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**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually,

Plaintiffs,

v.

LOURDES, INC., a Michigan domestic non-profit corporation, a/k/a LOURDES REHABILITATION AND HEALTH CARE CENTER

Defendant.

2019-173797-NO

Case No. 19- NO  
JUDGE PHYLLIS C.  
MCMILLEN

\_\_\_\_\_  
MARK W. HAFELI (P28908)  
Hafeli Staran & Christ, P.C.  
Attorney for Plaintiff  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 731-3083  
[mhafeli@hsc-law.com](mailto:mhafeli@hsc-law.com)

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint.

**COMPLAINT**

NOW COME Plaintiffs, MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually, by and through her counsel, Mark W. Hafeli, and for her Complaint states as follows:

1. Mimi Brun is the duly appointed Personal Representative of the Estate of Virginia Wahab.
2. Mimi Brun (“Ms. Brun”) is a resident of Oakland County, Michigan.
3. Virginia Wahab (“Virginia”) was a resident of Oakland County, Michigan and her Estate is pending in the Oakland County Probate Court.

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4. Virginia Wahab died on April 25, 2019.
5. Defendant, Lourdes, Inc., a/k/a Lourdes Rehabilitation and Healthcare Center (“Lourdes”) is a Michigan domestic non-profit corporation operating and doing business in Oakland County, Michigan.
6. The amount in controversy exceeds \$25,000.00.
7. Plaintiff, Ms. Brun is one of Virginia’s two daughters.
8. In February, 2016 Virginia was 92 years old.
9. Although elderly, Virginia had not lost any of the vitality and health she maintained throughout her life.
10. In February, 2016 Virginia was hospitalized for three days for dehydration and she stayed in the hospital until February 23, 2016.
11. Virginia’s doctor recommended that Ms. Brun find Virginia a short-term rehab facility.
12. On February 23, 2016 Virginia was admitted to Lourdes for short-term rehabilitation only.
13. The contract that Ms. Brun signed with Lourdes reads in part as follows:  
  
By signing this form below, I acknowledge the above stated policy and agree to admission into a **short-term rehabilitation room ONLY**. . . (**Exhibit 1**) (Emphasis added)
14. The provision in the contract which provided that Virginia agreed to move to a long-term care room at Lourdes was crossed out and the word “**NO**” was written over the provision. (**Exhibit 1**)
15. Based on the contract attached hereto as **Exhibit 1**, it was very clear Virginia was to stay at Lourdes on a short-term basis for rehabilitation only.

16. In April, 2016 Virginia's rehabilitation stay at Lourdes was complete and she was making plans to leave the facility.

17. A report from Health Alliance Plan read in part as follows:

We have reviewed your case and decided that Medicare coverage of your current skilled nursing facility services should end.

. . . Your nutritional needs are met with a regular diet. **You do not require any complex wound care or intravenous medications and you are medically stable for discharge. Your discharge plan is to return home with your family. . .**

You do not require skilled therapies five days per week and the therapists plan to discontinue skilled services to you on April 5, 2016. No other skilled needs are identified as you do not require any skilled nursing services such as intravenous medication or extensive daily wound care and you are medically stable. **Your discharge plan is to return home with your family. Any needs you require can be provided within the outpatient or home care setting. . . (Exhibit 2) (Emphasis added)**

18. Although the report attached as **Exhibit 2** clearly indicates that Virginia did not need to be in a nursing home, Lourdes kept her in a section of the nursing home reserved for terminally ill and dementia patients for over two years, until August, 2018.

19. Ms. Brun attempted to extract Virginia from the nursing home, but Lourdes would not release Virginia without payment of a bill in the amount of \$25,000.

20. Lourdes next settled on a strategy of filing a Petition for Appointment of a Guardian for Virginia (**Exhibit 3**) even though Virginia did not need a guardian because she was not mentally incompetent or suffering from physical illness.

21. Nevertheless, Lourdes filed a Petition (**Exhibit 3**) alleging that Virginia was suffering from a mental deficiency and physical illness even though Lourdes knew that she was not suffering from these conditions.

22. In the Petition Lourdes requested the appointment of a public administrator as Guardian rather than a family member, such as Ms. Brun, who had priority under the Probate laws.

23. 42 CFR §483.15(a)(3) reads as in pertinent part as follows:

(3) **The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. . . (Emphasis added) (Exhibit 4)**

24. In violation of 42 CFR §483.15(a)(3), Lourdes required Ms. Brun to guarantee payment to the facility as a condition of admission to Lourdes.

25. In Lourdes' Petition for Appointment of Guardian of Virginia, the reason given the appointment of a guardian is stated as follows:

**Daughter Mimi Brun has not paid resident's nursing home facility bill. Currently owes \$31,416.00. (Exhibit 5)**

26. Lourdes' requirement of Ms. Brun to guarantee payment to the facility as a condition of admission is illegal and is in violation of federal law.

27. Despite the violation of federal law contained in Lourdes' Petition, at a hearing on June 29, 2016 the Probate Judge appointed public administrator Jon Munger as Virginia's Guardian.

28. The public administrator and Lourdes petitioned for Medicaid benefits for Virginia even though Virginia did not qualify for or need Medicaid benefits.

29. Medicaid payments were obtained by Lourdes on behalf of Virginia and Virginia was kept in Lourdes against her will in exchange for the Medicaid payments.

30. On October 5, 2016 the public administrator had an order entered which read in part as follows:

**Brun committed to pay Lourdes the sum of \$25,000 prior to 10.30.2016. (Exhibit 6)**

31. A problem with **Exhibit 6** is that Ms. Brun never committed to pay Lourdes the sum of \$25,000 prior to October 30, 2016.

32. Another problem with **Exhibit 6** is that Lourdes' requirement that Ms. Brun guarantee to pay her mother's bill to Lourdes was a violation of federal law, specifically, 42 CFR §483.15(a)(3).

33. On May 25, 2018 the Probate Judge realized that she had been duped and entered an Order which read in part as follows:

**IT IS HEREBY ORDERED that the October 5, 2016 Order is modified by deleting the portion of the order requiring Mimi Brun to pay Lourdes \$25,000.00 prior to October 30, 2016. . . (Exhibit 7) (Emphasis added)**

34. Even though Lourdes knew or should have known that the Order which ordered Ms. Brun to pay Lourdes \$25,000 by October 30, 2016 was not a valid Order, Lourdes began to harass Ms. Brun for payment pursuant to the Order.

35. On December 15, 2016 Lourdes filed a Petition for Order to Show Cause against Ms. Brun seeking to hold Ms. Brun in contempt for failing to comply with the bogus Order. **(Exhibit 8)**

36. On March 7, 2017 the Probate Court issued a bench warrant for Ms. Brun's arrest for non-payment of the \$25,000 pursuant to Lourdes' illegal Petition. **(Exhibit 9)**

37. The bench warrant was set aside on May 25, 2018 **(Exhibit 10)** when the Court realized it had been illegally entered pursuant to Lourdes' Petition.

38. The illegal bench warrant obtained by Lourdes for the arrest of Ms. Brun remained outstanding for over a year from March 1, 2017 until May 25, 2018.

39. Ms. Brun worried for over a year that she might be arrested by the police and thrown into prison at any time pursuant to Lourdes' improper Petition.

40. In a February 2, 2017 e-mail, Lourdes' attorney told Ms. Brun, "We want to be paid. **You cannot expect to show up to see your mother when you have not paid for the privilege** and you have disappeared since November." (Emphasis added)

41. It is a violation of federal law to condition Virginia's right to visits from her daughter upon payment of a bill sent pursuant to a guarantee which was illegal under federal law.

42. Lourdes' brochure and documents contain statements that residents such as Virginia will be allowed full visitation by their relatives.

43. On July 17, 2016 Virginia signed an Affidavit in which she stated that she wanted go home with her daughter, Ms. Brun.

44. On November 16, 2016 Lourdes' attorney sent a letter to Ms. Brun stating that she was no longer permitted on the Lourdes premises.

45. Lourdes has received substantial Medicaid payments for care of Virginia that it was not entitled to since Virginia did not need skilled nursing care nor did she need Medicaid.

46. Lourdes eventually obtained an injunction against Ms. Brun visiting her mother, which was in violation of the Lourdes policy that promised full visitation rights for residents.

47. An affidavit signed by Wahab's sister, Sr. Helen Essa, reads, "Mimi is a devoted daughter and attended to every detail of her mother's care not ever putting her own needs first. I know how desperate my sister is to go home with Mimi and have Mimi care for her. **I pray, as we all do, that my sister will not die in a nursing home.** (Emphasis added)

48. Throughout the period of over two years, Lourdes kept Virginia in the nursing home against her will as collateral for payments that it claimed were owed to it by Ms. Brun.

49. On March 14, 2018 Lisa J. Orlando, a Guardian Ad Litem appointed by the Probate Court, reported as follows:

In the opinion of this GAL, it is Virginia Wahab a 94-year-old woman, who is paying the price of these ongoing legal disputes **and suffering harm by not being able to see her daughter for more than 17 months. To isolate and prohibit an aging Mother from seeing her daughter is heartbreaking to this GAL. Mimi Brun has priority under the statute and is Virginia's choice to be her Guardian. Therefore, it is in Virginia's best interest and appropriate for the Petitioner, her eldest daughter, to be her guardian. (Exhibit 11)** (Emphasis added)

50. Finally, on August 3, 2018, after hearing two days of testimony, the Probate Court ruled that the guardianship and conservatorship would terminate and Virginia would be returned to her daughter's care. Ms. Brun's power of attorney, which was suspended upon the original Petition filed by Lourdes for appointment of a guardian, was reinstated.

51. After the termination of the guardianship and conservatorship, Virginia was released from Lourdes nursing home to the care of her daughter, Mimi Brun.

52. While at Lourdes, Lourdes employees chemically restrained Virginia so she would be easier to manage.

53. While kept against her will at Lourdes, Lourdes did the following to Virginia:

- a. They lost Virginia's hearing aid and reading glasses leaving her unable to hear, see properly or read.
- b. They lost Virginia's dentures.
- c. They took a custom made wheelchair that Ms. Brun had made for her mother and gave it to another resident to use, then returned it to Virginia and Ms. Brun at the end of Virginia's stay at Lourdes in a badly soiled condition.
- d. Virginia suffered a number of falls while in the care and custody of Lourdes.

#### **COUNT I FALSE IMPRISONMENT**

54. Plaintiffs incorporate all of the allegations contained in this Complaint into Count I.

55. Virginia went to Lourdes for short-term rehabilitation.

56. Virginia's rehabilitation was completed in April, 2016.
57. Lourdes was obligated to release Virginia upon the completion of her rehabilitation in April, 2016.
58. Instead of releasing Virginia from the nursing home, Lourdes kept Virginia in the nursing home for an additional two years.
59. Virginia at no time needed to be in a nursing home for skilled nursing services.
60. Lourdes unlawfully restrained Virginia's personal liberty and freedom of movement since Virginia desired to leave the nursing home and move in with her daughter and Lourdes refused to release her.
61. Ms. Brun tried for over two years to get Virginia released from Lourdes, but Lourdes refused to release her.
62. Virginia's imprisonment by Lourdes was unlawful since she did not need skilled nursing care and she did not belong in a nursing home.
63. Lourdes' imprisonment of Virginia at Lourdes was based on a guarantee of payment by Ms. Brun which was illegal under federal law.
64. As a result of Lourdes false imprisonment of Virginia, Virginia has suffered damages including, but not limited to:
  - a. pain and suffering and extreme emotional distress from being forced to live in a nursing home against her will for over a two year period.
  - b. medical expenses
  - c. punitive damages
65. Lourdes is vicariously liable for all of the actions of its employees, agents and servants.



WHEREFORE, Plaintiff, Mimi Brun, as Personal Representative of the Estate of VIRGINIA WAHAB, demands Judgment against Defendant, LOURDES, INC., a/k/a LOURDES REHABILITATION AND HEALTH CARE CENTER, in whatever amount she is found to be entitled, plus costs, interest, attorney fees, punitive damages and all damages allowable under Michigan law.

## **COUNT II NEGLIGENCE**

66. Plaintiffs incorporate all of the allegations contained in this Complaint into Count II.

67. While Virginia was a resident of Lourdes, Lourdes undertook the duty to nurse, care for, observe and attend to the objective and subjective symptoms and medical needs of Virginia.

68. Lourdes, its staff, physicians, executives, employees, nurses, nurse's aides, agents and servants owed a duty imposed by the common law and the law of this state to skillfully, prudently and thoroughly diagnose, care, treat, advise and observe Virginia.

69. The standard of care applicable in this matter to Lourdes is that of a reasonably prudent nursing home.

70. Lourdes breached the aforesaid duty and standard in the following respects:

a. Lourdes filed a Petition for guardianship for Virginia when Virginia was not mentally incompetent and did not meet the requirements for appointment of a guardian.

b. Lourdes required Ms. Brun to guarantee payment to it as a condition of admission of Virginia in violation of 42 CFR §483.15.

c. Lourdes asked for the appointment of a public administrator instead of a family member as the guardian for Virginia in violation of MCL 720.206, which states that public administrators may only serve as personal representatives of decedent estates, not as guardians.

- d. Lourdes kept Virginia in its nursing home against her will when she did not need skilled care services, for a period of over two years.
- e. Lourdes cut off all rights of visitation on the part of Ms. Brun to see her mother, Virginia.
- f. Lourdes conditioned the right of Virginia to see her daughter, Ms. Brun, upon payment pursuant to a guarantee illegal under federal law and in violation of Virginia's resident right to visitation.
- g. Lourdes used chemical restraints on Virginia to make her easier to manage.
- h. Lourdes obtained a bench warrant for the arrest of Ms. Brun based on a fraudulent Court Order that was later set aside by the Court as being improperly entered.

71. As a result of Lourdes' negligence, both Plaintiffs suffered damages, including but not limited to:

- a. Virginia suffered substantial emotional distress when she was forced to reside in a nursing home against her will for a period of over two years.
- b. Both Plaintiffs suffered emotional distress when their rights to visitation with their loved ones were cut off by Lourdes.
- c. Both Plaintiffs suffered economic damages in the nature of medical expenses and nursing home expenses that were unnecessarily generated by Lourdes.

WHEREFORE, Plaintiffs, MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually, demand judgment against Defendant, LOURDES, INC., a/k/a LOURDES REHABILITATION AND HEALTH CARE CENTER, in whatever amount they are found to be entitled, plus costs, interest and attorney fees and all damages allowable under Michigan law.

**COUNT III  
BREACH OF EXPRESS AND IMPLIED CONTRACT**

72. Plaintiffs incorporate all of the allegations contained in this Complaint into Count III.

73. On or about March 3, 2016, Plaintiffs and Lourdes entered into a Contract whereby both parties agreed that Virginia would be confined in Lourdes for short-term rehabilitation and the provision for a lengthy stay at Lourdes was crossed out and the word “No” was written over it. (Exhibit 1)

74. Pursuant to its policies and brochures, Lourdes promised the Plaintiffs that Virginia would be treated with dignity and respect.

75. Pursuant to the terms of its policies and brochures, Lourdes promised Virginia that she would be freely entitled to family visits with her while in the nursing home.

76. Lourdes breached its contract with the Plaintiffs by confining Virginia in the nursing home for over a two year period when she did not need skilled nursing services.

77. Lourdes breached its contract with the Plaintiffs by cutting off all visitation rights of Ms. Brun to see her mother because “she had not paid for the privilege”.

78. Lourdes breached its contract with the Plaintiffs by requiring a third party guarantee of payment from Ms. Brun in violation of 42 CFR §483.15.

79. Lourdes breached its contract with the Plaintiffs because they did not allow Virginia to leave the nursing home when her rehabilitation was completed.

80. Lourdes breached its contract when it obtained a bench warrant for the arrest of Ms. Brun pursuant to a bogus Order that was later set aside by the Court.

81. Lourdes breached its contract with the Plaintiffs by filing a Petition for Guardianship when it knew that Virginia was not mentally incompetent and did not meet the requirements for appointment of a guardian.

82. Lourdes breached the contract by continuing to bill Medicaid for services that were not necessary for Virginia.

83. Lourdes breached the contract by chemically restraining Virginia so she would be easier to manage.

84. Lourdes is vicariously liable for all of the actions of its employees, agents and servants.

85. As a result of Lourdes' breach of contract, the Plaintiffs have suffered the following damages, including but not limited to:

a. Virginia was kept in a nursing home for over two years when she did not need skilled nursing services.

b. Both Ms. Brun and Virginia suffered severe emotional distress because they were not allowed to visit each other.

c. Ms. Brun suffered severe fear and emotional distress as a result of an illegal bench warrant being out for her arrest for over a one year period.

d. Virginia's health and well being deteriorated under the toxicity of unnecessary drugs used to constrain and control Virginia into a forced mental state that was not her normal self.

WHEREFORE, Plaintiffs, MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually, demand judgment against Defendant, LOURDES, INC., a/k/a LOURDES REHABILITATION AND HEALTH CARE CENTER, in whatever amount they are found to be entitled, plus costs, interest, attorney fees and all damages allowable under Michigan law.

#### **COUNT IV MALICIOUS PROSECUTION**

86. Plaintiffs incorporate all of the allegations contained in this Complaint into Count IV.

87. Lourdes took an Order which compelled Ms. Brun to pay \$25,000 to Lourdes by October 30, 2016 (**Exhibit 6**) and set up a show cause hearing as to why Ms. Brun should not be held in contempt of Court for failing to pay Lourdes the sum of \$25,000.

88. Lourdes requirement of Ms. Brun to pay \$25,000 pursuant to a guarantee of payment to the facility as a condition of admission was illegal under 42 CFR §483.15.

89. Lourdes knew that the Order was illegally entered.

90. Lourdes obtained a bench warrant for the arrest of Ms. Brun based on the illegal Order. (**Exhibit 9**)

91. When the Probate Judge learned that she had been tricked by the attorneys into entering the illegal Order, she set it aside on May 25, 2018. (**Exhibit 10**)

92. The bench warrant, based on the bogus Order, remained in effect for over a year and Ms. Brun suffered severe emotional distress knowing that she could be arrested at any moment while the bench warrant was in effect.

93. Lourdes had no probable cause to seek a bench warrant for Ms. Brun's arrest.

94. Lourdes obtained the bench warrant based upon malice since it knew or should have known that the payment Order was illegally entered.

95. Ms. Brun suffered a special injury resulting in damages as a result of Lourdes procurement of an illegal bench warrant.

96. In addition, Lourdes filed a Petition for the appointment of a public administrator for Virginia as Guardian of Virginia.

97. Lourdes knew or should have known that Virginia was not mentally incompetent and therefore, the standards for guardianship could not be met.

98. Lourdes also Petitioned for the appointment of a public administrator, rather than a family member who had priority under the probate code, in violation of MCL 720.206 which provides that public administrators can only be appointed in decedent estates.

99. Lourdes filed the Petition for guardianship at a time when Virginia should have been let out of their nursing home as her rehabilitation stay had concluded.

100. The guardianship was later dissolved by the Probate Court.

101. Both Plaintiffs suffered a special injury resulting in damages as a result of the malicious prosecution on the part of Lourdes.

102. Virginia was forced to spend two years in a nursing home for skilled nursing services which she did not need or want.

103. Ms. Brun suffered severe emotional distress for over a year since she was aware that she could be arrested at any time pursuant to the illegal bench warrant.

104. As a result of the outstanding illegal arrest warrant, Ms. Brun could no longer appear in Court to fight for her mother's release since if she did appear in Court, she would be arrested by the authorities and confined in prison.

105. Lourdes is vicariously liable for all of the actions of its employees, agents and servants.

WHEREFORE, Plaintiffs, MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually, demand judgment against Defendant, LOURDES, INC., a/k/a LOURDES REHABILITATION AND HEALTH CARE CENTER, in whatever amount they are found to be entitled, plus costs, interest, attorney fees, punitive damages, treble damages and all damages allowable under Michigan law.

**COUNT V  
ABUSE OF PROCESS**

106. Plaintiffs incorporate all of the allegations contained in this Complaint into Count V.

107. The Probate Court entered an Order which ordered Ms. Brun to pay \$25,000 to Lourdes by October 30, 2016. **(Exhibit 6)**

108. The Order was illegally entered by the Court since the Judge never made such an Order at the hearing.

109. Lourdes requirement of Ms. Brun to pay \$25,000 pursuant to a guarantee of payment to the facility as a condition of admission was illegal under 42 CFR §483.15.

110. Nevertheless, Lourdes improperly obtained a bench warrant for the arrest of Ms. Brun for non-payment of the \$25,000 pursuant to the illegally entered Order.

111. When the Judge found that she had been fooled by the attorneys in the Probate matter she set the bench warrant for Ms. Brun's arrest aside. **(Exhibit 10)**

112. Lourdes proceeded to obtain a bench warrant for the arrest of Ms. Brun based on a sham Order.

113. Lourdes abused the process of the Court by using the Court's contempt powers to collect an alleged debt.

114. In June, 2016 Virginia was due to be released from Lourdes because her rehabilitation had been completed.

115. Nevertheless, Lourdes had a social worker file a Petition for Guardianship when Virginia was not mentally or physically incompetent and she did not need a guardian.

116. Lourdes' Petition for the appointment of a public administrator, rather than a family member who had priority to serve as Guardian under the Probate code, violated MCL

720.206, which provides that public administrators can only serve as personal representatives of decedent's estate, not as guardians.

117. Lourdes' Petition for guardianship for breach of an illegal guarantee under federal law was an abuse of process.

118. When the Court finally took testimony on the guardianship, the guardianship was dissolved on August 3, 2018.

119. Lourdes is vicariously liable for all of the actions of its employees, agents and servants.

120. Virginia suffered severe emotional distress as a result of Lourdes' abuse of process because she was kept in a nursing home for over two years against her will when she did not need nursing home services.

121. Ms. Brun suffered damage from the abuse of process because Lourdes obtained a bench warrant for her arrest which was in effect for over a year and during that year, Ms. Brun knew she could be arrested and imprisoned at any moment.

WHEREFORE, Plaintiffs, MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually, demand judgment against Defendant, LOURDES, INC., a/k/a LOURDES REHABILITATION AND HEALTH CARE CENTER, in whatever amount they are found to be entitled, plus costs, interest, attorney fees, punitive damages and all damages allowable under Michigan law.

**COUNT VI  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

122. Plaintiffs incorporate all of the allegations contained in this Complaint into Count VI.



123. Lourdes kept Virginia imprisoned in the nursing home for over two years even though she did not need skilled nursing care and did not belong in a nursing home.

124. Lourdes cut off the right of Ms. Brun to visit her mother, Virginia, in the nursing home.

125. Lourdes cut off the right of Virginia to receive visits from her daughter, Ms. Brun, while kept in the nursing home.

126. Lourdes charged Medicaid for unnecessary services supplied to Virginia, since Virginia did not need skilled nursing care and did not belong in the nursing home.

127. Lourdes filed a Petition for guardianship alleging that Virginia was suffering from a mental and physical illness, when Virginia was not suffering from either.

128. Lourdes asked for the appointment of a public administrator to serve as guardian of Virginia even though under MCL 720.206 public administrators can only serve as personal representatives of estates, not guardians.

129. Lourdes required a third party guarantee of payment from Ms. Brun as a condition of Virginia's admission in violation of 42 CFR §483.15.

130. Lourdes served Ms. Brun at an address where she had never resided even though Ms. Brun's correct address was contained in the Power of Attorney that was on file at Lourdes.

131. Lourdes chemically restrained Virginia up while she staying in their nursing home so she would be easier to handle.

132. Lourdes stated to Ms. Brun that if she would pay \$25,000 to Lourdes, then she would be allowed to visit her mother, Virginia, which was in violation of Virginia's resident right to have her daughter visit her.

133. Lourdes instituted a contempt proceeding seeking to hold Ms. Brun in contempt for failure to comply with a bogus Order to pay \$25,000 to Lourdes.

134. Lourdes obtained a bench warrant for Ms. Brun's arrest based on a fraudulent Order that was later set aside by the Court.

135. Lourdes wrote letters to Ms. Brun stating that she was no longer permitted on the premises to visit her mother because she had not paid for the privilege of visitation.

136. Lourdes' conduct in this case was extreme and outrageous.

137. Lourdes' conduct was intentional and reckless.

138. Lourdes' conduct caused both Ms. Brun and Virginia severe emotional distress and pain and suffering.

139. Lourdes' conduct caused Ms. Brun and Virginia economic damages.

140. Lourdes is vicariously liable for all the actions of its employees, agents and servants.

WHEREFORE, Plaintiffs, MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually, demand judgment against Defendant, LOURDES, INC., a/k/a LOURDES REHABILITATION AND HEALTH CARE CENTER, in whatever amount they are found to be entitled, plus costs, interest, attorney fees, punitive damages and all damages allowable under Michigan law.

Hafeli Staran & Christ, P.C.

/s/Mark W. Hafeli  
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(P28908)

Dated: April \_\_, 2019

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually,

Plaintiffs,

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Defendant.

2019-173797-NO

Case No. 19- NO

JUDGE PHYLLIS C. MCMILLEN

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**DEMAND FOR JURY TRIAL**

NOW COMES the Plaintiffs, MIMI BRUN, as Personal Representative of the Estate of VIRGINIA WAHAB, and MIMI BRUN, individually, by and through her counsel, Mark W. Hafeli, and hereby demands a trial by jury of the above cause of action.

Hafeli Staran & Christ, P.C.

/s/Mark W. Hafeli  
Attorney for Plaintiff  
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Sylvan Lake, MI 48320  
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(P28908)

Dated: April \_\_, 2019

# *Exhibit 1*

Brown



Lourdes Rehabilitation and Healthcare Center

Virginia Wahab  
Resident

Room Number: 435

Thank you for choosing Lourdes Rehabilitation and Healthcare Center for your skilled nursing and rehabilitation stay.

We have designated a room for Virginia Wahab in need of short-term skilled rehabilitation following hospitalization. Length of stay will vary depending on the resident's medical condition and progress.

~~If your level of care changes or if a resident needs a longer length of stay due to added complications or factors, you agree to move to a long-term care room in our facility. If you have questions, please contact our facility social worker.~~

By signing this form below, I acknowledge the above stated policy and agree to admission into a short-term rehabilitation room. You may contact our facility representative for further information.

Mimi Brown  
Resident or Responsible Party

3/3/16  
Date

Sh. Stout  
Facility Representative

3/3/16  
Date

ONLY.

# *Exhibit 2*

Health Alliance Plan  
2850 West Grand Blvd.  
Detroit, MI 48202  
800-801-1770

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DETAILED EXPLANATION OF NON-COVERAGE

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Date: 04/04/2016

Patient Name: Virginia Wahab

Patient ID Number: 10043304200

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This notice gives a detailed explanation of why your Medicare provider and/or health plan has determined Medicare coverage for your current services should end. ***This notice is not the decision on your appeal.*** The decision on your appeal will come from your Quality Improvement Organization (QIO).

**We have reviewed your case and decided that Medicare coverage of your current skilled nursing facility services should end.**

- Facts used to make this decision: This is a Medical Necessity Denial: The therapists from Lourdes Rehabilitation and Healthcare Center will be discontinuing services on April 5, 2016 because you are appropriate for an alternate level of care. Per the therapy notes from Lourdes Rehabilitation and Healthcare Center you are able to eat and groom yourself with someone standing nearby you. You require the assistance of another person to bathe and dress yourself. You are able to move about in bed with the assistance of another person. You continue to require the assistance of another person to transfer from the bed to a chair. You are able to walk at least 50 feet using a rolling walker and the assistance of another person. The Therapist's notes indicate you will require 24 hour supervision for safety. Your nutritional needs are met with a regular diet. You do not require any complex wound care or intravenous medications and you are medically stable for discharge. Your discharge plan is to return home with your family. The additional care you require can be provided in the outpatient or home care setting.
- Detailed explanation of why your current services are no longer covered, and the specific Medicare coverage rules and policy used to make this decision: Chapter 8 – Coverage of Extended Care (SNF) Services  
30.6 – Daily Skilled Services Defined  
(Rev. 57, Issued: 11-08-06, Effective: 07-27-66, Implementation: 12-14-06)

Skilled nursing services or skilled rehabilitation services (or a combination of these services) must be needed and provided on a "daily basis," i.e., on essentially a 7 days a

week basis. A patient whose inpatient stay is based solely on the need for skilled rehabilitation services would meet the "daily basis" requirement when they need and receive those services on at least 5 days a week. (If therapy services are provided less than 5 days a week, the "daily requirement would not be met").

You do not require skilled therapies five days per week and the therapists plan to discontinue skilled services to you on April 5, 2016. No other skilled needs are identified as you do not require any skilled nursing services such as intravenous medication or extensive daily wound care and you are medically stable. Your discharge plan is to return home with your family. Any needs you require can be provided within the outpatient or home care setting.

- Health Plan policy, provision, or rationale used in making the decision: Medical Criteria for Admission to a SNF
  - a. The patient requires skilled nursing services or skilled rehabilitation services, i.e., services that must be performed by or under the supervision of professional or technical personnel and are ordered by a physician;
  - b. The patient requires these skilled services on a daily basis; and
  - c. As a practical matter, considering economy and efficiency, the daily skilled services can be provided only on an inpatient basis in a SNF.
  - d. The services delivered are reasonable and necessary for the treatment of a patient's illness or injury, i.e., are consistent with the nature and severity of the individual's illness or injury, the individual's particular medical needs, and accepted standards of medical practice. The services must also be reasonable in terms of duration and quantity.

Therapy services will end on April 5, 2016. No other skilled needs are identified as you do not require any skilled nursing services such as intravenous medication or extensive daily wound care and you are medically stable. Your discharge plan is to return home with your family. The additional care you require can be provided in the home care or outpatient setting.

If you would like a copy of the policy or coverage guidelines used to make this decision, or a copy of the documents sent to the QIO, please call us at 313-664-7015 or toll-free at 800-801-1770. For TDD services, please call 711.

Y0076\_HMO PPO DENC 2011  
File & Use Certified: 02/28/2011

Form CMS-10124-DENC (Approved 12/31/2011)

OMB Approval No. 0938-0953



# *Exhibit 3*

STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF OAKLAND

PETITION FOR  
APPOINTMENT OF GUARDIAN OF  
INCAPACITATED INDIVIDUAL

FILE NO.

2016.370,475-GA

(A) In the matter of VIRGINIA WAHAB XXX-XX-  
Alleged incapacitated individual Last four digits of SSN

(B) Date of birth	Race WHITE	Sex F	Address of alleged incapacitated individual where now found 2300 WATKINS LAKE ROAD, WATERFORD, MI 48328
-------------------	---------------	----------	--

(C) 1. I, LOURDES REHABILITATION AND HEALTHCARE CENTER, am interested in this matter  
Name (type or print) and make this petition as SKILLED NURSING FACILITY  
State interest/relationship

(D)  2. An action within the jurisdiction of the family division of circuit court involving the family or family members of the person named above has been previously filed in \_\_\_\_\_ Court, Case Number \_\_\_\_\_, was assigned to Judge \_\_\_\_\_, and  remains  is no longer pending.

(E) 3. The adult is a resident of OAK PARK, OAKLAND MI  
City, village, or township County State  
and has a home address and telephone number of 14080 ELGIN STREET  
Address  
OAK PARK MI 48237 (248) 546-1161  
City State Zip Telephone no.

The individual is a citizen of the following foreign country: \_\_\_\_\_  
(F) 4. The adult has  a patient advocate/power of attorney for health care. (Specify name and address below.)  
 a power of attorney. (Specify name and address below.)  
 a conservator. (Specify name and address below.)  
MIMI BRUN 20819 LITTLESTONE HARPER WOODS, MI 48225  
Name and address

(G)  5.  The patient advocate designation was not executed in compliance with MCL 700.5506.  
 The patient advocate is not complying with the terms of the designation or of MCL 700.5506 to MCL 700.5512.  
 The patient advocate is not acting consistent with the ward's best interests.

(H) 6. The adult lacks sufficient understanding or capacity to make or communicate informed decisions because of  
 mental illness.  mental deficiency.  physical illness or disability.  
 chronic intoxication.  chronic drug use.  \_\_\_\_\_

(I) 7. Specific facts about the adult's recent condition or conduct that lead me to believe the adult needs a guardian are  
(Attach a separate sheet if more space is needed.)  
Daughter Mimi Brun has not paid resident's nursing home facility bill. Currently owes \$31,416.00.

(J) 8. The name, address, and telephone number of the person/agency (if any) who currently has care and custody of the adult  
\_\_\_\_\_ are \_\_\_\_\_  
(SEE SECOND PAGE)

USE NOTE: This form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

CCPC-EST-01  
16 JUN -6 PM 2:13

**K** 9. The adult  is  is not entitled to receive Veterans Administration benefits. The Veterans Administration claimant number is \_\_\_\_\_.

**L** 10. The alleged incapacitated individual has  
 a spouse whose name and address are listed below.  
 adult child(ren) whose name(s) and address(es) are listed below.  
 living parent(s) whose name(s) and address(es) are listed below.  
 no spouse, child(ren), or parent(s). The names and addresses of presumptive heirs are listed below.  
 none of the above (must notify Attorney General - see instructions for the address of the Attorney General).

NAME	RELATIONSHIP	ADDRESS AND TELEPHONE NUMBER			
MIMI BRUN	DAUGHTER	Street address 20819 LITTLESTONE			
		City HARPER WOODS	State MI	Zip 48225	Telephone no.
ELLEN MORGAN	DAUGHTER	Street address 14080 Elgin St			
		City Oak Park	State MI	Zip 48237	Telephone no.
SR. HELEN ESSA	SISTER	Street address 20819 LITTLESTON			
		City HARPER WOODS	State MI	Zip 48225	Telephone no.

**M** 11. None of the adults named above is under any legal incapacity except \_\_\_\_\_

Give name, legal incapacity, and representative of the person, if any

**N** 12. I REQUEST that the court determine the adult is an incapacitated individual and appoint Jennifer  
Carney 4545 Clawson Tank Dr.  
Clarkston MI 48396 248-618-1200, who has priority as  
City State Zip Telephone no.  
Priority relationship  full guardian with all powers provided by statute.  
 limited guardian with the following powers:

**O**  13. No other person appears to have authority to act in the circumstances. I request that a temporary guardian be appointed pending a hearing on this petition because of the following emergency:

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

**P** Attorney signature \_\_\_\_\_ Date 06/06/2016  
Attorney name (type or print) \_\_\_\_\_ Bar no. \_\_\_\_\_ Petitioner signature Mia Vanacker  
Attorney address \_\_\_\_\_ Petitioner address 2300 WATKINS LAKE RD  
City, state, zip \_\_\_\_\_ Telephone no. \_\_\_\_\_ City, state, zip WATERFORD, MI 48328 Telephone no. (248) 886-5605

**Q**  14. NOMINATION BY THE ALLEGED INCAPACITATED INDIVIDUAL In the event the court finds that I require a guardian, I nominate: \_\_\_\_\_  
Name, address, and telephone no.

Date \_\_\_\_\_ Signature of alleged incapacitated individual \_\_\_\_\_

# *Exhibit 4*

We've updated our Privacy Statement. Before you continue, please read our new Privacy Statement and familiarize yourself with the terms.

WESTLAW

Code of Federal Regulations  
 Title 42, Public Health  
 Chapter II, Care of Medicare & Medicaid Services, Department of Health and  
 § 483.15 Admission, transfer, and discharge rights.  
 Code of Federal Regulations, Part 483, Subpart A, Effective: July 13, 2017 (Approx. 12 pages)  
 Subchapter G, Standards and Certification (Refs & Annos)  
 Part 483, Requirements for States and Long Term Care Facilities (Refs &  
 Annos)  
 Subpart B, Requirements for Long Term Care Facilities (Refs & Annos)

**Effective: July 13, 2017**

42 C.F.R. § 483.15

**§ 483.15 Admission, transfer, and discharge rights.**

Currentness

(a) Admissions policy.

- (1) The facility must establish and implement an admissions policy.
- (2) The facility must—
  - (i) Not request or require residents or potential residents to waive their rights as set forth in this subpart and in applicable state, federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and
  - (ii) Not request or require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.
  - (iii) Not request or require residents or potential residents to waive potential facility liability for losses of personal property
- (3) The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.
- (4) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,—
  - (i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and
  - (ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(5) States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

(6) A nursing facility must disclose and provide to a resident or potential resident prior to time of admission, notice of special characteristics or service limitations of the facility.

(7) A nursing facility that is a composite distinct part as defined in § 483.5 must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under paragraph (c)(9) of this section.

(b) Equal access to quality care.

(1) A facility must establish, maintain and implement identical policies and practices regarding transfer and discharge, as defined in § 483.5 and the provision of services for all individuals regardless of source of payment, consistent with § 483.10(a)(2);

(2) The facility may charge any amount for services furnished to non-Medicaid residents unless otherwise limited by state law and consistent with the notice requirement in § 483.10(g)(18)(i) and (g)(4)(i) describing the charges; and

(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(c) Transfer and discharge—

(1) Facility requirements—

(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(F) The facility ceases to operate.

(ii) The facility may not transfer or discharge the resident while the appeal is pending, pursuant to § 431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to § 431.220(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(2) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

(B) In the case of paragraph (c)(1)(i)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

(ii) The documentation required by paragraph (c)(2)(i) of this section must be made by—

(A) The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section; and

(B) A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section.

(iii) Information provided to the receiving provider must include a minimum of the following:

(A) Contact information of the practitioner responsible for the care of the resident

(B) Resident representative information including contact information.

(C) Advance Directive information.

(D) All special instructions or precautions for ongoing care, as appropriate.

(E) Comprehensive care plan goals.

(F) All other necessary information, including a copy of the resident's discharge summary, consistent with § 483.21(c)(2), as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with paragraph (c)(2) of this section, and

(iii) Include in the notice the items described in paragraph (c)(5) of this section.

(4) Timing of the notice.

(i) Except as specified in paragraphs (c)(4)(ii) and (8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice must be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (c)(1)(i)(A) of this section; or

(E) A resident has not resided in the facility for 30 days.

(5) Contents of the notice. The written notice specified in paragraph (c)(3) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;

(v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

(vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub.L. 106-402, codified at 42 U.S.C. 15001 et seq.); and

(vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) Changes to the notice. If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(7) Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(8) Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents, as required at § 483.70(l).

(9) Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in § 483.5) are subject to the requirements of § 483.10(e)(7) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

(d) Notice of bed-hold policy and return—

(1) Notice before transfer. Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies—

(i) The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;

(ii) The reserve bed payment policy in the state plan, under § 447.40 of this chapter, if any;

(iii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (e)(1) of this section, permitting a resident to return; and

(iv) The information specified in paragraph (e)(1) of this section.

(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and the resident representative written notice which specifies the duration of the bed-hold policy described in paragraph (d)(1) of this section.

(e)(1) Permitting residents to return to facility. A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following.

(i) A resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, returns to the facility to their previous room if available or immediately upon the first availability of a bed in a semi-private room if the resident



(A) Requires the services provided by the facility; and

(B) Is eligible for Medicare skilled nursing facility services or Medicaid nursing facility services.

(ii) If the facility that determines that a resident who was transferred with an expectation of returning to the facility cannot return to the facility, the facility must comply with the requirements of paragraph (c) as they apply to discharges.

(2) Readmission to a composite distinct part. When the facility to which a resident returns is a composite distinct part (as defined in § 483.5), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of return, the resident must be given the option to return to that location upon the first availability of a bed there.

#### Credits

[56 FR 48371, Sept. 26, 1991; 57 FR 43924, Sept. 23, 1992; 81 FR 26899, May 4, 2016; 81 FR 68855, Oct. 4, 2016; 82 FR 32259, July 13, 2017]

AUTHORITY: Secs. 1102, 1126I, 1819, 1871 and 1919 of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395i, 1395hh and 1396r).

#### Relevant Additional Resources

Additional Resources listed below contain your search terms.

#### UNITED STATES CODE ANNOTATED

Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals, see 42 USCA § 1396r-4.

Appropriations, see 42 USCA § 1396.

Certification and approval of rural health clinics and intermediate care facilities for mentally retarded, see 42 USCA § 1396l.

Community supported living arrangements services, see 42 USCA § 1396u.

Definitions, see 42 USCA § 1396d.

Enrollment of individuals under group health plans, see 42 USCA § 1396e.

Health insurance for aged and disabled, see 42 USCA § 1395hh.

Home and community care for functionally disabled elderly individuals, see 42 USCA § 1396t.

Hospital providers of nursing facility services, see 42 USCA § 1396f.

Indian Health Service facilities, see 42 USCA § 1396j.

Operation of State plans, see 42 USCA § 1396c.

Payment to States, see 42 USCA § 1396b.

Required laws relating to medical child support, see 42 USCA § 1396g-1.

Requirements for nursing facilities, see 42 USCA § 1396r.

Social Security, rules and regulations, see 42 USCA § 1302.

State plans for medical assistance, see 42 USCA § 1396a.

State programs for licensing of administrators of nursing homes, see 42 USCA § 1396g.

#### Relevant Notes of Decisions (2)

[View all 5](#)

Notes of Decisions listed below contain your search terms.

#### In general

Regulation requiring skilled nursing facilities to provide the necessary care and services to attain or maintain the highest practicable physical, mental, or psychosocial well-being, in accordance with the comprehensive assessment and plan of care, was not a strict liability regulation, and thus factual circumstances of alleged deficiencies had to be considered in determining whether skilled care facility violated the regulation. 42 C.F.R. § 483.25. *Crestview Parke Care Center v. Thompson*, 2004, 373 F.3d 743. Health 489; Health 537

#### Smoking

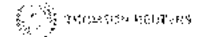
Federal law did not preempt city's enforcement of its tobacco smoking ordinance in long-term health care facility; federal regulations discussing rights of facility residents mentioned

nothing about smoking, and interpretive guideline to federal regulation, by stating that residents should be allowed to smoke outdoors "weather permitting," did not create obligation for such facilities to allow smoking indoors if weather did not permit outdoor smoking. 42 C.F.R. §§ 483.10(a)(1, 2), 483.15(b)(3). *City of San Jose v. Department of Health Services* (App. 6 Dist. 1998) 77 Cal.Rptr.2d 609, 66 Cal.App.4th 35, review denied. Environmental Law ¶ 251; Municipal Corporations ¶ 53

Current through April 16, 2019; 84 FR 16216.

End of  
Document

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# *Exhibit 5*

STATE OF MICHIGAN  
CIRCUIT COURT  
COUNTY OF OAKLAND

PETITION FOR  
APPOINTMENT OF GUARDIAN OF  
INCAPACITATED INDIVIDUAL

FILE NO.

2016.370,475-GA

(A) In the matter of VIRGINIA WAHAB XXX-XX-  
Alleged incapacitated individual Last four digits of SSN

(B) Date of birth	Race <u>WHITE</u>	Sex <u>F</u>	Address of alleged incapacitated individual where now found <u>2300 WATKINS LAKE ROAD, WATERFORD, MI 48328</u>
-------------------	----------------------	-----------------	---

(C) 1. I, LOURDES REHABILITATION AND HEALTHCARE CENTER, am interested in this matter  
Name (type or print)  
and make this petition as SKILLED NURSING FACILITY  
State interest/relationship

(D)  2. An action within the jurisdiction of the family division of circuit court involving the family or family members of the person  
named above has been previously filed in \_\_\_\_\_ Court, Case Number \_\_\_\_\_, was  
assigned to Judge \_\_\_\_\_, and  remains  is no longer pending.

(E) 3. The adult is a resident of OAK PARK OAKLAND MI  
City, village, or township County State  
and has a home address and telephone number of 14080 ELGON STREET  
Address  
OAK PARK MI 48237  (248) 546-1161  
City State Zip Telephone no.

The individual is a citizen of the following foreign country: \_\_\_\_\_  
(F) 4. The adult has  a patient advocate/power of attorney for health care. (Specify name and address below.)  
 a power of attorney. (Specify name and address below.)  
 a conservator. (Specify name and address below.)  
MIMI BRUN 20819 LITTLESTONE HARPER WOODS, MI 48225  
Name and address

(G)  5.  The patient advocate designation was not executed in compliance with MCL 700.5506.  
 The patient advocate is not complying with the terms of the designation or of MCL 700.5506 to MCL 700.5512.  
 The patient advocate is not acting consistent with the ward's best interests.

(H) 6. The adult lacks sufficient understanding or capacity to make or communicate informed decisions because of  
 mental illness.  mental deficiency.  physical illness or disability.  
 chronic intoxication.  chronic drug use.  \_\_\_\_\_

(I) 7. Specific facts about the adult's recent condition or conduct that lead me to believe the adult needs a guardian are  
(Attach a separate sheet if more space is needed.)  
Daughter Mimi Brun has not paid resident's nursing home facility bill. Currently owes \$31,416.00.

(J) 8. The name, address, and telephone number of the person/agency (if any) who currently has care and custody of the adult

(SEE SECOND PAGE)

USE NOTICE: This form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

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16 JUN -6 PM 2:10

adult  is  is not entitled to receive Veterans Administration benefits. The Veterans Administration claimant number is \_\_\_\_\_

10. The alleged incapacitated individual has
- a spouse whose name and address are listed below.
  - adult child(ren) whose name(s) and address(es) are listed below.
  - living parent(s) whose name(s) and address(es) are listed below.
  - no spouse, child(ren), or parent(s). The names and addresses of presumptive heirs are listed below.
  - none of the above (must notify Attorney General - see instructions for the address of the Attorney General).

NAME	RELATIONSHIP	ADDRESS AND TELEPHONE NUMBER			
		Street address	City	State	Zip
MIMI BRUN	DAUGHTER	20819 LITTLESTONE	HARPER WOODS	MI	48225
		Telephone no.			
ELLEN MORGAN	DAUGHTER	14080 Elgin St	Oak Park	MI	48237
		Telephone no.			
SR. HELEN ESSA	SISTER	20819 LITTLESTONE	HARPER WOODS	MI	48225
		Telephone no.			

11. None of the adults named above is under any legal incapacity except \_\_\_\_\_

Give name, legal incapacity, and representative of the person, if any

12. I REQUEST that the court determine the adult is an incapacitated individual and appoint Jennifer Carney who has priority as \_\_\_\_\_

Clarkston Address 4545 Clawson Tank Dr. City MI State MI Zip 48346 Telephone no. 248-618-1200

Priority relationship \_\_\_\_\_  full guardian with all powers provided by statute.  limited guardian with the following powers:

13. No other person appears to have authority to act in the circumstances. I request that a temporary guardian be appointed pending a hearing on this petition because of the following emergency:

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Attorney signature \_\_\_\_\_ Date 06/06/2016

Attorney name (type or print) \_\_\_\_\_ Bar no. \_\_\_\_\_ Petitioner signature Mia Vanacker

Attorney address \_\_\_\_\_ Petitioner address 2300 WATKINS LAKE RD

City, state, zip \_\_\_\_\_ Telephone no. \_\_\_\_\_ City, state, zip WATERFORD, MI 48328 Telephone no. (248) 886-5606

14. NOMINATION BY THE ALLEGED INCAPACITATED INDIVIDUAL In the event the court finds that I require a guardian, I nominate: \_\_\_\_\_ Name, address, and telephone no. \_\_\_\_\_

Date \_\_\_\_\_

Signature of alleged incapacitated individual \_\_\_\_\_

# *Exhibit 6*

STATE OF MICHIGAN PROBATE COURT COUNTY CIRCUIT COURT - FAMILY DIVISION	ORDER	FILE NO. <u>2016-3704756A</u>
---	-------	----------------------------------

In the matter of VIRGINIA WAHAB

1. Date of hearing: 10.5.2016 Judge: Hallmark Bar no

On petition filed, **THE COURT FINDS** that:

2. Notice of hearing was given to or waived by all interested persons.

IT IS ORDERED that: *The petition of son B. Muzee as Guardian  
bona fide same is hereby withdrawn w/o prejudice  
based w/out upw the Agreement of my m. B. Muzee  
to stop sending my E-mails to my family to these  
proceedings & the son Joseph H. E. H. Lock as  
my m. B. Muzee committed to pay loans the sum of  
25,000 prior to 10.30.2016*

10-5-16  
Date

*[Signature]*  
Judge

Attorney name \_\_\_\_\_ Bar no. \_\_\_\_\_

Address \_\_\_\_\_

City, state, zip \_\_\_\_\_ Telephone no. \_\_\_\_\_

2016 OCT -7 PM 2:14  
*ASB*

Do not write below this line - For court use only

# *Exhibit 7*



RECEIVED  
5/31/18

STATE OF MICHIGAN  
IN THE PROBATE FOR THE COUNTY OF OAKLAND

In the matter of VIRGINIA WAHAB,

Protected individual.

Case No: 2016-370475-GA  
Hon. Linda S. Hallmark

ORDER AMENDING OCTOBER 5, 2016 ORDER

At a session of said Court held in the Courthouse,  
County of Oakland, State of Michigan,

On MAY 25 2018

PRESENT: HONORABLE LINDA S. HALLMARK  
PROBATE COURT JUDGE

IT IS HEREBY ORDERED that the October 5, 2016 Order is modified by deleting the portion of the order requiring Mimi Brun to pay Lourdes \$25,000.00 prior to October 30, 2016. The remaining provisions of the Order remain in full force and effect.

Linda S. Hallmark  
Judge Linda S. Hallmark  
Probate Court Judge

A TRUE COPY  
OAKLAND COUNTY PROBATE REGISTER  
By Linda S. Hallmark  
Deputy

# *Exhibit 8*

STATE OF MICHIGAN

IN THE OAKLAND COUNTY PROBATE COURT

IN THE MATTER OF:  
Virginia Wahab

Case No. 2016-370475 GA  
Hon. Linda S. Hallmark

THE ROTH LAW FIRM  
By: Gregory J. Roth (P57677)  
Attorney for Virginia Wahab  
42705 Grand River Avenue, Suite 201  
Novi, Michigan 48375  
(248) 344-4772

LoPRETE & LYNEIS, P.C.  
By: Mary M. Lyneis (P62999)  
Attorney for Lourdes Senior Community  
40950 Woodward Avenue, Suite 306  
Bloomfield Hills, Michigan 48304  
(248) 594-5770

Mimi Brun, Adult Child, In Pro Per  
20819 Littlestone  
Harper Woods, MI 48225

EHRlich & FOLEY, P.C.  
By: Joseph H. Ehrlich (P27344)  
Attorney for Jon Munger  
Guardian and Special Fiduciary  
33 Bloomfield Hills Parkway, Suite 290  
Bloomfield Hills, Michigan 48304  
(248) 540-0100

MUNGER & ASSOCIATES, PC  
By: Jon Munger  
Guardian and Special Fiduciary  
4545 Clawson Tank Drive, Suite 100  
Clarkston, Michigan 48436  
(248) 922-5036

**LOURDES SENIOR COMMUNITY'S PETITION FOR ORDER TO  
SHOW CAUSE AGAINST MIMI BRUN**

NOW COMES Petitioner, Lourdes Senior Community ("Lourdes"), by and through its attorneys, LoPrete & Lyneis, P.C., and for its Petition for Order to Show Cause Against Mimi Brun, states as follows:

1. This is a guardianship proceeding.
2. The interested parties to this petition are as follows:

<u>Name</u>	<u>Address</u>	<u>Relationship</u>
Virginia Wahab	2300 Watkins Lake Rd. Waterford, MI 48328	Ward
Mimi Brun	20819 Littlestone Harper Woods, MI 48225	Daughter

OCPC-EST-BY-

16 DEC 15 12:21

Ellen Morgan	14080 Elgin Street Oak Park, MI 482337	Daughter
Jon Munger	4545 Clawson Tank Dr., Ste. 100 Clarkston, Michigan 48436	Guardian/Special Fiduciary

3. Virginia Wahab is a resident of Lourdes.

4. On October 5, 2016, this Court entered an Order wherein Mimi Brun agreed to pay Lourdes the amount of \$25,000 on or before October 30, 2016, representing an agreed reduced amount owed to Lourdes as of September, 2016, for resident Virginia Wahab. (**Exhibit 1**: Order dated 10/5/16).

5. The October 5, 2016 Order further states that Mimi Brun is to stop sending e-mails to any party to these proceedings and Joseph Ehrlich.

6. Despite the Court's Order, Mimi Brun has not paid Lourdes the sum of \$25,000, as required by the foregoing court order. In addition, she has continued to send e-mails to parties and counsel to these proceedings, including but not limited to Mary Lyneis, Jon Munger, Joseph Ehrlich, and staff at Lourdes.

7. Failure to comply with a Court Order is grounds for contempt of court:

Contempt of court is defined as a "wilful act, omission, or statement that tends to impair the authority or impede the functioning of a court." *In re Contempt of Robertson*, 209 Mich App 433, 436: 531 NW2d 763 (1995). Courts in Michigan have inherent and statutory power to punish contempt of court by fine or imprisonment. *Id.*; *MCL 600.1701, et seq.* The purpose of this power is to preserve the effectiveness and sustain the power of the courts. *In re Contempt of Dudzinski*, 257 Mich App 96, 108: 667 NW2d 68 (2003).

*Arbor Farms, LLC v GeoStar Corp*, 305 Mich App 374, 387: 853 NW2d 421, 429 (2014).

8. Accordingly, Mimi Braun is subject to a finding of contempt of court for her failure to comply with a court order in failing to make payment to Lourdes in the amount of \$25,000 and continuing to send e-mails to parties to this proceeding.

WHEREFORE, Petitioner respectfully requests a Show Cause Order be entered against Mimi Brun to appear and show cause as to why she has failed to comply with this Court's order dated October 5, 2016.

Respectfully submitted,

LoPRETE & LYNEIS, P.C.



MARY M. LYNEIS (P62999)  
Attorney for Lourdes Senior Community  
40950 Woodward Avenue, Suite 306  
Bloomfield Hills, MI 48304  
(248) 594-5770

Dated: December 14, 2016

# *Exhibit 9*

Bench warrant - Sheriff  
Memorandum copy - Court  
Memorandum copy - Friend of the court

Approved, SCAO	STATE OF MICHIGAN JUDICIAL CIRCUIT OAKLAND COUNTY PROBATE COURT	BENCH WARRANT	CASE NO. 16-370475-GA
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Court address 1200 N. Telegraph Rd., Pontiac, MI 48341 <del>14080 Elgin St.</del> In the matter of Virginia Wahab	Court telephone no. (248) 858-1000
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Plaintiff	v	Defendant
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IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

TO ANY PEACE OFFICER OR COURT OFFICER AUTHORIZED TO MAKE ARREST:

The person named below failed to appear before this court, as ordered, to show cause why s/he should not be held in contempt.

Therefore, I order you to arrest:

Full name (type or print) Mimi Brun						Date of birth	
Address 14080 Elgin St.				City Oak Park		State MI	Zip 48237
Sex Female	Eye color	Hair color Brown	Height 57"	Weight 175	Race Caucasian	Scars, tattoos, etc.	

Bring him/her before the court immediately or s/he may be released when a cash performance bond is posted in the amount of \$ 25,000.00 for personal appearance before the court at its next session.

Date 3-3-17

  
Judge Bar no. RB

RETURN

By virtue of this warrant, I have taken the person named above into custody as ordered.

Date \_\_\_\_\_

Peace officer \_\_\_\_\_

Bench warrant - Sheriff  
Memorandum copy - Court  
Memorandum copy - Friend of the Court

Approved, SCAO

STATE OF MICHIGAN 0 JUDICIAL CIRCUIT OAKLAND COUNTY PROBATE COURT	MEMORANDUM OF BENCH WARRANT	CASE NO.  18-370475-GA
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Court address: 1200 N. Telegraph Rd., Pontiac, MI 48341  
 Court telephone no. (248) 858-1000  
 in the matter of Virginia Wahab

Plaintiff  0
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v

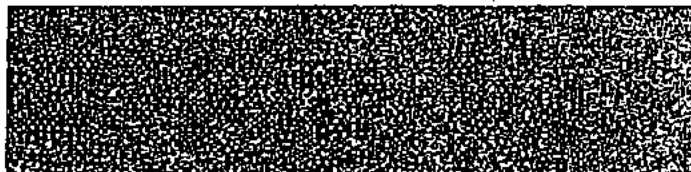
Defendant  0
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IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

A bench warrant has been issued to arrest:

Full name (type or print) Mimi Brun				Date of birth 0			
Address 14080 Elgin St.		City Oak Park		State MI		Zip 48237	
Sex Female	Eye color 0	Hair color Brown	Height 5'7"	Weight 175	Race Caucasian	Scars, tattoos, etc. 0	

He or she is to be brought before the court immediately or released when a cash-performance bond is posted in the amount of \$ 25,000.00 for personal appearance before the court at its next session.





# ***Exhibit 10***

STATE OF MICHIGAN  
IN THE PROBATE FOR THE COUNTY OF OAKLAND

In the matter of VIRGINIA WAHAB,

Protected individual.

Case No: 2016-370475-GA  
Hon. Linda S. Hallmark

ORDER SETTING ASIDE BENCH WARRANT

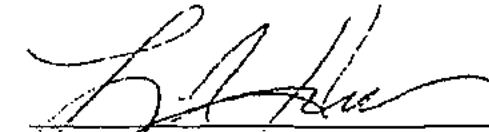
At a session of said Court held in the Courthouse,  
County of Oakland, State of Michigan,

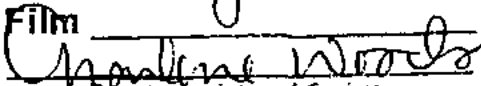
On 5/25/18

PRESENT: HONORABLE LINDA S. HALLMARK  
PROBATE COURT JUDGE

IT IS HEREBY ORDERED that the bench warrant in the above matter is set aside.

5-25-18

  
\_\_\_\_\_  
Judge Linda S. Hallmark  
Probate Court Judge

FILED May 25 20 18  
Film  
  
\_\_\_\_\_  
Deputy Register of Probate

# *Exhibit 11*

In the matter of Virginia Wahab

Case No. 2016-370,475-GA  
Hon. Linda S. Hallmark

SUPPLEMENTAL REPORT OF GUARDIAN AD LITEM:

The matter is before the Court on a Petition filed by Mimi Brun, daughter of the alleged incapacitated individual, Virginia Wahab, to request the Court modify the Guardianship to remove the current Guardian, Jon Munger, and appoint Mimi Brun as her Guardian.

Virginia Wahab is a 94-year-old woman who has been a resident at Lourdes Rehabilitation and Healthcare Center in Waterford, Michigan since February 23, 2016. She was brought to the facility for rehabilitation after being hospitalized for dehydration, complications from diabetes, cognitive impairment and a failure to thrive. Prior to being hospitalized, Virginia was living independently at her own home in Oak Park, Michigan. The discharge plan was for Virginia to return to her home in Oak Park and live with her daughter, the Petitioner. Unfortunately, the discharge plan never materialized and as a result, Virginia was a "private pay" resident, which resulted in a very large outstanding balance due to Lourdes.

I visited Virginia at Lourdes Senior Community first on November 16, 2017 and then again more recently, on February 28, 2018, at which time I again served her a copy of the petition, notice of hearing and the order appointing a guardian ad litem. I explained to her the nature, purpose and effect of the proceedings, my role as guardian ad litem, and her rights as required by statute and left a copy of PC 626 with her. I don't believe that Virginia was able to understand the information being presented, however she did clearly say that she did not want to go to court. I then asked her if she wanted Mimi to be her guardian and she said "of course!"

When I met with Virginia, she was very much the same as when I first had a visit with her last November. She was sitting in a chair in her room, very sweet, jovial and attentive. She was able to tell me her birthdate and the names of her children. She told me that she talks on the phone to Mimi a lot and that she is "on her side." Virginia misses her daughter but says she knows she "works a lot." Virginia appears well cared for and thriving at Lourdes.

I talked again to Judy Murray, the Director of Nursing for the facility who informed me that Virginia suffers from no new health concerns since my initial report. I also spoke again with Debbie Edmonds, the Administrator of Lourdes. Debbie explained that Lourdes filed the initial Petition for Guardianship due to nonpayment. The Petitioner told me she was never served the original Petition. Debbie told me that Virginia now receives Medicaid and that payment to the

FILED March 14, 2018  
Charlene [Signature]  
Clerk, Superior Court of Probate

Case No. 2016-370,475-GA

facility will be retroactive. As a result, Virginia's residence at Lourdes is no longer in jeopardy and she has been admitted for long-term care. Ms. Edmonds also told me that the initial application filed for Medicaid by Jon Mungers office resulted in a denial of benefits. A social worker from Lourdes re-applied and that application for Medicaid was granted.

I was able to talk at length with the Petitioner, Mimi Brun. She explained that the reason I did not receive a return phone call as I reported in my last GAL report was that the phone number listed for her on the Petition was incorrect. Her original plan was to return her Mother to their family home in Oak Park and Mimi would live with her. Mimi showed me pictures of the updates and improvements she had made to Virginias home in Oak Park, in anticipation of her Mothers return after temporary rehabilitation at Lourdes. She also had a very detailed plan of care and assistance for her Mother once she returns home including 24 hour home care, Doctor visits, out-patient physical therapy at Beaumont and assistance from family members including Virginias sister, Sr. Helen. Mimi also stated that since her Mother has been at Lourdes for such a long period she would use "baby steps" to see if her Mother wants to be home and how she adjusts to the change. During this time Virginia would still be a resident at Lourdes as long as Mimi could visit her there.

My investigation also revealed some legal issues surrounding the family home in Oak Park. According to the Petitioner, the property has been sold and she has leased the premises with the goal to live there and have it as an option to take care of her Mother there.

I then spoke with Sheila at Jon Mungers office who confirmed that Virginia does receive Medicaid now and that her only income is social security of \$1305.00 per month. The family home is no longer an issue as the property has been sold. There are no additional assets.

In my investigation, I was informed that there is a bench warrant for Mimi, which, I believe, is for contempt for disobeying a court order to pay Lourdes. It appears this matter and the amount due is in dispute and is the subject of separate proceedings in this court. I also discovered that there was a Restraining Order prohibiting Mimi from entering Lourdes, and thus prohibiting her from visiting her Mother. Neither of which are determinative alone regarding the appointment of a guardian.

Since the responsibilities of a Guardian include making decisions about medical treatment or the denial of same, including do-not-resituate decisions, an adult daughter is a far better choice to be Guardian than a Public Administrator. Being able to discuss this matter with the Petitioner,

Case No. 2016-370,475-GA

hear about their mother-daughter bond and find she has a solid plan in place and what she has in mind for the care and protection of her Mother, Virginia, I believe Mimi Brun is a willing, suitable and appropriate guardian for her Mother.

In the opinion of this GAL, it is Virginia Wahab a 94-year-old woman, who is paying the price of these ongoing legal disputes and suffering harm by not being able to see her daughter for more than 17 months. To isolate and prohibit an aging Mother from seeing her daughter is heartbreaking to this GAL. Mimi Brun has priority under the statute and is Virginia's choice to be her Guardian. Therefore it is in Virginia's best interest and appropriate for the Petitioner, her eldest daughter, to be her guardian.

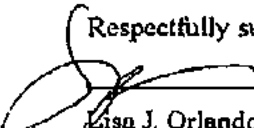
**RECOMMENDATION:**

The original petition for guardianship for Virginia Wahab was filed by Lourdes because Virginia was not discharged after treatment according to limits to coverage for services under her insurance plan, resulting in a growing outstanding balance owed to the facility for Virginia's continued care, not due to any neglect or abuse suffered by Virginia. As a result Jon Munger was appointed guardian by this court. The dispute over the balance due to Lourdes is the subject of other proceedings in this court.

Under MCL 700.5313(3)(b), the petitioner has priority over a professional guardian and, if suitable and willing to serve as guardian, the court shall appoint, an adult child of the legally incapacitated individual. Under MCL 700.5313(2)(b), the petitioner is Virginia's choice to serve as her guardian. I discovered no clear and convincing evidence why the Petition should not be granted. Mimi Brun, daughter of Virginia Wahab is suitable and willing to be her mother's Guardian and she is Virginia's choice. I recommend that the Court grant this Petition to Modify and remove Jon Munger as guardian of Virginia Wahab and appoint Mimi Brun as guardian with full powers as permitted by statute.

March 13, 2018

Respectfully submitted,

  
\_\_\_\_\_  
Lisa J. Orlando (P52901)