

EULA MAE POWELL Petition for Temporary Restraining Order/Objection to Guardianship/Conservatorship 2022-872277-GA and 2022-875643-CA

SECOND EMERGENCY ADDENDUM Dated January 8, 2023

It has come to the attention of Eula Mae Powell, via her advocate Mary Diane Bukowski, that federal regulations for nursing homes such as The Orchards at Harper Woods are outlined in:

- LII > Electronic Code of Federal Regulations (e-CFR) > Title 42 - Public Health
- > CHAPTER IV - CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
- > SUBCHAPTER G - STANDARDS AND CERTIFICATION
- > PART 483 - REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES
- > Subpart B - Requirements for Long Term Care Facilities
- > **§ 483.10 Resident rights.**

The following rights cited under **Resident Rights** have been egregiously violated by this nursing home and its corporate representatives and staff, as well as Karen Sue Herbert, appointed as Guardian and Conservator for the affairs of Eula Mae Powell. These violations are described in detail in the above-titled petitions for Temporary Restraining Order and Objection to Guardianship and Conservatorship already filed.

(e) Respect and dignity. The resident has a right to be treated with respect and dignity, including:

- (1)** The right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms, consistent with § 483.12(a)(2).

On November 5, 2022, as described by Eula Mae Powell on video (linked at <https://youtu.be/5UaiovuhYng>), unnamed staff members injected/dosed her with “chemical restraints” in the form of unknown quantities of psychotropic medication not required to treat her medical symptoms, which include only physical ailments. (Karen Sue Herbert’s petitions, which this honorable court granted, cite only physical ailments, not mental or psychological disabilities for the guardianship/conservatorship.) The dosing took place just before Mary Diane Bukowski’s arrival for a visit with Eula Mae Powell, which was repeatedly denied despite both parties’ demands. The two have been close friends for 40 years. According to staff, Karen Sue Herbert requested the denial of that visit. The Harper Woods police were called and threatened Bukowski with arrest and impoundment of her vehicle.

Resident Rights to Visitors:

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- (ii)** The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;

(iii) The facility must provide immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent at any time;

(iv) The facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

As described in the petitions already filed with this honorable court, Eula Mae Powell was repeatedly denied her right to visit not only with Mary Diane Bukowski (twice on Nov. 5 and Nov. 14), but also with long-time friend Agnes Hitchcock, paralegal Travis Herndon (acting with letter of authority from Atty. Jerome Goldberg), and Pastor Jerome Poole on Nov. 14.

On that date, Hitchcock and Bukowski were already visiting with Eula Mae Powell in her room; Hitchcock's driver accompanied her. Bukowski left for a moment to return to her car and when she came back, both she and Travis Herndon were denied entry by nursing home staff, who again called the police. The police ejected Hitchcock and her driver from the room and facility, and seized Bukowski's purse and legal documents pertaining to Ms. Powell's rights, which she had brought for Eula Mae Powell. Her purse was searched and returned only after several hours; the documents seized have not been returned to date.


Bukowski did manage to visit Eula Mae Powell at the nursing home on Sunday, Dec. 18, when she alerted several nurses and attendants to Ms. Powell's deteriorating condition. Ms. Powell reported severe pain in her back and constant coughing, but no one at the nursing home addressed the issues. Ms. Powell was rushed to St. John's Ascension Hospital several days later by ambulance. Bukowski visited her there and spoke to hospital staff about the medical danger Ms. Powell was in at the nursing home, but they sent her back to the Orchards at Harper Woods that evening. The hospital staff insisted they could only talk to Ms. Powell's guardian. Another niece called the guardian to ask her to call and authorize Ms. Powell to remain under care. But she did not. The guardian had not been to see Ms. Powell either at the home (for many weeks) or in the hospital, and had ceased picking up Ms. Powell's clothing to launder it (Bukowski did that herself on Dec. 18.)

Friends and another niece could not reach Ms. Powell through her cell phone for a week afterwards, causing concern. Ms. Powell finally did find her phone and called Bukowski. When Bukowski and attorney Jerome Goldberg, also a long-time friend of Eula Mae Powell's, visited on Monday, Jan. 2, they found Ms. Powell in very poor condition. She had just thrown up and was nearly naked, wearing only a hospital gown that had partially fallen off, and lying half off the bed in a state of confusion. Five staff members were attending to her.


Bukowski asked to see someone in charge, and eventually, the Director of Nursing, Jannene Allen, came to the room after the staff members left. She was absolutely unconcerned, not even aware of what had just happened. When Bukowski asked her for information about Ms. Powell's condition, she told Bukowski and Goldberg that she could discuss Ms. Powell's medical condition only with the guardian, citing HIPPA. Goldberg pointed out that Ms. Powell was present and could authorize them to speak with the nursing director. But the director insisted that Ms. Powell was not competent to make such decisions with no foundation, and that Ms. Powell was only suffering from the effects of old age. She then threatened to call the police on the visitors once again. According to the home's job postings, the Director of Nursing makes **\$233,282 to \$330,274 a year.**


Bukowski found Ms. Powell's phone, which had been tossed in a corner of the room, as well as her dentures and glasses, which were packed amongst multiple bags in the room. Ms. Powell put her dentures back in after Bukowski washed them, and was able to eat a deli sandwich Goldberg had brought her. Her demeanor completely changed once she realized her friends were there to care for her. She was coherent and completely aware.

Resident rights to be informed of right to visitors, and right to written policies and procedures on visitation:

(B) Inform each resident of the right, subject to his or her consent, to  receive the visitors whom he or she designates, including, but not limited to, a spouse (including a same-sex spouse), a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.

(C) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

(D) Ensure that all visitors enjoy full and equal visitation privileges consistent with resident preferences. 

(v) The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation, when such limitations may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation. 

The Orchards at Harper Woods has repeatedly denied the rights above to Eula Mae Powell and her visitors. Despite Bukowski's repeated request on video of Nov. 5, no

written policies and procedures on visiting were ever provided to her. Eula Mae Powell has NEVER received a copy of her rights to receive the visitors she designates.

Requirement for nursing home to post the following information informing residents and visitors of state and federal agencies that can take complaints regarding violations.

(i) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State agencies and advocacy groups, such as the State Survey Agency, the State licensure office, adult protective services where state law provides for jurisdiction in long-term care facilities, the Office of the State Long-Term Care Ombudsman program, the protection and advocacy network home and community based service programs, and the Medicaid Fraud Control Unit; and

(ii) A statement that the resident may file a complaint with the State Survey Agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, non-compliance with the advance directives requirements (42 CFR part 489 subpart I) and requests for information regarding returning to the community.

No such lists are posted anywhere within public view at The Orchards of Harper Woods facility.

The State of Michigan has additionally filed dozens of complaints against this nursing home related to other matters including violations of resident rights, over the past years. See: <https://projects.propublica.org/nursing-homes/homes/h-235480>.

On behalf of Eula Mae Powell, this second addendum is being provided by Mary Diane Bukowski to this court and all interested parties notified on Jan. 4 of the original petitions for TRO and objection to and removal of guardianship/conservatorship.



(Signed) Mary Diane Bukowski
January 8, 2023

Contact Mary Diane Bukowski at 313-825-6126 and diane_bukowski@hotmail.com

cc: All parties served with notice of Jan. 18 hearing as attached.
Applicable federal and state authorities