IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

SHERRI CORUM, AS PERSONAL REPRESENTATIVE OF THE WRONGFUL DEATH BENEFICIARIES OF MARY JO HEBERT, DECEASED,

Plaintiff/Appellee,

Ct. App. No. 28,314

vs.

ROSWELL SENIOR LIVING, LLC, D/B/A ROSWELL SENIOR LIVING COMMUNITY A/K/A LA VILLA, SUNWEST MANAGEMENT, INC., et al.,

Defendants/Appellants.

On Appeal from the First Judicial District Court
Santa Fe County, New Mexico
The Honorable James Hall, Presiding

APPELLANTS' REPLY BRIEF

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STATEMENT OF COMPLIANCE WITH RULE 12-213(F)(3)

This Reply Brief complies with the type-volume limitation imposed by Rule 12-213(F)(3). The word count feature of the word processing system (Microsoft Word, Version 2002) used to prepare the brief indicates a word count of [ ], excluding the cover page, table of contents, table of authorities, signature block, certificate of service, and this certificate of compliance.

I. INTRODUCTION

This appeal presents an issue of statutory interpretation arising from language in the New Mexico Uniform Health-Care Decisions Act ("NMUHCDA"), NMSA 1978, § 24-7A-1(G) (1995), concerning the extent of the authority conferred on a health-care surrogate. The NMUHCDA authorizes a surrogate to "make a health-care decision," and defines "health-care decision" as "a decision ... regarding the individual's health-care, including ... selection ... of health-care providers and institutions." NMSA 1978, § 24-7A-1(G)(1). The Appellants (collectively "La Villa") contend that this language encompasses the authority to enter into an arbitration agreement as part of the consideration agreed upon in selecting a health-care provider. The Appelleee ("Ms. Corum") argues that an agreement to arbitrate contained in an admissions agreement is beyond the scope of the authority conferred by the NMUHCDA upon a surrogate. The Court's task is to determine which of the two competing constructions of the statute best

accords with the intent of the Legislature, as evidenced by the language, history, purpose, and policy of the NMUHCDA.

Ms. Corum disparages La Villa's interpretation of the NMUHCDA as, variously, "absurd" and "ludicrous." [AB 9, 15] The language of the statute, its purpose, precedents from other jurisdictions, and public policy, however, all support the interpretation of the NMUHCDA urged by La Villa. There is nothing "absurd" or "ludicrous" about the statutory interpretation urged by either party. Nonetheless, an interpretation of the NMUHCDA which allows a health-care surrogate to enter into an arbitration agreement as part of the consideration exchanged for health-care services, in the selection of a health-care provider, better serves the intent of the NMUHCDA than Ms. Corum's interpretation.

Ms. Corum's position would negate the authority expressly granted to a surrogate and thwart the purpose of the NMUHCDA. *See, e.g., State v. Rivera*, 2004-NMSC-001, ¶ 14, 134 N.M. 769, 82 P.3d 939 (stating that the court may consider the policy implications of differing constructions urged by the parties, where doing so would not "second guess" clear policy of the Legislature). Ms. Corum does not dispute that Mr. Hebert was Mrs. Hebert's husband and that the NMUHCDA conferred "surrogate" authority on Mr. Hebert by virtue of his status as husband. *See* NMSA 1978, § 24-7A-5(B)(1). Ms. Corum also concedes that a surrogate's authority includes the selection of a health-care provider. [RP 209] No

one disputes the unavailability of Ms. Corum, who had a power of attorney. [AB 11]

Ms. Corum nonetheless "vehemently disputes" the conclusion that a NMUHCDA surrogate's authority to make a health-care decision encompasses any authority related to consideration exchanged with the selected health-care services provider. [AB 11] Thus, under Ms. Corum's interpretation, a surrogate could select a health-care institution, but could not agree to the costs paid for the services of the institution, agree to particular living arrangements, or agree to other consideration, such as an arbitration agreement.

This interpretation of the NMUHCDA would effectively gut surrogate authority. Ms. Corum suggests no reason to believe a health-care provider or health-care institution would agree to provide health-care services without first reaching agreement about consideration. The elimination of a person with authority to make decisions regarding the consideration to be exchanged for health-care services would recreate the very problem presented in *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261 (1990): an incapacitated patient languishing in the absence of a surrogate with the authority to make necessary decisions on the patient's behalf. The NMUHCDA should not be interpreted in a manner which will perpetuate precisely the impasse our Legislature aimed to resolve.

II. ARGUMENTS

A. The NMUHCDA Is Reasonably Susceptible To An Interpretation Which Affords Health Surrogates The Authority To Enter Into Arbitration Agreements In Selecting A Health-care Provider.

Ms. Corum makes several arguments aimed at demonstrating that the NMUHCDA unambiguously forecloses the interpretation advanced by La Villa. [AB 10] These arguments fail, however, because the language of the NMUHCDA may be reasonably read to grant a health-care surrogate the power to agree to the consideration exchanged in selecting a health-care provider. An agreement to arbitrate as part of the consideration agreed upon for assisted living care fairly falls within the meaning of the phrase "a decision regarding the individual's health-care, including ... selection ... of health-care providers and institutions." NMSA 1978, § 24-7A-1(G)(1).

Ms. Corum argues that admission to a health-care institution is not, in all cases, a "health-care decision." [AB 10] Section 24-7A-1(G) of the NMUHCDA, however, specifically includes the selection and discharge of health-care institutions within the ambit of health-care decisions. Ms. Corum does not dispute that, in Ms. Hebert's case, the decision to have her reside at La Villa was a health-care decision. [AB 1]; [RP 214].

Thus, the question before this Court is whether the authority to select a health-care institution encompasses the authority to decide upon the consideration

exchanged for the health-care services provided by the institution. Ms. Corum suggests no reason, textual or otherwise, for concluding that the Legislature authorized a surrogate to "select" a health-care institution, but unambiguously withheld the authority to effectuate the selection by negotiating and agreeing upon consideration.

Ms. Corum relies on the rule of *ejusdem generis* in asserting that the surrogate authority granted in the NMUCHDA should be narrowly construed. [AB 8]. Her reliance on this rule is misplaced for three reasons. First, the rule of *ejusdem generis* only applies to statutory language in which a listing of specific items is followed by a general category, as a means of interpreting the meaning of the words describing the general category. *See, e.g., Lucero v. Richardson*, 2002-NMCA-013, ¶ 18, 131 N.M. 522, 39 P.3d 739. The NMUHCDA broadly defines "health-care decision" as a "decision ... regarding the individual's health-care" and includes four specific areas, among them the "selection of a health-care institution." NMSA 1978 § 24-7A-1(G)(1). *Ejusdem generis* cannot, therefore, be applied to limit the authority conferred with the specific power to select a health-care institution because the selection authority, the power at issue in this case, is itself a specific kind of a "health-care decision." "Health-care decision" is defined to include the selection of a health-care institution. Ms. Corum's reliance on *ejusdem generis* does not support her position. *See Anderson v. Welsh*, 86 N.M.

767, 773, 527 P.2d 1079, 1085 (Ct. App. 1974) (noting *ejusdem generis* doctrine did not apply to ordinance governing "buildings and structures," in which "structures" was defined by the ordinance.)

Second, even if *ejusdem generis* did apply, it is only one aid in determining legislative intent. *See State v. Gonzales*, 78 N.M. 218, 219, 430 P.2d 376, 376 (1967) (noting *ejusdem generis* is "resorted to merely as an aid in determining legislative intent"). In carefully examining the legislative intent of the NMUHCDA, this court has already concluded that the phrase "health-care decisions" should be broadly defined and that the substantive restrictions on a decision made by a surrogate are limited. *Protection & Advocacy Sys., Inc. v. Presbyterian Healthcare Servs.*, 1999-NMCA-122, ¶¶ 15-16, 128 N.M. 73, 989 P.2d 890.

Third, Ms. Corum's reliance on *ejusdem generis* contradicts her claim that the NMUHCDA is unambiguous. Interpretive tools such as *ejusdem generis* become useful only in addressing ambiguous statutory language. *See, e.g., Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-51, ¶ 27, 135 N.M. 506, 90 P.3d 525 (stating that only if the words are of statute are ambiguous does the court construe its language).

Ms. Corum further asserts that the authority to enter into an arbitration agreement cannot be encompassed within the authority to make a health-care

decision because an arbitration agreement in connection with an admission to a health-care institution is not "implemented" by a health-care provider. [AB 10] Ms. Corum relies on 1978 NMSA, § 24-7A-7(A), which requires a supervising health-care provider to inform a patient of a health-care decision before the decision is implemented. [AB 10]

Ms. Corum's argument disregards the question presented by this case. The selection of a health-care institution is undeniably included in the definition of a health-care decision. The issue here is whether the authority to select a health-care institution subsumes the authority to agree upon arbitration as consideration for the services provided. Whether the selection was correctly "implemented" does not bear upon whether Mr. Hebert had the authority to agree to arbitrate as part of his authority to select an assisted living facility. Ms. Corum is wrong in claiming that the NMUHCDA unambiguously states that an agreement to arbitrate is beyond the authority of a health-care surrogate selecting a health-care institution.

B. La Villa's Interpretation Of The NMUHCDA Better Serves The Goals And Purposes Of The Legislature.

Ms. Corum's alternate argument is that the authority of a health-care surrogate under the NMUHCDA should be interpreted to exclude the power to agree to arbitrate, even if the statute is ambiguous. [AB at 11- 27] This argument fails to recognize the basic purpose of the NMUHCDA, the necessity of recognizing an implied authority to enter into an agreement to arbitrate as incident

to the express authority to select a health-care institution, and the inapplicability of the precedents from other jurisdictions Ms. Corum cites. For these reasons, the interpretation advocated by La Villa is more consonant with the intent of the Legislature.

1. Ms. Corum's Interpretation Conflicts With The Core Purpose of The NMUHCDA.

Our appellate courts have repeatedly stressed that a court's responsibility in addressing questions of statutory interpretation is to facilitate the operation of the statute and the achievement of the Legislature's goals. *See, e.g., McMinn v. MBF Operating Acquisition Corp.*, 2007-NMSC-40, ¶ 16, 142 N.M. 160, 164 P.3d 41 (rejecting strict textual approach to application of statutes providing for judicial appraisal of dissenting shareholder's stock, where doing so would overlook the underlying goals, policies, and purposes of the statutes at issue); *State v. Davis*, 2007-NMCA-22, ¶ 6, 141 N.M. 205, 152 P.3d 848 (noting the court's mindfulness of "the high duty" of the judicial branch to facilitate and promote the legislature's accomplishment of its purposes in interpreting statutes). Ms. Corum's interpretation overlooks this responsibility in failing to acknowledge the problem the NMUHCDA was enacted to address and the impracticality of her interpretation.

Ms. Corum proposes no practicable approach to applying a statute which, on the one hand, grants a health-care surrogate the power to select a health-care

institution, but also denies the surrogate the authority to decide whether to agree to the consideration proposed by the institution for its services. If Mr. Hebert's authority as a surrogate extended only to "selection" of an assisted living facility, he would lack the power to effectuate his selection and make the services of the selected institution available to Mrs. Hebert. Admission to a selected institution unavoidably involves steps other than its "selection." The Legislature could not have meant to address the problems posed in cases like *Cruzan* by granting such an unworkably narrow authority to a health-care surrogate.

2. Ms. Corum's Interpretation Overlooks The Implied Authority To Agree To Arbitrate Incident To The Authority To Select A Health-Care Institution.

Many New Mexico precedents recognize that an express legislative grant of authority may also carry necessarily implied powers, incident to or encompassed by the express authority. *See, e.g., Sheraton Dev. Co., L.L.C. v. Town of Chilili Land Grant,* 2003-NMCA-120, ¶¶ 13-14, 134 N.M. 444, 78 P.3d 525 (holding that a statute allowing land grant board to sell and convey land necessarily implied the power to sue and be sued); *Leyba v. Whitley,* 120 N.M. 768, 776, 907 P.2d 172, 180 (1995) (recognizing that the Wrongful Death Act creates an implied in law authority in personal representatives to engage in attorney-client relationships for the benefit of statutory beneficiaries); *Bolton v. Bd. of County Comm'rs of Valencia County,* 119 N.M. 355, 366-367, 890 P.2d 808, 819-820 (1994) (holding

that county's express statutory authority to issue revenue bonds to maintain and repair roads encompassed the authority to refinance the purchase of road building equipment, vehicles, and personal property). *Howell v. Heim*, 118 N.M. 500, 505, 882 P.2d 541, 546 (1994) (holding that "although not expressly stated, the [Public Assistance Act] by implication gives the [Human Services Department] the authority" to impose durational limits on the receipt of benefits). These authorities contradict Ms. Corum's suggestion that the universe of decisions "related to" Mrs. Hebert's health-care should not include the authority to agree to arbitration, or make other "legal" decisions [AB 11], where the NMUHCDA expressly grants the authority to select a health-care institution. The express grant of the authority to select a health-care institution would be unhelpful to the patient for whom the surrogate is acting without the implied authority to take the steps necessary to implement the selection. Those steps must include negotiating and reaching agreement on the consideration exchanged for the services of the institution.

Ms. Corum recognizes that this case may be usefully viewed as a question of the extent of a surrogate's authority as an agent for the patient in relation to health-care decisions. [AB] Common law agency rules, however, weigh against Ms. Corum's narrow interpretation of a health-care surrogate's authority in relation to the selection of a health-care institution.

Under general agency principles, "implied authority" is the power to take acts necessary and incidental to achieving the principal's objectives. *Restatement of the Law (Third) Agency,* § 2.02, 90-91, comments b, d (2006). "The underlying assumptions are that the principal does not wish to authorize what cannot be achieved if necessary steps are not taken by the agent, and the principal's manifestation often will not specify all steps necessary to translate it into action." *Id.* at 91 comment d. "Implied authority" is a form of actual authority. *Id.* at 90, comment b. Accordingly, an agent's authority to employ a third party for the benefit of the principal includes the authority to make an agreement complete in all its terms, including those relating to compensation. *See, e.g.* 2A C.J.S. *Agency*, § 161 at 439-439 (2003). The authority of an agent to make purchases for a principal, for example, contemplates negotiation of consideration of some sort, and the power to agree upon the negotiated consideration is within the authority of the agent. *See, e.g., People's Merchantile Co. v. Farmer's Cotton Finance Corp.*, 38 N.M. 237, 240-241, 31 P.2d 252, 254 (1934) (holding that an agent who had the authority to contract for the principal's purchase of cotton also had the authority to agree upon commission as payment for cotton purchased for the principal, because the grant of the power to purchase must have contemplated a consideration of some kind).

The authority to conduct a transaction includes the authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it. *See, e.g., Cooper v. Albuquerque National Bank*, 75 N.M. 295, 302, 404 P.2d 125, 130 (1965). More broadly, New Mexico law recognizes that, where an agent is directed to accomplish a given result and no means are specified, the agent is authorized to do anything which is fairly and reasonably regarded as incidental to the accomplishment of the result directed. *See Silva v. Haake*, 56 N.M. 497, 501-502, 245 P.2d 835, 837-838 (1952). When our Legislature conferred on a health-care surrogate the authority to "select" a health-care institution as agent for the patient, it must have similarly contemplated that the agent/surrogate would have the authority to make binding agreements for consideration, including an agreement to arbitrate. *See, e.g., State v. Morrison*, 1999-NMCA-41, ¶ 9, 127 N.M. 63, 976 P.2d 1015 (stating that, in the absence of evidence to the contrary, courts interpret statutes using the common law concept most likely intended by the Legislature to be embodied in the statute).

The NMUHCDA was enacted to remedy the problems created by the lack of a health-care surrogate with authority to make health-care decisions on behalf of an incapacitated patient. It must be construed liberally to accomplish that purpose. *See, e.g., New Mexico Dept. of Labor v. Echostar Communications Corp.*, 2006-NMCA-47, ¶ 7, 139 N.M. 493, 134 P.3d 780. As between La Villa's

interpretation, which would tend to lessen harm to patients caused by the lack of surrogate authority, and Ms. Corum's, which would increase the likelihood that an incapacitated patient would not receive health-care services because a surrogate lacked adequate authority, La Villa's interpretation should control. *See id.* (holding that, in light of the purposes of the disputed statute, it made "little sense" to construe it in a manner which defeated its purpose). Ms. Corum's interpretation disregards the implied authority to enter into arbitration agreements, incident to the express authorization to select a health-care institution.

3. The Precedents From Other Jurisdictions Relied Upon By Ms. Corum Do Not Support Her Position.

Despite Ms. Corum's arguments, relevant precedent from other jurisdictions strongly supports La Villa's interpretation. La Villa's interpretation of the NMUHCDA is supported by the decisions of the highest court in Mississippi and an appellate court in Texas. *Covenant Health Rehab of Picayune, L.P. v. Brown*, 949 So.2d 732, 737 (Miss. 2007); *In re Ledet*, 2004 Tex. App. LEXIS 11474, *12. (2004). Ms. Corum relies upon precedents from Tennessee and California which are distinguishable and therefore unpersuasive.

While Ms. Corum recognizes that the highest court in Mississippi has ruled contrary to her position, she describes Mississippi law on the issue as "in flux," citing decisions from Mississippi intermediate courts and a dissenting opinion contrary to the ruling of the highest court. [AB 22] Ms. Corum misstates the

holding in *Covenant Health* in claiming that the opinion did not consider whether the surrogate was authorized by statute to agree to arbitration. [AB 24] The *Covenant Health* court specifically stated it had "confirmed [the surrogate's] authority to sign the agreement." *Id.* at 737. Although earlier opinions from the intermediate courts in Mississippi conflicted, the most recent holding from the Mississippi Supreme Court supports La Villa's interpretation of the NMUHCDA. *See Covenant Health*, 949 So.2d at 736.

Ms. Corum also notes that *Mississippi Care Center v. Hinyub*, 975 So.2d 211, 218 (Miss. 2008) held that statutory surrogate authority did not encompass the authority to execute an arbitration agreement which clearly stated it was not a precondition to admission to the institution. [AB 26] The *Hinyub* holding is not contrary to La Villa's position. This case does not require the Court to decide whether a "stand alone" arbitration agreement with independent consideration constitutes a "health-care decision." This case concerns an arbitration agreement executed as consideration for health-care services, incident to the selection of a health-care institution.

Ms. Corum's reliance on cases interpreting the California statutory scheme is misplaced. Ms. Corum is incorrect in asserting that the statutory language in *Pagarigan v. Libby Care Center*, 99 Cal. App. 4th 298 (2002) only "differs slightly" from the NMUHCDA. [AB 16] The complete statutory language at issue

in *Pagarigan* (quoted in La Villa's brief in chief) concerns authority related to orders or prescriptions issued by physicians or surgeons. *See* Cal. Health & Saf. Code §1418.8 (2007). [BIC 15] Similarly, Ms. Corum asserts that this court should examine *Flores v. Evergreen*, 148 Cal. App. 4th 581 (2007). [AB 19] Like *Pagarigan*, *Flores* was decided under the significantly different statutory scheme adopted in California, which includes specific provisions forbidding mandatory arbitration agreements and severely limiting claims which may be arbitrated. 148 Cal. App. 4th at 591-92. Neither *Flores* nor *Pagarigan* addresses language like the NMUHCDA health-care surrogate provision at issue in this case. Ms. Corum's reliance on cases applying the California statutory regime, which includes express restrictions on arbitration, tellingly ignores the strong policy favoring arbitration evident in New Mexico statutory and common law. [BIC 11]

The only cases in California which have addressed language the same as or similar to the language in the NMUHCDA at issue in this case have done so in the context of a contract or written power of attorney. *See Hogan v. Country Villa Health Services*, 148 Cal. App.4th 259, 267 (2007); *Garrison v. Superior Court*, 132 Cal. App. 4th 253, 266 (2005). Notably, these cases have concluded that the execution of an arbitration agreement in connection with the admission to a health-care institution is part of a health-care decision. *Hogan*, 148 Cal. App.4th at 267; *Garrison*, 132 Cal. App.4th at 266.

Ms. Corum also asks the Court to consider precedents from Tennessee. Ms. Corum acknowledges that the case of *Ratieri v. NHC*, 2003 Tenn. App. LEXIS 957 (2003), did not involve the interpretation of any version of the Uniform Health Care Decisions Act ("UHCDA"). [AB 21] In fact, *Ratieri* involved a competent individual's admission to a long term care facility and questions regarding apparent authority. *Id.* at **5, 29. *Ratieri* is, therefore, neither persuasive nor useful in addressing the issue this case presents.

Ms. Corum also relies on *McKey v. National Healthcare Corp.*, 2008 Tenn. App. LEXIS 477 (2008). [AB 21] The *McKey* court found that, absent a showing establishing the resident's "designated physician" determined that the resident lacked capacity or that the identification of the surrogate was documented in the clinical record as required by the Tennessee version of the UHCDA, the requirements of the UHCDA had not been met. 2008 Tenn. App. LEXIS 477 ** 8-13. The *McKey* court did not, therefore, consider whether the authority of a surrogate to select a health-care institution encompasses the authority to agree to arbitration.

Ms. Corum argues that, because there is nothing in the record to indicate Mr. Hebert communicated his assumption of authority to Mrs. Hebert, this court, like the court in *McKey*, should find that not all provisions of the statute were followed. [AB 22]; *see also* NMSA 1978, § 24-7A-5(D) ("A surrogate shall communicate his

assumption of authority as promptly as practicable to the patient, to members of the patient's family specified in Subsection B of this section who can be readily contacted and to the supervising health-care provider.") This argument was not made in the district court. [RP 205-215] By raising the argument for the first time on appeal, Ms. Corum prevents La Villa from presenting the evidence to support Mr. Hebert's assumption of surrogate authority. *See Cockrell v. Cockrell*, 117 N.M. 321, 323, 871 P.2d 977, 979 (1994) (stating that fact issues will not be originally determined on appeal). Ms. Corum conceded in the district court that Mr. Hebert had surrogate authority and disputed only whether, as a matter of law, that authority encompassed the authority agree to arbitration. [RP 209] Ms. Corum may not now complain that the factual record is insufficient to support the authority she previously conceded. *See, e.g., Paz v. Tijerina*, 2007-NMCA-109, ¶ 25, 142 N.M. 391, 165 P.3d 1167 (noting the "right for any reason" rule should not be applied on a fact dependent basis not raised below, when the district court's rulings were based on legal argument and the district court made no findings.)

C. The Court Should Deny Ms. Corum's Request That The Case Be Remanded For A Determination of Procedural Or Substantive Unconscionability.

Ms. Corum requests remand to consider substantive and procedural unconscionability. [AB 35] In the district court, however, Ms. Corum presented no evidence establishing either substantive or procedural unconscionability. A

remand for a determination of unconscionability would unfairly afford Ms. Corum another chance to present evidence on a topic already raised in the district court below. She has already failed to make a case for unconscionability. She may not revive the issue under the rubric of "right for any reason" because doing so would be unfair. *See Paz*, 2007-NMCA at ¶ 25.

Ms. Corum's newly presented concerns of substantive unconscionability regarding the neutrality of the National Arbitration Forum ("NAF") are unsupported. [AB 36] Ms. Corum did not raise any such concerns in the district court, but only discussed NAF's limitations on interrogatories. [RP 212] She did not provide the court with any reason to question whether an as yet unselected arbitrator would be neutral. Ms. Corum's reliance on *Walker v. Ryan Steak Houses, Inc.*, 400 F.3d 370, 386 (6th Cir. 2005) is misplaced. [AB 36] In *Walker*, the court questioned whether a different arbitration forum, Employment Dispute Services, Inc. ("EDSI"), provided a neutral forum. *Id.* at 386. EDSI selected arbitrators from employers with whom they had a business relationship and provided the parties with a list of only nine potential arbitrators. *Id.* at 375. There are no similar facts alleged here, either in the district court, or on appeal.

Ms. Corum has no legitimate basis for suggesting procedural unconscionability. The only evidence presented by any party regarding the circumstances surrounding the execution of the arbitration agreement was the

uncontroverted affidavit of Diedra Duvall. [RP 181-182] That evidence suggests no basis for the position Ms. Corum now asserts on appeal. Ms. Corum's allegations of procedural unconscionability are wholly unsupported. [AB 36-37]

D. The Arbitration Provision Binds The Wrongful Death Beneficiaries.

Finally, Ms. Corum asserts arbitration agreements cannot apply to wrongful death claims because the personal representative for the wrongful death estate, Ms. Corum was not appointed until after Mrs. Hebert's death and cannot be bound by a contractual agreement executed prior to Mrs. Hebert's death. [AB 33] This argument is not pertinent to the issue presented by this appeal. It does not concern whether Mr. Hebert had the authority to enter into an agreement to arbitrate, incident to his authority to select a health-care institution.

In any event, Ms. Corum's argument is mistaken. New Mexico follows the general common law rule that the death of the principal operates as a revocation of an agent's authority, unless the power is coupled with an interest. *See, e.g.,* (*Brazfield v. Mountain States Mut. Cas. Co.,* 93 N.M. 417, 419-420, 600 P.2d 1207, 1209-1210 (1979).) Acts of an agent completed before the principal's death, however, are not revoked when the principal dies. *See, e.g., In Re Estate of Capuzzi,* 684 N.W.2d 677, 680 (Mich. 2004) (holding that an agent's transfer of shares before the principal's death was not revoked by the principal's death, and was therefore binding on the principal's estate). Mr. Hebert's agreement to

arbitrate therefore binds Mrs. Hebert's heirs and beneficiaries, unless Mr. Hebert lacked the authority to bind Mrs. Hebert. Ms. Corum's argument does not alter the relevant issue, which is whether the NMUHCDA authorized Mr. Hebert to agree to arbitrate as part of his authority to select a health-care institution.

III. CONCLUSION

For the reasons stated above, the Court should reverse the judgment of the district court, and remand this case with directions to enter an order to arbitrate Ms. Corum's claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Appellants' Reply Brief was mailed on October 29, 2008, to the following individual:

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