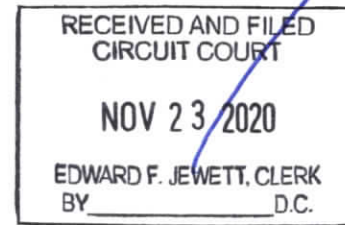


VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

SUMMONS – CIVIL ACTION

CASE NO. CL20005209-00

**K.E.E.;
M.J.M.;
M.M.A.;
S.M.F.;
A.C.J.;
J.E.H.;
S.K.P.;
C.L.K. (By Next Friend and Mother S.M.M.);
H.G.B. (By Next Friend and Mother G.L.B.);
B.C.P.;
K.M.J.;
D.T.A.;
C.V.M.;
K.A.M. (By Next Friend and Mother S.M.M.);
J.L.K. (By Next Friend and Mother S.M.K.);
J.A.H. (By Next Friend and Mother S.M.H.);
C.T.K. (By Next Friend and Mother J.K.);
K.E.H. (By Next Friend and Mother F.E.H.);
M.M. (By Next Friend and Mother S.E.M.);**



HERCHEL C. HARDEN III
Defendant.

In response to the Summons served on November 2, 2020, the following response is respectfully
Submitted by Defendant Harden, Pro Se:

DEFEDANT'S RESPONSE TO COMPLAINT

42. Defendant Harden completed an internship at Cumberland Hospital during the period of July – September, 2012, while a student at Liberty University. Upon graduation in March, 2013 with a Master's Degree in Professional Counseling, he began work as a Psychotherapist, Counselor in Residency, under supervision of the Director of Psychology & Psychotherapy Services. Defendant Harden remained a Counselor in Residency from March, 2013 to September, 2019, at which time he voluntarily resigned. Therefore, defendant Harden was not an employee during a number of the complaints described in the summons. Additionally, defendant

Harden was not affiliated in any way with the hospital's Residential Treatment Care (RTC) program as he was not a licensed therapist and could not practice under that program's state licensure.

63. Defendant Harden, as a Counselor in Residency, had no authority, financial gain or motivation to pressure any doctor and/or admissions staff member, or any other staff, to fill beds as stated. Defendant Harden received a salary of \$52,000 per year, (Offer Letter, **Exhibit A**), with an annual pay raise of approximately 1.5% throughout his employment. He received no monetary compensation in the form of bonuses, incentives, promotions, favors, or promises before, during or after his internship or employment at Cumberland Hospital. Defendant Harden did receive several gifts, such as a folding chair, t-shirt, cooler, etc., bearing the hospital logo, which were given to all hospital staff. Further, defendant Harden maintains that beds management was a direct function of the Head Nurse, under the express guidance of the Chief Executive Officer. It was only during an actual admission that defendant Harden and other staff, learned of the placement of patients to Cumberland. Further, defendant Harden maintains that when/if he observed any such inadequacy, it was reported to his supervisor, immediately. Defendant Harden acknowledges a high level of safety risks on units due to patient outbursts, aggressions, peer conflicts, and low staff to patient ratios. He voiced his concerns often and made it a practice to walk the grounds each morning and afternoon to "encourage all patients. Defendant Harden recalls a specific incident when a patient caused over \$20,000 in property damage, and despite the collective recommendation of staff to remove the patient from Cumberland as a significant threat to other patients and staff, the CEO would not release him. In defendant's Harden's opinion, there were other incidences where violent and/or inappropriate patients had been admitted to fill beds.

Defendant Harden adds, that while discharge planning was part of each treatment team meeting, hospital policy would not allow discharges on Fridays. Defendant Harden's understanding was that if patients were released on Friday there would be a vacant bed for two days. There were many cases where defendant Harden approached his supervisor and medical staff/doctors to advocate for parents/guardians who needed to complete travel over the weekend. Defendant Harden was successful in gaining approval from the medical doctors and case management on several occasions.

64. Defendant Harden, as a Counselor in Residency, gave reports at treatment team meetings, along with many others. He maintains that he never pressured and/or encouraged any doctors or staff to keep a patient admitted to Cumberland for as long as patient could pay.

Defendant Harden offers the following example when a patient's discharge might be extended: If a patient with Type I diabetes was not demonstrating appropriate safety measures by following his/her protocols, and had participated in a family day pass and did not check blood sugars and parents/guardian did not supervise, then a patient, because of, and only because of safety, may stay a bit longer until the patient demonstrated safe protocols and self-care. Defendant Harden also maintains that other factors may prolong discharge. For example, there were instances where the patient may be ready for discharge, but due to the state system, especially in North Carolina, there was no identified placement. In those cases, a patient had to remain at Cumberland, sometimes for several months.

Defendant Harden's goal, once he was assigned to a patient at admission, was to work with the patient to be successful, with the shortest stay at Cumberland as possible. Defendant Harden maintains that he was known for moving patients through the system to discharge quicker than other therapists, based on his supervisor's feedback to him. Defendant Harden regularly worked with case management to facilitate discharge as quickly as possible.

65. Defendant Harden, as a Counselor in Residency, did not participate in the pre-admission process nor did he have the authority to influence unnecessary lengths of stay. With the exception of a patient demonstrating unsafe self-management and protocols that were documented by several members of staff in the records, there was never a time that an extended length of stay was recommended by defendant Harden.

66. Defendant Harden maintains that he had no knowledge of anything to do with Cumberland Hospital or UHS profit margins, nor was he pressured by anyone to extend patients length of stay. If lengths of stay were extended, final decisions were made the Head Nurse and CEO.

67. Defendant Harden had no connection or contact with the RTC and therefore, never targeted any patient for an RTC admission. Patient placement was the duty of the case manager who worked diligently to find appropriate placement for patients throughout the country. Defendant Harden was asked about the suitability of placement for patients when preparing for

discharge. He recalls a couple of instances where Cumberland's RTC was suggested and case management approached him for input. Defendant Harden, as a Counselor in Residency, had no authority, financial gain or motivation to target any patient for RTC.

68. Defendant Harden had no connection or contact with the RTC and therefore, never had anything to do with any patient care.

69. Defendant Harden had no connection or contact with the RTC and therefore, never had anything to do with any patient care.

70. Defendant Harden had no connection or contact with the RTC and therefore, never had anything to do with any patient care.

71. Defendant Harden had no input to a patient's diagnosis. The medical doctor conducting a patient's admission would identify, from the admissions paperwork, the diagnoses that the patient would have while at Cumberland. Once a diagnosis was given, changes could only be made by a medical doctor.

72. Defendant Harden maintains that he never witnessed or heard of any such comments, threats, actions, etc. by any staff member during any admissions attended he attended.

73. Defendant Harden maintains that he never made any such false statements to, or attempted to deceive, either VDH or DBHDS as he had no interactions with those agencies at any time while employed at Cumberland. However, once he had resigned from employment, Defendant Harden reached out to DBHDS via email, requesting to speak with someone who would investigate his concerns about Cumberland. He never received an email reply or call-back.

75. Defendant Harden maintains these statements would have been by the admissions staff, and not him personally. Defendant Harden recalls, that early in his employment, he reported to his supervisor about a form that needed to be signed so that patients could participate in the Ropes Course. He pointed out the ropes tower was old, appeared in need of repair, and that, to his knowledge, no one was trained to facilitate the course. Defendant Harden notes that admissions eventually stopped presenting the Ropes Course permission form.

76. Defendant Harden had no involvement with or connection to the marketing and advertising materials used by Cumberland. He has no knowledge of any reference to

Cumberland being a Psychiatric hospital of care. However, sometime toward the middle of 2019, Defendant Harden was asked by administration to access a certain website and to make a positive comment about Cumberland Hospital and how great it was to work at there. Defendant Harden ignored the request.

77. Defendant Harden had no involvement or connection to the marketing and advertising materials used by Cumberland. He maintains that to his knowledge, there was a medical condition associated with patients. or at least those assigned to him at admission.

78. Defendant Harden maintains that having patient's read and acknowledge the "Patient Resident Rights," was part of the admissions department duties when walking a patient and family/guardian through all of the administrative requirements for admission.

79. Defendant Harden agrees that this was stated by admissions staff to perspective patients and family/guardians.

80. Defendant Harden agrees that this was stated by admissions staff to perspective patients and family/guardians.

82. Defendant Harden agrees that this was stated by admissions staff to perspective patients and family/guardians.

83. Defendant Harden agrees that this was stated by admissions staff to perspective patients and family/guardians.

84. Defendant Harden agrees this was a requirement for the admissions staff to address with patients and family/guardians, prior to admission. Defendant Harden, while attending the admission, would complete a Seclusion and Restraint form with the patient to identify things that were triggering, as well as calming to the patient. The patient, family/guardian, and the therapist would sign the form and place on the chart.

86. Defendant Harden maintains that he treated his patients, as well as those who were not his patient, with dignity and respect. Defendant Harden made both morning and afternoon rounds to those units where his patients were located for purposes of checking-in, answering questions of patients, and offering suggestions when appropriate. This was his way of building trust and showing such dignity and respect. Defendant Harden would not participate in the

restraint of any/all patients, although trained in Nonviolent Crisis Intervention (CPI), unless absolutely necessary.

87. Defendant Harden did not operate any facility, nor did he subject any patient to constant threats to their basic safety, devoid of fundamental sanitation and humanity. Defendant Harden maintains that the Unit Coordinators and Unit Staff were responsible, as well as maintenance staff, for maintaining units. Defendant Harden often reported observations on units to Unit Coordinators, and/or to his supervisor, if any such unsafe or unsanitary conditions were observed.

89. Defendant Harden maintains that he never violated any common rule of society in the day-to-day actions, interactions, and treatment of his patients.

90. Defendant Harden maintains that at anytime he was notified, or made aware of, any incident, mentally, emotionally, physically or sexual, he would go to the Unit Coordinators and/or staff, report to Risk Management and/or his supervisor, immediately. Defendant Harden maintains that on several occasion he advocated for his patients and attempted to be present when they were being questioned by staff.

91. Defendant Harden maintains that such guidance would have come directly from the Head Nurse, CEO, or Risk Manager.

92. Defendant Harden maintains that such guidance would come have come directly from the Head Nurse, CEO, or Risk Manager.

93. Defendant Harden maintains that such guidance would have come directly from the Head Nurse, CEO, or Risk Manager.

94. Defendant Harden maintains that he would not participate in the restraint of any/all patients, although trained in Nonviolent Crisis Intervention (CPI). To his knowledge, physical restraint and seclusion was used only when a patient was demonstrating behaviors that were unsafe for him/her and/or others. Patients would often aggress against their peers with physical outbursts and assaults. A patient was only placed in seclusion for the purposes of calming down and working through the distress. It is defendant Harden's understanding, that a staff member was present with the patient and the seclusion room door was only closed as needed, to prevent

further aggression by the patient. Defendant Harden maintains, that at no time, or under any circumstances, did he take measures to coerce, discipline or retaliate against any patient. Physical restraint and seclusion were always a last resort.

95. Defendant Harden has no knowledge of any such frequent and routine use of physical restraints and/or seclusion of patients as a matter of ease and convenience because staffing numbers and ratios were inadequate.

96. Defendant Harden had no authority to instruct staff when an incident occurred. He maintains that often times he informed the parents, as did the Unit Coordinator, Risk Manager on occasion, and possibly others. Defendant Harden was not aware of such guidance, but that such guidance would have to come from the Risk Manager, Head Nurse, or CEO.

107. Defendant Harden did, on occasion, hear rumors that Dr. Davidow had been accused of inappropriate touching of females during admission examinations. However, defendant Harden always addressed with his supervisor, where he was informed that such behaviors had been investigated or were being investigated, and was later told that there were no findings against Dr. Davidow. Beyond staff rumors, as no patient ever reported this behavior to Defendant Harden, he maintains that he had no knowledge of such conduct.

108. Defendant Harden had no knowledge of any such abuse by Dr. Davidow, and had he known, he would have been reported it.

115. Defendant Harden had no knowledge of any NKCSO investigation and accusations against Defendant Davidow.

116. Defendant Harden had no knowledge, nor would have known that Defendant Davidow presented an imminent danger to vulnerable children and patients, including Plaintiffs herein. Had he suspected, he would have spoken up and reported.

122. Defendant Harden was not an employee of Cumberland Hospital or UHS in July 2008.

131. Defendant Harden is not certain who M.J.M. is, but notes that she did not arrive at Cumberland until August 22, 2012. At that time, defendant Harden was an intern student who led groups at the direction of his supervisor, Jan Hembree, Director of Psychology & Psychotherapy. As such, he made no materially false statements in reports or records about progress other than

her participation/non-participation in group discussions and activities. Defendant Harden had no input in regards to overall progress, precautions and diagnosis and did nothing to deceive or cause further harm to M.J.M. Defendant Harden had no impact in prolonging her stay, or anyone else's for that matter, and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland. Defendant Harden completed his internship and left Cumberland in September 2012.

136. Defendant Harden is not certain who M.M.A. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to prolong a patient's stay at Cumberland. Harden had no impact in prolonging the stay, of this patient, or anyone else's for that matter, and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

141. Defendant Harden is not certain who S.M.F. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to prolong a patient's stay at Cumberland. Harden had no impact in prolonging the stay, of this patient, or anyone else's for that matter, and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

149. Defendant Harden is not certain who A.C.J is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to prolong a patient's stay at Cumberland. Harden had no impact in prolonging the stay, of this patient, or anyone else's for that matter, and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

156. Defendant Harden is not certain who J.E.H. is, and whether he had contact with her during her employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and

diagnosis with the intent to deceive and cause further harm or to prolong a patient's stay at Cumberland. Harden had no impact in prolonging the stay, of this patient, or anyone else's for that matter, and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

162. Defendant Harden is not certain who C.V.M. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to prolong a patient's stay at Cumberland. Harden had no impact in prolonging the stay, of this patient, or anyone else's for that matter, and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

170. Defendant Harden is not certain who S.K.P. is, and whether he had contact with her during his employment at Cumberland. Defendant maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to prolong a patient's stay at Cumberland. Harden had no impact in prolonging the stay, of this patient, or anyone else's for that matter, and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

176. Defendant Harden is not certain who C.L.K. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he never made materially false statements to any patient's mother and guardian. He also maintains that he has never made false statements to any Department of Social Services agency in New York or any other state.

184. Defendant Harden vehemently and categorically denies that he was ever abusive in any manner with H.G.B. He maintains that at no time did he ever strike this patient. Defendant Harden provided individual and family counseling to H.G.B, and to the best of his recollection, he conducted all individual counseling sessions on the unit due to medical protocols. Defendant Harden recalls that he included a significant amount of medical history and observations from a hospital in AZ, into his Psychosocial Evaluation. Specifically, defendant Harden remembers that there were concerns noted by the previous hospital, that staff had raised concerns for Munchausen by proxy and other unorthodox treatment for unconfirmed medical diagnosis,

including invasive medical procedures. He also recalls that there had been previous involvement by CPS in the home, and that H.G.B. was dealing with anger over family dynamics, issues with his mother, and his medical condition. Defendant Harden believes the mother had been concerned that H.G.B.'s diagnosis might be changed, which would impact his future intensive services. Defendant Harden maintains, to the best of his recollection, he and H.G.B. had a good therapeutic relationship.

185. Defendant Harden, again, vehemently and categorically denies that he has ever physically abused any patient at Cumberland.

186. Defendant Harden maintains that his approach with patients was not aggressive or dangerous, and certainly did not pose a risk of injury. However, defendant Harden maintains that he was often assigned some of the most aggressive and physically dangerous patients because he was able to conduct individual and group counseling in such a way to earn their trust and respect. Defendant Harden was 64 years-old when he began his internship at Cumberland Hospital and was 71 years-old when he voluntarily resigned. His therapeutic approach was rooted in his life experience and training. While he was never physically threatening in any way, he was often called upon to provide intervention when patients were in distress to "talk them down" and defuse potentially dangerous situations. His groups, especially the older boys, were also considered well behaved when conducted by counselors who filled in for defendant Harden.

187. As with every other Plaintiff in this complaint, Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to prolong a patient's stay at Cumberland. He has had no impact in prolonging the stay of this patient, or anyone else to increase the revenue and profits of UHS and Cumberland.

192. Defendant Harden is not certain who B.C.P is, and whether he had contact with him during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to B.C.P. by prolonging his stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

206. Defendant Harden is not certain who K.M.J. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to K.M.J., by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

215. Defendant Harden is not certain who D.T.A. is, and whether he had contact with him during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to D.T.A., by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

221. Defendant Harden is not certain who K.A.M. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to K.A.M. by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

223. Defendant Harden submits that he left Cumberland on September 15, 2019 and was not a party to this patient's readmittance and subsequent complaint.

224. Defendant Harden submits that he left Cumberland on September 15, 2019 and was not a party to this patient's readmittance and subsequent complaint.

225. Defendant Harden submits that he left Cumberland on September 15, 2019 and was not a party to this patient's readmittance and subsequent complaint.

229. Defendant Harden is not certain who A.J.S. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to A.J.S. by prolonging her stay at

Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

237. Defendant Harden is not certain who J.L.K. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to J.L.K. by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

242. Defendant Harden is not certain who K.E.H. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to K.E.H. by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

249. Defendant Harden is not certain who C.T.K. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to C.T.K. by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

258. Defendant Harden is not certain who J.A.H. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm or to J.A.H. by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

264. Defendant Harden is not certain M.M. is, and whether he had contact with her during his employment at Cumberland. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis

with the intent to deceive and cause further harm or to C.T.K. by prolonging her stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

272. Defendant Harden, again, vehemently and categorically denies that he has ever physically abused, assaulted or battered any patient at Cumberland and further denies that he ever physically abused, assaulted or battered H.G.B.

273. Defendant Harden denies any contact that would cause injury, damage, loss, and;/or harm as described,

275. Defendant Harden believes that a thorough and proper investigation of this matter will result in the complaint being unfounded against him.

279. Defendant Harden had no authority to, or involvement in the hiring process nor assigning appropriate staff members to units. However, Defendant Harden agrees that the lack of staff created a dangerous environment for all patients and staff. This environment also created high staff turnover and callout, and unrealistic and excessive workload for all employees.

280. Defendant Harden had no authority to, or involvement in the hiring process nor assigning appropriate staff members to units. However, Defendant Harden agrees that the lack of staff created a dangerous environment for all patients and staff. This environment also created high staff turnover and callout, and unrealistic and excessive workload for all employees.

281. Defendant Harden had no authority to, or involvement in the hiring process nor assigning appropriate staff members to units. However, Defendant Harden agrees that the lack of staff created a dangerous environment for all patients and staff. This environment also created high staff turnover and callout, and unrealistic and excessive workload for all employees.

282. Defendant Harden had no authority to, or involvement in the hiring process nor assigning appropriate staff members to units. However, Defendant Harden agrees that the lack of staff created a dangerous environment for all patients and staff. This environment also created high staff turnover and callout, and unrealistic and excessive workload for all employees.

283. Defendant Harden had no authority to, or involvement in the hiring process nor assigning appropriate staff members to units. However, Defendant Harden agrees that the lack of

staff created a dangerous environment for all patients and staff. This environment also created high staff turnover and callout, and unrealistic and excessive workload for all employees.

284. Defendant Harden believes that a thorough and proper investigation of this matter will result in this complaint being unfounded against him.

286. Defendant Harden had no connection to offerings of residential services. Defendant Harden's relationships with patients was therapeutic and trusting.

287. Defendant Harden's relationships with patients was therapeutic and trusting. At all times Defendant Harden exercised his ability to protect and provide reasonable care and avoid dangers to harm of patients.

288. Defendant Harden provided counseling services to those individuals assigned to him for therapeutic purposes. Defendant Harden maintains no knowledge of such targeting of certain populations. It is Defendant Harden's understanding that final approvals for admission were made by the CEO and the medical director. Defendant Harden only had knowledge of those admissions for which he was assigned.

289. Defendant Harden's relationships with patients was therapeutic and trusting. At all times Defendant Harden exercised his ability to protect and provide reasonable care and avoid dangers to harm of patients.

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291. Defendant Harden's relationships with patients was therapeutic and trusting. At all times Defendant Harden exercised his ability to protect and provide reasonable care and avoid dangers to harm of patients.

292. Defendant Harden's relationships with patients was therapeutic and trusting. At all times Defendant Harden exercised his ability to protect and provide reasonable care and avoid dangers to harm of patients. At no time, during his employment at Cumberland, did Defendant Harden deprive any patient of their normal power of self-protection, the protection of their

parents, unless mandated by a Child Protection Agency, or other agency with the authority to order such protection.

293. Defendant Harden routinely learned of assaults by peers, on his patients, after the fact. Defendant Harden was typically notified by unit personnel.

294. Defendant Harden did maintain control when in the presence of his patients and other peers. Additionally, Defendant Harden understood the necessity to exercise control.

296. Defendant Harden understood, and during his admissions, observed both Defendant Davidow and a female case manager, transition to the exam room for purposes of conducting a physical exam of patient. At no time did Defendant Harden suspect any known danger that could and would result during the physical examination by Defendant Davidow and the case manager present.

297. Defendant Harden understood, and during his admissions, observed both Defendant Davidow and a female case manager, transition to the exam room for purposes of conducting a physical exam of patient. At no time did Defendant Harden suspect any known danger that could and would result during the physical examination by Defendant Davidow and the case manager present.

298. "Reasonably foreseeable means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision." Defendant Harden never had indication or suspicion that the alleged abuses against Defendant Davidow was possible or likely to occur during physical examination with a female case manager present.

299. Defendant Harden readily acknowledges his duty to provide patients with supervision and care when in his presence. Defendant Harden, in most cases, was not present 100% of the time to provide protection to patients.

300. Defendant Harden believes that a thorough and proper investigation of this matter will result in this complaint being unfounded against him.

302. Defendant Harden, in providing therapeutic and trust building services, never assumed to act gratuitously and/or for consideration to render services. Defendant Harden always treated patients with dignity and respect and, if noted otherwise, would address the same with the staff

member observed not rendering such dignity and respect. Defendant Harden agrees that any/all patients at Cumberland had the right to receive treatment in the least restrictive treatment environment that was appropriate for their treatment plan, and the right not to be "placed in seclusion unless it is determined that such restrictions are necessary to protect "them or others from harm." Defendant Harden had no knowledge of any patient being placed in seclusion other than for their own protection or preventing harm to others.

303. Defendant Harden, during his employment at Cumberland, observed staff members who were committed to care for their patients and did all, within their power, to provide a safe, sanitary, or humane environment and treatment with dignity and respect. However, based on the overall history and background of each patient, and their life experiences, it was difficult for staff to know when someone would take aggressive and hostile measures towards another peer or staff member.

304. Defendant Harden believes that a thorough and proper investigation of this matter will result in this complaint being unfounded against him.

306. Defendant Harden had nothing to do with the retention of Defendant Davidow or any other employee of Cumberland during his employment.

307. Defendant Harden was not an employee of Cumberland Hospital when PSI and Cumberland hired Defendant Davidow.

308. Defendant Harden had nothing to do with the retention or placement on administrative leave of Defendant Davidow.

309. Defendant Harden believes that a thorough and proper investigation of this matter will result in this complaint being unfounded against him.

311. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm by prolonging a patient's stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

312. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to

deceive and cause further harm by prolonging a patient's stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

314. Defendant Harden maintains that he has never made materially false statements in reports and records about any patient's progress, precautions, and diagnosis with the intent to deceive and cause further harm by prolonging a patient's stay at Cumberland and certainly had nothing to do with increasing the revenue and profits of UHS and Cumberland.

315. Defendant Harden believes that a thorough and proper investigation of this matter will result in this complaint being unfounded against him.

316. Defendant Harden attests that he did act within the scope of his employment based upon his assigned duties as a Counselor in Residency.

317. Defendant Harden acted in the furtherance of and within the scope of his employment as a Counselor in Residency. Defendant Harden was under direct supervision of the Director of Psychology and Psychotherapy from his initial hire until July 15, 2019 when his supervisor resigned position and a new department head was assigned.

319. Defendant Harden adamantly denies this allegation.

320. Defendant Harden agrees.

321. Defendant Harden adamantly denies this allegation.

339. Defendant Harden made no misrepresentations to any patient, or their parents/guardian, regarding the attributes of Cumberland Hospital for the purpose of inducing patients and members of the general public to purchase their services and rely on the safety of their facility and the quality of their services.

340. Defendant Harden, neither individually or collectively, made various material representations, in his documents, brochures and on websites to patients and the general public that Cumberland Hospital was safe. Defendant Harden had no documents, brochures, or websites in his position as a Counselor in Residency.

354. Defendant Harden believes that a thorough and proper investigation of this matter will result in this complaint being unfounded against him.

356. Defendant Harden believes that a thorough and proper investigation of this matter will result in this complaint being unfounded against him.

Respectfully submitted this 23d day of November, 2020.



HERSCHEL C. HARDEN, III

9407 CUMBERLAND ROAD · NEW KENT, VIRGINIA 23124 · (800) 368-3472

cumberland

HOSPITAL FOR CHILDREN AND ADOLESCENTS

March 19, 2013

Hershel "Mickey" Harden, III
6284 St. John's Wood
Williamsburg, VA 23188

Dear Mickey:

This is to formally confirm our offer and your acceptance of employment with Cumberland Hospital for Children and Adolescents as a Psychotherapist effective March 25, 2013. You will start out as a full-time employee; however, the job status is subject to change depending on our patient census. Your salary as a full-time employee is \$52,000, and this is classified as an exempt position. Congratulations and welcome!

This offer is contingent upon successful completion of your urine drug screen, background investigations and reference checks. Employment with Cumberland Hospital is at-will. This at-will acknowledgment does not, and is not intended to, undermine or interfere with my right to engage in protected concerted activity under Section 7 of the National Labor Relations Act or any other applicable law.

You are eligible for our flexible benefits program-called UniFLEX. These benefits become effective on the 31st day of employment, so you will have time to review the plans and make your selection. Benefits enrollment information and plan descriptions will then be forwarded to your home. Subsequently, we will arrange for you to attend new hire orientation with Human Resources which will include a benefits overview. If you neglect to enroll within 30 days of your start date, you will not be eligible to enroll until the next open enrollment period. You will be eligible for these and other benefits that UHS makes available to employees according to the current or future terms of such plans. Accrual of your paid time off begins on your first day of employment and eligibility to use PTO begins after 90 days of employment.

Please review the enclosed documents pertaining to your employment at Cumberland Hospital. Each will need to be completed prior to your first day of orientation. There is a checklist enclosed as well for your convenience. Please bring your original Driver's License and Social Security Card -- OR -- U.S. Passport on the first day of orientation. We also ask that you provide us with your most recent immunization (shot) records. Please be aware that tuberculosis screening will be performed upon hire. If you have received a PPD or chest X-ray within the last twelve months please provide us with a copy of this documentation on the first day of orientation.

We enthusiastically welcome you to the Cumberland Team. Should you have any questions, please do not hesitate to call the Human Resources Office at (804) 966-1645 or (800) 368-3472, extension 1645.

Sincerely,



Kim White
Recruitment Coordinator

Enclosures

I understand and accept the conditions of this offer letter.


Signature

3/20/13
Date

Exhibit A

CUMBERLAND HOSPITAL FOR CHILDREN AND ADOLESCENTS

Staff Position Description/Performance Evaluation

Position Title: Psychotherapist

★ **Employee Name:** HERSCHEL C. (Mickey) HARDEN II

Department: Psychology

★ **Date of Hire:** 3/5/13 **Review Date:** _____

Division: Clinical Services

Appraisal of Performance From _____ **To** _____

Reports To: Director of Program Services

Evaluator: _____

Position Purpose: To provide psychotherapy services for patients (ages 4 to 22) and their families at Cumberland Hospital.

Key Responsibilities:

1. Provides individual therapy.
2. Provides family therapy.
3. Provides group therapy.
4. Participates in professional development activities.

**Performance
Standards:**

Standard No.	Weight	Performance Standard	Performance Evaluation
1	60%	<p>Provides individual therapy.</p> <p>Units of Measure:</p> <ul style="list-style-type: none"> • Meets with assigned patients at least 2x/week for individual therapy. • Documentation of the bi-weekly sessions in the chart at the end of the week. • Documentation includes, at a minimum, a therapy progress note denoting session content and treatment plan for next session. • Presents information to the Treatment Team (both written and verbal) in clear, concise, and measurable goals. • Treatment goals are measurable and generalized to outside of the therapy sessions. • Maintains contact with outpatient psychotherapist throughout patient stay, including scheduling of discharge, outpatient, and psychotherapy. • Will include, at a minimum, review of medical records, and attendance at peer review meetings. 	<p>3. Meets and exceeds performance standard.</p> <p>2. Meets performance standard.</p> <p>1. Does not meet performance standard.</p> <p><u>Comments:</u></p>
2	20%	<p>Provides family therapy.</p> <p>Units of Measure:</p> <ul style="list-style-type: none"> • Meets with assigned families at least once weekly for family therapy as documented in notes and by number of sessions billed. • Documentation of the weekly sessions in the chart at the end of the week. • Documentation includes, at a minimum, a therapy progress note denoting session content and treatment plan for next session. • Presents information to the Treatment Team (both written and verbal) in clear, concise, and measurable goals. • Treatment goals are measurable and generalized to outside of the therapy sessions. • Makes every attempt to meet with families in person; if this is not possible, therapy is held via conference call. • Will include, at a minimum, review 	<p>3. Meets and exceeds performance standard.</p> <p>2. Meets performance standard.</p> <p>1. Does not meet performance standard.</p> <p><u>Comments:</u></p>

		of medical records, observation, productivity and billing reports, and attendance at peer review meetings.	
3	10%	<p>Provides group therapy.</p> <p>Units of Measure:</p> <ul style="list-style-type: none"> • Holds assigned groups as scheduled as noted documentation in the chart, as well as by number of session billed. • Documentation of the weekly sessions in the chart at the end of the week. • Documentation includes, at a minimum, group progress note form completed for each patient who is assigned to the group. • Presents information to the Treatment Team (both written and verbal) in clear, concise, and measurable goals. • Treatment goals are measurable and generalized to outside of the therapy sessions. • Will include, at a minimum, review of medical records, observation, productivity and billing reports, and attendance at peer review meetings. 	<p>3. Meets and exceeds performance standard.</p> <p>2. Meets performance standard.</p> <p>1. Does not meet performance standard.</p> <p><u>Comments:</u></p>
4	10%	<p>Participates in professional development activities.</p> <p>Units of Measure:</p> <ul style="list-style-type: none"> • Attends peer review 90% of the time. • Participates in peer review through case presentation at least once per year. • Attends psychotherapy department meetings 90% of the time. 	<p>3. Meets and exceeds performance standard.</p> <p>2. Meets performance standard.</p> <p>1. Does not meet performance standard.</p> <p><u>Comments:</u></p>

For Supervisor Use:

Comments:

Recommendations:

For Employee Use:

Comments:

Goals for Appraisal Period:

Evaluation of Supervisor:

1. Do you know the standards by which your supervisor evaluated your performance and expected results? Yes _____ No _____
2. Do you feel your contribution and performance are measured fairly? Yes _____ No _____
3. Has your supervisor assisted you in evaluating your strengths and weaknesses for future performance improvement? Yes _____ No _____

Employee Signature

Date

Supervisor Signature

Date

Administrative Review

Date

PERFORMANCE EVALUATION

Sum of Points Received x 100 = Performance Rating x Weight = Merit Points

Standard	Points Received	X 100	= Performance Rating	X Weight	= Merit Points
1		X 100		.60	
2		X 100		.20	
3		X 100		.10	
4		X 100		.10	

Total Merit Points: _____

Merit Increase Schedule

Level of Performance	Point Range
Meets standard	300 - 175
Does not meet standard	174 - below