THE STATE OF SOUTH CAROLINA
In The Court of
Appeals In The Court
of Common Plea

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit

Court Judge

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Appellate Case No. 2021-000903

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Greenville County Detention Center, Respondent,

v.

Ortagus Bennett, Appellant.

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## ISSUES

Plaintiff, submits the following Memorandum of law per the court's instruction. The issues addressed herein include:

I. Whether Mr. Bennett's Medical Malpractice actions against the Greenville County Detention Center and/or Prisma Health - Upstate should be dismissed pursuant to SCRCP Rule 12(b)(6) due to the action having been filed after the expiration of the 2 year statute of limitations set forth in the South Carolina Tort Claims Act;

II. Whether the Defendants' Rule 12(b)(6) Motions to Dismiss Mr. Bennett's Medical Malpractice actions against Greenville Detention Center and Prisma Health-Upstate should be denied in favor of allowing Mr. Bennett to Amend his original pleadings to include the allegations set forth hereinbelow, or, alternatively, in favor of allowing Mr. Bennett to withdraw his original pleadings and substitute them with Notices of Intent to Sue together with the requisite supporting affidavits, thereby bringing the action into compliance with the prelitigation mandates of S.C. Code Ann. § 15-79-125.

For the reasons set forth herein below, neither action should be subject to dismissal pursuant to Rule 12(b)(6), and Mr. Bennett should be granted leave to amend his pleadings in both actions as set forth herein and/or to substitute the original pleadings with Notices of Intent to Sue together with the requisite supporting affidavits.

## ARGUMENTS

Neither Greenville County Detention Center nor Prisma Health-Upstate is entitled to dismissal of the medical malpractice claims due to the expiration

of the Tort Claims Act 2 year statute of limitations.

A. Prisma Health - Upstate is not a "governmental entity" within the meaning of the South Carolina Tort Claims Act, and is therefore not entitled to the 2-year abbreviated statute of limitations set forth in the Tort Claims Act.

Generally speaking, the statute of limitation in South Carolina for bringing a medical malpractice is 3 years from the date of the procedure that caused the injury, or three years from the date the treatment, omission, or operation that gives rise to the injury, or three years from the date the injury reasonably ought to have been discovered. S.C. Code Ann. §15-3-545. The South Carolina Tort Claims Act sets forth a shorter, 2 year statute of limitations for actions being brought against a "governmental health care facility." SC Code Ann. §15-78-100. A "governmental health care facility" is defined as one that is "operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance . . . ." SC Code Ann. § 15-78-30(j).

In the instant case, Plaintiff misidentified Prisma Health-Upstate as "Greenville Hospital System currently d/b/a Prisma Health." Plaintiff further mistakenly alleged that Prisma Health is a "governmental entity." In its' motion to dismiss, Prisma Health-Upstate attempts to capitalize on this inaccuracy in Plaintiff's pro se original filing to suggest that the 2 year statute of limitations set

forth in the Tort Claims Act should be deemed applicable to Prisma Health-Upstate. This position is, of course, untenable. Prisma Health-Upstate is not a "governmental health care facility" as defined in § 15-78-30(j). Rather, at all times pertinent to this action, Prisma Health-Upstate operated as a privately owned, non-profit entity. Prisma Health-Upstate cites no authority and supporting the position that a litigant's inadvertent designation of a private
facility as a governmental health care facility in a pleading somehow bestows legal status upon the misnamed entity as an actual "governmental health care facility" within the meaning of the Tort Claims Act. Because Prisma Health is actually a private entity, the general 3 year statute of limitations is applicable in Plaintiff's action against Prisma Health-Upstate.

Plaintiff filed his pro se original Complaint on April 6, 2020, alleging in part that he was assaulted and injured on April 9, 2017. Even assuming, without conceding, that the applicable statute of limitations was triggered on the day Plaintiff suffered the underlying injuries, Plaintiff clearly filed his Complaint prior to the expiration of the 3 year time frame applicable to Prisma Health-Upstate.

Pursuant to Rule 15, of the South Carolina Rules of Civil Procedure, Plaintiff should be granted leave to amend his Complaint to, *inter alia*, delete reference to Greenville Hospital System, add "Upstate" to the designation of Prisma Health as a party defendant, and delete mistaken references to Prisma Health as a governmental entity. Alternatively, under the same theory of applicability as Rule 15, SCRCP, Plaintiff should have been granted leave to withdraw and replace the Summons and

Complaint with the attached Notice of Intent to Sue and Supporting Affidavit.

B. The Statute of Limitations as to both Prisma Health-Upstate and the Greenville County Detention Center, should be deemed to have been triggered on January 28th 2020, the date on which Plaintiff reasonably could have discovered that Defendants negligently failed to offer him appropriate medical evaluation and treatment for his injuries.

The general law on the statute of limitations is familiar. "The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). It requires a party to "act with some promptness" when the circumstances "would put a person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist." *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993).

The lead case on tolling explains it is based on ensuring "fundamental practicality and fairness" and should be used "sparingly." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115-17, 687 S.E.2d 29, 32-33 (2009) (quoting *Rodriguez v. Superior Court*, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728, 736 (Cal. Ct. App. 2009)). "It has been observed that '[e]quitable tolling typically applies in cases where a litigant was prevented from

filing suit because of an extraordinary event beyond his or her control.'" *Id.* at 116, 687 S.E.2d at 32 (quoting *Ocana v. Am. Furniture Co.*, 2004- NMSC 018, 135 N.M. 539, 91 P.3d 58, 66 (N.M. 2004)). Estoppel applies when the defendant's conduct induces the plaintiff to delay filing suit. *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 360, 559 S.E.2d 327, 338 (Ct. App. 2001).

Here, the Defendants' wrongful conduct was not reasonably discoverable until January 28th, 2020, the date Plaintiff was first made aware that Defendants had wrongfully failed to initially complete adequate imaging studies of the correct region of his head and face, which led to the failure of both Defendants to diagnose his actual injuries.

The Plaintiff's medical records show that he presented to the Detention Center and to Prisma Health Upstate on April 9, 2017 with an indented facial structure and complaining of sever pain in the facial/jaw area. Despite obvious swelling and indentation in Plaintiff's facial area, in addition to persistent complaints of severe pain, Defendants' took x-ray images of only Plaintiff's mandible area. According to Plaintiff's records, neither the treating physicians nor the hospital radiologist could appreciate any fracture of the Plaintiff's mandible from the films taken on April 9, 2017. Despite Plaintiff's massive facial swelling,

and continued complaints of severe pain, neither facility initially obtained any additional imaging.

Following his initial presentation at Prisma Health-Upstate, Plaintiff was transported to the Greenville County Detention Center. Once there, Plaintiff continued to exhibit massive facial swelling and an indentation in the area of his cheek, continuous complaints regarding his head and face due to a suffered concussion, as well as continued severe pain. Medical personnel at the Detention Center took another x-ray, again limiting the diagnostic test to images of Plaintiff's mandible. Failing to appreciate a fracture in Plaintiff's mandible, medical personnel at the Detention Center simply ceased offering help to the Plaintiff. Plaintiff remained incarcerated at the Greenville County Detention center for three additional weeks, during which time he consistently sought medical attention via the Detention Center's Medical Kiosk, and was continually denied the same. In fact, rather than offer Plaintiff the additional medical treatment he desperately needed and continuously requested, the Detention Center opted instead to intentionally cut off the Plaintiff's access to the facility's Medical Kiosk, which was the only means available to Plaintiff to request medical care within the Detention Center. Requests made by Plaintiff's fiancé and other family members on Plaintiff's behalf seeking additional medical evaluation and treatment were steadfastly ignored while Plaintiff remained incarcerated.

On April 30, 2017, after his release from the Detention Center, Plaintiff returned to Prisma Health-Upstate for additional medical evaluation and treatment, which included a CT Scan. Thereafter, he was referred to Dr. Bart Williams, who several weeks later performed surgery to correct Plaintiff's pronounced zygomatic arch fracture.

It is important to note that Plaintiff's argument, to be set forth in his Amended Complaint and/or NOI, is not that Defendants failed to properly diagnose a fractured mandible - Claimant did not, in fact, sustain a fractured mandible. Instead, both Defendant Prisma Health-Upstate and the Greenville County Detention Center negligently failed to order the correct imaging studies during Plaintiff's initial encounters, which studies would have immediately revealed (and later did reveal) Plaintiff's zygomatic arch fracture. It is further important to note that while subsequent caregivers confirmed Defendants' reading of the original films, which did not show a mandible fracture, and although Plaintiff's zygomatic arch fracture was diagnosed during the April 30, 2017 return visit to Prisma Health-Upstate, neither Defendant made Plaintiff aware that CT scan images of his entire head and face should have been taken initially, and that those CT scans would have immediately revealed the zygomatic arch fracture. When I had the privileges of utilizing the Detention Center Kiosk, I made the request for a CT Scan evaluation, personnel asked why I felt a CT Scan was needed and my response was that my injuries were not only visible but the pain was also unbearable. Even with my multiple complaints my request was ignored.

For purposes of determining when a reasonably prudent person would have realized that the failure to obtain CT scans initially was a negligent omission, it is

Plaintiff's position that a lay person could not be expected to realize that the failure to order a different type of diagnostic test initially was an act of negligence in and of itself.

Moreover, Plaintiff, and others acting on his behalf, requested copies of the initial images taken at Prisma Health-Upstate and the Greenville County Detention Center on several occasions prior to the filing of this action, but both Defendants refused to release the x-ray film images to Plaintiff and they still have not been received to this date to determine if the correct images were taken or if the correct findings were simply looked over and/or not properly reviewed. However, without the images being provided by both Defendants, there is no way to be assured of what took place. Plaintiff requested his medical records from The Greenville County Detention Center on the day after his release, on April 30, 2017, but was only provided with copies of his own requests for medical care made via the facility's Health Care Kiosk. No x-ray films were provided to him by the Detention Center. Plaintiff also requested his entire medical file from Prisma Health-Upstate on three separate occasions in 2017 - August 29th, October 25th, and November 6th. On all three occasions Defendant Prisma Health-Upstate failed to provide Plaintiff with the x-ray films. Defendants' failure to release the x-ray films effectively thwarted Plaintiff's efforts accomplish due diligence in attempting to discover whether Defendants committed an actionable error in failing to diagnose his zygomatic fracture, despite the Defendants' correct diagnosis that he did not sustain a fracture of his mandible.

Further, although Plaintiff was diagnosed with a closed head injury and given care instructions for a mild concussion during his April 30, 2017 return visit to Prisma Health-Upstate, it was not until Plaintiff was able to obtain extensive additional evaluation and care, including examination by a neurologist, Dr. Marshall A. White, that Plaintiff learned the Defendants also failed to properly diagnosis him with a significant concussion resulting in ***traumatic brain injury***, accompanied by other neuropsychological and neuropsychiatric consequences including retrograde anterograde amnesia, as well as anterograde amnesia. Importantly, Dr. White opined in his January 28, 2020 report that as of the time of his evaluation, Plaintiff was not receiving adequate treatment for the neuropsychiatric consequences of his traumatic brain injury. In fact, Plaintiff reported that this condition went completely undiagnosed during the weeks he spent in the Detention Center, and that he received no therapy or other treatment at all while housed there.

Particularly in light of the unique circumstances surrounding Defendants' failure to properly diagnose Plaintiff, including the capturing and valid interpretation of x-ray images of Plaintiff's mandible, Plaintiff posits that a "a reasonable person" would not have been put on notice of negligent misdiagnosis

where caregivers were skilled at using the apparatus they choose, the x-ray films prints resulting from the initial studies appeared readable, and caregivers correctly determined from those images that Plaintiff did not suffer a fractured mandible, and, most especially, where the skilled medical personnel apparently did not appreciate the need for further studies despite Plaintiff's persistence complaints of pain and discomfort.. This is particularly true where both Defendants played an active roll at thwarting Plaintiff's efforts to accomplish due diligence in discovering that a cause of action existed by failing to provide Plaintiff with his entire medical file until years after his numerous requests that the records be produced. Moreover, there can be no serious question but that Plaintiff's traumatic brain injury, which was not adequately treated during the bulk of the statutory period, burden Plaintiff with some degree of disability that, in the interest of fairness, ought to be considered in evaluating the merits of Plaintiff's tolling argument.

For all of the foregoing reasons, the statute of limitations should be deemed triggered as of January 28, 2020. At a minimum, this Court should construe the proposed changes to Plaintiff's theory of recovery set forth above as adequate to preclude dismissal of either action under the auspices of Rule 12(b)(6) due to the running of the statute of limitations.

II. Defendants' Rule 12(b)(6) Motions to Dismiss Plaintiff's medical malpractice actions against Greenville Detention Center and Prisma Health-Upstate for failure to comply with the prelitigation filing mandates of S.C. Code Ann § 15-79-125 should be denied in favor of allowing Plaintiff to Amend his original pleadings to include the allegations and alternative theories of recovery set forth in this memorandum, or, alternatively, in favor of allowing Mr. Bennett to withdraw his original pleadings and substitute them with Notices of Intent to Sue together with the requisite supporting affidavits, thereby bringing the action into compliance with the prelitigation mandates of S.C. Code Ann. § 15-79-125.

Rule 12(b)(6), SCRCP, under which both Defendants have elected to proceed, permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim. *See, e.g.*, *Charleston Cty. Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) ("In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint."); *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (". . . solely upon the allegations set forth on the face of the complaint"); *see*

*also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929, 940-41 (2007) ("[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote [**588] and unlikely.") (internal quotations omitted); *Republican Party of N. Carolina v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses."). At the Rule 12 stage, therefore, the first decision for the trial court is narrow in scope: whether the pleading states a claim upon which relief can be granted under any theory of law. Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 179-180, 826 S.E.2d 585, 587-588, 2019 S.C. LEXIS 14, *2-4

There exists a vast body of law in South Carolina establishing our judiciary's strong preference that meritorious cases be allowed to proceed to trial rather than dismissed due to the presence of deficiencies that may be easily remedied by way of an amended pleading. *Spence v. Spence*, 368 S.C. 106, 130-131, 628 S.E.2d 869, 881-882, 2006 S.C. In fact, it is so well established as to be axiomatic in South Carolina that even when a trial court finds a complaint fails "to state facts sufficient to constitute a cause of action" under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing

the final order of dismissal. *See Foman v. Davis*, 371 U.S. 178, 179, 182, 83 S. Ct. 227, 228, 230, 9 L. Ed. 2d 222, 224, 226 (1962) (where a complaint is dismissed "for failure to state a claim upon which relief might be granted," leave to amend the complaint "should, as the rules require, be 'freely given'" (quoting Rule 15(a), Fed. R. Civ. P.)); [***3] *Dockside Ass'n, Inc. v. Detyens,* Simmons & Carlisle, 297 S.C. 91, 95, 374 S.E.2d 907, 909 (Ct. App. 1988) (holding "Dockside should have been given leave to amend its complaint" before it was finally dismissed pursuant to Rule 12(b), SCRCP (citing *Foman*, 371 U.S. at 182, 83 S. Ct. at 230, 9 L. Ed. 2d at 226)). It is further well established in South Carolina that Rule 15(a) "strongly favors amendments and the court is encouraged to freely grant leave to amend." *Patton v. Miller*, 420 S.C. 471, 489-90, 804 S.E.2d 252, 261 (2017) (quoting *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)).

Even on appeal, when a plaintiff is not given the opportunity to file and serve an amended complaint at the trial court level, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find
the dismissal is without prejudice. When the statute of limitations has expired, the appellate court may in its discretion impose a reasonable period of time in which to amend the complaint. An appellate court should follow this procedure when the

plaintiff presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted. Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, 1998 ME 70, 708 A.2d 283, 286-87 (Me. 1998) (trial court acted within its discretion in dismissing case with prejudice pursuant to Rule 12(b)(6) where plaintiff was unable to show how he would cure defects in his complaint if granted leave to amend it); Barkley v. Good Will Home Asso., 495 A.2d 1238 (Me. 1985) (in absence of bad or dilatory motives on the part of plaintiff or undue prejudice to defendant, the trial court abused its discretion by denying the plaintiff an opportunity to amend her complaint after it was dismissed pursuant to Rule 12(b)(6)); Baker v. Town of Middlebury, 753 N.E.2d 67, 74 (Ind. App. 2001) (dismissal of complaint pursuant to Rule 12(b)(6) with prejudice was harmless error because plaintiff failed to show how he would have amended his complaint to avoid dismissal).

It stands to reason that the judicial goal of carefully guarding the fundamental rights of parties to move forward with a full and fair hearing whenever possible would also carry over into the arena of applying and, where necessary, construing the provisions of South Carolina Code Ann. § 15-79-125, South Carolina's medical malpractice "gatekeeper" statute. It goes without saying

that SC Code Ann. § 15-79-125 is fraught with pitfalls for the unwary and uninitiated, such as the Plaintiff herein who, through no fault of his own that he could have predicted, found himself attempting to navigate through the unfamiliar provisions without the benefit of an attorney, in the midst of a pandemic, facing the possibility that the statute of limitations may have been close to expiring, and also dealing with the very real possibility (and eventual reality) that for the first time in recent memory, the entire South Carolina judiciary might be forced to shut down. There can be little question but that in a few weeks or months, a body of caselaw will develop to help all of us deal with the aftershock of Covid-19, but thus far we have very little pandemic-crisis related caselaw currently at our disposal. Fortunately, our Appellate Courts have had some opportunity to weigh in on how to best utilize the statute to accomplish the goals of the legislature in enacting its provisions while also avoiding the worst of the unintentially harsh results.

SC Code Ann.15-79-125 provides as follows:

**(A)** Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for

filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

**(B)** After the Notice of Intent to File Suit is filed and served, all named parties may subpoena medical records and other documents potentially related to the medical malpractice claim pursuant to the rules governing the service and enforcement of subpoenas outlined in the South Carolina Rules of Civil Procedure. Upon leave of court, the named parties also may take depositions pursuant to the rules governing discovery outlined in the South Carolina Rules of Civil Procedure.

**(C)** Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon a finding of good cause. Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the

mediation conference for all or any part of the State shall govern the mediation process, including compensation of the mediator and payment of the fees and expenses of the mediation conference. The parties otherwise are responsible for their own expenses related to mediation pursuant to this section.

**(D)** The circuit court has jurisdiction to enforce the provisions of this section.

**(E)** If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed:

**(1)** within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; or

**(2)** prior to expiration of the statute of limitations, whichever is later.

**(F)** Participation in the prelitigation mediation pursuant to this section does not alter or eliminate any obligation of the parties to participate in alternative dispute resolution after the civil action is initiated. However, there is no requirement for participation in more than one alternative dispute resolution forum following the filing of a summons and complaint to initiate a civil action in the matter.

It is undisputed that Plaintiff in the instant case, having been demonstrably forced to proceed without an attorney due to the onslaught of Covid-19 closures

and shelter-in-place orders, filed Summonses and Complaints against Prisma Health and The Greenville County Detention Center in the Court of Common Pleas in April of 2020, and had the pleadings served on the Defendants, without knowing that §15-79-125(A) requires that medical malpractice litigants to begin the litigation process by filing a and serving Notice of Intent to Sue rather than a Summons and Complaint. Unfortunately, Plaintiff was not advised at the time of filing with the Clerk of Court that an NOI was required before a Medical Malpractice suit could be commenced, and the filings were instead accepted and filed with the clerk's office. Both Defendants filed motions to dismiss pursuant to Rule 12(b)(6). Thereafter, the case essentially became inactive due to closures associated with the pandemic, Plaintiff actually contracting Covid -19, and other delays, until the Court heard Defendants Motions.

One of the concerns raised by the Court was what, if any, path forward exists for the Plaintiff since the Summons and Complaints were filed without first complying with the mandates of § 15-79-125(A). As more fully set forth below, Plaintiff believes that the most appropriate course of action is to grant Plaintiff leave to withdraw the initial pleadings in both cases while contemporaneously filing a Notice of Intent to Sue, together with a Supporting Affidavit from a qualified physician.

The South Carolina Supreme Court has recently provided guidance on how the provisions of 15-79-125 should be construed in favor of allowing amendments to pleadings. By way of example, the Court recently noted that allowing amendments to prelitigation pleadings is consistent with the **intent** of the legislature to create a unique pre-litigation period of discovery and mandatory mediation via section 15-79-125 in order to filter out frivolous claims at the earliest stage in **medical malpractice** cases. Wilkinson v. E. Cooper Cmty. Hosp., Inc., 410 S.C. 163, 173-174, 763 S.E.2d 426, 432, 2014 S.C. LEXIS 435, *16-18, 2014 WL 4935934. Further, the Court has recently expressed a strong preference to "permit **medical malpractice** cases to proceed on the merits rather than to affirm unwarranted dismissals based on technical noncompliance with the **medical malpractice** statutes. *See Ross v. Waccamaw Cmty. Hosp*., 404 S.C. 56, 744 S.E.2d 547 (2013) (concluding that failure to timely complete the pre-litigation mediation process as required by section 15-79-125 does not divest the trial court of subject matter jurisdiction or mandate dismissal); *Grier v. AMISUB of S.C., Inc*., 397 S.C. 532, 725 S.E.2d 693 (2012) (holding that the pre-litigation expert affidavit, which is filed pursuant to section 15-79-125, must specify at least one negligent act or omission and the factual basis for each claim, but does not need to include an opinion as to proximate cause and,

therefore, **medical malpractice** claimant's case could proceed as the pre-litigation affidavit was sufficient).

Notably, granting the Plaintiff leave to amend and replace the original pleadings with a compliant Notice of Intent to Sue would harmonize with the Supreme Court's recent decision and would not result in any demonstrable prejudice to either Defendant since until very recently, the ability of any parties to any actions has been extremely limited. As well, at this very early stage of litigation, there exist no procedural barriers to aligning the pleadings herein with the requirements of Section 15-79-125 and proceeding forward exactly as set forth in the statutory scheme.

**CONCLUSION**

Due the abovementioned details, I would like for the court of appeals to reconsider the initial order of dismissal set forth in the Circuit Court's order. This was also addressed directly in court that we could have withdrawn the previously submitted summons and complaint and refile with the appropriate NOI if provided the opportunity due to the request and lawsuit was filed well within the appropriate statutory of limitations timeframe. The complaints were also immediately made after being notified that both Defendants failed to take appropriate action in providing the right medical attention and images for proper diagnosis. Currently, as of today I'm still seeking medical attention for my head injury sustained the night of the incident. This should provide even more greater concern that if the proper medical attention was immediate addressed, the proper attention could have been provided and addressed. Considering the circumstances of COVID, the opportunity to amend the unintended deficiencies due the lack of attorney availability should have been granted.