THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2021-000838

Case No. 2018-CP-26-5438

Tara Gurry, Appellant,

v.

Myrtle Beach Dermatology, LLC, Respondents.

Shannon Hussey, Richard Hussey M.D.

FINAL BRIEF OF APPELLANT

Tara Gurry

711 A 3rd Avenue S,

North Myrtle Beach, SC 29582

(843) 877-5839

Appellant-Pro Se Litigant

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STATEMENT OF THE CASE

On April 24, 2018 Plaintiff, Tara Gurry filed a Notice of Intent for Medical Malpractice against Defendants, Shannon Hussey, Richard Hussey M.D., and Myrtle Beach Dermatology, LLC. On September 27, 2018, Appellant filed a Summons and Complaint against the Respondents in the Horry County Court of Common Pleas. Respondents filed an Answer on October 25, 2018 denying liability. On August 2, 2019, ADR Mediation took place. This case was given a Date Certain of June 28, 2021.

On June 28, 2021 at the pre-trial hearing, this matter came before the Court upon a Motion in Limine by the Defendants' counsel to Challenge, Limit, and/or Exclude the testimony from trial of Plaintiff's expert Dr. Schield Wikas. Present were Defendants' Attorneys' Marian Scalise, and Lydia Magee, Pro Se Plaintiff Tara Gurry (Appellant), and the Honorable Judge Benjamin Culbertson.

The circumstances of this hearing are that Defense Counsel handed Appellant a large stack of 24 Motions in Limine that were just filed that morning, which was going to be the first day of trial. Right after that, it was the preliminary jury selection process, and after that, the pre-trial hearing began. Obviously, Appellant had no time to read through the motions, never mind come up with good arguments, and evidence to defend.

This medical malpractice case against the Defendants, specifically Defendant Nurse Practitioner Shannon Hussey (Respondent) involves unnecessary treatment, and improper injection of Kenalog into a normal scar that was healing well from melanoma excision surgery just 13 weeks prior. Ms. Hussey's injection caused injuries including severe atrophy that made a significant depression, which is detailed in medical records, MRI and PET/CT Scans, pictures and witness testimony. Furthermore, due to the extensive atrophy that damaged her leg and went all the way down to her

iliotibial band, Appellant was diagnosed with IT Band Syndrome. The Kenalog injection caused Ms. Gurry systemic effects that were diagnosed by medical professionals, and are listed side effects in the Kenalog Packet Insert.

At the pre-trial hearing the defense counsel sought a Motion to Challenge, Limit, and/or Exclude Plaintiff's dermatology expert Dr. Shield Wikas's testimony. The trial court granted the Motion in full, thus excluding Dr. Wikas' entire testimony. An expert witness was needed in this medical malpractice case, and therefore the exclusion of Dr. Wikas testimony, led to the Court filing an order granting Defendants' Motion for Summary Judgment.

On June 28, 2021 the Court hereby granted the Defendants Motion to Exclude Dr. Wikas' testimony from trial at a pre-trial hearing. The Order Granting Defendants' Motion to exclude Dr. Wikas' Testimony was filed on July 1, 2021. The Order Granting Defendants' Motion for Summary Judgment was filed on July 1, 2021. Appellant filed a Notice of Appeal on August 6, 2021.

FACTUAL BACKGROUND

Appellant was diagnosed with malignant melanoma on her right lateral thigh, it was surgical removed by a wide local excision on January 27, 2016 by Dr. Massesa. The surgery and recovery went well, and the thigh shape was normal with no depression that is evident in pictures, PET/CT scan, and medical records. Appellant was doing well, healthy and in great spirits since the PET/CT scan showed the melanoma did not metastasize.

Due to the seriousness of the malignant skin cancer diagnosis Appellant knew she wanted to established a good relationship with a dermatologist. She went to Myrtle Beach Dermatology, and had her first appointment with Nurse Practitioner Shannon Hussey on February 22, 2016. Ms. Hussey had been hired by her former husband Dr. Hussey, and at the time of the incident she had only 18 months of experience working at dermatology office, with no formal dermatology

education, nor training. Appellant returned on May 3, 2016, for a routine skin check. After the skin check Respondent looked at the well healing scar, and stated, "I have something that'll make that look better, I do it all the time" She left the room and returned a few minutes later with a syringe, and injected "kenalog" into a normal healing scar. Upon the first injection Appellant immediately told her it hurt, yet she continued injecting along the entire scar 5 inch scar.

Appellant endured painful major atrophy, that destroyed subcutaneous tissue, nerves, veins, and it went so deep it damaged the iliotibial band, leaving a significant indention in her leg. An orthopedic doctor diagnosed her with ITB syndrome, therefore she was unable to lead the active lifestyle as an elite athlete she loved, and had to stop running. Appellant became ill with various systemic side effects that are documented side effects of Kenalog in the Packet Insert, and included in her medical records. She had to see many doctors medical professionals, and physical therapists to try and get well, they performed examinations, tests and scans and Appellant was diagnosed with diseases and disorders. Dr. Wikas had access and knowledge to all of the above information by medical records, pictures and testimony.

Appellant's expert witness Dr. Wikas used several avenues and resources to formulate his medical opinion for this case. He used his medical education in dermatology and pharmacy, and his professional experience as a veteran dermatologist for 38 years, and former pharmacist. As a dermatologist he has extensive clinical practice as well being an educator for future dermatologist. For this case Dr. Wikas reviewed medical records, test, scans, pictures, Kenalog Packet Insert and discovery in the case. He also did a thorough physical examination of Ms. Gurry's legs with emphasis on the depression and atrophy that the kenelog injection caused.

Per Appellant's consistent testimony, it states she was not informed by Ms. Hussey of any new "diagnosis" (hypertrohic scar), nor about the drug kenalog in any capacity. There was no

explanation of the invasive treatment of the kenalog injection, nor were first line non-invasive treatments discussed, nor the common sense option of letting it heal naturally offered. Appellant trusted her as a medical professional, and had no reason to believe , she'd be harmed, nor suffer any adverse side effects, as no informed consent was given, the only information she was told from Ms. Hussey was, "I have something that'll make it look better, I do it all the time."

Subsequently a few weeks after the injection, Appellant saw veteran dermatologist Dr. Sheretz, and was diagnosed with atrophy from the kenalog injection. Dr. Sheretz was in shock at the severity of the atrophy, and she voluntary signed a statement stating what Ms. Hussey did was Below the Standard of Care. Dr. Wikas reviewed Dr. Sheretz medical records.

Dr. Wikas reviewed Coastal Cancer Center medical records on March 3, 2016 that show Appellant was in great health, on no medication, and the incision site was healing normally. Oncologist Dr. Markow wrote: "Overall, the patient's condition is unchanged...The patient notes no other significant modifying or associated signs or symptoms especially related to location, severity, duration, timing, context or quality...This patient reports not taking external medications." Dr. Markow thoroughly examined Ms. Gurry's incision both visually and manually, as melanoma is known to return to the primary tumor site. He documents in the medical records : "Right healing incision on the thigh. No significant erythema. Color and texture normal with no subcutaneous masses palpable. No rashes. No petechiae, ecchymosis or purpura."

Dr. Wikas reviewed Medical Records that included PET/CT Scans were he noted the skin and subcutaneous tissue changes from the "before the injection" scan to the "after the injection". PET/CT scan February 25, 2016 show she was healing well with no loss of subcutaneous tissue from her WLE surgery, thigh shape was normal. PET/CT scan September 21, 2016 show drastic change with major subcutaneous loss and a depression in thigh. Let it be known, a layperson

looking at the these scans would easily be able to point out the legs and note where the damage is on the "after the injection scan". Although Dr. Wikas is not a radiologist, he has looked at scans in his dermatology practice to examine skin and subcutaneous tissue.

Appellant had to go to many medical providers to try and get well. Ms. Gurry's medical records document the many serious side effects of the injection she suffered, all are stated in the Kenalog Packet Insert which Dr. Wikas is very knowledgeable about as a veteran dermatologist and former pharmacist..

STANDARD OF REVIEW

Standard of Review for Argument 1, 2 and 3:

A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair. Qualification of an expert and the admission or exclusion of his testimony is a matter within the sound discretion of the trial court. The admission or exclusion of evidence in general is within the sound discretion of the trial court. In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof. Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997)

Standard of Review for Argument 4:

In reviewing the summary judgment, the Appellate Court applies the same standard, which governs the trial court, and must view the evidence in the light most favorable to the party against whom was granted. In determining whether any judicial issues exist, the evidence and all reasonable inferences there from must be viewed in the light most favorable to the non-moving party. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).

On appeal from an order granting summary judgment, the appellate court will review all inferences, ambiguities, and conclusions arising from the evidence in a light most favorable to the non-moving party. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

ARGUMENTS

I. THE TRIAL COURT ERRED BY FINDING EXPERT WITNESS' ENTIRE OPINION IS BASED ON A THEORY OF RES IPSA LOQUINTUR.

In the Order it states, "this Court finds that his entire opinion is based on a theory of res ipsa loquitur." This is not true. Dr. Wikas gave expert witness testimony that properly stated the standard of care, breaches, causation, and the injuries that occurred directly from Ms. Hussey's actions, and he clearly met all requirements. Dr. Wikas used the term “It speaks for itself” solely to show it was obvious and logical that the injection injured the patient by the “egregious” and “catastrophic” actions of the Respondent.

A. The Court did not take into consideration Expert Witness Dr. Wikas' testimony that clearly stated his opinions on the the breach of the standard of care, causation and injuries. The Court ignored the majority and core of Dr. Wikas' opinion.

Dr. Wikas gave proper and reliable expert witness testimony stating clearly his opinions which met all the necessary requirements of a medical expert witness, yet this was overlooked and ignored by the Court.

At the pre-trial hearing Defense Counsel presented the Motion to challenge, limit &/or exclude Dr. Wikas Testimony. It is undeniable that the trial court erred in its analysis by granting the Motion in full, and excluding Dr. Wikas' entire testimony. The trial court opinion focused solely on a small portion of testimony where Dr. Wikas made a reference to "the thing speaks for itself" which was irrelevant in the light of his extensive testimony that easily met his expert witness obligations. The trial court ignored the fact that the majority of Dr. Wikas' deposition testimony focused on using his extensive knowledge, education, skill, experience and training as a dermatologist for nearly four decades to give his opinion on the case. It was arbitrary to decide that analysis would focus on a few statements in Dr. Wikas' testimony rather than the quality and quantity of his opinion that the Respondent breached the standard of care, and her negligence caused the Appellant's injuries. Dr. Wikas testified on numerous issues during deposition. Dr. Wikas is qualified to testify regarding everything dealing with dermatology and the skin, including wound healing from any kind of surgery. His testimony was clearly reliable and relevant to the case, and it would help laymen jurors understand the nature of what the kenalog injection does when properly injected, and improperly injected. The trial court erred by excluding all of Dr. Wikas' testimony without consideration to the relevance, significance, and most importantly, legitimacy of his professional opinions.

Dr. Wikas testified in the de bene esse deposition, his expert opinion to the standard of care, the breaches, causation, and injuries Appellant suffered due to the negligence of the Respondent.

In the de bene esse Deposition, Dr. Wikas testified about how to administer kenalog which is universally used in dermatology, and based on reliable medicine, pharmacological science, and techniques.

Q. How is Kenalog administered into an irregular thick scar, a keloid scar?

A. It's injected. You usually use a small syringe, certainly no bigger than three milliliters or -- and the needle that's used is usually an extremely fine needle, such as a 30-gauge needle. And when you inject the corticosteroid, you inject right into the keloidal tissue, the very thick tissue.

Q. And what happens if Kenalog is injected into healthy tissue and skin?

A. It will lead to thinning of the skin, what we call atrophy is the medical term. It can cause allow for the generation of new small blood vessels, capillaries, that are more obvious as the skin gets thinner

Dr. Wikas' physical examination of Appellant is another example of reliable medicine and science he used in determining his opinions on this case.

Q. And moving on, tell us about when you examined me and what was your assessment?

A. Your skin was thin, atrophic. It actually had a chicken skin appearance. There was an accentuation of blood vessels, some of them red, some of them bluish, but the most obvious appearance was a thinning of the skin and a bit of a depression.

Dr. Wikas states what he reviewed for the case, and gives testimony that Ms. Hussey's actions were "well below the standard of care", gave several breaches including misdiagnosis, unnecessary treatment, improper administration of Kenalog, and inadequate informed consent.

Q. What documents have you reviewed in this case?

A. I've reviewed clinical documents, I've reviewed affidavits, I've reviewed depositions, and other materials, a whole host of materials.

Q. What is your opinion of Shannon Hussey's treatment and the standard of care of May 3rd, 2016?

A. I felt that she fell below the standard of care because you had catastrophic thinning of the skin, a depression, accentuation of blood vessels, there was sensitivity to touch, so I felt that her activities were well below the standard of care.

Q. Regarding Shannon Hussey's deviation from the standard of care, please list the breaches.

A. The first breach was misdiagnosis. She diagnosed a hypertrophic scar when there was no hypertrophic scar. It was my impression that she injected too much corticosteroid, probably too deeply, too high a concentration, too large a volume.

Q. And regarding informed consent?

A. I don't feel that there was adequate informed consent given at the time, so I don't feel there was adequate informed consent given.

(R. p. 14, lines 15-25, R. p. 15, lines 1-25, R. p. 16, lines 1-14)

Dr. Wikas' expert opinion on hypertrophic scars is based on 38 years of dermatology clinical practice, and again reliable medicine.

Q. Explain how hypertrophic scars fade with time.

A. Hypertrophic scars can over time just go away by themselves if there's no treatment. A common way to treat a hypertrophic scar is massaging the area using a silicone gel or a sheet. The other option would be to inject a corticosteroid if it doesn't respond to anything.

Q. So you would try the noninvasive approaches before the invasive approach of the Kenalog injection?

A. Yes.

(R. p. 14, lines 3-14)

Dr. Wikas medical examination of Appellant ruled out any other skin &/or wound disorders , and substantiates his assessment of "catastrophic thinning of the skin" that caused a depression

destroying subcutaneous tissue which is a direct cause of Ms. Hussey's negligence. His vast experience as a dermatologist solidifies his opinion that what Ms. Hussey says she injected, and is written in the medical record can not be true. The pharmaceutical science of kenalog is based on several decades of universal clinical applications in dermatology offices worldwide. Dr. Wikas expands upon his opinion indicating further breach of standard of care by performing an unnecessary treatment on a scar that "was healing absolutely beautifully,", and he gives the causation of Appellant's injury.

A. Dehiscence is when a wound comes apart. The other term is ruptures. It totally comes apart, and if we're

talking about stitches, the stitches either break open or they eat through the skin. But it's literally when a wound opens up.

Q. Did you see any indication of this when you examined me?

A. No, I didn't.

Q. So Ms. Hussey's narration of the preparation and injection of the corticosteroid, what is your opinion on that?

A. I think the results speak for themselves. I've never seen, Ms. Hussey said she injected 3.3 milligrams of the corticosteroid into the incision site. I've injected that amount of concentration many, many times, literally at least hundreds of times, and I've never seen a wound implode. So my impression is, in all likelihood, she injected too high a concentration, too high a volume probably, too deep into the underlying tissue.

Q. And did you , the injection that Ms. Hussey did, did you think that that was necessary for any reason? A. In the photographs that I saw, the wound looked just fine. I saw no indication of a

hypertrophic scar, it was healing absolutely beautifully, and I think if no medication was used at all, the scar would have healed fantastically, beautifully, and maybe even not even visible.

(R. p. 21, lines 24-25, R. p. 22, lines 4-25, R. p. 23, lines 1-3,)

Q. So if you look at the dosage and administration, if you would go ahead and give your opinion on the enlarged in all caps last paragraph, if you'll expand upon that, page 15, so it's right below dosage and administration.

A. Yes. What is your question?

Q. Yes, so if you will explain, it says right here that, "It should be emphasized that the dosage requirements are variable and must be individualized on the basis of the disease under treatment and the response of the patient." How do you do that in your practice when deciding to inject a keloid scar?

A. First of all, in the dosage and medication given by Ms. Hussey, it was unnecessary. It should not have been given. Totally unnecessary. Second of all, you customize the medication, the dosage, the volume, to each individual. It has to be customized. The smallest amount would be the -- and that means smallest amount in terms of concentration, that is the number of milligrams, smallest amount in volume would be the most appropriate. A lot of times, one drop of the medication is sufficient in each injection site, and a lot of times that injection site is one.

Q. Okay. Great. Dr. Wikas, if you would do this, please, and put down the package insert. I want to go ahead and -- you can put that down because you have enough knowledge and even with your background in pharmaceutical education and what not, so I'd like to just move forward. You know enough about Kenalog 10 drug; is that correct?

A. I have sufficient background, yes.

Q. Excellent. So if you can let me know, as far as the intralesional administration, you've already explained how that is done with a Kenalog scar. If you can let me know about what happens if it's injected to a great volume as well as concentration, what happens to the drug regarding the bodies of fat?

A. The medication, if injected too deep, that means -- when I'm saying too deep, we're talking about a millimeter to 2 millimeters, so if the amount is injected too deep, it will lead to a destruction of the underlying tissue, it will allow for absorption of the medication into blood vessels, into lymphatic vessels. With the destruction, there's a cataclysmic change in the underlying tissues such that they're all destroyed with the atrophic implosion. And there's absorption systemically. So you do have a local effect, that's correct, but you also have systemic absorption of the medication, which can go to other parts of the body.

Q. And regarding that systemic absorption that goes to the other parts of the bodies, what -- give me some of the adverse effects that you know about on that?

During this deposition Mrs. Scalise raised the same objection several times. When Appellant simply asked Dr. Wikas to comment on kenalog's systemic side effects, which he has knowledge of as a former pharmacist, and dermatologist that uses the drug regularly and instructs students about it.

Mrs. Scalise Objection: Dr. Wikas has previously testified that he cannot give any of that information or opinion. So I think for him to -- for you to ask questions about what are the systemic effects when there is no evidence of Plaintiff having systemic effects simply leads to the confusion of the issues and misleading the jury, so I do object.

Ms. Gurry: Well, I object to your objection, because it's not correct because I do have evidence of systemic effect in medical records, and we will let the judge decide upon that, and I'm going to

move forward with my questions and Dr. Wikas will be able to answer. And I've heard your objections very well. You've stated it several times. Thank you.

(R. p. 24, lines 3-25, R. p. 25, lines 5-25, R. p. 26, lines 1-16, R. p. 29, line 25, R. p. 30, lines 1-7,)

Q. So Dr. Wikas, regarding, again, the same question, if you remember. Or if you need to me to repeat that, just let me know.

A. Sure. Some of the –

MS. SCALISE: Same objection.

A. Some of the occurrences with injection of corticosteroids such as Kenalog when it becomes systemic can be elevation of blood sugar, it can lead to a decrease in the absorption of calcium, increase in the excretion of calcium, the matrix of bones, which is basically the framework of bones, the proteins are no longer laid down, so it can lead to deterioration of bones and lead to what's called bone loss. The early one is called osteopenia. It can lead to some effects, emotional effects. It can lead to anxiety, upset. Those are some of the common ones I see.

(R. p. 30, lines 9-25)

Q. I find it very interesting, you've been a dermatologist nearly 40 years; is that correct?

A. Correct

Q. From '84? That would be -- and you have never -- have you ever seen anything like the atrophy that I -- and the injury that I got from the injection?

A. No, thank goodness, because that would be considered catastrophic.

Q. So what is your expert opinion on how much she did inject and what dosage?

MS. SCALISE: Object to the form. Calls for speculation.

A. The amount Ms. Hussey said she injected really doesn't jive with the results, because in order to get that kind of result, the concentration would have to be much higher, and in all

likelihood, there was a much greater volume that was injected. So that literally was dissolving the underlying tissues.

Q. And so how long do you think corticosteroids, in most situations, an excessive dose of corticosteroid would-- someone would experience side effects?

(R. p. 32, lines 3-25)

A. Could be anywhere from one to three months.

Q. And in the situation of my injury and what you've examined and the pictures you've seen, would you think that that would be -- what would you think the side effect duration would be?

A. Well, from the point of view of the depression, that's permanent. So the side effects, we're talking about making a permanent structural change in the skin, probably with an effect on muscles, deterior --loss of muscle and a change in function. (R. p. 33, lines 1-14)

Q.Dr. Wikas, let's move on. Let's move on to Exhibit 10, skin anatomy. You should have a copy of that there.

A. I do.(Plaintiff's Exhibit 10,Anatomy of the Skin Diagram)

Q. Okay. Great. So this is what you specialize in, correct? You're a doctor of dermatology; this is your forte?

A. Yes.

Q. Okay. And so let's go ahead, so if you'll tell me, what is in skin and subcutaneous tissue?

A. Well, the first thin layer is the epidermis; the second layer is the dermis. Thickness varies with different parts of the body. And under this is subcutaneous fat, and within these areas, you see hair follicles, nerves, lymphatic vessels, oil glands, other vessels. So that's basically what you see in that area.

Q. Okay. So with my situation and the atrophy and the depression that I received, what was destroyed by that?

A. Everything

MS. SCALISE: Object to the form. Calls for speculation.

A. -- below the dermis.

(R. p. 34, lines 22-24, R. p. 35, lines 7-25, R. p. 36, lines 1-3)

In Dr, Wikas testimony above, it's evident he is firm and consistent in his opinions. Especially that the treatment was unnecessary, "...medication given by Ms. Hussey, it was unnecessary. It should not have been given. Totally unnecessary. ", yet another breach of the standard of care by the Respondent. (R. p. 24, lines 17-19)

B. The Court did not review "expert witness' entire opinion" only excerpts of the Discovery Deposition transcript that fit the narrative of Res Ipsa Loquintur that Defense Counsel hand picked.

Defense Counsel only provided limited excerpts of the transcript to the Court, and ignored the most crucial part and core of the Expert Witness' discovery deposition testimony. The Court should have viewed the entire discovery deposition transcript to get the totality of Dr. Wikas opinions. Most importantly, the Court should have taken into consideration all of Dr. Wikas opinions in the de bene esse deposition, yet he did not, therefore the findings and judgment are unjust and erred.

In the order it states, "This Court has reviewed the entire de bene esse transcript of Dr. Wikas, and portions of his discovery deposition which were attached to Defendants' Motion in Limine, and based upon that review, this Court finds that his entire opinion is based on a theory of res ipsa loquitur. " The Courts' decisions were erred as the court ignored all of Dr. Wikas opinions on the standard of care, breach, causation and injuries sustained.

During Dr. Wikas' depositions defense counsel Mrs. Scalise baited Dr. Wikas with the term Res Ipsa Loquitur, to support the motion in limine she was planning on filing. Likewise, defense counsel

was misleading as she provided no clarification to Dr.Wikas with a definition, nor explanation as to the legal context of res ipsa loquitur.

Dr. Wikas opinions are clear that the Respondent's breach in the standard of care was the proximate cause of Appellant's injuries. The courts' findings "his entire opinion is based on a theory of res ipsa loquitur" is pure speculation, as there is no direct evidence in Dr. Wikas testimony to support this.

Res ipsa loquitur is a Latin phrase meaning “the thing speaks for itself"; that is the literal meaning of it, there is no rule that says an expert witness can not use the term "the thing speaks for itself", nor that if it is used the legal doctrine should be implied. This is a commonplace term used by many, and it being stated should not infer the legal doctrine should be presumed. Furthermore, the legal term Res ipsa loquitur main characteristics are the burden of proof shifts to the defendant, and usually an expert witness is not necessary, both of these were not mentioned by the expert witness, nor the Appellant.

Lastly, Dr. Wikas is a medical expert, not a legal expert, and his testimony clearly shows his opinion was not based on the legal doctrine of Res Ipsa Loquiter. He did not demonstrate that he had any knowledge nor experience of what res ipsa loquitur doctrine means, unlike his testimony on that standard of care, breaches, causation, and injuries which he explained in detail, and used several times throughout his testimony. Likewise, he never used res ipsa loquitur in his affidavit which contain his first opinions on this case. It is evident that Dr. Wikas' opinions have been consistent and concise, yet this was ignored by the Court. The trial court’s ruling was based upon an error of law and factual findings that were without evidentiary support, resulting in an abuse of discretion, and highly prejudicial to the Appellant. Consequently, the trial court’s ruling on the Motion to Exclude Dr. Wikas' Testimony must be reversed.

II. THE TRIAL COURT ERRED BY FINDING EXPERT WITNESS' OPINIONS ARE NOT BASED ON RELIABLE MEDICINE OR SCIENCE.

In the order the Court stated, "Dr. Wikas's opinions regarding the occurrence of Plaintiff's alleged injury from an intralesional Kenalog injection are not based upon reliable medicine or science making them unreliable." This is not true. Dr. Wikas' opinions are based upon reliable medicine and science.

South Carolina uses Evidence Rule 702 to determine if an expert's opinion is admissible. Rule 702 states , "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or or otherwise."

Expert Witness Dr. Wikas meets and exceeds all requirements for an expert witness per South Carolina Rule 702 , and his testimony is based on a plethora of medical education and professional experience that spans well over 4 decades. The most important elements of an expert witness per Rule 702 are "knowledge, skill, experience, training, or education" Dr. Wikas has extensive knowledge, skill, experience, training, and education in dermatology which are the most important factors, coupled with the facts and evidence of this case, to formulate his opinion. There is no mention of medical literature, peer review, research, nor tests in Rule 702 as these are not requirements for an expert witness to opine.

Appellant's expert witness Dr. Wikas used several avenues and resources to formulate his medical opinion for this case. Most importantly, he used his medical education in dermatology and pharmacy, and his professional experience as a veteran dermatologist for 38 years, and former pharmacist. As a dermatologist he has extensive clinical practice as well being an educator for

future dermatologist. For this case Dr. Wikas reviewed medical records, test, scans, pictures, Kenalog Packet Insert, testimony, and discovery in the case. He also did a thorough physical examination of Ms. Gurry's legs with emphasis on the depression and atrophy where the kenalog was injected.

This case is largely based on the drug Kenalog that the Respondent injected into the Appellant's leg injuring her, and this physical damage is evident to this day with extensive atrophy and a depression. Dr. Wikas has been working with kenalog for 38 years and uses it regularly to administer on irregular raised thick scars, he has vast clinical practice, coupled with the fact he has multiple years of pharmaceutical eduction, and was a former pharmacist. He knows and uses the kenalog packet insert information on a regular basis, and his knowledge and experience with kenalog as medicine and pharmacological science is extensive.

He testified he administers kenalog regularly, and teaches medical students how to do intralesional kenalog injections, along with what must be avoided so atrophy side effects do not happen. Furthermore the kenalog packet insert verifies he used reliable medicine and science to form his opinions about the Appellant's injury from the kenalog injection, along with all the medical records, documents, and other evidence he reviewed and used to formulate his opinion in this case. The trial court erred by finding expert witness opinions are not based upon reliable medicine or science, and excluding Dr. Wikas as an expert witness in this case was highly prejudicial to Appellant, and therefore warrants reversal.

In this portion of Dr. Wikas testimony from the de bene esse deposition he examines and opines on stipulated authenticated photographs showing the Appellant's injury from the kenlaog injection, starting the day after the injection.

Dr. Wikas with his vast experience using kenalog, knowledge of drugs properties, and experience with wound healing , provides detailed opinions on what he sees in the original close up photographs of the injection site. Dr. Wikas is using reliable medicine knowledge he uses daily in his clinical practice to opine along with all the evidence of case. After looking at several photographs, and stating in depth the damage he sees, he is asked ," what is that from?" and Dr. Wikas testifies " That's from the injection of the Kenalog by Ms. Hussey."

Examining one of the last photographs he states , " it just shows that the loss of tissue is profound." Dr Wikas then looks at all the photographs in chronological order and testifies, " So you see here the skin beginning to thin out, and that's actually kind of rapid, which would indicate a higher dose or concentration of cortisone medication injected here because the period of time is so short. So we're just seeing a progression of destruction and deterioration." This is concise expert witness testimony that the Respondent's improper injection caused the Appellant's injury .

Q. Okay. Let's move on, Dr. Wikas. So we're going to move onto the pictures, so you'll be using that iPad there that Grace gave you.

A. Yes.

So we're going to start off with, yes, we'll start off with Number 3, Exhibit Number 3. Plaintiff's Exhibit 3, 5/4/16 Photograph taken at 8:48 a.m., was marked for purposes of identification. some accumulation of cortisone medication, but the skin is getting really thin, and possibly accentuation of underlying stitches, that they have not yet dissolved.

Q. Okay. So if you were to, again, keeping in mind that this was less than 24 hours from when I was with Ms. Hussey's care and she injected me, how would you classify that healing from a 5-inch incision site where melanoma was removed just 13 weeks prior? How was I healing?

MS. SCALISE: Object to the form. Calls for speculation.

Q. Can you, with your professional opinion assessing scars, which you do every day in your practice, if you can go ahead and assess that scar, please.

MS. SCALISE: Again, just for the record, I'm just raising an objection as to speculation in the sense that he is looking at one photo which is a one-dimensional image. He was not looking at your leg on May the 4th of 2016, and this photo is, you know, I'm not sure as far as the lighting, the accuracy, the detail that is evident from that. So I just would raise those objections to him offering any opinions as to a medical diagnosis based on this photo.

Q. And Dr. Wikas, I don't know if you're able to zoom in on that, if you can zoom in on the photo?

A.Yes. The –

Q. Yes. So, and do you see on the photo,

(R. p. 36, lines 2-25, R. p. 37,lines 1-25, R. p. 28, lines 1-25, 39, lines 1-25)

Q. too, there's a piece of hair, I believe it's below the scar?

A. Oh, yeah.

Q. So the detail on that -- so the detail on that photograph is excellent. And again, there's the metadata information on it, exactly when it was taken. If you would go ahead and from that there, you know, give your professional opinion as to how it was healing and what you think the prognosis would have been if it was never injected with Kenalog.

A. I think the most superior part of the scar is looking fine. There's a little bit of redness. But as we go down, the skin is getting thinner and then it's starting to bubble up as we go down more, and my impression would be these are areas where stitches that have not dissolved would be located and maybe even accumulation of some of the cortisone medication, and I'd be concerned about this would predict potential skin destruction underneath.

Q. Because of the injection?

A. Yes.

Q. Yes. Okay. If we can -- do you see a hypertrophic scar there?

A. No, I see a lot of damage.

Q. From the injection?

A. Yes

Q. If we can move on then to Exhibit 4. that's the next picture.

Plaintiff's Exhibit 4, 5/4/16 Photograph, was marked for purposes of identification.

Q. So if you would just explain what you see here, and again, knowing that the Kenalog was injected, you see the date there, so the injection was May 3rd, you'd be able to tell the time, you know, and what you're seeing and if that's a normal reaction to Kenalog.

Here Mrs. Scalise makes an objection and states that Appellant only used a handful of photos out of 1500 authenticated original cellphone photos yet defense counsel has access to all the photos and could have submitted any photos they wanted to into exhibits.

MS. SCALISE: And again, just for purposes of the record, I would again raise an objection with regard to the quality of the photos with the lighting and, you know, there are 1,500 photos that Plaintiff has taken and she has only I think submitted maybe seven or so, so these are not the full presentation of all the photos of her leg, which show different aspects.

A. Superiorly, I see a widening of the scar with redness. That's going to predict a lot of blood vessels growing in. Then you go inferiorly, there's a bubble. This would most likely indicate thinning of the skin, a possible accumulation of cortisone medication. And then inferiorly, you see a number of red areas, a little bit elevated, and the influx or ingrowth of new blood vessels, which is kind of unusual. Usually you don't see it that quick after an injection. So, and then, and the

surrounding areas between the bubble and the lowest red area, you see the beginning of thinning of the skin, bruising, the chicken skin appearance. That's all.

Q. And what does a bruise indicate in an area where someone's been injected?

A. It's an injury. Opening and destruction of blood vessels, destruction of underlying

(R. p, 40, lines 1-25, R. p. 41 lines 1-25, R. p. 42, lines 1-25)

Q. Okay. If you'll move onto the next picture, Exhibit 5. And what do you see here?

Plaintiff's Exhibit 5, 5/30/16 Photograph

A. Superiorly, in the very superior, going to the edge of the photograph, you see the uppermost portion of the scar, and then lower, you see where atrophy is occurring, destruction of underlying tissue. You go down farther, you see more redness, more atrophy. In the surrounding areas, left and right, you see bruising, the appearance of destruction of underlying tissue. And under that, you've got two areas that are red and possibly a little bit raised. That's indicating destruction of underlying tissue. But I think these are in areas where the stitches that were placed is where you see these accentuations, because the stitches that were used by the physician were extremely slow dissolving stitches. They were extremely large stitches and exquisitely slow dissolving. That's all.

Q. So the damage that you see that you've stated, what is that from?

A. That's from the injection of the Kenalog by Ms. Hussey.

Q. Thank you. Okay. And then if you would go ahead, you can move onto the other pictures. You can just -- and if you notice anything different in the pictures, you can go ahead and talk about those. So basically, here, will you explain the progression of the effects of the drug?

A. Do you want me –

MS. SCALISE: Objection. Leading.

A. Do you want me to go to Exhibit 6?

Q. Yes. You can go to Exhibit 6 and 7

Plaintiff's Exhibit 6, 6/31/16 Photograph; and Plaintiff's Exhibit 7, 7/2/16 Photograph

A. Okay.

Q. Okay. You can go to -- what exhibit are you on right now?

A. I'm on 6 right now.

Q. Okay

A. You see in the superior portion of it, ou see the influx of new blood vessels, which spreads out laterally. These have a bluish appearance with some bruising. You see as you go lower on the lateral portions of it the mottling of the skin, discoloration, beginning to form that chicken skin appearance and feel. And then you see destruction of the underlying skin because it's, the atrophy is becoming more accentuated, and then the inferior of this, you see the results of thinning of the skin, atrophy, and I think the areas where you're having the greatest redness is where the underlying -- the absorbable stitches were placed. And then in the superior, mid-superior portion of this, you see a little bit of what I call denudation or loss of epidermis.

Q. Okay. And if you move onto the next exhibit, the next picture.

A. That's Exhibit 9?

Q. Okay. How about Exhibit 8, let's move onto Exhibit 8.

A. Exhibit 8? Just a second. Oh, here it is. Plaintiff's Exhibit 8, 7/9/16

Q. If you would just explain what you see in the picture, Dr. Wikas. Thank you.

A. I see progression of atrophy superiorly and underneath the tissue. The redness is getting a little less. You see the results of spreading of the incision site and the widening of the thin skin, and you can see there's a hint right here of a depression where the underlying skin is -- has been lost and you don't see any more of that little scab that was there before.

So basically, it's a progression of loss of underlying tissue, widening of the scar.

Q. Thank you. And if you'll go to the last exhibit, go to Exhibit 9. Plaintiff's Exhibit 9

(R. p. 43, lines 1-25, R. p. 44, lines 1-25, R. p. 45, lines 1-25, R. p. 46, lines 8-25,)

A. Okay.

Q. And again, please explain what you see there.

MS. SCALISE: And again, for purposes of the record, again objecting to the use of the photos and not looking at all 1,500 to show that certain ones have been picked out due to lighting, distortion, exposure, et cetera.

A. Basically, you see widening of the scar. In the middle of the scar, you see the addition of blood vessels. Some of them are bluish. Some of them are reddish. And then in the surrounding areas, you see extreme whiteness, which would indicate lack of vascular supply. And as you go downward, the scar is widening a bit with increase in number of blood vessels. So you see some scarring, a loss of -- where you see the white areas, most likely, there's a loss of blood supply, and just a widening of the scar, besides the red areas, it just shows that the loss of tissue is profound.

Q. Okay. Thank you. If you would go back to exhibit -- so keep it fresh in your mind what you've just seen here in the pictures towards the end, and then if you would go back please to Exhibit 3, that's the first photograph you looked at.

A. Yes.

Q. Okay. So you remember this was taken less than 20 hours after the injection. If you will tell me the difference between this photo and the latter photos, 6, 7, 8, and 9, as far as skin appearance, the texture, the veins?

A. The surrounding tissue looks somewhat normal, but you can see, in the middle of the ·scar, you can see the destruction occurring with discoloration, with new blood vessels starting to grow in.

When you look from the first to the last one you showed me, it's like there's a slow motion, almost like a nuclear explosion going on underneath the skin with destruction. So you see here the skin beginning to thin out, and that's actually kind of rapid, which would indicate a higher dose or concentration of cortisone medication injected here because the period of time is so short. So we're just seeing a progression of destruction and deterioration.

Q. Okay. And the -- other than the scar itself and what you've already described there, the leg skin, what do you notice in that appearance, just that -- the leg skin beyond the scar, that compared to the latter images?

A. Well, you see, at least laterally, you see discoloration, which was the beginning ofatrophy, and then if you go out farther laterally to either end, the skin looks fairly normal. But when you go to the other slides or photos, you see a slow, destructive deterioration of the underlying skin.

Q. And I'm trying to get at the skin appearance beyond the scar itself as well, what you see compared to this first one to the latter images.

A. Well, you're beginning to see some changes with discoloration in this first one, but ·it's just the beginning of a process. It's not as profound.

Q. Okay. And –

A. But you know something bad is going on here.

Q. And how does Kenalog break down collagen?

A. I'm not sure how it actually breaks down collagen, but I know it happens. It may cause --some of it may be getting rid of the fibroblasts that make the collagen, but we know that collagen is destroyed with the injection of a corticosteroid medication.

Q. And what's the significance and importance of collagen in the skin?

B. A. Collagen provides body to the skin. If you didn't have collagen, for example, on the upper arms, you would see the skin sagging. Same thing on the face. When you have sunlight exposed to the skin, there's a breakdown in collagen and then you get wrinkles. When you have on the face the breakdown of collagen, muscles working against each other, there you have an accentuation of wrinkling.

(R. p. 48. lines 1-25, R. p. 49, lines 1-25, R. p. 50, lines 1-14)

III. THE TRIAL COURT ERRED BY FINDING EXPERT WITNESS' OPINIONS ARE BASED PURELY ON SPECULATION AND HIS OPINIONS ARE WHOLLY UNRELIABLE AND HIS TESTIMONY IS EXCLUDED.

In the Order it states, "Dr. Wikas's opinions are based purely on speculation, and he has failed to provide any research or medical literature to suggest that what the Plaintiff complains of is even a possibility, his opinions are wholly unreliable and his testimony is excluded from the trial of this case."

The Court erred in finding "Dr. Wikas's opinions are based purely on speculation" Dr. Wikas did not provide evidence which is speculative. He used his extensive knowledge, skill, education, training and experience in dermatology, coupled with his analysis of the facts and evidence in this case, his testimony did not consist of guessing nor speculating. Furthermore, per Rule 702 Dr. Wikas used the most important components of this rule of evidence for expert witnesses.

It is undisputed that kenalog causes atrophy. It is what the drug is used for in dermatology offices to soften or atrophy raised thick irregular scars, and it's common sense if it's injected into a normal scar or healthy skin it will cause atrophy, and if it's severe, will lead to a depression in the skin. Dr. Wikas opinion is firm this is what happened to the Appellant, he ruled out everything else including anything dealing with the melanoma excision surgery and wound healing.

During his deposition, Dr. Wikas testified in detail about how to properly administer intralesional kenalog into an irregular scar, and what occurs. He then testified what happens if it's injected into healthy skin, and why a medical professional must be certain not to do this, as it causes atrophy, and if too high a volume &/or concentration is injected it will led to a depression in the skin. Dr. Wikas also testified to the anatomy of skin which encompasses several layers that have nerves, veins sweat glands, hair follicles, all of which he testified were destroyed in Appellant's leg where the atrophy and depression were evident.

Dr. Wikas testified that his examination of Appellant's leg showed severe atrophy which are indicative of the kenaolog being injection at "too high volume and/or too high concentration". While this testimony is based on Dr. Wikas' expertise and extensive experience as a dermatologist, the trial court still excluded his testimony. While all of this testimony would assist the trier of fact in reaching a determination on the issues in this case, yet the Court nevertheless struck all of his testimony, and in doing so, took away the right to have this case properly brought to trial.

Regarding speculative testimony, Dr. Wikas would have been speculating and guessing if he had given an exact amount, percentage, or any quantifying variable regarding the kenalog injected. Obviously that would be impossible to know, and there are no tests he could conduct to determine this. Dr Wikas testified several times the amount written on the medical record by Ms. Hussey was not the amount that was injected, it exceeded that, and was enough to cause severe atrophy, and a dent in the leg.

In fact, Mrs. Scalise made an objection, "Calls for speculation." when Dr. Wikas was asked about specifics of the dosage.

Q. So what is your expert opinion on how much she did inject and what dosage?

MS. SCALISE: Object to the form. Calls for speculation.

Again, the most important elements of an expert witness per SC Rule 702 are "knowledge, skill, experience, training, or education" Dr. Wikas has extensive knowledge, skill, experience, training, and education in dermatology which are the most important factors, along with is pharmaceutical knowledge, coupled with the facts substantiated by the evidence in this case, to formulate his opinion. Rule 702 does not mention medical literature nor research, as these are not requirements for an expert witness to opine, and furthermore, Dr. Wikas explains why these were not used in his testimony for this case. The Court erred on finding his opinions are wholly unreliable, and excluding his testimony, this was highly prejudicial to the Appellant and warrants reversal.

In Dr. Wikas prior testimony and his opinion below, as he is examining authenticated photographs. Authenticated photographs are useful evidence to back witnesses' testimony. Photographs provide a permanent visual record that can be analyzed and examined at any time, and can provide accurate depictions of the evidence. This is another strong point of this case, and unfortunately these numerous pieces of crucial evidence were overlooked by the Court.

Q. Thank you. We're going to move on to Exhibit 11, and this is a picture as well, Dr. Wikas. This is my healed scar from my lymph node removal surgery, which was February 28th, so that's Exhibit 11. Plaintiff's Exhibit 11, Photograph of Scar from Lymph Node Removal, was marked for purposes of identification.

MS. SCALISE: And again, for that particular exhibit, it has writing on it, so I object to any writing describing what that photo is.

Q. So if you'll just ignore the writing, Dr. Wikas, and go ahead and look at the picture.

So just looking at the picture, Dr. Wikas, how would you classify this healed scar?

A. I'd say it's perfectly healed and I don't see any scarring.

B. How do you believe I would have healed from the melanoma removal surgery?

MS. SCALISE: Object to the form. Calls for speculation.

A. When you look at the incision site on your leg and you see the upper portion of it, it was healing

absolutely beautifully, and I believe without the injection of the Kenalog into the scar, you would more likely than not heal in such a way where the scar may not even be visible.

Q. Excellent. Would there be a dent in my leg?

A. You didn't -- any of the changes that you had were not there before the injection. It looked like a normal healing area. Afterwards, everything went downhill. The skin was thinning rapidly, being depressed, loss of body, loss of smoothness. So I think it certainly would not have healed anything to the way you've got it healed now.

Q. And you had mentioned the sutures before. You don't believe the sutures had anything to do with my adverse -- the atrophy and the damage in my leg?

A. No, I don't think so. The sutures that were placed there were extremely, extremely strong and they were -- they're very slow to be absorbed to dissolve, so, you know, you would have had adequate time for the top layer of the skin to heal nicely.

Okay. So we'll move on to Exhibit Number 2, so this is the PET/CT scan. So this is -- that's not on the laptop. That's going to be -- or maybe it is. I'm not positive. I think It's there.

Q. It's there?

A. Yeah.-- Plaintiff's Exhibit 2,PET/CT Scans, was marked for purposes of identification.)

MS. GURRY: Okay. Great. So, and I already have your objection on this, Marian.

MS. SCALISE: Well, I was going to say, just for purposes of the record, I will raise an objection to him being asked any questions about the imaging, again, under Rules 702 and 403.

(R. p. 51, lines 5-25, R. p. 52, lines 1-25, R. p. 53, lines 1-25)

Q. Dr. Wikas, do you have any experience with identifying basic anatomy on scans, specifically subcutaneous tissue?

MS. SCALISE: And again, I raise the same objection and point to his prior deposition testimony when he said he has no -- he is not an expert in imaging and has no education, experience, or training to say what imaging reveals. So I object to any answer related to that.

Q. Dr. Wikas, I'll repeat the question. Do you have any experience with identifying basic anatomy on scans, specifically subcutaneous tissue?

MS. SCALISE: Same objection.

A. Yes, I do, on skin.

Q. Great. Yes, very good. If you would please identify where the subcutaneous tissue is on the upper legs.

MS. SCALISE: Same objection.

A. see is a loss of the top layer of the skin. It looks like a bit of a shark bite.

Q. And you are referring to -- which scan are you referring to? There's one scan that was after the surgery and then there was one that was after the injection. The one that has, as you put it, the shark bite appearance with the tissue missing, can you -- which scan is that? What date?

A. September 21, 2016.

Q. Very good. Okay. So, Dr. Wikas, getting back to what occurred May 3rd, 2016, could you -- could you expand upon that a little bit more? I know you've already given testimony. If you can just go ahead, we're going to be wrapping things up here, if you could maybe incapsulate and expand upon, again, Shannon Hussey's treatment of me on May 3rd, 2016.

MS. SCALISE: And again, I would just object. Asked and answered.

A. Basically, I think Ms. Hussey gave too high a concentration of corticosteroid, too large a volume of corticosteroid, which led to thinning of the skin, loss of the underlying subcutaneous tissue, which would mean a lot of fat, and leading to a depression in the subcutaneous tissue. Like I said, it appears to be a implosion of the tissue leading to the visual appearance and the touch of an indentation.

Q. So regarding what occurred on that day, how would you classify Shannon Hussey's behavior?

A. It was below the standard of care.

(R. p. 55, lines 9-25, R. p. 56, lines 1-2, 18-25, R. p. 57, lines 1-3, 15, R. p. 59, lines12-25, R. p. 60, lines 1-8)

Dr. Wikas used a wide variety of evidence in this case to assist in formulating his opinions. Circumstantial evidence is every bit as competent and capable of proving a fact at issue as direct evidence, and our law makes no distinction between the efficacy of circumstantial evidence and direct evidence. Any fact in issue may be proved by circumstantial evidence as well as direct evidence, and circumstantial evidence is just as good as direct evidence if it is equally as convincing to the trier of the facts. It's well recognized rule that an issue may be proved by circumstantial evidence. But for circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty, and must have sufficient probative value to constitute the basis for legal inference, and not mere speculation. The facts and circumstances shown should be reckoned with in the light of ordinary experience, and such conclusions deduced therefrom as common sense dictates. Holland, et al v. Georgia Hardwood Lumber Co., et al, 214 S.C. 195, 204, 51 S.E.2d 744 (1949).

Below is Dr. Wikas testimony as Mrs. Scalise cross examines him. He holds strong to his opinions and is very logical and straightfoward in his responses.

Q. Okay. And, Doctor, I want you to hold up for the jury Plaintiff's Exhibit Number 3. This is the one from May the 4th of 2016, and as I understand, your testimony is that this does not show a hypertrophic scar; is that correct?

A. Correct.

Q. Okay. Thank you, sir.

Now, let's talk about your opinions in this case as it relates to Nurse Practitioner Hussey. You again have kind of backtracked and said, okay, because she's got this depression, she must have done something wrong and you attribute that to too much concentration of Kenalog, too much injection of Kenalog, and/ or the wrong location; is that fair to say?

A. I also included too much volume.

Q. Well, that's what I meant for excessive concentration.

Let's talk first about this claim of excessive concentration. With that, are you just basically guessing that Nurse Practitioner Hussey grabbed the wrong bottle of Kenalog and got Kenalog 40 instead of Kenalog 10?

A. I'm not guessing. I'm just saying that something happened, and with 3 milligrams injected, you're not

going to see that change. So I'm thinking, what are the potential things that cause this kind of catastrophic event, and the only things that I can think of was too large a concentration, too large of volume, those are the kinds of things I'm thinking about. But you don't see this with 3 milligrams, and frankly, it shouldn't -- the procedure should never have been done because the scar was healing beautifully.

Q. But let's talk about this about too large of a concentration or too large of a volume. You would agree, you cannot say what specifically it was; these are just kind of your hypotheses as to what potentially could have caused this, correct?

A. Yes.

Q. And you have not performed any testing to see whether this would be accurate, whether if you ·put in too much concentration, that it would cause this depression?

A. You don't need to do testing because I've seen what happens when other physicians have done that.

Q. Okay. But, Doctor, you've testified previously, have you not, that you've never seen anything like this before?

A. At a wound, at a wound. But when -- for example, if I may.

Q. Sure.

B. A. It is -- I've seen this over the years many times when -- whether it's a child or an adult is given an injection in a muscle, and if it's incorrectly injected, all of a sudden, they come to me because they say I've got this big indentation. And what happened was there was an incorrect injection, and if you open that up, you see a big hole going down to the bone. So in that sense, I've seen it.

Q. All right. But, Doctor, you would agree that for Kenalog, it can be administered intramuscularly, like what you're talking about, or it can be intralesionally, it can be given orally, it can be given IV. There are all different methods that Kenalog or an intralesional steroid can be given, correct?

Q. But here, again, as far as it being given intralesionally, you've never seen a depression like what Ms. Gurry has sustained, correct?

A. Correct.

R. And so you've not read any literature, you've not performed any testing to see whether that truly would take place, if you gave too much of a concentration intralesionally, that it would cause the depression such that she has?

A. If you gave it intralesionally or even too deep.

Q. All right. But, Doctor, answer my question. Is it fair to say that you have not reviewed any peerreview literature that supports your theory, correct?

A. Correct.

Q. And you've not performed any testing to confirm your theory, correct?

(R. p. 79, lines 4-25, R. p. 83, lines 1-4)

A. I would never do that.

Q. Sure. Would you agree that there's no set amount as to how much intralesional steroid should be injected into a hypertrophic scar?

A. Correct.

Q. That's all patient-dependent, correct?

A. Correct.

Q. And it's also provider-dependent, is it not?

A. Yes.

Q. And in fact, some providers would administer a certain amount of intralesional steroids others might have a different amount, correct?

A. Correct

Q. And same as far as concentration. Some would give 2.5 milligrams, some would give 3.3 milligrams, some would give 5, some would give 10. It's all provider-dependent, correct?

A. Depending on the area you're going to treat, yes.

Q. Okay. But even within an area you're going to treat, you would agree that different providers would potentially utilize different concentrations, correct?

A. Correct.

(R. p. 84, lines 1-23)

Mrs. Scalise continues with her questioning basing the majority of it on the May 3, 2016 medical record from Ms. Hussey, yet Dr. Wikas has made it clear he does not believe this medical record is true and accurate. His opinion that the record is inaccurate is corroborated with all the Appellant's medical records, scans, pictures and witness testimony, there is an abundance of evidence he's reviewed to backup his assertion. Dr. Wikas opined he believes it was a misdiagnosis, kenalog treatment was unnecessary, informed consent including options of letting it heal naturally were not given, and that the kenalog injection was not administered properly with a greater volume &/or concentration that caused "catastrophic" atrophy injuring the Appellant.

Dr. Wikas is asked if he is guessing regarding his opinion of excessive concentration. He is direct and firm in his answer starting with I'm not guessing and the elaborating again on his testimony finishing with his assertion from the beginning that "the procedure should have never been done because the scar was healing beautifully." Respondent made several deviations from the standard of care yet only one breach from the standard of care is required in South Carolina.

Q. Let's talk first about this claim of excessive concentration. With that, are you just basically guessing that Nurse Practitioner Hussey grabbed the wrong bottle of Kenalog and got Kenalog 40 instead of Kenalog 10?

A. I'm not guessing. I'm just saying that something happened, and with 3 milligrams injected, you're not going to see that change. So I'm thinking, what are the potential things that cause this kind of catastrophic event, and the only things that I can think of was too large a concentration,

too large of volume, those are the kinds of things I'm thinking about. But you don't see this with 3 milligrams, and frankly, it shouldn't -- the procedure should never have been done because the scar was healing beautifully."

In the final questions to Dr. Wikas, he explains why he hasn't reviewed any medical literature or peer review studies similar to this case, and why tests would not be readily performed.

Q. I'll go ahead and I'll restate that. Let me restate that because it was long. But Ms. Scalise has asked you if you have ever seen any medical literature or peer-review studies where an excessive amount and/or volume of Kenalog has been injected and caused the atrophy that I encountered. And what would be the reasoning for not seeing this in medical literature?

A. Because it's a very rare event.

Q. And would it injure whoever it was, animals, people, whoever it was being tested upon?

A. Yes, and because it's a logical -- it's a logical event that would occur with excessive concentration or excessive volume being injected into the skin.

(R. p. 104, lines 15-25, R. p. 105, lines 1-6)

Dr. Wikas has been concise in his opinion that the Respondent deviated from the standard of care, and her negligence caused the Appellant's injuries. He summed it all up well in the the end "it's a logical event that would occur with excessive concentration or excessive volume being injected into the skin."

Sadly as Dr. Wikas has opined several times it was an unnecessary treatment, therefore the injection should have not been given. If the Respondent had done what she was supposed to at the appointment, and just performed a melanoma skin check, the Appellant would have never suffered, been injured, and have to get future surgery. Dr. Wikas affirms, "First of all, in the dosage and medication given by Ms. Hussey, it was unnecessary. It should not have been given. Totally unnecessary. "

In the discovery deposition Dr. Wikas' testimony is consistent and concise with all of his opinions on the standard of care, breaches, causation and the injuries.

Dr. Wikas explains how everything was fine prior to the injection, yet after the injection everything went wrong. He believes the treatment was unnecessary, and there was no hypertrophic scar, just a wound "healing perfectly naturally". One of the many breaches in the standard of care by the Respondent is it was an unnecessary treatment, and the injection should not have been given. The mere fact that the Appellant was injected with kenalog makes it improper, there was nothing to treat, it went into healthy skin, and caused a 'catastrophic event". He is using his professional education and experience, along with the evidence and facts of this case to opine. Below are a few of his statements from the discovery deposition.

A. There was no problem prior to the injections. After the injection, everything went wrong. It became a catastrophic event. "

Q. What are you basing that on, that after this injection, quote, "Everything went wrong"?

A. There was no problem. The wound was healing perfectly naturally prior to the injection. After the injection, atrophy started to occur. She had systemic side effects. A lot of the systemic side effects are comparable to the results of corticosteroid.

Dr. Wikas continues about the improperly injected kenalog drug that caused systemic effects. As a former pharmacist and veteran dermatologist he knows the pharmacological science of kenalog.

A. Well, she did have local effect because it was injected too deep or with too high of a concentration, too high of a volume. That goes to say that this would be more into the blood and lymphatic vessels, and therefore, you would have a systemic effect. It's just like if you give somebody an injection into a muscle, that's a local injection; however, you are getting a systemic effect.

Dr. Wikas opinion is firm on how "egregious" and "catastrophic" the injury was with extensive atrophy and systemic effects. Again, all the facts and evidence in this case support his testimony. "The result was so egregious, just so excessive, that if it was injected properly, you wouldn't get that result. The result was horrible, especially in an individual with a high aesthetic acuity."

(R. p. 121, lines 24-25, R. p. 122, lines 1-12, R. p. 124, lines 18- 25, R. p. 125, lines 1-6, R. p. 149 , lines 8-12)

Finally, The Court inexplicably ignored Dr. Wikas extensive knowledge, skills, experience, education and training that he acquired over 40 years, and that he used for his opinion based upon facts substantiated by evidence in this case. Instead the Court alluded to medical literature, research, and tests as being superior in assessing an expert witness' testimony. This goes against the very essence of Evidence Rule 702.

For the reasons stated above, the trial court erred by finding expert witness opinions are based purely on speculation, and excluding Dr. Wikas as an expert witness in this case was highly prejudicial to Appellant, and therefore warrants reversal.

IV. THE TRIAL COURT ERRED BY FILING AN ORDER GRANTING SUMMARY JUDGMENT.

The trial court erred by filing an order to grant summary judgment. This summary judgment was based solely on the exclusion of Dr. Wikas' entire testimony, which was improper as his testimony was based upon facts substantiated by evidence, which is detailed in the above arguments. The exclusion of Dr. Wikas testimony was erroneous, and the resulting prejudice was granting summary judgment.

In a medical malpractice action the plaintiff must establish by expert testimony both the required standard of care and the defendant's failure to conform to the standard, unless the subject matter

lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the defendant's conduct. Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633 (1986). Appellant and expert witness Dr. Wikas meet all requirements set forth by South Carolina law for a medical malpractice case. The Court erred in granting the Defendants' Motion for Summary Judgment, and not allowing this case to go to trial with an expert witness. For the reasons stated above, the trial court should be reversed on this ground.

CONCLUSION

For the reasons set forth above and established in the record, and for such other and further grounds as this Court may find appropriate, the Circuit Court's Order Excluding Expert Witness Testimony, and Order Granting Summary Judgment, must be reversed.

November 14, 2022

Respectfully submitted,

Tara Gurry

Tara Gurry

711 A 3rd Avenue South,

North Myrtle Beach, South Carolina 29582

(843) 877-5839

Pro Se Appellant

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2021-000838

Case No. 2018-CP-26-5438

Tara Gurry, Appellant,

v.

Myrtle Beach Dermatology, LLC, Respondents.

Shannon Hussey, Richard Hussey M.D.

CERTIFICATE OF COUNSEL – FINAL BRIEF OF APPELLANT

The undersigned certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

November 14, 2022
North Myrtle Beach, SC

Respectfully submitted,
Tara Gurry

Tara Gurry
711 A 3rd Avenue South,
North Myrtle Beach, SC 29582
Pro Se Appellant
843-877-5839