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April 12, 2012

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Holmes v. East Cooper Comm. Hosp., Inc., et al.
Case No. 2010-CP-10-03410

Dear Ms. Kitchings:

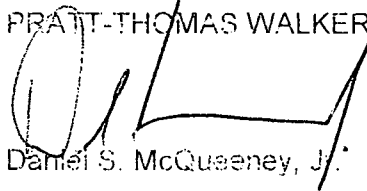
Please find enclosed an original and seven (7) copies of Respondents' Motion to Compete in connection with the above-referenced matter, as well as a check in the amount of \$25.00 for the filing fee. I would appreciate it if you could return a filed copy of the Motion to me in the self-addressed, stamped envelope enclosed herewith.

As evidenced by the enclosed Proof of Service, and by copy of this letter to Appellant's counsel, I am serving Appellant with a copy of the Motion.

Thank you for your assistance in this regard.

With kindest regards, I remain,

PRATT-THOMAS WALKER, P.A.



Daniel S. McQueeney, Jr.

DSM:aabp
Enclosure
cc (w/enc): Chaimers C. Johnson, Esquire

SC Court of Appeals
APR 13 2012
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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2010-CP-10-03410

Dr. Cynthia Holmes, M.D.,

Appellant,

v.

East Cooper Community Hospital, Inc.,
and Tenet HealthSystem Medical, Inc.,

Respondents.

Respondents' Motion to Compel Appellant to Compile, Serve, and File a Supplement or Appendix to the Record on Appeal to Include Matters Designated by Respondents but Wholly or Partially Excluded by Appellant and Motion for an Extension of the Time in Which to Serve and File Their Final Brief

Pursuant to Rule 210(c), SCACR, and Rule 212(b), SCACR, Respondents East Cooper Community Hospital, Inc., and Tenet HealthSystem Medical, Inc. ("Respondents") hereby move to compel the Appellant to compile, serve, and file a supplement or appendix to the Record on Appeal to include documents which, although designated for inclusion by the Respondents, were wholly or partially omitted from the Record on Appeal by the Appellant. Pursuant to Rule 263(b), SCACR, Respondents also hereby move for an extension of the time in which to serve and file their final brief pending a resolution of this Motion, as set forth further herein.

Motion to Compel Supplement or Appendix to Record on Appeal

Rule 210(c), SCACR provides, in pertinent part: "The Record on Appeal shall

include all materials designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267." Rule 210(g), SCACR, provides, in pertinent part: "Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material."

The Record on Appeal compiled, served, and filed by the Appellant wholly or partially omits the following matters, which were designated by Respondents for inclusion in the Record on Appeal under Rule 209, SCACR:

(1) A complete copy of the Order of the Honorable Jasper Cureton filed on December 2, 2009 in Case No. 2005-CP-10-5113, Dr. Cynthia Holmes, M.D. v. E. Cooper Comm. Hosp., Inc., et al., a copy of which is attached hereto as Exhibit 1. Appellant did not include page 2 of this Order in the Record on Appeal. See R. p.230.

(2) A complete copy of the Order of the Supreme Court of South Carolina in Case No. 2005-CP-10-4351, J. Doe v. Richard L. Duncan, et al., a copy of which is attached hereto as Exhibit 2. Appellant did not include page 2 of this Order in the Record on Appeal. See R. pp.233-235.

(3) A complete copy of the Affidavit of Dr. William Stroud, M.D., a copy of which is attached hereto as Exhibit 3, which was filed as an exhibit in support of Respondents' Motion for Summary Judgment on June 28, 2011. Appellant did not include page 7 of this Affidavit in the Record on Appeal. See R. pp.681-89.

(4) A copy of Respondents' Motion for Sanctions, a copy of which is attached hereto as Exhibit 4, which was filed with the lower court on August 8, 2011. Appellant did not include a copy of this Motion in the Record on Appeal.

(5) A copy of the circuit court's Order Awarding Sanctions, a copy of which is

attached hereto as Exhibit 5, which was filed on February 1, 2012. Appellant did not include a copy of this Order in the Record on Appeal.

Respondents' undersigned counsel hereby certifies that each of these matters was designated in Respondents' Designation of Matter to Be Included in the Record on Appeal and presented to the lower court as required by Rule 210(c), SCACR. Respondents' undersigned counsel also hereby certifies that these matters are relevant to this appeal.

In his Certificate of Compliance with Rule 210(g), SCACR, a copy of which is attached hereto as Exhibit 6, Appellant's counsel states: "The undersigned has not included documents which were proposed but did not comply with Rule 210, SCACR (were not presented to the lower court or tribunal)." Upon information or belief, this statement refers to the Appellant's unilateral omission from the Record on Appeal of Respondents' Motion for Sanctions and the Order Awarding Sanctions, attached hereto as Exhibit 4 and Exhibit 5, respectively, and discussed *supra*.

Rule 210(c) provides: "The Record on Appeal shall not . . . include matter which was not presented to the lower court" It is obvious from the face of the Motion for Sanctions that it was presented to the lower court since it was filed with the lower court, and the circuit court clearly considered it because the circuit court granted the Motion through the Order Awarding Sanctions. Ex. 4; Ex. 5. The circuit court signed the Order Awarding Sanctions, which was also filed with the clerk of the lower court. Ex. 5. The Order Awarding Sanctions was therefore unequivocally "presented to the lower court."

Upon information and belief, the Appellant may contend that the Motion and Order are not relevant to this appeal. This argument would also be defeated by a

cursory review of the Motion and Order. The Motion constitutes a post-trial motion. Ex. 4; see S.C. Code Ann. §15-36-10(C)(1) (motion for sanctions under the Act is a post-trial motion). The Order Awarding Sanctions addresses the exact same grounds addressed in the circuit court's Order granting summary judgment to the Respondents, which is the subject of this appeal. Ex. 5. The Order Awarding Sanctions finds that many of the arguments raised by Appellant in opposition to summary judgment were not only incorrect, but were also frivolous. Ex. 5.

For clarification, it should be noted that Appellant served the notice of appeal in the present case *after* Respondents served their post-trial Motion for Sanctions. Ex. 4; **R. p.1436**. Appellant's counsel then argued that the post-trial motion should be stayed pending the present appeal, an argument which the circuit court rejected because it is contrary to the well-established law. See Ex. 5, p.16; see also Hudson v. Hudson, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) (notice of appeal does not deprive the circuit court of jurisdiction to consider timely post-trial motion).

The Appellant also never disclosed the pending post-trial motion to this Court until the motion was granted, upon which Appellant filed a new notice of appeal, purporting to appeal only the Order Awarding Sanctions. See Toal, Jean Hoefler, et al., Appellate Practice in South Carolina (2d ed. 2002) p.120 ("In the event timely post-trial motions are filed under Rule 59, SCRPC. . . the appellant should notify the clerk of the appellate court in writing. Upon receipt of such notice, the appeal will be dismissed with prejudice."). In the interim, Appellant filed his initial brief and designation of matter in the present appeal, which did not challenge the Order Awarding Sanctions. See Rule 208(b)(1)(C), SCACR ("Ordinarily, no point will be considered which is not set forth in

the statement of the issues on appeal"); Gold Kist, Inc. v. Citizens & S. Nat. Bank of S. Carolina, 286 S.C. 272, 276, 333 S.E.2d 67, 70 (Ct. App. 1985) (exceptions not argued in a party's appellate brief are deemed abandoned).

There are therefore two separate appeals currently pending before this Court, when there would normally be one. Rule 208(b)(1)(C) and Gold Kist suggest any issues which could have been raised in the second appeal have been abandoned through the first. In the past, the Appellant has used similar tactics to attempt to appeal the same circuit court orders over and over again in Case No. 2005-CP-10-5113 (See, e.g., Ex. 1; R. pp.228-229), and the circuit court here has recognized that Case No. 2005 CP-10-5113 is identical to the present lawsuit. Ex. 5.

While it is beyond dispute that Respondents' Motion for Sanctions and the circuit court's Order Awarding Sanctions were presented to the lower court, Appellant's argument to the contrary does not permit him to unilaterally omit the material from the Record on Appeal: "[I]f opposing counsel designates matter not presented below, one should first attempt to resolve the problem by consulting with opposing counsel; however, *if this does not succeed, then the party compiling the record should not, and cannot, unilaterally refuse to include the matter in the record.*" See Toal, Jean Hoefler, et al., Appellate Practice in South Carolina (2d ed. 2002) p.141 (emphasis added).

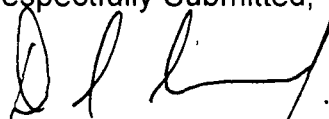
Based on the foregoing, Respondents respectfully move that this Court compel the Appellant to comply with Rules 210(c) and 210(g) by compiling, serving and filing a supplement or appendix to the Record on Appeal containing complete copies of the orders, affidavit, and motion set forth above. Respondents also request that Appellant be compelled to pay the Respondents' costs and attorneys' fees associated with

bringing this Motion.

Motion for an Extension

Pursuant to Rule 263(b), SCACR, Respondents also request that the time to serve and file their final brief be held in abeyance pending a resolution of the above-described Motion. Respondents would respectfully request that the time to serve and file their final brief be extended to ten (10) days after the Appellant's service of a supplement or appendix to the Record on Appeal. Should the above-described Motion be denied, Respondents would request an extension to ten (10) days after the denial of the Motion.

Respectfully Submitted,



Lindsay K. Smith-Yancey
E. Douglas Pratt-Thomas
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
(843) 727-2200
Attorneys for Respondents

Charleston, South Carolina
April 12, 2012



IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2010-CP-10-03410

Dr. Cynthia Holmes, M.D.,

Appellant,

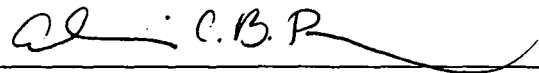
v.

East Cooper Community Hospital, Inc.,
and Tenet HealthSystem Medical, Inc.,

Respondents.

PROOF OF SERVICE

I certify that I have served *Respondents' Motion to Compel Appellant to Compile, Serve, and File a Supplement or Appendix to the Record on Appeal to Include Matters Designated by Respondents but Wholly or Partially Excluded by Appellant and Motion for an Extension of the Time in Which to Serve and File Their Final Brief* on Appellant Cynthia Holmes, M.D., by depositing a copy of it in the United States Mail, postage prepaid, on April 12, 2012, addressed to her attorney of record, Chalmers C. Johnson, 523 So. G Street, Apartment #402, Tacoma, WA 98405.



Alison A. B. Preacher
Paralegal to E. Douglas Pratt-Thomas,
Lindsay K. Smith-Yancey and
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
(843) 727-2230
Attorneys for Respondents

The South Carolina Court of Appeals

Dr. Cynthia Holmes, M.D.,

Appellant,

v.

East Cooper Community Hospital, Inc.;
Tenet HealthSystem Medical, Inc.;
John Grady, M.D.; and Paul Yantis,
M.D.,

Respondents.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2005-CP-10-05113

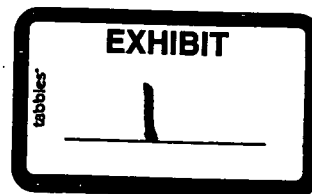
ORDER

Appellant in the above-captioned appeal filed a motion seeking to have Mr. Prati-Thomas remain counsel of record. The motion is denied.

Appellant also filed a petition for writ of supersedeas or clarification, seeking to determine whether the "orders" on appeal should be stayed. We request Respondents provide a return to Appellant's petition within ten days.

We also take the opportunity to clarify that the only orders properly being challenged on appeal are the orders dated August 6, 2009 and the form order dated June 25, 2009. The other orders listed in Appellant's amended notice of appeal have been the subject of previous appeals to this Court. Appellant has attempted to appeal those previous orders several times. If Appellant again attempts to pursue appeals of those orders she will be sanctioned.

AND IT IS SO ORDERED.



Jasper W. Curran A.S.

Columbia, South Carolina

Dec 2, 2009

cc: Cynthia Collie, Esquire
Lindsay K. Smith-Yancey, Esquire
Daniel S. McQueeney, Jr., Esquire

FILED
12/2/09

The Supreme Court of South Carolina

05-CP-10-4351

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

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ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collie. In order to avoid any confusion, we point out that J. Doe, Cynthia Holmes and Cynthia Collie are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner:

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Homes engaged in a lengthy, albeit fruitless, administrative appeal of the



Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff[s] conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.



engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)

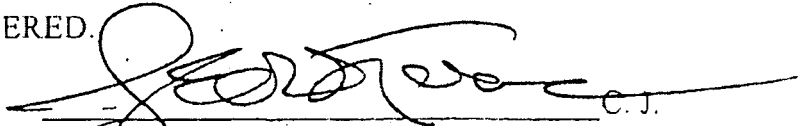
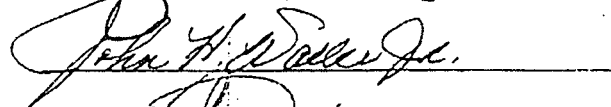
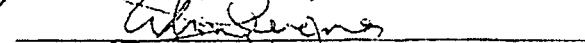
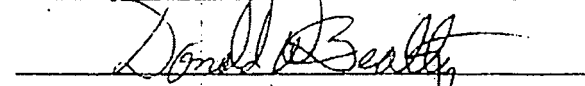
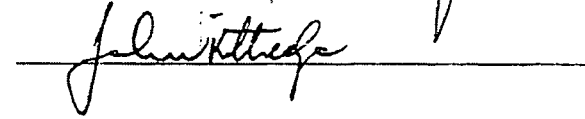
Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)

The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.

IT IS SO ORDERED.


C.J.

J.

J.

J.

J.

Columbia, South Carolina

December 2, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C.A. NO.: 2010-CP-10-3410

Dr. Cynthia Holmes, M.D.,)
Plaintiff,)
vs.)
East Cooper Community Hospital, Inc.,)
and Tenet HealthSystem Medical, Inc.,)
Defendants.)

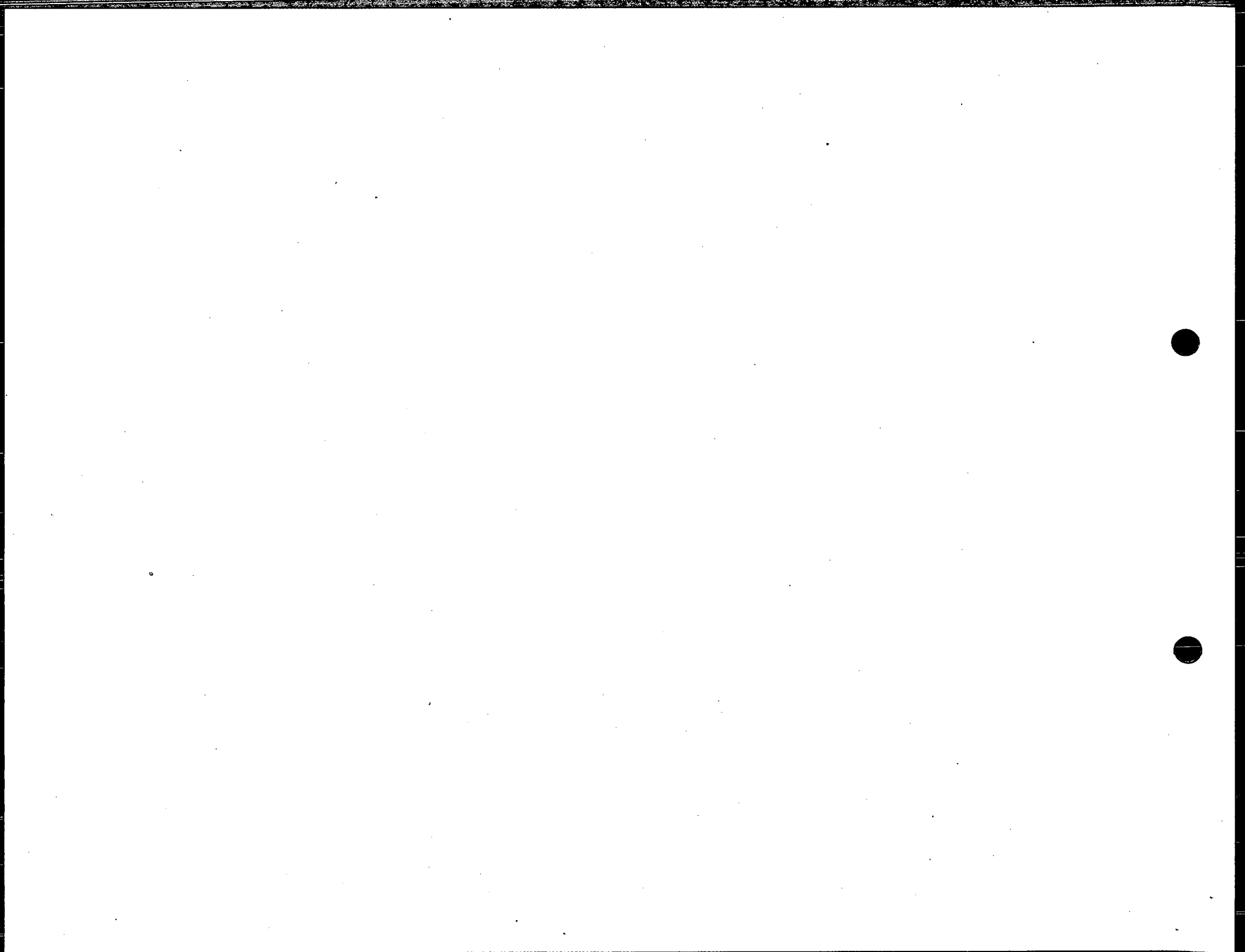
Affidavit of William Stroud, Jr., M.D.

FILED
2011 JUN 28 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED BEFORE ME, William Stroud, Jr., M.D., who, being first duly sworn, avers and states as follows:

1. I am over eighteen (18) years of age, of sound mind, and competent to make this Affidavit. The facts stated herein are true and correct, and are based upon my personal knowledge.
2. I am a medical doctor practicing in the field of general surgery.
3. I became a member of the Medical Staff of East Cooper Medical Center (the "Hospital") in 1985 and have had privileges at the Hospital since that time.
4. During the time of Dr. Holmes' 2008 reappointment application, I served as the Chairman of the Department of Surgery for the Hospital. As such, I also served on the Credentials Committee and the Medical Executive Committee ("MEC") of the Hospital. I have knowledge of and am familiar with the processes and requirements for the granting of Medical Staff membership and clinical privileges for physicians at the Hospital, including the provisions of the Medical Staff Bylaws, Rules and Regulations ("Bylaws") regarding same.





5. Initial appointments and reappointments to the Medical Staff are made by the Governing Body of the Hospital upon a recommendation from the MEC for a period not to exceed two (2) years. 2007 Bylaws, Art. V, §1 (p.20). The applicant has the burden of producing adequate information for a proper evaluation of his or her current clinical competence in terms of his or her ability to practice or continue to practice in the area in which privileges are sought. 2007 Bylaws, Art. V, §3.C (p.29). Applicants for reappointment to the Medical Staff have the burden of completing and submitting an application for reappointment at least 30 days prior to the expiration of their previous appointment term. 2007 Bylaws, Art. V, §3.B (p.29).

6. Medical staff members requesting a change in staff category or clinical privileges have the burden of supplying information in support thereof. 2007 Bylaws, Art. V, §3.A.2 (p.28). Clinical privileges may be granted only upon formal request on forms provided by the Hospital with subsequent processing and approval. 2007 Bylaws, Art. VI, §2.A (p.37). Every application for staff appointment or reappointment must contain a request for the specific clinical privileges desired by the applicant. 2007 Bylaws, Art. VI, §2.A (p.37). Requests for clinical privileges shall be evaluated on the basis of a physician's training, experience and education, demonstrated current competence, and other relevant information. 2007 Bylaws, Art. VI, §2.B (p.37). A practitioner who fails to return the form or to supply all of the required information within thirty (30) days prior to the expiration of the current appointment period or respond in a timely manner to a request for information shall be deemed to have resigned his or her Medical Staff membership, effective as of the date of the expiration of the current appointment period. 2007 Bylaws,



Art. V, §3.B (p.29) (emphasis added). **A practitioner who is deemed to resign in this manner is not entitled to the hearing and appeal rights under the Bylaws.** 2007 Bylaws, Art. V, §3.B (p.29) (emphasis added).

7. The Credentials Committee is responsible for initially reviewing and evaluating the qualifications of each applicant for initial appointment, reappointment, or modification of appointment to the Medical Staff, and for clinical privileges at the Hospital. 2007 Bylaws, Art. XI, §3.B.1 (p.74). **The Credentials Committee is also responsible for reviewing each application prior to processing to determine if it is complete for processing and shall not process any application for membership or privileges that is incomplete.** 2007 Bylaws, Art. XI, §3.B.2 (p.74) (emphasis added). The Credentials Committee is comprised of at least five (5) physician members of the Active Medical Staff representative of the major clinical departments. 2007 Bylaws, Art. XI, §3.A (p.74). The Chairman of the Credentials Committee is appointed by the Chief of Staff and must also be a member of the Active Medical Staff. 2007 Bylaws, Art. XI, §3.A (p.73).

8. The MEC is responsible for, among other things, receiving reports from the Credentials Committee relating to physician appointments, reappointments, clinical privileges and assignment of Medical Staff category. 2007 Bylaws, Art. XI, §2.B.2 (p.72-73). The MEC is also responsible for the review and consideration of said reports and then making its own determinations and recommendations for physician appointments, reappointments, clinical privileges and Medical Staff category assignments to the Governing Board. 2007 Bylaws, Art. XI, §2.B.2 (p.72-73). The MEC is comprised of the Chief of Staff, Vice-Chief of Staff, Secretary-Treasurer, the



Chairpersons of all Medical Staff Departments, the most recent ex-Chief of Staff, the Chairman of the Credentials Committee, the Chairman of Medical/Surgical/Patient Care Unit Committee, one member selected at large from the Medical Staff by the Chief of Staff, and the Administrator of the Hospital, who is a non-voting member. 2007 Bylaws, Art. XI, §2.A (p.72). Pursuant to the Medical Staff Bylaws, the Chief of Staff serves as Chairman of the MEC and is responsible for reporting to the recommendations of the MEC to the Governing Board. 2007 Bylaws, Art. XI, §2.A (p.72).

9. In September of 2007 the MEC instituted a requirement that all applicants and reapplicants to the Medical Staff were required to complete a Delineation of Privileges form as part of their application process to identify what privileges were being sought. 2007 Bylaws, Art. VI, §2.A (p.37). This form set forth the threshold requirements for Core Privileges for the applicant's specialty. Core privileges is the grouping of basic procedures physicians are taught in his or her specific training program and should be qualified to perform into a single privilege for that category or specialty. Additional procedures that go beyond the Core and require additional training or experience are listed separately and specific criteria are developed to qualify for procedures that fall outside core privileges. During the time of Dr. Holmes's reappointment application in 2008, the Core Privileges for ophthalmology included the admission, work-up, diagnosis, and the performance of surgical procedures on patients of all ages presenting with illnesses, injuries, and disorders of the eye, including its related structures and visual pathways. To be eligible for Core privileges within the specialty of ophthalmology, reapplicants must demonstrate that they had performed at least 48 ophthalmologic surgical procedures in the preceding 24 months in a hospital or

surgical outpatient setting. See Ex. B to Affidavit of Elaine B. Meuli, 2008 Credentials File for Dr. Holmes, Delineation of Privileges form.

11. From 2006 to 2008 Dr. Holmes was a member of the Consulting Medical Staff of East Cooper Medical Center. Dr. Holmes' term on the Consulting staff was scheduled to expire in November of 2008 and prior thereto she submitted a reappointment application requesting advancement from a Consulting member to an Associate member of the Medical Staff.

12. The Consulting Medical Staff consists of physicians who do not admit patients to the Hospital but who desire privileges to provide only consultative services to patients at the request of Active, Associate, or Courtesy staff physicians. Consulting staff members are not eligible to admit patients, perform surgery, vote, or hold office. See Exhibit E to Deposition of Elaine B. Meuli, Medical Staff Bylaws (Rev. Dec. 2007) ("2007 Bylaws"), Art. IV, §5 (p. 19).

13. The Associate Medical Staff consists of practitioners who (i) do not have privileges at any other hospital; but who (ii) meet all the criteria for active staff membership except the minimum number of admissions, procedures, or patient contacts per year or preceding 12-month period. 2007 Bylaws, Art. IV, §3.A (p.18). **At the time of initial appointment and at all times subsequent thereto, a member of the Associate Medical Staff was required to meet all of the threshold criteria for exercising Core Privileges in his or her respective Department.** 2007 Bylaws, Art. IV, §3.A (p.18)(emaphasis added). The threshold criteria, which are identified by the Department and approved by the MEC, relate to minimum formal training, board certification, professional experience within the preceding twelve months and clinical

references. 2007 Bylaws, Art. IV, §3.A (p.18). In order to facilitate ongoing professional practice evaluation, all patient admissions, procedures and patient contacts by members of the associate staff are reviewed by the Department to which the Practitioner is assigned. 2007 Bylaws, Art. IV, §3.A (p.18).

14. Pursuant to amendments to the Bylaws in December of 2007, only Active members of the Medical Staff are eligible for surgical privileges.

15. Dr. Holmes's 2006 appointment to the Consulting staff was scheduled to expire on November 13, 2008. Despite the provision in the 2007 Bylaws requiring the reappointment application be completed within thirty (30) days prior to the expiration of her current appointment period, the Hospital did not receive Dr. Holmes's reappointment application until November 6, 2008. In her application, Dr. Holmes requested advancement from the Consulting Medical Staff to the Associate Medical Staff. Dr. Holmes failed to complete the required Delineation of Privileges portion of her application identifying the privileges she was seeking and attesting, among other things, that she was qualified for reappointment by having performed at least 48 ophthalmologic surgical procedures in the preceding 24 months. In lieu of the required Delineation of Privileges form, Dr. Holmes arbitrarily and unilaterally attached an outdated "laundry list" of surgical procedures she wished to be granted.

15. Because of her failure to complete this required portion of her application, the Hospital returned the application to Dr. Holmes as incomplete on November 11, 2006, and provided her explicit instructions on how to complete the required Delineation of Privileges form. See Exhibit O to Defs.' Answer. The letter returning the application was hand-delivered to Dr. Holmes on November 12, 2008, with a warning that it needed



to be completed on or before November 13, 2008, to comply with the 2007 Bylaws. Ex. O to Defs.' Answer. As documented in her 2008 credentials file, multiple efforts were made to contact Dr. Holmes regarding the incomplete form, and Dr. Holmes initially communicated that the form was to be submitted as is.

16. On November 13, 2008, Dr. Holmes delivered a revised application for reappointment. The revised application ignored the explicit instructions in the November 12, 2008 letter and the only change from the previous application was to state and document that she had completed more than 90 hours of continuing medical education. The revised application did not include a completed Delineation of Privileges form as required, nor did it provide evidence that Dr. Holmes had performed sufficient ophthalmologic surgical procedures in the previous 24 months in a hospital or surgical setting. In addition, Dr. Holmes' application contained no information whatsoever that she was currently clinically competent for Associate status. According to the Hospital's files, Dr. Holmes had not admitted or surgically treated any patients at the Hospital since 1998 and her application did not contain any information that she had ever admitted patients or performed surgery at that or any other hospital or accredited surgical facility.

17. Ophthalmologists like Dr. Holmes fall under the Department of Surgery. As the Chairman of the Department of Surgery and a member of the Credentials Committee, I participated in the determinations and recommendations regarding the 2008 application for reappointment to the Medical Staff made by Dr. Holmes. As the Chairman of the Department of Surgery, I determined that Dr. Holmes submitted an incomplete reappointment application because she did not complete the Delineation of



Privileges form identifying the privileges she was seeking and attesting or in any way documenting that she was qualified for reappointment and Core privileges in her specialty of ophthalmology.

18. As the Chairman of the Department of Surgery, I submitted Dr. Holmes' 2008 reappointment application to the Credentials Committee, which likewise determined the following: that Dr. Holmes' application was incomplete; that multiple attempts were made to allow Dr. Holmes the opportunity to correct her application; that Dr. Holmes failed to complete the Delineation of Privileges portion of her application and, instead, attached a copy of an old "laundry list" of privileges, even though she was informed the "laundry list" was obsolete; and that Dr. Holmes failed to demonstrate that she has performed at least 48 ophthalmologic surgical procedures in the past 24 months in a hospital or surgical outpatient setting as required for Associate Medical Staff membership.

19. The Credentials Committee unanimously determined that Dr. Holmes failed to submit a complete application within 30 days prior to the expiration of her current appointment, that her application was, therefore, incomplete and deemed a voluntary resignation from the Medical Staff in accordance with the Bylaws effective December 13, 2008, the date on which her then-current appointment expired. The Credentials Committee also determined that the Bylaws did not afford Dr. Holmes an administrative hearing or appeal rights on the basis of an incomplete application.

20. As a member of the MEC, I also participated in the determinations and recommendations of the MEC regarding the 2008 application for reappointment to the Medical Staff made by Dr. Holmes. The MEC adopted the findings and

recommendations of the Credentials Committee for the same reasons discussed in above.

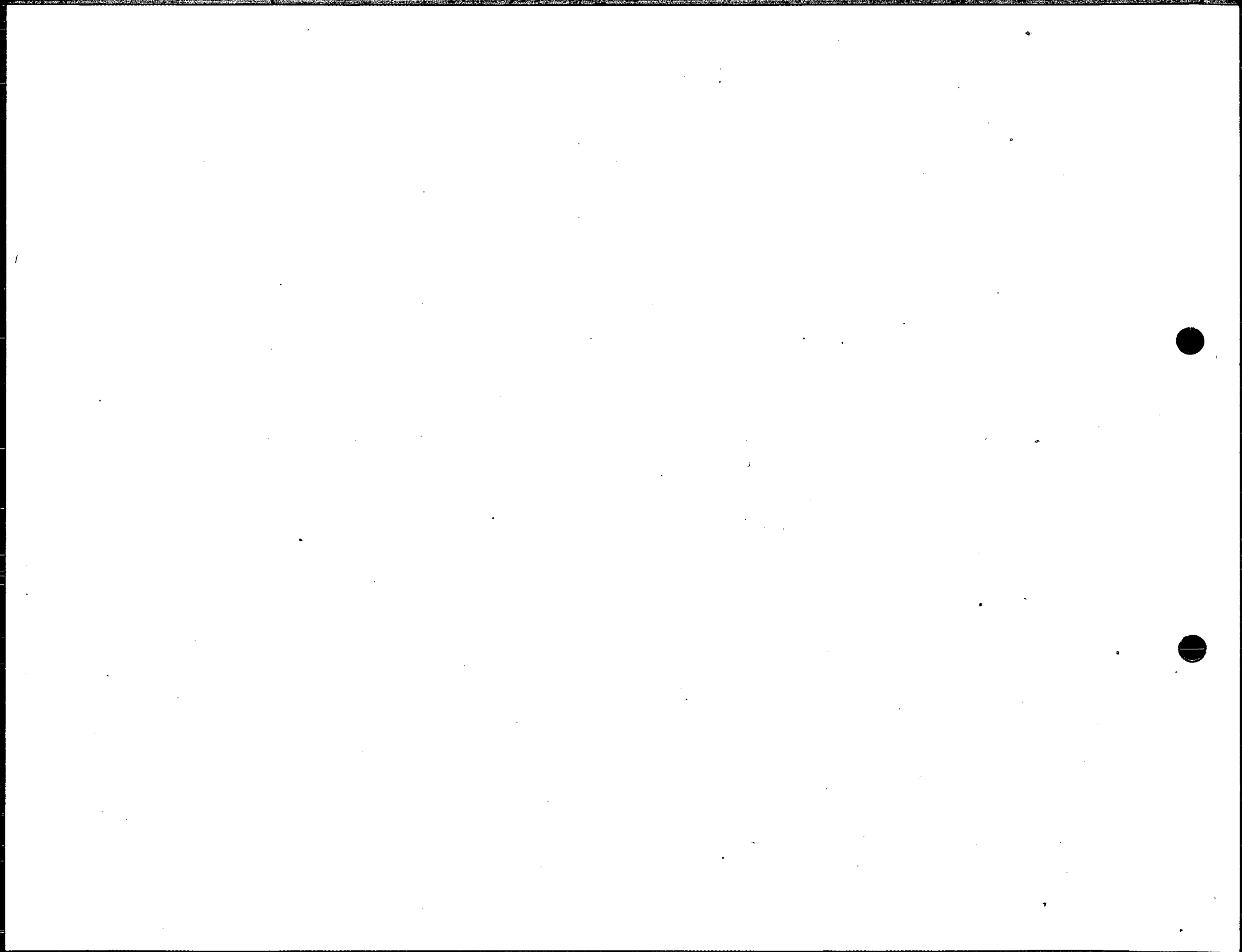
21. The Governing Board of East Cooper Medical Center then adopted the recommendation of the MEC and on December 19, 2008, Dr. Holmes was provided written notification that her failure to return the completed reappointment form and supply required information within 30 days prior to the expiration of her reappointment had been deemed as her resignation from the Medical Staff. See Ex. P to Defs.' Answer. Dr. Holmes was further advised that she would not be afforded a hearing or appellate rights under the circumstances because of the Hospital Bylaw provision stating that a practitioner deemed to have resigned because of an incomplete application is not entitled to hearing and appellate rights. Ex. P to Defs.' Answer.

22. I was present and actively participated in all discussions, deliberations and recommendations of the Credentials Committee and MEC concerning Dr. Holmes's 2008 reappointment application. The determinations and recommendations by the Credentials Committee and the MEC herein were made in accordance with the Medical Staff Bylaw provisions discussed above, and were arrived at solely because Dr. Holmes' reappointment application was incomplete. Her reappointment process was handled in good faith, in accordance with the Bylaws, and in the same manner as any other physician under the same circumstances.

William Stroud, Jr., M.D.
William Stroud, Jr., M.D.

Sworn to before me this
28 day of June, 2011

Dana R. Bradford



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Oct 4 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2010-CP-10-3410

Dr. Cynthia Holmes, M.D.,)
Plaintiff,)

vs.)

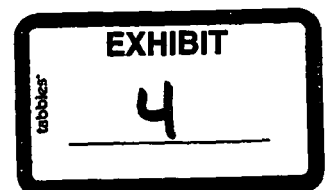
East Cooper Community Hospital, Inc.,)
and Tenet HealthSystem Medical, Inc.,)
Defendants.)

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SANCTIONS
PURSUANT TO
S.C. CODE ANN. §15-36-10**

FILED
2011 AUG - 8 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: Chalmers C. Johnson, Esquire, Attorney for the Plaintiff

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendants East Cooper Community Hospital, Inc., and Tenet HealthSystem Medical, Inc., (collectively "Defendants") move the Court pursuant to Rule 59, SCRPC, and S.C. Code Ann. §15-36-10, for an Order assessing attorneys' fees and costs to Defendants. This Motion is made on the grounds that the Plaintiff's allegations and causes of action alleged in her Complaint have terminated in favor of Defendants by way of an Order granting Defendants summary judgment entered on July 29, 2011, and received by the Defendants on August 3, 2011. Further grounds for this Motion are that the Plaintiff's purpose in the procurement, initiation and continuation of this lawsuit was done primarily for a purpose other than that of securing proper discovery or adjudication of the claim upon which the proceedings were based, namely harassment of the Defendants through the initiation of uninvestigated and unsubstantiated claims and the continuation of such claims after the production of clear and convincing evidence to the contrary; seeking the same damages from the Defendants herein claimed and sought by the



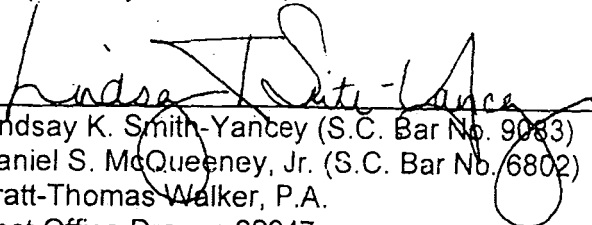
Plaintiff from other parties in various other legal proceedings; seeking damages from Defendants immune from civil liability under state and federal statute; seeking adjudication of claims over which the Court does not have jurisdiction; and raising issues which have been previously adjudicated against the Plaintiff and in the Defendants' favor.

This Motion will be based on the pleadings, discovery and Orders from this and other cases involving the Plaintiff, and a forthcoming Affidavit of the Defendants' attorneys' fees and costs, as well as a Memorandum of Law.

Defendants further move for such other relief as shall appear to this Court just and proper.

Please be present to defend this Motion is so minded.

Respectfully Submitted,


Lindsay K. Smith-Yancey (S.C. Bar No. 9083)
Daniel S. McQueeney, Jr. (S.C. Bar No. 6802)
Pratt-Thomas Walker, P.A.
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Charleston, South Carolina 29413-2247
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Attorneys for Defendants

August 8, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 10-CP-10-3410

2011 AUG -8 PM 2:54

FILED

BY JULIE J. ARMSTRONG
CLERK OF COURT

Dr. Cynthia Holmes, M.D.,)
)
Plaintiff,)
)
vs.)
)
East Cooper Community Hospital, Inc.,)
and Tenet HealthSystem Medical, Inc.)
)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing Defendants' Notice of Motion and Motion for Sanctions Pursuant to S.C. Code Ann. §15-36-10 by delivering a copy to the following counsel/parties, in accordance with applicable Rules of Civil Procedure, on August 8th, 2011, by United States Mail (postage prepaid, properly addressed) and electronic mail:

Chalmers C. Johnson, Esquire
523 So. G Street, Apt. #402
Tacoma, WA 98405
Email: chalmersjohnson@gmail.com

By: Alison A. B. Preacher
Alison A. B. Preacher
Paralegal to Lindsay K. Smith-Yancey

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2010-CP-10-3410

Dr. Cynthia Holmes, M.D.,)
Plaintiff,)

vs.)

East Cooper Community Hospital, Inc.,)
and Tenet HealthSystem Medical, Inc.,)
Defendants.)

ORDER AWARDING SANCTIONS

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JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on Defendants' motion pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, codified at section 15-36-10 of the South Carolina Code (hereinafter referred to as the "FCPSA" or "the Act"). A hearing on Defendants' motion was held on November 22, 2011. As indicated more fully below, this Court grants Defendants' motion, sanctions the Plaintiff pursuant to the Act, and awards judgment against Plaintiff in the amount of \$53,447.15 (Fifty-Three Thousand Four Hundred Forty-Seven and 15/100 Dollars) payable to Defendants for reimbursement of attorneys' fees and other expenses incurred in the defense of this action.

In addition, in light of the Plaintiff's long history of litigation against Defendants and others, the Court finds injunctive relief pursuant to section 15-36-10(G)(3) appropriate. Consequently, this Court hereby orders that any future litigation filed on behalf of the Plaintiff against the Defendants in any way premised upon the status of her medical staff membership, categorization, or privileges or her prior litigation with the Defendants shall be accompanied by a \$50,000.00 bond or letter of credit, paid in to the

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Clerk of Court, to be applied to Defendants' attorneys' fees and other litigation expenses in the event Defendants are the prevailing party and the Court finds them to be entitled to reimbursement of their attorneys' fees and other litigation expenses. If the Plaintiff fails to post such a bond or letter of credit, Defendants may present a certified copy of this Order to the Clerk of Court, upon which the Clerk shall summarily dismiss the action.

Factual/Procedural Background

The Plaintiff herein is a medical doctor specializing in the field of ophthalmology. Her current Complaint alleges causes of action for breach of contract and breach of the covenant of good faith and fair dealing concerning her medical staff privileges at Defendant East Cooper Community Hospital, Inc., which owns and operates East Cooper Medical Center (hereinafter referred to as the "Hospital").

This is the fourth lawsuit filed by the Plaintiff against Defendants arising out of her medical staff privileges at the Hospital. The Plaintiff's first lawsuit, Doe v. Tenet HealthSystem Medical, Inc., et al., Civil Action Number 2:99-0833-23, was filed in the United States District Court for the District of South Carolina, and Defendants were granted summary judgment. The Plaintiff's second lawsuit, Doe v. Tenet HealthSystem Medical, Inc., et al., Civil Action Number 2000-CP-10-1888, was filed in the Charleston County Court of Common Pleas. The parties resolved the second lawsuit through a Settlement Agreement and General Release in Full (the "Settlement Agreement") in 2002.

The Plaintiff's third lawsuit, Holmes v. East Cooper Community Hosp., Inc., et al., Civil Action Number 2005-CP-10-5113, was also filed in the Charleston County Court of

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Common Pleas. The Plaintiff's allegations in Paragraphs 31-36 of the Amended Complaint in Case Number 2005-CP-5113, stating an alleged cause of action for breach of a covenant of good faith and fair dealing, are almost identical to the allegations in Paragraphs 12-16 of the Plaintiff's Complaint in the present lawsuit.¹ In her third lawsuit, the Plaintiff contended, among other things, that the Defendants breached the Settlement Agreement in their consideration of her 2002 and 2004 applications for reappointment to the Hospital's medical staff, advancement in staff category, and surgical privileges. She made the same argument in the instant case with respect to her 2006 and 2008 applications.

Defendants were awarded summary judgment in the Plaintiff's third lawsuit, and Plaintiff was ultimately sanctioned pursuant to the Act. Defendants were awarded a \$90,000.00 judgment against Plaintiff. The Plaintiff's appeals of these orders were dismissed and remitted by the South Carolina Court of Appeals.

Plaintiff's allegations in the current lawsuit relate to her applications for reappointment to the Hospital's medical staff, advancement in staff category, and request for surgical privileges in 2006 and 2008. On July 29, 2011, this Court entered an order granting summary judgment to Defendants. On August 8, 2011, Defendants filed and served this motion.

Law/Analysis

I. The FCPSA Standard

¹ The Plaintiff's Amended Complaint in Case Number 2005-CP-10-5113 includes two separate paragraphs labeled 31 through 36. This Court is referring to the second such set of paragraphs therein.



The FCPSA allows for the imposition of sanctions for the initiation and prosecution of civil lawsuits without merit. Section 15-36-10(C)(1) of the FCPSA provides when an action has been dismissed by summary judgment, upon motion of the prevailing party, "the court shall proceed to determine if the claim . . . was frivolous." Section 15-36-10(C)(1) further provides that a party shall be sanctioned for a frivolous claim if the Court finds that the party failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that *his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party*; or

(c) a reasonable attorney in the same circumstances would believe that *the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.*

(emphasis added).

Section 15-36-10(E) of the Act sets forth the elements a Court should consider when determining whether a party has violated the provisions of the Act, stating the Court shall take into account the following:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

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- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

Section 15-36-10(G) of Act sets forth the sanctions allowable, including (1) reasonable costs and attorneys' fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

In Rutland v. Holler, Dennis, Corbett, Ormond & Garner, 371 S.C. 91, 98, 637 S.E.2d 316, 320 (Ct. App. 2006), the South Carolina Court of Appeals affirmed the circuit court's award of sanctions to the defendant, emphasizing that "Respondents were able to show that the primary purpose for which the proceedings were initiated 'was not that of securing the proper . . . adjudication of the civil proceedings.'" The Court recognized: "A review of the record reveals that the lawsuit at issue alleged causes of action for the same complaint as the previous lawsuits, *i.e.*, Rutland's dissatisfaction with Corbett and his law firm." Id. "In light of this unsuccessful procedural history, it is inconceivable that Rutland reasonably believed that his claims against Respondents were valid." Id.

II. Defendants are entitled to sanctions under the FCPSA for continuing to argue that this Court has jurisdiction to review the privileging decisions of a private, for-profit hospital.

The Plaintiff herein violated the Act by initiating and continuing this litigation despite this Court's lack of subject matter jurisdiction, despite a prior ruling against the



Plaintiff that this Court lacks subject matter jurisdiction, and despite being sanctioned for arguing that this Court has subject matter jurisdiction in a previous case based on the very same allegations.

The Plaintiff contends in this action, as she did in Case Number 2005-CP-10-5113, that rather than asking the Court to review the decisions made regarding her credentialing process, she seeks a determination of whether Defendants breached the Settlement Agreement in their consideration of her applications for advancement in staff category and surgical privileges. In the previous lawsuit, the Honorable R. Markley Dennis, Jr., not only granted summary judgment to Defendants on the basis that the circuit court lacked jurisdiction over such claims, but also sanctioned the Plaintiff for raising the argument.

"Generally speaking, subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." Metts v. Mims, 384 S.C. 491, 498, 682 S.E.2d 813, 817 (2009). "It is well settled in South Carolina, and throughout the country, that it is improper for the courts to review the decisions of governing boards of private hospitals concerning the staff privileges of practitioners." Wood v. Hilton Head Hosp., Inc., 292 S.C. 403, 405, 356 S.E.2d 841, 842 (1987). Thus, "the implementation of the regulations of a private hospital which are initiated to restrict a practitioner's practices are not subject to judicial review." Id.

As this Court recognized in its Order granting summary judgment to Defendants: "Though styled as a breach of contract action, as her multiple previous lawsuits against Defendants were, the Plaintiff's claims all arise out of the peer review process at the

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Hospital and, as such, are not subject to judicial review." **Summ. J. Order filed 07/29/2011, p.5.**

As previously discussed, in the 2005 lawsuit, Judge Dennis granted summary judgment to Defendants. **Summ. J. Order filed 05/23/2007 in 2005-CP-10-5113.** In addressing the allegations set forth above relating to the Plaintiff's 2004 application, which are almost identical to the claims set forth in the current case relating to the Plaintiff's 2006 and 2008 applications, Judge Dennis held, in pertinent part:

The Plaintiff's Amended Complaint seeks judicial determination of whether the decisions regarding her credentialing and privileges at East Cooper Hospital were reasonable and in compliance with the Hospital's Bylaws. Specifically, she requests the Court to review whether the failure to process and consider her application for associate status and surgical privileges, her reappointment to the consulting staff, and the denial of an administrative hearing were reasonable decisions made in accordance with the Bylaws. The Plaintiff's claims all arise out of the peer review process at East Cooper Hospital and, as such, are not subject to judicial review. The Court does not have jurisdiction to determine these issues and the Plaintiff has presented no evidence or reason to persuade the Court to depart from the long-standing principle that such actions are not subject to judicial review.

Summ. J. Order filed 05/23/2007 in 2005-CP-10-5113, p.4 (double emphasis added).

The present lawsuit restates the Plaintiff's allegations and arguments in her 2005 lawsuit. The Plaintiff alleges, as she did in 2005, that the Defendants breached the Settlement Agreement in reviewing her applications for medical staff privileges. **Compl.** In the 2005 lawsuit, Judge Dennis considered this argument and rejected it in two separate orders. In one of those orders, he sanctioned the Plaintiff for making the argument. With the Plaintiff being sanctioned in 2005 for making the argument, no reasonable attorney could contend that the argument is not frivolous in this action.

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The Plaintiff contends that the present lawsuit was filed under a good faith argument for the extension of Lee v. Chesterfield Gen. Hosp., Inc., 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986). This argument has no merit. Initially, Judge Dennis considered and rejected this exact same argument in his order sanctioning the Plaintiff in the 2005 case:

Plaintiff's interpretation and reliance on *Lee v. Chesterfield General Hospital*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986), in an effort to justify her quest to have the Court review the decisions regarding her credentialing is without merit. In *Lee* the Court confirmed the decision reached in *Gowan* but found subject matter jurisdiction where the Plaintiff did not seek to conduct a judicial review of internal hospital rules, but claimed that the Bylaws were imposed in furtherance of a conspiracy, the purpose of which was to injure the Plaintiff. *Lee* at 10. Here the Plaintiff asked the Court to review the basis for the credentialing decisions and substitute its judgment for the Hospital and its review committees by determining that the credentialing decisions were made inappropriately. This is precisely the type of intervention that *Strauss*, *Gowan*, and *Wood* decisions sought to prevent.

Sanctions Order filed 08/06/2009 in 2005-CP-10-5113, pp.15-16.

While the Plaintiff contends that this previous circuit court order is not binding precedent and that Judge Dennis's decision in this instance was incorrect, the Plaintiff ignores that, "[u]nder the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Carman v. S.C. Alcoholic Beverage Control Comm'n, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994). Plaintiff failed to offer any argument as to why Judge Dennis's decision does not



collaterally estop her in this action. Moreover, the Plaintiff's argument on this point emphasizes her intention to re-litigate the case she lost in 2005.

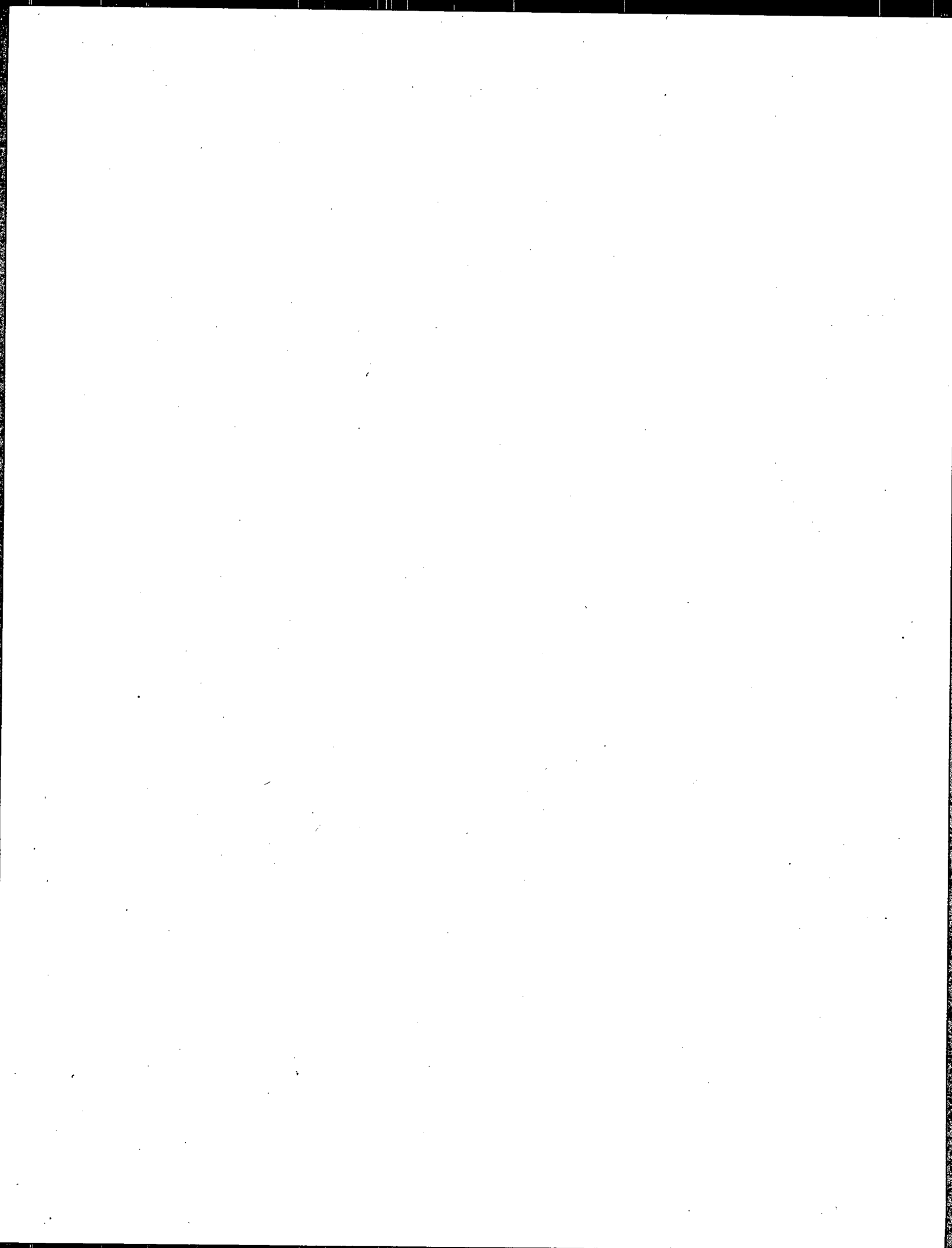
In addition, by its express terms, the Lee decision was limited to civil conspiracy claims and has no application to the actions alleged by the Plaintiff in this case. The Plaintiff cites no cases or authority from South Carolina or any other jurisdiction purporting to extend the Lee decision to her breach of contract claim asserted in this case. The Plaintiff also fails to distinguish the well-settled rule in South Carolina that the parties may not, by agreement or otherwise, consent to confer subject matter jurisdiction on the court. See Eldridge v. City of Greenwood, 331 S.C. 398, 408, 503 S.E.2d 191, 196 (Ct. App. 1998) ("Claims of lack of subject matter jurisdiction may be raised at any time, and subject matter jurisdiction may not be waived by filing responsive pleadings or otherwise consenting to the jurisdiction of a particular court.").

Based on the ample case law on this issue, a reasonable attorney in the same circumstances would believe that under the facts herein, the Plaintiff's claim was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law. As such, Defendants are entitled to sanctions under the Act.

III. Defendants are entitled to sanctions under the Act because the Plaintiff initiated and continued the present action despite the Defendants' compliance with the plain language of the Bylaws.

Even if this Court had subject matter jurisdiction to review the privileging decisions of the Hospital, there is absolutely no evidence that the Defendants failed to comply with the Settlement Agreement or the Medical Staff Bylaws in reviewing the Plaintiff's application.





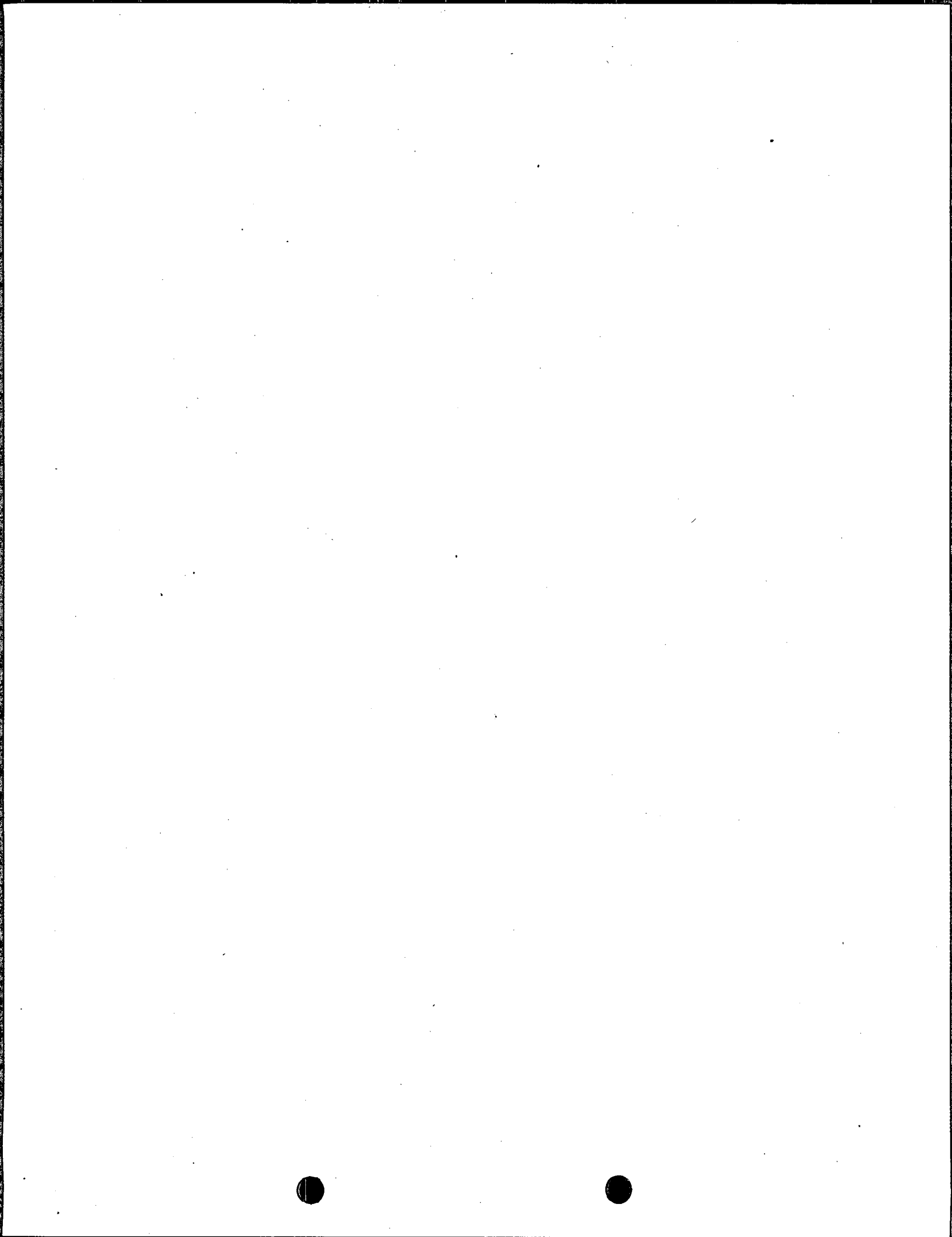
The Settlement Agreement provides, in pertinent part: "Dr. Holmes shall have the right to apply for a change in status in accordance with the Bylaws." **Settlement Agreement, pp.1-2.** The construction of a clear and unambiguous contract is a question of law for the court. Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987).

The record in this case shows that the Plaintiff failed to produce any evidence in support of her allegations that the subject Settlement Agreement was breached. Indeed, the affidavit of her expert witness failed to even mention the Settlement Agreement and only addressed whether the Hospital's Bylaws were followed. Defendants produced testimony from relevant committee and board members involved in the Plaintiff's credentialing process, who all testified that the Plaintiff's reappointments were conducted in compliance with the Bylaws.

Notwithstanding the foregoing, the Plaintiff failed to conduct *any* discovery on these allegations (or otherwise) until the eve of the summary judgment hearing, when she noticed and took the deposition of Janie Sinacore-Jaberg, the Hospital's former CEO. In the 2005 lawsuit, the circuit court looked to the Plaintiff's failure to conduct any discovery as supporting its award of sanctions: "[Plaintiff] failed to conduct any discovery, written or otherwise, on this or any other claim pled in her Complaint." **Sanctions Order, p.13.**

In this case, after the hearing on Defendants' motion for summary judgment was set, Plaintiff noticed and took the deposition of Sinacore-Jaberg. **Ex. 3 to Plt.'s Response to Defs.' Mot. for Sanctions.** While the Plaintiff points to Sinacore-Jaberg's deposition transcript to show that she conducted discovery in the present case, it is





telling that the Plaintiff did not cite to Sinacore-Jaberg's substantive testimony in either her response to Defendants' motion for summary judgment or her response to Defendants' motion for sanctions. Moreover, the Plaintiff's expert witness never even mentioned Sinacore-Jaberg's testimony in his affidavit, and Sinacore-Jaberg was never asked about the Settlement Agreement. Defendants never designated Sinacore-Jaberg as a witness or submitted an affidavit from her in support of their motions.

The Plaintiff produced absolutely no evidence that Defendants failed to comply with the Settlement Agreement or the Bylaws in considering her 2006 or 2008 reappointment applications. The lack of any factual basis for the Plaintiff's claim and the Plaintiff's failure to conduct substantive discovery relating to the Settlement Agreement also support sanctions against her.

IV. The factors in section 15-36-10(E) of the Act support an award of sanctions.

This Court has considered each of the factors in section 15-36-10(E) of the Act in determining whether the Plaintiff violated the Act. Neither the number of parties nor the complexity of the legal issues involved in this case appears to have confused the Plaintiff in any manner. It is the Plaintiff's continued refusal to consider applicable case law and prior court orders which caused her to file this frivolous lawsuit, not the complexity of the issues involved. If the Plaintiff had even cursorily reviewed her previous filings, prior Court orders, the Settlement Agreement, and the Bylaws prior to filing this lawsuit, it would have shown her the unreasonableness of her actions.

The Plaintiff has been in possession of or had access to the dispositive facts of this action—the 1999 federal suit complaint, the 2000 state court complaint, the Settlement Agreement, the 2005 filings, the prior Court orders, and the Bylaws—since

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before she filed this action. As the Court's records reflect, she also had roughly four (4) months to reconsider the filing of this lawsuit before she served it.

Factor five requires this Court to consider previous violations of this section in determining whether the Plaintiff violated the Act. This factor weighs strongly in favor of sanctions against the Plaintiff. Two separate circuit court judges have sanctioned the Plaintiff under the Act. In addition, the Supreme Court of South Carolina has emphasized the Plaintiff's vexatious litigation activities involving the Defendants in two separate orders. Judge Dennis in the instant case warned the Plaintiff that she might be sanctioned during a hearing on Defendants' motion to dismiss. Despite these sanctions and warnings, the Plaintiff has continued her litigation against the Defendants. This factor also strongly supports the injunctive relief provided herein.

With respect to the sixth factor, while the Plaintiff has asserted several procedural reasons as to why she believes she should not be sanctioned, the only substantive argument she offered was her apparent belief that the Lee decision supported this lawsuit. As previously discussed, the Plaintiff was placed on notice in her 2005 lawsuit that Lee afforded her no relief.

V. Pursuant to section 15-36-10(G)(1) of the South Carolina Code, Defendants are entitled to their attorneys' fees and other litigation expenses incurred in defending this lawsuit against the Plaintiff.

Section 15-36-10(G)(1) of the South Carolina Code provides that sanctions under the Act may include: "[A]n order for the party represented by an attorney . . . to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section." "Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage,



parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding" Id.

In Glasscock v. Glasscock, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991), the Supreme Court of South Carolina set forth the six (6) factors a court should use in determining a reasonable attorney's fee: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services."

In support of their request for attorneys' fees, Defendants submitted an affidavit setting forth the actual fees incurred in the defense of this action and a detailed itemization of said fees. Defendants request costs and attorneys' fees in the amount of \$53,447.15 (Fifty-Three Thousand Four Hundred Forty-Seven and 15/100ths Dollars).

In considering the factors set forth in Glasscock, the Court finds that the time and charges submitted for defending this action is comparable to the compensation charged by and paid to other attorneys with comparable legal ability, experience, success and standing within the South Carolina Bar in connection with healthcare litigation throughout the State of South Carolina; that the services set forth in the record for defending this matter were reasonable under the circumstances; that Defendants' requirement to pay for the defense of this case was not contingent on the outcome; and that counsel for Defendants obtained beneficial results in this action through the granting of summary judgment of the remaining claims and the successful prosecution of the present motion.



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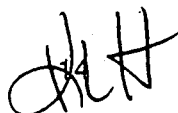
Based on the foregoing, I hereby order judgment entered in favor of Defendants against the Plaintiff in the amount of \$53,447.15 (Fifty-Three Thousand Four Hundred Forty-Seven and 15/100ths Dollars), with said judgment to be enrolled against the Plaintiff Cynthia Holmes, as well as against her alias, Cynthia Elaine Collie.

VI. Pursuant to section 15-36-10(G)(3) of the South Carolina Code, Defendants are entitled to injunctive relief.

Section 15-36-10(G)(3) of the South Carolina Code provides that sanctions may include "a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith." "The court has the discretion and the power to restrict a litigant who abuses the judicial system, and has authority to enjoin persons engaged in a manifest abuse of judicial process." 43A C.J.S. Injunctions § 96. "A court has both the duty and the power to protect the courts, citizens, and opposing parties from the abuse of a party who uses the judicial process not to vindicate his or her rights, but to harass and intimidate his or her adversaries by repeatedly filing groundless and vexatious claims against them." Id. "In order to preserve court resources, courts may place reasonable limits on the filings of litigants who abuse the judicial system, although such a sanction should be drawn narrowly." Id.

"A court's equity jurisdiction may properly be invoked to enjoin a multiplicity of successive suits at law by the same plaintiffs." 43A C.J.S. Injunctions § 99. "A party litigant who brings successive law suits involving the same issues against the same parties that are vexatious in nature may be enjoined from continuing such actions." Id.

"The power of the court to grant an injunction is in equity." Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "The court will reserve its equitable powers for situations when there is no adequate remedy at law."

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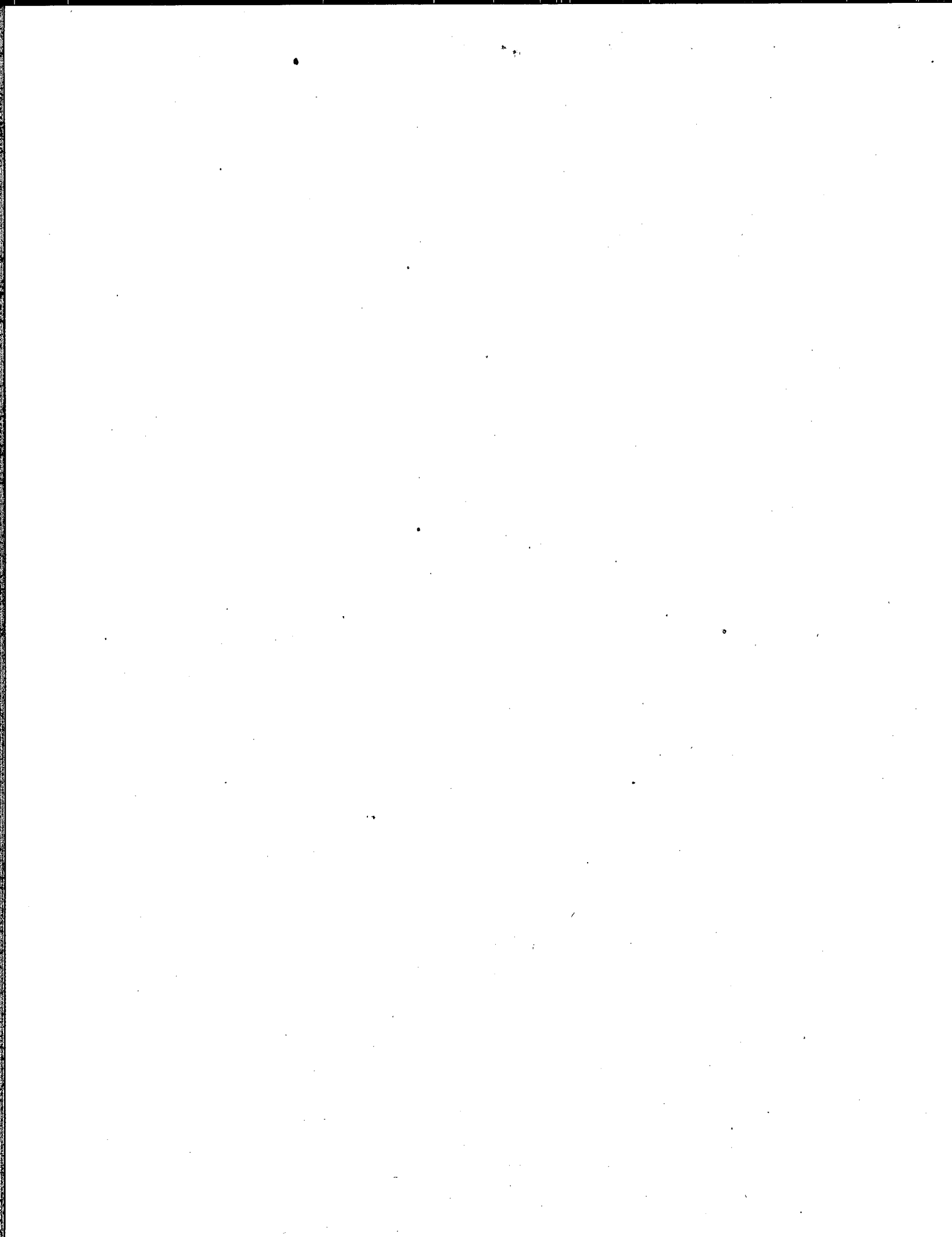
Id. "The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." Id. "In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case." Id.

In this case, the Defendants have made a detailed showing of the Plaintiff's pattern of filing abusive and frivolous litigation. The Plaintiff has filed several lawsuits against Defendants, as well as two separate lawsuits against her former attorneys, all arising from a medical privileging dispute which began in 1997.

It is also clear that the Defendants have no adequate remedy at law. Defendants have already been awarded their attorneys' fees and costs under the Act in the 2005 lawsuit, and this judgment had no impact on the Plaintiff's desire to file the current frivolous lawsuit. The Honorable Thomas L. Hughston, Jr., has also sanctioned the Plaintiff in another lawsuit, against her former attorneys, awarding those former attorneys \$200,000.00 in attorneys' fees and costs in an order filed on November 18, 2009. This Order had no impact on the Plaintiff's decision to file the present lawsuit, and the Plaintiff has shown that she is unwilling to be deterred by judgments against her. Simply put, the Defendants have no other avenue of relief short of an injunction.

This Court also notes that Judge Hughston and the Supreme Court of South Carolina have already enjoined the Plaintiff from filing lawsuits in South Carolina courts without a licensed attorney signing on her behalf. These injunctions also provided no relief to Defendants.

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This Court hereby enjoins the Plaintiff, or anyone on her behalf, filing a lawsuit against East Cooper Community Hospital, Inc.; Tenet HealthSystem Medical, Inc.; or their directors, officers, agents, servants, employees, attorneys, or related entities without such filing being accompanied by a bond or letter of credit, paid into the Clerk of Court at the time of filing, in the amount of \$50,000.00. Such bond or letter of credit will be applied to pay the attorneys' fees and other litigation expenses of any of the foregoing if they are the prevailing party in the action and if they are entitled to such attorneys' fees and other litigation expenses through the imposition of sanctions or otherwise. Furthermore, if the Plaintiff, or anyone on her behalf, files a lawsuit without such a bond or letter of credit, the Defendants may present a certified copy of this Order to the Clerk of Court and, upon presentation, the action should be summarily dismissed by the Clerk.

This Court has carefully considered this relief in an attempt to issue an injunction which is no more comprehensive than required by the facts of this case and the long history of the Plaintiff's litigation activities. The Plaintiff has been sanctioned or warned multiple times by multiple courts. She has been given every opportunity to conform her conduct to the standards of a reasonable attorney.

VII. Plaintiff's procedural arguments for denying Defendants' motion are without merit.

Most of the Plaintiff's arguments for denying the Plaintiff's motion are procedural in nature. This Court rejects these arguments for the following reasons:

1. Plaintiff contends the pending appeal of this Court's summary judgment order warrants a stay of this motion. In Hudson v. Hudson, 290 S.C. 215, 216; 349 S.E.2d 341, 341-42 (1986), the Supreme Court of South Carolina held that a notice of appeal

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does not deprive the circuit court of jurisdiction to consider a timely post-trial motion, which includes a motion for sanctions under the Act.

2. Plaintiff contends that Defendants failed to comply with Rule 59(g), SCRCP, which requires a party to provide a copy of a motion to alter or amend to the judge within ten (10) days after the filing of the motion. In Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002), the South Carolina Court of Appeals held that Rule 59(g) does not affect the timeliness of a post-trial motion, nor does it impact the circuit court's jurisdiction.

3. Plaintiff contends that Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997), compels this Court to deny the Defendants' motion. In Hanahan, the Supreme Court of South Carolina recognized: "Other courts . . . hold that a party who survives pre-trial motions to dismiss and for summary judgment are not subject to sanctions after a trial on the surviving claims." Id. at 157, 485 S.E.2d at 912. "The theory behind these cases is that if a case is submitted to the jury, it cannot be deemed frivolous." Id. Hanahan has no applicability to the facts of the case because this case was not submitted to the jury, and the Plaintiff did not survive pre-trial motions to dismiss or for summary judgment. While the Plaintiff points to the consideration by Judge Dennis of a previous motion to dismiss in this matter as supporting a finding that she survived a pre-trial motion, Judge Dennis clearly stated at the hearing of that motion that he deemed the motion premature and was not ruling on its merits. He never denied the motion. The motion was renewed after a sufficient time to conduct discovery, and summary judgment was entered against the Plaintiff.

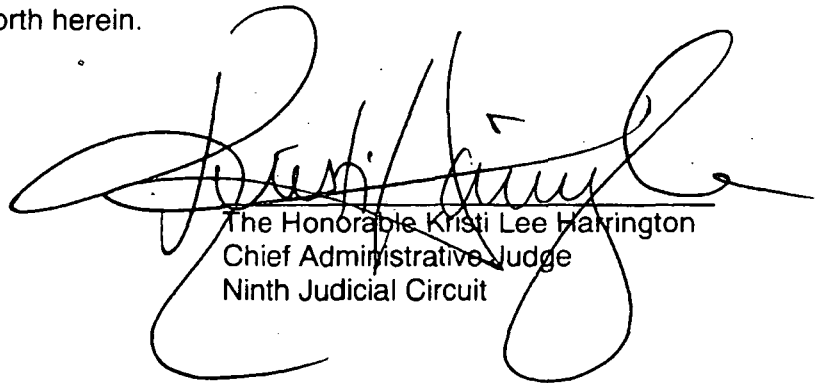
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Conclusion

Defendants have shown that this lawsuit was a renewal of the Plaintiff's 2005 lawsuit against them. The allegations and arguments were the same, and the Plaintiff fails to explain how they are different.

The Plaintiff has shown a long history of ignoring plain facts, clear legal precedent, and previous warnings and sanctions of other Courts.

Under the circumstances, this Court hereby sanctions the Plaintiff pursuant to the Act, awards Defendants their requested attorneys' fees and other litigation expenses, and enjoins the Plaintiff from filing further lawsuits against the Defendants without a bond or letter of credit as set forth herein.



The Honorable Kristi Lee Harrington
Chief Administrative Judge
Ninth Judicial Circuit

January 27, 2012
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2010-CP-10-3410

Dr. Cynthia Holmes, M.D.

Appellant,

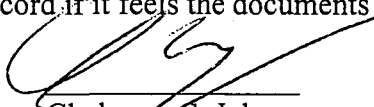
v.

East Cooper Community Hospital, Inc.;
Tenet HealthSystem Medical, Inc.,

Respondents.

COUNSEL'S CERTIFICATE OF COMPLIANCE
SCACR 210(g)

As Counsel for the Appellant, I certify that, the Record on Appeal contains all materials proposed to be included by the parties, and which comply with SCACR 210 and not any other material. The undersigned has not included documents which were proposed but did not comply with Rule 210, SCACR (were not presented to the lower court or tribunal). The parties have conferred regarding this exclusion and agreed that Respondent will bring a motion to supplement the record if it feels the documents should be included as part of the appeal.


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