



# The South Carolina Court of Appeals

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March 15, 2023

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Re: MUSC v. HCA Healthcare, Inc.  
Appellate Case No. 2022-000352

Dear Counsel:

Enclosed is the decision of the Court. The record on appeal, final briefs, and sealed documents must be filed within thirty (30) days of the date of this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "V. Claire Allen". The signature is written in a cursive style with a large initial "V".

CLERK

# The South Carolina Court of Appeals

Medical University of South Carolina and University  
Medical Associates of the Medical University of South  
Carolina, Appellants,

v.

HCA Healthcare, Inc., Trident Medical Center, LLC,  
Terry A. Day, Betsy Kay Davis, Joshua D. Hornig, Eric  
J. Lentsch, David M. Neskey, and Arand K. Sharma,  
Defendants,

Of Which HCA Healthcare, Inc. and Trident Medical  
Center, LLC are the Respondents.

Appellate Case No. 2022-000352

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## ORDER

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Appellants move to file certain "confidential and proprietary documents" under seal. The documents at issue are the subject of the order on appeal, in which the circuit court denied Appellants an injunction to transfer possession of the documents to Appellants. Appellants assert the documents were submitted to the circuit court for *in camera* review, and it is essential that they remain confidential because their value lies in their proprietary nature.

Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, we have the power to control our own records. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). In *Ex parte Capital U-Drive-It*, the Supreme Court of South Carolina analyzed Rule 41.1(b), SCRCP, in deciding whether to seal or unseal a court record. 369 S.C. at 12, 630 S.E.2d at 470. Rule 41.1(b), SCRCP, requires a motion to seal to identify, with specificity, the documents or portions of documents for which sealing is considered necessary, to contain a non-confidential description of the documents, and to be accompanied by a separately sealed attachment labeled

"Confidential Information to be submitted to Court in Connection with the Motion to Seal." Rule 41.1 also requires the moving party to state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

- (1) ensuring the parties' right to a fair trial or hearing;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality of the proceeding;
- (4) the public or professional significance of the proceeding;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and
- (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

When ruling on a motion to seal, the court may also consider the public interest in the proceeding; the private or public status of the litigants and case generally; whether release would enhance the public's understanding of an important historical event; whether the public already has access to information contained in the records; whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470 (2006).

After careful consideration of the motion and the factors enumerated above, Appellants' motion to seal is granted. *See* Rule 41.1(b), SCRCP; *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). Appellants' attachments to Exhibit 6, Exhibit 7, Exhibit 10, and Exhibit 15, below, shall be filed under seal.

  
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FOR THE COURT

Columbia, South Carolina

cc:

**FILED**  
**Mar 15 2023**

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