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**Jun 07 2023**  
**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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Appeal from Charleston County  
Court of Common Pleas  
The Honorable Debra R. McCaslin, Circuit Court Judge

C/A No. 2020-CP-10-02902  
Appellate No. 2021-000487  
Unpublished Opinion No. 2023-UP-205 - Filed May 24, 2023

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Michelle Cha Holliman, individually and as personal representative  
of the Estate of Allen B. Holliman,

Respondent,

v.

We Are Sharing Hope SC, Medical University of South Carolina,  
United Network for Organ Sharing, Jacqueline Honig, M.D., and Darla Welker,

Defendants,

of which We Are Sharing Hope SC and United Network for Organ Sharing are the

Appellants.

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**PETITION FOR REHEARING**  
**behalf of Appellant We Are Sharing Hope SC**

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In this action, Defendant-Appellant We Are Sharing Hope SC (Sharing Hope) appeals from the Order Regarding Discovery issued by the Honorable Debra R. McCaslin which compels production of and discovery responses as to documents/materials which We Are Sharing Hope SC claims are protected by a privilege arising from the self-critical quality assurance and peer-review evaluation it participated in as required by its federal certification as an Organ Procurement Organization (OPO) within the federal Organ Procurement and Transplant Network (OPTN) administered by United Network for Organ Sharing (UNOS), as well as from the Root Cause

Analysis with the donor hospital. The Court has dismissed the appeal as interlocutory: “This order is not immediately appealable under section 44-7-394 of the South Carolina Code (2018) because WASH is not ‘a hospital or affected person.’” As required by Rule 242(d)(2)<sup>1</sup>, SCACR, the Appellant Sharing Hope respectfully petitions for rehearing, pursuant to Rule 221, SCACR, and points to the following points which have been overlooked or misapprehended by the court.

**1. The immediate appeal of this discovery order is statutorily authorized by S.C. Code §44-7-394.**

Sharing Hope has acknowledged that as a general rule, pretrial discovery orders are not directly appealable under §14-3-330, but Sharing Hope maintains that §44-7-394 provides the Court of Appeals with appellate jurisdiction of the pending appeal from the order compelling Sharing Hope to produce materials that were created as part of a peer review process mandated by the federally-created Organ Procurement and Transplant Network. To the extent that the Court considers that §44-7-394 does not apply because Sharing Hope is not a hospital or related person, the Court has overlooked or misapprehended that the merits of that very point are one of the issues in this appeal. The order on appeal contains a specific ruling on §44-7-392 and compels production of documents (and deposition testimony). Accordingly, the order is immediately appealable under the statutory authority of §44-7-394.

**2. The Appellate Court can, and should, exercise pendant appellate jurisdiction over the interconnected issues relating to the peer review privilege as asserted by Sharing Hope.**

Sharing Hope has asserted a peer review privilege based on multiple grounds. In addition to contending that South Carolina law, as found in §40-71-20 and §44-7-392, recognizes a peer

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<sup>1</sup> “Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.”

review privilege for retrospective self-critical analysis in the healthcare field, Sharing Hope also contends that longstanding, well-established public policy supports recognition of a privilege to protect peer review materials generated in the healthcare field. Sharing Hope separately argues that its participation in the root cause analysis conducted with Grand Strand Hospital is protected by § 44-7-392.<sup>2</sup> To the extent that any of these issues, arguably, do not fall squarely within the precise parameters of §44-7-392 (and the appellate jurisdiction conferred by §44-7-394), the Court can and should review the other grounds under its pendent appellate jurisdiction in the interest of judicial efficiency and economy. Morris v. Anderson Cty., 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) (“this Court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation”); Roberts v. Recovery Bureau, Inc., 316 S.C. 492, 495, 450 S.E.2d 616, 618 n. 2 (Ct. App. 1994) (“The appellate courts have discretion, however, to consider an unappealable order if an appealable issue is before the court and a ruling on appeal will avoid unnecessary litigation.”). *See also* Woods v. Rock Hill Fertilizer Co., 102 S.C. 442, 86 S.E. 817, 819 (1915) (“it will be better for both parties in the further progress of the case to have these questions decided”); Tate v. Oxner, 236 S.C. 313, 317, 114 S.E.2d 225, 225 (1960) (“where there is an appealable issue before the Court, an Order refusing a motion to strike may also be considered in order to avoid unnecessary litigation.”).

### **Conclusion**

Wherefore, based on the appellate jurisdiction issues as argued in the brief and in the foregoing petition, Sharing Hope respectfully submits that the Petition for Rehearing should be granted and the case should proceed to disposition on the merits of the privilege issues.

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<sup>2</sup> As an additional ground, Sharing Hope maintains that Virginia law provides a peer review privilege to the materials created by Sharing Hope to meet the requirement of a Virginia entity, relying upon Va. Code Ann. § 8.01-581.17.

Respectfully submitted,

HOOD LAW FIRM, LLC

/s/ Mary Agnes Hood Craig

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**Attorneys for Appellant We Are Sharing Hope SC**

June 7, 2023

Charleston, South Carolina

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SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned certifies that on this **7th** day of **June 2023**, a copy of the **Petition for Rehearing On behalf of Appellant We Are Sharing Hope SC** was served by emailing a copy of each, on the following counsel at the addresses listed below:

John C. Moylan, III, Esquire	<a href="mailto:jmoylan@wyche.com">jmoylan@wyche.com</a>
Mary Lucille Dinkins, Esquire	<a href="mailto:ldinkins@wyche.com">ldinkins@wyche.com</a>
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**HOOD LAW FIRM, LLC**

*/s/ Mary Agnes Hood Craig*

Mary Agnes Hood Craig (SC #6960)

June 7, 2023

**RECEIVED**  
**Jun 07 2023**  
**SC Court of Appeals**

**Via E-Filing & US Mail**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Michelle Cha Holliman, individually and as personal representative of the estate of Allen B. Holliman, Respondent v. We Are Sharing Hope SC, Medical University of South Carolina, United Network for Organ Sharing, Jacqueline Honig, M.D., and Darla Welker, Defendants, of which We Are Sharing Hope SC and United Network for Organ Sharing are the Appellants  
C/A No. 2020-CP-10-02902, Charleston CP  
Appellate Case No. 2021-000487  
HLF File No. 269.009

Dear Ms. Kitchings:

Enclosed please find the original Petition for Rehearing on behalf of Appellant We Are Sharing Hope SC with a Certificate of Service, which we are also electronically filing. We are submitting herewith a \$50.00 check for the motion filing fee by U.S. Mail this same day. We are serving all Counsel of Record by email in accordance with Rule 262, SCACR, and the Supreme Court's order of May 6, 2022.

Kind regards,

Yours truly,

*/s/ Mary Agnes Hood Craig*

Mary Agnes Hood Craig

MHC/hnb

Enclosures

cc w/ enclosure [***Via E-Mail***]:

John C. Moylan, III, Esquire/Mary Lucille Dinkins, Esquire/James Hunter May, Esquire  
Jack G. Gresh, Esquire/Lauren Spears Gresh, Esquire  
Rachel Lewis Anna, Esquire  
Hugh W. Buyck, Esquire/G. Wade Cooper, Esquire  
Christine Kent Toporek, Esquire  
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Kelly M. Jolley, Esquire/Ariail B. Kirk, Esquire