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Jul 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge
Appellate Case No. 2021-000487

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.

**APPELLANT UNITED NETWORK FOR ORGAN SHARING'S
PETITION FOR REHEARING**

This Court dismissed the above-captioned appeal, ruling that the appealed order is interlocutory and not immediately appealable. Appellant United Network for Organ Sharing (UNOS) respectfully submits this Petition for Rehearing. UNOS hereby incorporates the grounds in support of appealability set forth in the Petition for Rehearing by We Are Sharing Hope SC (WASH) and the parties' briefs before this Court.

ARGUMENT

Orders compelling discovery ordinarily are interlocutory and not immediately appealable. Appellate courts will nevertheless address the issues therein when such will guide the bench and bar in the future. *Tucker v. Honda of S.C. Mfg., Inc.*, 582 S.E.2d 405, 407 (S.C. 2003) (“Although [this] appeal is interlocutory in nature, we believe it is to the benefit of the Bench and the Bar that

we clarify the procedure for review of claims of attorney client privilege.”). The instant case presents similar exceptional circumstances. It involves novel questions of South Carolina law that have far-reaching implications for the success of the organ transplant program in South Carolina and the quality of transplant care provided to South Carolina’s citizens.

Assuming this appeal does not come within the immediate appeal provisions in S.C. Code Ann. § 44-7-392 (2018), there remains the question of whether this Court should extend the public policy expressed in numerous statutory and common law peer review and other privileges to South Carolina’s organ transplant system or recognize a common law peer review privilege.

Post-incident investigations and candid self-critical inquiry are essential to the future safety and improvement of South Carolina’s organ transplant system. The absence of a privilege for this peer review process will chill participation in the review to the detriment of organ transplant patients throughout South Carolina. Thus, South Carolina should extend the public policy underlying numerous peer review and other privileges set forth in various statutes and the common law to include the peer review process at issue here. Reaching this issue in this appeal will guide the bench and bar in this case and future cases involving peer review of any future organ transplant incidents in South Carolina. Such guidance now will reduce the number of future appeals (before or after final judgment) and best serve judicial economy to the benefit of South Carolina citizens generally. Moreover, immediate appeals of orders compelling disclosure of such privileged matters are necessary to protect the essential public policy and healthcare purpose of such privileges, *i.e.*, promoting and protecting candid, self-critical inquiry.

CONCLUSION

For all of the foregoing reasons, this Court should retain this appeal and rule upon the merits of the statutory and common law peer review privilege issues in this case.

Respectfully Submitted,

s/Robert L. Widener

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Columbia, SC
July 17, 2023

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of which We Are Sharing Hope SC and
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PROOF OF SERVICE

I, Ann Shuler, an employee of Burr & Forman LLP, certify that, on this 17th day of July, 2023, a copy of *Appellant United Network for Organ Sharing's Petition for Rehearing* was served upon all counsel of record in the above-captioned matter via U.S. Mail and email at the email addresses listed below:

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July 17, 2023

VIA EMAIL (ctappfilings@sccourts.org)

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
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**Re: Michelle Holliman v. We are Sharing Hope SC
Appellate Case No. 2021-000487
Unpublished Opinion No. 2023-UP-205
Submitted May 17, 2023 - Filed May 24, 2023**

Dear Ms. Kitchings:

Attached for filing, please find the Appellant United Network for Organ Sharing's Petition for Rehearing. By copy of this letter we are serving this request upon counsel for Respondents via email and U.S. Mail. Our check for the \$50.00 filing fee will be hand delivered to the Court today.

Sincerely,

Burr & Forman LLP



Robert Widener

RLW/as

Attachment

cc: Mary Agnes Hood Craig, Esquire
Jean Marie Jennings, Esquire
Deborah Harrison Sheffield, Esquire
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Honorable Jenny Abbott Kitchings
July 17, 2023
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