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**Jul 28 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

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Appellate Case No: 2021-000487

Trial Court Case No: 2020-CP-10-02902

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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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**RESPONDENT’S RETURN TO APPELLANTS’ PETITIONS FOR REHEARING<sup>1</sup>**

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This Court correctly applied well-established law in dismissing Appellants’ We Are Sharing Hope SC’s (WASH) and United Network for Organ Sharing’s (UNOS) notices of appeal because the circuit court’s interlocutory discovery order is not immediately appealable due to the fact that neither Appellant is a hospital or affected person under S.C. Code § 44-7-394(C), as this Court correctly held in its Order dismissing the appeals. Because neither WASH nor UNOS is a hospital or affected person under the applicable statute, the ordinary rules of appealability require

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<sup>1</sup> For the sake of efficiency, Respondent files this Return addressing both Appellants’ Petitions for Rehearing.

dismissal of this appeal of an interlocutory discovery order.

Appellants do not (and cannot) argue in their petitions for rehearing that they are hospitals or affected persons under § 44-7-394. Rather, they once again ask this Court to ignore the mountain of case law holding—for good reason—that South Carolina’s appellate courts will not entertain immediate appeals from interlocutory discovery orders. *E.g.*, *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (“[T]he fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.”); *Ex Parte Wilson*, 367 S.C. 7, 12-13, 625 S.E.2d 205, 208 (2005) (“As a general rule, only final judgments are appealable. . . . [A]n order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision.” (citations omitted)); *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003) (“[W]e note an order compelling discovery does not ordinarily involve the merits of the case and may not be appealed.”); *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (“Discovery orders, however, are interlocutory and are not immediately appealable.” (citation omitted)); *Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 335, 852 S.E.2d 744, 747 (Ct. App. 2020) (“[D]iscovery orders are interlocutory and not immediately appealable.” (citation omitted)). The Court correctly declined Appellants’ invitation to ignore this well-established case law.

UNOS’s petition does not specify any grounds the Court overlooked or misapplied in dismissing the appeal, which is required by Rule 221(a), SCACR. Instead, UNOS asks this Court to create a common law peer review privilege or to judicially extend the statutory provisions set by the General Assembly. UNOS’s argument lies not with this Court, but rather is one for the General Assembly, especially in light of the extensive statutory law governing this issue. *See S.C.*

Code Ann. § 40-71-20; §§ 44-7-392, 394 (defining which entities qualify for peer review privilege). Whether to expand the reach of these provisions is an issue for the General Assembly and does not warrant the rehearing of an unappealable interlocutory discovery order.

WASH's petition fares no better. Although WASH does not claim that it is a hospital or affected person under § 44-7-394, it nevertheless argues that it should be permitted to immediately appeal the underlying discovery order pursuant to the statute because that order rejected WASH's privilege claim under the statute. That argument is circular. This Court is required to determine the threshold issue of whether the underlying order is appealable, and WASH is not entitled to immediately appeal the underlying order pursuant to § 44-7-394 just because the circuit court rejected its claim of privilege under the statute. As this Court correctly held, and as WASH does not dispute, WASH is not a hospital or affected person under § 44-7-394. Therefore, its immediate appeal of the interlocutory discovery order is not permitted.

WASH also argues that the Court should exercise its discretionary pendant appellate jurisdiction to recognize a judicially-created privilege over all peer review materials in the healthcare field. For the Court to exercise its discretionary pendant jurisdiction, however, there must be an order that *is* appealable. The cases cited by WASH do not hold otherwise and simply stand for the proposition that when there *is* an appealable issue before the Court (which there is not in this case), the Court may exercise its discretion to consider other issues that would ordinarily be unappealable at the same time. WASH's suggestion that the Court should reach the merits here when there is no appealable order before the Court is incorrect.

### **CONCLUSION**

This Court correctly determined that neither WASH nor UNOS may immediately appeal the underlying circuit court order because neither Appellant is a hospital or affected person under § 44-7-394. Neither WASH nor UNOS raise any argument that changes this basic fact or justifies

rehearing. Therefore, Respondent respectfully requests that this Court deny Appellants' Petitions for Rehearing.

Respectfully submitted,

WYCHE, P.A.

*s/John C. Moylan, III*

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Of which We Are Sharing Hope SC and United Network for Organ  
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Appellants.

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**PROOF OF SERVICE**

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This is to certify that I have this date caused to be served a true and correct copy of the foregoing **Respondent's Return to Appellants' Petitions for Rehearing** on counsel in this action by email, pursuant to the Supreme Court's Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules dated May 6, 2022, by electronic mail, addressed as follows:

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*s/John C. Moylan, III*

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SC Court of Appeals

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*Via E-Filing*

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

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

Dear Ms. Kitchings:

Enclosed for filing with your office, please find the Respondent's Return to Petitions for Rehearing and Proof of Service.

All counsel of record are being served with same via electronic mail.

Sincerely,

*s/John C. Moylan, III*

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Enclosure

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