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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court

Trial Court Case No.: 2019-CP-26-05302

Appellate Case No.: 2023-000577

Claudine Garver, Both Individually and as Personal Representative of the
Estate of Jeremy Garver, Appellant,

v.

McLeod Loris Seacoast Hospital; McLeod Physician Associates, II; and
Michael McCaffrey, M.D., Defendants,

Of which McLeod Loris Seacoast Hospital is the Respondent.

RECORD ON APPEAL

FEIDLER LAW FIRM, LLC
Stefan B. Feidler, Esq. (S.C. Bar # 101918)
P.O. Box 22273
Charleston, SC 29413
(843) 790-9015
Attorney for Appellant

BUYCK LAW FIRM, LLC
Hugh W. Buyck, Esq. (S.C. Bar # 66462)
Jeffrey H. Lappin, Esq. (S.C. Bar # 105073)
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
(843) 377-1400
Attorneys for the Respondent

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Claudine Garver, Both Individually and as	)	C/A No. 2019-CP-26-05302
Personal Representative of the Estate of	)	
Jeremy Garver,	)	
	)	
	)	ORDER
	)	GRANTING DEFENDANT MCLEOD
Versus	)	LORIS SEACOAST HOSPITAL'S
	)	MOTION FOR SUMMARY JUDGMENT
McLeod Loris Seacoast Hospital; McLeod	)	
Physician Associates, II; and Michael	)	
McCaffrey, M.D.	)	
	)	
Defendants.	)	

Defendant McLeod Loris Seacoast Hospital filed a Motion for Summary Judgement pursuant to Rule 56 of the South Carolina Rules of Civil procedure. A hearing was held via WebEx conferencing on January 3, 2023. After having closely reviewed memos, depositions, arguments of the parties, and applicable law, this Court hereby **grants** McLeod Loris Seacoast Hospital's Motion for Summary Judgment.

Standard of Review

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. City of Columbia v. ACLU, 323 S.C. 384, 475 S.E.2d 747 (1996); Rule 56 (c) SCRCF. The plain language of Rule 56 (c) SCRCF mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). A party cannot escape summary judgment on the mere hope that something may develop at trial or by remaining

silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977). Conclusory allegations or denials, without more, are insufficient to defeat a motion for summary judgment. Ross v. Communication Satellite Corp., 759 F. 2d. 355, 365 (4th Cir. 1985); see also Baber v. Hosp. Corp. of Am., 977 F. 2d 872, 874-75 (4th Cir. 1992) (holding that the nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment).

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. Id. When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing, that is, pointing out to the [trial] court that there is an absence of evidence to support the nonmoving party's case. Id. at 825. The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim. Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, 382 (S.C. 1994) (noting that where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot

simply rest on mere allegations or denials contained in the pleadings. See Singleton, 659 S.E.2d at 203. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. Thompkins v. Festival Centre Group, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

Therefore, where the Plaintiff relies solely upon the pleadings, files no counter affidavits, and makes no factual showing in opposition to motion for summary judgment, the court is required to grant summary judgment, if under the facts presented by the Defendant, he is entitled to judgment as a matter of law. Garrett v. Reese, 262 S.C. 327, 204 S.E.2d 432 (1974).

Issues

The allegations of the Complaint include assertions the Codefendant neurologist, Michael McCaffrey, MD, mis-diagnosed a basilar aneurysm for approximately 22 months beginning treatment of the Decedent on December 29, 2015. [Defendant's Exhibit 1- McCaffrey Medical Records]. The Decedent presented through the McLeod Loris Seacoast Hospital Emergency Department on October 23, 2017. [Defendant's Exhibit 2- McLeod Seacoast Records]. It was through this ER visit when radiographic studies first diagnosed the brain tumor. [Id.]. Mr. Garver then succumbed to this unexpected finding on November 4, 2017. [Defendant's Exhibit 3- Grandstand Medical Records.]. At no time was Defendant Dr. McCaffrey an employee of this Defendant, McLeod Loris Seacoast Hospital. Rather he was employed by and through the properly named entity, McLeod Physician Associates, II, a separate 501(c)(3) corporation serving as a physician practice plan. [Affidavit, William S. Barnes, Jr., Esq.]

Plaintiff has only identified one medical expert witness, Neurologist Thomas Ward, M.D. [Defendant's Exhibit 4 - Plaintiff's Third Response to Defendants' Interrogatories]. Dr. Ward does not hold himself out as an expert in the standard of care for emergency medicine.

[Defendant's Exhibit 5 - Deposition of Thomas Ward p. 72: 6-9]. Dr. Ward testified that he will not opine at the trial of this case that the Defendant Hospital deviated from the standard of care.

2 Q. Well, then, in that regard let me make
 3 sure that I'm clear for the record.
 4 You will not come to trial in this case
 5 and say that any of the staff at McLeod Seacoast
 6 Hospital, including Dr. Larson, the ER doctor –
 7 you wouldn't contend there were deviations from the
 8 standard of care on October the 23rd; is that
 9 correct?
 10 A. I think that's what I would agree.

[Id. at p.73: 4-10].

Dr. Ward additionally admitted he would not offer that the hospital proximately caused the death of the Decedent.

16 Q. Are you going to argue at the trial of
 17 this case that McLeod Seacoast Hospital is
 18 responsible for Mr. Garver's death?
 19 A. I don't think I would come to that
 20 conclusion.

[Id. at p. 75: 16-20].

To rebut the position of failure to prove medical negligence, Plaintiff asserts the allegations against Defendant Seacoast pertain to a defective referral communication process that under our common tort law, are not guided by the requirements of S.C. Code Ann. Section 15-79-125 et seq., but rather nonmedical and/or administrative care. See Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).

Plaintiff argues the hospital failed to timely refer the decedent for follow-up care for the performance of an MRI. This argument, however, is misplaced as the Plaintiff was referred to MUSC for the MRI, received an MRI and the Plaintiff previously asserted claims against MUSC for medical negligence proximately causing the Plaintiff's death. See Claudine Garver, Both

Individually and as Personal Representative of the Estate of Jeremy Garver v. Medical University of South Carolina d/b/a MUSC, Court of Common Pleas, Charleston County, South Carolina C/A # 2019-CP-10-6565.

Plaintiff failed to meet her burden to assert allegations of medical negligence or negligent administrative care.

A medical malpractice plaintiff must prove, by a preponderance of the evidence:

- (1) The presence of a doctor-patient relationship between the parties;
- (2) Recognized and generally accepted standards, practices and procedures which are exercised by competent physicians in the same branch of medicine under similar circumstances;
- (3) The medical or health professional's negligence, deviating from generally accepted standards, practices, and procedures;
- (4) Such negligence being the proximate cause of the plaintiff's injury; and
- (5) An injury to the plaintiff.

Jamison v. Hilton , 413 S.C. 133, 140-41, 775 S.E.2d 58, 62 (Ct. App. 2015) (quoting Brouwer v. Sisters of Charity Providence Hosps. , 409 S.C. 514, 521, 763 S.E.2d 200, 203 (2014).

Despite ample time for extensive discovery, the Court finds that the Plaintiff has presented no evidence, affidavits or expert witness testimony of any deviation from the applicable standard of care as to the Hospital or its employees. As reflected above, Plaintiff's only expert, Dr. Ward, testified specifically that he would offer no such testimony. Further, Dr. McCaffrey was not employed by McLeod Loris Seacoast Hospital so Plaintiff cannot impute liability to the hospital for the actions of Dr. McCaffrey. Plaintiff admits Dr. McCaffrey was not involved in the October 23, 2017 emergency room visit at issue.

Plaintiff has failed to set forth any expert testimony from an emergency medicine expert. Further, his only expert witness, who is a neurology expert, failed to proffer any testimony that McLeod Loris Seacoast Hospital deviated from the standard of care or was the cause of Plaintiff's death.

To the extent the Plaintiff relies on Dawkins for the proposition there was a failure on the part of the hospital to appropriately refer or administratively speak with MUSC concerning an MRI referral, this too fails. Plaintiff presents no testimony as to the professional standards required of the Hospital under these circumstances or how the alleged failure to timely refer the decedent to MUSC proximately caused the decedent's death. The MRI was performed at MUSC and Plaintiff has shown no causal relationship through any alleged. As noted, Plaintiff's sole expert, Dr. Ward, testified specifically he would not opine that the Hospital caused the decedent's demise.

THEREFORE, IT IS ORDERED there are no genuine issues of material fact concerning McLeod Loris Seacoast Hospital and judgment as a matter of law is appropriate pursuant to SCRCP 56(c). McLeod Loris Seacoast Hospital's Motion for Summary Judgment is hereby granted, ending this matter as to McLeod Loris Seacoast Hospital with prejudice.

IT IS SO ORDERED!

January __, 2023

The Honorable William H. Seals



Horry Common Pleas

Case Caption: Claudine Garver , plaintiff, et al VS McLeod Loris Seacoast Hospital
, defendant, et al
Case Number: 2019CP2605302
Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-02-14 12:25:26 page 7 of 7

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2605302

Claudine Garver et al
PLAINTIFF(S)

Michael McCaffrey et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful and deliberate consideration, Judge Seals respectfully denies Plaintiff's Motion to Reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/09/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Horry Common Pleas

Case Caption: Claudine Garver , plaintiff, et al VS McLeod Loris Seacoast Hospital
, defendant, et al
Case Number: 2019CP2605302
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-03-09 14:52:46 page 3 of 3

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-NI-26-_____

CLAUDINE GARVER as Personal
Representative for the ESTATE OF
JEREMY GARVER,

Plaintiff,

v.

McLEOD SEACOAST; McLEOD
HEALTH; McLEOD SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; McLEOD
NEUROLOGY SEACOAST;
DIAGNOSTIC SERVICES OF S.C., LLC;
MICHEAL McCAFFREY, M.D.,

Defendant(s).

**NOTICE OF INTENT TO FILE SUIT IN A
PROFESSIONAL MALPRACTICE CASE
(S.C. Code Ann. 15-79-125)**

The Plaintiff does hereby submit this Notice of Intent to File Suit pursuant to §15-79-125 of the *1976 South Carolina Code of Laws* as amended and hereby submits this Notice of Intent to file suit against the Defendants named above. If Defendant(s) do not raise arbitration, Plaintiff will assume no arbitration clause exists or Defendant(s) have abandoned any alleged claim to arbitration.

- I. Venue is proper in this court because (1) Defendants maintain their business headquarters in Horry County; (2) Defendants principal place of business is located in Horry County; and/or (3) the most substantial part of the alleged act or omission giving rise to this cause of action occurred in this County.
- II. An Affidavit of an expert witness, subject to the Affidavit requirements established in §15-36-100 of the *1976 South Carolina Code of Laws* as amended, is attached hereto as Exhibit A along with the CV of said expert witness.
- III. A short and plain statement of the facts showing that the Plaintiff is entitled to relief;

- a. From December 2015 to October 2017, Jeremy Garver presented to Defendants with complaints of headaches lasting 24-48 hours, left sided paralysis, significant scotomatous lasting 20-30 minutes, increased migraines with increased intensity, occipital headaches, and stroke like symptoms including numbness in extremities.
- b. On or about November 1, 2017, a cerebral angiogram revealed a large fusiform aneurysm arising from the mid basilar segment. Surgery was scheduled for November 8, 2017.
- c. That on November 4, 2017, Jeremy Garver was pronounced dead due to subarachnoid hemorrhage and ruptured cerebral aneurysm.
- d. That Jeremy Garver's injuries were foreseeable to Defendants and Defendants knew or should have known about, and could have prevented, the injuries to Jeremy Garver by providing proper treatment consistent with the industry standards.
- e. That Jeremy Garver's injuries and death were a direct and proximate result of Defendants' deviation from the generally accepted standard of care provided by similarly situated medical providers.
- f. That Jeremy Garver would not have endured the injuries and death, but for Defendants' failure to exercise a reasonable standard of care for Jeremy Garver.
- g. Numerous failures, deficiencies, omissions, and breaches of the standard of care have been committed by the Defendants with respect to Plaintiff and/or Plaintiff's decedent. These include, but are not limited to: neglect; corporate negligence and mismanagement; failure to exercise independent judgment as patient advocates; failure to ensure proper preventative measures were in place to prevent such injuries; failure to properly assess Jeremy Garver; failure to properly train staff;

failure to properly supervise; and failure to abide by applicable federal and state laws governing hospitals. The above deficiencies, neglect, and failures caused Plaintiff and/or Plaintiff's decedent pain and suffering, death, and medical bills. See attached Expert Affidavit.

- h. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, and has otherwise been damaged and injured.
- i. A more complete statement of facts is attached hereto in the format of a draft complaint.

IV. Standard interrogatories and responses are attached hereto as Exhibit B.

V. Pursuant to S.C. Code § 15-79-125(c), you are notified of the statutory requirement to participate in a mediation conference "within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit . . ." Plaintiff is ready and willing to schedule such mediation immediately. If mediation proves unsuccessful, Plaintiff will file the Summons and Complaint, as provided in S.C. Code § 15-79-125.

VI. Please take notice that pursuant to the *South Carolina Court-Annexed ADR Rule (Rule 4)* you are advised that this dispute is subject to pre-suit mediation within 120 days and that the names of the primary and secondary mediators¹ are:

Primary Mediator: _____ Secondary Mediator: _____

¹ Notwithstanding the Clerk of Court's appointment, the parties by agreement may select a different mediator at any time.

As appointed by the Clerk of Court Horry County the ____ day of ____, 2019.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

BY /s/ Stefan B. Feidler
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

Dated at Charleston, South Carolina
This 15 day of 1, 2019

PLEASE READ CAREFULLY – WAIVER OF ARBITRATION AGREEMENT

IF DEFENDANT(S) CONTEND(S) THERE IS AN ARBITRATION AGREEMENT IN QUESTION IN THIS MATTER, PLAINTIFF HEREBY DEMANDS A COPY OF SAME. THE FAILURE TO PROVIDE A COPY OF ANY ARBITRATION AGREEMENT WITHIN SIXTY (60) DAYS OF SERVICE SHALL BE DEEMED A WAIVER OF ARBITRATION. ANY DELAY AND/OR ADDITIONAL EXPENSES INCURRED BY PLAINTIFF IN PURSUING THIS MATTER WHEREBY AN ARBITRATION AGREEMENT EXISTS AND DEFENDANT(S) FAIL TO PROVIDE THE SAME WITHIN SIXTY (60) DAYS OF SERVICE, THEREBY CAUSING PREJUDICE TO PLAINTIFF, WILL BE DEEMED A WAIVER. PLAINTIFF PREVIOUSLY REQUESTED DEFENDANT(S) PROVIDE "ANY AND ALL ADMISSION PAPERWORK INCLUDING ANY AND ALL ARBITRATION AGREEMENT(S)." AS OF THE DATE OF THE FILING OF THIS MATTER DEFENDANT(S) HAVE NOT PROVIDED AN ARBITRATION AGREEMENT. IF THE PARTIES MOVE FORWARD WITH PRE-SUIT MEDIATION IN ACCORDANCE WITH SOUTH CAROLINA CODE ANN. SECTION 15-79-125(C) AND DEFENDANT(S) FAIL TO PRODUCE AN ARBITRATION AGREEMENT, PLAINTIFF WILL ASSUME THERE IS NO ARBITRATION AGREEMENT OR DEFENDANT(S) WAIVE THE RIGHT TO ENFORCE ANY ARBITRATION AGREEMENT. IF PLAINTIFF DISCOVERS THERE IS AN ARBITRATION AGREEMENT AT OR AFTER PRE-SUIT MEDIATION, PLAINTIFF WILL MOVE TO STRIKE DEFENDANT(S) RIGHT TO ENFORCE ARBITRATION AND FOR ANY AND ALL COSTS ASSOCIATED WITH THE MOTION, PRE-SUIT MEDIATION, AND EXPENSES (i.e. EXPERT).

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

McLEOD LORIS SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; and MICHAEL
McCAFFREY, M.D.,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorneys, Stefan B. Feidler , Eric M. Poulin, Roy T. Willey, IV, at his/their office, 32 Ann Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Dated at Charleston, South Carolina on the 19 day of August, 2019.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler

Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

McLEOD LORIS SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; MICHAEL
McCAFFREY, M.D.,

Defendant(s).

COMPLAINT
(Jury Trial Demanded)

The Plaintiff, complaining of the Defendants, alleges and says as follows:

PARTIES & JURISDICTION

1. Plaintiff, Claudine Garver, both Individually and as Personal Representative of the Estate of Jeremy Garver ("Plaintiff"), was duly appointed as the Personal Representative of the Estate of Jeremy Garver (hereinafter "Mr. Garver" or "Jeremy Garver"), the deceased, on December 15, 2017, in the Horry County Probate Court located in South Carolina. Plaintiff is therefore authorized to bring this action in tort to recover for Jeremy Garver's wrongful death, for the damages to the wrongful death beneficiaries of Jeremy Garver, and for claims belonging to Jeremy Garver in life and belonging to his Estate, including, but not limited to, pre-death pain and suffering, mental distress, medical bills, loss of quality of life to the decedent, and funeral expenses. S.C. §§ 15-590, 15-51-10, 15-51-20, and 15-5-100.
2. Upon information and belief, Defendants McLeod Loris Seacoast, McLeod Physician Associates, II, are incorporated in the State of South Carolina, and maintain their principal places of business in Horry County, State of South Carolina.

3. Upon information and belief, Defendant Michael McCaffrey, M.D., is a citizen of Horry County, State of South Carolina.
4. Whenever the term “McLeod Defendants” is utilized in this Complaint, such terms collectively refers to and includes all named Defendants in this lawsuit unless specifically restricted within a cause of action or as further defined below.
5. Upon information and belief, the McLeod Defendants at all times owned, operated, maintained, and/or controlled McLeod Seacoast Hospital (“the Hospital”).
6. Upon information and belief, at all material times, the McLeod Defendants were responsible for ensuring that the activities and operations of the Hospital complied with all applicable state and federal statutes, laws, and regulations.
7. Upon information and belief, at all material times, the Hospital was a participant in the Medicare and Medicaid programs. The McLeod Defendants were, therefore, required to comply with the provisions of 42 C.F.R. § 482.1 *et seq.*
8. Whenever in this Complaint it is alleged that the McLeod Defendants did any act or failed to do any act, it is meant that the officers, agents, or employees of McLeod Defendants respectively performed, participated in, or failed to perform such acts while in the course and scope of their employment or agency relationship with the McLeod Defendants .
9. The Defendants are subject to the jurisdiction of this Honorable Court.
10. The causes of action sued upon arose in Horry County, State of South Carolina.
11. Defendants are joint tort-feasors and were all jointly, directly, and vicariously liable for the care and treatment Jeremy Garver received.
12. Venue is, therefore, proper for all Defendants in Horry County, State of South Carolina.

13. That pursuant to S.C. Code Ann § 15-36-100, Plaintiff filed the Notice of Intent, Expert Affidavit, and Plaintiff's Responses to Standard and First Interrogatories on January 15, 2019.
14. That pursuant to S.C. Code Ann § 15-36-100, the parties conducted pre-suit mediation and an ADR Report was filed with the Court.
15. That "not every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).
16. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.'" Id. at 178, 758 S.E.2d at 504 (further citations omitted).
17. That 'the statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care.' Id. (further citation omitted).
18. "Thus, medical providers are still subject to claims sounding in ordinary negligence." Id. (further citations omitted).
19. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Horry County, State of South Carolina.

BACKGROUND FACTS

20. On or about December 29, 2015, Mr. Garver presented to the McLeod Defendants complaining of headaches, neck pain, and shoulder pain. Mr. Garver complained of moderate to severe pain that would last for hours, located in his bilateral shoulder radiating up into the

bilateral scalp/temporalis. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a two (2) month follow up was scheduled.

21. On or about February 5, 2016, Mr. Garver presented to the McLeod Defendants complaining of frequent headaches. Notes reveal Mr. Garver administered nine (9) Imitrex pills since last visit on December 29, 2015. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
22. On or about May 31, 2016, Mr. Garver presented to the McLeod Defendants with complaints of nine (9) headaches per month for last three (3) months. Mr. Garver mentioned these headaches would wake him up and last forty-eight (48) hours. Mr. Garver developed significant scotomatous lasting 20-30 minutes. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
23. On or about September 21, 2016, Mr. Garver presented to the McLeod Defendants with complaints of increased migraines with increased intensity, and throbbing pain associated with photophobia and phonophobia, which caused nausea/vomiting. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
24. On or about March 21, 2017, Mr. Garver presented to the McLeod Defendants with complaint of severe headaches four (4) to five (5) times a year in right occipital region of scalp radiating to the neck and across shoulders, headaches did not improve with medications, and numbness in feet. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.

25. On or about May 23, 2017, Mr. Garver presented to the McLeod Defendants with complaints of worsening occipital headaches. Mr. Garver was treated with bilateral occipital nerve block. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
26. On September 26, 2017, Mr. Garver presented to the McLeod Defendants with chronic migraines. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled, and bilateral occipital neuralgia.
27. On or about October 23, 2017, Mr. Garver presented to the McLeod Defendants with stroke like symptoms.
28. On or about October 23, 2017, a nonenhanced CT scan revealed a non-ruptured basilar or vertebral basilar junction aneurysm with localized mass effect on the pons after Mr. Garver presented with complaints of weakness on left side since 3:00pm (EST), history of migraines with headaches as well as left sided paresthesia and gait instability.
29. Upon information and belief, on October 24, 2017, the McLeod Defendants referred Jeremy Garver for a MRI/brain scan.
30. On or about October 30, 2017, it was discovered that Mr. Garver was suffering from an aneurysm of basilar artery. Surgery was immediately scheduled for on or about November 8, 2017.
31. On or about November 3, 2017, Mr. Garver was admitted to the McLeod Defendants under cardiac arrest.
32. On November 3, 2017, Mr. Garver was admitted to Grand Strand Regional Medical Center for neurosurgical care.

33. On November 4, 2017 at 10:27am (EST) Mr. Garver was pronounced dead due to Subarachnoid Hemorrhage and Ruptured Cerebral Aneurysm.
34. That the aforementioned dates whereby Jeremy Garver presented to the McLeod Defendants for treatment prior to October 2017, constitute different occurrences whereby the McLeod Defendants breached the standard of care resulting in conscious pain and suffering.
35. At all material times, the McLeod Defendants were engaged in the business of providing hospital and healthcare services to patients of the Hospital and were responsible to patients of the hospital for the provision of appropriate assessments, diagnosis, care, and treatment. Further, the McLeod Defendants charged and were paid for services rendered to Jeremy Garver.
36. At all material times, both the medical professionals and custodial care provider staff including medical, nursing, pharmacy, dietary, and rehabilitative staff and custodial care provider staff ("hospital staff") at the Hospital were agents, employees, and/or servants, either actual or apparent, of the McLeod Defendants so that any acts or omissions on the part of the same would be attributable to and imputed to the McLeod Defendants pursuant to the doctrine of *respondeat superior* or other similar theories of liability. Alternatively, the hospital staff were borrowed servants of the McLeod Defendants.
37. As a hospital patient, Jeremy Garver was entitled to and had the right to receive that degree of care, skill, and diligence ordinarily employed by members of the health care profession under the same or similar conditions and like surrounding circumstances.
38. At all material times, the McLeod Defendants represented that: (a) they were competent to provide Jeremy Garver with the necessary care, treatment, and services and would provide

the same; and (b) that they were capable of successfully managing Jeremy Garver's condition.

39. Despite these representations, during his admission(s) to the Hospital, Jeremy Garver suffered multiple injuries due to the negligent acts and/or omissions of the McLeod Defendants, including, but not limited to: (a) subarachnoid hemorrhage; (b) ruptured cerebral aneurysm; (c) physical suffering and mental anguish; (d) untreated and unmanaged pain; and (e) untimely death due to McLeod Defendants negligent acts and/or omissions.

FIRST CAUSE OF ACTION
(Wrongful Death/Professional Negligence/Gross Negligence)

40. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
41. This count involves professional negligence perpetrated by the McLeod Defendants through hospital staff who provided services individually and/or in the course and scope of their employment to Jeremy Garver while a patient of McLeod Defendants.
42. The McLeod Defendants, individually and collectively and by virtue of their own independent actions and while acting as agents, servants, and/or employees of one another, and while acting through the healthcare providers and the hospital staff employed or utilized by them at the Hospital, owed a duty to Jeremy Garver to comply with the standard of care and skill exercised by healthcare providers generally under similar conditions and like surrounding circumstances as those presented by Jeremy Garver during his multiple admissions to the Hospital.
43. During Jeremy Garver's multiple admissions, the McLeod Defendants, individually and collectively, and by virtue of their own independent actions, and while acting as agents (actual or apparent), servants, and/or employees of one another, and while acting through the

healthcare providers and the hospital staff employed or utilized by them at the hospital, breached the applicable standard of care with respect to their assessment, diagnosis, planning, care, treatment, and evaluation of Jeremy Garver.

44. That the McLeod Defendants had a duty to do that which the reasonably prudent health care provider or health care institution would do or not do in the same or similar circumstances.

45. The McLeod Defendants, acting individually and/or as agents, servants, or employees, breached their duties to Plaintiff and/or Jeremy Garver, departed from the prevailing professional standards of care, and were careless, negligent, reckless, willful, wanton, jointly and severally, including, but not limited to the following particulars whether singularly, concurrently, or in combination, to wit:

- a. Failure to conduct proper assessments of Jeremy Garver;
- b. Failure to properly warn Jeremy Garver;
- c. Failure to properly assess Jeremy Garver;
- d. Failure to refer Jeremy Garver;
- e. Failure to conduct appropriate assessments and inspections of Jeremy Garver's condition(s);
- f. Failure to properly control Jeremy Garver's condition(s);
- g. Failure to properly monitor Jeremy Garver;
- h. Failure to properly monitor the progression of Jeremy Garver's symptoms;
- i. Failure to recognize the severity of Jeremy Garver's condition, and failing to properly diagnose, monitor, refer, and treat Jeremy Garver's conditions;
- j. Failure to transfer Jeremy Garver in a timely manner for CT Scan, MRI, and/or surgical intervention;

- k. Failure to properly communicate and explain the urgency of Jeremy Garver's condition(s) and/or symptoms;
- l. Failing to make certain that Jeremy Garver received the appropriate referral(s) and/or surgical intervention(s) and/or transfer to a facility in a timely manner so that the appropriate surgical interventions could be accomplished in a timely manner;
- m. Causing a delay in the surgical intervention necessary to treat Jeremy Garver's condition;
- n. Failure to respond to an emergency situation in an appropriate and timely manner;
- o. Failure to use due care to determine the extent and severity of Jeremy Garver's condition;
- p. Failure to properly consider complications of the aneurysm as a possible explanation of Jeremy Garver's continued signs and symptoms;
- q. Failure to take adequate steps for evaluation and treatment of Jeremy Garver's symptoms and/or conditions;
- r. Failure to avoid delay in the transfer of Jeremy Garver to an appropriate medical care provider;
- s. Failure to properly examine Jeremy Garver;
- t. Failure to properly consult the records of previous admissions to Defendants' facility and/or previous admissions to other medical providers;
- u. Failure to consult with a physician properly qualified to assess and treat the condition(s) of Jeremy Garver;
- v. Failure to admit Jeremy Garver to the hospital;

- w. Failure to properly consider complications of the aneurysm, as a possible explanation of Jeremy Garver's signs and symptoms; and,
 - x. Failure to utilize appropriate measure to treat Jeremy Garver condition;
 - y. Failing to provide the appropriate referral for surgical interventions;
 - z. Failing to recognize the warning signs associated with Jeremy Garver's condition(s) and/or symptoms;
 - aa. Failing to comply with applicable state and federal codes, regulations, statutes, customs and standards, including, but not limited to without limitation, the Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd *et seq.*, DHEC R. 61-16 *et seq.*;
 - bb. Failing to exercise that degree of knowledge, care, and skill in the interpretation, diagnosis, care, and treatment of Jeremy Garver's medical condition ordinarily possess and exercised by physicians and medical personnel similarly situated throughout the United States, including the State of South Carolina; and
 - cc. Departing from the generally accepted standards of the medical practice, which existed throughout the United States, including the State of South Carolina, in the interpretation, diagnosis, care, and treatment of Jeremy Garver's medical condition(s).
46. Prior to his untimely death, decedent Jeremy Garver was in good health. At the time of his death, Jeremy Garver was 42 years old and had a life expectancy of 36.46 years pursuant to S.C. Code Ann. § 19-1-150.
47. One or more of the deviations from the standard of care as set forth above proximately caused severe injury to Jeremy Garver, which resulted in his death. The rupture of the

subarachnoid hemorrhage and/or cerebral aneurysm more likely than not would not have occurred had there been reasonable care, treatment, and monitoring of Jeremy Garver prior to his transfer/referral for a CT scan and/or MRI, including monitoring Jeremy Garver's symptoms, controlling Jeremy Garver's symptoms, monitoring the progression of Jeremy Garver's symptoms, and/or transferring/referring Jeremy Garver in a timely manner for urgent care and/or surgery. If the McLeod Defendants had not deviated from the standard of care, Jeremy Garver's rupture of the subarachnoid hemorrhage and/or cerebral aneurysm would not have occurred and Jeremy Garver would not have died.

48. That Jeremy Garver suffered from a ruptured subarachnoid hemorrhage and/or cerebral aneurysm.
49. Because of the breaches of the standard of care enumerated herein, Jeremy Garver and/or Plaintiff suffered significant damages, including, but not limited to ruptured subarachnoid hemorrhage and/or cerebral aneurysm, cardiac arrest, pain and suffering, and death.
50. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of the McLeod Defendants, as set forth above, and of Jeremy Garver's premature death, Jeremy Garver's statutory beneficiaries have suffered damages in the form of pecuniary loss; funeral and burial expenses; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship; deprivation of the use and comfort of Jeremy Garver's society; loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries; and loss of services. As a further direct and proximate result of the negligent, careless, reckless, and grossly negligent conduct of the McLeod Defendants as set forth above. Plaintiff has been deprived of lost income and the present value of the accumulations that Jeremy Garver would have made to the estate had he lived out his normal life

expectancy; has become liable for sums of money for medicine and medical services, care, and treatment for Jeremy Garver's injuries; and has become liable for large sums of money for funeral and other related burial expenses, Therefore, Plaintiff is entitled to recover actual and exemplary damages in an amount to be determined by the trier of fact, together with the costs and disbursements of this action.

51. As a direct and proximate result of the joint and concurring wrongful acts, negligence, reckless, willful, and wanton behavior of the McLeod Defendants, as alleged above, Claudine Garver, as Personal Representative of the Estate of Jeremy Garver, is entitled to recover:

- a. Medical bills including physician bills, radiology bills, hospital bills, and prescription charges;
- b. Loss of enjoyment of life;
- c. Physical and mental pain and suffering;
- d. Wrongful death;
- e. Permanent injury and impairment;
- f. Lost wages;
- g. Loss of consortium;
- h. Punitive damages; and
- i. Such damages as a jury shall deem just and proper.

SECOND CAUSE OF ACTION
(Survival/Negligence/Gross Negligence)

52. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

53. Plaintiff, Claudine Garver, as Personal Representative of the Estate of Jeremy Garver, brings this action on behalf of the Estate of Jeremy Garver, pursuant to the South Carolina Survival Statute, S.C. Code Ann. §§ 15-5-90 *et seq.*
54. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of Defendants, as set forth above. Jeremy Garver was not provided with appropriate medical treatment; Jeremy Garver incurred unnecessary medical costs and expenses; and Jeremy Garver suffered bodily injury, conscious pain, suffering, and mental distress, disability, and death. Jeremy Garver suffered damages, including but not limited to: pecuniary loss; medical expenses; pain and suffering; mental shock and suffering; wounded feelings; grief and sorrow; restriction of movement; disability; severe and debilitating pain and discomfort; loss of total enjoyment of life; and death.
55. Jeremy Garver's claims for damages survive his death to the benefit of his estate. As further direct and proximate result of the negligent, careless, reckless, and grossly negligent conduct of the Defendants as set forth above, the Estate of Jeremy Garver has been deprived of the present value of lost income; suffered conscious pain and suffering; has become liable for sums of money for medicine and medical care, services, and treatment for Jeremy Garver's injuries; and has become liable for large sums of money for funeral and other related burial expenses. Plaintiff is entitled to recover for the benefit of Jeremy Garver's Estate, actual damages and punitive damages in an amount to be determined by the trier of fact, together with costs and disbursements of this action.

THIRD CAUSE OF ACTION
(Loss of Consortium)

56. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

57. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of the McLeod Defendants which caused injury to Jeremy Garver and untimely death, who was a loving and devoted husband and loving and devoted father, Plaintiff Claudine Garver suffered actual damages for the loss of consortium and companionship of Plaintiff's spouse as provided under S.C. Code Ann. § 15-75-20, for which Plaintiff seeks recovery in this action, including loss of consortium, love, affection, aid, comfort, society, companionship, services, support, and all other damages recoverable in an action for loss of consortium under South Carolina law.
58. Plaintiff is informed and believes that she is entitled to judgment against the McLeod Defendants for actual damages, together with an appropriate award of punitive damages, in an amount to be determined by the trier of fact.

FOURTH CAUSE OF ACTION
Negligence per se

59. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
60. The McLeod Defendants are health care provider who have a duty to abide by certain state regulations in the care and treatment of their patients.
61. The state regulations combine to form a minimum standards of care which the McLeod Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, Jeremy Garver.
62. The McLeod Defendants failed to abide by said standards, rules and regulations promulgated by the State of South Carolina in their treatment and care of Jeremy Garver.

63. The standards, rules and regulations promulgated by the state of South Carolina were specifically enacted for the benefit of the class of persons for which Jeremy Garver was a member.

64. As a direct and proximate result of the McLeod Defendants' negligence, recklessness, carelessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations promulgated by the State of South Carolina, Jeremy Garver suffered severe injuries and resulting death as described above, constituting negligence *per se*.

FIFTH CAUSE OF ACTION
Breach of Contract

65. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

66. Jeremy Garver entered into a contract with the McLeod Defendants for the adequate provision of his care, treatment, and safety.

67. Pursuant to such agreement, the McLeod Defendants promised to care for Jeremy Garver, exercise due care, and follow all state and federal laws and regulations relating to care of patients.

68. In exchange for such promises, Jeremy Garver agreed to compensate the McLeod Defendants for such care.

69. This bargained-for exchange constitutes a contract.

70. The McLeod Defendants breached the contract by not exercising due care, by not following state or federal laws and regulations relating to care of patients, such as Jeremy Garver, and by their/its acts and omissions as described in the Complaint or as may be proven through discovery or at trial.

71. Jeremy Garver was deprived of the benefit of the bargain, and suffered damages which directly and proximately flowed from the breach, and were of the kind to arise and flow from such breach.

SIXTH CAUSE OF ACTION
(Fraud / Negligent Misrepresentation / Spoliation)

72. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

73. The McLeod Defendants, through deception, artifice and circumvention, successfully defrauded Jeremy Garver, who trustingly submitted to the McLeod Defendants care and on the basis of explicit and implicit representations:

- a. That the McLeod Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure Jeremy Garver received safe and adequate care;
- b. That the McLeod Defendants would adequately staff the Hospital and Jeremy Garver would be served by adequately trained employees;
- c. That the McLeod Defendants would provide high quality professional care and would accurately and truthfully document the condition of Jeremy Garver and the care rendered to him; and
- d. Such other misrepresentations as are set forth more fully above in this Complaint or may be ascertained through further discovery or proven at trial.

74. At the time of Jeremy Garver's admission to care, the McLeod Defendants promoted and disseminated the above representations and information which would lead Jeremy Garver, his family, and other similarly situate consumers to believe the above representations were true.

75. The McLeod Defendants purposefully disseminated such representations and promotions in order to induce Jeremy Garver, his family and others like them into placement of themselves and/or of their relatives in the exclusive control and custody of the McLeod Defendants, and once there, allowing such persons to remain.
76. The McLeod Defendants fraudulently concealed their inability to care for Jeremy Garver according to acceptable standards required by law and represented by the McLeod Defendants, and the representations made were false.
77. The representations made and concealments done by the McLeod Defendants were material to Jeremy Garver and his family.
78. At the time the McLeod Defendants made such representations, they knew such affirmative claims of service were false.
79. Jeremy Garver and his family were unaware of the falsity of the representations made by the McLeod Defendants.
80. Jeremy Garver and his family had a right to rely on the representations and concealments made by the McLeod Defendants.
81. As a result of the McLeod Defendants' fraud, misrepresentations, and concealments, Jeremy Garver subsequently suffered damages and injuries while under the McLeod Defendants' care.
82. As a proximate cause of the McLeod Defendants' fraud and misrepresentation, Jeremy Garver suffered physical injuries, pain and suffering as previously alleged, and death.

SEVENTH CAUSE OF ACTION
(Vicarious Liability)

83. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

84. The Defendants McLeod Loris Seacoast and McLeod Physician Associates, II, employed Defendant Michael McCaffrey and medical personnel, and either expressly or impliedly allowed them to provide medical care and treatment to their patients.
85. As the employers of Defendant Michael McCaffrey and other medical personnel, the McLeod Defendants are vicariously liable for all negligent actions or inactions taken by Defendant Michael McCaffrey and other medical personnel.
86. As the employer of Defendant Michael McCaffrey and other medical personnel, the McLeod Defendants are vicariously liable for Defendant Michael McCaffrey's and the medical staff's failure to exercise due care and failure to follow the accepted standard of care, all of which directly caused the injuries and damages to Plaintiff and/or Jeremy Garver as described herein.
87. Therefore, the McLeod Defendants and/or Defendants McLeod Loris Seacoast and McLeod Physician Associates, II, are vicariously liable for all damages caused by Defendant Michael McCaffrey, their medical staff, and employees.

EIGHTH CAUSE OF ACTION
(Nondelegable Duty)

88. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
89. The McLeod Defendants had a nondelegable duty to Jeremy Garver to provide competent medical treatment and services.
90. Plaintiff and/or Jeremy Gar entrusted the McLeod Defendants with the important duty to provide competent medical services. As such, these Defendants cannot contend that they are not liable for the acts or omission committed by employee(s) and/or their medical staff.

91. Because the McLeod Defendants had a nondelegable duty, the McLeod Defendants are liable for the acts of their employees and medical personnel.

92. Therefore, the McLeod Defendants had a nondelegable duty to Plaintiff and/or Jeremy Garver, which they breached said duty and are liable to Plaintiff for actual, consequential, and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, on behalf of the Estate and Decedent's statutory beneficiaries, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler
 Stefan B. Feidler, Esquire
 S.C. Bar No.: 101918
 Roy T. Willey, IV, Esquire
 S.C. Bar No.: 101010
 Eric M. Poulin, Esquire
 S.C. Bar No.: 100209
 32 Ann Street
 Charleston, South Carolina 29403
 (843) 614-8888

Dated at Charleston, South Carolina

This 19 day of August, 2019.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Claudine Garver, Both Individually and as Personal Representative of the Estate of Jeremy Garver,	)	C/A No. 2019-CP-26-05302
	)	
	)	
Plaintiff,	)	ANSWER OF THE DEFENDANT
	)	MCLEOD LORIS SEACOAST HOSPITAL
Versus	)	(Jury Trial Demanded)
	)	
McLeod Loris Seacoast Hospital; McLeod Physician Associates, II; and Michael McCaffrey, M.D.	)	
	)	
	)	
Defendants.	)	

TO: STEFAN B. FEIDLER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

COMES NOW, the Defendant, McLeod Loris Seacoast Hospital (hereinafter “this Defendant”), by and through its undersigned attorneys answering the Plaintiff’s Complaint as follows:

1. This Defendant denies each and every allegation of the Plaintiff’s Complaint which is not hereinafter specifically admitted.
2. Answering Paragraph 1 of the Plaintiff’s Complaint, this Defendant lacks sufficient information to admit or deny the Plaintiff’s status as personal representative of the Estate of Jeremy Garver. All remaining allegations of this Paragraph are denied.
3. Answering Paragraph 2 of the Plaintiff’s Complaint, this Defendant admits it is a 501(c)(3) corporation which operates exclusively for benevolent, educational, scientific and charitable purposes. Accordingly, this Defendant affirmatively pleads it is entitled to the protections set forth in the limitations of liability referenced in the S.C. Code Ann. § 33-56-180(A) of the 1976 Code of Laws of South Carolina as amended and/or South Carolina Tort

Claims Act, South Carolina Code Ann. § 15-78-10, et seq. which limits recovery against a charitable Defendant and exempts it from a claim of punitive damages as claimed within the Complaint. Further answering, this Defendant admits it is a healthcare facility in Horry County, South Carolina.

4. This Defendant admits Paragraph 3 of the Plaintiff's Complaint upon information and belief.

5. Answering Paragraph 4 of the Plaintiff's Complaint, this Defendant responds it did not employ the Defendant Dr. McCaffrey. Upon information and belief, he was employed by the Defendant McLeod Physician Associates, II.

6. Answering Paragraph 5 of the Plaintiff's Complaint, this Defendant admits it is a charitable healthcare facility.

7. Answering Paragraph 6 of the Plaintiff's Complaint, this Defendant admits McLeod Seacoast Hospital met the prevailing standard of care in all respects related to the care and treatment of the decedent.

8. Answering Paragraph 7 of the Plaintiff's Complaint, this Defendant admits it was a participant in the Medicare and Medicaid programs. Further answering, this Defendant denies the allegations in Paragraph 7 of the Plaintiff's Complaint have any relevance to the care and treatment provided to the decedent.

9. This Defendant denies Paragraph 8 of the Plaintiff's Complaint.

10. Answering Paragraph 9 of the Plaintiff's Complaint, this Defendant admits it is subject to the jurisdiction of the Court pursuant to the defenses set forth within this Answer and the defenses to be developed during discovery.

11. Answering Paragraph 10 of the Plaintiff's Complaint, this Defendant admits the healthcare provided to the decedent by it took place in Horry County, South Carolina.

12. This Defendant denies Paragraph 11 of the Plaintiff's Complaint.

13. This Defendant admits Paragraphs 12, 13 and 14 of the Plaintiff's Complaint. Further answering, this Defendant reserves the right to challenge the right of the affiant referenced in Paragraph 13 of the Plaintiff's Complaint to testify at trial.

14. Answering Paragraphs 15, 16, 17 and 18 of the Plaintiff's Complaint, this Defendant denies the reasoning of the Dawkins decision quoted in these Paragraphs has any applicability whatsoever to this litigation or this Defendant. This Defendant admits healthcare providers have a duty to provide care that meets the prevailing standard of care.

15. This Defendant admits Paragraph 19 of the Plaintiff's Complaint subject to the defenses set forth within this Answer and as will be developed during discovery.

16. This Defendant denies Paragraphs 20, 21, 22, 23, 24, 25 and 26 as those Paragraphs are intended to apply to or refer to this Defendant.

17. Answering Paragraphs 27 and 28 of the Plaintiff's Complaint, this Defendant refers to the medical records related to the emergency department visit which took place on October 23, 2017 and to the testimony of the healthcare providers involved in that visit for a complete and accurate recitation of the care provided. This Defendant denies all allegations of these Paragraphs which are contrary to the medical records and testimony of the providers involved. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver during that ER visit met the standard of care in all respects.

18. This Defendant denies Paragraphs 29 and 30 as those Paragraphs are intended to apply to or refer to this Defendant.

19. Answering Paragraphs 31 of the Plaintiff's Complaint, this Defendant refers to the medical records related to the emergency department visit which took place on November 3, 2017 and to the testimony of the healthcare providers involved in that visit for a complete and accurate recitation of the care provided. This Defendant denies all allegations of this Paragraph which are contrary to the medical records and testimony of the providers involved. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver during that ER visit met the standard of care in all respects.

20. This Defendant admits Paragraph 32 of the Plaintiff's Complaint.

21. Answering Paragraph 33 of the Plaintiff's Complaint, this Defendant admits only that Mr. Garver died on November 4, 2017.

22. This Defendant denies Paragraph 34 of the Plaintiff's Complaint.

23. Answering Paragraph 35 of the Plaintiff's Complaint, this Defendant admits it is a healthcare facility and has a duty to provide care through its employees that meets the prevailing standard of care.

24. This Defendant denies Paragraph 36 of the Plaintiff's Complaint.

25. Answering Paragraphs 37 and 38 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

26. This Defendant denies Paragraph 39 of the Plaintiff's Complaint.

27. Answering Paragraph 40 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 26 above as if fully repeated herein verbatim.

28. This Defendant denies Paragraph 41 of the Plaintiff's Complaint.

29. Answering Paragraph 42 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

30. This Defendant denies Paragraph 43 of the Plaintiff's Complaint.

31. Answering Paragraph 44 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

32. This Defendant denies Paragraphs 45 including all subparts (a) through (cc), 46 and 47 of the Plaintiff's Complaint.

33. Answering Paragraph 48 of the Plaintiff's Complaint, this Defendant admits prior to transfer to Grand Strand Regional Medical Center, Mr. Garver was diagnosed with a suspected hemorrhage.

34. This Defendant denies Paragraphs 49, 50 and 51 including all subparts (a) through (i) of the Plaintiff's Complaint.

35. Answering Paragraph 52 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. This Defendant denies Paragraphs 53, 54 and 55 of the Plaintiff's Complaint.

37. Answering Paragraph 56 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 36 above as if fully repeated herein verbatim.

38. This Defendant denies Paragraphs 57 and 58 of the Plaintiff's Complaint.

39. Answering Paragraph 59 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 38 above as if fully repeated herein verbatim.

40. Answering Paragraph 60 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

41. This Defendant denies Paragraphs 61, 62, 63 and 64 of the Plaintiff's Complaint.

42. Answering Paragraph 65 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 41 above as if fully repeated herein verbatim.

43. This Defendant denies Paragraphs 66, 67, 68, 69, 70 and 71 of the Plaintiff's Complaint.

44. Answering Paragraph 72 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 43 above as if fully repeated herein verbatim.

45. This Defendant denies Paragraphs 73 including all subparts (a) through (d), 74, 75, 76, 77, 78, 79, 80, 81 and 82 of the Plaintiff's Complaint.

46. Answering Paragraph 83 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 45 above as if fully repeated herein verbatim.

47. This Defendant denies Paragraph 84 of the Plaintiff's Complaint as it is intended to apply to it. The Defendant Dr. McCaffrey was an employ of McLeod Physician Associates, II at all times referenced within the Complaint.

48. This Defendant denies Paragraphs 85, 86 and 87 of the Plaintiff's Complaint.

49. Answering Paragraph 88 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 48 above as if fully repeated herein verbatim.

50. Answering Paragraph 89 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

51. This Defendant denies Paragraphs 90, 91 and 92 of the Plaintiff's Complaint.

52. This Defendant denies the Plaintiff is entitled to the relief requested within her prayer for relief.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:
(No Deviation from Standard of Care)

53. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 52 above as if fully repeated herein verbatim.

54. That the care and treatment administered by this Defendant conformed to and was in full compliance with the standard of care. All care and treatment administered by this

Defendant was within acceptable standards and methods, and, at no time pertinent hereto, did this Defendant deviate from any standard while caring for or tending to the decedent. Consequently, the Plaintiff is barred from recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(No Proximate Cause)

55. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 54 above as if fully repeated herein verbatim.

56. That, even if this Defendant was negligent, as alleged in the Complaint, which is specifically denied, the negligence of this Defendant was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Charitable Immunity)

57. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 56 above as if fully repeated herein verbatim.

58. This Defendant affirmatively pleads it is entitled to the protections set forth in the limitations of liability referenced in the S.C. Code Ann. § 33-56-180(A) of the 1976 Code of Laws of South Carolina as amended and/or South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq. which limits recovery against a charitable Defendant and exempts it from a claim of punitive damages as claimed within the Complaint. The Defendant McLeod Loris Seacoast Hospital is a 501(c)(3) corporation which operates exclusively for benevolent, educational, scientific and charitable purposes. As a charitable organization as defined by Chapter 56 of Title 33 of the South Carolina Code of Laws (1976 as amended) and pursuant to

said statutory scheme, recovery against this Defendant for any tortuous act or omission is specifically limited to actual damages in a specified amount not to exceed the limitations set forth within the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq. and this Defendant pleads said statutory scheme as a bar and/or limitation to recovery by the Plaintiff against this Defendant in this action. Specifically, the Plaintiff cannot recover an amount to exceed \$300,000 against this Defendant pursuant to South Carolina Code Ann. § 15-78-120(a)(1).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Application of S.C. Code Ann. § 15-38-15)

59. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 58 above as if fully repeated herein verbatim.

60. This Defendant hereby reserves the right to seek all remedies, rights and privileges available pursuant to S.C. Code Ann. § 15-38-15. That, upon information and belief, even if this Defendant was negligent as described in the Complaint, which is specifically denied, this Defendant was less than fifty percent liable for the total fault alleged. Accordingly, joint and several liability should not apply to this action and each Defendant should be held liable only for the percentage of fault, which is specifically denied, to be determined by the trier of fact.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Failure to State a Claim)

61. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 60 above as if fully repeated herein verbatim.

62. The Complaint fails to state facts sufficient to constitute a case of action. According, this action or some of the causes of action stated should be dismissed against this Defendant pursuant to Rule 12(b)(6), SCRCPP.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

63. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 62 above as if fully repeated herein verbatim.

64. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE having answered all of the allegations of the Plaintiff's Complaint and asserting these affirmative defenses herein, this Defendant hereby moves the Court for a dismissal of all claims, for costs and fees associated with the defense of this action, and for such other relief as the Court deems appropriate.

BUYCK, SANDERS & SIMMONS, LLC

305 Wingo Way
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 284-8105
Email: dks@buyckfirm.com

s/Darren K. Sanders
Darren K. Sanders (S.C. Bar # 68296)
Hugh W. Buyck (S.C. Bar # 66462)
Attorneys for the Defendant
McLeod Loris Seacoast Hospital

October 1, 2019
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05302
	)	
Claudine Garver Both Individually and as	)	
Personal Representative for the Estate of	)	
Jeremy Garver,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
McLeod Loris Seacoast Hospital; McLeod	)	
Physician Associates II; and Michael	)	
McCaffrey, M.D.,	)	
	)	
Defendants.	)	
	)	
	)	

**AMENDED
ANSWER OF DEFENDANT
MICHAEL MCCAFFREY, M.D.**

The Defendant Michael McCaffrey, M.D. amending his answer to the Complaint, responds as follows:

FOR A FIRST DEFENSE

The Complaint fails to allege facts sufficient to state a cause of action and should be dismissed pursuant to Rule 12(b)(6) *South Carolina Rules of Civil Procedure*.

FOR A SECOND DEFENSE

The Defendant Michael McCaffrey, M.D. responds to the numbered paragraphs of the Complaint as follows:

1. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 1 and demands strict proof thereof.
2. Responding to Paragraph 2, the answering Defendant admits on information and belief that McLeod Loris Seacoast Hospital is incorporated in the State of South Carolina and maintains its principal place of business in Horry County. The answering Defendant admits that

McLeod Physician Associates II is incorporated in the State of South Carolina, but states that on information and belief McLeod Physician Associates II maintains its principal place of business in Florence County.

3. Admitted.

4. Paragraph 4 contains an assertion by Plaintiff of her intention in drafting the Complaint, to which no response is required. The answering Defendant asserts that McLeod Loris Seacoast Hospital and McLeod Physician Associates II are separate and distinct corporations, and that the answering Defendant is an employee of McLeod Physician Associates II.

5. Responding to Paragraph 5, the answering Defendant admits on information and belief McLeod Loris Seacoast Hospital owned and operated McLeod Loris Seacoast Hospital. Except as specifically admitted, the allegations of Paragraph 5 are denied.

6. The allegations of Paragraph 6 are denied insofar as they relate to the answering Defendant.

7. Responding to Paragraph 7, the answering Defendant admits on information and belief that McLeod Loris Seacoast Hospital was a participant in the Medicare and Medicaid programs. The allegations of Paragraph 7 are denied insofar as they relate to the answering Defendant.

8. Responding to Paragraph 8, the answering Defendant asserts that Paragraph 8 is an assertion of the intentions of Plaintiff in drafting the Complaint, to which no response is required. To the extent that any response may be required, the allegations of Paragraph 8 are denied.

9. Admitted.

10. Admitted.

11. Denied.

12. Admitted.

13. Responding to Paragraph 13, the answering Defendant admits that the referenced documents were filed but denies the allegations thereof.

14. Admitted.

15. Paragraph 15 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 15 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

16. Paragraph 16 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 16 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

17. Paragraph 17 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 17 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

18. Paragraph 18 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 18 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

19. Admitted.

20. Responding to Paragraph 20, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

21. Responding to Paragraph 21, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

22. Responding to Paragraph 22, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

23. Responding to Paragraph 23, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

24. Responding to Paragraph 24, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

25. Responding to Paragraph 25, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

26. Responding to Paragraph 26, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

27. Responding to Paragraph 27, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant asserts that the allegations of Paragraph 27 refer to and involve parties other than the answering Defendant.

28. Responding to Paragraph 28, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant asserts that the allegations of Paragraph 28 refer to and involve parties other than the answering Defendant.

29. Responding to Paragraph 29, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant asserts that on October 24, 2017, in response to a telephone call from Decedent's wife, Jeremy Garver was referred for an MRI of the brain with and without contrast.

30. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 30 and demands strict proof thereof.

31. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 31 and demands strict proof thereof. The allegations of Paragraph 31 are denied insofar as they relate to the answering Defendant.

32. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 32 and demands strict proof thereof.

33. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 32 and demands strict proof thereof.

34. Denied.

35. Denied as to the answering Defendant.

36. Denied as to the answering Defendant.

37. Responding to Paragraph 37, the answering Defendant admits that he had a duty of care to Plaintiff's decedent in accordance with the applicable and prevailing standard of care at the time of his treatment of Plaintiff's decedent. The answering Defendant asserts that at all time his care and treatment of Plaintiff's decedent met the standard of care.

38. The allegations of Paragraph 38 are denied insofar as they relate to the answering Defendant.

39. Denied.

40. Responding to Paragraph 40, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 39 above as fully as if set forth verbatim.

41. Paragraph 41 contains a characterization by Plaintiff of her claim to which no response is required. To the extent that any response may be required, the allegations of Paragraph 41 are denied.

42. Responding to Paragraph 42, the answering Defendant admits that he had a duty of care to Jeremy Garver to comply with the applicable and appropriate standard of care at the time of his treatment and asserts that at all times he complied with the applicable standard of care.

43. The allegations of Paragraph 43 are denied insofar as they relate to the answering Defendant.

44. Responding to Paragraph 44, the answering Defendant admits that he had a duty of care to Jeremy Garver to comply with the applicable and appropriate standard of care at the time of his treatment and asserts that at all times he complied with the applicable standard of care.

45. The allegations of Paragraph 45 are denied insofar as they relate to the answering Defendant.

46. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 46 and demands strict proof thereof.

47. The allegations of Paragraph 47 are denied insofar as they relate to the answering Defendant.

48. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 48 and demands strict proof thereof.

49. Denied.

50. Denied.

51. Denied.

52. Responding to Paragraph 52, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 51 above as fully as if set forth verbatim.

53. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 53 and demands strict proof thereof.

54. Denied.

55. Denied.

56. Responding to Paragraph 56, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 55 above as fully as if set forth verbatim.

57. Denied.

58. Denied.

59. Responding to Paragraph 59, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 58 above as fully as if set forth verbatim.

60. Paragraph 60 states a legal proposition to which no response is required. To the extent that any response may be required, the allegations of Paragraph 60 are denied.

61. Paragraph 61 states a legal proposition to which no response is required. To the extent that any response may be required, the allegations of Paragraph 61 are denied.

62. Denied.

63. Paragraph 63 states a legal proposition to which no response is required. To the extent that any response may be required, the allegations of Paragraph 63 are denied.

64. Denied.

65. Responding to Paragraph 65, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 64 above as fully as if set forth verbatim.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Responding to Paragraph 72, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 71 above as fully as if set forth verbatim.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Responding to Paragraph 83, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 82 above as fully as if set forth verbatim.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Responding to Paragraph 88, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 87 above as fully as if set forth verbatim.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Each and every allegation of the Complaint not specifically admitted herein is denied.

FOR A THIRD DEFENSE

94. At all times referenced in the Complaint, the answering Defendant was an employee of McLeod Physician Associates II acting in the course and scope of his employment.

95. McLeod Physician Associates II is a charitable, not-for-profit organization, organized pursuant to the laws of the State of South Carolina which operates exclusively for benevolent, scientific, educational, and charitable purposes. The answering Defendant hereby pleads the privileges, immunities, and limitations of liability set forth in S. C. Code §36-56-180, 1976 South Carolina Code of Laws, as amended, and S.C. Code §15-78-10, *et. seq.*, 1976 South Carolina Code of Laws, as amended.

FOR A FOURTH DEFENSE

96. The answering Defendant hereby pleads the remedies, rights, and privileges set for the in S.C. Code §15-38-15, to the extent applicable.

FOR A FIFTH DEFENSE

97. The care and treatment rendered by the answering Defendant to Jeremy Garver was at all time within the applicable and appropriate standard of care.

FOR A SIXTH DEFENSE

98. The care and treatment rendered by the answering Defendant to Jeremy Garver, and any act or omission alleged in the Complaint, was not the direct or proximate cause of any injury or damages alleged by the Plaintiff.

WHEREFORE, having fully answered the Complaint, the Defendant Michael McCaffrey, M.D. prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court may find just and proper.

Florence, South Carolina

October 15, 2019

/s/Saunders M. Bridges, Jr.
Saunders M. Bridges, Jr., SC Bar #879
Carrie A. Fox, SC Bar #75170
Aiken Bridges Elliott Tyler & Saleeby, PA
181 E. Evans Street, Suite 409
P. O. Drawer 1931
Florence, South Carolina
Tel: (843) 669-8787
Fax: (843) 664-0097
Email: smb@aikenbridges.com

ATTORNEYS FOR DEFENDANTS
MCLEOD PHYSICIAN ASSOCIATES II
AND MICHAEL MCCAFFREY, MD

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 15th day of October 2019, served a copy of the above and foregoing pleading on all parties to this proceeding by electronically filing the same with the SC Courts E-Filing System, which will send electronic notice of same to the following:

Stefan B. Feidler, Esquire Eric M. Poulin, Esquire Roy T. Willey, IV, Esquire Anastopoulo Law Firm, LLC 32 Ann Street Charleston, SC 29403	Darren K. Sanders, Buyck, Sanders & Simmons, LLC Post Office Box 2424 Mt. Pleasant, SC 29465-2424

/s/Saunders M. Bridges, Jr.

Saunders M. Bridges, Jr., SC Bar #879
Aiken Bridges Elliott Tyler & Saleeby, PA
181 E. Evans Street, Suite 409
P. O. Drawer 1931
Florence, South Carolina
Tel: (843) 669-8787
Fax: (843) 664-0097
Email: smb@aikenbridges.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Claudine Garver, Both Individually and as	)	C/A No. 2019-CP-26-05302
Personal Representative of the Estate of	)	
Jeremy Garver,	)	
	)	
	)	DEFENDANT MCLEOD LORIS
	)	SEACOAST HOSPITAL'S
	)	MEMORANDUM IN SUPPORT FOR
	)	SUMMARY JUDGMENT
	)	
Plaintiff,	)	
	)	
Versus	)	
	)	
McLeod Loris Seacoast Hospital; McLeod	)	
Physician Associates, II; and Michael	)	
McCaffrey, M.D.	)	
	)	
Defendants.	)	

Defendant McLeod Loris Seacoast Hospital (hereinafter “this Defendant” or “the hospital”), respectfully submits this Memorandum in Support of its Motion for Summary Judgment filed on September 16, 2022.

FACTS

The allegations are that the Codefendant neurologist, Michael McCaffrey, MD, misdiagnosed a basilar aneurysm for approximately 22 months. Codefendant Neurologist Michael McCaffrey, M.D., first began treating the Decedent on December 29, 2015. [Exhibit 1- McCaffrey Medical Records]. The Decedent presented through the McLeod Loris Seacoast Hospital Emergency Department on October 23, 2017. [Exhibit 2- McLeod Seacoast Records]. It was through this ER visit when radiographic studies first diagnosed the condition. [Id.]. Mr. Garver then succumbed to this unexpected finding on November 4, 2017. [Exhibit 3- Grandstand Medical Records.]. At no time was Defendant Dr. McCaffrey an employee of this Defendant, McLeod Loris Seacoast Hospital. Rather he was employed by and through the properly named entity,

McLeod Physician Associates, II, a separate 501(c)(3) corporation serving as a physician practice plan.

LEGAL STANDARD – SUMMARY JUDGMENT

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. City of Columbia v. ACLU, 323 S.C. 384, 475 S.E.2d 747 (1996); Rule 56 (c) SCRPC. The plain language of Rule 56 (c) SCRPC mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). A party cannot escape summary judgment on the mere hope that something may develop at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977).

Conclusory allegations or denials, without more, are insufficient to defeat a motion for summary judgment. Ross v. Communication Satellite Corp., 759 F. 2d. 355, 365 (4th Cir. 1985); see also Baber v. Hosp. Corp. of Am., 977 F. 2d 872, 874-75 (4th Cir. 1992) (holding that the nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment). Reliance upon inadmissible hearsay is also insufficient to overcome a motion for summary judgment. Evans v. Technologies Applications & Services Co., 80 F. 3d. 954, 962 (4th Cir. 1996).

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the

light most favorable to the nonmoving party. Id. When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing, that is, pointing out to the [trial] court that there is an absence of evidence to support the nonmoving party's case. Id. at 825. The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim. Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, 382 (S.C. 1994) (noting that where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. See Singleton, 659 S.E.2d at 203. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

Therefore, where the Plaintiff relies solely upon the pleadings, files no counter affidavits, and makes no factual showing in opposition to motion for summary judgment, the court is required to grant summary judgment, if under the facts presented by the Defendant, he is entitled to judgment as a matter of law. Garrett v. Reese, 262 S.C. 327, 204 S.E.2d 432 (1974).

LEGAL ARGUMENT

- I. **Plaintiff has presented no evidence the Hospital deviated from the applicable standard of care.**

A plaintiff in a medical malpractice case must present (1) evidence of the generally recognized practices and procedures that would be exercised by competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances, (2) evidence that the defendant doctor departed from the recognized and generally accepted standards, practices, and procedures in the manner alleged by the plaintiff, and (3) evidence that the defendant's departure from the generally accepted standards and practices was the proximate cause of the plaintiff's injuries and damages. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 546, 694 S.E.2d 1, 4–5 (2010).

In a medical malpractice action, the plaintiff must establish by expert testimony both the required standard of care and the defendant's failure to conform to the standard, unless the subject matter lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the defendant's conduct. Pederson v. Gould, 288 S.C. 141, 142 (1986). On a defendant's motion for summary judgment, there will usually be no genuine issue of material fact unless the plaintiff presents expert testimony on the standard of care and its breach by the defendant. Botelho v. Bycura, 282 S.C. 578, 320 S.E.2d 59 (Ct. App. 1984); Jernigan v. King, 312 S.C. 331, 440 S.E.2d 379 (Ct. App. 1993). In *Pederson*, the patient underwent a vaginal hysterectomy. See Pederson 288 S.C. 141 at 142. The Plaintiff's did not offer any expert testimony from an expert gynecologist to opine that the Defendant deviated from the standard of care. Id. The court held that the performance of a hysterectomy does not fall under the “common knowledge” exception to the expert witness requirement in medical malpractice actions. Id.

Similarly, here, the Plaintiff is required to present expert witness testimony that this Defendant deviated from the standard of care. An emergency department admission and subsequent workup for a brain aneurysm does not fall under the “common knowledge” exception to the expert witness requirement in medical malpractice actions. Plaintiff has only identified one

medical expert witness, Neurologist Thomas Ward, M.D. [Exhibit 4 - Plaintiff's Third Response to Defendants' Interrogatories]. Dr. Ward does not hold himself out as an expert in the standard of care for emergency medicine. [Exhibit 5 - Deposition of Thomas Ward p. 72: 6-9].

Dr. Ward testified that he will not opine at the trial of this case that this Defendant deviated from the standard of care.

2 Q. Well, then, in that regard let me make
3 sure that I'm clear for the record.
4 You will not come to trial in this case
5 and say that any of the staff at McLeod Seacoast
6 Hospital, including Dr. Larson, the ER doctor –
7 you wouldn't contend there were deviations from the
8 standard of care on October the 23rd; is that
9 correct?
10 A. I think that's what I would agree.

[Id. at p.73: 4-10].

Dr. Ward additionally, testified that this Defendant did not proximately cause the death of the Decedent.

16 Q. Are you going to argue at the trial of
17 this case that McLeod Seacoast Hospital is
18 responsible for Mr. Garver's death?
19 A. I don't think I would come to that
20 conclusion.

[Id. at p. 75: 16-20].

Plaintiff has not proffered any expert testimony from any purported expert to testify that any actions within the emergency department were deviations of the standard of care. As such, the Plaintiff has failed to present expert testimony regarding this Defendant's failure to conform to the applicable standard of care.

II. **To the extent that Plaintiff offers expert testimony related to codefendant Michael McCaffrey, M.D.'s deviation from the standard of care, his deviation is unrelated to this Defendant.**

Plaintiff's only medical expert, Thomas Ward, M.D., testified that codefendant Dr. McCaffrey deviated from the standard of care by not previously ordering head imaging in light of the patient's continual complaints. [Id. at p. 31: 18- p.33: 10]. However, this Defendant is not vicariously liable for alleged malpractice of Dr. McCaffrey. During the time period at issue, December 29, 2015 to November 5, 2017, Dr. McCaffrey was not employed by McLeod Loris Seacoast Hospital. [Exhibit 6- Affidavit of William Barnes]. Dr. McCaffrey was employed by McLeod Physician Associates II. [Id.], [Exhibit 7- Dr. McCaffrey's Amended Answer], [Exhibit 8- McLeod Loris Seacoast Hospital Answer], and [Exhibit 9 McLeod Physician Associates II and Michael McCaffrey, M.D.'s Motion for Partial Summary Judgment]. McLeod Loris Seacoast Hospital is a separate entity from McLeod Physician Associates II. [Id.]. As such, the Plaintiff cannot impute Dr. McCaffrey's alleged deviation from the standard of care onto the Hospital.

CONCLUSION

For the reasons and arguments outlined above, this Defendant respectfully moves this Court for an Order entering summary judgment in its favor.

This Motion is based upon the pleadings, discovery, supporting memorandum, exhibits, supporting deposition transcripts and any additional exhibits to be filed with the Court in accordance with the South Carolina Rules of Civil Procedure.

Respectfully submitted,

[Signature Page Follows]

BUYCK LAW FIRM, LLC

305 Wingo Way
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 284-8105
Email: hwb@buyckfirm.com

S/Hugh W. Buyck

Hugh W. Buyck (S.C. Bar # 66462)
Jeffrey H. Lappin (S.C. Bar# 105073)

Attorneys for the Defendant
McLeod Loris Seacoast Hospital

December 28, 2022
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05302
Claudine Garver, Both Individually and as Personal Representative for the Estate of Jeremy Garver,	)	
Plaintiff,	)	
vs.	)	MOTION AND
	)	NOTICE OF MOTION FOR
McLeod Loris Seacoast Hospital; McLeod Physician Associates II; and Michael McCaffrey, M.D.,	)	PARTIAL SUMMARY JUDGMENT
Defendants.	)	

The Defendants, McLeod Physician Associates II and Michael McCaffrey, M.D., pursuant to Rule 56, South Carolina Rules of Civil Procedure, finding as a matter of law;

(1) that the Defendant McLeod Physician Associates, II is a South Carolina corporation and a charitable organization exempt from taxation pursuant to § 501(c)(3) or 501(d) of Title XXVI of the United States Code, as amended;

(2) that at all relevant times the Defendant McCaffrey was an employee of McLeod Physician Associates, II;

(3) that at all relevant times the Defendant McCaffrey was acting within the course and scope of his employment by McLeod Physician Associates, II;

(4) that the Defendant McCaffrey was not at any relevant time as alleged in the Complaint an employee of McLeod Loris Seacoast Hospital;

(5) that Plaintiff has failed to meet the burden of proof to support a specific finding that the Defendant McCaffrey acted in a reckless, willful, or grossly negligent manner;

(6) that the Defendant McCaffrey is therefore immune from any recovery by the Plaintiff by reason of the matters alleged in the Complaint, and should be and is hereby dismissed as a named Defendant from this action.

This Motion is based upon the written discovery exchanged in this litigation, the depositions of the Defendant McCaffrey and of Plaintiff's expert witness, Thomas Ward, M. D. and affidavits to be filed with the Court.

Respectfully submitted.

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P. A.

s/Saunders M. Bridges, Jr.
Saunders M. Bridges, Jr., SC Bar #879
J. David Banner, SC Bar #15611
181 East Evans Street, Suite 409
Post Office Drawer 1931
Florence, SC 29503
Tel: (843) 669-8787
E-mail: smb@aikenbridges.com
jdb@aikenbridges.com

Attorneys for the Defendants
McLeod Physician Associates II
and Michael McCaffrey, MD

Florence, South Carolina
December 16, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05302
	)	
Claudine Garver Both Individually and as	)	DEFENDANTS MCLEOD PHYSICIAN
Personal Representative for the Estate of	)	ASSOCIATES II AND MICHAEL
Jeremy Garver,	)	MCCAFFREY, M.D.'S
	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	THEIR MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT;
vs.	)	AND IN OPPOSITION TO
	)	PLAINTIFF'S MOTION TO COMPEL
McLeod Loris Seacoast Hospital; McLeod	)	DISCOVERY; AND IN OPPOSITION
Physician Associates II; and Michael	)	TO PLAINTIFF'S MOTION TO
McCaffrey, M.D.,	)	STRIKE MICHAEL MCCAFFREY'S
	)	THIRD AFFIRMATIVE DEFENSE OR
Defendants.	)	IN THE ATERNATIVE MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT ON
	)	DAMAGES AS TO BOTH
	)	DEFENDANTS

The Defendants McLeod Physician Associates II ("MPA II") and Michael McCaffrey, M.D. submit this memorandum in support of their Motion for Partial Summary Judgment. Further, in this memorandum these Defendants address Plaintiff's Motion to Compel Discovery and Plaintiff's Motion to Strike Dr. McCaffrey;s Third Affirmative Defense or for Partial Summary Judgment on Damages.

FACTS

This medical malpractice case arises out of the tragic death of Plaintiff's decedent Jeremy Garver on November 4, 2017. Mr. Garver had been treated by Defendant Dr. McCaffrey through seven office visits. Dr. McCaffrey had diagnosed and treated Mr. Garver for migraine headaches. Dr. McCaffrey was at all times an employee of McLeod Physician Associates II, a charitable corporation, maintaining an office practice as a neurologist.

Defendant Neurologist Michael McCaffrey, M.D., first began treating the Decedent on December 29, 2015, [MLSH Exhibit 1- McCaffrey Medical Records] and Dr. McCaffrey last saw

decedent on September 26, 2017. The Decedent presented through the McLeod Loris Seacoast Hospital Emergency Department on October 23, 2017, with significant changes in his symptoms. [MLSH Exhibit 2- McLeod Seacoast Records]. Mr. Garver was referred to MUSC, where he made two different visits without treatment. Mr. Garver died after returning home from MUSC on the evening of November 4, 2017. [MLSH Exhibit 3- Grandstand Medical Records.].

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants' Motion for Partial Summary Judgment filed December 16, 2022 seeks summary judgment on several aspects of the case. Items one through four relate to the charitable status of the Defendant McLeod Physician Associates II and the employment of Dr. McCaffrey by that charitable organization. The facts concerning the charitable status of McLeod Physician Associates II and the employment of Dr. McCaffrey are uncontested. (Affidavit of William C. Barnes, Jr., Exhibit A hereto.)

Items five and six of these Defendants' motion seek a ruling by the Court that Plaintiff has failed to produce any evidence of gross negligence, willfulness, recklessness, or the absence of slight care on the part of Dr. McCaffrey, and that Dr. McCaffrey should be dismissed as a named party, and summary judgment granted as to punitive damages. (This motion does not address the Defendants' contention that punitive damages are not allowed against Dr. McCaffrey under any circumstances.)

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. City of Columbia v. ACLU, 323 S.C. 384, 475 S.E.2d 747 (1996); Rule 56 (c) SCRCF. The plain language of Rule 56 (c) SCRCF mandates the entry of summary judgment, after adequate time for discovery and upon

motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). A party cannot escape summary judgment on the mere hope that something may develop at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977). Conclusory allegations or denials, without more, are insufficient to defeat a motion for summary judgment. Ross v. Communication Satellite Corp., 759 F. 2d. 355, 365 (4th Cir. 1985); see also Baber v. Hosp. Corp. of Am., 977 F. 2d 872, 874-75 (4th Cir. 1992) (holding that the nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment).

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. Id. When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing, that is, pointing out to the [trial] court that there is an absence of evidence to support the nonmoving party's case. Id. at 825. The moving party need not support its motion with affidavits or other

similar materials negating the opponent's claim. Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, 382 (S.C. 1994) (noting that where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. See Singleton, 659 S.E.2d at 203. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

Therefore, where the Plaintiff relies solely upon the pleadings, files no counter affidavits, and makes no factual showing in opposition to motion for summary judgment, the court is required to grant summary judgment, if under the facts presented by the Defendant, he is entitled to judgment as a matter of law. Garrett v. Reese, 262 S.C. 327, 204 S.E.2d 432 (1974).

In order to support the submission of punitive damages to the jury, Plaintiff must produce evidence of gross negligence, willfulness, wantonness, or an absence of slight care on the part of the Defendant. In a medical malpractice action, the plaintiff must establish by expert testimony both the required standard of care and the defendant's failure to conform to the standard, unless the subject matter lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the defendant's conduct. Pederson v. Gould, 288 S.C. 141, 142 (1986). On a defendant's motion for summary judgment, there will usually be no genuine issue of material fact unless the plaintiff presents expert testimony on the standard of care and its breach by the defendant. Botelho v. Bycura, 282 S.C. 578, 320 S.E.2d 59 (Ct. App. 1984); Jernigan v. King, 312 S.C. 331, 440 S.E.2d 379 (Ct. App. 1993).

Plaintiff's only expert witness is Thomas Ward, M.D., who was deposed on July 23, 2021. Relevant portions of Dr. Ward's deposition are provided herewith as Exhibit B. In his deposition, Dr. Ward went through sequentially the series of visits of Decedent to Dr. McCaffrey by date, including the Decedent's last visit to Dr. McCaffrey on September 26, 2017. This was the last time decedent saw Dr. McCaffrey, and approximately five weeks before decedent presented to the emergency department at McLeod Loris Seacoast on October 23, 2017.

While Dr. Ward testified that in his opinion Dr. McCaffrey misinterpreted or failed to recognize certain symptoms, nowhere in his testimony does Dr. Ward testify or even hint that Dr. McCaffrey was grossly negligent, wanton, willful, or failed to exercise slight care. Indeed, Dr. Ward's testimony describes the treatments provided by Dr. McCaffrey throughout the period of time when Dr. McCaffrey treated the Decedent.

Plaintiff's burden is to produce not mere evidence, but "clear and convincing" evidence. S.C. Code §15-33-135. Given Plaintiff's failure to produce such evidence, summary judgment as to punitive damages should be granted. Without a specific finding by a jury of reckless, willful, or grossly negligent action, a judgment cannot be returned against an employee of a charitable organization. S.C. Code §33-56-180(A). Since there is no evidence which would support such a finding, partial summary judgment on this issue be granted.

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Plaintiff's Motion to Compel Discovery Responses can be grouped into two issues: First, issues concerning production of the Defendants' liability insurance coverage information, and, second, financial related information relevant only in a case involving punitive damages.

In response to Plaintiff's Interrogatories and Requests to Produce regarding liability insurance coverage and policies, the Defendants have produced a copy of the Declarations page of

the only insurance policy applicable. The Declarations page contains the name, address, policy number, policy limits, and coverage dates. (Exhibit C McCaffrey 000001-000002). Defendants also have offered to produce the entire policy for inspection, which has not been requested by Plaintiff's counsel. Defendants believe that this production complies with Rule 26(b)(2). Nothing therein requires a "certified" copy of the policy.

The following discovery requests by Plaintiff are justified only by Plaintiff's request for punitive damages. Plaintiff's interrogatories seven and nine to Dr. McCaffrey and interrogatory nine to MPA II relate solely to Plaintiff's claim for punitive damages. Since MPA II, as a charitable organization, is not subject to punitive damages under any circumstances. The Defendant Dr. McCaffrey is subject to punitive damages, if at all, only after a specific finding by a jury. Then, only the net worth of the Defendant would be relevant. Plaintiff's requests for production twenty-one and twenty-two to Dr. McCaffrey and requests for production eight, nine, twelve, and thirteen through twenty-three to MPA II, are likewise objectionable.

Should the Court deny Dr. McCaffrey's motion for partial summary judgment, this Defendant has offered to produce a sealed copy of a current financial statement to be opened by the Court, if appropriate, after a verdict of punitive damages.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO STRIKE OR FOR
PARTIAL SUMMARY JUDGMENT ON DAMAGES**

Plaintiff has moved to strike the Defendants' Third Defense, which raises the statutory limitations, privileges and immunities provided by S.C. Code §36-56-180 and §15-78-10. These Defendants certainly have the burden of establishing the necessary elements of this Defense (charitable status and employment) at trial, which these Defendants' already have met. (Exhibit A Affidavit of William C. Barnes, Jr.) The Defendants Third Defense as an entirely proper pleading.

Plaintiff then seeks, alternatively, partial summary judgment as to the Court's interpretation of the applicable statutes, S.C. Code §36-56-180 and §15-78-10. Plaintiff seems to ask that the Court, before trial, make a unique and new interpretation of the statutes, even though such an interpretation would be required only in the unlikely event of a specific finding against Dr. McCaffrey of gross negligence, willfulness, and wantonness. Further, Plaintiff's argument overlooks not only the plain language of these statutes, but also the clear and plain language of S.C. Code §15-32-240 and §15-32-540.

Plaintiff's motion for a ruling on these issues is premature and, most probably, unnecessary and should be denied.

WHEREFORE, the Defendants McLeod Physician Associates II and Michael McCaffrey, M.D. pray that these Defendants' Motion for Partial Summary Judgment be granted; that Plaintiff's Motion to Compel be denied; and, that Plaintiff's Motion to Strike or in the Alternative for Partial Summary Judgment be denied.

Respectfully submitted.

Florence, South Carolina

December 29, 2022

/s/Saunders M. Bridges, Jr.
 Saunders M. Bridges, Jr., SC Bar #879
 J. David Banner, SC Bar #15611
 Aiken Bridges Elliott Tyler & Saleeby, PA
 181 E. Evans Street, Suite 409
 P. O. Drawer 1931
 Florence, South Carolina
 Tel: (843) 669-8787
 Fax: (843) 664-0097
 Email: smb@aikenbridges.com
jdb@aikenbridges.com

**ATTORNEYS FOR DEFENDANTS
 MCLEOD PHYSICIAN ASSOCIATES II
 AND MICHAEL MCCAFFREY, MD**

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 29th day of December 2022, served a copy of the above and foregoing pleading on all parties to this proceeding via electronic mail and by electronically filing the same with the SC Courts E-Filing System, which will send electronic notice of same to the following:

Stefan B. Feidler, Esquire
Feidler Law Firm, LLC
Post Office Box 22273
Charleston, SC 29413

Hugh W. Buyck, Esquire
G. Wade Cooper, Esquire
Jeffrey H. Lappin, Esquire
Buyck Law Firm, LLC
Post Office Box 2424
Mt. Pleasant, SC 29465-2424

/s/Saunders M. Bridges, Jr.
Saunders M. Bridges, Jr., SC Bar #879
J. David Banner, SC Bar #15611
Aiken Bridges Elliott Tyler & Saleeby, PA
181 E. Evans Street, Suite 409
P. O. Drawer 1931
Florence, South Carolina
Tel: (843) 669-8787
Fax: (843) 664-0097
Email: smb@aikenbridges.com
jdb@aikenbridges.com

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-05302

CLAUDINE GARVER Both Individually and
as Personal Representative for the ESTATE OF
JEREMY GARVER,,

Plaintiff,

v.

McLEOD LORIS SEACOAST HOSPITAL;
McLEOD PHYSICIAN ASSOCIATES, II; and
MICHAEL McCaffrey, M.D.,

Defendant(s).

**PLAINTIFF'S NOTICE OF MOTION,
MOTION AND MEMORANDUM IN
SUPPORT OF PLAINTIFF'S
MOTION TO RECONSIDER**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

Plaintiff Claudine Garver Both Individually and as Personal Representative for the Estate of Jeremy Garver ("Plaintiff") hereby submits this notice, motion, and memorandum of law in support of her motion to reconsider pursuant to Rules 52 and 59(e), SCRCP, for an order reconsidering the order filed February 15, 2023, that granted summary judgement as to Defendant McLeod Loris Seacoast Hospital ("Defendant").

SUMMARY OF EVIDENCE IN SUPPORT OF MOTION

- **Plaintiff's Complaint:** Plaintiff asserted Dawkins language in the Complaint and the allegations against Defendant fall under an administrative process pertaining to a defective referral process, where time was of the essence after Jeremy Garver's brain mass was discovered at Defendant's ER. For instance, Plaintiff alleged Defendant:
 - failed to transfer Jeremy Garver in a *timely manner* for CT Scan, MRI, and/or surgical intervention; and
 - failed to make certain that Jeremy Garver received the appropriate referral(s) and/or surgical intervention(s) and/or transfer to a facility in a *timely manner* so that the appropriate surgical interventions could be accomplished in a *timely manner*.

[Exhibit 1 - Complaint].

- Evidence in Support of Motion to Reconsider:
 - Testimony: Defendant was aware of the urgency to refer Mr. Garver for MRI yet discharged Mr. Garver with merely instructions to contact the neurology department who was associated with Defendant and consider calling MUSC for an appointment. [Exhibit 2 - Discharge Instructions]. The referring neurologist from that neurology department testified he was "on call ten days a month. That just happened to be one of the days [he] wasn't on call." [Exhibit 3 - Deposition of Michael McCaffrey p. 62: 2-5]. The referring neurologist also testified he was not on call until November 2017. [Exhibit 3 - Deposition of Michael McCaffrey p. 63: 1-5]. The referring neurologist also confirmed his assistants whom were responsible for assisting with the referral were employed by Defendant.
 - Testimony: Mrs. Garver testified that Defendant never reached out to Dr. McCaffrey for the MRI referral, Dr. McCaffrey was nowhere to be found, and she was under the impression that if Defendant "found something neurologically wrong with [Jeremy Garver] immediately at the ER of which his doctor was associated with, [she] would have thought that [Dr. McCaffrey] would have been involved a little bit. [She] shouldn't even had to call him." [Exhibit 4 - Deposition of Claudine Garver].
 - Testimony: Defendant Michael McCaffrey agreed with Claudine Garver when he testified "guess it should have been somebody calling [him] up on the phone as opposed to the patient's wife." [Exhibit 3 - Deposition of Michael McCaffrey p. 62: 6-8].
 - Medical Records: Defendant was aware of the urgency for a referral, noting in the discharge records that "follow up with neurology stressed," yet Defendant failed to assist the Garvers with a timely referral. [Exhibit 5 - McLeod ED Course].
 - Timeline:
 - October 23, 2017: Jeremy Garver admitted to Defendant's facility with stroke like symptoms where a CT scan was performed and large brain mass was discovered. [Exhibit 5 - McLeod ED Course].
 - October 23, 2017: MUSC consulted and advised the Defendant and Garvers that Jeremy Garver needed a referral for a MRI then would need to schedule an appointment with MUSC's neurosurgery department. [Exhibit 5 - McLeod ED Course].
 - October 23, 2017: Jeremy Garver discharged from Defendant's facility with merely instructions to contact neurology for a referral. [Exhibit 2 - Discharge Instructions].
 - October 26, 2017: MRI finally performed. [Exhibit 3 - Deposition of Michael McCaffrey p. 64: 3-6].

- October 31, 2017: Jeremy Garver meets with MUSC neurosurgeon and scheduled to return for medical procedure.
- November 3, 2017: Jeremy Garver pronounced dead due to a ruptured cerebral aneurysm. [Exhibit 6 - Death Certificate].

SUMMARY OF FACTS

On October 23, 2017, Jeremy Garver presented to Defendant's ER with stroke like symptoms. [Exhibit 2 - Discharge Instructions]. A CT scan revealed a large brain mass. [Exhibit 5 - McLeod ED Course]. Defendant consulted with MUSC via televised conference call where MUSC advised Defendant and the Garvers that Jeremy Garver needed a referral for a MRI, then would need to schedule an appointment with MUSC's neurosurgery. *Id.* MUSC relayed the need for urgency to the Defendant, which Defendant was aware of. [Exhibit 5 - McLeod ED Course]. Jeremy Garver was discharged that same day with merely instructions to contact Defendant's neurology department for follow up MRI and consider calling MUSC for an appointment. [Exhibit 2 - Discharge Instructions]. No other instructions were given to the Garvers. However, the referring neurologist who was treating Jeremy was not on call until beginning of November 2017 and Jeremy Garver was not able to get a MRI until October 26, 2017. [Exhibit 3 - Deposition of Michael McCaffrey p. 62: 2-5; p. 62: 1-5]. Finally, Jeremy Garver met with a neurosurgeon at MUSC and was scheduled to return to MUSC for a medical procedure, but died November 3, 2017 due to a ruptured cerebral aneurysm. [Exhibit 6 - Death Certificate]. The referral process is at issue.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper only when it is clear there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-

moving party. Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 443 S.E.2d 392 (1994). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Id.

LEGAL ANALYSIS

The Defendant is a non-profit entity who employs both medical and nonmedical personnel who, by itself, without naming an individual medical personnel employed by the Defendant (i.e. Registered Nurse), is incapable of committing medical malpractice. The statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical or administrative care. Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014). To recover for medical malpractice, a plaintiff must show failure by a physician to exercise that degree of care and skill which is ordinarily employed by the profession under similar conditions and in like circumstances. Welch v. Whitaker, 282 S.C. 251, 317 S.E.2d 758 (Ct.App.1984). This must be established by expert testimony unless the subject matter is of common knowledge or experience. Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct.App.1985). A referral, once advised and/or recommended by medical professional, is nothing more than an administrative process. A referral, in the most basic sense, is a written order from a doctor to see a specialist for a specific medical service. These referral orders are handled by administrative staff who merely assist the patient and referring medical professional. Unlike a failure to refer, which is usually clear medical malpractice, a failure or lack of procedure in a referral system is simply administrative. Defendant Michael McCaffrey's testimony briefly explains Defendant's referral process, or lack thereof:

Q Okay. I believe he was admitted the night prior, late that night. Is there not a process where McLeod contacts you and asks for a referral or is that up to the patients?

A I don't know what happened in that situation. I'm on call ten days a month. That just happened to be one of the days I wasn't on call. I guess it should have been somebody calling me up on the phone as opposed to the patient's wife.

....

Q All right. And so what's the process when a patient's wife calls for a referral? Can you just kind of flesh that out for me?

A Well, she called and said they diagnosed him with a brain tumor.

Q All right.

A So that usually throws up what you call a red flag. We need to get an MRI of the brain.

Q And then if you're on -- were you on -- you were not on call on October 24th, 2017, is that correct?

A No, I don't think I was on call either one of those days. I don't think I was on call until -- I usually do my call the beginning of each month, so it wouldn't have been until the beginning of November.

Q Okay. And so they're calling your office for a referral. What do you -- what do you do at that point or is this something your office can handle without you?

A No, I talk to [assistant name omitted] and I say we're coming to get his MRI done today or tomorrow, as soon as possible.

Q Okay. So she called you and said, hey, we need a referral, and then you said, let's get it done as soon as possible?

A As soon as possible, yes, sir.

Q And then the referral, is this something you email, fax, is it a phone call? How does that work, or how did it work?

- A Sometimes I can handwrite an order and it's faxed straight over to whatever MRI facility we can get this done at.
- Q Okay. I think he was referred over to InMed Diagnostic Services of South Carolina, is that correct?
- A That's correct. That was the place where we could get it done the fastest.
- Q So -- and I think the wife called on October 24th. Was a referral sent over there on October 24th as well?
- A Yes, sir.
- Q Okay. And then once it gets into their hands, is it up to them to schedule it?
- A [Assistant name omitted] tries to stay on the phone with them to see when it's going to get done if that's possible.
- Q And correct me if I'm wrong, but I believe the MRI was conducted on October 26th, 2017?
- A That's correct.

[Exhibit 3 - Deposition of Michael McCaffrey p. 61: 23-25; p. 62: 1-25; p. 63: 1-25; and p. 64: 1-14].

Several things are clear from Defendant McCaffrey's testimony. First, the referral process varies. Sometimes fax, sometimes email, sometimes handwritten. Second, Defendant instructed the Garvers that Defendant McCaffrey was the only doctor capable of referring Jeremy Garver for a MRI. Finally, Defendant McCaffrey was not on call and not readily available which made it considerably more difficult for the Garvers to obtain the referral.

Claudine Garver emphasized the clear issue with the referral process through her testimony. Claudine Garver testified that Defendant never reached out to Dr. McCaffrey for the brain MRI referral, Dr. McCaffrey was nowhere to be found, and she was under the impression

that if Defendant "found something neurologically wrong with [Jeremy Garver] immediately at the ER of which his doctor was associated with, [she] would have thought that [Dr. McCaffrey] would have been involved a little bit. [She] shouldn't even had to call him." [Exhibit 4 - Deposition of Claudine Garver p. 117: 12-25; p. 118: 1-3]. Dr. McCaffrey agreed with Claudine Garver when he testified "guess it should have been somebody calling [him] up on the phone as opposed to the patient's wife." [Exhibit 3 - Deposition of Defendant McCaffrey p. 62: 2-8]. However, again, Dr. McCaffrey was not available that day. By the time Jeremy Garver was able to obtain the referral and met with MUSC's neurosurgeon on October 31, 2017, the neurosurgeon determined that he would need to "coordinate an expedited visit with neuro-endovascular colleagues for appropriate management." However, it was too late as on November 3, 2017 Jeremy Garver was pronounced dead due to a ruptured cerebral aneurysm. [Exhibit 6 - Death Certificate].

CONCLUSION

Based on the aforementioned, the court should grant Plaintiff's Motion to Reconsider.

FEIDLER LAW FIRM, LLC

s/ Stefan B. Feidler

Stefan B. Feidler | stefan@feidlerlawfirm.com

S.C. Bar No. 101918

P.O. Box 22273

Charleston, SC 29413

Phone: (843) 790-9015

Attorney for the Plaintiff

February 23, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLAUDINE GARVER Both Individually and as
Personal Representative for the ESTATE OF
JEREMY GARVER,

Plaintiff,

vs.

MEDICAL UNIVERSITY OF SOUTH
CAROLINA d/b/a MUSC,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-NI-10-0084

(Please Print)

Submitted By: Stefan B. Feidler; Eric M. Poulin;
Roy T. Willey, IV.

Address: 32 Ann Street, Charleston, SC 29403

SC Bar #: 101918; 100209; 101010

Telephone #: (843)614-8888

Fax #: (843)853-2291

Other:

E-mail: stefan@akimlawfirm.com;
eric@akimlawfirm.com; and
roy@akimlawfirm.com.

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☒ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☒ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture—Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: 10/4/2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute;
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions**

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

MEDICAL UNIVERSITY OF SOUTH
CAROLINA d/b/a MUSC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: ~~2019-CP-10-05302~~

2019-NI-10-0084

**NOTICE OF INTENT TO FILE SUIT IN A
PROFESSIONAL MALPRACTICE CASE
(S.C. Code Ann. 15-79-125)**

FILED
2019 OCT -4 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Pursuant to S.C. Code Ann § 15-79-125, the Plaintiff above-named hereby files this Notice of Intent to File Suit. Set forth below is Plaintiff's Short and Plain Statement of Facts showing that s/he is entitled to relief. Attached as Exhibit A and incorporated herein by reference are Plaintiff's Answers to Standard Interrogatories as set forth in Rule 33, SCRPC.

Because of time constraints, and in accordance with S.C. Code Ann § 15-36-100(c)(1), which states "the contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, a plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with an affidavit," the Plaintiff above-named will file the requisite affidavit within forty-five days of this filing.

SHORT AND PLAIN STATEMENT OF THE FACTS

1. The Plaintiff, Claudine Garver as Personal Representative of the Estate of Jeremy Garver, is a resident and citizen of Horry County, State of South Carolina.

2. Upon information and belief, Defendant, Medical University of South Carolina d/b/a MUSC Medical Center (hereinafter “Defendant”) is a governmental entity, organized, and doing business in the County of Charleston, State of South Carolina, and as such is covered under the South Carolina Tort Claims Act.
3. Upon information and belief, Defendant’s medical staff, including but not limited to physician(s), emergency room staff, and general clinical/medical staff were citizens and resident of the County of Charleston, State of South Carolina and at all times mentioned herein involved in the care and/or treatment of Plaintiff’s decedent Jeremy Garver (hereinafter “Jeremy Garver”).
4. At all times herein mentioned, Defendant acted by and through its servants, agents, and/or employees, including, but not limited to, nurses, physicians, residents, orderlies, technicians, pharmacists, and/or other employees and healthcare professionals, all of whom were acting within the scope of their employment at MUSC.
5. Venue is proper in this Court because the Defendant has its principal place of business in Charleston County, State of South Carolina, and the acts and/or omissions giving rise to this cause of action occurred in Charleston County.
6. That in late October 2017, Jeremy Garver was referred to Defendant with chief complaints of weakness on left side since 3pm, history of migraines with headaches, left sided paresthesia, and gait instability.
7. That a CT scan / MRI revealed a giant fusiform aneurysm arising from the mid basilar segment between the AICAs and the SCAs. The aneurysm measured 27 mm x 23 mm.
8. That on or about November 1, 2017, Defendant scheduled Jeremy Garver to return on November 8, 2017, for an outpatient procedure.

9. That upon information and belief, on November 1, 2017, Jeremy Garver was discharged from Defendant's facility, but immediately returned to Defendant's ER with complaints of nausea and/or severe headache/pain.
10. That upon information and belief, Defendant advised Jeremy Garver that his nausea and/or severe headache/pain was due to medications related to the CT scan / MRI and denied Jeremy Garver re-admission into Defendant's facility.
11. That on or about November 3, 2017, Jeremy Garver suffered a subarachnoid hemorrhage and/or ruptured cerebral aneurysm, and on or about November 4, 2017 at 10:27am Jeremy Garver was determined dead.
12. That as a direct and proximate cause of the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendant and its employees and/or agents in failing to possess and exercise the ordinary degree and skill, competency, and medical training ordinarily and customarily possessed and exercised by similarly situated healthcare providers under similar circumstances, and thereby deviating from the applicable standard of care, Plaintiff and/or Jeremy Garver suffered real and lasting injur(ies) including death. Plaintiff and/or the Estate of Jeremy Garver has incurred substantial medical expenses, funeral expenses, experienced pain and suffering, mental anguish, and loss of enjoyment of life.
13. That there may be additional bases for these deviations which will further be addressed by expert witness(es) and as discovery progresses. Therefore, Plaintiff reserves the right to supplement these deviations as deemed necessary.

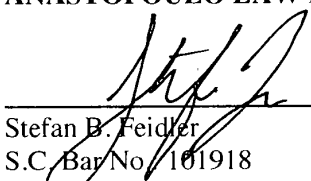
[SIGNATURE BLOCK ON FOLLOWING PAGE]

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 4
DAY OF October, 2019

C. Haun

10/4, 2019
Charleston, South Carolina

ANASTOPOULO LAW FIRM, LLC



Stefan B. Feidler
S.C. Bar No. 101918
Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
32 Ann Street
Charleston, SC 29403
(843) 614-8888
(843) 494-5536 fax

Attorneys for the Plaintiff

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2019-CP-10-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff(s),

v.

MEDICAL UNIVERSITY OF SOUTH
CAROLINA d/b/a MUSC,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or attorneys, Stefan B. Feidler, Eric M. Poulin, Roy T. Willey, IV Stefan B. Feidler, at their office, 32 Ann Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 20 day of 12, 2019.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2019-CP-10-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

MEDICAL UNIVERSITY OF SOUTH
CAROLINA d/b/a MUSC,

Defendant.

**COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, complaining of the Defendant, alleges and says as follows:

PARTIES & JURISDICTION

1. Plaintiff, Claudine Garver, both Individually and as Personal Representative of the Estate of Jeremy Garver ("Plaintiff"), was duly appointed as the Personal Representative of the Estate of Jeremy Garver (hereinafter "Mr. Garver" or "Jeremy Garver"), the deceased, on December 15, 2017, in the Horry County Probate Court located in South Carolina. Plaintiff is therefore authorized to bring this action in tort to recover for Jeremy Garver's wrongful death, for the damages to the wrongful death beneficiaries of Jeremy Garver, and for claims belonging to Jeremy Garver in life and belonging to his Estate, including, but not limited to, pre-death pain and suffering, mental distress, medical bills, loss of quality of life to the decedent, and funeral expenses. S.C. §§ 15-590, 15-51-10, 15-51-20, and 15-5-100.
2. Upon information and belief, Defendant Medical University of South Carolina d/b/a MUSC (hereinafter "Defendant" or "MUSC") is incorporated in the State of South Carolina, and maintain its principal places of business in Charleston County, State of South Carolina.

3. Upon information and belief, at all material times, the Defendant was responsible for ensuring that the activities and operations of MUSC complied with all applicable state and federal statutes, laws, and regulations.
4. Upon information and belief, at all material times, MUSC was a participant in the Medicare and Medicaid programs; thus, required to comply with the provisions of 42 C.F.R. § 482.1 *et seq.*
5. Whenever in this Complaint it is alleged that Defendant and/or MUSC did any act or failed to do any act, it is meant that the officers, agents, or employees of MUSC respectively performed, participated in, or failed to perform such acts while in the course and scope of their employment or agency relationship with the McLeod Defendants .
6. The Defendant is subject to the jurisdiction of this Honorable Court.
7. The causes of action sued upon arose in Charleston County, State of South Carolina.
8. Venue is, therefore, proper for Defendant in Charleston County, State of South Carolina.
9. That pursuant to S.C. Code Ann § 15-36-100, Plaintiff filed the Notice of Intent, Expert Affidavit, and Plaintiff's Responses to Standard and First Interrogatories.
10. That pursuant to S.C. Code Ann § 15-36-100, Plaintiff attempted to conduct pre-suit mediation but Defendant claimed it was not necessary.
11. That "not every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125." *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).

12. “However, at all times, the medical professional must ‘exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.’” Id. at 178, 758 S.E.2d at 504 (further citations omitted).
13. That ‘the statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers’ ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care.” Id. (further citation omitted).
14. “Thus, medical providers are still subject to claims sounding in ordinary negligence.” Id. (further citations omitted).
15. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Charleston County, State of South Carolina.

BACKGROUND FACTS

16. That in late October 2017, Jeremy Garver was referred to Defendant with chief complaints of weakness on left side since 3pm, history of migraines with headaches, left sided paresthesia, and gait instability.
17. That a CT scan / MRI revealed a giant fusiform aneurysm arising from the mid basilar segment between the AICAs and the SCAs. The aneurysm measured 27 mm x 23 mm.
18. That on or about November 1, 2017, after evaluating Jeremy Garver, Defendant scheduled Jeremy Garver to return on November 8, 2017, for an outpatient procedure.
19. That upon information and belief, on November 1, 2017, Jeremy Garver was discharged from Defendant’s facility, but immediately returned to Defendant’s ER with complaints of nausea and/or severe headache/pain. These neurological symptoms were consistent with aneurysm expansion and/or rupture.

20. That upon information and belief, Defendant advised Jeremy Garver that his nausea and/or severe headache/pain was due to medications related to the CT scan / MRI and denied Jeremy Garver re-admission into Defendant's facility.
21. That on or about November 3, 2017, Jeremy Garver suffered a catastrophic subarachnoid hemorrhage and/or ruptured cerebral aneurysm.
22. That Jeremy Garver was transferred to another facility due to being an organ donor and on or about November 4, 2017 at 10:27am Jeremy Garver was pronounced dead.
23. That as a direct and proximate cause of the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendant and its employees and/or agents in failing to possess and exercise the ordinary degree and skill, competency, and medical training ordinarily and customarily possessed and exercised by similarly situated healthcare providers under similar circumstances, and thereby deviating from the applicable standard of care, Plaintiff and/or Jeremy Garver suffered real and lasting injur(ies) including death. Plaintiff and/or the Estate of Jeremy Garver has incurred substantial medical expenses, funeral expenses, experienced pain and suffering, mental anguish, and loss of enjoyment of life.
24. That there may be additional bases for these deviations which will further be addressed by expert witness(es) and as discovery progresses. Therefore, Plaintiff reserves the right to supplement these deviations as deemed necessary.

FOR A FIRST CAUSE OF ACTION
(Negligence / Gross Negligence)

25. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
26. That Defendant owed a duty to Jeremy Garver as providers to act in a reasonable fashion, provide a safe and adequate facility and provide timely care to Jeremy Garver in that of similar providers.
27. That the resulting injuries and damages to Plaintiff/Jeremy Garver were caused proximately by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton, and unlawful acts, and/or omissions and/or breach of duty of Defendant in any one or more of the following respects:
 - a. Failing to arrange for a full evaluation of Jeremy Garver when he returned to MUSC with reports of neurological symptoms consistent with aneurysm expansion and/or rupture;
 - b. Failing to arrange an immediate medical evaluation of Jeremy Garver when he returned to MUSC with reports of neurological symptoms consistent with aneurysm expansion and/or rupture;
 - c. Failing to appropriately respond to Jeremy Garver when he returned to MUSC with reports of neurological symptoms consistent with aneurysm expansion and/or rupture;
 - d. Assuming Jeremy Garver was simply dehydrated when he returned to MUSC and failing to notice the importance of Jeremy Garver's complaints and/or symptoms, and/or neurological symptoms consistent with aneurysm expansion and/or rupture;
 - e. In deviating from the standard of care for medical care providers and/or hospitals;
 - f. In failing to provide Jeremy Garver with the reasonably required care expected of and typically exercised by similarly situated professional medical care providers;

- g. In failing to acknowledge and/or properly document and/or record Jeremy Garver's symptoms and/or physical conditions;
 - h. In causing Jeremy Garver to incur medical costs associated with additional medical care after he left MUSC;
 - i. In causing and/or refusing to alleviate Jeremy Garver's severe pain and/or suffering;
 - j. In failing to conduct an assessment of Jeremy Garver;
 - k. In failing to recognize and/or treat Jeremy Garver on an emergent basis upon his return, which would have decreased the likelihood of the catastrophic aneurysm rupture which caused Jeremy Garver's death;
 - l. In any such other particulars as may be ascertained through discovery or shown at trial; and
 - m. All of which were direct and proximate cause of the injuries and damages suffered by the Plaintiff and/or Jeremy Garver, said acts being in violation of the Laws of the State of South Carolina and/or violations of the standards of care as it pertains to medical care providers and/or hospitals such as Defendant.
28. The Defendant, by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment.
29. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of Defendant, as is set forth more fully above, Jeremy Garver and/or Plaintiff was injured, endured pain and suffering, suffered mentally and emotionally, has incurred various expenses, and has otherwise been damaged and injured.

30. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of all Defendant, as is set forth more fully above, Jeremy Garver suffered in various ways because of receiving inadequate medical care while under Defendant's care.
31. That upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual, compensatory, and exemplary or punitive damages for Jeremy Garver's personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.
32. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff and/or Jeremy Garver has been damaged and injured in the following respects:
- a. Jeremy Garver endured physical pain and suffering as a result of Defendant's deviations from the standard of care and/or acts and/or omissions;
 - b. Jeremy Garver and/or Plaintiff suffered from anxiety, mental anguish, and emotional and/or psychological pain and suffering as a direct result of Defendant's breach of duty and/or deviations from the standard of care and/or acts and/or omissions; and
 - c. Jeremy Garver and/or Plaintiff incurred unnecessary medical costs.
33. That as a direct and proximate cause of the Defendant's conduct, as aforesaid, Plaintiff and/or Jeremy Garver has experienced economic loss associated with Jeremy Garver's medical expenses and is entitled to relief for the same.

FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

34. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
35. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of the Defendant, which caused injury to Jeremy Garver and untimely death, who was a loving and devoted husband and loving and devoted father, Plaintiff Claudine Garver suffered actual damages for the loss of consortium and companionship of Plaintiff's spouse as provided under S.C. Code Ann. § 15-75-20, for which Plaintiff seeks recovery in this action, including loss of consortium, love, affection, aid, comfort, society, companionship, services, support, and all other damages recoverable in an action for loss of consortium under South Carolina law.
36. Plaintiff is informed and believes that she is entitled to judgment against the Defendant for actual damages, together with an appropriate award of punitive damages, in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Negligence *Per Se*)

37. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
38. That in addition to the above, the Defendant was negligent *per se* in its violations of the Emergency Medical Treatment Act and Active Labor Act, South Carolina Department of Health and Environmental Control Regulations for Hospitals at Regulation 61-16, *et seq*; Defendants' own Policies and Procedures; as well as protective Federal Regulations and Statutes, when Defendant failed and/or refused to re-admit Jeremy Garver.

39. That each and/or all of the foregoing state and federal laws, rules and regulations prescribe certain actions or define the standard of conduct.
40. That Jeremy Garver was in the class of persons sought to be protected by each regulation and/or statute. Moreover, Jeremy Garver's injuries and/or death were/was the type of harm that each of these regulations was intended to prevent according to the extent that the Defendant's conduct violated these regulations.
41. That such conduct amounts to negligence *per se* as that term is defined and is known and understood at law. Each act or omission constituting negligence *per se* was the proximate cause of Jeremy Garver's injuries and/or damages and/or death, and was the proximate cause of the damages and injuries suffered by the wrongful death beneficiaries.
42. That as a direct and proximate result of the Defendant's acts and/or delicts, Jeremy Garver endured extreme conscious pain and suffering, mental distress, medical bills and disability.
43. That as a further direct consequence of said acts and delicts, the untimely death of Jeremy Garver proximately resulted, causing the damages and injuries suffered by the wrongful death beneficiaries.

FOR A FOURTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

44. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
45. That as a result of such negligent acts and omissions, Plaintiff was inflicted with severe emotional distress.
46. That as a result of Defendant's negligent actions, Plaintiff suffered emotional distress.

47. That as a result of Defendant's negligent actions, Plaintiff suffered severe distress which no reasonable person could be expected to endure.

48. That as a result of said behavior by Defendant, Plaintiff alleges that Defendant did not act in good faith or in a reasonable manner, and so Plaintiff was subjected to considerable distress and embarrassment.

FOR AN FIFTH CAUSE OF ACTION
(Survival Action S.C. Code Ann. § 15-5-90)

49. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

50. That as a consequence of the events set forth in this Complaint, and as a direct and proximate cause of the negligence of the Defendant as aforesaid, Decedent was caused to sustain great conscious pain and suffering prior to his death, which injuries are compensable under South Carolina Code of Laws, Section 15-5-90.

51. That Decedent was painfully and seriously injured as a result of the negligence of the Defendant, for which a claim is hereby made by the Estate and administrators for full and complete compensation for pain and suffering.

FOR A SIXTH CAUSE OF ACTION
(Wrongful Death S.C. Code Ann. § 15-51-10)

52. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

53. That Defendant knew or should have known that Jeremy Garver would suffer foreseeable injury, including death, as a result of Defendant's failure to exercise ordinary care as set forth more fully above.

54. That as a direct and proximate cause of the Defendant's conduct, as aforesaid, Jeremy Garver, for whom this action is brought, lost life, and as a result Plaintiff has experienced pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of

companionship, and deprivation of the use and comfort of Jeremy Garver's society, and is entitled to relief for the same.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, on behalf of the Estate and Decedent's statutory beneficiaries, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler
 Stefan B. Feidler, Esquire
 S.C. Bar No.: 101918
 Eric M. Poulin, Esquire
 S.C. Bar No.: 100209
 Roy T. Willey, IV, Esquire
 S.C. Bar No.: 101010
 32 Ann Street
 Charleston, South Carolina 29403
 (843) 614-8888

Dated at Charleston, South Carolina

This 20 day of 12, 2019.

State of South Carolina)
)
County of Horry) Circuit Court
Docket Number Unknown

Claudine Garver both)
Individually and as Personal)
Representative of the Estate)
of Jeremy Garver)

vs.)

Transcript of Record

McLeod Seacoast, Michael)
McCaffrey, MD, and McLeod)
Physician Associates, II)

January 3, 2023
Conway, South Carolina

B E F O R E:

The Honorable William H. Seals, Jr., Judge.

A P P E A R A N C E S (All present by video or telephone):

Stefan B. Feidler
Attorney for the Plaintiff

Hugh W. Buyck
Attorney for the Defendant

Marian Scalise, Attorney

Cylia Israel
Transcriber



1 THE COURT: All right. Do we have everybody we need, or
2 are we waiting on --

3 MR. BUYCK: I believe we have everybody if we got a court
4 reporter.

5 THE COURT: Recording as we speak.

6 MR. BUYCK: Okay. Great.

7 THE COURT: I'm ready when you are.

8 MR. BUYCK: Yeah. I am here -- hereby here on behalf of
9 McLeod Loris Hospital. And I am -- we have filed a motion for
10 summary judgment in regards to the plaintiff's claims of
11 medical malpractice as well as any administrative and other
12 claims that the plaintiff has raised within their memorandum
13 in opposition to our motion. They've brought forth the
14 Dawkins administrative issue. And Dawkins was the case in
15 which there was a slip-and-fall in an ER and said, you didn't
16 have to have an expert for a slip-and-fall.

17 The issues here, however, Your Honor, concern a period of
18 time where the patient saw a Dr. McCaffrey as their -- as his
19 neurologist. Dr. McCaffrey treated him in the office. He is
20 a McLeod Physician Associates, II employee. He is not a
21 employee of McCleod Loris. McCleod Loris' only involvement
22 was an ER visit on October 23rd, 2017 in which there was a
23 study performed which confirmed that the patient had a brain
24 tumor.

25 Thereafter, the patient went to the Medical University in

1 which the plaintiff actually had a separate claim against the
2 Medical University that they had filed in Charleston County,
3 and was seen and subsequently succumbed to the brain tumor by
4 November 4th, or approximately 10, 11 days after being seen at
5 McCleod Loris facility. The plaintiff's expert was deposed.
6 And Dan Sanders (ph.) actually deposed plaintiff's expert, and
7 his name was Dr. Thomas Ward (ph.). And you'll see on page 5
8 of our memorandum the testimony from Dr. Ward who says that he
9 would not come to the courtroom and argue that there was a
10 deviation from standard care by McCleod Seacoast or the ER
11 doctors and that he would not argue that McCleod was
12 responsible for Mr. Garver's death, so no deviation from
13 standard care and no proximate care.

14 So our position is that in a medical malpractice case you
15 certainly have to have -- you have to establish not only the
16 standard care but proximate cause by expert testimony. Mr.
17 Fiedler, in our response to our motions, surprisingly has now
18 taken the position that it was an administrative position,
19 that they had to get him to MUSC quicker so that he'd have
20 more treatment and, therefore, he wouldn't've survived -- he
21 would've survived. There's no testimony in this record for
22 that causation position. There's been no witness identified
23 to say that even if they had done something different in the
24 ER on that date, that the result would've been changed.

25 Mr. McCaffrey (sic) had a rather significant brain tumor

1 as evident by this 10, 11-day period of time before it was --
2 before he succumbed to it. He had had additional appointments
3 at MUSC. They had gone to Charleston, and they had come back
4 to where he was living in the Myrtle Beach area. But
5 plaintiff now takes position that we didn't get him a referral
6 quick enough, so that he could have treatment for his
7 condition. But they have no testimony after all these years
8 that any of that would've made any difference in regards to
9 the survivability of this significant medical condition.

10 And so Your Honor, we take position that, 1) their expert
11 testimony is clear that he's not stayed (ph.) either standard
12 of care or causation; 2) if they say it falls outside of a
13 medical malpractice into this realm of Dawkins today for
14 administerial or administrative act, they still have no
15 testimony from a negligence standpoint as to proximate cause.

16 And proximate cause is a touchstone of any negligence
17 action. And I don't think that a juror, even if you -- you go
18 down the Dawkins route, that a juror can understand the
19 significance of a medical condition, one, and reach a
20 proximate conclusion; and two, even if you say, all right, it
21 is an administrative or administerial function, they don't
22 have anybody to testify that we did anything improperly from
23 an administrative or administerial position. And we contend
24 that it would take expert testimony to say what needs to be
25 done in order to get a referral within a hospital system.

1 That's not a common knowledge exception.

2 In the realm of today in getting insurance verification
3 and what goes on with that, I don't think the average juror
4 understands it. I don't understand it. So we would submit
5 that we are entitled to summary judgment under the various
6 summary judgment standards that are set forth not only in our
7 motion but also Mr. Bridges' (ph.) motions, that there is no
8 evidence to support the claims against McCleod Loris Hospital.

9 There's an affidavit attached to Mr. Bridges' memorandum
10 that we're going to hear about in a minute from Mr. Sonny
11 Barnes who is general counsel for McCleod, who indicates that
12 none of the ER providers were employed by McCleod Physician
13 Associates, II, neither was Dr. McCaffrey. And Dr. McCaffrey
14 stands alone in regards to his medical care. So that's our
15 position, Your Honor. And we welcome any questions you may
16 have.

17 THE COURT: Any response to that?

18 MR. FEIDLER: Yes, Your Honor. And thank you for hosting
19 us today.

20 THE COURT: It's hard to hear you (indiscernible).

21 MR. FEIDLER: Can you hear me better?

22 THE COURT: Much better. Thank you.

23 MR. FEIDLER: Okay. I get closer. So with all due
24 respect to Mr. Buyck and his client, this shouldn't be a shock
25 that we're alleging Dawkins. Dawkins was quoted in our

1 complaint, and allegations in our complaint pointed at
2 Defendant Seacoast. Specifically, on page 8 through 9 says
3 that they failed to properly refer Mr. Garver for an MRI; they
4 failed to properly communicate the urgency of Mr. Garver's
5 conditions; they failed to make certain that Mr. Garver had
6 appropriate referral in a timely manner. But I think it might
7 be a little bit -- I think it is important to kind of look at
8 the background and the facts of this case.

9 Mr. Garver went to Seacoast on October 23rd, 2017 with
10 stroke-like symptoms. When he went in there, there was some
11 mention of tingling in his left arm, trouble walking, things
12 like that. Of course, they had performed a CT which
13 identified a large brain mass. They reach out -- and I think
14 it's actually called reach -- reach out to consult with MUSC,
15 who says yes, you need a referral for an MRI; once you have
16 that MRI on CD, you need to come see our neurosurgeons, and we
17 need to figure out what's going on; you have a large brain
18 mass.

19 And so at that point, what Seacoast does is they say, all
20 right, well, you have a large brain mass, you need to get a
21 MRI, you need to check on this. So what happens is, and what
22 we're arguing is, this is a defective referral communication
23 process. There's some kind of defect where time was a issue
24 in this case, because Mr. Garver never made it to his
25 appointment with the neurosurgeon, the one where they verified

1 and said this needs to be an expedited condition; this is
2 something that needs to happen immediately. But there is
3 plenty of testimony concerning the issues around this
4 defective referral process between Seacoast's folks. And what
5 Mr. Buyck said is, well, Sonny Bone -- Sonny will come in and
6 say, well, the ER folks, they were not associated with the
7 neurologists' employer, but they were associated with
8 Seacoast. Now that matters for particulars, and I'll get to
9 that in a second.

10 But let's kind of go around some of the testimony. So
11 here's a wife and a husband who find out there's a large brain
12 mass. She receives a call from MUSC the next day. And in
13 that call, the MUSC RN said she spoke with scheduling earlier
14 today, and they told her she would need a referral, so they're
15 working on getting a neurologist and/or the McCleod Seacoast
16 to send a referral over. When asked during her deposition
17 about specific complaints against the Seacoast ER admission --
18 and again, this is the widow, Ms. Garver -- she says they
19 never contacted Dr. McCaffrey who's the neurologist who was at
20 the facility and was treating Mr. Garver, and he was never
21 made part of the conversation until I need to get a MRI.

22 She also said that what's said that he was under the care
23 of Dr. McCaffrey and he was nowhere to be found other than for
24 us to make a referral for an MRI. She said, I found
25 something -- she said, I thought if they find something

1 neurologically wrong with him, being Mr. Garver, immediately
2 at the ER, at the ER which his doctor's associated with, I
3 would've thought he would've been involved a little bit; I
4 shouldn't even have to call him.

5 Dr. McCaffrey testified when asked about this whole
6 referral issue and why it took -- why it took time, why it
7 didn't go smoothly, because again, Mr. Garver passed out after
8 this aneurysm ruptured a couple days later, he said, I don't
9 know what happened in that situation; I'm on call ten days a
10 month; it just happened to be one of the days I wasn't on
11 call; I guess it should've been somebody calling me on the
12 phone as opposed to the wife.

13 He also admitted that all his assistants -- again, this
14 is Dr. McCaffrey, the neurologist -- worked for Seacoast. So
15 he had ER employees that worked for Seacoast. And then you
16 have neurology department whose employees, not the doctor, but
17 the employees work for Seacoast. So there's a breakdown in
18 the referral process where in this case, time is of the
19 essence. So Seacoast knew the urgency of this referral; yet,
20 they just hand it off to Mr. Garver or Mrs. Garver after they
21 find this large brain mass.

22 Ms. Garver also testified that she couldn't believe they
23 were discharging him from the hospital. So Seacoast in the
24 discharge notes noted "Follow-up with Neurology is stressed".
25 They put that in the notes. Yet if you look in the discharge

1 notes which is part of my exhibits, there are two unsigned
2 acknowledgment of receipt of discharge instructions in Mr.
3 Garver's discharge paperwork. So Judge, what we're getting at
4 is that there is not -- it is not a medical malpractice, and
5 they've known that from the beginning.

6 You only have a neurologist expert on board. He handled
7 the affidavit to get our foot in the door in the notice of
8 intent. He testified, I think, definitely a year, if not, two
9 years ago that he wasn't an ER doctor, and he had no opinion
10 as it pertains to the ER. So they had known from the very
11 get-go that this is not a medical malpractice lawsuit but
12 whether a breakdown in the referral process where every second
13 mattered. And if they say, well, the next day or the day
14 after the referral came and then the MRI, that's something for
15 the jury to decide and not the Court, whether that was too
16 much time.

17 And it's easy for me to explain this to a jury. And this
18 is where Dawkins comes in, because all I need to do is do a
19 30(b)(6) to get some testimony about the referral process, the
20 policies and procedures at Seacoast pertaining to the referral
21 process and whether or not there was a breakdown. Because
22 essentially, by the time he gets that referral, by the time he
23 gets that MRI to MUSC, that neurosurgeon actually said, I need
24 to coordinate an expedited visit with my neuro and the
25 vascular colleagues for appropriate management, come back on

1 this day.

2 Jeremy Garver never made it back. Instead, he was found
3 unresponsive in his bed and actually transferred to Seacoast
4 where he eventually was pronounced dead. So this is nothing
5 more than a breakdown in their referral process, has nothing
6 to do with medical malpractice. And I don't think we need an
7 expert to explain that to a juror. Thank you, Judge.

8 THE COURT: Attorney Buyck.

9 MR. BUYCK: Your Honor, if I could briefly reply. It
10 goes back to this causation issue. Even if you believe
11 everything he just asserted, it goes back to the causation
12 issue, as we stated on page 5 of our memorandum in opposition,
13 "Are you going to argue at the trial the case that McCleod
14 Seacoast Hospital is responsible for Mr. Garver's death?"
15 Answer: "I don't think I would come to that conclusion.
16 Somebody who has a brain mass who did get to MUSC, who was
17 referred to MUSC, who had seen the folks at MUSC in Charleston
18 before they returned him back to Myrtle Beach". So you got
19 this break in causal chain. But as Mr. Fiedler, here we are
20 on the -- we've been placed on the trial roster before -- he
21 says he's still after all these years. This case is four or
22 five years old now, hasn't the evidence to support, 1) that
23 there was a breakdown or 2) causation between an alleged
24 breakdown and this death. And that's our position, Your
25 Honor.

1 I think it's pretty clear. Again, there's no expert
2 testimony to establish what the referral process should be.
3 There's no expert that's been identified that McCleod Seacoast
4 did anything improperly, whether it be referral or whether it
5 be communications. The wife says, I expected other things,
6 but she did get to MUSC. She did get to have additional
7 studies, and there was a lawsuit against MUSC over all of this
8 that the plaintiff initiated. So I just think it's -- it's an
9 attempt -- here we are in this wild, wild, west Dawkins
10 world -- is an attempt to try to explicate yourself from what
11 it truly is at its core, and that's a medical malpractice
12 claim. And there are no allegations to support position.
13 There are no -- there are no facts to support their position.
14 There is no testimony to support the position that it would've
15 made any difference whatsoever. So respectfully, Your Honor,
16 we would -- we move for summary judgment at this stage. Thank
17 you.

18 THE COURT: I'll take that under advisement today and let
19 you know something this afternoon.

20 MR. BUYCK: Thank you.

21 THE COURT: How about you, Mr. Bridges, you've got a
22 motion?

23 MR. FEIDLER: Judge, plaintiff. We do have a motion to
24 strike. And I know that Mr. Bridges filed a motion for
25 partial summary judgment. I'm not sure that's on the roster

1 today. And I think there's a mention of motion to compel.
2 But yes, Judge, we did file a motion to strike Dr. McCaffrey,
3 his third defense, which says that he is immune from liability
4 and/or punitive damages in accordance with the South Carolina
5 Solicitation of Charitable Funds Act.

6 We, Judge, take the position that -- well, looking just
7 at the plain language, we take the position that he -- we will
8 admit that he does work for a charitable fund or nonprofit.
9 But as an employee, the statute, and our understanding is
10 clear that we name him individually and find that he acted in
11 reckless, willful, or a grossly negligent manner, then he can
12 also be held liable, and he's not immune.

13 I think this might -- we do have mediation coming up with
14 that. I filed this motion to get a little clarification
15 because I don't think the parties could agree on what the
16 limitations are against the individual defendants. But we
17 plain out take the position that if we can prove that
18 reckless, willful, or grossly negligent acts on behalf of Dr.
19 McCaffrey, he is not -- he can be held liable, and he is not
20 capped under that Charitable Funds and/or the South Carolina
21 Tort Claims Act.

22 Judge, there's a couple cases on point that go through
23 this. One of them is James v. Lister that is a 1998 Court of
24 Appeals case where they address the South Carolina Torts Claim
25 Act before it was -- the 1994 adoption, but it's the same

1 language. And basically to just clarify that, when you name
2 the individual employee and you find that they're -- the jury
3 finds that they're reckless, willful, or grossly negligent, he
4 can be held personally liable. Another case was the Chastain
5 v. AnMed -- and for the court reporter, that's
6 C-H-A-S-T-A-I-N. It's a 2010 Supreme Court case. In this
7 case, since none of the nurses were found guilty of reckless,
8 willful, or grossly negligent care, they were not found
9 individually liable. So that case clearly shows the Supreme
10 Court agrees with our position that we can find that Dr.
11 McCaffrey was grossly negligent, et cetera, that he can be
12 held personally liable.

13 And again, Judge, I think this is just one of the
14 situation where we're just trying to get some clarification
15 from the Court. And I understand Mr. Sanders probably had to
16 assert this defense on behalf of, definitely, the nonprofit,
17 McCleod Physician Associates, but certainly for the
18 individual. But thank you, Judge.

19 THE COURT: (Indiscernible).

20 MR. BUYCK: Yes, Your Honor. On this particular point,
21 Mr. Fielder's motion is to strike that defense. Actually, we
22 have to raise that defense in our answer. And so striking
23 that defense would not be appropriate. What that defense says
24 is a verdict cannot be rendered against Dr. McCaffrey unless
25 the jury makes a specific finding to a special interrogatory

1 of gross negligence on the part of Dr. McCaffrey. And so we
2 have to raise that. And the only way any other issue comes up
3 after that is if, in fact, after a trial, a jury makes that
4 finding against Dr. McCaffrey. So anything else with regard
5 to interpreting that statute is actually premature.

6 We do disagree that a finding against the employee, which
7 is what Dr. McCaffrey is, would open him to personal
8 liability. We think the statutes when read together still
9 protect him from personal liability and from punitive damages.
10 But again, there's almost no case law in South Carolina on
11 that because findings against a physician or a nurse are so
12 extremely rare that -- I mean, I've never had it happen, so
13 far, knock on wood. But that's something for the trial judge
14 to address only if and after there's a finding by the jury on
15 gross negligence. So that's our position on that, Your Honor.

16 And this will segue, I guess into the motions I filed on
17 behalf of Dr. McCaffrey and McCleod Loris, Seacoast having to
18 do with our motion for partial summary judgment as to the
19 question of any gross negligence on the part of Dr. McCaffrey
20 which, depending on how Your Honor ruled on that, it may well
21 moot all this that we're talking about right now. So that's
22 where we are on that, Your Honor.

23 We do have mediation in, when, March, Stefan?

24 MR. FEIDLER: I believe so, yes, sir.

25 MR. BUYCK: Yeah. And then this case, Your Honor, is set

1 to be tried by you, I believe in -- I believe the end of May.

2 MR. FEIDLER: Yes, sir.

3 MR. BUYCK: And then I have my motion. Stefan has a
4 motion to compel on some discovery disputes we're having as
5 well.

6 I don't know, Stefan; do you want to argue those, or you
7 want us to --

8 MR. FEIDLER: Say I could be losing my mind, but I don't
9 know if I saw that motion to compel on the roster. I know we
10 were talking about it. I feel like you and I may have talked
11 about it. And I don't know if we figured something out. I
12 don't see it on the roster. But I'll let Judge Seals
13 determine that, and --

14 MR. BUYCK: Okay. Well, I don't think it's pressing
15 anything.

16 MR. FEIDLER: Okay. I agree.

17 And Judge, no response to Mr. Bridges.

18 THE COURT: It sounds good. I'll take it under
19 advisement and let you know something today, both of you.

20 MR. FEIDLER: All right. We appreciate it. You all have
21 a good day. And Happy New Year to everyone.

22 THE COURT: You have a good day as well.

23 MR. BUYCK: Thank you, Your Honor. And again, I
24 apologize for the whole (indiscernible).

25 THE COURT: No problem at all.

1 MR. BUYCK: No reason. It worked out fine.

2 THE COURT: That's right. That's right. You all have a
3 good day.

4 MR. BUYCK: So Your Honor, just to clarify. My motion
5 for partial summary judgment and a motion to compel we'll hear
6 at a later time?

7 THE COURT: That'll be good.

8 MR. BUYCK: All right. So we'll let you know after the
9 mediation of when we need to hear those.

10 THE COURT: That sounds good. Thank you.

11 MR. BUYCK: All right. Happy New Year to everyone.

12 THE COURT: Happy New Year.

13 MR. BUYCK: Thank you.

14 (End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Horry)

I, CYLIA ISRAEL, a court-approved transcriber, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Horry County,
South Carolina, on the 3rd day of January, 2023.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

June 19, 2023



Cylia Israel, CDLT-113
Transcriber

In re Jeremy Garver

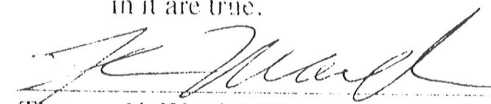
Affidavit of Thomas N. Ward, MD

1. My name is Thomas N. Ward, and I am over the age of eighteen years of age, of sound mind and otherwise competent to make this Affidavit, which I make based upon my background, education, training, and experience. This affidavit is also based on my personal knowledge.
2. I am a medical doctor who specializes in neurology, licensed in the State of New Hampshire and Vermont. My further qualifications and background are set forth in the attached CV [Exhibit "A"], which is incorporated by reference.
3. I have actual professional knowledge and experience in my area of practice, including my specialty within this area, which is neurology. In addition to the above, I have been in the active practice of the area of my specialty and/or have taught in the area of my specialty, in the State of New Hampshire for at least three of the last five years proceeding this opinion.
4. I am familiar with the standard of care applicable to the Defendant(s) during the time of Mr. Garver's treatment by Defendant(s) at Defendants' facility, commonly known as McLeod Seacoast, and standard of care and skill exercised by reasonable prudent neurologist and other healthcare providers under similar conditions as those involving.
5. I have reviewed the following records and/or documents relating to Jeremy Garver:
 - McLeod Seacoast;
 - Medical University of South Carolina; and
 - Grand Strand Medical Center.
6. Based on my review of the aforementioned records, I find that there is at least one deviation from the standard of care on behalf of the Defendants during Jeremy Garver's treatment by Defendants.
7. Without limitation, my review of records and/or documents relating to this matter show the following:
 - On December 29, 2015, Mr. Garver initially admitted to McLeod with complaints of headaches that began 5-6 years prior, neck and shoulder pain with moderate to

serve pain that lasts for hours. An assessment showed intractable migraine without aura and without status migrainous. Mr. Garver was prescribed Imitrex and scheduled for a 2 month follow up.

- Mr. Garver returned to McLeod on several occasions from February 5, 2016 to September 21, 2016, complaining of frequent headaches, increased migraines with increased intensity, and scotomatous lasting 20-30 minutes. Again, Mr. Garver was prescribed medications.
 - On March 21, 2017, Mr. Garver presented to McLeod complaining of severe headaches without improvement, pain in his neck and shoulders, and numbness in feet. Again, Mr. Garver was prescribed medications.
 - Mr. Garver continued to present to McLeod complaining of worsening headaches and migraines, until October 23, 2017, when he was admitted to the emergency room with stroke like symptoms. A nonenhanced CT head scan revealed a 2.4 x 2.5 cm soft tissue mass. Mr. Garver was immediately referred to the Medical University of South Carolina for brain imaging, which revealed a cerebral aneurysm.
 - On November 3, 2017, Mr. Garver was transported to McLeod's emergency room.
 - On November 4, 2017, Mr. Garver was pronounced dead at Grand Strand Regional Medical Center. The Death Certificate states Subarachnoid Hemorrhage and Ruptured Cerebral Aneurysm as the cause of death.
8. In my professional opinion, the Defendants deviated from the standard of care and skilled exercised generally and under similar conditions and like surrounding circumstance as those presented by Mr. Garver. In particular, in my opinion without limitation, Defendants deviated from the standard of care in the following particulars:
- There were multiple symptoms or "red flags." which should have been considered medical necessary to have a brain imaging study prior to October 2017. These include:
 - i. positional headaches;
 - ii. substantial changes in headache pattern and intensity; and
 - iii. worrisome neurologic symptoms.

9. Additionally, it is my opinion that Jeremy Garver's death could have been avoided, but for Defendants deviations from the standard of care.
10. This is not a complete list of all deviations from the standard of care which I have found in reviewing these records. As a result, I reserve the right to modify, change or supplement these opinions in the future.
11. I certify I have not been found guilty of fraud or perjury in any jurisdiction.
12. This affidavit is based on documentation provided to me, but does not form the whole bases of my expert opinion. I reserve the right to amend this information in that event that further information is provided.
13. Under penalties of perjury, I certify that I have read the foregoing and that the facts stated in it are true.


 Thomas N. Ward, MD

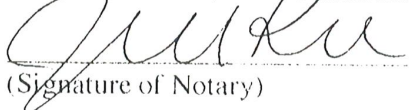
1-2-2019

Date

State of New Hampshire
 County of Grafton

Thomas N. Ward M.D. personally appeared before me, the undersigned officer duly authorized by the law of New Hampshire to administer oaths, being by me:

On this 2nd day of January 2019


 (Signature of Notary)

Jessica Kaczorowski
 (Printed name of Notary Public)

My commission expires 12/3/2019

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-NI-26-_____

CLAUDINE GARVER as Personal
Representative for the ESTATE OF
JEREMY GARVER,

Plaintiff,

v.

McLEOD SEACOAST; McLEOD
HEALTH; McLEOD SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; McLEOD
NEUROLOGY SEACOAST;
DIAGNOSTIC SERVICES OF S.C., LLC;
MICHEAL McCaffrey, M.D.,

Defendant(s).

**PLAINTIFF'S RESPONSES TO
STANDARD INTERROGATORIES**

TO: DEFENDANT(S) AND ALL COUNSEL OF RECORD:

Plaintiff CLAUDINE GARVER as Personal Representative for the ESTATE OF JEREMY GARVER (herein referred to as "Plaintiff") responds to the following interrogatories pursuant to Rule 26 and Rule 33 of the South Carolina Rules of Civil Procedure. These interrogatories are deemed to be continuing, and if complete answers to any of them are presently unavailable, supplemental answers will be supplemented at the time the information becomes available prior to trial.

STANDARD INTERROGATORY RESPONSES

1. Give the names and addresses of persons who may be witnesses concerning the facts of this action or who have knowledge of relevant facts concerning this incident, and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

RESPONSE:

**Claudine Garver
c/o Stefan B. Feidler
32 Ann Street**

Charleston, SC 29403

**Thomas Ward, MD
32 Bramble Lane
Norwich, VT 05055**

No recorded statements at this time. See attached Expert Affidavit.

Michael McCaffrey, MD

No written statements outside of those provided in the medical records. No recorded statements at this time.

Plaintiff reserves the right to amend and/or supplement this response up to the date of trial.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant, or counsel, that relates to the claim or defense in this case.

RESPONSE:

Plaintiff is in possession of certain medical records along with an affidavit from Plaintiff's expert. Plaintiff reserves the right to amend and/or supplement this response up to the date of trial.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage or property damage coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE:

Defendants' insurance carrier, the name of which Plaintiff is not yet aware, is the liability insurance carrier. Plaintiff reserves the right to amend and/or supplement this response up to the date of trial.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

RESPONSE:

As set forth above, the Plaintiff is gathering all medical bills and this will be supplemented. Without limitation, the Plaintiff claims personal injuries, permanent scarring, emotional distress, physical symptoms associated with stress from the matter, loss of enjoyment of life, wrongful death, funeral expenses, loss of consortium, etc.

Plaintiff reserves the right to amend and/or supplement this response up to the date of trial.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE:

Plaintiff cannot identify any expert Plaintiff expects to call at the trial of this case at this early stage of discovery. A supplemental response will be forth coming Furthermore, the Plaintiff reserves the right to call as an expert any medical provider that assisted Plaintiff, Plaintiff's decedent with the injuries being complained of. Each medical provider's testimony will be based upon his or her education, experience, and personal observation and treatment of Plaintiff, Plaintiff's decedent. In addition, the Plaintiff may rely upon expert testimony of the expert who provided an Affidavit of Merit attached to the Notice of Intent to File Suit.

6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

Thomas Ward, MD
32 Bramble Lane
Norwich, VT 05055

No recorded statements at this time. See attached as Expert Affidavit

No statements other than Plaintiff's Expert's Affidavit has been taken at this time, other than those contained in the medical records. Each fact witness is expected to testify to his or her knowledge of the facts of this case together with all information regarding liability and damages and any lay opinions he or she may have. With medical providers, each of these witnesses may be called to testify to his or her

treatment of the Plaintiff, that he or she is familiar with the standard of care, that the Defendants breached the standard of care, and all opinions regarding liability or damages, together with expert opinion appropriate for any expert in this case. Expert witnesses are expected to testify that he or she is familiar with the standard of care, that the Defendants breached the standard of care, and all opinions regarding liability or damages, together with any expert opinion appropriate for any expert in this case.

Plaintiff reserves the right to amend and/or supplement this response up to the date of trial.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY /s/ Stefan B. Feidler
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, SC 29403
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Dated at Charleston, SC
This 15 day of 1, 2019

EXHIBIT 1

McLeod

Physician Associates

Garver, JEREMY

40 Y old Male, DOB: 12/31/

Account Number:

Guarantor: Garver, JEREMY Insurance: SELECT HEALTH

Payer ID:

PCP: Christine McGinley, DO

Appointment Facility: Seacoast Neurology Loris

12/29/2015

Progress Notes: MICHAEL MCCAFFREY, MD

Current Medications**Taking**

- Magnesium once a day
- Cyclobenzaprine HCl 10 MG Tablet 1 tablet as needed once a day
- Flonase(Fluticasone Propionate (Nasal)) 2 puffs as needed once a day
- ibuprofen 1 tab

Not-Taking/PRN

- Baclofen 20 MG Tablet 1 tablet with food or milk every 8 hrs
- Nortriptyline HCl(Nortriptyline HCl) 25 MG Capsule 1 capsule Once a day
- Medication List reviewed and reconciled with the patient

Past Medical History

Gastritis
High blood pressure
Hx of migraines

Surgical History

no surgical hx

Family History

Father: alive
Mother: alive
1 son(s) - healthy.
father: rosacea, gout
mother, high blood pressure, high cholesterol
family history: canceraw.

Social History**Tobacco Use:**

Smoking

Are you a: *never smoker***Miscellaneous:**

Marital status: Married.

Drug/Alcohol:

Alcohol

Did you have a drink containing alcohol in the past year? *No*
Points *0*

Allergies

N.K.D.A.

Reason for Appointment

1. HEADACHES
2. Neck and shoulder pain

History of Present Illness**Headache:**

40 year old male presents with c/o Headache.
The complaints are reported by the patient.
The headache began 5-6 yrs ago.
The headache is located bilateral shoulder radiating up into the bilateral scalp/temporalis.
The quality of the headache is dull ache, neck ache, pulsatile, tension, throbbing.
The intensity of the headache moderate/severe.
The frequency of the headache is severe HA once a month.
The duration of the headache is hours.
The headaches are associated with muscle pain, neck pain, phonophobia, photophobia.
The headaches are worsened by light, noisy environment.
The headaches are relieved by medication, rest, chiro.
The medications for headache include analgesics, muscle relaxers.
Medications for headaches are taken as needed.
The relief that the medication for the headache provides is 60-70%.
The onset of the relief provided by the medication is hours.
The duration of the effect of the medication is hours.
The side effects of the medication include none.

Vital Signs

Wt 149 lbs, Ht 5'7, BMI 29.10 Index, Temp 98.1 F, HR 67, BP 115/76, BSA 1.69.

Examination**General Examination:**

GENERAL APPEARANCE: well developed and well nourished, in no acute distress, cooperative.

HEENT: EOMI, PERRLA.

NECK/THYROID: no mass, non-tender, no carotid bruit, normal range of motion.

CARDIOVASCULAR: regular sinus rhythm/regular rate and

Patient: Garver, JEREMY DOB: 12/31/ Progress Note: MICHAEL MCCAFFREY, MD 12/29/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Hospitalization/Major Diagnostic Procedure
gastritis 1/2011

Review of Systems

General/Constitutional:

Fatigue NO. Fever NO. Night sweats NO.
Weakness NO. Weight loss NO.

Respiratory:

Patient denies cough, DOE (dyspnea on exertion), shortness of breath, snoring, wheezing, swelling of the legs.

Cardiovascular:

Patient denies chest pain, dizziness, dyspnea on exertion, fainting, orthopnea, murmurs, irregular heart beat, pacemaker, pains in leg while walking, palpitations, easy fatigue.

Musculoskeletal:

General no limitation in motion, no muscle or joint pain, no muscle weakness, no neck/backache/shoulder pain, no swelling or redness in joints.

Neurologic:

Neurology good coordination,, headache, tingling, numbness.

Headache YES. Memory loss NO.

Seizures NO. Tingling/numbness YES.

Tremor NO.

Psychiatric:

Psychiatry good mood, no current suicidal ideations, no nervousness, no obsessions or compulsions, no tension, no unusual perceptions, good mood, no current suicidal ideations, no nervousness, no obsessions or compulsions, no tension, no unusual perceptions.

rhythm, normal S1S2, no murmurs.

RESPIRATORY: clear to auscultation bilaterally.

SKIN: warm, normal color.

EXTREMITIES: no clubbing, cyanosis, or edema.

PERIPHERAL PULSES: normal (2+) bilaterally.

PSYCH judgement and in Attentive, sight are appropriate, oriented x 3, normal speech.

Neurological:

CORTICAL FUNCTIONS: normal.

CRANIAL NERVES:

I - Not Tested, II - Pupils 4mm reacting briskly to 2 mms, no afferent pupil defect, III, IV, VI - EOM were full with normal pursuit and saccade, No ptosis or nystagmus, V - Motor V intact, Pinprick, light touch intact in all three divisions, VII - No asymmetry or weakness, VIII - Acuity intact to finger rub bilaterally, IX, X - Palate rose in middle., XII - Tongue protruded midline w/o atrophy or fasciculations.

MOTOR STRENGTH: 5/5 throughout.

SENSORY: non focal to pin prick and light touch.

REFLEXES: bilaterally symmetrical, babinski negative.

CEREBELLAR SIGNS: absent.

TREMORS: absent.

COORDINATION: finger-to-nose and rapid alternating movements were intact, No ataxia.

GAIT AND STATION: Within normal limits.

SPEECH: normal.

MUSCLE BULK: normal.

PRONATOR DRIFT: not present.

Assessments

1. Intractable migraine without aura and without status migrainosus - G43.019 (Primary)

Treatment

1. Intractable migraine without aura and without status migrainosus

Start Sumatriptan Succinate Tablet, 100 MG, 1 tablet as needed, Orally, Twice a day as needed for headache, 30 days, 9, Refills 5

Notes: The patient has been diagnosed with tension type headaches which improved with chiropractic therapy and muscle relaxers. He has one severe headache per month with associated photophobia, phonophobia, and nausea consistent with a migraine headache. We will start the patient on sumatriptan 50-100 mg every 12 hours as needed for migraine headache. The patient may require a prophylactic medication in the near future.

Follow Up

2 Months

*Michael
McCauffrey MD*

Electronically signed by MICHAEL MCCAFFREY, MD on
12/29/2015 at 04:37 PM EST

Sign off status: Completed

Seacoast Neurology Loris
3710 Mishoe Street
Loris, SC 295692822
Tel: 843-716-8900
Fax: 843-716-2273

Patient: Garver, JEREMY DOB: 12/31/ [REDACTED] Progress Note: MICHAEL MCCAFFREY, MD 12/29/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

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EXHIBIT 2

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566
Phone: 843-390-8133

Soarian© Chart Report - Nurse Notes

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	12/31/ [REDACTED]	Patient ID:	[REDACTED]
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Nurse Initial Assessment Note

Collected On: 10/23/2017 21:08

Arrival Information

Arrival Information

Communication Barrier None, Historian Self, Spouse; Accompanied by Spouse, Arrived from Home, Arrival Mode Walk In Walk In Detail Ambulatory; Treatment Prior to Arrival None, Primary Care Provider LRMC.

Collected On: 10/23/2017 21:08

Advanced Directive

Advanced Directive

Do You Have an Advanced Directive No No Advanced Directive Detail Do You Want To Formulate an Advanced Directive No.

Collected On: 10/23/2017 21:08

HPI

History of Present Illness

Chief Complaint Patient Stated Complaint LEFT ARM TINGLING DAZED,

Narrative of Presenting Problem

Patient is a 42 year old male with complaints of tingling in left hand fingers 1 and 2 also with weakness in left hand and with left leg weakness, states he went to see a PMD and told to come to ED, wife states patient has history of migraines but is having increase of neck pain, patient is a photographer and they have been busy, wife states patient was stumbling when coming home from physicians visit today, patient ambulating with no stumbling in room, states onset this afternoon around 16:00 with weakness to left side, states he felt like he was coming down with something to do with his sinus. Patient A&O x4, no vision change, no slurred speech, History of migraines.

Onset 4 Hours ago, Timing Continuous, Occurred at Home, Current Pain 2; Neck, Associated Symptom

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Nurse Notes Page 1 of 3

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continued from previous page

Weakness, left sided weakness, neck pain.

Collected On: 10/23/2017 21:08

Past History

Allergy Allergy List Reviewed Yes,

- Penicillins

; Home Medication List

Home Medication List

10/23/2017 19:44

- Home Medication List: Status: Complete

-- sumatriptan succinate

-- topiramate

-- cyclobenzaprine

, Home Medication List Reviewed Yes.

Medical and Surgical History

Medical migraines; Surgical None.

Social History

Smoking Status Never Smoker; Alcohol Use Denies; Illicit Drug Use Denies.

Collected On: 10/23/2017 21:08

Assessment

Constitutional

Denies Any Symptom, no Chills, no Fever; Alert, NAD, Well Nourished.

Head and Face

NCAT.

Eye

Denies Any Symptom; Pupils Equally Round Reactive to Light.

Ear Nose Throat

Denies Any Symptom; Mucous Membranes Moist, Oropharynx Clear.

Cardiovascular

Denies Any Symptom, no Chest Pain; No Peripheral Edema, Pulses Normal, Regular Rate and Rhythm.

Respiratory

Denies Any Symptom, no Cough, no Dyspnea; CTAB, Normal Rate and Effort.

Gastrointestinal

Denies Any Symptom, no Abdominal Pain, no Diarrhea, no Nausea, no Vomiting; Abdomen Soft, Bowel Sounds

Present, Not Tender.

Genitourinary

Denies Any Symptom, no Dysuria.

Musculoskeletal

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Nurse Notes Page 2 of 3

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Neck Pain; Distal Pulses Normal, No Injury or Deformity, No Calf Tenderness.

Neurologic

Numbness, Weakness, no Slurred Speech; No Focal Deficits; Sensory Function Altered Touch Sensation
numbness to left hand finger 1 and 2; Gait Normal.

Skin

Denies Any Symptom; Dry, Warm.

Psychiatric

Cooperative.

Collected On: 10/23/2017 21:08

Clinical Scoring Tools

Clinical Scoring Tools

Glasgow Coma Scale Eyes Open Spontaneously (4), Best Verbal Response Oriented (5), Best Motor Response
Obeys Commands (6), Total 15; Morse Fall Risk History of Falling, Immediate or Previous No (0), Secondary
Diagnosis No (0), Ambulatory Aid None or Bedrest or Nurse Assist (0), Intravenous Therapy or Saline Lock No (0),
Gait and Transferring Normal or Bedrest or Immobile (0), Mental Status Oriented to Own Ability (0), Total 0, Scale
Meaning No Risk for Falls, Fall Risk Precautions Instituted No.

Collected On: 10/23/2017 21:08

Screening

Screen Performed

Abuse Neglect Feels Safe at Home Yes, Feels Abused or Threatened No; Communicable Disease Current Cough
No, Cough > 2 Weeks No, Tuberculosis Exposure No, Travel Outside USA within past 3 months No; Sepsis
Infectious Disease Suspected None; Sepsis Screen Systemic Inflammatory Response Syndrome Criteria None;
Suicide Risk and Homicide Risk Thoughts of Self Harm No, Thoughts of Harming Others No.

Collected On: 10/23/2017 21:08

Interventions and Safety Measures

Patient Identification Verified by Name, DOB; Band Placement Confirmed Allergy.

Bed Brakes Engaged, Bed in Lowest/Locked Position, Bedrails up, Call Bell within Reach.

Collected On: 10/23/2017 21:08

Electronically signed by Michael P Booth, RN on 10/23/2017 21:09

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

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McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566
Phone: 843-390-8133

Soarian® Chart Report - Nurse Notes

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	12/31/ [REDACTED]	Patient ID:	[REDACTED]
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Nurse Reassessment Note

Collected On: 10/23/2017 22:00

Pain Reported

Pain Reported

Pain Level Reported Current Pain 3.

Collected On: 10/23/2017 22:00

Vital Signs and Body Measurements

Vital Signs

Measured at 10/23/2017 22:00, Temperature 98 Fahrenheit, Blood Pressure 132/88, Heart Rate 72 Beats per Minute; Respiratory Rate 18 Breaths per Minute, Pulse Oximetry Reading 99 %.

Collected On: 10/23/2017 22:00

Brief Assessment

Brief Assessment Appears Comfortable, No Complaints Expressed.

Collected On: 10/23/2017 22:00

Assessment

Constitutional

Denies Any Symptom, no Chills, no Fever; Alert, NAD, Well Nourished.

Head and Face

NCAT.

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

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Eye

Denies Any Symptom; Pupils Equally Round Reactive to Light.

Ear Nose Throat

Denies Any Symptom; Mucous Membranes Moist, Oropharynx Clear.

Cardiovascular

Denies Any Symptom, no Chest Pain; No Peripheral Edema, Pulses Normal, Regular Rate and Rhythm.

Respiratory

Denies Any Symptom, no Cough, no Dyspnea; CTAB, Normal Rate and Effort.

Gastrointestinal

Denies Any Symptom, no Abdominal Pain, no Diarrhea, no Nausea, no Vomiting; Abdomen Soft, Bowel Sounds Present, Not Tender.

Genitourinary

Denies Any Symptom, no Dysuria.

Musculoskeletal

Neck Pain; Distal Pulses Normal, No Injury or Deformity, No Calf Tenderness.

Neurologic

Numbness, Weakness, no Slurred Speech; No Focal Deficits; Sensory Function Altered Touch Sensation numbness to left hand finger 1 and 2; Gait Normal.

Skin

Denies Any Symptom; Dry, Warm.

Psychiatric

Cooperative.

Collected On: 10/23/2017 22:00

Interventions and Safety Measures

Patient Identification Verified by Name, DOB; Band Placement Confirmed Allergy.

Bed Brakes Engaged, Bed in Lowest/Locked Position, Bedrails up, Call Bell within Reach.

Collected On: 10/23/2017 22:00

Electronically signed by Michael P Booth, RN on 10/23/2017 23:04

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Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

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McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566
Phone: 843-390-8133

Soarian® Chart Report - Triage

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	12/31/ [REDACTED]	Patient ID:	[REDACTED]
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Nurse Triage Note

Collected On: 10/23/2017 19:39

Triage Start Time

Start Time 10/23/2017 19:39.

Collected On: 10/23/2017 19:39

HPI

History of Present Illness

Treating Complaint Asthenia; Chief Complaint Patient Stated Complaint LEFT ARM TINGLING DAZED, Narrative of Presenting Problem pt stated tingling to left arm and leg. pt stated he feels "dazed" and is stumbling. stated chronic neck pain/migraines he takes meds from, Timing Continuous, Occurred at Home, Current Pain 2; Neck.

Collected On: 10/23/2017 19:39

Vital Signs and Body Measurements

Vital Signs

Measured at 10/23/2017 19:41, Temperature 97.9 Fahrenheit Oral; Blood Pressure 135/87 LUE, Sitting, Automated; Heart Rate 74 Beats per Minute; Respiratory Rate 16 Breaths per Minute, Pulse Oximetry Reading 99 %.

Collected On: 10/23/2017 19:39

Sepsis Screening

Sepsis Screen Performed

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Chart Report - Triage Page 1 of 3

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Sepsis Screen Performed Sepsis Sepsis Screen Systemic Inflammatory Response Syndrome Criteria None.

Collected On: 10/23/2017 19:39

Arrival Information

Arrival Information

Communication Barrier None, Historian Self, Spouse; Accompanied by Spouse, Arrived from Home, Arrival Mode Walk In Walk In Detail Ambulatory; Treatment Prior to Arrival None, Primary Care Provider LRMC.

Collected On: 10/23/2017 19:39

Past History

Allergy

- Penicillins

Medical and Surgical History

Medical migraines; Surgical None.

Social History

Smoking Status Never Smoker; Alcohol Use Denies; Illicit Drug Use Denies.

Collected On: 10/23/2017 19:39

Assessment

Eye

Denies Any Symptom; Pupils Equally Round Reactive to Light.

Collected On: 10/23/2017 19:39

Clinical Scoring Tools

Clinical Scoring Tools

Glasgow Coma Scale Eyes Open Spontaneously (4), Best Verbal Response Oriented (5), Best Motor Response Obeys Commands (6), Total 15; Morse Fall Risk History of Falling, Immediate or Previous No (0), Secondary Diagnosis No (0), Ambulatory Aid None or Bedrest or Nurse Assist (0), Intravenous Therapy or Saline Lock No (0), Gait and Transferring Normal or Bedrest or Immobile (0), Mental Status Oriented to Own Ability (0), Total 0, Scale Meaning No Risk for Falls, Fall Risk Precautions Instituted No.

Collected On: 10/23/2017 19:39

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Triage Page 2 of 3

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Screening

Screen Performed

Abuse Neglect Feels Safe at Home Yes, Feels Abused or Threatened No; Communicable Disease Current Cough No, Cough > 2 Weeks No, Tuberculosis Exposure No, Travel Outside USA within past 3 months No; Suicide Risk and Homicide Risk Thoughts of Self Harm No, Thoughts of Harming Others No.

Collected On: 10/23/2017 19:39

Interventions and Safety Measures

Patient Identification Verified by Name, DOB; Band Placement Confirmed Identification, Allergy.

Collected On: 10/23/2017 19:39

Triage Level

Triage Level 3.

Collected On: 10/23/2017 19:39

Triage End Time

End Time 10/23/2017 19:43.

Collected On: 10/23/2017 19:39

Electronically signed by Cortney M Debartolo, RN on 10/23/2017 19:43

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Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

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McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566
Phone: 843-390-8133

Soarian® Chart Report - Physician Notes

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	12/31/ [REDACTED]	Patient ID:	[REDACTED]
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Provider Note

Collected On: 10/23/2017 20:33

Arrival Information

Arrival Information

Provider Statement Reviewed and Agreed with Available Nursing Documentation, Seen by Physician Provider
Time Seen Detail 10/23/2017 20:33; Historian Self, Spouse; Arrived from Home, Treatment Prior to Arrival None,
Primary Care Provider LPMC.

Collected On: 10/23/2017 20:33

HPI

History of Present Illness

Chief Complaint

Narrative of Presenting Problem

Patient is a 42 year old male with complaints of tingling in left hand fingers 1 and 2 also with weakness in left hand and with left leg weakness, states he went to see a PMD and told to come to ED, wife states patient has history of migraines but is having increase of neck pain, patient is a photographer and they have been busy, wife states patient was stumbling when coming home from physicians visit today, patient ambulating with no stumbling in room, states onset this afternoon around 16:00 with weakness to left side, states he felt like he was coming down with something to do with his sinus. Patient A&O x4, no vision change, no slurred speech, History of migraines.

Onset 4 Hours ago, Timing Continuous, Occurred at Home, Current Pain 2; Neck, Associated Symptom

Weakness, left sided weakness, neck pain.

Collected On: 10/23/2017 20:33

Past History

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Physician Notes Page 1 of 7

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Allergy Allergy List Reviewed Yes,

- Penicillins

; Home Medication List

Home Medication List

10/23/2017 19:44

- Home Medication List: Status: Complete

-- sumatriptan succinate

-- topiramate

-- cyclobenzaprine

, Home Medication List Reviewed Yes.

Medical and Surgical History

Medical migraines; Surgical None.

Social History

Smoking Status Never Smoker; Alcohol Use Denies; Illicit Drug Use Denies.

Collected On: 10/23/2017 20:33

ROS

Constitutional

Denies Any Symptom, no Chills, no Fever.

Eye

Denies Any Symptom.

Ear Nose Throat

Denies Any Symptom.

Cardiovascular

Denies Any Symptom, no Chest Pain.

Respiratory

Denies Any Symptom, no Cough, no Dyspnea.

GI

Denies Any Symptom, no Abdominal Pain, no Diarrhea, no Nausea, no Vomiting.

Genitourinary

Denies Any Symptom, no Dysuria.

Musculoskeletal

Neck Pain.

Neurologic

Numbness, Weakness, no Slurred Speech.

Skin

Denies Any Symptom.

Collected On: 10/23/2017 20:33

Physical Examination

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

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Vitals Signs Graph

10/23/2017 19:39

- Temperature: 97.9 (97-101.5F)
- Pulse Ox (%): 99
- Respirations: 16 (12-20)
- BP: 135/87 (90-140/60-90)
- Site: LUE
- BP Position: Sitting
- Pulse: 74 (60-100)
- Pain Intensity: 2

Constitutional

Alert, NAD, Well Nourished.

Head and Face

NCAT.

Eye

Pupils Equally Round Reactive to Light.

ENT

Mucous Membranes Moist, Oropharynx Clear.

Cardiovascular

No Peripheral Edema, Normal S1, S2, Pulses Normal, Regular Rate and Rhythm.

Respiratory

CTAB, Normal Rate and Effort.

Gastrointestinal

Abdomen Soft, Bowel Sounds Present, Not Tender.

Musculoskeletal

Distal Pulses Normal, No Injury or Deformity, No Calf Tenderness.

Neurologic

No Focal Deficits; Sensory Function Altered Touch Sensation numbness to left hand finger 1 and 2; Gait Normal.

Skin

Dry, Warm.

Psychiatric

Appropriate Affect, Cooperative.

Collected On: 10/23/2017 20:33

ED Department Orders

Orders

Cardiovascular

- **ED EKG** ,Reason: Stroke symptoms , Do not delay CT of head to complete , STAT

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Physician Notes Page 3 of 7

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Laboratory

- **CBC and Diff** STAT (Complete)
- **Basic Metabolic Panel (BMP)** STAT
- **Type & Screen** Unit will not be reserved for Patient unless X Match has been Ordered STAT (Complete)
- **PTT(Activated Partial Thromboplastin Time)** STAT (Complete)
- **PT(W/ INR)/Prothrombin Time** STAT (Complete)

Medication

- **SODIUM CHLORIDE 0.9%** (1000 ML bag) Intravenous @75mL/Hour Over 13.25H
- **SODIUM CHLORIDE 0.9% FLUSH (NORMAL SALINE FLUSH)** 10 ML = 10 ML Intravenous ONE TIME for 1 Doses, Clinician Dir:USE TO FLUSH IV WHILE IN ER

Nursing Orders

- **Cardiac Monitoring** and Pulse Oximeter continuous
- **Vital Signs** and neuro checks every 1 hr x 4 then Q4H
- **Call MD** of SBP > 185 or DBP > 110 and obtain orders for BP Management to maintain BP goal
- **Nursing Swallowing Checklist assessment** (extubated patients only). NPO including meds until checklist completed and passed (Complete)
- **Insert Saline Lock IV** 18 gauge, and another 18 gauge IV
- **FSBS (Fingerstick Blood Sugar - Nursing)** STAT

Nutrition Services

- **Diets:** NPO

Orderset Information (Administrative Use)

- **ED Stroke Orders (CPOE 457)**

Radiology

- **CT Cervical Spine Without Contrast** ,Reason: Radiculopathy , STAT
- **DIA: Chest - 1 View (PA AP Port)** ,Reason: Stroke symptoms , Do not delay CT of head to complete , STAT (Complete)
- **CT Head Without Contrast-Reach MD** ,Reason: Stroke Symptoms , STAT (Complete)

Collected On: 10/23/2017 20:33

Laboratory Results

All Laboratory Results Last 24 Hours

CBC

10/23/2017 20:58

- WBC: 5.77
- RBC: 4.98

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Physician Notes Page 4 of 7

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- Hemoglobin: 15.2
- Hematocrit: 42.6
- MCV: 85.5
- MCH: 30.5
- MCHC: 35.7
- RDW: 12.8
- Platelet Count: 183
- Absolute Neutrophils: 3.48
- Absolute Lymphocytes: 1.89
- Absolute Monocytes: 0.32
- Absolute Eosinophils: 0.05
- Absolute Basophils: 0.02
- Absolute Immature Granulocytes: 0.01
- NRBC#: 0.00
- Neutrophils: 60.3
- Lymphocytes: 32.8
- Monocytes: 5.5
- Eosinophils: 0.9
- Basophils: 0.3
- Immature Granulocytes: 0.2
- NRBC%: 0.0

Coagulation Testing

10/23/2017 20:58

- (PT)Prothrombin Time: 10.4
- INR: 1.01
- (PTT)Activated Partial Thromboplastin Time: 22.6

Collected On: 10/23/2017 20:33

Radiology Reports and Cardiology Results

Radiology Reports

All Radiology Reports Last 24 Hours

Diagnostics

10/23/2017 20:52

• Chest 1-View (PA AP PORT): 8191509ORDER DR: ERIC J LARSON M.D. ATTEND DR: ERIC J LARSON M.D. TRANSCRIBED D/T: Oct 23 2017 9:02PM PROCEDURE: CHEST/1VIEW (PA AP PORT) / ORD #: 90002 Accession#: 8191509 CPT: 71010 ORDERED FOR: Oct 23 2017 8:46PM COMPLETED: Oct 23 2017 8:52PM INDICATIONS/COMMENTS: Other (Specify)-Stroke symptoms RESULT: Exam: Portable frontal chest. Indication: Left-sided weakness, onset today. Comparison:None. FINDINGS: The cardiomedastinum and pulmonary vasculature are normal. No active pleural, parenchymal, or bony process is seen. Gentle dextro thoracic scoliosis is evident. IMPRESSION: No active cardiopulmonary disease is evident. \ READING DR: JOHN J DALY M.D. READING DATE: Oct 23 2017 9:02PM ***Final Result*** ELECTRONICALLY SIGNED BY: JOHN J DALY M.D.

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Physician Notes Page 5 of 7

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On: Oct 23 2017 9:02PM

CT

10/23/2017 20:52

• CT Head Without Contrast-Reach MD: 8191508ORDER DR: ERIC J LARSON M.D. ATTEND DR: ERIC J LARSON M.D. TRANSCRIBED D/T: Oct 23 2017 9:06PM PROCEDURE: CT HEAD WO/REACH MD / ORD #: 90001 Accession#: 8191508 CPT: 70450 ORDERED FOR: Oct 23 2017 8:46PM COMPLETED: Oct 23 2017 8:52PM INDICATIONS/COMMENTS: Stroke Symptoms RESULT: Exam: Nonenhanced head CT. Indication: Left-sided weakness and paresthesias today, history of migraine headaches. Technique: Contiguous 5mm thick axial images were obtained through the brain without IV contrast media administration. FINDINGS: A 2.4 x 2.5 cm soft tissue mass is identified either exophytic from the right aspect of the pons or much more likely within the prepontine/ambient cisterns with mass effect on the adjacent pons. There is no significant hydrocephalus, blood products, or cortical infarction. Review of the bony calvarium is unremarkable. IMPRESSION: There is a 2.4 x 2.5 cm relatively hyperdense mass identified most likely extra axial in the region of the prepontine/ambient cistern with mass effect on the adjacent pons. An exophytic pons mass is less likely. The most likely etiology in this position is a meningioma. Other tumors cannot be excluded and follow-up MR imaging with multiplanar sequences would be helpful in further characterizing this lesion. Results discussed with Dr. Larsen, 10/23/2017, 9:07 PM. All CT scans at this facility used dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable. All CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable. \ READING DR: JOHN J DALY M.D. READING DATE: Oct 23 2017 9:06PM ***Final Result*** ELECTRONICALLY SIGNED BY: JOHN J DALY M.D. On: Oct 23 2017 9:10PM

Collected On: 10/23/2017 20:33

Data Reviewed

Laboratory Test Ordered or Reviewed Yes Laboratory Discussed with Patient and/or Family Yes; Radiology Test Ordered or Reviewed Yes, Electrocardiogram or Other Medical Test Ordered or Reviewed Yes.

Collected On: 10/23/2017 20:33

Clinical Scoring Tools

Clinical Scoring Tools

Glasgow Coma Scale Eyes Open Spontaneously (4), Best Verbal Response Oriented (5), Best Motor Response Obeys Commands (6), Total 15.

Collected On: 10/23/2017 20:33

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Physician Notes Page 6 of 7

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McLeod Seacoast 0163

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ELECTRONICALLY FILED - 2022 Dec 28 2:49 PM - Horry - COMMON PLEAS CASE#2019CP2605302

continued from previous page

ED Course

Clinical Status

10/23/2017 21:52, Stable, pt looks well in er. nonfocal but with the complaints of left sided symptoms, reach called. ct with mass. discussion with pt and family about need for follow up. report of ct given to family. follow up with neurology stressed. .

Collected On: 10/23/2017 20:33

MDM and Diagnosis

Medical Decision Making

10/23/2017 21:53.

Final Diagnostic Impression

intracranial mass, Headache.

Diagnosis and Management Option

New Problem (to Examining Provider), Additional Workup Planned.

Collected On: 10/23/2017 20:33

Disposition

Discharge Decision Time 10/23/2017 21:54, Condition Stable, Location Home.

Collected On: 10/23/2017 20:33

Supervisory Note

Supervision of Documentation Written by Clinical Care Provider

Supervision Provided To Documentation assistance provided by scribe. Information recorded by the scribe was done at my direction and has been reviewed and validated by me.

Collected On: 10/23/2017 20:33

Documented for Eric J Larson, MD by Allison Page, Scribe on 10/23/2017 21:41

Electronically signed by Eric J Larson, MD on 10/23/2017 21:54

Pt Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Physician Notes Page 7 of 7

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McLeod Seacoast 0164

McLeod Seacoast Hospital

4000 Hwy 9 East
 Little River SC 29566
 Phone: 843-390-8133

Soarian® Chart Report - Visit

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	12/31/ [REDACTED]	Patient ID:	[REDACTED]
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Visit Information

Arrival Date/Time: 10/23/2017 19:14

Discharge Date/Time:

Patient Complaint: LEFT ARM TINGLING DAZED

Treating Complaint: Asthenia

Disposition Diagnoses: intracranial mass, Headache

Disposition: Discharge

Dispositioning Provider: Eric J Larson, MD, Michael P Booth, RN

ELECTRONICALLY FILED - 2022 Dec 28 2:49 PM - Horry - COMMON PLEAS - CASE#2019CP2605302

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: [REDACTED]

Chart Report - Visit Page 1 of 1

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Printed By: Larson, Eric J MD
 Printed On: 23-Oct-17 23:06

McLeod Seacoast 0165

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EXHIBIT 3

GRAND STRAND REGIONAL MEDICAL CENTER (COCQV)

Brain Death Note

REPORT#:1104-0357 REPORT STATUS: Signed

DATE:11/04/17 TIME: 1039

PATIENT: GARVER, JEREMY

ACCOUNT#:

DOB: 12/31/ AGE: 42

SEX: M

UNIT #: F000925914

ROOM/BED: F,ICU2S04-A

ATTEND: Becker, Gregory L

MD

ADM DT: 11/03/17

AUTHOR: Becker, Gregory L

MD

REP SRV DT: 11/04/17

REP SRV TM: 1039

* ALL edits or amendments must be made on the electronic/computer document *

****See Addendum****

Brain Summary Note

Pronouncement of Brain Death

Date: 11/04/17

Time: 1027

Clinical assessment: SBP 100 or greater, core temp above 36C, no neuromusc blockade, no sedative/CNS depressant, no sev. acid-base abnorm., no sev. electrolyte abn., no sev. endocrine abnorm., no spontaneous resp., coma, irrevers-cause known

LOC/CT results/Injury hx:

CTA of brain with no blood flow and consistent with brain death at 0907.

Clinical exam:

Absent corneal reflex, Absent cough reflex, Absent face mvt to noxious stim, Absent gag reflex, Absent motor response deep pain, Absent oculoccephalic reflex, Absent oculovestibular reflex, Absent pupils respond to light, Absent spont movement/posturing, Absent vol motor resp. to pain

Apnea test not performed: hemodynamically unstable

Final diagnosis:

This patient meets the criteria for brain death and is so declared at 1037.
Informed and discussed with family at length.

Donor ID: AEK0097 ABO:
Comments: 2017-0446

Electronically Signed by Becker, Gregory L MD on 11/04/17 at 1043

Addendum 1: 11/05/17 1451 by Becker, Gregory L MD

Correction: patient formally declared brain dead at 1027.

Electronically Signed by Becker, Gregory L MD on 11/05/17 at 1452

RPT #: 1104-0357
END OF REPORT

EXHIBIT 4

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-05302

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

McLEOD LORIS SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; and MICHAEL
McCAFFREY, M.D.,

Defendant(s).

**PLAINTIFF'S THIRD
INTERROGATORIES RESPONSES TO
DEFENDANT MCLEOD LORIS
SEACOST HOSPITAL**

**TO: DARREN K. SANDERS, ESQUIRE AND HUGH W. BUYCK, ESQUIRE AS
COUNSEL FOR DEFENDANT MCLEOD LORIS SEACOST HOSPITAL:**

The Plaintiff, Claudine Garver, Individually and as Personal Representative of the Estate of Jeremy Garver answers the following interrogatories pursuant to Rule 26 and 33 of the South Carolina Rules of Civil Procedure. These Interrogatories are deemed to be continuing, and may be supplemented from time to time as information becomes available and until the trial of this matter.

INTERROGATORIES

3. Set forth a list of photographs, plats, sketches or other prepared documents in the possession or control of the Plaintiff or her attorneys that relate to the claims made in the Plaintiff's Complaint.

RESPONSE:

Outside of the medical records produced herewith, Plaintiff is not in possession or control of any photographs, plats, or sketches that relate to the claims made in Plaintiff's Complaint.

Plaintiff reserves the right to amend and/or supplement this response as additional, relevant information becomes available throughout discovery and until the trial of this matter.

SECOND RESPONSE:

Dr. Wood Preliminary Appraisal of Financial Loss to the Beneficiaries of Mr. Jerney Garver_001-004

Plaintiff reserves the right to amend and/or supplement this response as additional, relevant information becomes available throughout discovery and until the trial of this matter.

7. Furnish the name, address, place of employment and qualifications of each and every expert witness the Plaintiff plans to call at the trial of this case. As to each person named in response to this Interrogatory, state:

- a. The subject matter on which the expert or experts are expected to testify;
- b. The substance of the facts and opinions to which each of the experts named is expected to testify;
- c. Furnish a summary of the grounds for each opinion expected to be elicited from each of the experts named in response to this Interrogatory;
- d. Provide a copy of any written report, memorandum or other written document prepared by each expert witness including a copy of all handwritten notes generated by the expert; and
- e. Whether said expert has conducted any investigation, inspection, examination and/or testing in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, examination and/or testing, the results of same and the dates on which such work was performed.

RESPONSE:

**Thomas Ward, MD
32 Bramble Lane
Norwich, VT 05055**

- a. **Neurology and/or neurologist standard(s) of care and causation of the alleged injuries and damages.**

- b. Facts and opinions as provided in Dr. Ward's Affidavit.
- c. Plaintiff is without knowledge of "the grounds for each opinion expected to be elicited from" Dr. Ward outside of those grounds found in Dr. Ward's Affidavit and/or alleged in the Complaint.
- d. This Interrogatory requests that Plaintiff provide documents and is not an appropriate interrogatory, but rather a request for production. Dr. Ward's affidavit is produced in response to Defendant's requests for production.
- e. Upon information and belief, as of the date of this response, none.

Plaintiff reserves the right to amend and/or supplement this response as additional, relevant information becomes available throughout discovery and until the trial of this matter.

SECOND RESPONSE:

Oliver G. Wood, Jr.
P.O. Box 24677
Columbia, SC 29224

- a. Consulting Economist – personal injury, wrongful death, punitive damages
- b. Facts and opinions as provided in Mr. Wood's Affidavit
- c. Plaintiff is without knowledge of "the grounds for each opinion expected to be elicited from" Mr. Wood outside of those grounds found in Mr. Wood's Affidavit and/or alleged in the Complaint.
- d. This Interrogatory request that Plaintiff provide documents and is not an appropriate interrogatory, but rather a request for production. Mr. Wood's affidavit is produced in response to Defendant's request for production.
- e. Mr. Wood performed an Appraisal of Financial Loss Due to Wrongful Death of a Man. This report will be produced in Defendant's Request for Production.

Plaintiff reserves the right to amend and/or supplement this response as additional, relevant information becomes available throughout discovery and until the trial of this matter.

16. Set forth a list of all exhibits or other documents, which will be used in the trial of this case.

RESPONSE:

Plaintiff has not determined what exhibits or documents she will utilize at the trial of this case.

Plaintiff anticipates that she will use the following:

- MUSC Bills_001-010
- Grand Strand Medical Bills_001-010
- Grand Strand Medical Center_001-0422
- McLeod Neurology Carolina Forest_001-047
- McLeod Seacost Medical Records_0001-0102
- Expert Affidavit_001-003

Plaintiff reserves the right to amend and/or supplement this response as additional, relevant information becomes available throughout discovery and until the trial of this matter.

SECOND RESPONSE:

- Arnold Butler Records_001-017
- Little River Medical Center Records for Julian Garver_0001-0196
- Dr. Thomas Ward Referencing Articles_001-078
- Dr. Thomas Ward Notes_001-020

Plaintiff reserves the right to amend and/or supplement this response as additional, relevant information becomes available throughout discovery and until the trial of this matter.

THIRD RESPONSE:

- Dr. Wood Preliminary Appraisal of Financial Loss to the Beneficiaries of Mr. Jerney Garver_001-004 – Copy
- Oliver Wood, Jr. CV_001

Plaintiff reserves the right to amend and/or supplement this response as additional, relevant information becomes available throughout discovery and until the trial of this matter.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/Stefan B. Feidler_____

Roy T. Willey, IV

S.C. Bar No.: 101010

Eric M. Poulin

S.C. Bar No.: 100209

Stefan B. Feidler

S.C. Bar No.: 101918

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEY FOR THE PLAINTIFF

Dated at Charleston, SC
This 8th day of October, 2021

EXHIBIT 5



Deposition of:
Thomas Ward , MD

July 23, 2021

In the Matter of:
Garver, Claudine v. Mcleod Loris
Seacoast Hospital, Et Al

Veritext Legal Solutions
800.743.DEPO (3376) | Calendar-carolinas@veritext.com |
www.veritext.com

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

CLAUDINE GARVER, both Individually and as Personal
Representative of the Estate of JEREMY GARVER,

Plaintiff,

vs.

C/A NO. 2019-CP-26-05302

MCLEOD LORIS SEACOAST HOSPITAL, MCLEOD PHYSICIAN
ASSOCIATES II and MICHAEL McCAFFREY, M.D.,
Defendants.

VIDEO TELECONFERENCE

DEPOSITION OF: THOMAS WARD, M.D.

DATE: July 23, 2021

TIME: 9:00 a.m.

LOCATION: 32 Bramble Lane
Norwich, VT

TAKEN BY: Counsel for the Defendants

REPORTED BY: PATRICIA L. THOMPSON,
Registered Professional Reporter

1 APPEARANCES OF COUNSEL:

2
3 ATTORNEYS FOR THE PLAINTIFF

4 CLAUDINE GARVER, both Individually
and as Personal Representative
5 of the Estate of JEREMY GARVER:

6 ANASTOPOULO LAW FIRM, LLC

BY: STEFAN B. FEIDLER
(Via VTC)

7 32 Ann Street
Charleston, SC 29403
8 (800) 777-7777
Stefan@akimlaw.com

9
10 ATTORNEYS FOR THE DEFENDANT

11 MCLEOD LORIS SEACOAST HOSPITAL:

BUYCK & SANDERS, LLC

12 BY: DARREN K. SANDERS
(Via VTC)

13 305 Wingo Way
Mt. Pleasant, SC 29464
(843) 377-1400
dks@buyckfirm.com

14
15 ATTORNEYS FOR THE DEFENDANTS

16 MCLEOD PHYSICIAN ASSOCIATES II

and MICHAEL McCaffrey, MD:

17 AIKEN, BRIDGES, ELLIOTT,
TYLER & SALEEBY, P.A.

18 BY: SAUNDERS M. BRIDGES, JR.
(Via VTC)

19 181 East Evans Street, Suite 409
20 Florence, SC 29503
(843) 669-8787
smb@aikenbridges.com

21
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24 (INDEX AT REAR OF TRANSCRIPT)
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THOMAS WARD, MD
being first duly sworn, testified as follows:
EXAMINATION

BY MR. BRIDGES:

Q. Good morning, Dr. Ward. My name is Sandy Bridges and I represent Dr. McCaffrey and his employer, McLeod Physician Associates, in this case filed in South Carolina.

You have been identified as an expert witness hired by the plaintiff to testify in this case, and so the purpose of my deposition today is just to find out what your opinions are going to be at trial and so that we can prepare for the trial and understand what you're going to be testifying about.

I'm also going to ask you the usual background questions. If I ask something that is unclear or in any way nonsensical, please just tell me and I will rephrase it or repeat the question so that you understand the question before you answer.

Is that agreeable?

A. Yes.

Q. Okay. If at any time you want to take a break, just say so. We'll be happy to do that. I don't anticipate being here all day, but if you

1 do want to do that just let us know.

2 A. Thank you.

3 Q. Now, Dr. Ward, you are today while
4 we're doing this deposition at home in Norwich,
5 Vermont; is that right?

6 A. That's correct.

7 Q. And I have a copy of your CV which we
8 received from Mr. Feidler on Wednesday, and it
9 shows your address as 32 Bramble Lane, Norwich,
10 Vermont.

11 Is that still your address?

12 A. That is correct.

13 Q. And that is shown as both your office
14 and home addresses?

15 A. I'm in my basement office as we speak.

16 Q. Now, this particular copy of your CV
17 says: Last updated September 1, 2018.

18 A. That's not my recent CV. I'm not sure
19 why that came through. I thought I had sent -- the
20 most recent one I have I think is updated in June
21 of 2021. So I think I need to send you my newest
22 version.

23 Q. All right, sir. That would be good if
24 you could send that, and Mr. Feidler will get it to
25 us.

1 Is there anything particularly
2 significant that has changed since September 1,
3 2018?

4 A. I work two days a week at the VA
5 hospital in White River Junction, which I have done
6 since 2019. So that would be new, and other than
7 that I don't think there is anything substantially
8 different.

9 Q. Well, let me just go through and hit
10 some highlights here to be sure we're up to date.

11 So you're currently working at White
12 River Junction two days a week; is that correct?

13 A. Yes; at the veterans hospital there.

14 Q. And what exactly are you doing there at
15 White River Junction? What is the name of the
16 hospital again?

17 A. It's the White River Junction Veterans
18 Administration Hospital, I think.

19 Q. Okay. Thank you.

20 What exactly is your role at the VA
21 hospital at White River Junction?

22 A. I'm on the staff there. So I see
23 neurology patients, both new neurology patients who
24 are veterans and patients in follow-up.

25 Q. Now, before you started at White River

1 Junction in 2019 when was the last time you had
2 maintained either an office or a hospital-based
3 practice?

4 A. I retired in 2016 from
5 Dartmouth-Hitchcock Medical Center in Lebanon, New
6 Hampshire, but I renewed my privileges there and
7 saw patients for about three months, I think, in
8 2018.

9 One of my trainees was out on maternity
10 leave, so I agreed to come back and cover her time
11 in neurology there as a courtesy primarily.

12 Q. Was that a hospital practice or an
13 office practice?

14 A. Both. The entire thing.
15 The way that it works there is the
16 hospital and the clinic and the medical school are
17 all intertwined. And the hospital and the clinic
18 are in the same building. So if you are doing
19 neurology there you see patients in the hospital.
20 You may see patients in the emergency room when
21 you're on call, and you may take telephone calls
22 from outside people. And you also see patients in
23 the clinic.

24 So you see patients all over the place
25 basically. It's everything.

1 Q. And that hospital, I believe, is
2 connected with a medical school?

3 A. Yes. Well, it used to be called the
4 Dartmouth Medical School, but now it's called the
5 Geisel School of Medicine at Dartmouth.

6 You probably recognize the name. Peter
7 Geisel, who was a Dartmouth school graduate, who is
8 better known as Dr. Seuss and his estate gave
9 Dartmouth College and the medical school a very
10 large amount of money, and in turn the school got
11 renamed.

12 Q. That's very nice. I love Dr. Seuss.
13 Let me ask it this way. Maybe I can
14 get this in one question. Has most of your career
15 been in connection with academic medical hospitals?

16 A. That's correct. The vast majority.

17 Q. Attached to your CV that we have is a
18 group of pages with a copy of research funding.

19 A. Yes.

20 Q. Do any of those studies relate
21 particularly to the issues in this case?

22 A. I don't believe so, no.

23 Q. There is another topic, Invited
24 Presentations. I assume talks and giving meetings
25 and things like that.

1 A. Exactly.

2 Q. Do any of these invited presentations
3 that you have listed on your CV relate particularly
4 to the issues in this case?

5 A. There was one case that I had presented
6 -- and I'm not sure. It probably is on that list
7 somewhere, but when you get my updated CV -- I did
8 have a case of a man who had a history of migraine
9 headaches but hadn't had any for a period of time,
10 and then one day had a very severe headache after
11 several years of having no headaches and was
12 actually admitted to the hospital where he had some
13 hours later a massive intracranial hemorrhage.

14 Q. Do you know which presentation that
15 might be? Where it was? When it was? How I could
16 identify it?

17 A. I would have to look. I could probably
18 pull it up on this computer. I'm not sure that it
19 would be particularly helpful, but I could pull up
20 my CV and look for it if you want.

21 Q. Well, you said that man had gone for a
22 long period of time --

23 A. I think it had been maybe five years or
24 longer that he had not had a migraine and then in
25 the setting of some exertion of mowing the lawn

1 suddenly got a terrible headache and ended up being
2 rushed to the hospital.

3 Q. Okay. Was he your patient before?

4 A. Well, no. He was not my patient
5 before, but he became my patient the day he was
6 admitted to the hospital.

7 Q. Well, that's a significant difference
8 from this situation.

9 A. Yes.

10 Q. While I'm flipping through, I
11 understand that you also maintain a home in
12 Sarasota, Florida.

13 A. That's correct.

14 Q. Do you do any medical practice down in
15 Sarasota?

16 A. I have no license in Florida. I do
17 plan to do some of my business consulting when I am
18 in Sarasota.

19 I have a New Hampshire and a Vermont
20 license. I do not have a Florida license, although
21 if I really was so inclined it turns out I could go
22 to the VA facility because it's a federal facility
23 and my Vermont and New Hampshire license would
24 work. But I don't plan to do that.

25 Q. You spend your winters in Florida?

1 A. That's going to be my plan. I haven't
2 done that yet, but that's the plan.

3 Q. Then I have some journal articles that
4 you have listed --

5 A. Yes.

6 Q. -- that you have, I guess, written or
7 participated in writing.

8 Do any of those relate to the issues in
9 this case?

10 A. One of them does. It would be listed,
11 I think, under Nye and Ward 2015 - Headache
12 Currents. It would be towards the end of the list.

13 Q. The Clinic and Emergency Room
14 Evaluation and Testing of Headache?

15 A. Yes.

16 Q. And that's one of the articles that
17 you'll get to us that you'll provide us a copy
18 with?

19 A. Yes.

20 Q. How does that relate to the issues in
21 this case?

22 A. It talks about something that most of
23 the other articles I have sent along talk about:
24 Things that are called red flags. Things that
25 should give you pause when you're seeing a patient.

1 And we do mention those red flags actually, so
2 that's why I listed it.

3 Q. You have a section entitled "Book
4 Chapters" --

5 A. Yes.

6 Q. -- that you have written or contributed
7 to.

8 A. Yes.

9 Q. Do any of those book chapters have any
10 particular relevance to the issues in this case?

11 A. Nothing that comes to mind.

12 I do think one of the chapters in -- I
13 think the book is called Refractory Headache. I
14 wrote a chapter on taking a history in headache
15 patients, and that might bear on it.

16 I actually -- that article comes from,
17 I think, the better part of ten years ago, and I
18 would actually have to look at the chapter to see
19 if it was fairly relevant or not.

20 Q. Thank you.

21 A. I think the authors were -- Loder was
22 one of the editors of that book, and there was
23 another, I think.

24 Q. Then you've got two books under your
25 name here, Head, Neck and Facial Pain.

1 A. Yes.

2 Q. And Understanding Your Migraines.

3 Are those books for practitioners or
4 for lay men?

5 A. The first one was for practitioners.

6 The second book is actually -- I feel
7 bad about it because Dr. Loder and I did our best
8 to write that book for patients, and I don't think
9 we sold more than a handful of them.

10 It's very nice that you do a book and
11 -- well, the same is true for the other book, to be
12 perfectly honest. The other for clinicians was
13 very highly reviewed, and we didn't sell hardly any
14 of those. So that's one of the reasons you don't
15 see me writing a lot of books. It's a labor of
16 love and a lot of work.

17 So the second one was for patients and
18 the first one was for clinicians.

19 Q. On your CV you list yourself as
20 president and treasurer of a medical consulting
21 group.

22 A. That is correct.

23 Q. And what is the name of it?

24 A. Dartmouth Region Medical/Legal
25 Consulting.

1 Q. And is that an incorporated business or
2 an LLC or an --

3 A. LLC.

4 Q. In Vermont --

5 A. Yes.

6 Q. -- or New Hampshire?

7 A. Vermont.

8 Q. Are you the only member of the LLC?

9 A. No. I am the president and treasurer.
10 My wife is the vice-president, and my son, who is
11 an attorney, is the secretary.

12 Q. And is that the entity through which
13 you do your expert witness work?

14 A. That is correct.

15 Q. How long have you been working as an
16 expert witness in medical malpractice cases?

17 A. I didn't catch the last part of what
18 you said.

19 Q. How long have you worked as an expert
20 witness in medical malpractice cases?

21 A. I've done this since 2016. So about
22 five years.

23 Q. During that period have you testified
24 at trial?

25 A. Yes. I believe -- or I hope we sent

1 you a list of my depositions and trials among the
2 things that were sent to you.

3 Q. I don't believe we got that, but tell
4 me: Do you believe that Mr. Feidler in his office
5 somewhere may have gotten that?

6 A. I thought I had sent them, but
7 apparently I also sent a wrong copy of my CV. So I
8 probably ought to do it again.

9 Q. All right. Can you provide that to
10 Mr. Feidler along with your updated CV?

11 A. I will do that then.

12 Q. Approximately how many trials have you
13 testified at?

14 A. I think only three or four.

15 Q. Have you ever testified in South
16 Carolina?

17 A. No.

18 Q. Do you have any estimate of how many
19 depositions you may have given?

20 A. I just did a deposition yesterday. So
21 this question always comes up, and the answer is I
22 have done a very large number of them over the
23 years.

24 When I was working at
25 Dartmouth-Hitchcock Medical Center I would do a

1 number of them every year on behalf of my patients,
2 but I never kept a record of them.

3 So, you know, from 1989 until 2016
4 probably more than a hundred depositions in that
5 capacity and a much smaller number of depositions
6 actually since 2016 for this business.

7 Q. Well, I meant to ask only about the
8 depositions in which you are a retained expert
9 witness in a medical malpractice case. So that
10 would be how many?

11 A. Between one and ten, I think.

12 Q. Any of those depositions in cases in
13 South Carolina?

14 A. No.

15 Q. To your knowledge have you ever been
16 retained in a case in South Carolina?

17 A. I believe this is the only one.

18 Q. Have you before this case or since this
19 case was assigned to you ever reviewed any other
20 cases for the Anastopoulo Law Firm?

21 A. I don't believe so.

22 Q. What percentage of your cases as an
23 expert witness are for the plaintiff and for the
24 defendant?

25 A. That's also interesting.

When I started the business it was about 50/50, and over time it has changed. I would say it's now about 90% for plaintiff and about 10% for the defense.

Q. Do you belong to any expert listing services?

A. Not to my knowledge.

Q. Do you advertise in any way your services?

A. I do -- I have a rather primitive website that when I remember that I have it I occasionally update it. And two or three times people have found me from the website. It's not something that I spend a lot of time with, but that's really the only advertising I do. The rest of it is word of mouth.

Q. What is the website address?

A. I believe it's www.DRMLConsulting.com. I think that's the website. I never look it up.

Q. Thank you.

Now, we also have been provided -- actually when the case was first filed -- with an affidavit dated January 2, 2019 signed by you.

Do you have a copy of that affidavit
that you can refer to?

1 A. I have it, but I'm having trouble
2 finding it.

3 Q. Well, it's not very long. I'm going to
4 ask you about a couple of things on it. I'll just
5 read them to you.

6 A. All right.

7 Q. First you refer in the affidavit to the
8 defendants as a group. So I want to ask you
9 whenever I'm asking these questions to try to
10 differentiate between Dr. McCaffrey and Dr. Larson
11 and the hospital because they're different entities
12 all together. Even though there are common words
13 in the name, those are different entities.

14 You understand that?

15 A. I do.

16 Q. Okay. So in this affidavit you also
17 state that you had reviewed documents from the file
18 at Seacoast, from the Medical University of South
19 Carolina, which we just call MUSC down here, and
20 from Grand Strand Medical Center.

21 A. That's correct.

22 Q. Since you executed this affidavit have
23 you received any other materials since that you
24 have reviewed?

25 A. Yes. I believe, although I haven't

1 taken notes on them, I think I saw depositions of
2 Dr. McCaffrey and also of Jeremy Garver's widow,
3 Claudine.

4 Q. Did you receive depositions of the
5 family members of Mr. Garver?

6 A. Other than Claudine Garver I don't
7 believe. I don't believe so.

8 Q. Did you receive any of the depositions
9 that were taken in the case filed against the
10 Medical University in South Carolina filed by Miss
11 Garver?

12 A. Only indirectly, I believe, from --
13 there was some discussion in the deposition of
14 Claudine Garver, but -- and I saw, as I said, the
15 deposition of Dr. McCaffrey, but I don't believe I
16 saw anything else.

17 Q. Were you aware that this plaintiff has
18 filed a separate lawsuit against the Medical
19 University of South Carolina?

20 A. I'm aware of that.

21 Q. Have you reviewed any of the pleadings
22 in that case?

23 A. Only, I believe, what is in the
24 deposition of Claudine Garver.

25 Q. Have you reviewed the affidavits or

1 testimony of the plaintiff's experts in the MUSC
2 case?

3 A. I don't believe so.

4 Q. Have you been retained to give expert
5 testimony in the plaintiff's case against MUSC?

6 A. I believe so.

7 Q. You have been? You believe you have
8 been?

9 A. That's what I understand.

10 Q. Going back to your affidavit in this
11 case, is there anything in the affidavit that you
12 now would change or alter as opposed to adding more
13 details to?

14 A. Not that I recall.

15 Q. Now, we were provided with some
16 handwritten notes, and are these notes which you
17 made yourself as you went through your review?

18 A. That's what I typically do, is I
19 request whatever records are available. And I try
20 to see as many records as I can get, and then as I
21 review the records I will take usually a legal pad
22 and with my fountain pen I will take notes to try
23 to put down the parts of the record that I think
24 are the most relevant or important.

25 When I went to school we did

1 penmanship. And I try to make my things legible.
2 I only got a B in penmanship, but I feel it's
3 legible.

4 The point is for two purposes. The
5 point is it makes it easier for me to go back if I
6 have to write a summary. The other point is
7 usually in the margin somewhere you'll find a
8 statement about how much time I spent.

9 In this particular case -- yes; there
10 are some places where I made a notation as to how
11 much time I actually spent looking at the record.
12 Because it's sometimes not just a matter of reading
13 the record, but sometimes you have to go look
14 things up. There are sometimes terms in there,
15 abbreviations -- I'm not sure what they are, so it
16 often takes longer to review the record than one
17 would anticipate simply from reading it.

18 So I try to have it relatively
19 organized and I try to make sure that it's
20 reasonable legible, because even -- if I was an
21 attorney and knew what I did, I wouldn't ask for my
22 handwritten notes, but the attorneys almost always
23 want to see them. So that's why we sent them to
24 you.

25 Q. All right. So these notes, which we

1 received actually on Wednesday, the day before
2 yesterday, appear to go through the review that you
3 did on July 9 and July 10, 2021.

4 A. There were other dates as well on other
5 notes, yes.

6 Q. Yes. There are earlier dates.

7 A. Yes.

8 Q. What I'm asking is: Are these the most
9 recent notes that you have?

10 A. I believe so. I sent along everything
11 that I had.

12 Q. We also received several articles; and
13 I'm not going to go through them in detail, but I'm
14 just going to refer to each one and ask you what
15 the relevance or significance of that article is.

16 Okay?

17 A. Yes.

18 Q. The first one I have here is Political
19 Clues and Political Rules - Primary Versus
20 Secondary.

21 A. Yes. And actually that is probably the
22 most important article. Because most of the
23 articles I sent along talk about so-called red
24 flags, which I mentioned before, and this is one of
25 the first, if not the most important mention of it

1 from about 2003, a very famous headache expert
2 named David Dodick who was at the Mayo Clinic -
3 Scottsdale.

4 There was an article based on a
5 presentation he did around then for the Migraine
6 Trust. And so he was talking about how you sort
7 out between primary headaches, meaning things unto
8 themselves like migraine or tension headache or
9 cluster, as opposed to secondary headaches and
10 headaches that are due to something else. So he
11 had this set of clues.

12 And then most of the subsequent
13 articles that I've included refer to that article
14 and talk about the new SNOOP. And now it's got
15 like fifteen P's -- it used to just have one or two
16 P's -- for all the different clinical clues, which
17 should make you look harder.

18 I probably said more than you wanted.
19 I'm sorry.

20 Q. And what is the point of Dr. Dodick's
21 article here?

22 A. That there are certain things that you
23 may find in the history or the presentation of a
24 patient that should give you pause and wonder if
25 something else is causing the headache rather than

1 it just being, for instance, a migraine.

2 Q. The next article is one in which you
3 were one of the authors of, Clinic and Emergency
4 Room Evaluation.

5 A. Yes. This is a paper that we published
6 in 2015 in a journal called Headache Currents.

7 It's a little unusual because Headache
8 Currents is a journal within a journal, the journal
9 Headache. And as a matter of full disclosure, at
10 that time I was the editor of the journal Headache,
11 and because I believe in transparency and peer
12 review I actually -- I guess the word is recused
13 myself and had someone else put this article
14 through peer review so that it actually did pass
15 legitimate peer view.

16 It's an article that I wrote with
17 Barbara Nye and it's something I am interested in,
18 is the differences in approaches to headache
19 depending on where you're located.

20 It's obviously very different if you're
21 seeing a patient in the emergency room than if you
22 have the leisure of seeing the patient in your
23 clinic and perhaps you may see them again in
24 follow-up or see them over time.

25 So we talked a little bit about that,

1 and the reason I included it is, again, we did
2 mention red flags in there.

3 Q. Then as I see in this article you refer
4 to the SNOOP algorithm.

5 A. Yes.

6 Q. Then the Clinical Significance of
7 Basilar Artery Aneurysms.

8 A. I'm not trying to be didactic, but I
9 actually put that in there for your benefit in case
10 you didn't know what a basilar artery aneurysm was.

11 I can tell you later on what it is or I
12 can tell you now, but I put it in because it
13 describes how they behave clinically.

14 It's an article -- it's an old article.
15 I think it's from like 1974. But that hasn't
16 changed, obviously. A basilar artery aneurysm is a
17 basilar artery aneurysm.

18 Q. So I don't forget to ask, go ahead and
19 tell me what a basilar artery aneurysm is.

20 A. All right. So there is two different
21 kinds of aneurysms: Intracranial -- there is
22 multiple ones. The major ones we are concerned
23 about are saccular ones, which usually occur at the
24 bifurcations of blood vessels. And they're like
25 little balloons, and over time some of them expand;

1 and as you know, if the balloon expands it blows
2 up. That's the more common kind of aneurysm, and
3 they're called saccular.

4 Basilar artery aneurysms are different,
5 and they're called fusiform. It means they're
6 stretched out and elongated, and because they're in
7 the basilar artery they can do several things.

8 Because aneurysms like this can have
9 diminished flow. Sometimes they will form clot and
10 they may cause decreased circulation or they can
11 throw off bits of clot and cause things like
12 transient ischemic attacks or strokes. But they
13 can also do other things. Because they can get to
14 be pretty large.

15 Mr. Garver's aneurysm was called a
16 giant aneurysm because it was more than 2.5
17 centimeters. More than 25 millimeters in diameter.
18 It was called a giant one. And they can also act
19 like a tumor, like a mass lesion, and sometimes
20 because of pressing on things can cause changes in
21 spinal fluid flow or push on nerves or push on
22 important tracts in the brain stem, like the
23 cortical spinal tracts. And that's one of the
24 things that happened with Mr. Garver, I believe.

25 And lastly, if they get big enough it

1 can also blow up; have a subarachnoid hemorrhage,
2 like a saccular one.

3 But interestingly, I think the way that
4 most neurologists and neurosurgeons tend to find or
5 stumble into a basilar artery aneurysm would be
6 because it was acting as a mass lesion. And I just
7 put that article in because I thought it was a nice
8 description of it.

9 Q. Then we have a review article, Expert
10 Consensus Recommendations For the Performance of
11 Peripheral Nerve Blocks For Headaches.

12 A. Yes. I don't have that one in front of
13 me, but I have it in the packet.

14 It's basically a guideline, if you
15 will, published by the American Headache Society, I
16 believe, on when to do them and what they can
17 benefit -- I think the point of that is that a
18 response -- many times headaches can respond to
19 occipital nerve blocks, is the point of that. It
20 is not diagnostic of anything.

21 Occipital nerve blocks -- the occipital
22 nerves are often tender in many different kinds of
23 headaches -- posttraumatic headache, chronic
24 migraine, cluster headache -- and you can inject
25 local anesthetic and almost any kind of head pain

1 may just go away. It's something that a lot of us
2 do to try to get patients quick relief.

3 Q. Next is an article, Comments,
4 Observations and Rebuttals, which I assume is a
5 section in the Headache publication.

6 A. Yes.

7 Q. It says: Imaging the Patient With
8 Migraine - a Question/Answer.

9 A. Yes. I believe that was a two-part --
10 Dr. Johnson, who may be an attorney as well as a
11 physician -- I'm not sure -- and Dr. Randy Evans,
12 who is down at Baylor in Houston -- Dr. Evans has
13 some interesting neuroimaging and when to do it,
14 and he has some interesting medical/legal aspects
15 of headache and has written on that quite a bit.

16 So I believe this was a back-and-forth
17 about somebody who had a long history of headaches
18 and then the headaches got worse, and there was a
19 question -- a back-and-forth about, you know,
20 should this person have been imaged earlier or was
21 the timing of the neuroimaging that they got, which
22 I believe was an MRI -- was it appropriate?

23 So that was sort of a back-and-forth
24 between them.

25 Q. Is that a controversial topic in the

1 specialty?

2 A. It is. It's an ongoing problem -- it's
3 a problem within a problem.

4 Many of my colleagues don't even like
5 guidelines because sometimes guidelines, for
6 instance, when they're used talking about when to
7 give certain medications -- some of my colleagues
8 believe that the insurance companies use the
9 guidelines to deny people care.

10 When it comes to imaging, people are
11 always talking about -- it's the back-and-forth
12 between being cost effective and how much does it
13 cost society as opposed to the benefit for an
14 individual patient. And those are philosophical
15 debates that people get into all the time.

16 Q. Is the use of radiation that results
17 from some imaging part of that debate?

18 A. Yes. And I can't recall if it's in the
19 articles that I sent you or somewhere else, but
20 there is a great concern about repeated CT scans of
21 the brain.

22 I know I didn't send you this, but
23 there was a thing that was written up about eight
24 years ago by the American Headache Society in
25 conjunction with the Institute of Medicine called

1 Choosing Wisely Campaign, and they made the big
2 point that unless it was an emergency -- because CT
3 scans are wildly available and quick. Unless it
4 was an emergency, if you wanted to look at the
5 brain, getting an MRI would be better than getting
6 a CT scan because you weren't exposing the patient
7 to radiation over and over again.

8 Q. The next article is Expert Opinion -
9 Migraine and Medical Malpractice by Dr. Evans and
10 Dr. Johnson.

11 A. Yes. And that's basically another
12 article talking about the same sort of thing.

13 Q. Then again we have Research
14 Submissions, a Neuroimaging For Migraine, the
15 American Headache Society Systematic Review and
16 Evidence Based Guideline.

17 A. Yeah. I think we probably should not
18 include that one because my recollection is that
19 was published in 2020, and this case predates that.

20 So I'm not sure it's fair to introduce
21 something that is afterwards. But it's basically a
22 group of people that I helped actually by providing
23 services from the Dartmouth Biomedical Library to
24 do a massive literature search to try to look at
25 the quality of articles and the evidence to tell

1 people when they think that a patient should have
2 an image or shouldn't. But as I say, that's
3 something that came out after this case -- after
4 this event happened.

5 Q. The next one I see is from Practical
6 Neurology - Ruling Out Secondary Headache.

7 Again, this is March or April of 2018,
8 but nevertheless --

9 A. Yes. It's probably more of the same.
10 I believe it's an article from Jonathan Smith --

11 Q. Yes, sir.

12 A. -- also at the Mayo Clinic -
13 Scottsdale. And it basically covers the same
14 territory. But I believe you're right. I believe
15 it came out after this event.

16 You'll see that over and over again,
17 except that they seem to be adding endless number
18 of P's at the end of it. I now just have to look
19 at the table because I cannot remember them all.

20 Q. Then I have an article, Which Headache
21 to Investigate, When and How by Dr. Ravishankar.

22 A. Yes. Dr. Ravishankar is a very nice
23 headache expert in what we used to call Bombay,
24 which I believe is now called Mumbai, and he again
25 wrote emphasizing, I think, that the major concern

1 is to make sure you do not miss a patient who has a
2 secondary headache, meaning due to something else.

3 And I believe in that article -- I
4 haven't looked at it for a few weeks. I believe he
5 also talks about SNOOP in there.

6 Q. I think that's it. Thank you for going
7 through that with me.

8 So at this point, Doctor, I find the
9 best way to get through these depositions is to ask
10 the witness to state his or her opinions and then
11 we'll go back through them.

12 So maybe that's what we can do here, if
13 you would tell me what opinions you tend to give at
14 trial in this case.

15 A. So correct me if I'm wrong. I managed
16 to just kick myself out of the place on the
17 computer, but it probably doesn't matter.

18 Regarding Dr. McCaffrey's care of
19 Jeremy Garver, what I saw in the record, which was
20 very clear to me, was a man who had headaches that
21 according to the International Classification of
22 Headache Disorders, Version III and the prior
23 versions, pretty clearly had migraine; however,
24 there is two caveats to that.

25 In the International Classification of

1 Headache Disorders under each type of headache,
2 primary headache, it says the exclusion is not due
3 to another disorder.

4 So the point is there are things that
5 can mimic migraines, and that's sometimes called
6 symptomatic migraine. And that would be a
7 secondary headache, meaning a headache due to
8 something else.

9 And having migraine does not inoculate
10 you from getting anything else, including any other
11 kind of headache.

12 So that's my background on this. And I
13 saw -- I believe he first saw him in December of
14 2015, and when he saw him he had a history of what
15 was thought to be migraine for five or six years,
16 and also neck pain. And then he had a frequency of
17 headache -- of one severe headache, I believe, a
18 month, roughly. It was bad. It sounded like
19 migraine. It had migraine features. It was
20 recurrent and it went away.

21 But over the several visits that ensued
22 there were two important things: The headache
23 frequency increased dramatically, and that's in
24 Dr. McCaffrey's own words. And he instituted a
25 preventive drug, Topiramate. He instituted

1 Topiramate and increased the dose; and Mr. Garver
2 initially got some reduction of headaches, but then
3 they resurfaced and got worse and worse.

4 So the notes in his own words basically
5 say there was an increasing frequency of headache,
6 which by definition is a change in headache
7 pattern, which is a red flag, and I believe he
8 should have had imaging at that point, as the
9 headaches were worsening despite preventive
10 treatment, and he was not imaged.

11 Q. Okay. Let me go back.

12 You agree that Mr. Garver did in fact
13 suffer from migraine?

14 A. I believe he did suffer from migraine.

15 Q. And you mentioned two things which you
16 consider to be red flags, the frequency and what
17 else?

18 A. It was primarily the change in headache
19 pattern.

20 Now, I will tell you, if you wish,
21 there is one other thing. But I actually agree
22 with what I think Dr. McCaffrey may have said. I
23 think you also have an article which were the old
24 guidelines for imaging headache by Silverstein, and
25 Silverstein talks about the things also that make

1 it more likely you'll find something if you image a
2 headache patient. One of them was a change in
3 pattern, but the other one was headache awakening
4 people from sleep.

5 So that was something else that
6 Mr. Garver had. And I'm a fairly old neurologist
7 at this point and I tend to tell stories about my
8 teachers and being a medical student, and I was
9 always taught as a medical student that if you had
10 a patient with headaches that woke you up at night
11 you should be concerned about things like a brain
12 tumor.

13 And while that's true, in fairness the
14 overwhelming number of people who wake up with
15 headaches at night have migraine. Migraine loves
16 to wake adult patients up at night.

17 So as I say, I used to run the
18 Dartmouth headache clinic. I had thousands of
19 migraine patients. They would often -- some of
20 their headaches would wake them up at night, and I
21 would note it. But by itself I won't get very
22 excited about it. However, that is pointed out in
23 the literature as being a concern because one of
24 the features of a brain tumor or a mass lesion, if
25 you will, is when the patient is laying down, if

1 they have a mass lesion their spinal fluid
2 pressures rises more than someone who doesn't have
3 a mess lesion, and that wakes them up with a
4 headache.

5 I'm just saying that's not a major
6 thing. To me the major change, the major red flag,
7 was the change in headache pattern, the escalating
8 number of headaches despite the institution of
9 preventive therapy.

10 Q. Did Mr. Garver also suffer from tension
11 headaches?

12 A. I don't know. I will tell you why.

13 I know that in the record people
14 thought that he did have tension headache, but he
15 also had neck pain. And the way that we are wired
16 anatomically, if you will -- neuroanatomically --
17 sometimes neck and shoulder pain can trigger
18 headache. And often in a migraine patient it will
19 come out as a migraine, but it can come out as a
20 headache that may have features more like a tension
21 type headache. And conversely, if you have a bad
22 headache your neck and shoulders may tighten up.

23 But having said that, we know far more
24 about tension type headache -- we know far more
25 about migraine headache than we know about tension

1 type headache.

2 And I will further say, just to muddy
3 the waters -- but not intentionally -- mild
4 migraine often shares features with tension
5 headache. So there is some overlap. And I did see
6 somewhere in the record where someone had felt that
7 he had also had tension type headache. I don't
8 think there is any reason that someone couldn't
9 have both.

10 Q. Did you see in the record where he
11 would go and have chiropractic treatments which he
12 said would help his tension headaches?

13 A. I'm aware of that, yes.

14 Q. Is that an unusual sequence of events
15 for a patient having tension headaches?

16 A. No. It's not unusual at all.

17 I also recall -- I believe he was
18 chronically on a muscle relaxer, cyclobenzaprine.

19 Q. And what is the significance of that?

20 A. I believe, strictly speaking,
21 cyclobenzaprine is only supposed to be used short
22 term. I think it really wasn't studied for
23 long-term use. But I certainly have had a fair
24 number of people with chronic neck and upper back
25 pain who seem to find that it gives them light

1 relief.

2 Q. Let's focus, then, on what you think is
3 the significant red flag, which is the change in
4 pattern.

5 Is my question accurate, Doctor?

6 A. Yes. You want me to go through that
7 specifically?

8 Q. Please.

9 A. All right. So I'm taking this from my
10 handwritten notes, which were taken from the full
11 record that I have. And we can go back to those if
12 we need.

13 So on December 29, 2015 Dr. McCaffrey
14 noted that the patient had a history of headaches
15 that began five or six years earlier. He also had
16 shoulder pain, and it said: Severe headache once a
17 month lasting hours. And his diagnosis -- he did a
18 pretty complete examination that was normal. And
19 so his diagnosis was intractable migraine without
20 aura, without status migrainosus, and he put the
21 patient on Sumatriptan. So we have a baseline of
22 one bad headache a month.

23 Then I believe the next visit was
24 February 5, 2016 where he noted that it was a
25 follow-up for frequent migraine headaches. He said

1 there was a flurry of headaches and there was
2 nausea, which I believe is not a symptom that had
3 been noted before. But nausea is a symptom of
4 migraine. It can be a symptom of other things.
5 And there was a prior history of light and sound
6 sensitivity. So he added the medication Zofran,
7 which can be helpful for nausea.

8 Q. Let me stop you right there.

9 As of December 29 do you have any
10 criticism of Dr. McCaffrey's examination, including
11 his treatments at that point in time?

12 A. It was a very thorough examination
13 which was normal. I don't have -- I don't have any
14 criticism.

15 Q. Do you agree that headache patients
16 frequently will undercount the frequency of their
17 headaches on initial presentation for treatment?

18 MR. FEIDLER: Objection.

19 A. Yes. It's a difficult problem.

20 I prefer -- well, when I was running
21 the headache clinic -- I still see headache
22 patients but not nearly so many as I used to. I
23 like my patients to keep a headache count. Because
24 if they have had a bad month but the three or four
25 days before the office had been good, they may tell

1 you they're doing okay, and yet their calendar
2 wouldn't show that. And conversely, if they had a
3 pretty good month but had a pretty good headache
4 two or three days just before their visit, they
5 would tell you they're doing terrible.

6 I do like to see a headache calendar.
7 It makes it more objective. You're right.

8 Q. Okay. As of the next visit, the second
9 visit on February 5, 2016, is it your testimony
10 that Dr. McCaffrey at that point should have
11 changed the diagnosis or the treatment?

12 A. I would not necessarily say then. The
13 record is, I think, a little vague.

14 There was a follow-up for frequent
15 migraine headache, but I don't believe -- he said
16 there was a flurry of headaches. It was a little
17 vague. And I think he focused more again on
18 treating the patient, which was to add the
19 antinausea medicine.

20 Q. The next visit was May 31.

21 A. That's correct. And at that point what
22 he noted was more than nine headaches per month for
23 the past three months, and then he said they can
24 awaken him from sleep and last more than 48 hours.

25 And then he noted -- it said the

1 patient is having increasing frequency of his
2 migraine headaches to more than nine headaches per
3 month, and that's when he started the preventive
4 drug Topiramate, also known as Topamax.

5 Q. Do you have criticism of
6 Dr. McCaffrey's treatment as of May 31?

7 A. I do.

8 Q. And please explain that.

9 A. That would be the red flag, the change
10 in headache pattern, and in this case an increasing
11 frequency of headaches. So if I was in that
12 situation and that was my patient, I would have
13 gotten a scan at that point.

14 I saw a patient this week at the VA
15 that I've seen for a very long time with a
16 different kind of primary headache who suddenly
17 isn't responding to his treatment very well, and so
18 I ordered a scan on him.

19 Q. A CT scan? What kind of scan did you
20 order?

21 A. Getting an MRI of the brain.

22 Q. Tell me what you believe Dr. McCaffrey
23 should have done on May 31.

24 A. I would have suggested he should have
25 gotten an MRI of the brain.

1 Q. And what would the MRI have shown?

2 A. I hate using the retrospectoscope,
3 because we all know the answer.

4 It would have shown a giant basilar
5 artery aneurysm.

6 Q. And what is the basis of your opinion
7 that the aneurysm at that point in time was a giant
8 basilar artery aneurysm?

9 A. Because that is not in very far time
10 from when he subsequently really was imaged.

11 And also -- and again, I don't like
12 using the retrospectoscope because it makes us all
13 seem smarter than we are.

14 I'm going into the weeds, but seeing as
15 we're there, there is a note from October 30, 2017
16 from a Dr. Vandergrift, and he was a neurosurgeon
17 who had seen Mr. Garver. And there is a typo in
18 his note -- I assume it was done with voice
19 recognition, but it says "an order," which I think
20 he meant "older" MRI of his cervical spine that
21 says: Visible but smaller.

22 And I believe he's referring to the
23 basilar artery aneurysm, which looking carefully at
24 the scan of his cervical spine you can sometimes
25 see part of the brain stem. And my understanding

1 is he could tell it was there, but it was smaller.

2 So that was from five or six years
3 earlier, I believe.

4 Q. Well, do basilar artery aneurysms of a
5 fusiform type progress or grow at a uniform rate?

6 A. I believe that is not known, especially
7 for given individual risk factors for -- the usual
8 risk factors for atherosclerotic disease.

9 So it could be family history of those
10 things; high blood pressure, which Mr. Garver had
11 -- I don't know what his cholesterol status was,
12 but like anyone else, when you find these
13 aneurysms, depending on their size and location,
14 they often get watched.

15 This is a somewhat different case
16 because the database isn't as big. When you're
17 talking about the saccular aneurysms -- and we
18 talked about how they get like a balloon and the
19 wall gets thin and they blow up.

20 It's seems that if a saccular aneurysm
21 is less than seven millimeters in diameter it's
22 much less likely to burst than if it's seven
23 millimeters or a centimeter above.

24 That's not necessarily known for
25 basilar artery aneurysms because they're much less

1 common, and I think it depends a little bit more on
2 their other medical conditions, whether their
3 cholesterol is out of control, whether their blood
4 pressure is out of control, what the exact shape of
5 this thing is.

6 So that's a difficult question; and I
7 guess I didn't answer it probably well, but
8 obviously some of them do enlarge.

9 Q. Well, I guess my question, then, is:
10 You don't know when Mr. Garver's aneurysm enlarged
11 to a giant basilar artery aneurysm?

12 A. That I can't tell you, no.

13 Q. Then let me go back. You refer to the
14 Topamax. Tell me what Topamax is and what it does.

15 A. All right. There are two major
16 categories of migraine medications: Acute
17 medications that you take when you have a headache
18 to try to shut it off, and then preventive
19 medications, which you take to try to make the
20 headaches fewer, milder or shorter. And many of
21 these medications have been found by accident to
22 work for migraine. The old drug Propranolol was
23 found by accident to work for migraines.

24 So many of these drugs come from other
25 disciplines, and Topiramate or Topamax is one of

1 them. Topamax was originally used as an
2 antiseizure medicine and still is, but it turns out
3 that it does have some effect on migraine, and so
4 it can be used for that.

5 It is one of the drugs, if I recall --
6 it's a little controversial. And I'm going into
7 the weeds again. It probably was multiple
8 mechanisms. But it's one of the drugs that I
9 believe Dr. Moskowitz in Harvard showed in animals
10 at least that it raises the threshold for this
11 phenomenon called cortical spreading depression,
12 which some people think is one of the triggers for
13 migraine. And it turns out that many of the
14 preventive drugs we have for migraine make it
15 harder to set this phenomenon off, at least in
16 animals.

17 And so that may be one of the ways, but
18 it probably has multiple mechanisms. But this was
19 something that was tested for migraine, and it did
20 well enough in the pivotal clinical trials that the
21 FDA gave it an FDA indication to use as a migraine
22 preventive. And that's probably also more than you
23 wanted to know.

24 Q. You noted, I'm sure, that Dr. McCaffrey
25 started the Topamax at a fairly low dose and over

1 time increased it to the point where it seemed to
2 have some more effect.

3 A. Yes.

4 Q. And is that a frequent sequence of
5 events for treating someone with Topamax?

6 A. Well, everyone pharmacologically is
7 their own little work of art. One size usually
8 doesn't fit all.

9 The typical dosing -- Topiramate for
10 migraine prevention is at lower doses than we use
11 for seizure prevention, but typical doses are 50
12 milligrams a day to 150 milligrams. And if you
13 really dive into the data, not many people pick up
14 the benefit beyond a hundred milligrams a day.

15 Have I ever had a patient who responded
16 well with 25 milligrams a day? Yes.

17 But this was a very reasonable dosage
18 titration. He had him on 50 milligrams a day, 75
19 milligrams a day. I believe a hundred and maybe
20 even 125 milligrams a day eventually.

21 Q. Does Topamax have any effect at all on
22 an existing basilar artery aneurysm?

23 A. Not to my knowledge. I wouldn't expect
24 it to.

25 Q. Now, I believe September 21 --

1 A. 2016. Yes. At that point as far I can
2 tell from the record he had the patient on 50
3 milligrams a day of Topamax, and it said: Does not
4 control the migraines as well. Again, it says the
5 headaches are increasing in frequency and
6 intensity.

7 So, again, that's a pattern change.
8 That was my opinion. And then he also said he
9 initially had a very good response to Topamax,
10 which has decreased over the past six to eight
11 weeks. So at that point he elected to increase the
12 dose.

13 So I would take that as, again, another
14 -- the same red flag, if you will, increasing
15 headache frequency and intensity. So it changed in
16 pattern. And this is my own little personal
17 editorial: Despite being put on a preventive drug.

18 He references in this note that the
19 headaches usually resolve with Imitrex.

20 Q. What is that medication?

21 A. Imitrex is sumatriptan. It is an acute
22 treatment. It comes in several forms, but I
23 believe he had Imitrex pills.

24 And it is interesting. I don't have a
25 reference off the tip of my fingers, but I'll get

1 one for you if you want it. One should never
2 mistake a treatment response for a diagnosis. And
3 the reason for that is sumatriptan is typically
4 used as an acute migraine treatment, and it can
5 work dramatically. It is sometimes used as a
6 treatment for cluster headache, especially when it
7 is injected. However, there are reports in the
8 literature of people who have had the headache of
9 subarachnoid hemorrhage who respond to sumatriptan.

10 And I'm not saying these were headaches
11 due to subarachnoid hemorrhage; I'm simply saying a
12 response to sumatriptan does not say that this is
13 just migraine. That's all I'm saying. But in this
14 case I believe he was successfully treating
15 migraine headaches with sumatriptan, and I do not
16 believe he harmed him in any way by giving him
17 sumatriptan. In fact, I think he gave him relief.

18 Q. The next note I have is March 21, 2017.

19 A. Yes. That was a six-month follow-up
20 for migraines. I believe he had the patient on a
21 hundred milligrams a day of Topamax, which is the
22 usual good dose, and he noted -- he put down: As
23 noted, overall daily improvement since increasing
24 the Topamax.

25 So then he increased the Topamax to 125

1 milligrams a day. I'm not quite sure why, but
2 okay. But then he says: May require occipital
3 nerve blocks. He put that in. I'm not sure what
4 he thought the future was going to hold, but he put
5 that down as a potential treatment option
6 apparently.

7 Q. Anything new in this note in terms of a
8 red flag that you refer to?

9 A. No. I don't think that changes
10 anything particularly. I have a suspicion that he
11 felt reassured because the patient was better.

12 Q. Then May 23, 2017. Anything
13 significant to you?

14 A. Yes. I have a suspicion that it's a
15 little bit overly dramatic note, but for someone
16 who is caring for a sick patient I understand why
17 he said it this way. So it was a follow-up, and
18 this was for occipital nerve blocks.

19 This says "seen emergently." I don't
20 know if I would have said "emergently," but I get
21 it. The patient was in distress and he wanted to
22 help him out.

23 So he was seen emergently for worsening
24 of occipital headache -- that's headache in the
25 back of the head -- over the past 24 to 48 hours.

1 So it sounds like he had a bad headache
2 attack. And I don't know this because -- we could
3 look, but the patient probably did take his
4 sumatriptan and it probably didn't work, so he
5 showed up at the office with this terrible two-day
6 headache at the back of his head. And at the prior
7 visit Dr. McCaffrey had wondered about doing an
8 occipital nerve block, so he went ahead and did
9 that.

10 Q. Is that an appropriate treatment for a
11 patients who presents like that?

12 A. It's certainly something you can do for
13 almost any kind of headache pain. It's not
14 diagnostic, but it can work dramatically.

15 As a little anecdote: I'll never
16 forget the first time I did a paroccipital nerve
17 block on a very sick patient many years ago who
18 came to my clinic. And I still see her. She works
19 at the VA hospital. I don't see her as a patient
20 anymore.

21 But she had been sick for days with a
22 terrible headache, and she came in and I told the
23 nurse: We're going to do a paroccipital nerve
24 block. And I had her kneel down and put her head
25 on the table -- because you inject them from

1 behind -- and I did these nerve blocks, and about
2 ten seconds later she looked up and said: Doctor,
3 I can't feel my head.

4 For just a second I was horrified
5 because no one had ever said that to me before.
6 But if you think about that, that's the normal
7 state. So they can work dramatically, but they're
8 not diagnostic. We've done them for posttraumatic
9 headache. We've done them for cluster headache and
10 migraine headaches, status migrainosus.

11 One of my former trainees who, when she
12 was doing a pain fellowship, actually did them to
13 relieve the pain of a subarachnoid headache.

14 So it's not diagnostic, but it can be
15 dramatically effective for a patient. And it's
16 something you can do right in the office. So
17 that's why a lot of neurologists have this clinical
18 trick up their sleeve, if you will.

19 Q. Any other observations or comments
20 about the visit on May 23, 2017?

21 A. No, except that it sounds like -- well,
22 I would not have diagnosed it as bilateral
23 occipital neuralgia.

24 Occipital neuralgia is probably a
25 different entity, and it has to do with neuralgic

1 pains coming from the occipital nerves. It's often
2 in the setting of someone who has fallen backward
3 and hit their -- a purest probably would say that
4 wasn't the diagnosis, but I don't think it matters.
5 I understand what he meant by that. It was
6 reasonable to say it. He had tender occipital
7 nerves and he responded to a nerve block. I
8 wouldn't quibble with that.

9 Q. Then we go to September 26, 2017.

10 A. I believe that's the last time
11 Dr. McCaffrey saw Mr. Garver as a follow-up at that
12 point for chronic migraine and I do not -- we'll
13 come back to chronic migraine in a second.

14 He said that he had been headache free
15 after the occipital nerve block for around three
16 weeks. And, of course, this is some months later.
17 So apparently the headaches must have been ongoing,
18 so he increased the Topamax to, I think, 150
19 milligrams a day. At least that's how I understood
20 the note.

21 Q. Now, from there we go to the next
22 involvement with Dr. McCaffrey in any way is the
23 phone call from Mrs. Garver to Dr. McCaffrey's
24 office on October the 24th, 2017.

25 A. Yes. I think I saw that somewhere.

1 Yes.

2 Q. And I believe Mrs. Garver testified
3 that she called and told Dr. McCaffrey's office
4 that the emergency room physician had instructed
5 her to call him to arrange an MRI.

6 A. And there was some remark, I think,
7 about a mass in the brain, in quotes.

8 Q. Yeah. So upon receipt of that call do
9 you criticize Dr. McCaffrey's office for arranging
10 the MRI?

11 A. Again, I don't like using the
12 retrospectoscope.

13 I have thought about this and I would
14 have further down the road certainly handled this
15 very differently, but I'm not a neurosurgeon and
16 I'm not aware of what resources are available in
17 that particular community.

18 Having said that, the way that this man
19 presented for his telemedicine just before then
20 where they thought he was having a stroke and he
21 was having weakness on one side of the body and
22 stumbling -- is that what I should be talking
23 about, or am I not answering your question?

24 Q. No. Keep going.

25 A. I'm not trying to be difficult. I'm

1 trying to be helpful.

2 Q. Thank you.

3 A. Again, I'm an old guy and none of us
4 have seen -- I have certainly not seen 20 people
5 with basilar artery injuries. I've only seen a
6 few.

7 I would have taken it at that point
8 that this thing was declaring itself that it was
9 expanding and the weakness on his left side -- the
10 corticospinal tracts that have to do with
11 controlling your arms and legs, running a thing
12 called the basis pontis, which is just above where
13 this mass was -- I would have taken that clinical
14 scenario as saying this thing is moving. It's
15 declaring itself. And I would have gone -- I would
16 have immediately gotten a neurosurgeon then.

17 Now, I will tell you that aneurysms
18 can fool you, and that's why I would have done this
19 a little differently. They originally just
20 described this as a mass. They thought it was a
21 tumor. Tumor can mean anything. But we have seen
22 people with aneurysms that looked like mass
23 lesions -- they were big -- but when you did an
24 angiogram or MRI you saw they were filled with
25 blood and sometimes clot as well, and so then you

1 made the correct diagnosis. Because obviously the
2 surgical approach to an aneurysm can be very
3 different than a typical brain tumor.

4 Q. Now, you understand that the MRI which
5 Dr. McCaffrey had arranged did in fact identify a
6 nonruptured 2.1 centimeter basilar artery aneurysm?

7 A. Yes.

8 Q. A basilar junction aneurysm with
9 localized mass effect on the pons.

10 A. Yes.

11 Basically, as I said, one of the things
12 that a giant fusiform aneurysm can act like is an
13 expanding mass, and one of the things it can do is
14 push on neuro structures; and as I said, this is --
15 the vertebral arteries come up and they form the
16 basilar artery and then they come out and they form
17 the posterior communicating arteries higher up.

18 And so a basilar artery aneurysm would
19 be at the bottom of the brain stem, and this is
20 thing was at the base of the brain, so called the
21 pons. And the lower part of the pons is the
22 so-called basis pontis. This is where your motor
23 fibers run in the corticospinal tracts that go down
24 to control your arms and your legs.

25 So that's why I think Mr. Garver showed

1 up with weakness on one side, motor weakness,
2 because this thing was starting to clinically
3 declare itself in a very obvious way. I think it
4 was probably declaring itself before by increasing
5 the frequency of headache. Whether it was or not
6 doesn't matter because he had an increase in
7 frequency of headache, which is a red flag
8 regardless, but then clinically this thing was
9 declaring itself.

10 I'm sorry. I'm an old guy. I'm very
11 conservative. I put my patients first. If this
12 man had come into my room with a story of stumbling
13 and being weak on one side, I would have gone into
14 overdrive because I would consider that an
15 emergency. That's just me. That's my own --
16 that's what I would have done. I'm not saying
17 that's what everyone would have done.

18 Q. You understand, Doctor, that Mr. Garver
19 did not present to Dr. McCaffrey with those
20 complaints?

21 A. I understand, yes.

22 Q. Have you reviewed any of the studies,
23 the MRIs yourself?

24 A. Yes. I had hoped to see the old
25 cervical MRI from -- that would be seven or eight

1 years ago, but I don't believe anyone has it except
2 perhaps Dr. Vandergrift.

3 I had some difficulty opening the
4 images, but I was able to see some of the images of
5 the MRI of the brain that do show this mass, this
6 giant aneurysm at the base of the pons. So I was
7 able to see some of it, yes.

8 Q. Were you able to compare the image of
9 October 26, which was the one that Dr. McCaffrey
10 arranged, with the later studies done at MUSC?

11 A. No. I don't believe I -- I hadn't seen
12 the angiogram. I did have trouble opening some of
13 the images. Some of them may have been sent to me.
14 So I'm basically relying upon the reports more than
15 my own review of the images.

16 What I saw was quite limited, but I
17 obviously believe them to be true.

18 Q. Have you asked counsel for the older
19 scans that were done?

20 A. I think we had a discussion about that
21 some months ago, but I think they couldn't be
22 found. So I have not seen them.

23 And again, it would have been wonderful
24 if someone had seen that back then and been aware
25 of it and could have followed it or evaluated it

1 then, but that's the retrospectoscope, and we have
2 what we have.

3 I will tell you anecdotally I saw a
4 patient almost a year ago who had a neck problem,
5 and I was seeing them for that. And a neurosurgeon
6 in private practice who I know very well was also
7 seeing him at that and had looked at his MRI of the
8 cervical spine and commented that he actually could
9 actually see the pituitary gland, and he said there
10 was a tumor in there. And this was not a brain
11 study; this was a study of the cervical spine. And
12 the fellow in fact had a pituitary adenoma.

13 So sometimes a careful look at the scan
14 for other things can help the patient, but in this
15 case it was probably simply not recognized because
16 they were focusing on the cervical spine itself,
17 not the brain stem.

18 Q. Let's say you have a patient who
19 presents with a basilar aneurysm of a small size.
20 Tell me: What is the course of treatment or
21 nontreatment that you follow for that?

22 A. I can tell you what would have occurred
23 at my institution, at Dartmouth-Hitchcock Medical
24 Center.

25 The people who follow those are the

1 neurosurgeons. And so regardless of what sort of
2 aneurysm we stumble into, be it tiny or be it
3 large, we refer them to the neurosurgeons, who then
4 keep an eye on them.

5 They often do imaging periodically.
6 Perhaps at six months and then once a year if
7 nothing is changing. And if a saccular aneurysm
8 gets to be a certain size they may decide to clip
9 it or coil it or whatever they think is the best
10 procedure.

11 It would be a little more complicated
12 with a basilar aneurysm because they do have a
13 different behavior pattern and they are less
14 common, but they would obviously keep an eye on the
15 same thing, looking to see if it was causing
16 symptoms, if the patient was having odd symptoms.
17 Was this thing in fact forming clot and forming
18 emboli off it? Was it acting as a mass lesion?
19 Was it big enough that they might be concerned that
20 it might bleed?

21 But they would keep a good eye on it.
22 If it was a sort of chronic long-term situation, it
23 would be the neurosurgeons who did that. But
24 certainly neurologists, because we see so many
25 patients, very often run into asymptomatic

1 aneurysms. They're not all that uncommon.

2 Q. Well, this particular type of aneurysm
3 -- there is a very high risk to do any kind of
4 surgery on them, is it not?

5 A. I believe it is. I think the options
6 are more limited in part because you want to be
7 very careful -- you need to have that circulation.
8 You can't just cut it off. The patient would die.

9 And I'm not an expert in the different
10 options for this. I'm not putting myself out as a
11 neurosurgeon certainly, but I believe they were
12 planning to coil it and do a coil embolism, which
13 would stabilize it.

14 I'm aware years and years ago -- I
15 don't think it's done anymore. I believe I read a
16 case report of an enlarging aneurysm -- and this
17 would have been 40 or 50 years. I believe the
18 neurosurgeon, who may have been from India,
19 actually wrapped the thing in some sort of muslin
20 to try to keep it from expanding. I remember
21 reading that. And that's sort of anecdotal
22 medicine, but I have a suspicion he wasn't the only
23 person who could have done that.

24 So yes; you're right. It's tricky
25 business.

1 Q. So basically, then, you would watch it
2 until it got to a size that you were worried about?

3 A. Well, the neurosurgeons would watch it.
4 Yes.

5 Q. The neurosurgeons would watch it.
6 Do you have any other opinions
7 regarding Dr. McCaffrey's treatment that you have
8 not already discussed?

9 A. I believe that's the fundamental or the
10 gist, if you will, of my feelings about the case.
11 Yes.

12 Q. If a neurosurgeon were to refer a
13 patient such as this for an MRI that did in fact
14 discover a basilar aneurysm, what would be the
15 appropriate thing for him to do?

16 A. Again, I'm not a neurosurgeon, but I
17 would tell you what I would like to do or what I
18 think the right thing to do would be.

19 Q. Let me interrupt your answer. I think
20 I may have asked you the wrong question.

21 I meant to ask: If a neurologist in
22 your position and Dr. McCaffrey's position sent a
23 patient for an MRI which revealed a basilar
24 aneurysm, what would then be appropriate for the
25 neurologist to do?

1 A. What I would do -- let's say that this
2 patient was in my examination room at
3 Dartmouth-Hitchcock Medical Center and I had an MRI
4 that had just been done that showed a basilar
5 artery aneurysm.

6 If the patient had a normal neurologic
7 examination I would still probably walk down the
8 hall -- because they were located in the same part
9 of the clinic that we were -- and I would have
10 shown the scan to one of the neurosurgeons and say:
11 You need to see this guy. He needs to be taken
12 care of. And they would make a determination about
13 what to do; when to schedule it. They might even
14 see the patient the same day, but that's just
15 because they were there.

16 However, if the patient was having
17 symptoms -- if he was having trouble walking, if he
18 was weak on one side as this man was or -- I
19 believe he might even have been having some
20 dysarthria, some sort of speech problem. I would
21 have taken that as the thing had become symptomatic
22 and I would have taken that as urgent issue,
23 meaning the neurosurgeon -- I would tell about it
24 and say: I think you need to do something now.

25 That's how I was trained and that's

1 what I would do -- I'm not sure everyone would
2 agree with me -- as I say, because I think it was
3 declaring itself.

4 Q. I'll just go ahead and ask this
5 question before moving on so Mr. Sanders can be
6 thinking about it.

7 Do you have any opinion with regard to
8 the actions of Dr. Larson or the treatment
9 Mr. Garver received at Seacoast Hospital?

10 A. So let me -- just to help me out a
11 little bit because I don't want to talk about the
12 wrong time. Are we talking about the time that he
13 showed up there on October 23rd and had the
14 tele-medicine stroke consult?

15 Q. Yes, sir.

16 A. Is that what we're talking about?

17 Q. Yes. Let's talk about that one first.

18 A. Well, my concern about it, again, is he
19 had been complaining about weakness on the left
20 side for several hours, and he had left-sided
21 paresthesia. That means abnormal sensations. He
22 apparently had headache and gait instability, and
23 that's what led them to do this scan.

24 In that particular situation -- again,
25 having seen the mass -- I would have moved on this

1 more quickly because I wouldn't have known what the
2 mass was and I would have found out -- now, I don't
3 know the nature of McLeod Seacoast Hospital in
4 Little River. I don't know if they can do an MRI.
5 I don't know if they can do a CT angiogram. I
6 don't know what facilities they have. But the fact
7 of the matter is that this man wasn't normal and
8 had a mass -- I probably then would have sent him
9 to a facility that could have done it then. And
10 again, that's just me. That's what I would have
11 done.

12 Q. Now I want to turn to the treatment
13 that Mr. Garver had at MUSC.

14 A. And so we're talking about the 30th of
15 October?

16 Q. He went down and he saw
17 Dr. Vandergrift --

18 A. Yes.

19 Q. -- first in Charleston.

20 So Dr. Vandergrift, as you recall,
21 apparently looked at the older scan that we've not
22 been able to see and made an appointment for
23 Mr. Garver with another physician at MUSC to do the
24 angiogram.

25 A. Yes.

1 Q. Let's start with that first visit down
2 to Charleston when he saw Dr. Vandergrift.

3 A. Well, he recorded a history of left arm
4 and leg weakness and paresthesia and slurring of
5 speech and then said his left side was still
6 slightly clumsy.

7 So it sounds as though he was not
8 perfectly back to normal but somewhat still
9 symptomatic. He did put a question mark next to
10 the line: Headaches getting worse over the past
11 couple of years. And then he did an examination,
12 and the examination was abnormal in that the
13 reflexes, the deep tendon reflexes, which where
14 somebody is perfectly healthy is supposed to be the
15 same on both sides and symmetric -- in his case
16 they were normal on the right and increased on the
17 left side three plus, meaning spread to another
18 joint. And a three plus reflex or a four plus
19 reflex is a sign of a so-called upper motor neuron
20 lesion, and of course the location for that upper
21 motor neuron lesion would be pushing on the basis
22 pontis from this aneurysm.

23 Q. And so it is my understanding, then,
24 the CT and/or MRI was done which revealed a giant
25 fusiform aneurysm arising from the mid basilar

1 segment of 27 X 23 millimeters.

2 So in the face of that what was the
3 appropriate thing to do then?

4 A. Well, again, I'm not a neurosurgeon,
5 but if I had a patient with this imaging finding
6 who still had symptoms that were new and had an
7 abnormal examination, I would have thought that he
8 should have been admitted to the hospital and
9 treated as soon as possible, only because I would
10 think it was declaring itself or in the process of
11 declaring itself.

12 Q. So it is my understanding from the
13 records from MUSC that Mr. Garver was sent home and
14 was told to return on November 1 for an
15 angiogram --

16 A. Yes.

17 Q. -- which occurred, and he was then sent
18 home again and told to return on November 8, a week
19 later for a procedure.

20 A. I believe that's true. It was the 6th
21 or the 8th. I think there may have been two dates
22 in the record, but several days later, yes.

23 Q. So I'm going to read to you a paragraph
24 from the plaintiff's Complaint, but in the case
25 filed against the Medical University of South

1 Carolina. Okay?

2 A. Yes.

3 Q. "On November 1, 2017 Jeremy Garver was
4 discharged from defendant's facility," being MUSC.

5 "Immediately returned to defendant's ER
6 with complaints of nausea and/or severe headache
7 and pain. These neurological symptoms were
8 consistent with aneurysm expansion and/or rupture."

9 Now I'll ask you about the last
10 sentence: These symptoms were consistent with
11 aneurysm expansion and/or rupture. Do you agree
12 with that?

13 A. It could certainly be. There is two
14 ways of thinking as to what happened.

15 Sometimes people with migraine, when
16 they get contrast agents or procedures like that,
17 can have a bad migraine. And the reason I say that
18 unfortunately is the symptoms of subarachnoid
19 hemorrhage can look just like a migraine headache:
20 Nausea, bad headaches, light and sound sensitivity.
21 And that's one of the reasons when you're initially
22 diagnosing migraine the criteria require that you
23 have it multiple times, because your first ever
24 migraine can look just like a subarachnoid
25 hemorrhage.

1 So based on that it's not possible to
2 say with certainty whether this was a bad migraine
3 or if this aneurysm in fact may have developed some
4 clot during the procedure or expanded a little bit
5 or leaked a little bit. I can't say.

6 And having said that, I've already told
7 you I'm an old person and I'm a very conservative
8 doctor. I would have defaulted to the worst of the
9 two to protect the patient; and if that was the
10 case, I probably would have at least got the
11 patient to the hospital for observation until they
12 were in the same state they were when they first
13 arrived.

14 Q. I'm going to read you another paragraph
15 from the Complaint against MUSC filed by the
16 plaintiff.

17 It says: On or about November 3, 2017
18 Jeremy Garver suffered a catastrophic subarachnoid
19 hemorrhage and/or ruptured cerebral aneurysm.

20 Do you agree with that?

21 A. Yes.

22 Q. Do you consider that Jeremy Garver's
23 presentation at MUSC on any of those occasions
24 created an emergent situation?

25 MR. FEIDLER: Objection. You can

1 answer.

2 A. I think I've already answered that
3 before.

4 I would consider someone, especially
5 once you knew that they had a large aneurysm acting
6 as a mass lesion who then became symptomatic at
7 that point, meaning they had neurologic findings --
8 I would consider that as an emergency.

9 MR. BRIDGES: I think that's all I
10 have, Dr. Ward. I appreciate your time and your
11 patience.

12 THE WITNESS: And I will send my
13 updated CV and list of depositions and trial.

14 MR. BRIDGES: Now Mr. Sanders may have
15 some questions.

16 (Short recess taken.)

17 EXAMINATION

18 BY MR. SANDERS:

19 Q. Dr. Ward, I'm going to follow up with a
20 few things here. I don't anticipate that we'll
21 have too much follow-up.

22 I am Darren Sanders. I represent
23 McCaffrey Seacoast Hospital in the case and I want
24 to zero in on the discussions about the hospital
25 entity itself.

1 First let me see if we can close one
2 door. I think factually the patient, whenever he
3 experienced this horrible event that ended up
4 leading to him passing away on November the 3rd --
5 he initially was taken by EMS to McLeod Seacoast
6 Hospital and then transferred immediately to Grand
7 Strand Hospital under the care of a neurosurgeon.

8 Is that consistent with the sequence of
9 events as you understand it?

10 A. Yes. It says -- I believe at 5:36 in
11 the morning he was at McLeod Seacoast Hospital,
12 roughly, and then he went to Grand Strand. And
13 that was also on the 3rd, yes.

14 Q. Are you critical in any way of the care
15 and treatment that Mr. Garver received on November
16 the 3rd at McLeod Seacoast before he was
17 transferred to Grand Strand?

18 A. It sounds like they did everything they
19 could do.

20 He apparently suffered a horrible event
21 that morning at home and my understanding -- and
22 this is just from what I see in the records,
23 obviously -- is his wife performed CPR and then
24 emergency medical services apparently coded him. I
25 assume they shocked him multiple times. Four

1 times.

2 So when they get him to the emergency
3 room he did have a pulse. He did have a blood
4 pressure. His heart rate was quite high. They had
5 given him epinephrine. They put him on a
6 ventilator, which is appropriate.

7 He had a Glasgow coma scale of three.
8 And I know you guys all know about the Glasgow coma
9 scale, a scale from like 1974 developed by a
10 neurosurgeon. The score is three to 15. The
11 lowest score you can get is three, and that just
12 implies a terrible prognosis.

13 So anyway, they thought it was
14 reasonable to send him somewhere with a
15 neurosurgeon, and I think the reason for that was
16 that when you have a massive bleed into the spinal
17 fluid your intracranial pressure -- your spinal
18 fluid pressure goes up, and that's one of the
19 things that impairs the circulation -- profusion of
20 the brain. Okay? And the difference between your
21 peripheral mean arterial pressure and your
22 intracranial pressure -- if your intracranial
23 pressure goes up you can't profuse your brain.
24 Your brain is going to be destroyed.

25 So I think the reason they did the

1 ventriculostomy was to try to drain some fluid and
2 get the pressure down as a sort of last ditch
3 measure. It sounds like they did everything
4 appropriate and fairly promptly.

5 Q. And Mr. Bridges explained this to you
6 earlier on: While there are some overlap with the
7 nomenclature for these various defendants, we
8 definitely have a difference here where
9 Dr. McCaffrey is employed by an entity called
10 McLeod Physician Associates II. And then the
11 hospital entity is separate, but it's McLeod
12 Seacoast Hospital.

13 So what I'm going to be asking you
14 about now is McLeod Seacoast Hospital. I don't
15 think there were any visits at McLeod Seacoast
16 Hospital for Mr. Garver before October the 23rd of
17 2017 that are germane to this lawsuit.

18 Is that consistent with your
19 understanding?

20 A. That's my understanding. There might
21 be other records, but I've not seen such.

22 Q. I think there may have been some like
23 ER visit in 2015 with a hand injury or something.
24 I might be wrong about that. But no one has
25 brought that up as any sort of issue, and I take it

1 that you will neither. Is that true?

2 A. I think you're right. Yes.

3 Q. Let's turn our attention, then, to this
4 presentation on October the 23rd of 2017 for sake
5 of our discussion.

6 First just let me ask you: Do you hold
7 yourself out as an expert in the standard of care
8 for an emergency room physician?

9 A. Not as an emergency room physician, no.

10 Q. Will you be coming to trial in this
11 case and saying that any of the staff at McLeod
12 Seacoast Hospital, including the ER doctor,
13 Dr. Larson, deviated from any standard of care on
14 October the 23rd of 2017, or is that not your
15 mission here in this case?

16 A. Let me just look for a moment through
17 his -- because there are a lot of records, as you
18 know, and I don't want to misspeak.

19 I am not an emergency room physician,
20 and so I would not -- I certainly have a lot of
21 colleagues and friends who are emergency room
22 physicians. I could speak to what I would do if I
23 was a neurologist in the emergency room then, but I
24 would not speak to the standard of care for an
25 emergency room physician. I just don't think

1 that's right.

2 Q. Well, then, in that regard let me make
3 sure that I'm clear for the record.

4 You will not come to trial in this case
5 and say that any of the staff at McLeod Seacoast
6 Hospital, including Dr. Larson, the ER doctor --
7 you wouldn't contend there were deviations from the
8 standard of care on October the 23rd; is that
9 correct?

10 A. I think that's what I would agree.

11 Q. So let's pivot our discussion just a
12 tiny bit, because I want to make sure that
13 factually we're on the same sheet of music.

14 Whenever the patient presented on
15 October the 23rd to the ER, there was a tele-stroke
16 evaluation performed in the emergency department
17 that evening; correct?

18 A. Yes.

19 Q. And that was an appropriate request
20 certainly to make under the circumstances?

21 A. Yes, given that they did not know what
22 was going on in his head and given that he
23 presented fairly acutely with neurologic deficits.

24 On the list of things that neurologists
25 are concerned about when you have someone with a

1 sudden neurologic deficit -- stroke is usually at
2 the top of the list.

3 Now, he would have been a fairly young
4 person to have a stroke, but it's not impossible.
5 There are many possible causes of stroke in a young
6 person. So if he had come to our emergency room at
7 Dartmouth, I think he would also have been seen
8 emergently by the stroke doctors.

9 Q. Do you have an understanding that the
10 tele-stroke consultation was actually undertaken by
11 a physician at MUSC, the Medical University of
12 South Carolina, named Dr. Charles Andrews?

13 A. That's what the note says, yes.

14 Q. Do you have an understanding of
15 Dr. Andrews' qualifications?

16 A. No, I don't, actually.

17 Q. Would it surprise you to learn that he
18 is a neuro critical care physician?

19 A. It wouldn't surprise me, but I didn't
20 know it. In fact, I think that's probably
21 reasonable.

22 Q. Do you recall reviewing in
23 Dr. McCaffrey's deposition and even in
24 Mrs. Claudine Garver's deposition that part of what
25 came from that evaluation by the MUSC physician

1 that evening was that MUSC physician actually went
2 ahead and put Mr. Garver on the list at MUSC to be
3 seen by the neurosurgery service?

4 A. I believe that's what they wanted to
5 do, yes.

6 They did a CT scan without contrast, I
7 think, and saw this mass by the brain stem. And it
8 says: Impression - brain stem mass.

9 Recommendation: Neurosurgery consult.

10 Q. Then I guess -- I don't want this to
11 sound -- I don't want it in any way to sound
12 exceedingly harsh, but part of what is alleged
13 against McLeod Seacoast Hospital in this case is
14 that the hospital is responsible for Mr. Garver's
15 death.

16 Are you going to argue at the trial of
17 this case that McLeod Seacoast Hospital is
18 responsible for Mr. Garver's death?

19 A. I don't think I would come to that
20 conclusion.

21 Q. Do you have any connections to South
22 Carolina in any way?

23 A. I have been to Charleston one time. I
24 don't remember the name of the restaurant, but it
25 was lovely. And I think I drove through it on my

1 way to Florida this year.

2 So other than that, no; I don't know
3 much about South Carolina and don't really have any
4 connection there.

5 Q. In the towns where you have testified
6 as an expert witness at trial has the court ever
7 limited your testimony in any fashion?

8 A. Yes.

9 Q. Could you explain that instance to us.

10 A. All right. This was very strange.
11 This was three or four years ago. I was testifying
12 in New Hampshire on a case of carbon monoxide
13 poisoning. And the case had not moved fast.

14 And I am an academic physician, so I'm
15 always reading the literature. In fact, subsequent
16 to when I was deposed I actually was senior author
17 on a book chapter about various sorts of poisoning,
18 including carbon monoxide poisoning.

19 So I went to give my testimony at
20 trial, and things were going just fine until I was
21 asked another question by the attorney for the
22 defense; and I answered it with something that I
23 knew but with some information that was newer than
24 what had occurred at the deposition a couple of
25 years earlier.

1 It was very strange. Because I was
2 asked to leave the room. The jury was asked to
3 leave the room. There was about a 45-minute back
4 and forth between the judge and the attorneys, and
5 then I was sent home; however, the jury was not
6 told why I was sent home and they were told they
7 could disregard my testimony. And I believe the
8 attorney I was working with got the plaintiff's
9 medical covered, so he was happy enough.

10 But that's the only time. And it was
11 very odd. It was not intentional on my part. It
12 was just that I read the medical literature more
13 days than not and I don't necessarily categorize
14 what year something came from.

15 Q. Did the lawyer that had engaged your
16 services ever give you an explanation for why the
17 judge didn't wish for you to come back onto the
18 witness stand and complete your testimony?

19 A. He wouldn't talk about it.

20 Q. Has something similar to that where the
21 court either limited or excluded your testimony
22 ever happened on any other occasion?

23 A. No.

24 Q. A couple of other things to follow up
25 on a curiosity that I had.

1 The articles that you've provided to us
2 from the medical literature, do you consider all of
3 those articles to be reasonably reliable?

4 A. I would not have sent them if I thought
5 they were not.

6 Q. And certainly if we end up in trial in
7 this case you wouldn't have any hesitation in
8 discussing the points from those articles with our
9 jury, would you?

10 A. Oh, that's why I provided them.

11 Q. And a couple of times there were
12 discussions with Mr. Bridges about -- I suppose
13 it's one thing to diagnose an aneurysm of this
14 type, and then the next question becomes: All
15 right. What is one going to do about it to treat
16 it, if anything?

17 A. Yes.

18 Q. Have I understood you correct to say
19 that you do not hold yourself out as an expert on
20 how to treat an aneurysm like Mr. Garver had?

21 A. That's correct.

22 Q. So as far as what treatment he would
23 have needed at any point in time through the time
24 that he first started seeing Dr. McCaffrey through
25 the time of his treatment at MUSC, you would not be

1 able to give us any information about what
2 treatment would be mandated for that aneurysm;
3 correct?

4 MR. FEIDLER: Objection.

5 A. Mostly correct. I would think that
6 some treatment would be indicated; I'm just not
7 going to second guess the neurosurgeons and say
8 what procedure should be chosen. They know far
9 enough about that, and they do the procedures and I
10 don't.

11 Q. I think that you were asked earlier do
12 you know that the plaintiff has also hired
13 Dr. Brian Holmes in the case against MUSC, who is a
14 neurosurgeon.

15 A. I don't think I know that, no.

16 Q. Have you been provided with Dr. Holmes'
17 deposition testimony from the case against MUSC?

18 A. No. I have not seen it.

19 Q. I'm looking at Dr. Holmes' affidavit
20 which was filed with the court in Charleston
21 County, and I'm going to read a statement from that
22 affidavit to you -- again, this is the plaintiff's
23 expert -- and then I'll follow up after I read the
24 statement.

25 He's making reference to when the

1 cerebral angiogram was performed at MUSC, which I
2 think was November the 1st, if I'm getting the
3 dates correct.

4 A. I think you're right.

5 Q. And Dr. Holmes concludes based upon his
6 review of the records and the imaging -- it says:
7 The cerebral angiogram identified an unruptured
8 cerebral aneurysm.

9 Do you have any reason to disagree with
10 that statement?

11 A. No.

12 Q. He then goes on to say: The risk of
13 aneurysmal subarachnoid hemorrhage is statistically
14 low in an asymptomatic individual.

15 Do you have any reason to disagree with
16 that statement?

17 A. A little bit. Generally no, but
18 because these are not particularly common aneurysms
19 I have a suspicion that each one is its own little
20 work of art.

21 So I would say that that -- I'm not
22 sure what that is based on; however, I think he's
23 getting at the same thing I was trying to say but
24 probably from a point of more expertise. Because
25 he used the word "asymptomatic." And Mr. Garver

1 was symptomatic. That's the difference.

2 Q. Let me continue, then, with the next
3 statement to put it fairly into context. And I
4 know that you don't have this sitting in front of
5 you and I promise you that I'm reading it the way
6 that it's typed.

7 Dr. Holmes goes on to render the
8 following opinion: As such, prior to his discharge
9 from the facility arrangement of outpatient
10 evaluation for Mr. Garver the following week was
11 appropriate.

12 So let me try to put this into context
13 and see if you understand this the way that I think
14 I understand it.

15 We know that Mr. Garver had the
16 angiogram performed at MUSC on November the 1st,
17 and MUSC's strategy in treating his aneurysm was to
18 bring him back, whether it was the 6th or the 8th.
19 It may say a different date in two spots.

20 A. But it doesn't matter.

21 Q. But apparently the MUSC neurosurgery
22 team who investigated this aneurysm had the
23 impression after the completion of the angiogram
24 that it would be appropriate and within the
25 standard of care to bring him back a week later to

1 treat that aneurysm.

2 Is that the way you understand the
3 records?

4 A. Yes.

5 Q. Will you be coming to the trial in our
6 case and taking any contrary opinion to Dr. Holmes,
7 or is that beyond your scope of expertise?

8 A. Well, as I say, I would not hold myself
9 out as an neurosurgeon and that is not my area of
10 expertise, but if push comes to shove the only
11 thing I would say -- because I tend to be detail
12 oriented -- is his remark was about an asymptomatic
13 aneurysm, and at that point Mr. Garver was not
14 asymptomatic.

15 I am not trying to be difficult, but
16 that's not for me to say. That would be for others
17 to say, I think.

18 Q. Got you. Let me put you on hold just
19 for a moment to look through my notes and make sure
20 that there is nothing else I need to ask you.

21 Before I do that let us be clear for
22 the record about a couple of things.

23 Have you given us here today all of the
24 opinions that you intend to render at the trial of
25 this case?

1 A. I believe so.

2 Q. Upon reflecting back on the questions
3 that Mr. Bridges and I have asked you do you feel
4 the need as we sit here right now to change any of
5 the answers that you have given us today?

6 A. No.

7 Q. Do you agree that a judge and jury can
8 rely upon the opinions you have given us here today
9 as being complete, honest and truthful in all
10 respects?

11 A. I certainly hope so.

12 Q. And do you also understand, Dr. Ward,
13 that should you reflect upon this information, get
14 new information, develop any changes to your
15 opinions you've given us today or add to any of
16 those opinions, the law in South Carolina requires
17 you to let plaintiff's counsel know that, where we
18 could then reconvene your deposition before you
19 took the witness stand at trial?

20 A. I understand.

21 Q. And you agree that it would be fair for
22 us to have the opportunity to explore any changes
23 or new opinions prior to you taking the witness
24 stand at trial?

25 A. Yes.

1 Q. And do you agree to abide by doing so?

2 A. Yes.

3 MR. SANDERS: Hold on one second. Let
4 me see if I have anything else.

5 (Short recess taken.)

6 BY MR. SANDERS:

7 Q. I did have one other curiosity.

8 I think you mentioned earlier that the
9 company that you have set up that handles your
10 medical/legal work -- that your son is a part of
11 that company as well and that he is an attorney.

12 What type of law does he practice?

13 A. Very good law. He's a deputy district
14 attorney in Cayuga County. So he's a prosecutor
15 basically.

16 Q. Understood.

17 Of the entity -- I know that it was
18 Dartmouth -- and I'm sorry to say that I don't
19 remember the rest of the name before we get to the
20 LLC. But does that entity handle any other
21 business interests for you besides medical/legal
22 consulting work?

23 A. Anything that I have to do to maintain
24 my licenses as part of the business -- so the money
25 I get paid for working at the VA I put in there.

1 Because I'm not a very good or useful witness if
2 I'm not in active practice, so I need to be in
3 active practice.

4 Insurance costs I put in there;
5 continuing medical education costs because they're
6 required to maintain my licenses, but it's all
7 pretty much related to the business directly or
8 indirectly.

9 Did you have some particular activity
10 that doesn't come to mind? I don't think there is
11 anything else.

12 Q. No. I was just curious. Sometimes I
13 see that folks have formulated businesses like that
14 and they have other side businesses that run
15 through it that are always interesting to hear
16 about, but it doesn't sound like you have that.

17 MR. SANDERS: Thanks again for your
18 patience. I think those are all the questions that
19 I have.

20 MR. BRIDGES: I don't have anything
21 else.

22 EXAMINATION

23 BY MR. FEIDLER:

24 Q. I only have one question for you.
25 Pertaining to all your opinions today,

1 do you hold those opinions within a reasonable
2 degree of medical certainty?

3 A. I do.

4 MR. FEIDLER: Very well. I have no
5 further questions. We can go off the record.

6 (Deposition concluded at 11:12 a.m.)
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CERTIFICATE OF REPORTER

I, Patricia L. Thompson, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed by
official seal this 2nd day of August 2021 at
Charleston, Charleston County, South Carolina.



Patricia L. Thompson

Patricia L. Thompson
Registered Professional Reporter
My Commission Expires
October 15, 2025

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(NO INFORMATION REQUESTED.)

(NO EXHIBITS PROFFERED.)

1 Stefan B. Feidler

2 Stefan@akimlaw.com

3 August 3, 2021

4 RE: Garver, Claudine v. Mcleod Loris Seacoast Hospital, Et Al
5 7/23/2021, Thomas Ward , MD (#4730585)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
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14 Copies should be sent to all counsel, and to Veritext at
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16
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Thomas Ward , MD (#4730585)

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Thomas Ward , MD

Date

Garver, Claudine v. Mcleod Loris Seacoast Hospital, Et Al
Thomas Ward , MD (#4730585)

ACKNOWLEDGEMENT OF DEPONENT

I, Thomas Ward , MD, do hereby declare that I
have read the foregoing transcript, I have made any
corrections, additions, or changes I deemed necessary as
noted above to be appended hereto, and that the same is
a true, correct and complete transcript of the testimony
given by me.

Thomas Ward , MD

Date

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05302
	)	
Claudine Garver, Both Individually and as)	)	
Personal Representative for the Estate of Jeremy)	)	
Garver,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	WILLIAM C. BARNES, JR., ESQUIRE
	)	
vs.	)	
	)	
McLeod Loris Seacoast Hospital; McLeod)	)	
Physician Associates II; and Michael)	)	
McCaffrey, M.D.,	)	
	)	
Defendants.	)	
	)	

I William C. Barnes, Jr. make this Affidavit based on personal knowledge, and in my capacity as General Counsel of McLeod Health and related entities, including McLeod Physician Associates

II. Being duly sworn, I do hereby swear and affirm the following:

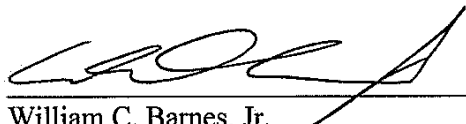
(1) that the Defendant McLeod Physician Associates II is a South Carolina corporation and a charitable organization exempt from taxation pursuant to § 501(c)(3) or 501(d) of Title XXVI of the United States Code, as amended;

(2) that at all relevant times the Defendant McCaffrey was an employee of McLeod Physician Associates, II;

(3) that at all relevant times the Defendant McCaffrey was acting within the course and scope of his employment by McLeod Physician Associates II;

(4) that the Defendant McCaffrey was not at any relevant time as alleged in the Complaint an employee of McLeod Loris Seacoast Hospital.

Further, Affiant sayeth not.

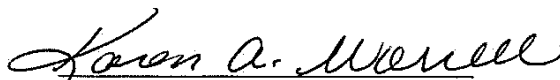


William C. Barnes, Jr.
General Counsel
McLeod Health

Florence, South Carolina
December 28, 2022

SWORN TO before me this

28 day of December 2022.



Notary Public for South Carolina
My Commission Expires: 4/22/2024

EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05302
	)	
Claudine Garver Both Individually and as	)	
Personal Representative for the Estate of	)	
Jeremy Garver,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
McLeod Loris Seacoast Hospital; McLeod	)	
Physician Associates II; and Michael	)	
McCaffrey, M.D.,	)	
	)	
Defendants.	)	
	)	
	)	

**AMENDED
ANSWER OF DEFENDANT
MICHAEL MCCAFFREY, M.D.**

The Defendant Michael McCaffrey, M.D. amending his answer to the Complaint, responds as follows:

FOR A FIRST DEFENSE

The Complaint fails to allege facts sufficient to state a cause of action and should be dismissed pursuant to Rule 12(b)(6) *South Carolina Rules of Civil Procedure*.

FOR A SECOND DEFENSE

The Defendant Michael McCaffrey, M.D. responds to the numbered paragraphs of the Complaint as follows:

1. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 1 and demands strict proof thereof.
2. Responding to Paragraph 2, the answering Defendant admits on information and belief that McLeod Loris Seacoast Hospital is incorporated in the State of South Carolina and maintains its principal place of business in Horry County. The answering Defendant admits that

McLeod Physician Associates II is incorporated in the State of South Carolina, but states that on information and belief McLeod Physician Associates II maintains its principal place of business in Florence County.

3. Admitted.

4. Paragraph 4 contains an assertion by Plaintiff of her intention in drafting the Complaint, to which no response is required. The answering Defendant asserts that McLeod Loris Seacoast Hospital and McLeod Physician Associates II are separate and distinct corporations, and that the answering Defendant is an employee of McLeod Physician Associates II.

5. Responding to Paragraph 5, the answering Defendant admits on information and belief McLeod Loris Seacoast Hospital owned and operated McLeod Loris Seacoast Hospital. Except as specifically admitted, the allegations of Paragraph 5 are denied.

6. The allegations of Paragraph 6 are denied insofar as they relate to the answering Defendant.

7. Responding to Paragraph 7, the answering Defendant admits on information and belief that McLeod Loris Seacoast Hospital was a participant in the Medicare and Medicaid programs. The allegations of Paragraph 7 are denied insofar as they relate to the answering Defendant.

8. Responding to Paragraph 8, the answering Defendant asserts that Paragraph 8 is an assertion of the intentions of Plaintiff in drafting the Complaint, to which no response is required. To the extent that any response may be required, the allegations of Paragraph 8 are denied.

9. Admitted.

10. Admitted.

11. Denied.

12. Admitted.

13. Responding to Paragraph 13, the answering Defendant admits that the referenced documents were filed but denies the allegations thereof.

14. Admitted.

15. Paragraph 15 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 15 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

16. Paragraph 16 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 16 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

17. Paragraph 17 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 17 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

18. Paragraph 18 purports to be a quotation from legal opinions, to which no response is required. The answering Defendant denies the applicability of Paragraph 18 of the Complaint and denies that the selected quotation represents a full, complete, and accurate statement of law.

19. Admitted.

20. Responding to Paragraph 20, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

21. Responding to Paragraph 21, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

22. Responding to Paragraph 22, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

23. Responding to Paragraph 23, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

24. Responding to Paragraph 24, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

25. Responding to Paragraph 25, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

26. Responding to Paragraph 26, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant admits that on the referenced date Mr. Garver presented to Dr. McCaffrey's office.

27. Responding to Paragraph 27, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant asserts that the allegations of Paragraph 27 refer to and involve parties other than the answering Defendant.

28. Responding to Paragraph 28, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant asserts that the allegations of Paragraph 28 refer to and involve parties other than the answering Defendant.

29. Responding to Paragraph 29, the answering Defendant craves reference to the medical records and denies any allegation inconsistent therewith. Further, the answering Defendant asserts that on October 24, 2017, in response to a telephone call from Decedent's wife, Jeremy Garver was referred for an MRI of the brain with and without contrast.

30. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 30 and demands strict proof thereof.

31. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 31 and demands strict proof thereof. The allegations of Paragraph 31 are denied insofar as they relate to the answering Defendant.

32. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 32 and demands strict proof thereof.

33. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 32 and demands strict proof thereof.

34. Denied.

35. Denied as to the answering Defendant.

36. Denied as to the answering Defendant.

37. Responding to Paragraph 37, the answering Defendant admits that he had a duty of care to Plaintiff's decedent in accordance with the applicable and prevailing standard of care at the time of his treatment of Plaintiff's decedent. The answering Defendant asserts that at all time his care and treatment of Plaintiff's decedent met the standard of care.

38. The allegations of Paragraph 38 are denied insofar as they relate to the answering Defendant.

39. Denied.

40. Responding to Paragraph 40, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 39 above as fully as if set forth verbatim.

41. Paragraph 41 contains a characterization by Plaintiff of her claim to which no response is required. To the extent that any response may be required, the allegations of Paragraph 41 are denied.

42. Responding to Paragraph 42, the answering Defendant admits that he had a duty of care to Jeremy Garver to comply with the applicable and appropriate standard of care at the time of his treatment and asserts that at all times he complied with the applicable standard of care.

43. The allegations of Paragraph 43 are denied insofar as they relate to the answering Defendant.

44. Responding to Paragraph 44, the answering Defendant admits that he had a duty of care to Jeremy Garver to comply with the applicable and appropriate standard of care at the time of his treatment and asserts that at all times he complied with the applicable standard of care.

45. The allegations of Paragraph 45 are denied insofar as they relate to the answering Defendant.

46. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 46 and demands strict proof thereof.

47. The allegations of Paragraph 47 are denied insofar as they relate to the answering Defendant.

48. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 48 and demands strict proof thereof.

49. Denied.

50. Denied.

51. Denied.

52. Responding to Paragraph 52, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 51 above as fully as if set forth verbatim.

53. The answering Defendant is without knowledge on which to admit or deny the allegations of Paragraph 53 and demands strict proof thereof.

54. Denied.

55. Denied.

56. Responding to Paragraph 56, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 55 above as fully as if set forth verbatim.

57. Denied.

58. Denied.

59. Responding to Paragraph 59, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 58 above as fully as if set forth verbatim.

60. Paragraph 60 states a legal proposition to which no response is required. To the extent that any response may be required, the allegations of Paragraph 60 are denied.

61. Paragraph 61 states a legal proposition to which no response is required. To the extent that any response may be required, the allegations of Paragraph 61 are denied.

62. Denied.

63. Paragraph 63 states a legal proposition to which no response is required. To the extent that any response may be required, the allegations of Paragraph 63 are denied.

64. Denied.

65. Responding to Paragraph 65, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 64 above as fully as if set forth verbatim.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Responding to Paragraph 72, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 71 above as fully as if set forth verbatim.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Responding to Paragraph 83, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 82 above as fully as if set forth verbatim.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Responding to Paragraph 88, the answering Defendant re-alleges and incorporates herein his responses to Paragraphs 1 through 87 above as fully as if set forth verbatim.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Each and every allegation of the Complaint not specifically admitted herein is denied.

FOR A THIRD DEFENSE

94. At all times referenced in the Complaint, the answering Defendant was an employee of McLeod Physician Associates II acting in the course and scope of his employment.

95. McLeod Physician Associates II is a charitable, not-for-profit organization, organized pursuant to the laws of the State of South Carolina which operates exclusively for benevolent, scientific, educational, and charitable purposes. The answering Defendant hereby pleads the privileges, immunities, and limitations of liability set forth in S. C. Code §36-56-180, 1976 South Carolina Code of Laws, as amended, and S.C. Code §15-78-10, *et. seq.*, 1976 South Carolina Code of Laws, as amended.

FOR A FOURTH DEFENSE

96. The answering Defendant hereby pleads the remedies, rights, and privileges set for the in S.C. Code §15-38-15, to the extent applicable.

FOR A FIFTH DEFENSE

97. The care and treatment rendered by the answering Defendant to Jeremy Garver was at all time within the applicable and appropriate standard of care.

FOR A SIXTH DEFENSE

98. The care and treatment rendered by the answering Defendant to Jeremy Garver, and any act or omission alleged in the Complaint, was not the direct or proximate cause of any injury or damages alleged by the Plaintiff.

WHEREFORE, having fully answered the Complaint, the Defendant Michael McCaffrey, M.D. prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court may find just and proper.

Florence, South Carolina

October 15, 2019

/s/Saunders M. Bridges, Jr.
 Saunders M. Bridges, Jr., SC Bar #879
 Carrie A. Fox, SC Bar #75170
 Aiken Bridges Elliott Tyler & Saleeby, PA
 181 E. Evans Street, Suite 409
 P. O. Drawer 1931
 Florence, South Carolina
 Tel: (843) 669-8787
 Fax: (843) 664-0097
 Email: smb@aikenbridges.com

ATTORNEYS FOR DEFENDANTS
 MCLEOD PHYSICIAN ASSOCIATES II
 AND MICHAEL MCCAFFREY, MD

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 15th day of October 2019, served a copy of the above and foregoing pleading on all parties to this proceeding by electronically filing the same with the SC Courts E-Filing System, which will send electronic notice of same to the following:

Stefan B. Feidler, Esquire Eric M. Poulin, Esquire Roy T. Willey, IV, Esquire Anastopoulo Law Firm, LLC 32 Ann Street Charleston, SC 29403	Darren K. Sanders, Buyck, Sanders & Simmons, LLC Post Office Box 2424 Mt. Pleasant, SC 29465-2424

/s/Saunders M. Bridges, Jr.
Saunders M. Bridges, Jr., SC Bar #879
Aiken Bridges Elliott Tyler & Saleeby, PA
181 E. Evans Street, Suite 409
P. O. Drawer 1931
Florence, South Carolina
Tel: (843) 669-8787
Fax: (843) 664-0097
Email: smb@aikenbridges.com

EXHIBIT 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Claudine Garver, Both Individually and as Personal Representative of the Estate of Jeremy Garver,	)	C/A No. 2019-CP-26-05302
	)	
	)	
Plaintiff,	)	ANSWER OF THE DEFENDANT
	)	MCLEOD LORIS SEACOAST HOSPITAL
Versus	)	(Jury Trial Demanded)
	)	
McLeod Loris Seacoast Hospital; McLeod Physician Associates, II; and Michael McCaffrey, M.D.	)	
	)	
	)	
Defendants.	)	

TO: STEFAN B. FEIDLER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

COMES NOW, the Defendant, McLeod Loris Seacoast Hospital (hereinafter “this Defendant”), by and through its undersigned attorneys answering the Plaintiff’s Complaint as follows:

1. This Defendant denies each and every allegation of the Plaintiff’s Complaint which is not hereinafter specifically admitted.
2. Answering Paragraph 1 of the Plaintiff’s Complaint, this Defendant lacks sufficient information to admit or deny the Plaintiff’s status as personal representative of the Estate of Jeremy Garver. All remaining allegations of this Paragraph are denied.
3. Answering Paragraph 2 of the Plaintiff’s Complaint, this Defendant admits it is a 501(c)(3) corporation which operates exclusively for benevolent, educational, scientific and charitable purposes. Accordingly, this Defendant affirmatively pleads it is entitled to the protections set forth in the limitations of liability referenced in the S.C. Code Ann. § 33-56-180(A) of the 1976 Code of Laws of South Carolina as amended and/or South Carolina Tort

Claims Act, South Carolina Code Ann. § 15-78-10, et seq. which limits recovery against a charitable Defendant and exempts it from a claim of punitive damages as claimed within the Complaint. Further answering, this Defendant admits it is a healthcare facility in Horry County, South Carolina.

4. This Defendant admits Paragraph 3 of the Plaintiff's Complaint upon information and belief.

5. Answering Paragraph 4 of the Plaintiff's Complaint, this Defendant responds it did not employ the Defendant Dr. McCaffrey. Upon information and belief, he was employed by the Defendant McLeod Physician Associates, II.

6. Answering Paragraph 5 of the Plaintiff's Complaint, this Defendant admits it is a charitable healthcare facility.

7. Answering Paragraph 6 of the Plaintiff's Complaint, this Defendant admits McLeod Seacoast Hospital met the prevailing standard of care in all respects related to the care and treatment of the decedent.

8. Answering Paragraph 7 of the Plaintiff's Complaint, this Defendant admits it was a participant in the Medicare and Medicaid programs. Further answering, this Defendant denies the allegations in Paragraph 7 of the Plaintiff's Complaint have any relevance to the care and treatment provided to the decedent.

9. This Defendant denies Paragraph 8 of the Plaintiff's Complaint.

10. Answering Paragraph 9 of the Plaintiff's Complaint, this Defendant admits it is subject to the jurisdiction of the Court pursuant to the defenses set forth within this Answer and the defenses to be developed during discovery.

11. Answering Paragraph 10 of the Plaintiff's Complaint, this Defendant admits the healthcare provided to the decedent by it took place in Horry County, South Carolina.

12. This Defendant denies Paragraph 11 of the Plaintiff's Complaint.

13. This Defendant admits Paragraphs 12, 13 and 14 of the Plaintiff's Complaint. Further answering, this Defendant reserves the right to challenge the right of the affiant referenced in Paragraph 13 of the Plaintiff's Complaint to testify at trial.

14. Answering Paragraphs 15, 16, 17 and 18 of the Plaintiff's Complaint, this Defendant denies the reasoning of the Dawkins decision quoted in these Paragraphs has any applicability whatsoever to this litigation or this Defendant. This Defendant admits healthcare providers have a duty to provide care that meets the prevailing standard of care.

15. This Defendant admits Paragraph 19 of the Plaintiff's Complaint subject to the defenses set forth within this Answer and as will be developed during discovery.

16. This Defendant denies Paragraphs 20, 21, 22, 23, 24, 25 and 26 as those Paragraphs are intended to apply to or refer to this Defendant.

17. Answering Paragraphs 27 and 28 of the Plaintiff's Complaint, this Defendant refers to the medical records related to the emergency department visit which took place on October 23, 2017 and to the testimony of the healthcare providers involved in that visit for a complete and accurate recitation of the care provided. This Defendant denies all allegations of these Paragraphs which are contrary to the medical records and testimony of the providers involved. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver during that ER visit met the standard of care in all respects.

18. This Defendant denies Paragraphs 29 and 30 as those Paragraphs are intended to apply to or refer to this Defendant.

19. Answering Paragraphs 31 of the Plaintiff's Complaint, this Defendant refers to the medical records related to the emergency department visit which took place on November 3, 2017 and to the testimony of the healthcare providers involved in that visit for a complete and accurate recitation of the care provided. This Defendant denies all allegations of this Paragraph which are contrary to the medical records and testimony of the providers involved. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver during that ER visit met the standard of care in all respects.

20. This Defendant admits Paragraph 32 of the Plaintiff's Complaint.

21. Answering Paragraph 33 of the Plaintiff's Complaint, this Defendant admits only that Mr. Garver died on November 4, 2017.

22. This Defendant denies Paragraph 34 of the Plaintiff's Complaint.

23. Answering Paragraph 35 of the Plaintiff's Complaint, this Defendant admits it is a healthcare facility and has a duty to provide care through its employees that meets the prevailing standard of care.

24. This Defendant denies Paragraph 36 of the Plaintiff's Complaint.

25. Answering Paragraphs 37 and 38 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

26. This Defendant denies Paragraph 39 of the Plaintiff's Complaint.

27. Answering Paragraph 40 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 26 above as if fully repeated herein verbatim.

28. This Defendant denies Paragraph 41 of the Plaintiff's Complaint.

29. Answering Paragraph 42 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

30. This Defendant denies Paragraph 43 of the Plaintiff's Complaint.

31. Answering Paragraph 44 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

32. This Defendant denies Paragraphs 45 including all subparts (a) through (cc), 46 and 47 of the Plaintiff's Complaint.

33. Answering Paragraph 48 of the Plaintiff's Complaint, this Defendant admits prior to transfer to Grand Strand Regional Medical Center, Mr. Garver was diagnosed with a suspected hemorrhage.

34. This Defendant denies Paragraphs 49, 50 and 51 including all subparts (a) through (i) of the Plaintiff's Complaint.

35. Answering Paragraph 52 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. This Defendant denies Paragraphs 53, 54 and 55 of the Plaintiff's Complaint.

37. Answering Paragraph 56 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 36 above as if fully repeated herein verbatim.

38. This Defendant denies Paragraphs 57 and 58 of the Plaintiff's Complaint.

39. Answering Paragraph 59 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 38 above as if fully repeated herein verbatim.

40. Answering Paragraph 60 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

41. This Defendant denies Paragraphs 61, 62, 63 and 64 of the Plaintiff's Complaint.

42. Answering Paragraph 65 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 41 above as if fully repeated herein verbatim.

43. This Defendant denies Paragraphs 66, 67, 68, 69, 70 and 71 of the Plaintiff's Complaint.

44. Answering Paragraph 72 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 43 above as if fully repeated herein verbatim.

45. This Defendant denies Paragraphs 73 including all subparts (a) through (d), 74, 75, 76, 77, 78, 79, 80, 81 and 82 of the Plaintiff's Complaint.

46. Answering Paragraph 83 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 45 above as if fully repeated herein verbatim.

47. This Defendant denies Paragraph 84 of the Plaintiff's Complaint as it is intended to apply to it. The Defendant Dr. McCaffrey was an employ of McLeod Physician Associates, II at all times referenced within the Complaint.

48. This Defendant denies Paragraphs 85, 86 and 87 of the Plaintiff's Complaint.

49. Answering Paragraph 88 of the Plaintiff's Complaint, this Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 48 above as if fully repeated herein verbatim.

50. Answering Paragraph 89 of the Plaintiff's Complaint, this Defendant admits it owed a duty to provide care through its employees that met the prevailing standard of care at the time treatment was being rendered to Mr. Garver. Further answering, this Defendant admits all of the care and treatment provided to Mr. Garver met the standard of care in all respects.

51. This Defendant denies Paragraphs 90, 91 and 92 of the Plaintiff's Complaint.

52. This Defendant denies the Plaintiff is entitled to the relief requested within her prayer for relief.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(No Deviation from Standard of Care)

53. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 52 above as if fully repeated herein verbatim.

54. That the care and treatment administered by this Defendant conformed to and was in full compliance with the standard of care. All care and treatment administered by this

Defendant was within acceptable standards and methods, and, at no time pertinent hereto, did this Defendant deviate from any standard while caring for or tending to the decedent. Consequently, the Plaintiff is barred from recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(No Proximate Cause)

55. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 54 above as if fully repeated herein verbatim.

56. That, even if this Defendant was negligent, as alleged in the Complaint, which is specifically denied, the negligence of this Defendant was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Charitable Immunity)

57. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 56 above as if fully repeated herein verbatim.

58. This Defendant affirmatively pleads it is entitled to the protections set forth in the limitations of liability referenced in the S.C. Code Ann. § 33-56-180(A) of the 1976 Code of Laws of South Carolina as amended and/or South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq. which limits recovery against a charitable Defendant and exempts it from a claim of punitive damages as claimed within the Complaint. The Defendant McLeod Loris Seacoast Hospital is a 501(c)(3) corporation which operates exclusively for benevolent, educational, scientific and charitable purposes. As a charitable organization as defined by Chapter 56 of Title 33 of the South Carolina Code of Laws (1976 as amended) and pursuant to

said statutory scheme, recovery against this Defendant for any tortious act or omission is specifically limited to actual damages in a specified amount not to exceed the limitations set forth within the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq. and this Defendant pleads said statutory scheme as a bar and/or limitation to recovery by the Plaintiff against this Defendant in this action. Specifically, the Plaintiff cannot recover an amount to exceed \$300,000 against this Defendant pursuant to South Carolina Code Ann. § 15-78-120(a)(1).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Application of S.C. Code Ann. § 15-38-15)

59. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 58 above as if fully repeated herein verbatim.

60. This Defendant hereby reserves the right to seek all remedies, rights and privileges available pursuant to S.C. Code Ann. § 15-38-15. That, upon information and belief, even if this Defendant was negligent as described in the Complaint, which is specifically denied, this Defendant was less than fifty percent liable for the total fault alleged. Accordingly, joint and several liability should not apply to this action and each Defendant should be held liable only for the percentage of fault, which is specifically denied, to be determined by the trier of fact.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Failure to State a Claim)

61. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 60 above as if fully repeated herein verbatim.

62. The Complaint fails to state facts sufficient to constitute a case of action. According, this action or some of the causes of action stated should be dismissed against this Defendant pursuant to Rule 12(b)(6), SCRPC.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

63. This Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 62 above as if fully repeated herein verbatim.

64. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE having answered all of the allegations of the Plaintiff's Complaint and asserting these affirmative defenses herein, this Defendant hereby moves the Court for a dismissal of all claims, for costs and fees associated with the defense of this action, and for such other relief as the Court deems appropriate.

BUYCK, SANDERS & SIMMONS, LLC

305 Wingo Way
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 284-8105
Email: dks@buyckfirm.com

s/Darren K. Sanders
Darren K. Sanders (S.C. Bar # 68296)
Hugh W. Buyck (S.C. Bar # 66462)
Attorneys for the Defendant
McLeod Loris Seacoast Hospital

October 1, 2019
Mt. Pleasant, South Carolina

EXHIBIT 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05302
Claudine Garver, Both Individually and as Personal Representative for the Estate of Jeremy Garver,	)	
Plaintiff,	)	
vs.	)	MOTION AND
	)	NOTICE OF MOTION FOR
McLeod Loris Seacoast Hospital; McLeod Physician Associates II; and Michael McCaffrey, M.D.,	)	PARTIAL SUMMARY JUDGMENT
Defendants.	)	

The Defendants, McLeod Physician Associates II and Michael McCaffrey, M.D., pursuant to Rule 56, South Carolina Rules of Civil Procedure, finding as a matter of law;

(1) that the Defendant McLeod Physician Associates, II is a South Carolina corporation and a charitable organization exempt from taxation pursuant to § 501(c)(3) or 501(d) of Title XXVI of the United States Code, as amended;

(2) that at all relevant times the Defendant McCaffrey was an employee of McLeod Physician Associates, II;

(3) that at all relevant times the Defendant McCaffrey was acting within the course and scope of his employment by McLeod Physician Associates, II;

(4) that the Defendant McCaffrey was not at any relevant time as alleged in the Complaint an employee of McLeod Loris Seacoast Hospital;

(5) that Plaintiff has failed to meet the burden of proof to support a specific finding that the Defendant McCaffrey acted in a reckless, willful, or grossly negligent manner;

(6) that the Defendant McCaffrey is therefore immune from any recovery by the Plaintiff by reason of the matters alleged in the Complaint, and should be and is hereby dismissed as a named Defendant from this action.

This Motion is based upon the written discovery exchanged in this litigation, the depositions of the Defendant McCaffrey and of Plaintiff's expert witness, Thomas Ward, M. D. and affidavits to be filed with the Court.

Respectfully submitted.

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P. A.

s/Saunders M. Bridges, Jr.
Saunders M. Bridges, Jr., SC Bar #879
J. David Banner, SC Bar #15611
181 East Evans Street, Suite 409
Post Office Drawer 1931
Florence, SC 29503
Tel: (843) 669-8787
E-mail: smb@aikenbridges.com
jdb@aikenbridges.com

Attorneys for the Defendants
McLeod Physician Associates II
and Michael McCaffrey, MD

Florence, South Carolina
December 16, 2022

EXHIBIT

1

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566

ELECTRONICALLY FILED - 2022 Dec 30 9:40 AM - Horry - COMMON PLEAS - CASE#2019CP2605302

Soarian® Tracking Board Discharge Report - Discharge Instructions

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	[REDACTED]	Patient ID:	4002511642
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 18:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Visit Information

You were seen in the McLeod Seacoast Hospital Emergency Department.

Arrival Date/Time: 10/23/2017 at 7:14 pm

Your chief complaint was: LEFT ARM TINGLING DAZED

Your diagnosis is: intracranial mass, Headache

Discharge Instructions

Patient Education

PLEASE RETURN FOR WORSENING SYMPTOMS

PLEASE CALL NEUROLOGY OFFICE IN MORNING FOR FOLLOW UP MRI

CONSIDER CALLING MUSC FOR AN APPOINTMENT

Follow Up Care Instruction

Follow Up with Provider Follow Up 1).

Electronically signed by Eric J Larson, MD on 10/23/2017 21:55

Name: JEREMY RAY GARVER	MRN: 1525019	Patient ID: 4002511642

Discharge Instructions Page 1 of 1

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566
Phone: 843-390-8133

Discharge Medication List

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	[REDACTED]	Patient ID:	4002511642
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Your Discharge Medications

ELECTRONICALLY FILED - 2022 Dec 30 9:40 AM - Horry - COMMON PLEAS - CASE#2019CP2605302

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Discharge Medication List Page 1 of 2

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Printed By: Larson, Eric J MD
Printed On: 23-Oct-17 21:55

McLeod Seacoast Hospital_0036

Medications Given to You in the ED

Medication: SODIUM CHLORIDE 0.9% (1000 ML bag) Intravenous @75mL/Hour Over 13.25H

You were given: SODIUM CHLORIDE 0.9% (SODIUM CHLORIDE 0.9%) 1000 ML on 10/23/2017 at 9:26 pm.

Medication: SODIUM CHLORIDE 0.9% FLUSH (NORMAL SALINE FLUSH) 10 ML = 10 ML Intravenous
ONE TIME for 1 Doses, Clinician Dir:USE TO FLUSH IV WHILE IN ER

You were given: 10 ML on 10/23/2017 at 9:26 pm.

ELECTRONICALLY FILED - 2022 Dec 30 9:40 AM - Horry - COMMON PLEAS - CASE#2019CP2605302

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Discharge Medication List Page 2 of 2

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Printed By: Larson, Eric J MD
Printed On: 23-Oct-17 21:55

McLeod Seacoast Hospital_0037

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566

Soarian® Tracking Board Discharge Report - Signature Acknowledgement

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	[REDACTED]	Patient ID:	4002511642
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Acknowledgement and Receipt of Discharge Instructions

Discharge instructions have been reviewed with me. I have received and understand my discharge instructions.

We are pleased to have been able to provide you with care today. Please review these instructions when you return home in order to better understand your diagnosis and the necessary further treatment and precautions related to your condition.

In most cases, treatment in an Emergency Department is intended to be temporary in nature. In general, any additional treatment is to be given by your family doctor, or the physician to whom you have been referred upon discharge from the Emergency Department.

These instructions are temporary. If you have any questions or problems after leaving the Emergency Department, please notify your physician or the physician to whom you have been referred, or return to the Emergency Department if your condition worsens.

Reminder: If you have been referred to another physician for follow-up care, your treatment physician may expect payment at time of service. Please contact the physician's office prior to treatment to clarify payment options.

X-RAYS and LAB TESTS:

If you had x-rays today, they were read by the emergency physician. Your x-rays will also be read by a radiologist within 24 hours. If you had a culture done, it will take 24 to 72 hours to get the results. If there is a change in the x-ray diagnosis or a positive culture, we will contact you. Please verify your current phone number prior to discharge at the check out desk.

MEDICATIONS:

If you received a prescription for medication(s) today, it is important that when you fill this, you let the pharmacist know all the other medications that you are on and any allergies you might have. It is also important that you notify your follow-up physician of all your medications including the prescriptions you may receive today.

Signature of Nurse: _____ **Date/Time:** _____

Signature of Patient/Responsible Party: _____ **Date/Time:** _____
(Parent of guardian if patient is a minor)

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Signature Acknowledgement Page 1 of 2

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566

Soarian® Tracking Board Discharge Report - Signature Acknowledgement

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	[REDACTED]	Patient ID:	4002511642
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Acknowledgement and Receipt of Discharge Instructions

Discharge instructions have been reviewed with me. I have received and understand my discharge instructions.

We are pleased to have been able to provide you with care today. Please review these instructions when you return home in order to better understand your diagnosis and the necessary further treatment and precautions related to your condition.

In most cases, treatment in an Emergency Department is intended to be temporary in nature. In general, any additional treatment is to be given by your family doctor, or the physician to whom you have been referred upon discharge from the Emergency Department.

These instructions are temporary. If you have any questions or problems after leaving the Emergency Department, please notify your physician or the physician to whom you have been referred, or return to the Emergency Department if your condition worsens.

Reminder: If you have been referred to another physician for follow-up care, your treatment physician may expect payment at time of service. Please contact the physician's office prior to treatment to clarify payment options.

X-RAYS and LAB TESTS:

If you had x-rays today, they were read by the emergency physician. Your x-rays will also be read by a radiologist within 24 hours. If you had a culture done, it will take 24 to 72 hours to get the results. If there is a change in the x-ray diagnosis or a positive culture, we will contact you. Please verify your current phone number prior to discharge at the check out desk.

MEDICATIONS:

If you received a prescription for medication(s) today, it is important that when you fill this, you let the pharmacist know all the other medications that you are on and any allergies you might have. It is also important that you notify your follow-up physician of all your medications including the prescriptions you may receive today.

Signature of Nurse: _____ **Date/Time:** _____

Signature of Patient/Responsible Party: _____ **Date/Time:** _____
(Parent of guardian if patient is a minor)

Name: JEREMY RAY GARVER **MRN:** 1525019 **Patient ID:** 4002511642

Signature Acknowledgement Page 2 of 2

EXHIBIT

2



MEDICAL RECORDS
169 Ashley Ave Suite H102
MSC 250
Charleston SC 29425-3490
Amb Encounter Report

Garver, Jeremy Ray
MRN: 005793922, DOB: 12/31/1974, Sex: M
Encounter date: 10/24/2017

Visit Summary (continued)

Outgoing Call

	Provider	Department	Center
10/24/2017 11:10 AM	Abbie Ensor	Nsg Hcc3	HCC

Call Documentation

Abbie Ensor at 10/24/2017 11:10 AM

Status: Signed

Received patient's information from Dr. Andrews who performed a REACH consult on this patient last night. Patient had a CT scan done at an outside facility and it showed a brainstem tumor. Patient was discharged home and told to follow-up with Neurosurgery. I called and spoke with patient's wife and she states they are working on getting the patient a MRI brain scan. I notified her that Dr. Vandergrift can certainly see the patient in clinic with imaging CD once the MRI is completed. She states she spoke with scheduling earlier today and they told her she would need a referral, so they are working on getting the Neurologist and/or the McLeod Seacoast to send a referral over. She will call our office back to set up appointment once MRI is scheduled. A. Ensor RN

Electronically signed by Abbie Ensor on 10/24/2017 11:13 AM

Care Advice Given

No Care Advice given for this encounter.

Orders

All Orders and Results Except Lab and Imaging

No orders and results found

Result Summary

All Lab and Imaging Orders and Results

No orders and results found

Notes

Progress Notes

No notes of this type exist for this encounter.

History & Physicals

No notes of this type exist for this encounter.

EXHIBIT

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Claudine Garver (Cross) Examination by Saunders Bridges

Claudine Garver
Garver, Claudine Vs. Mcleod Loris Seacoast Hospital, Et Al

September 18, 2020

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1 So they instructed us to go home the
2 next day and for me to get on the phone, which I
3 did the minute his office is open.

4 Q. All right. So I want to make sure
5 I understand what you're saying.

6 You're saying that at the hospital,
7 they told you both to get a referral for an MRI and
8 to call and make an appointment at MUSC?

9 A. Yes.

10 Q. Okay.

11 A. They knew it was bad -- I'm sorry.
12 They knew it was bad. It was big.
13 They -- whatever it was, it was a big mass. So
14 whether it was a tumor or aneurysm, it was going to
15 be a challenge either way.

16 Q. So you called Dr. McCaffrey's office
17 the next morning, correct?

18 A. Uh-huh, first thing.

19 Q. Do you know who you spoke with?

20 A. Not him. I don't -- I don't -- I don't
21 know who I spoke with. I spoke with someone,
22 explained it. It was whoever answered the phone.
23 I explained what I needed. They said they'd get
24 back to me. They got back to me, and I had an
25 appointment at the Open MRI for that Thursday.

1 Q. All right. So I'm just trying to
2 clarify the sequence here.

3 A. Uh-huh.

4 Q. You called Dr. McCaffrey's office.
5 They said they would get back to you with the
6 appointment. And they did that, correct?

7 A. The referral, they got back to me with
8 the referral. They didn't get to me with an
9 appointment. I believe -- I don't believe so. I
10 think -- I mean, I'm pretty sure I made the
11 appointment.

12 Q. Okay. So they --

13 A. I could be wrong, but I think -- I
14 could be wrong, but I think I made that appointment
15 because I was sitting at my dining room table with
16 all the information from the hospital that they
17 gave us.

18 Q. Okay. And do you know -- did you
19 call -- let me start over.

20 Do you know when you called the
21 MRI place?

22 A. Immediately as I had the referral. I
23 don't -- as soon as I had it. We weren't wasting
24 time. We weren't sitting around figuring -- trying
25 to buy time. We were scared shitless. So we were

1 sued in a case like this. And other times, I've
2 found over the years that there's specific reasons
3 that the plaintiff makes a choice of who they want
4 to sue and who they don't want to sue.

5 Are you aware that the employer for
6 Dr. McCaffrey was an entity called McLeod Physician
7 Associates, roman numeral II; or did you not know
8 one way or the other?

9 A. I knew it was McLeod and Seacoast.
10 But, no, I don't know anything about number two or
11 associates. I do not.

12 I know that he was involved with
13 Seacoast, then that was that. And, you know, when
14 he went to various -- he kept moving locations,
15 so -- you know, he had a Loris office -- he had a
16 Little River office, then he had a Carolina Forest
17 office. And, you know, we went to various
18 different offices for McCaffrey. He never seemed
19 to stay at the same building, so...

20 Q. All right.

21 A. So I don't know. I know he worked for
22 McLeod Seacoast, but...

23 Q. Okay. You have expressed to us
24 whenever Mr. Bridges was asking you questions the
25 concerns that you have about Dr. McCaffrey's care

Claudine Garver (Cross) Examination by Darren Sanders

Claudine Garver
Garver, Claudine Vs. Mcleod Loris Seacoast Hospital, Et Al

September 18, 2020

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1 at the time. And I'm not going to get back into
2 that. That's already been asked and answered as
3 far as I'm concerned.

4 I'm going to ask you a very direct
5 question about the hospital, McLeod Seacoast
6 Hospital, and the involvement that your husband had
7 there in the ER on October 23rd and then,
8 unfortunately, when he came back on November 3rd.

9 Do you have specific complaints and
10 criticisms about the way the ER staff dealt with
11 you and your family on either of those two visits?

12 A. No. But I find it interesting that the
13 doctor on record was McCaffrey and they never
14 contacted him and he was never part of conversation
15 until I had to get the MRI. And I'm not sure why
16 that is, other than we kept saying that was his
17 doctor. And maybe they knew he missed it. I don't
18 know. I find it interesting that -- we said that
19 he had been under the care of Dr. McCaffrey, and he
20 was nowhere to be found, other than for us to make
21 a referral for an MRI. So I find that interesting.

22 I don't -- that's, I guess, what I
23 have to say about that. That's like -- I
24 mean -- so -- because I would have thought that if
25 they found something neurologically wrong with him

Claudine Garver (Cross) Examination by Darren Sanders

Claudine Garver
Garver, Claudine Vs. Mcleod Loris Seacoast Hospital, Et Al

September 18, 2020

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1 immediately at the ER of which his doctor was
2 associated with, I would have thought that he would
3 have been involved a little bit. I shouldn't
4 even had to call him. He could have called us,
5 like -- you know, that's -- I have had with
6 doctors. Like doctors check on you. Doctors check
7 on me, you know. They -- if they feel like
8 something -- they check on Julian. If he's sick,
9 they -- if they really feel concerned, they take
10 the time and check in. And I find it interesting.

11 So I don't -- that's more of my term.
12 I find it interesting that the hospital didn't even
13 include him at all when that was -- he was
14 associated with the hospital, that they went right
15 over his head.

16 Q. All right. And just to make sure
17 that --

18 A. It's almost maybe -- maybe they didn't
19 feel -- sorry. Maybe they didn't feel he could
20 actually handle it. Maybe they already felt like
21 he messed up. Maybe they knew that he -- you know,
22 maybe they already knew that it was above what
23 he -- at this point, it was too late, that there
24 was a nothing else he could do at this point
25 because he had already missed it and they needed

Claudine Garver (Cross) Examination by Saunders Bridges

Claudine Garver
Garver, Claudine Vs. Mcleod Loris Seacoast Hospital, Et Al

September 18, 2020

Page 60

1 Q. All right. So I'm just trying to
2 clarify the sequence here.

3 A. Uh-huh.

4 Q. You called Dr. McCaffrey's office.
5 They said they would get back to you with the
6 appointment. And they did that, correct?

7 A. The referral, they got back to me with
8 the referral. They didn't get to me with an
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12 Q. Okay. So they --

13 A. I could be wrong, but I think -- I
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15 because I was sitting at my dining room table with
16 all the information from the hospital that they
17 gave us.

18 Q. Okay. And do you know -- did you
19 call -- let me start over.

20 Do you know when you called the
21 MRI place?

22 A. Immediately as I had the referral. I
23 don't -- as soon as I had it. We weren't wasting
24 time. We weren't sitting around figuring -- trying
25 to buy time. We were scared shitless. So we were

EXHIBIT

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**Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition**

ELECTRONICALLY FILED - 2022 Dec 30 9:40 AM - HORRY - COMMON PLEAS - CASE#2019CP2605302

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1 A Well, the information will be sent over
2 from the primary care doctor for me to review.
3 And then the patient will be -- there's certain
4 patients that may need to be referred to somebody
5 else. They may have a shoulder problem, they need
6 to see orthopedics. So I would advise them
7 whether they need to see a neurologist or not.

8 Then they're brought into the
9 office, they fill out entry paperwork to write
10 everything down about their insurance and their
11 family, family history, social history. And this
12 information is entered by one of the nurses, or my
13 medical assistant.

14 And then the patient, when
15 everything's completed, then they tell me that the
16 patient's ready for me to see them.

17 Q Okay. Those nurses, do they work for you,
18 physicians' associates, or McLeod, do you know?

19 A They work for McLeod.

20 Q Okay. And what about your assistant?

21 A They all work for McLeod.

22 Q And I'm assuming -- how many assistants
23 did you have at McLeod back in December 2015?

24 A Three or four assistants.

25 Q Do you know their names off the top of

Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition

ELECTRONICALLY FILED - 2022 Dec 30 9:40 AM - HORRY - COMMON PLEAS - CASE#2019CP2605302

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1 your head?

2 A Shannon Vanloozen, Stephanie Zurat, and
3 then Fantasia -- well, she changed her last name
4 now, Gore. She just got married. Renee Benson.
5 I'm trying to remember the name of the lady at the
6 front desk. I can't remember.

7 Q Okay. That's okay. But they all work for
8 McLeod, is that correct?

9 A Yes, sir.

10 Q Okay. Thank you. And so primary -- PCP
11 refers Mr. Garver over to you.

12 Do you recall reviewing anything
13 prior to this first meeting with Mr. Garver?

14 A With all my patients I sit down with
15 whatever got referred over by the primary care
16 doctor and I go through each page with them and go
17 over any lab tests that have occurred.

18 And as I'm doing this, I'm able
19 to put information into the template as I'm going
20 along with the patient.

21 Q Okay. That information you're putting in
22 the template, is that something that's going to pop
23 up on the -- one of -- or three pages that we're
24 looking at now?

25 A Yes, page one where it says "headaches"

**Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition**

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1 make it to the six-month follow-up. So when was the
2 next time you heard or had anything to deal with
3 Jeremy Garver after that September 26th appointment?

4 A We got a call at the office on 10-24-17
5 that he had been to the emergency room the night
6 before with a change in neurological symptoms.
7 And they recommended that he get an MRI of the
8 brain.

9 Q Okay. So do you know who called you?

10 A It was his wife. And talked to my
11 assistant, Stephanie Zurat.

12 Q Okay. Do you know what emergency room he
13 went to? Was it McLeod?

14 A It was McLeod Seacoast.

15 Q And I'm from that area and I'm pretty sure
16 it's the same -- that's the same location of your
17 office, or no?

18 A The office at that time -- we might have
19 moved down to Carolina Forest. But we might have
20 still been up there. I think -- I'm trying to
21 remember. I think we had already moved down to
22 Carolina Forest.

23 Q Okay. I believe he was admitted the night
24 prior, late that night. Is there not a process
25 where McLeod contacts you and asks for a referral or

**Janice D. Hayward, RMR
843.478.6756**

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**Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition**

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1 is that up to the patients?

2 A I don't know what happened in that
3 situation. I'm on call ten days a month. That
4 just happened to be one of the days I wasn't on
5 call.

6 I guess it should have been
7 somebody calling me up on the phone as opposed to
8 the patient's wife.

9 Q Okay. But patient's wife calls and then
10 your assistant, looks like Stephanie, I think, it
11 says an MRI sent to Fantasia for prior authority.
12 Fantasia, that was one of your --

13 A Well, her name is Fantasia Gore now,
14 Fantasia Murphy.

15 Q All right. And so what's the process when
16 a patient's wife calls for a referral? Can you just
17 kind of flesh that out for me?

18 A Well, she called and said they diagnosed
19 him with a brain tumor.

20 Q All right.

21 A So that usually throws up what you call
22 a red flag. We need to get an MRI of the brain.

23 Q And then if you're on -- were you on --
24 you were not on call on October 24th, 2017, is that
25 correct?

**Janice D. Hayward, RMR
843.478.6756**

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EXHIBIT

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

McLEOD LORIS SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; and MICHAEL
McCAFFREY, M.D.,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorneys, Stefan B. Feidler , Eric M. Poulin, Roy T. Willey, IV, at his/their office, 32 Ann Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

RECEIVED ELECTRONICALLY FILED -- 2019 SEP 19 10:46 AM -- HONORARY -- COMMON PLEAS -- CASE#2019CP2605502

Dated at Charleston, South Carolina on the 19 day of August, 2019.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler

Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

RECEIVED ELECTRONICALLY FILED -- 2019 AUG 19 10:46 AM -- HONORARY -- COMMON PLEAS -- CASE#2019CP2805502

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

McLEOD LORIS SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; MICHAEL
McCAFFREY, M.D.,

Defendant(s).

COMPLAINT
(Jury Trial Demanded)

The Plaintiff, complaining of the Defendants, alleges and says as follows:

PARTIES & JURISDICTION

1. Plaintiff, Claudine Garver, both Individually and as Personal Representative of the Estate of Jeremy Garver ("Plaintiff"), was duly appointed as the Personal Representative of the Estate of Jeremy Garver (hereinafter "Mr. Garver" or "Jeremy Garver"), the deceased, on December 15, 2017, in the Horry County Probate Court located in South Carolina. Plaintiff is therefore authorized to bring this action in tort to recover for Jeremy Garver's wrongful death, for the damages to the wrongful death beneficiaries of Jeremy Garver, and for claims belonging to Jeremy Garver in life and belonging to his Estate, including, but not limited to, pre-death pain and suffering, mental distress, medical bills, loss of quality of life to the decedent, and funeral expenses. S.C. §§ 15-590, 15-51-10, 15-51-20, and 15-5-100.
2. Upon information and belief, Defendants McLeod Loris Seacoast, McLeod Physician Associates, II, are incorporated in the State of South Carolina, and maintain their principal places of business in Horry County, State of South Carolina.

3. Upon information and belief, Defendant Michael McCaffrey, M.D., is a citizen of Horry County, State of South Carolina.
4. Whenever the term “McLeod Defendants” is utilized in this Complaint, such terms collectively refers to and includes all named Defendants in this lawsuit unless specifically restricted within a cause of action or as further defined below.
5. Upon information and belief, the McLeod Defendants at all times owned, operated, maintained, and/or controlled McLeod Seacoast Hospital (“the Hospital”).
6. Upon information and belief, at all material times, the McLeod Defendants were responsible for ensuring that the activities and operations of the Hospital complied with all applicable state and federal statutes, laws, and regulations.
7. Upon information and belief, at all material times, the Hospital was a participant in the Medicare and Medicaid programs. The McLeod Defendants were, therefore, required to comply with the provisions of 42 C.F.R. § 482.1 *et seq.*
8. Whenever in this Complaint it is alleged that the McLeod Defendants did any act or failed to do any act, it is meant that the officers, agents, or employees of McLeod Defendants respectively performed, participated in, or failed to perform such acts while in the course and scope of their employment or agency relationship with the McLeod Defendants .
9. The Defendants are subject to the jurisdiction of this Honorable Court.
10. The causes of action sued upon arose in Horry County, State of South Carolina.
11. Defendants are joint tort-feasors and were all jointly, directly, and vicariously liable for the care and treatment Jeremy Garver received.
12. Venue is, therefore, proper for all Defendants in Horry County, State of South Carolina.

13. That pursuant to S.C. Code Ann § 15-36-100, Plaintiff filed the Notice of Intent, Expert Affidavit, and Plaintiff's Responses to Standard and First Interrogatories on January 15, 2019.
14. That pursuant to S.C. Code Ann § 15-36-100, the parties conducted pre-suit mediation and an ADR Report was filed with the Court.
15. That "not every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).
16. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.'" Id. at 178, 758 S.E.2d at 504 (further citations omitted).
17. That 'the statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care.' Id. (further citation omitted).
18. "Thus, medical providers are still subject to claims sounding in ordinary negligence." Id. (further citations omitted).
19. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Horry County, State of South Carolina.

BACKGROUND FACTS

20. On or about December 29, 2015, Mr. Garver presented to the McLeod Defendants complaining of headaches, neck pain, and shoulder pain. Mr. Garver complained of moderate to severe pain that would last for hours, located in his bilateral shoulder radiating up into the

bilateral scalp/temporalis. Mr. Garver was assessed for intractable migraine without aura and without status migraniosus, a two (2) month follow up was scheduled.

21. On or about February 5, 2016, Mr. Garver presented to the McLeod Defendants complaining of frequent headaches. Notes reveal Mr. Garver administered nine (9) Imitrex pills since last visit on December 29, 2015. Mr. Garver was assessed for intractable migraine without aura and without status migraniosus, a six (6) month follow up was scheduled.
22. On or about May 31, 2016, Mr. Garver presented to the McLeod Defendants with complaints of nine (9) headaches per month for last three (3) months. Mr. Garver mentioned these headaches would wake him up and last forty-eight (48) hours. Mr. Garver developed significant scotomatous lasting 20-30 minutes. Mr. Garver was assessed for intractable migraine without aura and without status migraniosus, a six (6) month follow up was scheduled.
23. On or about September 21, 2016, Mr. Garver presented to the McLeod Defendants with complaints of increased migraines with increased intensity, and throbbing pain associated with photophobia and phonophobia, which caused nausea/vomiting. Mr. Garver was assessed for intractable migraine without aura and without status migraniosus, a six (6) month follow up was scheduled.
24. On or about March 21, 2017, Mr. Garver presented to the McLeod Defendants with complaint of severe headaches four (4) to five (5) times a year in right occipital region of scalp radiating to the neck and across shoulders, headaches did not improve with medications, and numbness in feet. Mr. Garver was assessed for intractable migraine without aura and without status migraniosus, a six (6) month follow up was scheduled.

25. On or about May 23, 2017, Mr. Garver presented to the McLeod Defendants with complaints of worsening occipital headaches. Mr. Garver was treated with bilateral occipital nerve block. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
26. On September 26, 2017, Mr. Garver presented to the McLeod Defendants with chronic migraines. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled, and bilateral occipital neuralgia.
27. On or about October 23, 2017, Mr. Garver presented to the McLeod Defendants with stroke like symptoms.
28. On or about October 23, 2017, a nonenhanced CT scan revealed a non-ruptured basilar or vertebral basilar junction aneurysm with localized mass effect on the pons after Mr. Garver presented with complaints of weakness on left side since 3:00pm (EST), history of migraines with headaches as well as left sided paresthesia and gait instability.
29. Upon information and belief, on October 24, 2017, the McLeod Defendants referred Jeremy Garver for a MRI/brain scan.
30. On or about October 30, 2017, it was discovered that Mr. Garver was suffering from an aneurysm of basilar artery. Surgery was immediately scheduled for on or about November 8, 2017.
31. On or about November 3, 2017, Mr. Garver was admitted to the McLeod Defendants under cardiac arrest.
32. On November 3, 2017, Mr. Garver was admitted to Grand Strand Regional Medical Center for neurosurgical care.

33. On November 4, 2017 at 10:27am (EST) Mr. Garver was pronounced dead due to Subarachnoid Hemorrhage and Ruptured Cerebral Aneurysm.
34. That the aforementioned dates whereby Jeremy Garver presented to the McLeod Defendants for treatment prior to October 2017, constitute different occurrences whereby the McLeod Defendants breached the standard of care resulting in conscious pain and suffering.
35. At all material times, the McLeod Defendants were engaged in the business of providing hospital and healthcare services to patients of the Hospital and were responsible to patients of the hospital for the provision of appropriate assessments, diagnosis, care, and treatment. Further, the McLeod Defendants charged and were paid for services rendered to Jeremy Garver.
36. At all material times, both the medical professionals and custodial care provider staff including medical, nursing, pharmacy, dietary, and rehabilitative staff and custodial care provider staff ("hospital staff") at the Hospital were agents, employees, and/or servants, either actual or apparent, of the McLeod Defendants so that any acts or omissions on the part of the same would be attributable to and imputed to the McLeod Defendants pursuant to the doctrine of *respondeat superior* or other similar theories of liability. Alternatively, the hospital staff were borrowed servants of the McLeod Defendants.
37. As a hospital patient, Jeremy Garver was entitled to and had the right to receive that degree of care, skill, and diligence ordinarily employed by members of the health care profession under the same or similar conditions and like surrounding circumstances.
38. At all material times, the McLeod Defendants represented that: (a) they were competent to provide Jeremy Garver with the necessary care, treatment, and services and would provide

the same; and (b) that they were capable of successfully managing Jeremy Garver's condition.

39. Despite these representations, during his admission(s) to the Hospital, Jeremy Garver suffered multiple injuries due to the negligent acts and/or omissions of the McLeod Defendants, including, but not limited to: (a) subarachnoid hemorrhage; (b) ruptured cerebral aneurysm; (c) physical suffering and mental anguish; (d) untreated and unmanaged pain; and (e) untimely death due to McLeod Defendants negligent acts and/or omissions.

FIRST CAUSE OF ACTION
(Wrongful Death/Professional Negligence/Gross Negligence)

40. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
41. This count involves professional negligence perpetrated by the McLeod Defendants through hospital staff who provided services individually and/or in the course and scope of their employment to Jeremy Garver while a patient of McLeod Defendants.
42. The McLeod Defendants, individually and collectively and by virtue of their own independent actions and while acting as agents, servants, and/or employees of one another, and while acting through the healthcare providers and the hospital staff employed or utilized by them at the Hospital, owed a duty to Jeremy Garver to comply with the standard of care and skill exercised by healthcare providers generally under similar conditions and like surrounding circumstances as those presented by Jeremy Garver during his multiple admissions to the Hospital.
43. During Jeremy Garver's multiple admissions, the McLeod Defendants, individually and collectively, and by virtue of their own independent actions, and while acting as agents (actual or apparent), servants, and/or employees of one another, and while acting through the

healthcare providers and the hospital staff employed or utilized by them at the hospital, breached the applicable standard of care with respect to their assessment, diagnosis, planning, care, treatment, and evaluation of Jeremy Garver.

44. That the McLeod Defendants had a duty to do that which the reasonably prudent health care provider or health care institution would do or not do in the same or similar circumstances.

45. The McLeod Defendants, acting individually and/or as agents, servants, or employees, breached their duties to Plaintiff and/or Jeremy Garver, departed from the prevailing professional standards of care, and were careless, negligent, reckless, willful, wanton, jointly and severally, including, but not limited to the following particulars whether singularly, concurrently, or in combination, to wit:

- a. Failure to conduct proper assessments of Jeremy Garver;
- b. Failure to properly warn Jeremy Garver;
- c. Failure to properly assess Jeremy Garver;
- d. Failure to refer Jeremy Garver;
- e. Failure to conduct appropriate assessments and inspections of Jeremy Garver's condition(s);
- f. Failure to properly control Jeremy Garver's condition(s);
- g. Failure to properly monitor Jeremy Garver;
- h. Failure to properly monitor the progression of Jeremy Garver's symptoms;
- i. Failure to recognize the severity of Jeremy Garver's condition, and failing to properly diagnose, monitor, refer, and treat Jeremy Garver's conditions;
- j. Failure to transfer Jeremy Garver in a timely manner for CT Scan, MRI, and/or surgical intervention;

- k. Failure to properly communicate and explain the urgency of Jeremy Garver's condition(s) and/or symptoms;
- l. Failing to make certain that Jeremy Garver received the appropriate referral(s) and/or surgical intervention(s) and/or transfer to a facility in a timely manner so that the appropriate surgical interventions could be accomplished in a timely manner;
- m. Causing a delay in the surgical intervention necessary to treat Jeremy Garver's condition;
- n. Failure to respond to an emergency situation in an appropriate and timely manner;
- o. Failure to use due care to determine the extent and severity of Jeremy Garver's condition;
- p. Failure to properly consider complications of the aneurysm as a possible explanation of Jeremy Garver's continued signs and symptoms;
- q. Failure to take adequate steps for evaluation and treatment of Jeremy Garver's symptoms and/or conditions;
- r. Failure to avoid delay in the transfer of Jeremy Garver to an appropriate medical care provider;
- s. Failure to properly examine Jeremy Garver;
- t. Failure to properly consult the records of previous admissions to Defendants' facility and/or previous admissions to other medical providers;
- u. Failure to consult with a physician properly qualified to assess and treat the condition(s) of Jeremy Garver;
- v. Failure to admit Jeremy Garver to the hospital;

- w. Failure to properly consider complications of the aneurysm, as a possible explanation of Jeremy Garver's signs and symptoms; and,
 - x. Failure to utilize appropriate measure to treat Jeremy Garver condition;
 - y. Failing to provide the appropriate referral for surgical interventions;
 - z. Failing to recognize the warning signs associated with Jeremy Garver's condition(s) and/or symptoms;
 - aa. Failing to comply with applicable state and federal codes, regulations, statutes, customs and standards, including, but not limited to without limitation, the Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd *et seq.*, DHEC R. 61-16 *et seq.*;
 - bb. Failing to exercise that degree of knowledge, care, and skill in the interpretation, diagnosis, care, and treatment of Jeremy Garver's medical condition ordinarily possess and exercised by physicians and medical personnel similarly situated throughout the United States, including the State of South Carolina; and
 - cc. Departing from the generally accepted standards of the medical practice, which existed throughout the United States, including the State of South Carolina, in the interpretation, diagnosis, care, and treatment of Jeremy Garver's medical condition(s).
46. Prior to his untimely death, decedent Jeremy Garver was in good health. At the time of his death, Jeremy Garver was 42 years old and had a life expectancy of 36.46 years pursuant to S.C. Code Ann. § 19-1-150.
47. One or more of the deviations from the standard of care as set forth above proximately caused severe injury to Jeremy Garver, which resulted in his death. The rupture of the

subarachnoid hemorrhage and/or cerebral aneurysm more likely than not would not have occurred had there been reasonable care, treatment, and monitoring of Jeremy Garver prior to his transfer/referral for a CT scan and/or MRI, including monitoring Jeremy Garver's symptoms, controlling Jeremy Garver's symptoms, monitoring the progression of Jeremy Garver's symptoms, and/or transferring/referring Jeremy Garver in a timely manner for urgent care and/or surgery. If the McLeod Defendants had not deviated from the standard of care, Jeremy Garver's rupture of the subarachnoid hemorrhage and/or cerebral aneurysm would not have occurred and Jeremy Garver would not have died.

48. That Jeremy Garver suffered from a ruptured subarachnoid hemorrhage and/or cerebral aneurysm.
49. Because of the breaches of the standard of care enumerated herein, Jeremy Garver and/or Plaintiff suffered significant damages, including, but not limited to ruptured subarachnoid hemorrhage and/or cerebral aneurysm, cardiac arrest, pain and suffering, and death.
50. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of the McLeod Defendants, as set forth above, and of Jeremy Garver's premature death, Jeremy Garver's statutory beneficiaries have suffered damages in the form of pecuniary loss; funeral and burial expenses; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship; deprivation of the use and comfort of Jeremy Garver's society; loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries; and loss of services. As a further direct and proximate result of the negligent, careless, reckless, and grossly negligent conduct of the McLeod Defendants as set forth above. Plaintiff has been deprived of lost income and the present value of the accumulations that Jeremy Garver would have made to the estate had he lived out his normal life

expectancy; has become liable for sums of money for medicine and medical services, care, and treatment for Jeremy Garver's injuries; and has become liable for large sums of money for funeral and other related burial expenses, Therefore, Plaintiff is entitled to recover actual and exemplary damages in an amount to be determined by the trier of fact, together with the costs and disbursements of this action.

51. As a direct and proximate result of the joint and concurring wrongful acts, negligence, reckless, willful, and wanton behavior of the McLeod Defendants, as alleged above, Claudine Garver, as Personal Representative of the Estate of Jeremy Garver, is entitled to recover:

- a. Medical bills including physician bills, radiology bills, hospital bills, and prescription charges;
- b. Loss of enjoyment of life;
- c. Physical and mental pain and suffering;
- d. Wrongful death;
- e. Permanent injury and impairment;
- f. Lost wages;
- g. Loss of consortium;
- h. Punitive damages; and
- i. Such damages as a jury shall deem just and proper.

SECOND CAUSE OF ACTION
(Survival/Negligence/Gross Negligence)

52. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

53. Plaintiff, Claudine Garver, as Personal Representative of the Estate of Jeremy Garver, brings this action on behalf of the Estate of Jeremy Garver, pursuant to the South Carolina Survival Statute, S.C. Code Ann. §§ 15-5-90 *et seq.*
54. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of Defendants, as set forth above. Jeremy Garver was not provided with appropriate medical treatment; Jeremy Garver incurred unnecessary medical costs and expenses; and Jeremy Garver suffered bodily injury, conscious pain, suffering, and mental distress, disability, and death. Jeremy Garver suffered damages, including but not limited to: pecuniary loss; medical expenses; pain and suffering; mental shock and suffering; wounded feelings; grief and sorrow; restriction of movement; disability; severe and debilitating pain and discomfort; loss of total enjoyment of life; and death.
55. Jeremy Garver's claims for damages survive his death to the benefit of his estate. As further direct and proximate result of the negligent, careless, reckless, and grossly negligent conduct of the Defendants as set forth above, the Estate of Jeremy Garver has been deprived of the present value of lost income; suffered conscious pain and suffering; has become liable for sums of money for medicine and medical care, services, and treatment for Jeremy Garver's injuries; and has become liable for large sums of money for funeral and other related burial expenses. Plaintiff is entitled to recover for the benefit of Jeremy Garver's Estate, actual damages and punitive damages in an amount to be determined by the trier of fact, together with costs and disbursements of this action.

THIRD CAUSE OF ACTION
(Loss of Consortium)

56. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

57. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of the McLeod Defendants which caused injury to Jeremy Garver and untimely death, who was a loving and devoted husband and loving and devoted father, Plaintiff Claudine Garver suffered actual damages for the loss of consortium and companionship of Plaintiff's spouse as provided under S.C. Code Ann. § 15-75-20, for which Plaintiff seeks recovery in this action, including loss of consortium, love, affection, aid, comfort, society, companionship, services, support, and all other damages recoverable in an action for loss of consortium under South Carolina law.

58. Plaintiff is informed and believes that she is entitled to judgment against the McLeod Defendants for actual damages, together with an appropriate award of punitive damages, in an amount to be determined by the trier of fact.

FOURTH CAUSE OF ACTION
Negligence per se

59. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

60. The McLeod Defendants are health care provider who have a duty to abide by certain state regulations in the care and treatment of their patients.

61. The state regulations combine to form a minimum standards of care which the McLeod Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, Jeremy Garver.

62. The McLeod Defendants failed to abide by said standards, rules and regulations promulgated by the State of South Carolina in their treatment and care of Jeremy Garver.

63. The standards, rules and regulations promulgated by the state of South Carolina were specifically enacted for the benefit of the class of persons for which Jeremy Garver was a member.

64. As a direct and proximate result of the McLeod Defendants' negligence, recklessness, carelessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations promulgated by the State of South Carolina, Jeremy Garver suffered severe injuries and resulting death as described above, constituting negligence *per se*.

FIFTH CAUSE OF ACTION
Breach of Contract

65. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

66. Jeremy Garver entered into a contract with the McLeod Defendants for the adequate provision of his care, treatment, and safety.

67. Pursuant to such agreement, the McLeod Defendants promised to care for Jeremy Garver, exercise due care, and follow all state and federal laws and regulations relating to care of patients.

68. In exchange for such promises, Jeremy Garver agreed to compensate the McLeod Defendants for such care.

69. This bargained-for exchange constitutes a contract.

70. The McLeod Defendants breached the contract by not exercising due care, by not following state or federal laws and regulations relating to care of patients, such as Jeremy Garver, and by their/its acts and omissions as described in the Complaint or as may be proven through discovery or at trial.

71. Jeremy Garver was deprived of the benefit of the bargain, and suffered damages which directly and proximately flowed from the breach, and were of the kind to arise and flow from such breach.

SIXTH CAUSE OF ACTION
(Fraud / Negligent Misrepresentation / Spoliation)

72. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

73. The McLeod Defendants, through deception, artifice and circumvention, successfully defrauded Jeremy Garver, who trustingly submitted to the McLeod Defendants care and on the basis of explicit and implicit representations:

- a. That the McLeod Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure Jeremy Garver received safe and adequate care;
- b. That the McLeod Defendants would adequately staff the Hospital and Jeremy Garver would be served by adequately trained employees;
- c. That the McLeod Defendants would provide high quality professional care and would accurately and truthfully document the condition of Jeremy Garver and the care rendered to him; and
- d. Such other misrepresentations as are set forth more fully above in this Complaint or may be ascertained through further discovery or proven at trial.

74. At the time of Jeremy Garver's admission to care, the McLeod Defendants promoted and disseminated the above representations and information which would lead Jeremy Garver, his family, and other similarly situate consumers to believe the above representations were true.

75. The McLeod Defendants purposefully disseminated such representations and promotions in order to induce Jeremy Garver, his family and others like them into placement of themselves and/or of their relatives in the exclusive control and custody of the McLeod Defendants, and once there, allowing such persons to remain.
76. The McLeod Defendants fraudulently concealed their inability to care for Jeremy Garver according to acceptable standards required by law and represented by the McLeod Defendants, and the representations made were false.
77. The representations made and concealments done by the McLeod Defendants were material to Jeremy Garver and his family.
78. At the time the McLeod Defendants made such representations, they knew such affirmative claims of service were false.
79. Jeremy Garver and his family were unaware of the falsity of the representations made by the McLeod Defendants.
80. Jeremy Garver and his family had a right to rely on the representations and concealments made by the McLeod Defendants.
81. As a result of the McLeod Defendants' fraud, misrepresentations, and concealments, Jeremy Garver subsequently suffered damages and injuries while under the McLeod Defendants' care.
82. As a proximate cause of the McLeod Defendants' fraud and misrepresentation, Jeremy Garver suffered physical injuries, pain and suffering as previously alleged, and death.

SEVENTH CAUSE OF ACTION
(Vicarious Liability)

83. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

84. The Defendants McLeod Loris Seacoast and McLeod Physician Associates, II, employed Defendant Michael McCaffrey and medical personnel, and either expressly or impliedly allowed them to provide medical care and treatment to their patients.
85. As the employers of Defendant Michael McCaffrey and other medical personnel, the McLeod Defendants are vicariously liable for all negligent actions or inactions taken by Defendant Michael McCaffrey and other medical personnel.
86. As the employer of Defendant Michael McCaffrey and other medical personnel, the McLeod Defendants are vicariously liable for Defendant Michael McCaffrey's and the medical staff's failure to exercise due care and failure to follow the accepted standard of care, all of which directly caused the injuries and damages to Plaintiff and/or Jeremy Garver as described herein.
87. Therefore, the McLeod Defendants and/or Defendants McLeod Loris Seacoast and McLeod Physician Associates, II, are vicariously liable for all damages caused by Defendant Michael McCaffrey, their medical staff, and employees.

EIGHTH CAUSE OF ACTION
(Nondelegable Duty)

88. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
89. The McLeod Defendants had a nondelegable duty to Jeremy Garver to provide competent medical treatment and services.
90. Plaintiff and/or Jeremy Gar entrusted the McLeod Defendants with the important duty to provide competent medical services. As such, these Defendants cannot contend that they are not liable for the acts or omission committed by employee(s) and/or their medical staff.

91. Because the McLeod Defendants had a nondelegable duty, the McLeod Defendants are liable for the acts of their employees and medical personnel.

92. Therefore, the McLeod Defendants had a nondelegable duty to Plaintiff and/or Jeremy Garver, which they breached said duty and are liable to Plaintiff for actual, consequential, and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, on behalf of the Estate and Decedent's statutory beneficiaries, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler
 Stefan B. Feidler, Esquire
 S.C. Bar No.: 101918
 Roy T. Willey, IV, Esquire
 S.C. Bar No.: 101010
 Eric M. Poulin, Esquire
 S.C. Bar No.: 100209
 32 Ann Street
 Charleston, South Carolina 29403
 (843) 614-8888

Dated at Charleston, South Carolina

This 19 day of August, 2019.

Exhibit

1

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

McLEOD LORIS SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; and MICHAEL
McCAFFREY, M.D.,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorneys, Stefan B. Feidler , Eric M. Poulin, Roy T. Willey, IV, at his/their office, 32 Ann Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Dated at Charleston, South Carolina on the 19 day of August, 2019.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler

Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
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32 Ann Street
Charleston, South Carolina 29403
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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2019-CP-26-_____

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

McLEOD LORIS SEACOAST
HOSPITAL; McLEOD PHYSICIAN
ASSOCIATES, II; MICHAEL
McCAFFREY, M.D.,

Defendant(s).

COMPLAINT
(Jury Trial Demanded)

The Plaintiff, complaining of the Defendants, alleges and says as follows:

PARTIES & JURISDICTION

1. Plaintiff, Claudine Garver, both Individually and as Personal Representative of the Estate of Jeremy Garver ("Plaintiff"), was duly appointed as the Personal Representative of the Estate of Jeremy Garver (hereinafter "Mr. Garver" or "Jeremy Garver"), the deceased, on December 15, 2017, in the Horry County Probate Court located in South Carolina. Plaintiff is therefore authorized to bring this action in tort to recover for Jeremy Garver's wrongful death, for the damages to the wrongful death beneficiaries of Jeremy Garver, and for claims belonging to Jeremy Garver in life and belonging to his Estate, including, but not limited to, pre-death pain and suffering, mental distress, medical bills, loss of quality of life to the decedent, and funeral expenses. S.C. §§ 15-590, 15-51-10, 15-51-20, and 15-5-100.
2. Upon information and belief, Defendants McLeod Loris Seacoast, McLeod Physician Associates, II, are incorporated in the State of South Carolina, and maintain their principal places of business in Horry County, State of South Carolina.

3. Upon information and belief, Defendant Michael McCaffrey, M.D., is a citizen of Horry County, State of South Carolina.
4. Whenever the term “McLeod Defendants” is utilized in this Complaint, such terms collectively refers to and includes all named Defendants in this lawsuit unless specifically restricted within a cause of action or as further defined below.
5. Upon information and belief, the McLeod Defendants at all times owned, operated, maintained, and/or controlled McLeod Seacoast Hospital (“the Hospital”).
6. Upon information and belief, at all material times, the McLeod Defendants were responsible for ensuring that the activities and operations of the Hospital complied with all applicable state and federal statutes, laws, and regulations.
7. Upon information and belief, at all material times, the Hospital was a participant in the Medicare and Medicaid programs. The McLeod Defendants were, therefore, required to comply with the provisions of 42 C.F.R. § 482.1 *et seq.*
8. Whenever in this Complaint it is alleged that the McLeod Defendants did any act or failed to do any act, it is meant that the officers, agents, or employees of McLeod Defendants respectively performed, participated in, or failed to perform such acts while in the course and scope of their employment or agency relationship with the McLeod Defendants .
9. The Defendants are subject to the jurisdiction of this Honorable Court.
10. The causes of action sued upon arose in Horry County, State of South Carolina.
11. Defendants are joint tort-feasors and were all jointly, directly, and vicariously liable for the care and treatment Jeremy Garver received.
12. Venue is, therefore, proper for all Defendants in Horry County, State of South Carolina.

13. That pursuant to S.C. Code Ann § 15-36-100, Plaintiff filed the Notice of Intent, Expert Affidavit, and Plaintiff's Responses to Standard and First Interrogatories on January 15, 2019.
14. That pursuant to S.C. Code Ann § 15-36-100, the parties conducted pre-suit mediation and an ADR Report was filed with the Court.
15. That "not every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).
16. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.'" Id. at 178, 758 S.E.2d at 504 (further citations omitted).
17. That 'the statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care.' Id. (further citation omitted).
18. "Thus, medical providers are still subject to claims sounding in ordinary negligence." Id. (further citations omitted).
19. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Horry County, State of South Carolina.

BACKGROUND FACTS

20. On or about December 29, 2015, Mr. Garver presented to the McLeod Defendants complaining of headaches, neck pain, and shoulder pain. Mr. Garver complained of moderate to severe pain that would last for hours, located in his bilateral shoulder radiating up into the

bilateral scalp/temporalis. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a two (2) month follow up was scheduled.

21. On or about February 5, 2016, Mr. Garver presented to the McLeod Defendants complaining of frequent headaches. Notes reveal Mr. Garver administered nine (9) Imitrex pills since last visit on December 29, 2015. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
22. On or about May 31, 2016, Mr. Garver presented to the McLeod Defendants with complaints of nine (9) headaches per month for last three (3) months. Mr. Garver mentioned these headaches would wake him up and last forty-eight (48) hours. Mr. Garver developed significant scotomatous lasting 20-30 minutes. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
23. On or about September 21, 2016, Mr. Garver presented to the McLeod Defendants with complaints of increased migraines with increased intensity, and throbbing pain associated with photophobia and phonophobia, which caused nausea/vomiting. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
24. On or about March 21, 2017, Mr. Garver presented to the McLeod Defendants with complaint of severe headaches four (4) to five (5) times a year in right occipital region of scalp radiating to the neck and across shoulders, headaches did not improve with medications, and numbness in feet. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.

25. On or about May 23, 2017, Mr. Garver presented to the McLeod Defendants with complaints of worsening occipital headaches. Mr. Garver was treated with bilateral occipital nerve block. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled.
26. On September 26, 2017, Mr. Garver presented to the McLeod Defendants with chronic migraines. Mr. Garver was assessed for intractable migraine without aura and without status migrainosus, a six (6) month follow up was scheduled, and bilateral occipital neuralgia.
27. On or about October 23, 2017, Mr. Garver presented to the McLeod Defendants with stroke like symptoms.
28. On or about October 23, 2017, a nonenhanced CT scan revealed a non-ruptured basilar or vertebral basilar junction aneurysm with localized mass effect on the pons after Mr. Garver presented with complaints of weakness on left side since 3:00pm (EST), history of migraines with headaches as well as left sided paresthesia and gait instability.
29. Upon information and belief, on October 24, 2017, the McLeod Defendants referred Jeremy Garver for a MRI/brain scan.
30. On or about October 30, 2017, it was discovered that Mr. Garver was suffering from an aneurysm of basilar artery. Surgery was immediately scheduled for on or about November 8, 2017.
31. On or about November 3, 2017, Mr. Garver was admitted to the McLeod Defendants under cardiac arrest.
32. On November 3, 2017, Mr. Garver was admitted to Grand Strand Regional Medical Center for neurosurgical care.

33. On November 4, 2017 at 10:27am (EST) Mr. Garver was pronounced dead due to Subarachnoid Hemorrhage and Ruptured Cerebral Aneurysm.
34. That the aforementioned dates whereby Jeremy Garver presented to the McLeod Defendants for treatment prior to October 2017, constitute different occurrences whereby the McLeod Defendants breached the standard of care resulting in conscious pain and suffering.
35. At all material times, the McLeod Defendants were engaged in the business of providing hospital and healthcare services to patients of the Hospital and were responsible to patients of the hospital for the provision of appropriate assessments, diagnosis, care, and treatment. Further, the McLeod Defendants charged and were paid for services rendered to Jeremy Garver.
36. At all material times, both the medical professionals and custodial care provider staff including medical, nursing, pharmacy, dietary, and rehabilitative staff and custodial care provider staff ("hospital staff") at the Hospital were agents, employees, and/or servants, either actual or apparent, of the McLeod Defendants so that any acts or omissions on the part of the same would be attributable to and imputed to the McLeod Defendants pursuant to the doctrine of *respondeat superior* or other similar theories of liability. Alternatively, the hospital staff were borrowed servants of the McLeod Defendants.
37. As a hospital patient, Jeremy Garver was entitled to and had the right to receive that degree of care, skill, and diligence ordinarily employed by members of the health care profession under the same or similar conditions and like surrounding circumstances.
38. At all material times, the McLeod Defendants represented that: (a) they were competent to provide Jeremy Garver with the necessary care, treatment, and services and would provide

the same; and (b) that they were capable of successfully managing Jeremy Garver's condition.

39. Despite these representations, during his admission(s) to the Hospital, Jeremy Garver suffered multiple injuries due to the negligent acts and/or omissions of the McLeod Defendants, including, but not limited to: (a) subarachnoid hemorrhage; (b) ruptured cerebral aneurysm; (c) physical suffering and mental anguish; (d) untreated and unmanaged pain; and (e) untimely death due to McLeod Defendants negligent acts and/or omissions.

FIRST CAUSE OF ACTION
(Wrongful Death/Professional Negligence/Gross Negligence)

40. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
41. This count involves professional negligence perpetrated by the McLeod Defendants through hospital staff who provided services individually and/or in the course and scope of their employment to Jeremy Garver while a patient of McLeod Defendants.
42. The McLeod Defendants, individually and collectively and by virtue of their own independent actions and while acting as agents, servants, and/or employees of one another, and while acting through the healthcare providers and the hospital staff employed or utilized by them at the Hospital, owed a duty to Jeremy Garver to comply with the standard of care and skill exercised by healthcare providers generally under similar conditions and like surrounding circumstances as those presented by Jeremy Garver during his multiple admissions to the Hospital.
43. During Jeremy Garver's multiple admissions, the McLeod Defendants, individually and collectively, and by virtue of their own independent actions, and while acting as agents (actual or apparent), servants, and/or employees of one another, and while acting through the

healthcare providers and the hospital staff employed or utilized by them at the hospital, breached the applicable standard of care with respect to their assessment, diagnosis, planning, care, treatment, and evaluation of Jeremy Garver.

44. That the McLeod Defendants had a duty to do that which the reasonably prudent health care provider or health care institution would do or not do in the same or similar circumstances.

45. The McLeod Defendants, acting individually and/or as agents, servants, or employees, breached their duties to Plaintiff and/or Jeremy Garver, departed from the prevailing professional standards of care, and were careless, negligent, reckless, willful, wanton, jointly and severally, including, but not limited to the following particulars whether singularly, concurrently, or in combination, to wit:

- a. Failure to conduct proper assessments of Jeremy Garver;
- b. Failure to properly warn Jeremy Garver;
- c. Failure to properly assess Jeremy Garver;
- d. Failure to refer Jeremy Garver;
- e. Failure to conduct appropriate assessments and inspections of Jeremy Garver's condition(s);
- f. Failure to properly control Jeremy Garver's condition(s);
- g. Failure to properly monitor Jeremy Garver;
- h. Failure to properly monitor the progression of Jeremy Garver's symptoms;
- i. Failure to recognize the severity of Jeremy Garver's condition, and failing to properly diagnose, monitor, refer, and treat Jeremy Garver's conditions;
- j. Failure to transfer Jeremy Garver in a timely manner for CT Scan, MRI, and/or surgical intervention;

- k. Failure to properly communicate and explain the urgency of Jeremy Garver's condition(s) and/or symptoms;
- l. Failing to make certain that Jeremy Garver received the appropriate referral(s) and/or surgical intervention(s) and/or transfer to a facility in a timely manner so that the appropriate surgical interventions could be accomplished in a timely manner;
- m. Causing a delay in the surgical intervention necessary to treat Jeremy Garver's condition;
- n. Failure to respond to an emergency situation in an appropriate and timely manner;
- o. Failure to use due care to determine the extent and severity of Jeremy Garver's condition;
- p. Failure to properly consider complications of the aneurysm as a possible explanation of Jeremy Garver's continued signs and symptoms;
- q. Failure to take adequate steps for evaluation and treatment of Jeremy Garver's symptoms and/or conditions;
- r. Failure to avoid delay in the transfer of Jeremy Garver to an appropriate medical care provider;
- s. Failure to properly examine Jeremy Garver;
- t. Failure to properly consult the records of previous admissions to Defendants' facility and/or previous admissions to other medical providers;
- u. Failure to consult with a physician properly qualified to assess and treat the condition(s) of Jeremy Garver;
- v. Failure to admit Jeremy Garver to the hospital;

- w. Failure to properly consider complications of the aneurysm, as a possible explanation of Jeremy Garver's signs and symptoms; and,
 - x. Failure to utilize appropriate measure to treat Jeremy Garver condition;
 - y. Failing to provide the appropriate referral for surgical interventions;
 - z. Failing to recognize the warning signs associated with Jeremy Garver's condition(s) and/or symptoms;
 - aa. Failing to comply with applicable state and federal codes, regulations, statutes, customs and standards, including, but not limited to without limitation, the Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd *et seq.*, DHEC R. 61-16 *et seq.*;
 - bb. Failing to exercise that degree of knowledge, care, and skill in the interpretation, diagnosis, care, and treatment of Jeremy Garver's medical condition ordinarily possess and exercised by physicians and medical personnel similarly situated throughout the United States, including the State of South Carolina; and
 - cc. Departing from the generally accepted standards of the medical practice, which existed throughout the United States, including the State of South Carolina, in the interpretation, diagnosis, care, and treatment of Jeremy Garver's medical condition(s).
46. Prior to his untimely death, decedent Jeremy Garver was in good health. At the time of his death, Jeremy Garver was 42 years old and had a life expectancy of 36.46 years pursuant to S.C. Code Ann. § 19-1-150.
47. One or more of the deviations from the standard of care as set forth above proximately caused severe injury to Jeremy Garver, which resulted in his death. The rupture of the

subarachnoid hemorrhage and/or cerebral aneurysm more likely than not would not have occurred had there been reasonable care, treatment, and monitoring of Jeremy Garver prior to his transfer/referral for a CT scan and/or MRI, including monitoring Jeremy Garver's symptoms, controlling Jeremy Garver's symptoms, monitoring the progression of Jeremy Garver's symptoms, and/or transferring/referring Jeremy Garver in a timely manner for urgent care and/or surgery. If the McLeod Defendants had not deviated from the standard of care, Jeremy Garver's rupture of the subarachnoid hemorrhage and/or cerebral aneurysm would not have occurred and Jeremy Garver would not have died.

48. That Jeremy Garver suffered from a ruptured subarachnoid hemorrhage and/or cerebral aneurysm.
49. Because of the breaches of the standard of care enumerated herein, Jeremy Garver and/or Plaintiff suffered significant damages, including, but not limited to ruptured subarachnoid hemorrhage and/or cerebral aneurysm, cardiac arrest, pain and suffering, and death.
50. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of the McLeod Defendants, as set forth above, and of Jeremy Garver's premature death, Jeremy Garver's statutory beneficiaries have suffered damages in the form of pecuniary loss; funeral and burial expenses; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship; deprivation of the use and comfort of Jeremy Garver's society; loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries; and loss of services. As a further direct and proximate result of the negligent, careless, reckless, and grossly negligent conduct of the McLeod Defendants as set forth above. Plaintiff has been deprived of lost income and the present value of the accumulations that Jeremy Garver would have made to the estate had he lived out his normal life

expectancy; has become liable for sums of money for medicine and medical services, care, and treatment for Jeremy Garver's injuries; and has become liable for large sums of money for funeral and other related burial expenses, Therefore, Plaintiff is entitled to recover actual and exemplary damages in an amount to be determined by the trier of fact, together with the costs and disbursements of this action.

51. As a direct and proximate result of the joint and concurring wrongful acts, negligence, reckless, willful, and wanton behavior of the McLeod Defendants, as alleged above, Claudine Garver, as Personal Representative of the Estate of Jeremy Garver, is entitled to recover:

- a. Medical bills including physician bills, radiology bills, hospital bills, and prescription charges;
- b. Loss of enjoyment of life;
- c. Physical and mental pain and suffering;
- d. Wrongful death;
- e. Permanent injury and impairment;
- f. Lost wages;
- g. Loss of consortium;
- h. Punitive damages; and
- i. Such damages as a jury shall deem just and proper.

SECOND CAUSE OF ACTION
(Survival/Negligence/Gross Negligence)

52. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

53. Plaintiff, Claudine Garver, as Personal Representative of the Estate of Jeremy Garver, brings this action on behalf of the Estate of Jeremy Garver, pursuant to the South Carolina Survival Statute, S.C. Code Ann. §§ 15-5-90 *et seq.*
54. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of Defendants, as set forth above. Jeremy Garver was not provided with appropriate medical treatment; Jeremy Garver incurred unnecessary medical costs and expenses; and Jeremy Garver suffered bodily injury, conscious pain, suffering, and mental distress, disability, and death. Jeremy Garver suffered damages, including but not limited to: pecuniary loss; medical expenses; pain and suffering; mental shock and suffering; wounded feelings; grief and sorrow; restriction of movement; disability; severe and debilitating pain and discomfort; loss of total enjoyment of life; and death.
55. Jeremy Garver's claims for damages survive his death to the benefit of his estate. As further direct and proximate result of the negligent, careless, reckless, and grossly negligent conduct of the Defendants as set forth above, the Estate of Jeremy Garver has been deprived of the present value of lost income; suffered conscious pain and suffering; has become liable for sums of money for medicine and medical care, services, and treatment for Jeremy Garver's injuries; and has become liable for large sums of money for funeral and other related burial expenses. Plaintiff is entitled to recover for the benefit of Jeremy Garver's Estate, actual damages and punitive damages in an amount to be determined by the trier of fact, together with costs and disbursements of this action.

THIRD CAUSE OF ACTION
(Loss of Consortium)

56. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

57. As a direct and proximate result of the careless, reckless, and grossly negligent conduct of the McLeod Defendants which caused injury to Jeremy Garver and untimely death, who was a loving and devoted husband and loving and devoted father, Plaintiff Claudine Garver suffered actual damages for the loss of consortium and companionship of Plaintiff's spouse as provided under S.C. Code Ann. § 15-75-20, for which Plaintiff seeks recovery in this action, including loss of consortium, love, affection, aid, comfort, society, companionship, services, support, and all other damages recoverable in an action for loss of consortium under South Carolina law.
58. Plaintiff is informed and believes that she is entitled to judgment against the McLeod Defendants for actual damages, together with an appropriate award of punitive damages, in an amount to be determined by the trier of fact.

FOURTH CAUSE OF ACTION
Negligence per se

59. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
60. The McLeod Defendants are health care provider who have a duty to abide by certain state regulations in the care and treatment of their patients.
61. The state regulations combine to form a minimum standards of care which the McLeod Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, Jeremy Garver.
62. The McLeod Defendants failed to abide by said standards, rules and regulations promulgated by the State of South Carolina in their treatment and care of Jeremy Garver.

63. The standards, rules and regulations promulgated by the state of South Carolina were specifically enacted for the benefit of the class of persons for which Jeremy Garver was a member.
64. As a direct and proximate result of the McLeod Defendants' negligence, recklessness, carelessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations promulgated by the State of South Carolina, Jeremy Garver suffered severe injuries and resulting death as described above, constituting negligence *per se*.

FIFTH CAUSE OF ACTION
Breach of Contract

65. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
66. Jeremy Garver entered into a contract with the McLeod Defendants for the adequate provision of his care, treatment, and safety.
67. Pursuant to such agreement, the McLeod Defendants promised to care for Jeremy Garver, exercise due care, and follow all state and federal laws and regulations relating to care of patients.
68. In exchange for such promises, Jeremy Garver agreed to compensate the McLeod Defendants for such care.
69. This bargained-for exchange constitutes a contract.
70. The McLeod Defendants breached the contract by not exercising due care, by not following state or federal laws and regulations relating to care of patients, such as Jeremy Garver, and by their/its acts and omissions as described in the Complaint or as may be proven through discovery or at trial.

71. Jeremy Garver was deprived of the benefit of the bargain, and suffered damages which directly and proximately flowed from the breach, and were of the kind to arise and flow from such breach.

SIXTH CAUSE OF ACTION
(Fraud / Negligent Misrepresentation / Spoliation)

72. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

73. The McLeod Defendants, through deception, artifice and circumvention, successfully defrauded Jeremy Garver, who trustingly submitted to the McLeod Defendants care and on the basis of explicit and implicit representations:

- a. That the McLeod Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure Jeremy Garver received safe and adequate care;
- b. That the McLeod Defendants would adequately staff the Hospital and Jeremy Garver would be served by adequately trained employees;
- c. That the McLeod Defendants would provide high quality professional care and would accurately and truthfully document the condition of Jeremy Garver and the care rendered to him; and
- d. Such other misrepresentations as are set forth more fully above in this Complaint or may be ascertained through further discovery or proven at trial.

74. At the time of Jeremy Garver's admission to care, the McLeod Defendants promoted and disseminated the above representations and information which would lead Jeremy Garver, his family, and other similarly situate consumers to believe the above representations were true.

75. The McLeod Defendants purposefully disseminated such representations and promotions in order to induce Jeremy Garver, his family and others like them into placement of themselves and/or of their relatives in the exclusive control and custody of the McLeod Defendants, and once there, allowing such persons to remain.
76. The McLeod Defendants fraudulently concealed their inability to care for Jeremy Garver according to acceptable standards required by law and represented by the McLeod Defendants, and the representations made were false.
77. The representations made and concealments done by the McLeod Defendants were material to Jeremy Garver and his family.
78. At the time the McLeod Defendants made such representations, they knew such affirmative claims of service were false.
79. Jeremy Garver and his family were unaware of the falsity of the representations made by the McLeod Defendants.
80. Jeremy Garver and his family had a right to rely on the representations and concealments made by the McLeod Defendants.
81. As a result of the McLeod Defendants' fraud, misrepresentations, and concealments, Jeremy Garver subsequently suffered damages and injuries while under the McLeod Defendants' care.
82. As a proximate cause of the McLeod Defendants' fraud and misrepresentation, Jeremy Garver suffered physical injuries, pain and suffering as previously alleged, and death.

SEVENTH CAUSE OF ACTION
(Vicarious Liability)

83. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.

84. The Defendants McLeod Loris Seacoast and McLeod Physician Associates, II, employed Defendant Michael McCaffrey and medical personnel, and either expressly or impliedly allowed them to provide medical care and treatment to their patients.
85. As the employers of Defendant Michael McCaffrey and other medical personnel, the McLeod Defendants are vicariously liable for all negligent actions or inactions taken by Defendant Michael McCaffrey and other medical personnel.
86. As the employer of Defendant Michael McCaffrey and other medical personnel, the McLeod Defendants are vicariously liable for Defendant Michael McCaffrey's and the medical staff's failure to exercise due care and failure to follow the accepted standard of care, all of which directly caused the injuries and damages to Plaintiff and/or Jeremy Garver as described herein.
87. Therefore, the McLeod Defendants and/or Defendants McLeod Loris Seacoast and McLeod Physician Associates, II, are vicariously liable for all damages caused by Defendant Michael McCaffrey, their medical staff, and employees.

EIGHTH CAUSE OF ACTION
(Nondelegable Duty)

88. Plaintiff repeats, realleges, and incorporates each of the foregoing paragraphs as if fully set forth herein.
89. The McLeod Defendants had a nondelegable duty to Jeremy Garver to provide competent medical treatment and services.
90. Plaintiff and/or Jeremy Gar entrusted the McLeod Defendants with the important duty to provide competent medical services. As such, these Defendants cannot contend that they are not liable for the acts or omission committed by employee(s) and/or their medical staff.

91. Because the McLeod Defendants had a nondelegable duty, the McLeod Defendants are liable for the acts of their employees and medical personnel.

92. Therefore, the McLeod Defendants had a nondelegable duty to Plaintiff and/or Jeremy Garver, which they breached said duty and are liable to Plaintiff for actual, consequential, and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, on behalf of the Estate and Decedent's statutory beneficiaries, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

Dated at Charleston, South Carolina

This 19 day of August, 2019.

Exhibit

2

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566

Soarian® Tracking Board Discharge Report - Discharge Instructions

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	[REDACTED]	Patient ID:	4002511642
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Visit Information

You were seen in the McLeod Seacoast Hospital Emergency Department.

Arrival Date/Time: 10/23/2017 at 7:14 pm

Your chief complaint was: LEFT ARM TINGLING DAZED

Your diagnosis is: intracranial mass, Headache

Discharge Instructions

Patient Education

PLEASE RETURN FOR WORSENING SYMPTOMS

PLEASE CALL NEUROLOGY OFFICE IN MORNING FOR FOLLOW UP MRI

CONSIDER CALLING MUSC FOR AN APPOINTMENT

Follow Up Care Instruction

Follow Up with Provider Follow Up 1).

Electronically signed by Eric J Larson, MD on 10/23/2017 21:55

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Discharge Instructions Page 1 of 1

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Printed By: Larson, Eric J MD
Printed On: 23-Oct-17 21:55

McLeod Seacoast Hospital_0035

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566
Phone: 843-390-8133

Discharge Medication List

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	[REDACTED]	Patient ID:	4002511642
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Your Discharge Medications

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Discharge Medication List Page 1 of 2

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Printed By: Larson, Eric J MD
Printed On: 23-Oct-17 21:55

McLeod Seacoast Hospital_0036

Medications Given to You in the ED

Medication: SODIUM CHLORIDE 0.9% (1000 ML bag) Intravenous @75mL/Hour Over 13.25H

You were given: SODIUM CHLORIDE 0.9% (SODIUM CHLORIDE 0.9%) 1000 ML on 10/23/2017 at 9:26 pm.

Medication: SODIUM CHLORIDE 0.9% FLUSH (NORMAL SALINE FLUSH) 10 ML = 10 ML Intravenous
ONE TIME for 1 Doses, Clinician Dir:USE TO FLUSH IV WHILE IN ER

You were given: 10 ML on 10/23/2017 at 9:26 pm.

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Discharge Medication List Page 2 of 2

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Printed By: Larson, Eric J MD
Printed On: 23-Oct-17 21:55

McLeod Seacoast Hospital_0037

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566

Soarian® Tracking Board Discharge Report - Signature Acknowledgement

Name:	JEREMY RAY GARVER	MRN:	1525019
DOB:	[REDACTED]	Patient ID:	4002511642
Age/Sex:	42Y/M	MPI:	1525019
Arrival Date/Time:	10/23/2017 19:14		
Provider:	Eric J Larson, MD		
Primary Care Physician:	No Family Physician		
PCP Phone Number:			

Acknowledgement and Receipt of Discharge Instructions

Discharge instructions have been reviewed with me. I have received and understand my discharge instructions.

We are pleased to have been able to provide you with care today. Please review these instructions when you return home in order to better understand your diagnosis and the necessary further treatment and precautions related to your condition.

In most cases, treatment in an Emergency Department is intended to be temporary in nature. In general, any additional treatment is to be given by your family doctor, or the physician to whom you have been referred upon discharge from the Emergency Department.

These instructions are temporary. If you have any questions or problems after leaving the Emergency Department, please notify your physician or the physician to whom you have been referred, or return to the Emergency Department if your condition worsens.

Reminder: If you have been referred to another physician for follow-up care, your treatment physician may expect payment at time of service. Please contact the physician's office prior to treatment to clarify payment options.

X-RAYS and LAB TESTS:

If you had x-rays today, they were read by the emergency physician. Your x-rays will also be read by a radiologist within 24 hours. If you had a culture done, it will take 24 to 72 hours to get the results. If there is a change in the x-ray diagnosis or a positive culture, we will contact you. Please verify your current phone number prior to discharge at the check out desk.

MEDICATIONS:

If you received a prescription for medication(s) today, it is important that when you fill this, you let the pharmacist know all the other medications that you are on and any allergies you might have. It is also important that you notify your follow-up physician of all your medications including the prescriptions you may receive today.

Signature of Nurse: _____ **Date/Time:** _____

Signature of Patient/Responsible Party: _____ **Date/Time:** _____
(Parent of guardian if patient is a minor)

Name: JEREMY RAY GARVER

MRN: 1525019

Patient ID: 4002511642

Signature Acknowledgement Page 1 of 2

McLeod Seacoast Hospital

4000 Hwy 9 East
Little River SC 29566

Soarian® Tracking Board Discharge Report - Signature Acknowledgement

Name:	JEREMY RAY GARVER	MRN:	1525019
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MEDICATIONS:

If you received a prescription for medication(s) today, it is important that when you fill this, you let the pharmacist know all the other medications that you are on and any allergies you might have. It is also important that you notify your follow-up physician of all your medications including the prescriptions you may receive today.

Signature of Nurse: _____ **Date/Time:** _____

Signature of Patient/Responsible Party: _____ **Date/Time:** _____
(Parent of guardian if patient is a minor)

Name:	JEREMY RAY GARVER	MRN:	1525019	Patient ID:	4002511642

Signature Acknowledgement Page 2 of 2

Exhibit

3

Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition

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1 make it to the six-month follow-up. So when was the
2 next time you heard or had anything to deal with
3 Jeremy Garver after that September 26th appointment?

4 A We got a call at the office on 10-24-17
5 that he had been to the emergency room the night
6 before with a change in neurological symptoms.
7 And they recommended that he get an MRI of the
8 brain.

9 Q Okay. So do you know who called you?

10 A It was his wife. And talked to my
11 assistant, Stephanie Zurat.

12 Q Okay. Do you know what emergency room he
13 went to? Was it McLeod?

14 A It was McLeod Seacoast.

15 Q And I'm from that area and I'm pretty sure
16 it's the same -- that's the same location of your
17 office, or no?

18 A The office at that time -- we might have
19 moved down to Carolina Forest. But we might have
20 still been up there. I think -- I'm trying to
21 remember. I think we had already moved down to
22 Carolina Forest.

23 Q Okay. I believe he was admitted the night
24 prior, late that night. Is there not a process
25 where McLeod contacts you and asks for a referral or

Janice D. Hayward, RMR
843.478.6756

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Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition

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1 is that up to the patients?

2 A I don't know what happened in that
3 situation. I'm on call ten days a month. That
4 just happened to be one of the days I wasn't on
5 call.

6 I guess it should have been
7 somebody calling me up on the phone as opposed to
8 the patient's wife.

9 Q Okay. But patient's wife calls and then
10 your assistant, looks like Stephanie, I think, it
11 says an MRI sent to Fantasia for prior authority.
12 Fantasia, that was one of your --

13 A Well, her name is Fantasia Gore now,
14 Fantasia Murphy.

15 Q All right. And so what's the process when
16 a patient's wife calls for a referral? Can you just
17 kind of flesh that out for me?

18 A Well, she called and said they diagnosed
19 him with a brain tumor.

20 Q All right.

21 A So that usually throws up what you call
22 a red flag. We need to get an MRI of the brain.

23 Q And then if you're on -- were you on --
24 you were not on call on October 24th, 2017, is that
25 correct?

Janice D. Hayward, RMR
843.478.6756

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Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition

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1 A No, I don't think I was on call either
2 one of those days. I don't think I was on call
3 until -- I usually do my call the beginning of
4 each month, so it wouldn't have been until the
5 beginning of November.

6 Q Okay. And so they're calling your office
7 for a referral. What do you -- what do you do at
8 that point or is this something your office can
9 handle without you?

10 A No, I talk to Fantasia and I say we're
11 coming to get his MRI done today or tomorrow, as
12 soon as possible.

13 Q Okay. So she called you and said, hey, we
14 need a referral, and then you said, let's get it
15 done as soon as possible?

16 A As soon as possible, yes, sir.

17 Q And then the referral, is this something
18 you email, fax, is it a phone call? How does that
19 work, or how did it work?

20 A Sometimes I can handwrite an order and
21 it's faxed straight over to whatever MRI facility
22 we can get this done at.

23 Q Okay. I think he was referred over to
24 InMed Diagnostic Services of South Carolina, is that
25 correct?

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Michael McCaffrey, MD - February 26, 2021
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1 A That's correct. That was the place
2 where we could get it done the fastest.

3 Q So -- and I think the wife called on
4 October 24th. Was a referral sent over there on
5 October 24th as well?

6 A Yes, sir.

7 Q Okay. And then once it gets into their
8 hands, is it up to them to schedule it?

9 A Fantasia tries to stay on the phone with
10 them to see when it's going to get done if that's
11 possible.

12 Q And correct me if I'm wrong, but I believe
13 the MRI was conducted on October 26th, 2017?

14 A That's correct.

15 Q Okay. I guess after that point it's kind
16 of out of your hands, so to speak. Did you have any
17 involvement after this point?

18 A Well, I asked Stephanie or one of my
19 other assistants to call Mrs. Garver to make sure.
20 I would have gotten on the phone and called MUSC
21 to get him down there but I was told he already
22 had an appointment there. It was done by the
23 teleneurology doctor the night he went to the ER.

24 Q That was that Reach consult, right?

25 A That's correct.

Janice D. Hayward, RMR
843.478.6756

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**Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition**

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1 Q Is that Dr. Andrews?

2 A I think that's the name. I don't
3 know -- I don't know any of the -- most of the
4 teleneurology guys I don't know.

5 Q And so why MUSC? Why are we reaching out
6 to MUSC and not any other hospital?

7 A The level of care. Especially with a
8 large aneurysm, you want the best level of care
9 possible.

10 MR. FEIDLER: I have a lot of
11 background noise. Can you still hear me
12 clear? We're good, Kevin?

13 THE VIDEOGRAPHER: Videographer is
14 good, yes.

15 BY MR. FEIDLER:

16 Q And so did you actually speak to anybody
17 from MUSC?

18 A No, I did not.

19 Q Okay. And so after your referral, when
20 was the last time you had any -- or you or anyone in
21 your office had any type of contact with the
22 Garvers, do you know?

23 A I don't remember.

24 Q And when did you learn, if you recall,
25 when Mr. Garver passed away?

**Janice D. Hayward, RMR
843.478.6756**

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Michael McCaffrey, MD - February 26, 2021
Zoom Video Deposition

66

1 A I don't recall.

2 Q Okay. Was it prior to the lawsuit being
3 filed?

4 A I think it was prior to the lawsuit
5 being filed.

6 Q I would assume you probably had a
7 follow-up and maybe he didn't make it to that
8 follow-up, and I'm just -- I'm just guessing maybe
9 that's how --

10 A One of my assistants had told me that
11 they had heard that he passed away.

12 Q Okay. And did she tell you why or you
13 don't recall?

14 A Well, we knew he had the aneurysm. It's
15 just in the process of being treated, he died.

16 Q All right. Did you say -- do you recall
17 that referral would have been faxed over or scanned
18 or you don't really know?

19 A I don't really know. I mean, I know
20 that if Fantasia wants me to fill something out or
21 order it in the computer system, a lot of times it
22 can be ordered in the computer system by one of my
23 assistants under the patient's chart.

24 Q Okay. Did you by chance read our expert's
25 affidavit?

Janice D. Hayward, RMR
843.478.6756

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Exhibit

4

EXHIBIT

3

Claudine Garver (Cross) Examination by Saunders Bridges

Claudine Garver
Garver, Claudine Vs. Mcleod Loris Seacoast Hospital, Et Al

September 18, 2020

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1 So they instructed us to go home the
2 next day and for me to get on the phone, which I
3 did the minute his office is open.

4 Q. All right. So I want to make sure
5 I understand what you're saying.

6 You're saying that at the hospital,
7 they told you both to get a referral for an MRI and
8 to call and make an appointment at MUSC?

9 A. Yes.

10 Q. Okay.

11 A. They knew it was bad -- I'm sorry.
12 They knew it was bad. It was big.
13 They -- whatever it was, it was a big mass. So
14 whether it was a tumor or aneurysm, it was going to
15 be a challenge either way.

16 Q. So you called Dr. McCaffrey's office
17 the next morning, correct?

18 A. Uh-huh, first thing.

19 Q. Do you know who you spoke with?

20 A. Not him. I don't -- I don't -- I don't
21 know who I spoke with. I spoke with someone,
22 explained it. It was whoever answered the phone.
23 I explained what I needed. They said they'd get
24 back to me. They got back to me, and I had an
25 appointment at the Open MRI for that Thursday.

Claudine Garver (Cross) Examination by Saunders Bridges

Claudine Garver
Garver, Claudine Vs. Mcleod Loris Seacoast Hospital, Et Al

September 18, 2020

Page 60

1 Q. All right. So I'm just trying to
2 clarify the sequence here.

3 A. Uh-huh.

4 Q. You called Dr. McCaffrey's office.
5 They said they would get back to you with the
6 appointment. And they did that, correct?

7 A. The referral, they got back to me with
8 the referral. They didn't get to me with an
9 appointment. I believe -- I don't believe so. I
10 think -- I mean, I'm pretty sure I made the
11 appointment.

12 Q. Okay. So they --

13 A. I could be wrong, but I think -- I
14 could be wrong, but I think I made that appointment
15 because I was sitting at my dining room table with
16 all the information from the hospital that they
17 gave us.

18 Q. Okay. And do you know -- did you
19 call -- let me start over.

20 Do you know when you called the
21 MRI place?

22 A. Immediately as I had the referral. I
23 don't -- as soon as I had it. We weren't wasting
24 time. We weren't sitting around figuring -- trying
25 to buy time. We were scared shitless. So we were

Claudine Garver (Cross) Examination by Darren Sanders

Claudine Garver
Garver, Claudine Vs. McLeod Loris Seacoast Hospital, Et Al

September 18, 2020

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1 sued in a case like this. And other times, I've
2 found over the years that there's specific reasons
3 that the plaintiff makes a choice of who they want
4 to sue and who they don't want to sue.

5 Are you aware that the employer for
6 Dr. McCaffrey was an entity called McLeod Physician
7 Associates, roman numeral II; or did you not know
8 one way or the other?

9 A. I knew it was McLeod and Seacoast.
10 But, no, I don't know anything about number two or
11 associates. I do not.

12 I know that he was involved with
13 Seacoast, then that was that. And, you know, when
14 he went to various -- he kept moving locations,
15 so -- you know, he had a Loris office -- he had a
16 Little River office, then he had a Carolina Forest
17 office. And, you know, we went to various
18 different offices for McCaffrey. He never seemed
19 to stay at the same building, so...

20 Q. All right.

21 A. So I don't know. I know he worked for
22 McLeod Seacoast, but...

23 Q. Okay. You have expressed to us
24 whenever Mr. Bridges was asking you questions the
25 concerns that you have about Dr. McCaffrey's care

1 at the time. And I'm not going to get back into
2 that. That's already been asked and answered as
3 far as I'm concerned.

4 I'm going to ask you a very direct
5 question about the hospital, McLeod Seacoast
6 Hospital, and the involvement that your husband had
7 there in the ER on October 23rd and then,
8 unfortunately, when he came back on November 3rd.

9 Do you have specific complaints and
10 criticisms about the way the ER staff dealt with
11 you and your family on either of those two visits?

12 A. No. But I find it interesting that the
13 doctor on record was McCaffrey and they never
14 contacted him and he was never part of conversation
15 until I had to get the MRI. And I'm not sure why
16 that is, other than we kept saying that was his
17 doctor. And maybe they knew he missed it. I don't
18 know. I find it interesting that -- we said that
19 he had been under the care of Dr. McCaffrey, and he
20 was nowhere to be found, other than for us to make
21 a referral for an MRI. So I find that interesting.

22 I don't -- that's, I guess, what I
23 have to say about that. That's like -- I
24 mean -- so -- because I would have thought that if
25 they found something neurologically wrong with him

Claudine Garver (Cross) Examination by Darren Sanders

Claudine Garver
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1 immediately at the ER of which his doctor was
2 associated with, I would have thought that he would
3 have been involved a little bit. I shouldn't
4 even had to call him. He could have called us,
5 like -- you know, that's -- I have had with
6 doctors. Like doctors check on you. Doctors check
7 on me, you know. They -- if they feel like
8 something -- they check on Julian. If he's sick,
9 they -- if they really feel concerned, they take
10 the time and check in. And I find it interesting.

11 So I don't -- that's more of my term.
12 I find it interesting that the hospital didn't even
13 include him at all when that was -- he was
14 associated with the hospital, that they went right
15 over his head.

16 Q. All right. And just to make sure
17 that --

18 A. It's almost maybe -- maybe they didn't
19 feel -- sorry. Maybe they didn't feel he could
20 actually handle it. Maybe they already felt like
21 he messed up. Maybe they knew that he -- you know,
22 maybe they already knew that it was above what
23 he -- at this point, it was too late, that there
24 was a nothing else he could do at this point
25 because he had already missed it and they needed

Claudine Garver (Cross) Examination by Darren Sanders

Claudine Garver
Garver, Claudine Vs. Mcleod Loris Seacoast Hospital, Et Al

September 18, 2020

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21 MRI place?

22 A. Immediately as I had the referral. I
23 don't -- as soon as I had it. We weren't wasting
24 time. We weren't sitting around figuring -- trying
25 to buy time. We were scared shitless. So we were

Exhibit

5

continued from previous page

ED Course

Clinical Status

10/23/2017 21:52, Stable, pt looks well in er. nonfocal but with the complaints of left sided symptoms, reach called. ct with mass. discussion with pt and family about need for follow up. report of ct given to family. follow up with neurology stressed.

Collected On: 10/23/2017 20:33

MDM and Diagnosis

Medical Decision Making

10/23/2017 21:53.

Final Diagnostic Impression

intracranial mass, Headache.

Diagnosis and Management Option

New Problem (to Examining Provider), Additional Workup Planned.

Collected On: 10/23/2017 20:33

Disposition

Discharge Decision Time 10/23/2017 21:54, Condition Stable, Location Home.

Collected On: 10/23/2017 20:33

Supervisory Note

Supervision of Documentation Written by Clinical Care Provider

Supervision Provided To Documentation assistance provided by scribe. Information recorded by the scribe was done at my direction and has been reviewed and validated by me.

Collected On: 10/23/2017 20:33

Documented for Eric J Larson, MD by Allison Page, Scribe on 10/23/2017 21:41

Electronically signed by Eric J Larson, MD on 10/23/2017 21:54

Pt Name: JEREMY RAY GARVER

MRN: [REDACTED]

Patient ID: [REDACTED]

Chart Report - Physician Notes Page 7 of 7

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Printed By: Larson, Eric J MD
Printed On: 23-Oct-17 23:06

McLeod Seacoast Hospital_0058

Exhibit

6

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-17-040626

DECEDENT'S NAME: *JEREMY RAY GARVER*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: [REDACTED]

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: GRAND STRAND REGIONAL MEDICAL CENTER, MYRTLE BEACH, SC 29572

PLACE OF DISPOSITION: LEE FUNERAL HOME AND CREMATORY

SEX: MALE

SOCIAL SECURITY NUMBER: [REDACTED]

AGE: [REDACTED]

COUNTY OF DEATH: HORRY

FUNERAL DIRECTOR: ALLEN E. LEE

EMBALMER'S NAME: NA

ACTUAL OR PRESUMED DATE OF DEATH : NOVEMBER 04, 2017

ACTUAL OR PRESUMED TIME OF DEATH: 1027

CAUSE OF DEATH - PART I

SUBARACHNOID HEMORRHAGE

RUPTURED CEREBRAL ANEURYSM

LICENSE NUMBER: 1595

LICENSE NUMBER: NA

MANNER OF DEATH : NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? NO

DATE OF INJURY: NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

AUTOPSY PERFORMED? NO

TIME OF INJURY: NA

AUTOPSY AVAILABLE? NA

INJURY AT WORK? NA

CERTIFIER NAME AND TITLE: MD GREGORY L. BECKER

LICENSE NUMBER: 35982

CERTIFIER'S ADDRESS: 906 MEDICAL CIRCLE, MYRTLE BEACH, SC, 29572

DATE FILED: NOVEMBER 06, 2017

DATE OF ISSUANCE: NOVEMBER 06, 2017

SPECIAL INSTRUCTIONS :

NA

SC06327435

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

ELECTRONICALLY FILED - 2023 Feb 23 12:10 PM - HORRY - COMMON PLEAS - CASE#2019CP2605302

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CLAUDINE GARVER Both Individually and as
Personal Representative for the ESTATE OF
JEREMY GARVER,

Plaintiff,)

vs.)

MEDICAL UNIVERSITY OF SOUTH
CAROLINA d/b/a MUSC,

Defendant(s).)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-NI-10-0084

(Please Print)

Submitted By: Stefan B. Feidler; Eric M. Poulin;
Roy T. Willey, IV.

Address: 32 Ann Street, Charleston, SC 29403

SC Bar #: 101918; 100209; 101010

Telephone #: (843)614-8888

Fax #: (843)853-2291

Other:

E-mail: stefan@akimlawfirm.com;
eric@akimlawfirm.com; and
roy@akimlawfirm.com.

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☒ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20__-CP-____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☒ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture—Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
Special/Complex /Other			☐ Public Service Commission (990)
☐ Environmental (600)	☐ Pharmaceuticals (630)		☐ Employment Security Comm (991)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		☐ Other (999)
☐ Medical (620)	☐ Out-of State Depositions (650)		
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
	☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: 10/4/2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a “Proof of ADR” form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the “Notice of Intent to File Suit” or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute;
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions**

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CLAUDINE GARVER Both Individually
and as Personal Representative for the
ESTATE OF JEREMY GARVER,

Plaintiff,

v.

MEDICAL UNIVERSITY OF SOUTH
CAROLINA d/b/a MUSC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: ~~2019-CP-10-05302~~

2014-NI-10-0084

**NOTICE OF INTENT TO FILE SUIT IN A
PROFESSIONAL MALPRACTICE CASE
(S.C. Code Ann. 15-79-125)**

FILED
2019 OCT -4 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Pursuant to S.C. Code Ann § 15-79-125, the Plaintiff above-named hereby files this Notice of Intent to File Suit. Set forth below is Plaintiff's Short and Plain Statement of Facts showing that s/he is entitled to relief. Attached as Exhibit A and incorporated herein by reference are Plaintiff's Answers to Standard Interrogatories as set forth in Rule 33, SCRPC.

Because of time constraints, and in accordance with S.C. Code Ann § 15-36-100(c)(1), which states "the contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, a plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with an affidavit," the Plaintiff above-named will file the requisite affidavit within forty-five days of this filing.

SHORT AND PLAIN STATEMENT OF THE FACTS

1. The Plaintiff, Claudine Garver as Personal Representative of the Estate of Jeremy Garver, is a resident and citizen of Horry County, State of South Carolina.

2. Upon information and belief, Defendant, Medical University of South Carolina d/b/a MUSC Medical Center (hereinafter “Defendant”) is a governmental entity, organized, and doing business in the County of Charleston, State of South Carolina, and as such is covered under the South Carolina Tort Claims Act.
3. Upon information and belief, Defendant’s medical staff, including but not limited to physician(s), emergency room staff, and general clinical/medical staff were citizens and resident of the County of Charleston, State of South Carolina and at all times mentioned herein involved in the care and/or treatment of Plaintiff’s decedent Jeremy Garver (hereinafter “Jeremy Garver”).
4. At all times herein mentioned, Defendant acted by and through its servants, agents, and/or employees, including, but not limited to, nurses, physicians, residents, orderlies, technicians, pharmacists, and/or other employees and healthcare professionals, all of whom were acting within the scope of their employment at MUSC.
5. Venue is proper in this Court because the Defendant has its principal place of business in Charleston County, State of South Carolina, and the acts and/or omissions giving rise to this cause of action occurred in Charleston County.
6. That in late October 2017, Jeremy Garver was referred to Defendant with chief complaints of weakness on left side since 3pm, history of migraines with headaches, left sided paresthesia, and gait instability.
7. That a CT scan / MRI revealed a giant fusiform aneurysm arising from the mid basilar segment between the AICAs and the SCAs. The aneurysm measured 27 mm x 23 mm.
8. That on or about November 1, 2017, Defendant scheduled Jeremy Garver to return on November 8, 2017, for an outpatient procedure.

9. That upon information and belief, on November 1, 2017, Jeremy Garver was discharged from Defendant's facility, but immediately returned to Defendant's ER with complaints of nausea and/or severe headache/pain.
10. That upon information and belief, Defendant advised Jeremy Garver that his nausea and/or severe headache/pain was due to medications related to the CT scan / MRI and denied Jeremy Garver re-admission into Defendant's facility.
11. That on or about November 3, 2017, Jeremy Garver suffered a subarachnoid hemorrhage and/or ruptured cerebral aneurysm, and on or about November 4, 2017 at 10:27am Jeremy Garver was determined dead.
12. That as a direct and proximate cause of the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendant and its employees and/or agents in failing to possess and exercise the ordinary degree and skill, competency, and medical training ordinarily and customarily possessed and exercised by similarly situated healthcare providers under similar circumstances, and thereby deviating from the applicable standard of care, Plaintiff and/or Jeremy Garver suffered real and lasting injur(ies) including death. Plaintiff and/or the Estate of Jeremy Garver has incurred substantial medical expenses, funeral expenses, experienced pain and suffering, mental anguish, and loss of enjoyment of life.
13. That there may be additional bases for these deviations which will further be addressed by expert witness(es) and as discovery progresses. Therefore, Plaintiff reserves the right to supplement these deviations as deemed necessary.

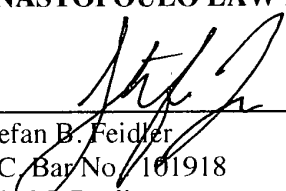
[SIGNATURE BLOCK ON FOLLOWING PAGE]

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 4
DAY OF October, 2019

C. Harun

10/4, 2019
Charleston, South Carolina

ANASTOPOULO LAW FIRM, LLC



Stefan B. Feidler
S.C. Bar No. 101918
Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
32 Ann Street
Charleston, SC 29403
(843) 614-8888
(843) 494-5536 fax

Attorneys for the Plaintiff

Exhibit

A

AFFIDAVIT OF MERIT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN RE: JEREMY GARVER)
 _____)

I, BRIAN HOLMES, M.D., FACS who being duly sworn deposes and states:

1. That I am over the age of 18 years old and I am qualified and competent to issue this Affidavit.
2. That I qualify as an "expert" as defined by S.C. Code Ann. Section 15-36-100. This is more fully set forth in my C/V.
3. I have practiced in the areas of healthcare applicable to this case, and I am familiar with the standard of care applicable in this case. I am familiar with the standard of care for neurosurgeons that currently relates to issues of care and treatment for patients such as Jeremy Garver. I am familiar with the standard of care applicable in this case by virtue of my training, education, experience, expertise, and can fairly evaluate the quality of care that was provided to Jeremy Garver.
4. This affidavit is made pursuant to S.C. Code Ann. 15-36-100, which requires that this Affidavit specify at least one negligent act or omission claimed to exist and the factual basis for said claim(s) based upon evidence available at the time of the filing of this Affidavit.
5. I have reviewed various medical records, images, and an affidavit pertaining to Jeremy Garver, including those of the Medical University of South Carolina "MUSC").
6. The records indicate the following, among other particulars:
 - On November 1, 2017, Mr. Garver, accompanied by his wife Claudine Garver, appeared at the MUSC for an angiogram scheduled for 10am that day. Jeremy's procedure was delayed.
 - A neurosurgeon at MUSC advised Mr. Garver and scheduled an outpatient procedure for November 8, 2017.
 - After Mr. and Mrs. Garver left the appointment at MUSC, Mr. Garver began to vomit. Per Mrs. Garver, Mr. Garver also complained of a headache, nausea, left sided weakness, and numbness.

- The couple immediately returned to MUSC. Mrs. Garver spoke to MUSC personnel and expressed Mr. Garver's symptoms.
 - MUSC personnel instructed the couple that Mrs. Garver was dehydrated. MUSC personnel then accompanied Mrs. Garver to the couple's car where Mr. Garver was waiting. MUSC personnel gave Mr. Garver a ginger ale and saltines, then instructed the family to go home.
 - On November 2, 2017, Mr. Garver received a call from MUSC personnel. Mrs. Garver reiterated Mr. Garver's continued complaints and symptoms, since leaving MUSC the previous day.
 - In the early morning of November 3, 2017, Mr. Garver was admitted to the emergency department. Mrs. Garver was later notified that Mr. Garver passed away due to a ruptured cerebral aneurysm. Mr. Garver's death certificate states the cause of death as Subarachnoid Hemorrhage, Ruptured Cerebral Aneurysm.
7. It is my opinion to a reasonable degree of medical certainty that the care and treatment rendered by MUSC, fell below the accepted standard of care for similar medical providers for the following reasons:
- Mr. Garver had undergone a catheter cerebral angiogram, which is an invasive diagnostic procedure. This procedure is associated with risks including but not limited to embolic events leading to neurological deficits, perforation or injury to a blood vessel leading to intracranial hemorrhage, renal injury secondary to iodinated contrast administration and/or dehydration. When Mr. Garver returned to the treating facility reporting symptoms strongly supportive of a complication of the catheter angiogram procedure, it was incumbent upon MUSC medical staff to arrange for a full evaluation of Mr. Garver when he or Mrs. Garver reported such symptoms. It was inappropriate for MUSC staff to assume that Mr. Garver's symptoms should be explained away by dehydration without a full medical evaluation. The staff of MUSC fell below the accepted standard of care when they did not arrange for the immediate medical evaluation of Mr. Garver.
 - The cerebral angiogram identified an unruptured cerebral aneurysm. The risk of aneurysmal subarachnoid hemorrhage is statistically low in an asymptomatic individual. As such, prior to his discharge from the facility, arrangement of outpatient evaluation for Mr. Garver the following week was appropriate. However, once an individual such as Mr. Garver is diagnosed with a cerebral aneurysm and then develops neurological symptoms consistent with aneurysm expansion or rupture, emergency neurological evaluation is required. The staff of MUSC fell below the accepted standard of care when they did not respond to Mr. and Mrs. Garver's report of neurological symptoms by arranging a medical evaluation. Instead, MUSC staff assumed that Mr. Garver's symptoms were of no importance and he was sent home after a sip of Ginger Ale and some crackers. Had Mr.

Garver's neurological symptoms been appropriately acknowledged, a full medical evaluation would have identified, more likely than not, that his symptoms were related to his cerebral aneurysm. More likely than not, definitive treatment of the aneurysm would then have been performed on an emergent basis, decreasing the likelihood of the catastrophic aneurysm rupture which caused Mr. Garver's death.

8. It is my opinion that these violations of the standard of care proximately caused Jeremy Garver's injuries.
9. That factual basis for my opinions, expressed herein, is based upon the records provided to me at the time of the filing of this Affidavit. I reserve the right to amend or supplement these opinions as discovery is ongoing and upon receipt of additional information, if any.

Brian Holmes MD

Brian Holmes, M.D., FACS

State of Maryland, County of Washington

The foregoing instrument was acknowledged before me

This 13 day of November, 2019

[Signature]
Notary of Public

My Commission Expires: January 2021

RECEIVED

Apr 07 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal from Horry County
Court of Common Pleas
William H. Seals, Jr. , Circuit Court Judge

Case No. 2019-CP-26-05302

McLeod Loris Seacoast Hospital,

Respondent,

v.

Claudine Garver, Both Individually and
as Personal Representative of the Estate
of Jeremy Garver,

Appellant.

NOTICE OF APPEAL

Claudine Garver, Both Individually and as Personal Representative of the Estate of
Jeremy Garver appeals the Order(s)-Judgment(s) of the Honorable William H. Seals, Sr.,
dated March 9, 2023. Appellant received written notice of entry of this Order-Judgment on
March 9, 2023.

[Signature Block on the Following Page]

April 7, 2023
Charleston, South Carolina

FEIDLER LAW FIRM, LLC

Stefan B. Feidler

Stefan B. Feidler, Esquire
stefan@feidlerlawfirm.com
S.C. Bar No. 101918
P.O. Box 22273
Charleston, SC 29413
Phone: (843) 790-9015

***Attorney for the Appellant Claudine Garver,
Both Individually and as Personal
Representative of the Estate of Jeremy Garver***

Other Counsel of Record:

Hugh W. Buyck, Esquire
hwb@buyckfirm.com
S.C. Bar No. 66462
305 Wingo Way
Mt. Pleasant, SC 29465
Phone: (843) 377-1400

***Attorney for Respondent
McLeod Loris Seacoast Hospital***

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Apr 07 2023

SC Court of Appeals

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal from Horry County
Court of Common Pleas
William H. Seals, Jr. , Circuit Court Judge

Case No. 2019-CP-26-05302

McLeod Loris Seacoast Hospital,

Respondent,

v.

Claudine Garver, Both Individually and
as Personal Representative of the Estate
of Jeremy Garver,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and Transcript Request Form on McLeod Loris Seacoast Hospital by electronic mail and U.S. mail on April 7, 2023, addressed to Respondent's attorney of record, Hugh W. Buyck at 305 Wingo Way, Mt. Pleasant, SC 29465, hwb@buyckfirm.com.

[Signature Block on Following Page]

April 7, 2023
Charleston, South Carolina

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stefan@feidlerlawfirm.com
S.C. Bar No. 101918
P.O. Box 22273
Charleston, SC 29413
Phone: (843) 790-9015

***Attorney for the Appellant Claudine Garver,
Both Individually and as Personal
Representative of the Estate of Jeremy Garver***

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 5, 2023
Charleston, SC

RECEIVED

Oct 05 2023

SC Court of Appeals

/s/ Stefan B. Feidler

Stefan B. Feidler, Esquire
stefan@feidlerlawfirm.com
S.C. Bar No. 101918
P.O. Box 22273
Charleston, SC 29413
Phone: (843) 790-9015

*Attorney for the Claudine Garver, Both
Individually and as Personal Representative
of the Estate of Jeremy Garver, Appellant*