

1 nine hundred and fifty-two - well, scratch that. I've got
2 the wrong page there. Do you have that total for -- yeah.
3 You can do the math. It would be, yeah, somewhere around
4 nine hundred and fifty. Six hundred and seventy-three plus
5 two sixty. It would be somewhere around nine hundred and
6 fifty thousand dollars.

7 This is what you can do. This is what I think you
8 should do is put a per day value on this, for the living
9 with the physical, the pain, the issues that's going to
10 effect him, the loss of enjoyment of life. When he grips a
11 baseball bat and grabs a rake, and shakes the hand, and
12 takes a picture, this is what you get. It's only the value
13 it is to put something -- there's some value per day. I
14 don't know if it's twenty-five dollars; I don't know if it's
15 fifty dollars. Mama's easy, simple. Her cost associated
16 with this. That's her's is. But R.J., it's a separate
17 line. It's a line that's designed to go to this court, to
18 handle appropriately for both this -- for all of. This,
19 scraping that dead tissue off and wearing this for the rest
20 of his life. I appreciate you. Thank you. You've been a
21 wonderful jury. Thank you

22 THE COURT: Thank you, Mr. Williams.

23 COURT'S CHARGE

24 All right. Ladies and gentlemen, you've now heard the
25 arguments of the attorneys. It is now my turn to charge you

1 on the law of this case.

2 The plaintiff, as Guardian ad litem and parent of
3 [REDACTED], claims that her child has been
4 injured by the actions of the defendant, Regional Medical
5 Center. In bringing the lawsuit plaintiff claims that the
6 defendant should compensate her for her minor child's
7 injuries.

8 You and I have certain duties to perform. As the trial
9 judge, it is my responsibility to preside over the trial of
10 this case and to rule on the admissibility of the evidence
11 offered during the trial. You are to consider only the
12 evidence before you. The testimony that has been presented
13 from the witness stand and any exhibits, which have been
14 made a part of the record. I have the duty to charge you on
15 the law that is applicable in this case. It is your duty as
16 jurors to accept and apply this law as I state it to you.
17 If you think you have any idea of what the law is or what
18 the law ought to be and it does not agree with what I tell
19 you the law is, you must forget your ideas because you are
20 sworn to accept the law and apply the law exactly as I state
21 it to you. In every case the jury is the sole and exclusive
22 judge of the facts. A trial Judge cannot comment on or make
23 any statement about the facts in a case. Since you're the
24 sole judges of the facts, do not think by anything I've said
25 during the trial that I have an opinion about the facts.

1 The law does not allow me to have an opinion about the
2 facts.

3 The burden of proof in this case is by a preponderance
4 of evidence. A preponderance of evidence simply means the
5 greater weight of the evidence. It is evidence, which, as a
6 whole, shows that the fact sought to be proved is more
7 likely true than not true. This can be illustrated by
8 imagining a set of scales. That's what we talked about
9 yesterday. Y'all will probably remember. When the case
10 begins, the scales are even. After all of the evidence has
11 been presented, if the scales remain even or if they tip
12 even slightly in favor of the defendant, then the plaintiff
13 has failed to meet her burden of proof and would not be
14 entitled to recovery in this case. On the other hand, if
15 the scales tip even slightly in favor of the plaintiff, the
16 plaintiff will have met her burden of proof and you should
17 return a verdict for the plaintiff.

18 The preponderance of evidence is not determined by the
19 number of witnesses. Instead, it is determined by the
20 greater weight of all the evidence. There are two types of
21 evidence generally presented during a trial, direct evidence
22 and circumstantial evidence. Direct evidence is the
23 testimony of a person who claims to have actual knowledge of
24 a fact, such as an eyewitness. It is evidence which
25 immediately establishes the main fact to be proved.

1 Circumstantial evidence is proof of a chain of facts and
2 circumstances indicating the existence of a fact. It is
3 evidence which immediately establishes collateral facts from
4 which the main fact may be inferred. Circumstantial
5 evidence is based on inference and not on personal knowledge
6 or observation. It is proof that does not actually
7 establish the fact in question but that asserts or describes
8 something else from which you may either reasonably infer
9 the truth of the fact or at least reasonably infer an
10 increase in the probability that the fact is true. For
11 circumstantial evidence to be sufficient to warrant the
12 finding of a fact, the circumstances must lead to that fact
13 with reasonable certainty. The facts and circumstances
14 should be considered in light of ordinary experience and
15 common sense. The existence of a fact cannot be based on
16 speculation, surmise or conjecture. The law makes
17 absolutely no distinction between the weight or value to be
18 given to direct or circumstantial evidence, nor is a greater
19 degree of certainty required of circumstantial evidence than
20 of direct evidence.

21 Necessarily, you must determine the credibility of the
22 witnesses who have testified. Credibility simply means,
23 believability. It is your duty as jurors to evaluate the
24 evidence and determine which evidence convinces you it is
25 true. In determining the believability of witnesses who

1 have testified, you may believe one witness over several
2 witnesses or several witnesses over one witness. You may
3 believe a part of the testimony of a witness and reject the
4 remaining part of the testimony of the same witness. You
5 may believe the testimony of a witness in its entirety or
6 reject the testimony of a witness in its entirety. You may
7 consider whether the witness has an interest in the result
8 of the trial, whether the witness is prejudiced toward
9 either the plaintiff or the defendant. The opportunity for
10 the witness to have seen the matters and things about which
11 the witness may testify, and the way the witness acts on the
12 witness stand.

13 The rules of evidence ordinarily do not permit
14 witnesses to testify to opinions or conclusions. An
15 exception to this rule exists for witnesses we call experts.
16 A witness who by education and experience has become expert
17 in some art, science or profession, may give an opinion as
18 to the subject the witness claims to be an expert in and may
19 also give the reasons for that opinion. You should consider
20 any expert opinion like any other evidence and give it the
21 weight you think it deserves. If you decide that an expert
22 witness's opinion is not based on sufficient education or
23 experience or if you decide that the reasons given in
24 support of the opinion are not sound, or that the opinion is
25 outweighed by other evidence, you may disregard the opinion

1 entirely. An expert witness's testimony is to be given no
2 greater weight than that of other witnesses simply because
3 the witness is an expert. You do not have to accept an
4 expert's opinion even though it is uncontradicted. The
5 testimony of experts is to aid and assist you as jurors, not
6 to dominate or control you in a decision of questions of
7 facts. Their opinions and deductions from the evidence
8 before you and their judgments and opinions do not preclude
9 yours. You are required to decide disputed questions after
10 comparison and consideration of all the evidence in this
11 case. If the opinions of medical experts are relied on to
12 establish proximate cause, the experts must state with
13 reasonably certainty that in his or her opinion,
14 professional opinion, the plaintiff's injuries most probably
15 resulted from the negligence of the defendant. It is not
16 necessary that the expert use the words most probably. It
17 is enough for the expert to state that it is the expert's
18 professional opinion that the defendant's negligence was
19 most likely among the possible causes of the plaintiff's
20 injuries. In this case there's been a conflict in the
21 testimony of expert witnesses. To that end, you must weigh
22 one expert's opinion against that of the other and you must
23 consider the reasons given by one as compared with those of
24 the other. You should consider the relative credibility and
25 knowledge of the experts who have testified. Thereupon, you

1 should find in favor of that expert testimony, which, in
2 your opinion, is entitled to the greater weight.

3 The plaintiff claims that the Defendant committed
4 medical malpractice. Medical malpractice is a form of
5 carelessness or negligence. In order to recover, the
6 plaintiff must prove by a preponderance of evidence the
7 standard of care, the breach of that standard of care,
8 proximate cause and damages. The plaintiff must prove the
9 standard of care the defendant owed in treating the
10 plaintiff. When a nurse treats a plaintiff, the law does
11 not require perfection or infallibility. The law does
12 require that the nurse use that degree of knowledge, care
13 and skill ordinarily possessed and used by nurses in good
14 standing in the nurse's field of medicine under the same or
15 similar circumstances and that the nurse followed the
16 generally accepted practices and procedures in the
17 profession. A nurse is not an insurer of health and is not
18 required to guarantee results. A nurse undertakes only to
19 meet the standard of skill possessed generally by others
20 practicing in the field of nursing under the same or similar
21 circumstances.

22 The plaintiff must prove that the defendant negligently
23 departed from the standard of care in treating the
24 plaintiff. Negligence is the failure to do what an ordinary
25 careful nurse in the nurse's field of medicine would have

1 done under the same or similar circumstances or the doing of
2 something that an ordinarily careful nurse would not have
3 done under the same or similar circumstances. The mere fact
4 that a treatment does not benefit the patient or that it
5 even harms the patient is not in and of itself negligence.
6 A bad result, injury, death or failure to cure is not enough
7 alone to show that the defendant was negligent.

8 In considering whether the defendant made a reasonable
9 decision, you must consider the decision in relation to the
10 facts as they existed at the time, not in light of what
11 hindsight may reveal.

12 The defendant in this case is a governmental entity as
13 defined by State law. Therefore, they come under a special
14 class of laws governing their liability called the torts
15 claims act. The defendant cannot be held liable for any
16 responsibility or duty, including but not limited to
17 supervision, protection, control, confinement, or custody of
18 any of their patients or clients, except when the
19 responsibility or duty is exercised in a grossly negligent
20 manner. Gross negligence is the intentional, conscious
21 failure to do something which is incumbent upon one to do,
22 or the doing of a thing intentionally that one ought not do.
23 Negligence is the failure to exercise due care while gross
24 negligence is the failure to exercise slight care.

25 To prove gross negligence the plaintiff must first

1 prove that the defendant owed a duty of care to the
2 plaintiff, that they breached that duty by a negligent act
3 or omission and that the breach was a proximate cause of
4 damage to the plaintiff. Each of those elements must be
5 proven by the plaintiff. To state a cause of action against
6 the defendant, the law requires that the defendant was
7 grossly negligent and that the gross negligence of the
8 defendant was a proximate cause of [REDACTED],
9 Jr.'s damages. The defendant's negligence must have
10 proximately caused the plaintiff's injuries. Proximate
11 cause is something that produces a natural chain of events,
12 which in the end, brings about the injury. It is the direct
13 cause of the injury.

14 To prove that the defendant's negligence proximately
15 caused the plaintiff's injury, the plaintiff must first
16 prove causation in fact. This is proven by showing that the
17 injury would not have occurred but for the defendant's
18 negligence. The plaintiff must also prove legal cause.
19 Legal cause is proven by showing that the injury was
20 foreseeable. This means that the injury occurred as a
21 natural and probable consequence of the defendant's
22 negligence. The plaintiff must prove that some injury from
23 the defendant's negligence was foreseeable, but does not
24 have to prove that the particular injury that occurred was
25 foreseeable. However, the defendant cannot be held

1 responsible for things which could not be expected to
2 happen. Proximate cause does not mean the only cause. The
3 defendant's act can be a proximate cause of the plaintiff's
4 injury if it was at least one of the direct concurring
5 causes of that injury. The plaintiff must also prove legal
6 cause. Legal cause is proven by showing that the injury was
7 foreseeable. This means that the injury occurred as a
8 natural and probable consequence of the defendant's
9 negligence. The plaintiff must prove that some injury from
10 the defendant's negligence was foreseeable but does not have
11 to prove that the particular injury that occurred was
12 foreseeable. However, the defendant cannot be held
13 responsible for things which could not be expected to
14 happen.

15 Proximate cause does not mean the only cause. The
16 defendant's act can be a proximate cause of the plaintiff's
17 injury if it was at least one of the direct concurring
18 causes of that injury. Proximate cause need not be
19 established with certainty. Probability is sufficient. A
20 bare possibility is not sufficient. You are not permitted
21 to guess, speculate or surmise as to the proximate cause.
22 The plaintiff must prove to you by a greater weight of the
23 evidence that gross negligence by the defendant was a
24 proximate cause of the injury sustained by the minor
25 plaintiff. In considering the plaintiff's damages and

1 losses, the law provides that you shall assess the amount
2 that you find to be justified by a preponderance of evidence
3 as full and just and reasonable compensation for all of the
4 plaintiff's damages. No more and no less. This is what the
5 law refers to as actual and compensatory damages.

6 Compensatory damages are not restricted to the actual loss
7 of money or time. These damages may include mental and
8 physical aspects of the injury, tangible and intangible,
9 financial and otherwise. By reimbursing or compensating the
10 plaintiff in all aspects, you are to attempt to restore the
11 plaintiff, that is to make the plaintiff whole or as the
12 plaintiff existed immediately prior to his injuries. The
13 plaintiff must prove that expenses caused by the injury were
14 necessary and reasonable.

15 You should consider the following elements of damage to
16 the extent you find they were proven by a preponderance of
17 the evidence. You should place a value on each element of
18 the damage in accord with the evidence presented and all
19 these amounts together to determine the amount of your
20 verdict. I instruct you that you shall evaluate each
21 element of damage individually. The following are various
22 elements of damage you may consider. Medical expenses,
23 those incurred to date and any which may be incurred in the
24 future. Value of bodily injury and permanent impairment.
25 The reasonable value of any bodily injury sustained

1 including permanent injury, significant disfigurement or
2 significant scarring, disability or impairment and the loss
3 of capacity to perform bodily functions or to do daily
4 activities, past and future. The reasonable value of the
5 plaintiff's pain, suffering, mental anguish, inconvenience,
6 discomfort and loss of capacity for the enjoyment of life.
7 If you decide the plaintiff is entitled to a verdict, your
8 next step would be to decide how much money the defendant
9 should be required to pay.

10 Actual damages are to compensate the plaintiff for the
11 plaintiff's injuries or loss and to put the plaintiff as
12 near as possible in the same position that the plaintiff was
13 in before the incident occurred. In other words, actual
14 damages would be the actual losses and expenses, which the
15 plaintiff has suffered. In this case, the plaintiff alleges
16 significant scarring as a result of the defendant's actions.
17 You may consider as factors in making this determination the
18 appearance, coloration, existence, size and shape of the
19 plaintiff's scar, along with the characteristics of the
20 surrounding skin and the remnants of the healing process and
21 other cosmetically important matters.

22 A plaintiff is never entitled to recover conjectural or
23 speculative damages. But if you find the plaintiff is
24 entitled to a verdict for actual damages, your verdict
25 should include an amount to cover any past, present and

1 future damages, which were proximately caused by the
2 defendant. Any future damages must be reasonably certain to
3 occur in the future as a result of the defendant's acts.
4 Actual damages need not be proven to a mathematical
5 certainty or be based on evidence of the precise amount of
6 damages the plaintiff has suffered. Instead, the evidence
7 must allow you to determine what amount of damages is fair,
8 just and reasonable. It is proper to include in the
9 estimate of future damages compensation for future medical
10 expenses and pain and suffering, which will, with reasonable
11 certainty result. Any future damages must be reasonably
12 calculated to have resulted from the alleged injury or
13 damages sustained in the case. Future damages must be
14 reduced to their present cash value. Pain and suffering
15 compensates the plaintiff for physical discomfort and the
16 emotional response to the sensation of pain caused by the
17 injury itself. There's no definite standard by which to
18 compensate the plaintiff for pain and suffering. You have
19 the authority to determine the amount, if any, to be allowed
20 for pain and suffering using calm and reasonable judgment to
21 ensure that the damages are just and reasonable in light of
22 the testimony and evidence presented in this case. Loss of
23 enjoyment of life compensates the plaintiff for limitations
24 on the plaintiff's ability to participate in and derive
25 pleasure from the normal activities of daily life. Mental

1 suffering, apprehension, shock, fright, emotional upset,
2 humiliation and anxiety, either present or expected in the
3 future, can properly be considered as an element of damages.
4 The amount of damages for mental suffering cannot be exactly
5 measured.

6 If you find that the defendant was permanently injured
7 as a result of the defendant's actions, you must then decide
8 how, if at all, that injury will effect the rest of the
9 plaintiff's life. A person's life expectancy is determined
10 by a life expectancy table which is a part of the laws of
11 this state. The life expectancy table is only an estimate
12 of the probable average remaining life -- of the life of all
13 person's in our state of a given age. The plaintiff is a
14 three-year-old male with a life expectancy, according to the
15 life expectancy table, of seventy-three point seven-six
16 years. This fact is to be considered by you along with any
17 other facts and circumstances in evidence bearing on the
18 plaintiff's life expectancy, including occupation, habits
19 and health at the time of injury in deciding the amount of
20 damages to be awarded to the plaintiff.

21 I have declared the law to you through these
22 instructions to help guide you to a just and lawful verdict.
23 Whether some of these instructions apply will depend upon
24 what you find to be the facts. The fact that I have
25 instructed you on various subjects in this case, including

1 damages, must not be taken as indicating an opinion of this
2 Court as to what you should find to be the facts or as to
3 which party is entitled to your verdict. Your verdict must
4 represent the considered judgment of each juror. In order
5 to return a verdict, it is necessary that each one of you
6 agree. Your verdict must be unanimous. All twelve of you
7 must agree on this verdict. Your verdict cannot be based on
8 sympathy, passion, prejudice, emotion or any other
9 consideration not in evidence in this case. Remember, at
10 all times you're not partisans favoring one party over the
11 other. You are the judges of the facts and your sole
12 interest is to seek the truth from the evidence that has
13 been presented to you in this case.

14 Now, Mr. Foreman, because I'm about as tired as y'all
15 are of sitting, I get to come down. I'm going to go over
16 this verdict form with you. This is the verdict form. You
17 are charged with completing this based on y'all's decisions
18 in the jury room. This just tells you where you are. This
19 tells you what court we're in. We're in -- as I told you,
20 we're in Common Pleas, First Judicial Circuit. This is the
21 case number of the case and this just tells you the parties.
22 You notice you've got Ms. Hamilton, individually and as the
23 guardian for R.J. The defendant in this case is The Medical
24 Center and this verdict form. You've got a number of
25 questions. Each one of these questions as it says, we, the

1 jury, by unanimous consent, have responded to the following
2 questions. And these are the questions. Question number
3 one, do you find that the defendant was grossly negligent?
4 And then you'll have to check either yes or no. If you
5 check yes, you go to question two. If you check no, you
6 stop your deliberation. Question two, was the defendant's
7 gross negligence a proximate cause of the plaintiff's
8 injuries? Again, you have two choices. Yes and no. If you
9 answer yes, you go to question three. If you answer no,
10 stop your deliberation. Question three, please state the
11 amount of damages, if any, sustained by the minor plaintiff,
12 [REDACTED] You are to determine only the
13 total amount of the plaintiff's damages and enter that
14 amount below. This is the damages to the child, okay? The
15 next part of that question is please state the amount of
16 damages, if any, sustained by the plaintiff Tekayah --

17 Did I say that right? Tekayah?

18 MR. WILLIAMS: Tekayah.

19 THE COURT: Tekayah, I'm sorry. Tekayah Hamilton,
20 individually and as the parent and Guardian ad litem for
21 [REDACTED] That's her son, as you know. You
22 are to determine only the total amount of the plaintiff's
23 damages and enter that below. Okay? Do you see the line
24 for each one of those where you fill it out when you get to
25 that, an actual damages amount. Then, Mr. Foreman, you are

1 charged with signing that and dating it, okay?

2 MR. FOREMAN: Yes, sir.

3 THE COURT: All right. Now, I'm not giving you
4 this yet.

5 MR. FOREMAN: Okay.

6 THE COURT: Okay. The reason for that is y'all
7 know how exciting that was to listen to, me read the law. I
8 saw y'all were excited, you know. Every now and then when I
9 do that I misstate something, but these attorneys were
10 paying very close attention to what I said. And I could
11 have misstated the law to you. And if I did, I've got to
12 correct it. So what we're going to do now is I'm going to
13 let you go back into the jury room. The attorneys are going
14 to tell me if I stated the law correctly or if I need to
15 correct something. If I don't need to correct something,
16 the verdict form and all of the exhibits are going to come
17 back into the jury room and you can begin your
18 deliberations. Now, if I've got to correct something, we'll
19 bring you back out here and we'll have a few more minutes of
20 exciting reading, okay?

21 MR. FOREMAN: Yes, sir.

22 THE COURT: Okay. I'm going to let you go back in
23 there. Again, you cannot begin deliberating yet. We'll be
24 with y'all in just a second, I hope.

25 (Jury out at 4:57 p.m.)

1 THE COURT: All right. Now, we'll get into the
2 charges that -- excuse me. We'll get into the charges in a
3 minute that we talked about in chambers that I'm not going
4 to charge. But as to what I did charge, any exceptions?

5 MR. WILLIAMS: Well, they kind of go hand in hand,
6 so I'm subject to the objections that you've already heard
7 and rationale that you've already heard the negligent
8 standard, you know.

9 THE COURT: Right. Okay

10 And Mr. Tanner, any changes?

11 MR. TANNER: No, sir.

12 THE COURT: Other than the exceptions.

13 MR. TANNER: Other than the exceptions that we
14 discussed.

15 THE COURT: That we're going to come back and put
16 on the record after?

17 MR. TANNER: Yes, sir.

18 THE COURT: Okay. If y'all wouldn't mind, if
19 y'all would go and let's make sure we've got all the
20 exhibits straight. And then -- and you can -- when you take
21 it back there you can tell the alternate she can leave.

22 (Reconciliation of exhibits with
23 counsel)

24 THE COURT: All right. Delaine, they're ready to
25 go. If you'd take the verdict form and those exhibits and

1 go on back.

2 THE BAILIFF: Yes, sir.

3 THE COURT: Okay.

4 (Alternate juror excused at 5:00
5 p.m.)

6 (Jury deliberating at 5:00 p.m.)

7 THE COURT: All right. Mr. Williams, are you
8 ready right now. You want to go ahead and put that
9 exception on the record?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. WILLIAMS: So, my problem is compounded here.
13 The jury charge you gave the jury gave them a medical
14 malpractice standard, which is typically, as you said, based
15 on a negligence standard. But then it instructed the jury
16 they have to come back with a gross negligence determination
17 based on one exception to the waiver of immunity in the tort
18 claim act, which would require that they make the
19 determination that the nurse was improperly supervised. I
20 forget what all it says, but you know what I mean.

21 THE COURT: Right.

22 MR. WILLIAMS: Subsection 25, which that
23 potentially limits a juror from contemplating, deciding that
24 there was a deviation from the standard of care and that
25 that is actionable in awarding. So in addition to the

1 confusing instruction, I think the law is clear. It's --
2 administration of medicine is not an exception to the waiver
3 of immunity under the tort claim act. Therefore, it's a
4 medical malpractice standard based solely on negligence.
5 And negligence is the standard, and the jury is making
6 determination solely whether or not there was gross
7 negligence, supervision, etcetera based on subsection 25.

8 THE COURT: Okay.

9 All right. And the reason I did not charge that is I
10 believe that the burden of proof in this case is gross
11 negligence when you consider the actions of a nurse in this
12 case. And I believe the case was Stewart. Isn't it
13 Stewart?

14 MR. TANNER: Yes, sir. Stewart versus Richland
15 Memorial Hospital.

16 THE COURT: Yeah. Stewart versus Richland
17 Memorial Hospital is the controlling case in that. But I
18 have -- I want to make sure on the record that we have you
19 objection to my charge noted in case any further work on
20 this case -- if it goes up, okay?

21 MR. WILLIAMS: Thank you, Judge.

22 THE COURT: And Mr. Tanner, likewise --

23 MR. TANNER: Yes, sir. May it please the Court?

24 THE COURT: -- you had, I believe two lines you
25 wanted me to include?

1 MR. TANNER: Yes, sir. I had asked in our
2 proposed charges, I had a charge that says the following. I
3 instruct you practicing nursing is an art not a science and
4 in providing nursing care, a nurse is not required to be all
5 knowing and all wise. That is, again, from my proposed
6 charge, which I believe was crafted in the '90's in
7 Columbia, Richland County specifically the number of medical
8 malpractice lawyers and judges there.

9 THE COURT: Wasn't there another line as well?

10 MR. TANNER: There was.

11 THE COURT: Yes, sir.

12 MR. TANNER: And while a nursing mistake or error
13 in judgment alone would not support a verdict for the
14 plaintiff's in a malpractice suit, if the nurse fails to
15 comply with the recognized standard of care, of nursing
16 care, which would be exercised by a similar nurse under the
17 same or similar circumstances, that the liability would
18 attach to the nurse for the state where error in judgment
19 that proximately results in injury to a patient. That would
20 be our exceptions.

21 THE COURT: Yeah. Yes, sir. And as I mentioned
22 to you I believe that my -- I'm hopeful that my standard of
23 care charge is the general charge that we give. And whereas
24 I do take great deference in anything that's decided in
25 Richland County, I think that took care of that. But out of

1 an abundance of caution, I wanted to preserve your objection
2 to that ruling in case you have to take the steps further,
3 okay?

4 MR. TANNER: Yes, sir.

5 MR. WILLIAMS: Judge, thank you for a wonderful
6 trial. You've been a great trial Judge.

7 THE COURT: Thank you. I do want to thank y'all.
8 Thank y'all for working with me to get this case done, okay?

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: We'll see. You know one thing I tell
11 people whenever I run into them, is I'm lucky to practice --
12 I mean to be a judge in South Carolina. Because the
13 attorneys are much a pleasure to work with. Y'all are
14 always prepared and willing to argue and do what you're
15 supposed to do for your client, so I'm always --

16 (Court in recess awaiting the
17 verdict of the jury at 5:03 p.m.)

18 (Court in session at 6:10 p.m.)

19 THE COURT: All right. I have -- I got a -- well,
20 it's sort of -- it's more of a request than it is a
21 question. It says we, the jury, ask to be released for
22 today, asking to return 5/9/2018 at 9:00 a.m. for further
23 deliberations to finalize our decision. So, I mean, I think
24 if they want to be released, I don't think it's going to be
25 to anyone's advantage for us to keep them, okay?

1 Any thoughts on that?

2 MR. TANNER: I don't know because, you know, it's
3 the fear of the unknown.

4 THE COURT: Oh, yeah. It is.

5 MR. TANNER: I mean, you know, I always worry
6 about late deliberations because people get hungry and -- I
7 guess for the record, I'd move for a mistrial because we
8 don't have a verdict and --

9 MR. WILLIAMS: I certainly don't think a mistrial
10 is appropriate, Your Honor. But I'd defer to the Court
11 whether they want to ask them to continue to deliberate or
12 if they want to recess until tomorrow.

13 THE COURT: Well, you know, I don't know whether
14 they've got issues about children or anything like that.
15 But what I was going to do is I'll bring them back in here
16 and just ask them some questions on the record about if they
17 would -- if they think they could do it in a little while,
18 I'd like for them to go ahead and do it. But I've got to
19 make sure that they don't talk among themselves, talk to
20 anybody else, you know, that kind of --

21 MR. TANNER: Any research.

22 THE COURT: Yeah. I've just got to caution them
23 about that and make sure they realize that I'm going to ask
24 them about tomorrow when it comes back, okay?

25 MR. TANNER: Yes, sir.

1 THE COURT: All right.

2 MR. TANNER: For the record, you're denying my
3 motion.

4 THE COURT: Oh, I'm sorry. Yeah. You know, you
5 know, they haven't said they couldn't -- they've given up on
6 it so --

7 MR. TANNER: Yes, sir.

8 THE COURT: But I'll note your motion that you --

9 MR. TANNER: Thank you.

10 THE COURT: -- and note your objection to my
11 ruling that I'm not granting a mistrial right now. But as
12 always, I appreciate your asking.

13 Yeah, if you'd bring the jury back in here?

14 THE BAILIFF: Yes, Your Honor.

15 THE COURT: I just need to talk to them for a
16 second.

17 THE BAILIFF: Yes, Your Honor.

18 (Off record discussion)

19 (Jury in at 6:15 p.m.)

20 THE COURT: All right. I just wanted to talk to
21 y'all a little bit, okay, before we decide anything. If I
22 let y'all go right now, y'all know y'all can't do any
23 independent research. Y'all can't, you know -- one or two
24 of y'all cannot contact each other and talk about it and do
25 anything like that. I mean, y'all's deliberation is

1 absolutely shut down until tomorrow at 9:00. The only thing
2 I was curious about and I don't know how close y'all are to
3 a decision or anything like that and you don't need to tell
4 me that. But, you know, right now it's 6:15. I don't know
5 whether y'all have got other things that y'all might want to
6 do tomorrow and like that. You realize you're going to have
7 to come back here and do that or do you think another forty-
8 five minutes or an hour y'all come to a decision? I mean,
9 you don't know?

10 MR. FOREMAN: Your Honor, to speak on behalf of
11 the jury, most of us are pretty well stressed right.

12 THE COURT: Oh, okay.

13 MR. FOREMAN: We have -- we have made a decision.
14 There's some processes that we would like to discuss further
15 --

16 THE COURT: Okay. All right.

17 MR. FOREMAN: Going through the evidence. And we
18 all kind of came to a vote, a unanimous vote of twelve, that
19 we would like to try to get some rest tonight and come back
20 with a clear head --

21 THE COURT: Okay.

22 MR. FOREMAN: And we all understand and we've
23 talked about that, that no one in this jury has spoken
24 anything of this until you told us to deliberate.

25 THE COURT: Okay. All right.

1 MR. FOREMAN: And these people have been very
2 trustworthy in that fact. And I feel like we will continue
3 to tomorrow morning to be able to do so.

4 THE COURT: The way you explained it to me, I
5 really appreciate it. That's exactly what I wanted to hear.
6 I'm glad that y'all understand when things kind of get to a
7 frustration level, y'all are willing to continue to talk
8 about this. So what I will do is, per your request, if
9 y'all will be back in the jury room at 9:00. Now, remember
10 y'all need to be here at 9:00 and you cannot begin your
11 deliberations until everybody's here. Okay?

12 MR. FOREMAN: Yes, sir.

13 THE COURT: Again, let me just remind you no
14 independent investigation. I don't know if any of y'all
15 know each other or anything like that, you know, where you
16 can talk. You cannot do that, okay? And if anybody tries
17 to talk to y'all, I need to know it, okay?

18 MR. FOREMAN: Yes, sir.

19 THE COURT: So y'all go home, relax and I'll see
20 y'all at 9:00 in the morning. Thank y'all for what y'all
21 doing.

22 JURORS: Thank you.

23 THE COURT: I appreciate it.

24 (Jury out at 6:20 p.m.)

25 (Court's Exhibit No. 4, jury note

1 was marked)

2 THE COURT: All right. Well, I've got to say the
3 way the foreman explained it, I thought was pretty good. So
4 I'm not going to -- you can renew your motion if you want to
5 and I'll continue to deny it, just if we need to do that.

6 MR. TANNER: I think I made it and you denied it.

7 THE COURT: Okay. All right.

8 MR. TANNER: I mean, I know that it's protected on
9 the record.

10 THE COURT: Well, it is in my view. But, you
11 know, one thing I learned is whatever I think about a case
12 is not necessarily --

13 MR. TANNER: Maybe with the Court's permission, in
14 light of what he said, I would renew my motion for a
15 mistrial for the record at this time.

16 THE COURT: Okay. Right. And I will again deny
17 it. I think -- I was glad to hear that they, you know, had
18 apparently reached some level of frustration and felt like a
19 night to take off would help them. So we'll see. And so
20 y'all be back -- we'll be back at 9:00 in the morning, y'all
21 and we'll see what happens.

22 MR. WILLIAMS: Thank you, Judge.

23 THE COURT: All right. Thank y'all.

24 (Court in recess May 7, 2018 at
25 6:25 p.m.)

(Court in session May 9, 2018 at

9:00 a.m.)

(Jury in at 9:01 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope y'all had a good evening.

MR. FOREMAN: We did. And hope you did as well, sir.

THE COURT: Yeah, I did. I did. Thank you. And I got to get up this morning and eat breakfast and not hurry and all that kind of stuff. So it worked out really well good. I hope y'all did.

Okay. Now, this morning I've got to ask y'all some questions. I want to make sure nobody talked -- y'all did not talk among yourselves last night?

MR. FOREMAN: No, sir.

THE COURT: Nobody tried to contact y'all?

MR. FOREMAN: No, sir.

THE COURT: Okay. Now, I know y'all are going to get ready to go back in there and being your deliberations. We'll go back through the exhibits and make sure we've got them all. I think the court reporter has already gone through that. So we will send those back, along with the verdict form in there so y'all can finish your deliberations. And y'all can continue on. It's a beautiful day to be in a jury room making a decision, okay?

1 MR. FOREMAN: Yes, sir.

2 THE COURT: So y'all have a good --

3 MR. FOREMAN: Could I ask a question? We would
4 like to give you some questions to get you to answer on some
5 certain items. And if we do so, we'll give you those in
6 writing; is that correct?

7 THE COURT: Yes, sir. If y'all have a question --
8 now, I need for y'all just to understand. Sometimes, you
9 know, when y'all have questions about a fact or something
10 like that, most -- well, sometimes I just have to replay
11 what the testimony was because I can't give you -- remember
12 how I told you all along --

13 MR. FOREMAN: Yes, sir.

14 THE COURT: -- that I can't tell you anything
15 about the facts or anything like that. So if y'all have a
16 fact question it'll put us in a position to where y'all
17 replay the tape or something like that. So just so y'all
18 will be aware of that. If you have a question about the
19 law, what I will do is I will read that portion of the
20 charge that applies to that is normally what I do. But now
21 it depends on what your question is.

22 MR. FOREMAN: Okay.

23 THE COURT: But if you'll write it out, we'll be
24 glad to address it or try to address it, okay? All right,
25 sir.

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MR. FOREMAN: Thank you.

THE COURT: Y'all go on back in there and y'all begin your deliberations.

MR. FOREMAN: Thank you, sir.

THE COURT: Yes, sir.

(Jury out at 9:02 p.m.)

THE COURT: All right. Hilda's gone through the exhibits and ensured that we've got them all together. Do y'all want to review them before I take them back in there?

MR. TANNER: ???

MR. WILLIAMS: I'll take her word over our review.

THE COURT: Okay. All right. Thank you, ma'am.

THE BAILIFF: Thank you, sir.

THE COURT: You take them on.

THE BAILIFF: Yeah.

THE COURT: Yes, ma'am. Yes, ma'am. Thank you, ma'am.

THE BAILIFF: Thank you.

(Exhibits and verdict form delivered to the jury at 9:02 a.m.)

THE COURT: All right. So it's 9:02 or :03, something like that when they resume their deliberations.

(Jury resumes deliberations at 9:03 a.m.)

THE COURT: I'm anxiously awaiting questions.

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(Court in recess at 9:05 a.m.)

(Court in session for verdict at

11:04 a.m.)

THE COURT: The jury's reached a verdict?

THE BAILIFF: Yes, Your Honor.

THE COURT: If you would, you know, bring them in, you know. You've told the Foreman he's going to give it to you and you're going to give it to me?

THE BAILIFF: Yes, Your Honor.

THE COURT: Okay. All right.

THE BAILIFF: Are you ready?

THE COURT: Yeah. Yeah. Is the plaintiff ready?

MR. WILLIAMS: Yes, sir.

THE COURT: Defendant ready?

MR. TANNER: Yes, sir.

THE COURT: Okay. All right.

(Off record discussion)

(Jury in at 11:05 a.m.)

THE COURT: All right. Mr. Foreman, has the jury reached their verdict?

MR. FOREMAN: Yes, we have, Your Honor.

THE COURT: Is that verdict unanimous?

MR. FOREMAN: Yes, sir.

THE COURT: If you wouldn't mind giving that to the bailiff, please sir?

1 MR. FOREMAN: Yes, sir.

2 THE BAILIFF: Your Honor, may I approach?

3 THE COURT: You may. Thank you, ma'am.

4 Y'all can sit down.

5 All right. Mr. Clerk if you wouldn't mind publishing
6 the verdict please, sir?

7 THE CLERK: State of South Carolina, County of
8 Orangeburg Tekayah Hamilton individually and as the parent
9 Guardian ad litem for Robert Lee M., Jr., plaintiff versus
10 The Regional Medical Center, defendant.

11 We, the jury, by unanimous consent have responded to
12 the following questions:

13 Do you find that the defendant was grossly negligent?

14 Yes.

15 Question number two, was the defendant's gross
16 negligence the proximate cause of the plaintiff's injuries?

17 Yes.

18 Please state the amount of damages, if any, sustained
19 by the minor plaintiff, [REDACTED]? One
20 million one hundred and twenty-seven thousand two hundred
21 and eighty dollars actual damages.

22 Please state the amount of damages, if any, sustained
23 by the plaintiff, Tekayah Hamilton, individually and as
24 parent Guardian ad litem for [REDACTED]? One
25 hundred thirty-five thousand four hundred seventy-seven

1 dollars actual damages.

2 THE COURT: All right. That was signed by the
3 foreperson and dated today.

4 And, again, Mr. Foreman, this is the verdict?

5 MR. FOREMAN: Yes, sir.

6 THE COURT: Okay. Any issues from the plaintiff?

7 MR. WILLIAMS: No, sir.

8 THE COURT: Anything from the --

9 MR. TANNER: Just for the record if you could poll
10 the jurors individually, Your Honor, and make sure it is a
11 unanimous verdict for the record.

12 THE COURT: All right. Hold on one second.

13 All right. Ladies and gentlemen, they've requested
14 that I poll the jury. So when I call your name I'll ask you
15 to stand up and I've got two questions to ask you.

16 (Jurors individually polled and
17 verdict stands)

18 THE COURT: All right. Anything further, Mr.
19 Tanner?

20 MR. TANNER: Nothing further, Your Honor.

21 THE COURT: Okay. All right. Ladies and
22 gentlemen, I appreciate the way y'all paid attention during
23 the trial and like that and gave us and the attorneys your
24 full attention. We do appreciate that. Y'all have done a
25 good job as jurors and I appreciate the way y'all considered

1 everything, told me about it and how everything was going
2 yesterday and like that. So thank you for your service.
3 You know, in addition to the huge amount of money that you
4 get paid, you know, for being on the jury, you know the
5 other good reward you may remember is you don't have to
6 serve on a jury now for three years, okay? But now you
7 still can if you want to. I hope y'all had a good
8 experience. I really hope you did. So if you get an
9 opportunity, you know, I hope y'all will consider doing
10 that. The other thing I need to tell you is, sometimes
11 after the trials the attorneys will contact you and ask you
12 if you want to talk about your jury service and like that.
13 That's a way for them to learn, you know, different things,
14 you know, about how did -- you know, maybe just ask you
15 questions. And you can respond but it is up to you whether
16 or not you want to respond. If they send you a
17 questionnaire -- I know some attorneys send questionnaires
18 sometime. You know, they might just run into you around
19 town. They might want to ask you a question. If you want
20 to talk to them, you can but you do not have to talk to
21 them. But if you do want to have some feedback back and
22 forth, feel free to do that. The prohibition against
23 talking about it was when you were making your deliberations
24 and like that, not after the trial. But if you just don't
25 want to talk about it, you don't have to, okay? But, again,

1 Thank y'all so much for your service. I hope y'all enjoy
2 the rest of the week. I am glad y'all were willing to
3 serve. I really am, okay? Thank y'all. Y'all have a good
4 day.

5 MR. FOREMAN: Thank y'all.

6 THE COURT: Thank you.

7 (Jury out at 11:05 a.m.)

8 COURT REPORTER: May I see that verdict form when
9 you get through?

10 THE COURT: It's one million one hundred twenty-
11 seven two eighty.

12 MR. WILLIAMS: Your Honor

13 THE COURT: I'm going to run copies of this for
14 y'all, okay?

15 Mr. Tanner, rather than do any motions or anything like
16 that, you've got ten days, you know, unless --

17 THE COURT: Do you want to hear the motion to
18 reduce it based on the tort claims act or do you want
19 everything in ten days.

20 THE COURT: Well, I mean -- I'm aware of the -- I
21 think everybody's aware of the tort claims act. I'm giving
22 you ten days --

23 MR. TANNER: Ten days.

24 THE COURT: There are other things that you --

25 MR. TANNER: Yes, sir.

1 THE COURT: -- may want to address.

2 MR. TANNER: Yes, sir.

3 THE COURT: So, and I --

4 MR. TANNER: Everything will be taken up in ten
5 days?

6 THE COURT: Yeah. Yeah. That'll give you time.
7 I mean, if I were you, I'd want time.

8 MR. TANNER: I appreciate that. Yes, sir.

9 THE COURT: Okay. All right.

10 MR. TANNER: Thank you, sir.

11 THE COURT: We're going to run copies of this so
12 everybody will have it, okay?

13 Okay. All right. Thank y'all very much.

14 MR. TANNER: Thank you.

15 MR. WILLIAMS: Thank you, Your Honor.

16 THE COURT: Appreciate it y'all.

17 (Court in recess May 9, 2018 at

18 11:20 a.m.)
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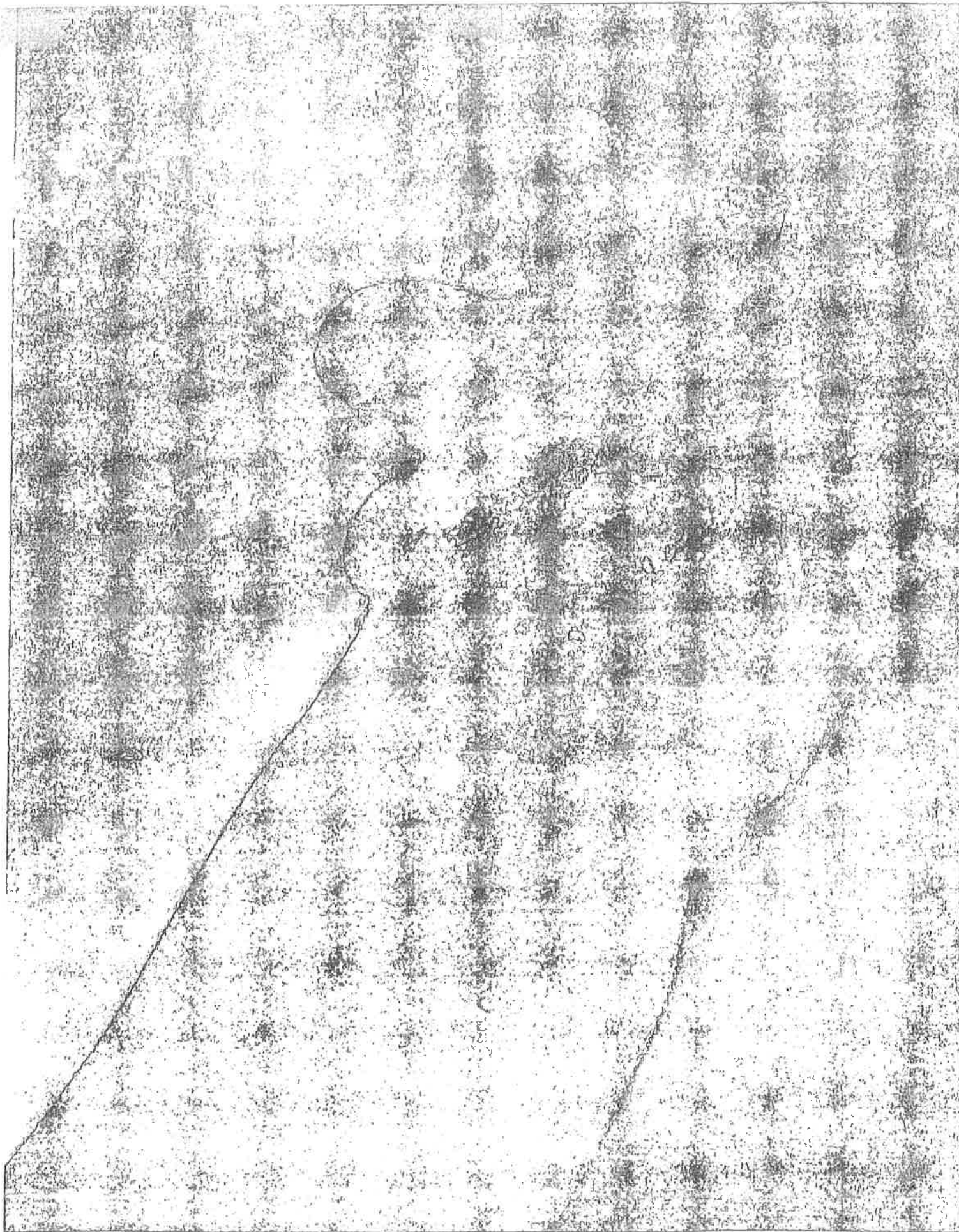
C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON
PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 7 - 9
DAY OF MAY, 2018.

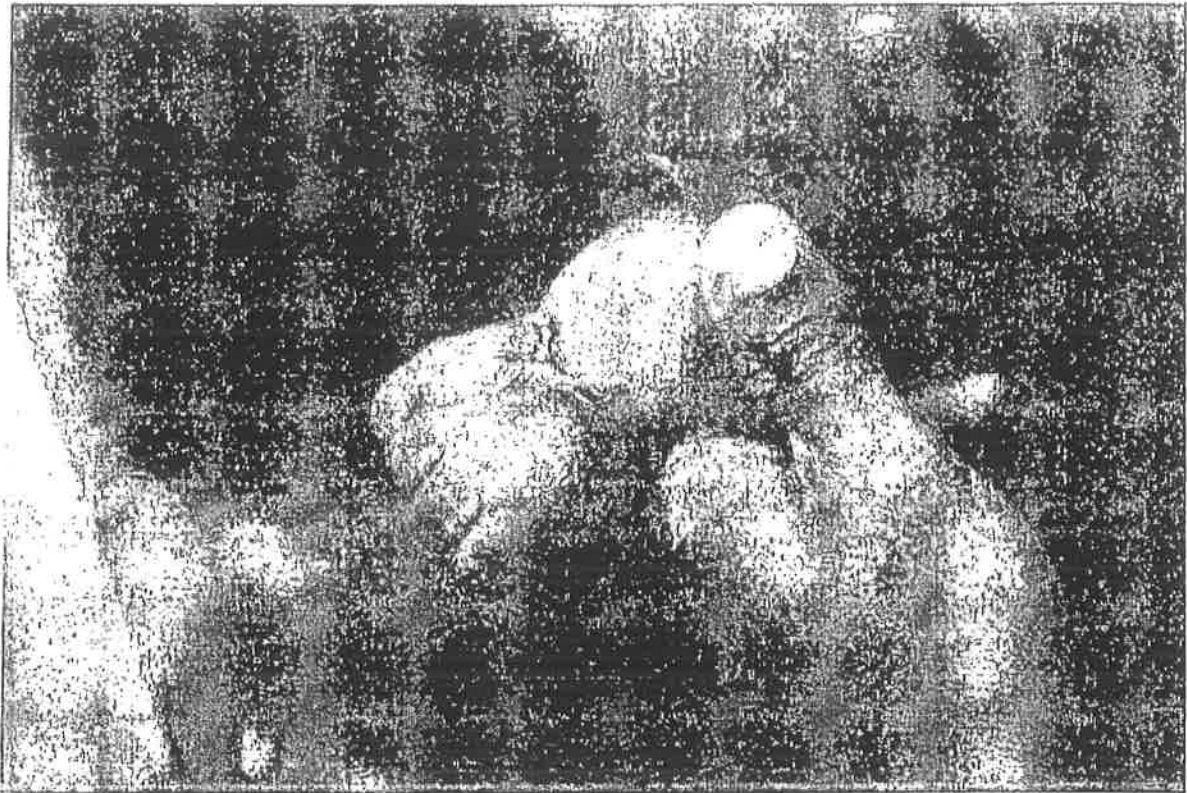
I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

March 17, 2019



PLAINTIFF'S
EXHIBIT
2





the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge: 10/25/2014
Discharge Date: 10/30/2014
Admitting: Bollin MD, Megan Shuler
Attending: Bollin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/29/2014 22:27
Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))
Charted Date/Time: 10/29/2014 22:28
Admin Details: Auth (Verified)
PRN Response Notes: Mom states PT no longer fussing. PT breastfeeding well. Currently sleeping; PRN Medication Effectiveness: Yes; Patient Response to Medication: No Adverse Reaction to Medication; NIPS Pain Scale: Yes; Legs NIPS: Relaxed; Arms NIPS: Relaxed; State of Arousal NIPS: Sleeping; Breathing Pattern NIPS: Relaxed; NIPS Pain Assessment Score: 0; Cry NIPS: No cry; Facial Expression NIPS: Relaxed
Action Details: Order: Bollin, Megan Shuler 10/25/2014 22:00; Perform: Stocklin RN, Shannon M 10/29/2014 22:27; VERIFY: Stocklin RN, Shannon M 10/29/2014 22:27

Admin Date/Time: 10/29/2014 20:14
Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))
Charted Date/Time: 10/29/2014 20:15
Ingredients: acetaminophen oral liquid INFANT (0-2 years) 60 mg 0.6 mL
Admin Details: (Auth) Oral
Action Details: Order: Bollin, Megan Shuler 10/25/2014 22:00; Perform: Stocklin RN, Shannon M 10/29/2014 20:15; VERIFY: Stocklin RN, Shannon M 10/29/2014 20:15
Reason for Medication: Stocklin RN, Shannon M 10/29/2014 20:15
Fever

Admin Date/Time: 10/29/2014 00:00
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/29/2014 01:26
Admin Details: (Not Done) meds d/c verbal order cefotaxime
Action Details: Perform: Stocklin RN, Shannon M 10/29/2014 00:00

Admin Date/Time: 10/29/2014 00:00
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/29/2014 01:26
Admin Details: (Not Done) meds d/c verbal order sodium chloride
Action Details: Perform: Stocklin RN, Shannon M 10/29/2014 00:00



Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for the patient via Horizon Patient Folder.
Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC002



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/28/2014 23:00
Medication Name: ampicillin (ampicillin injection PEDIATRIC)
Charted Date/Time: 10/29/2014 01:26
Admin Details: (Not Done) meds d/c verbal order
ampicillin
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 23:00

Admin Date/Time: 10/28/2014 20:00
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/29/2014 01:26
Admin Details: (Not Done) meds d/c verbal order
sodium chloride
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 20:00

Admin Date/Time: 10/28/2014 17:00
Medication Name: ampicillin (ampicillin injection PEDIATRIC)
Charted Date/Time: 10/29/2014 01:26
Admin Details: (Not Done) meds d/c verbal order
ampicillin
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 17:00

Admin Date/Time: 10/28/2014 16:00
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/29/2014 01:26
Admin Details: (Not Done) meds d/c verbal order
cefotaxime
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 16:00

Admin Date/Time: 10/28/2014 16:00
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/29/2014 01:26
Admin Details: (Not Done) meds d/c verbal order
sodium chloride
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 16:00

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.
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Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC003



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Bollin MD, Megan Shuler
Attending: Bollin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/28/2014 12:00
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/29/2014 01:27
Admin Details: (Not Done) meds d/c verbal order
sodium chloride
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 12:00

Admin Date/Time: 10/28/2014 11:00
Medication Name: ampicillin (ampicillin injection PEDIATRIC)
Charted Date/Time: 10/29/2014 01:27
Admin Details: (Not Done) meds d/c verbal order
ampicillin
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 11:00

Admin Date/Time: 10/28/2014 08:00
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/29/2014 01:27
Admin Details: (Not Done) meds d/c verbal order
cefotaxime
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 08:00

Admin Date/Time: 10/28/2014 08:00
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/29/2014 01:27
Admin Details: (Not Done) meds d/c verbal order
sodium chloride
Action Details: Perform: Stocklin RN, Shannon M 10/28/2014 08:00

Admin Date/Time: 10/28/2014 04:45
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/28/2014 05:22
Admin Details: (Not Done) Not Appropriate at this Time
sodium chloride
Action Details: Perform: Downing RN, Jamie B 10/28/2014 04:45

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for the patient via Horizon Patient Folder.
Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC004



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/28/2014 04:27
Medication Name: ampicillin (ampicillin Injection PEDIATRIC)
Charted Date/Time: 10/28/2014 04:27
Ingredients: sterSol20 4.25 mL; ampli500REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Downing RN, Jamie B 10/28/2014 04:27;
VERIFY: Downing RN, Jamie B 10/28/2014 04:27

Admin Date/Time: 10/28/2014 00:00
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/28/2014 01:04
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Downing RN, Jamie B 10/28/2014 01:04;
VERIFY: Downing RN, Jamie B 10/28/2014 01:04

Admin Date/Time: 10/27/2014 23:44
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/27/2014 23:44
Ingredients: sterSol20 4.25 mL; cefo1REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:53; Perform: Downing RN, Jamie B 10/27/2014 23:44;
VERIFY: Downing RN, Jamie B 10/27/2014 23:44

Admin Date/Time: 10/27/2014 23:08
Medication Name: ampicillin (ampicillin Injection PEDIATRIC)
Charted Date/Time: 10/27/2014 23:09
Ingredients: sterSol20 4.25 mL; ampli500REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Downing RN, Jamie B 10/27/2014 23:09;
VERIFY: Downing RN, Jamie B 10/27/2014 23:09

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.

Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC005



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/27/2014 20:00
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/27/2014 21:19
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Downing RN, Jamie B 10/27/2014 21:19;
VERIFY: Downing RN, Jamie B 10/27/2014 21:19

Admin Date/Time: 10/27/2014 17:48
Medication Name: ampicillin (ampicillin injection PEDIATRIC)
Charted Date/Time: 10/27/2014 17:48
Ingredients: sterSol20 4.25 mL; ampi500REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Craft RN, Susan M 10/27/2014 17:48; VERIFY:
Craft RN, Susan M 10/27/2014 17:48

Admin Date/Time: 10/27/2014 16:08
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/27/2014 16:08
Ingredients: cefo1REC 425 mg; sterSol20 4.25 mL
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:53; Perform: Craft RN, Susan M 10/27/2014 16:08; VERIFY:
Craft RN, Susan M 10/27/2014 16:08

Admin Date/Time: 10/27/2014 16:07
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/27/2014 16:08
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Craft RN, Susan M 10/27/2014 16:08; VERIFY:
Craft RN, Susan M 10/27/2014 16:08

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC006



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/27/2014 11:43
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/27/2014 11:54
Ingredients: *INT FLUSH 1 mL
Admin Details: (Modified) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Craft RN, Susan M 10/27/2014 11:43; Modify: Craft RN, Susan M 10/27/2014 11:54; VERIFY: Craft RN, Susan M 10/27/2014 11:54

Admin Date/Time: 10/27/2014 11:40
Medication Name: ampicillin (ampicillin Injection PEDIATRIC)
Charted Date/Time: 10/27/2014 11:43
Ingredients: sterSol20 4.25 mL; ampi500REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Craft RN, Susan M 10/27/2014 11:43; VERIFY: Craft RN, Susan M 10/27/2014 11:43

Admin Date/Time: 10/27/2014 08:08
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/27/2014 08:08
Ingredients: sterSol20 4.25 mL; cefo1REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:53; Perform: Craft RN, Susan M 10/27/2014 08:09; VERIFY: Craft RN, Susan M 10/27/2014 08:09

Admin Date/Time: 10/27/2014 08:08
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/27/2014 08:09
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Craft RN, Susan M 10/27/2014 08:09; VERIFY: Craft RN, Susan M 10/27/2014 08:09

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC007



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/27/2014 06:28

Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))

Charted Date/Time: 10/27/2014 06:28

Admin Details: Auth (Verified)

Patient Response to Medication: No Adverse Reaction to Medication, Temperature decreased; PRN Medication Effectiveness: Yes

Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Reese RN, Angella E 10/27/2014 06:28; VERIFY: Reese RN, Angella E 10/27/2014 06:28

Admin Date/Time: 10/27/2014 04:41

Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))

Charted Date/Time: 10/27/2014 04:42

Ingredients: acetaminophen oral liquid INFANT (0-2 years) 60 mg 0.6 mL

Admin Details: (Auth) Oral

Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Reese RN, Angella E 10/27/2014 04:42; VERIFY: Reese RN, Angella E 10/27/2014 04:42

Reason for Medication: Reese RN, Angella E 10/27/2014 04:42
Fever

Admin Date/Time: 10/27/2014 04:35

Medication Name: sodium chloride (*INT FLUSH)

Charted Date/Time: 10/27/2014 04:36

Ingredients: *INT FLUSH 1 mL

Admin Details: (Auth) IV Push, *Right Hand

Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Reese RN, Angella E 10/27/2014 04:35; VERIFY: Reese RN, Angella E 10/27/2014 04:35

Early/Late Reason: Reese RN, Angella E 10/27/2014 04:35
Other :

Request ID: 5707699

Print Date/Time 06/12/2016
06:36

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Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC008



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/27/2014 04:35

Medication Name: sodium chloride (*INT FLUSH)

Charted Date/Time: 10/27/2014 04:36

Ingredients: *INT FLUSH 1 mL

Admin Details: (Auth) IV Push, *Right Hand

Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Reese RN, Angella E 10/27/2014 04:36; VERIFY: Reese RN, Angella E 10/27/2014 04:36

Early/Late Reason: Reese RN, Angella E 10/27/2014 04:35

Other :

Admin Date/Time: 10/27/2014 04:34

Medication Name: ampicillin (ampicillin injection PEDIATRIC)

Charted Date/Time: 10/27/2014 04:36

Ingredients: ampli500REC 425 mg; sterSol20 4.25 mL

Admin Details: (Auth) IV Syringe

Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Reese RN, Angella E 10/27/2014 04:36; VERIFY: Reese RN, Angella E 10/27/2014 04:36

Admin Date/Time: 10/26/2014 22:56

Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Charted Date/Time: 10/26/2014 22:56

Ingredients: cefo1REC 425 mg; sterSol20 4.25 mL

Admin Details: (Auth) IV Syringe

Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:53; Perform: Reese RN, Angella E 10/26/2014 22:56; VERIFY: Reese RN, Angella E 10/26/2014 22:56

Early/Late Reason: Reese RN, Angella E 10/26/2014 22:56

Other :

Admin Date/Time: 10/26/2014 22:56

Medication Name: sodium chloride (*INT FLUSH)

Charted Date/Time: 10/26/2014 22:56

Ingredients: *INT FLUSH 1 mL

Admin Details: (Auth) IV Push, *Right Subclavian

Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Reese RN, Angella E 10/26/2014 22:56; VERIFY: Reese RN, Angella E 10/26/2014 22:56

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC009



Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/26/2014 22:55
Medication Name: ampicillin (ampicillin injection PEDIATRIC)
Charted Date/Time: 10/26/2014 22:56
Ingredients: ampi500REC 425 mg; sterSol20 4.25 mL
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Reese RN, Angella E 10/26/2014 22:56; VERIFY: Reese RN, Angella E 10/26/2014 22:56

Admin Date/Time: 10/26/2014 18:18
Medication Name: ampicillin (ampicillin injection PEDIATRIC)
Charted Date/Time: 10/26/2014 18:18
Ingredients: ampi500REC 425 mg; sterSol20 4.25 mL
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Gray RN, Taylor C 10/26/2014 18:18; VERIFY: Gray RN, Taylor C 10/26/2014 18:18
Early/Late Reason: Gray RN, Taylor C 10/26/2014 18:18
Med Not Available

Admin Date/Time: 10/26/2014 18:18
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/26/2014 18:18
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Gray RN, Taylor C 10/26/2014 18:18; VERIFY: Gray RN, Taylor C 10/26/2014 18:18

Admin Date/Time: 10/26/2014 15:52
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/26/2014 15:52
Ingredients: cefo1REC 425 mg; sterSol20 4.25 mL
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Gray RN, Taylor C 10/26/2014 15:52; VERIFY: Gray RN, Taylor C 10/26/2014 15:52

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0010



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/26/2014 14:33
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/26/2014 14:33
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Gray RN, Taylor C 10/26/2014 14:33; VERIFY: Gray RN, Taylor C 10/26/2014 14:33

Admin Date/Time: 10/26/2014 14:06
Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))
Charted Date/Time: 10/26/2014 14:06
Admin Details: Auth (Verified)
PRN Medication Effectiveness: Yes; Temperature Rectal: 37.2; Temperature Method: Rectal
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Williams RN, Sarah B 10/26/2014 14:06; VERIFY: Williams RN, Sarah B 10/26/2014 14:06

Admin Date/Time: 10/26/2014 11:28
Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))
Charted Date/Time: 10/26/2014 11:28
Ingredients: acetaminophen oral liquid INFANT (0-2 years) 60 mg 0.6 mL
Admin Details: (Auth) Oral
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Gray RN, Taylor C 10/26/2014 11:28; VERIFY: Gray RN, Taylor C 10/26/2014 11:28
Reason for Medication: Gray RN, Taylor C 10/26/2014 11:28
Fever

Admin Date/Time: 10/26/2014 11:22
Medication Name: ampicillin (ampicillin injection PEDIATRIC)
Charted Date/Time: 10/26/2014 11:23
Ingredients: ampicillin 425 mg; sterSol20 4.25 mL
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Gray RN, Taylor C 10/26/2014 11:23; VERIFY: Gray RN, Taylor C 10/26/2014 11:23

Request ID: 5707899

Print Date/Time 06/12/2015
06:36

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Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0011

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/26/2014 09:21
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/26/2014 09:21
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Gray RN, Taylor C 10/26/2014 09:21; VERIFY: Gray RN, Taylor C 10/26/2014 09:21

Admin Date/Time: 10/26/2014 07:17
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/26/2014 07:17
Ingredients: sterSol20 4.25 mL; cefo1REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Gray RN, Taylor C 10/26/2014 07:17; VERIFY: Gray RN, Taylor C 10/26/2014 07:17

Admin Date/Time: 10/26/2014 05:04
Medication Name: ampicillin (ampicillin Injection PEDIATRIC)
Charted Date/Time: 10/26/2014 05:07
Ingredients: sterSol20 4.25 mL; ampli500REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Morton RN, Teresa L 10/26/2014 05:07; VERIFY: Morton RN, Teresa L 10/26/2014 05:07

Admin Date/Time: 10/26/2014 05:04
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/26/2014 05:07
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Morton RN, Teresa L 10/26/2014 05:05; VERIFY: Morton RN, Teresa L 10/26/2014 05:05

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0012

(R. p. __). Because Hurley's definition of gross negligence is contrary to the legal definition of gross negligence, it would have confused and misled the jury, Rule 403, SCRE, and "also risked treading on the trial judge's role as the sole source of the law in the trial," *Carter*, 429 S.C. at 314, 838 S.E.2d at 532.

Hurley's opinion also "essentially told the jury what result to reach on" the gross negligence question. *Id.* at 313, 838 S.E.2d at 531. RMC asked Hurley her opinion as to whether it "was grossly negligent in its care and treatment of" R.J. (Trial Tr. p. 380) (R. p. __). The verdict form asked the jury "Do you find the Defendant was grossly negligent?" (Verdict Form) (R. p. __). The admission of Hurley's testimony would have impermissibly allowed an "expert to define [gross negligence] to the jury and apply [her] view of the facts to [her] definition of law," which "ran the risk of misleading the jury and telling them what their verdict should be." *Carter*, 429 S.C. at 314, 838 S.E.2d at 532. The proffered question was undoubtedly an "attempt[] to usurp" the jury's role in determining whether RMC was grossly negligent. *Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003).

The decision of the United States District Court for the District of South Carolina in *Hermitage Industries v. Schwerman Trucking Co.*, 814 F. Supp. 484 (D.S.C. 1993), is instructive on this issue and, for brevity, Hamilton incorporates the reasoning of the decision into this brief. The Court excluded expert testimony on the legal conclusion of negligence because "the proffered testimony of defendant's expert witness that plaintiff was 'negligent' constitutes a legal conclusion and is therefore inadmissible." *Id.* at 487.

Alternatively, even if the Court finds error in the lower court's ruling, it is harmless and RMC suffered no prejudice from the exclusion because Hurley made it apparent to the jury that she believed Downing satisfied the standard of care and RMC did nothing wrong. Hurley testified

four times to her opinion that Downing's treatment met the standard of care. (Tr. p. 347 lns. 15-18; 350 lns. 9-13; 352 lns. 8-10; 356 lns. 21-25) (R. pp. __). She testified that Downing's treatment met RMC's policy expectations, "exceeded the standard of care," and was "an outstanding job." (Tr. p. 347, 352-53, 357) (R. pp. __). The jury understood that Hurley did not think RMC was grossly negligent.

The lower court properly exercised its discretion to exclude Hurley's testimony on the legal conclusion of RMC's gross negligence, and this Court should affirm.

V. THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION TO PUBLISH THE REQUESTS FOR ADMISSION TO THE JURY.

The court properly exercised its discretion to publish the requests to admit to the jury so it could consider them along with all of the other evidence. "A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) (internal quotation marks omitted).

Hamilton moved to admit the requests to admit as a stipulation (Trial Tr. p. 252) (R. p. __) and asked to explain to the jury "what a request to admit is" (Trial Tr. p. 247) (R. p. __), but the lower court denied those requests and only allowed Hamilton to read the exact language of the requests and answers to the jury (Trial Tr. pp. 257-58) (R. p. __). The jury was free to accept or reject the requests to admit just like any other evidence.

Under Rule 43(g), SCRCP, "[c]ounsel for any party may read his pleadings to the jury." Even when a pleading, including a request for admission, is later amended, both the original and the amended answer may be published to the jury for it to consider along with all of the other evidence.⁵

⁵ "Once an answer to a Request for Admissions is amended under Rule 36, both the initial answer and the amended answer may be published to the jury. The jury may consider the initial answers as evidence, while the party who made such answers is free to explain why it was made and

RMC made two objections to the evidence. It argued (1) the purpose of the requests was to obtain an independent medical examination, and (2) the prejudicial effect of the requests outweighed the probative value under Rule 403, SCRE, because the requests would confuse the jury by telling them “a verdict had to be awarded” and “effectively” directing a verdict of liability for Hamilton. (Trial Tr. pp. 251-57) (Br. of App. pp. 28-30). The lower court properly acted within its discretion to rule these arguments did not require exclusion of the evidence.

As to the first argument, the reason RMC sent the requests to admit does not dictate their admissibility, especially when RMC did not limit the requests to a specific purpose. That RMC intended to use the requests to admit to get an independent medical examination under Rule 35(a), SCRCP, does not remove them from Rule 43(g), SCRCP.

Regardless, even if the Court considers RMC’s argument, the language of the requests shows they were not limited solely to Rule 35(a). Rule 35(a), SCRCP, provides for an independent medical examination when “the *amount in controversy* exceeds \$100,000 actual damages.” (emphasis added). RMC requested that Hamilton:

Admit the value of the amount in controversy in this action is less than \$100,000.00.

Admit the *value and amount in controversy* in this action is greater than \$100,000.00.

Admit the *value* of Plaintiff’s actual damages exceeds \$100,000.00.

(Req. to Admit) (R. p. __) (emphasis added). The requests to admit went beyond the amount in controversy by asking Hamilton to admit the “value” of her actual damages. This supports the lower court’s discretionary decision to publish the requests to admit to the jury.

amended. . . . It was for the jury to weigh the evidence along with [other evidence].” *Tuomey Reg’l Medical Ctr. v. McIntosh*, 315 S.C. 189, 191, 432 S.E.2d 485, 487 (1993) (internal citation, quotation marks, and alterations omitted).

As to RMC's Rule 403, SCRE, argument, the record supports the lower court's determination that the probative value of the evidence is not substantially outweighed by the danger of any unfair prejudice or confusion. The evidence had probative value in proving the amount of damages. In its post-trial motions and on appeal, RMC argues that the actual damages are only \$20,854.00—the amount of the medical bills. (Br. of App. pp. 37-38). RMC cannot assert that the “value of Plaintiff's actual damages exceeds \$100,000.00” so it can get an independent medical examination and then deny the possibility of that damages value in front of the jury.

RMC's argument that it suffered unfair prejudice because the jury would believe it had to find RMC liable and award damages is incorrect. Both parties argued about liability and damages in their closing arguments. (Trial Tr. pp. 387-415) (R. pp. __). The court charged the jury on its duty “to evaluate the evidence and determine which evidence convinces you it is true.” (Trial Tr. p. 418 lns. 23-25). It charged the jury to determine if RMC acted with gross negligence and, if applicable, to choose an amount of damages. (Trial Tr. pp. 421-428) (R. pp. __). It instructed the jury to “assess the amount that *you* find to be justified by a preponderance of the evidence” and to “place a value on each element of the damage in accord with the evidence presented.” (Trial Tr. p. 425) (R. p. __) (emphasis added). There is “a sound presumption of appellate practice, that jurors are reasonable and generally follow the instructions they are given.” *Arnold v. State*, 309 S.C. 157, 166, 420 S.E.2d 834, 838 (1992). The verdict form asked the jury to decide whether “the Defendant was grossly negligent” and, if so, to “state the amount of damages, *if any*,” sustained by R.J. and Tekayah. (Verdict Form) (R. p. __) (emphasis added). The jury knew that it must decide liability and damages.

The responses to the requests for admission were merely one piece of evidence. RMC was free to produce other, contradictory evidence, which it did. Just like any other evidence, the jury

was free to accept or reject the requests for admission. The evidence and law support the lower court's decision, and this Court should affirm.

Finally, any error in publishing the admissions to the jury was harmless because, as explained below, there was ample other evidence that Hamilton's damages exceeded \$100,000.00.

VI. THE LOWER COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION FOR A NEW TRIAL OR *NISI REMITTITUR*.

The lower court did not abuse its discretion in denying RMC's new trial motions based on the alleged excessiveness of the verdicts and the thirteenth juror doctrine. "The jury's determination of damages is entitled to substantial deference. The denial of a new trial motion is within the discretion of the trial court and, absent an abuse of discretion, it will not be reversed on appeal." *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 309-10, 578 S.E.2d 16, 25 (Ct. App. 2002).

The lower court maintained R.J.'s \$1,127,280.00 verdict but reduced it to the \$300,000.00 cap in the Tort Claims Act, and maintained Tekayah's verdict of \$135,477.00. (Order) (R. p. _). This Court "must accord the trial court's decision great deference, and respect its superior position to gauge credibility and the field of evidence." *Nestler v. Fields*, 426 S.C. 34, 41, 824 S.E.2d 461, 465 (Ct. App. 2019) (internal quotation marks omitted).

"A verdict which may be supported by *any* rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained is not excessive." *King v. Daniel Int'l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982) (emphasis added). RMC moved for a new trial on three grounds—thirteenth juror doctrine, new trial absolute when a verdict is grossly excessive or inadequate, or a new trial *nisi remittitur* or *additur* when the verdict is merely excessive or inadequate. See *Burke v. AnMed Health*, 393 S.C. 48, 55-57, 710 S.E.2d 84, 88-89 (Ct. App. 2011) (listing the three general grounds for a new trial). "Compelling

reasons [] must be given to justify invading the jury's province in this manner." *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995). The lower court correctly found the verdicts were not excessive in the first place—a basis to affirm as to all three alleged grounds for a new trial in this case.

If the court first finds the verdict excessive, it must determine whether it is merely excessive or grossly excessive. A merely excessive verdict is one that the court views as "not in accord with accepted judicial standards for measuring damages under the facts of the particular case." *Bowers v. Charleston & W. Carolina R.R. Co.*, 210 S.C. 367, 375, 42 S.E.2d 705, 708 (1947). A grossly excessive verdict is one "deemed to be the result of a disregard of the facts and of the instructions of the Court, and to be due to passion and prejudice rather than reason." *Id.* at 375, 42 S.E.2d at 708. "[T]o warrant a new trial absolute, the verdict reached must be so grossly excessive as to clearly indicate the influence of an improper motive on the jury." *Holroyd v. Requa*, 361 S.C. 43, 66, 603 S.E.2d 417, 429 (Ct. App. 2004).

In determining whether a verdict amount is excessive, "the facts must be viewed in the light most favorable to the plaintiff and, where the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive." *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). RMC presents no compelling reason for the Court to invade the jury's province. Viewing the evidence in a light most favorable to Hamilton, it bears a reasonable relationship to the character and extent of the injuries sustained and supports the lower court's finding that neither verdict was excessive.

A. The evidence supports the jury's verdict for R.J.

Hamilton presented ample evidence of R.J.'s damages to support the jury's verdict. There is evidence R.J. suffered a permanent injury. There is evidence R.J. suffered past, present, and future pain and suffering, mental and emotional anguish, anxiety, and loss of enjoyment of life.

"An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." *Boan v. Blackwell*, 343 S.C. 498, 501-02, 541 S.E.2d 242, 244 (2001). "Separate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant's negligence." *Id.* at 502, 541 S.E.2d at 244. "One cannot easily or with any mathematical certainty place a value on the amount of a person's pain and suffering." *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 218, 528 S.E.2d 682, 687 (Ct. App. 2000).

RMC argues "there was little testimony regarding pain and suffering." (Br. of App. p. 33). This is false. There is evidence R.J. experienced pain at the time of the infiltration, during the healing process, and after the scar formed. When the nurses finally called a doctor to look at R.J.'s hand, it was swollen with "a big black scar and it was a bubble" on top of his hand full of fluid. (Trial Tr. pp. 150-51) (R. pp. __). R.J. cried during every one of the fifteen visits to the wound care center. (Trial Tr. pp. 153-54) (R. pp. __). Dr. DeVito testified the "whole nature of the wound is painful." (Trial Tr. p. 230) (R. p. __). R.J. could not crawl with his hand out and Hamilton "constantly" watched him to make sure he did not hit it on something or make it bleed. (Trial Tr. p. 157) (R. p. __).

The infiltration resulted in keloid scar tissue that "invades" the skin surrounding it and causes painful burning and itching symptoms. (Trial Tr. p. 227) (R. p. __). Dr. DeVito testified some patients describe the pain "as if someone were putting hot needles to the skin." *Id.* Dr.

DeVito saw R.J. weeks before trial but testified he “couldn’t even examine the child” because R.J. pulled his hand back and withdrew, it is still “a source of pain for him,” and the examination “was really an ordeal.” (Trial Tr. pp. 236-37) (R. pp. _).

R.J. was three-years-old at the time of trial, and Hamilton testified he suffered complications from his scar. (Trial Tr. pp. 156-57) (R. pp. _). His hand cramps up and he complains about itching and cannot sit still when it hurts. (Trial Tr. p. 156) (R. p. _). Hamilton massages his hand and does hand exercises with him using a ball. (Trial Tr. p. 156) (R. p. _).

Dr. Davis and Dr. DeVito agreed that R.J. will have a permanent scar regardless of any future treatment. (Trial Tr. pp. 210-11, 236) (R. pp. _). R.J.’s skin will never be normal again. (Trial Tr. p. 237) (R. p. _). He does not have sweat glands or hair follicles on his right hand. (Trial Tr. p. 237) (R. p. _). Even slightly bumping R.J.’s hand could cause a blister or ulcer. (Trial Tr. p. 238) (R. p. _). The court charged the jury that R.J.’s life expectancy was 73.76 years. (Trial Tr. p. 428) (R. p. _).

RMC argues that the functionality of R.J.’s hand is a basis to find the damages excessive. (Br. of App. p. 34). This misstates the testimony and fails to view it in a light most favorable to Hamilton. During all of the functionality tests that Dr. Davis performed, R.J. complained that his hand felt tight. (Trial Tr. p. 205) (R. p. _). Dr. Davis testified that scars have a negative psychological impact on a person regardless of functional abilities. (Trial Tr. pp. 202-03) (R. pp. _). Almost four years after the infiltration, R.J. still complained of itching on the scar site. (Trial Tr. pp. 203-04) (R. pp. _). Dr. DeVito testified R.J. “has some limitation” compared to a child with no scar because R.J. would not even let Dr. DeVito touch the hand during the examination. (Trial Tr. p. 249) (R. p. _). Tekayah testified that she limits R.J.’s activities for fear that he will

injure his hand. (Trial Tr. p. 158) (R. p. _). That R.J. has functionality in his hand does not decrease the significance, frequency, or intensity of his regular emotional and physical pain from the scar.

“[A] verdict which may be supported by any rational view of the evidence, or as to which reasonable and disinterested men might draw different inferences, is not of this class” of excessive verdicts. *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of “probably the highest verdict in a personal injury case in the history of this State”). That RMC disagrees with the jury’s damages determination does not make it excessive. Further, that R.J.’s verdict of \$1,127,280.00 is “54 times” the medical expenses (Br. of App. p. 35), is not a basis for finding it excessive. RMC does not cite any law requiring that a verdict amount must be within a certain multiplier of alleged actual damages. On the contrary, the law is that there is no yardstick or measure for determining non-economic damages. *See Knoke v. S.C. Dep’t of Parks, Rec. & Tourism*, 324 S.C. 136, 142, 478 S.E.2d 256, 258-59 (1996) (stating “intangible damages” “cannot be determined by any fixed measure”); *Lucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976) (stating non-economic damages “are intangibles, the value of which cannot be determined by any fixed yardstick”). Further, R.J.’s medical expenses are Tekayah’s damages and, therefore, cannot be used as the “yardstick” for his measure of damages.

An award of \$1,127,280.00 for a child who will have to endure a scar and the daily physical and emotional pain and limitations associated with it for his *entire life* is neither merely nor grossly excessive.

B. The evidence supports the jury’s verdict for Tekayah.

Hamilton presented ample evidence of Tekayah’s damages to support the jury’s verdict. A parent can recover medical expenses, loss of services, and other pecuniary losses arising out of the

injuries of a minor child. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 68, 651 S.E.2d 305, 307-08 (2007).

The medical bills totaled \$20,854.00. (Trial Tr. p. 413; Pl.'s Exh. 7) (R. pp. __). Dr. DeVito's recommended surgical treatment for R.J.'s scar will cost approximately \$2,500.00 for the surgical fee and in excess of \$12,000.00 for other associated costs such as the anesthesia, hospitalization, the operating room, and testing. (Tr. pp. 240-41) (R. pp. __). Dr. DeVito testified that R.J. would need steroid injections "indefinitely" and each injection costs \$85.00. (Tr. p. 234; Pl.'s Exh. 8) (R. pp. __).

RMC argues Hamilton did not establish the scar treatment. (Br. of App. p. 34). This is incorrect. Tekayah testified that she did not want to have surgery on R.J.'s hand at the time of trial because he was so young and had already been through a lot. (Tr. pp. 170-71). Dr. Davis testified that giving the steroid treatment to a three-year-old is "not easy" and "not successful at that age" because it is traumatic for the child and requires a sedative. (Tr. pp. 207-08). Dr. DeVito testified that Keloid scars are difficult to treat with steroids because penetrating "a hard scar with a needle and syringe is . . . like trying to inject the paint on [a] wall." (Tr. pp. 231-32). Even an alternative vaccination gun that uses high pressure is "painful." (Tr. pp. 232-33). Dr. DeVito found it "very understandable" that Tekayah may not want to put R.J. through that pain at three-years-old and agreed it is a "painful dilemma" for a child. (Tr. pp. 234-35). Based on that testimony, the jury could have accepted Hamilton, Dr. DeVito, and Dr. Davis's testimony that it is best to wait to pursue scar treatment until R.J. is older. That Tekayah is choosing to wait does not mean she cannot recover for the future treatment.

The lower court considered that Tekayah missed work for a year because she could not trust any one to properly watch out for R.J.'s hand. (Trial Tr. p. 157; Order p. 5) (R. pp. __). The

lower court considered that Tekayah would remain R.J.'s guardian for an additional fifteen years from the date of trial. (Order p. 6) (R. p. _).

RMC incorrectly argues that Tekayah's damages are limited to only the medical expenses. (Br. of App. p. 37). A parent may recover for loss of a child's services and earning capacity (which are not at issue here), as well as "*other* pecuniary losses, *including* medical expenses incurred as a result of the injury." *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 68, 651 S.E.2d 305, 308 (2007). That the court listed medical expenses as included within the category of "pecuniary losses" necessarily means that a parent's recovery is not limited to medical expenses.

An award of \$135,477.00 for R.J.'s past and future medical expenses, as well as Tekayah's pecuniary loss for missed work, travel expenses, and constant daily watching over and caring for R.J. is neither merely nor grossly excessive.

CONCLUSION

For these reasons, the Court should affirm the lower court.

March 24, 2021

Respectfully submitted,

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton,
Jr., a minor child under the age of eighteen,.. Respondent

v.

The Regional Medical Center, ...Appellant

REPLY BRIEF OF THE REGIONAL MEDICAL CENTER

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I. THIS CASE IS ABOUT PEDIATRIC NURSING AND IV ADMINISTRATION AND MONITORING AND RESPONDENT'S EXPERT MONICA STOBBS FAILED TO MEET THE REQUIREMENTS OF RULE 702, SCRE, AND GOODING AS IT PERTAINED TO PEDIATRICS

In its brief, Respondent falsely states that Appellant is incorrect about this case being about pediatric nursing, and instead, characterizing it as "IV management safety practice of doing and documenting a saline flush before administering medication." (Br. of Resp. 8) Respondent falsely characterizes Appellant's discussion of blood return and IV management irrelevant on the basis that this case is about whether a flush was done, (Br. of Resp. 6), and that Appellant's arguments regarding Nurse Downing's qualifications are mute or "does not make a difference." (Br. of Resp. 7.) on the basis that the standard of care is the same for pediatrics and adults.

This case *is* about pediatric nursing, and there *are* differences between pediatrics and adults and the care provided to each during IV administration and monitoring. App. Br. 11. There are various physiological differences that vary greatly among infants, children, and adults. App. Br. 11 fn 1, 2, 3. Veins in infants are "obviously smaller" and can be "threadlike." App. Br. 11 fn 2. "Vein fragility and the high acuity levels of young patients can increase the likelihood of infiltration and extravasation, resulting in significant morbidity." App. Br. 11-12, fn 3. Since infants, children, and adults are all different, there are different procedures in place, different equipment used, and different techniques utilized in the IV administration. Trial Tr. 331:4-17, 332:7-12, 15-20, Mar. 17, 2019. It requires a certain skill. *Id.* at 332:7-9.

As this matter was about pediatric nursing, not general nursing, to testify as to the standard of care regarding *pediatric* standard of care for IV administration and monitoring, Nurse

Stobbs was required, by Rule 702 of the South Carolina Rules of Evidence, to possess the "knowledge, skill, experience, training or education" as it pertained to *pediatrics*. Rule 702, SCRE. "To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter.'" *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997) (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995); see, e.g., *State v. Douglas*, 367 S.C. 498, 508-509, 626 S.E.2d 59 (Ct. App. 2006); *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 65 (Ct. App. 1984). Nurse Stobbs fails to meet the requirements of both Rule 702 and *Gooding* as to *pediatric* nursing and IV administration. App. Br. 12-15. Nurse Stobbs has never cared for a pediatric patient; has never started or managed a pediatric IV; does not have any education or knowledge as to pediatric nursing or IV administration; and did not perform any research, independent study, or review any medical literature in preparation of formulating her opinions. App. Br. 13. Moreover, Nurse Stobbs actually testified in direct contradiction with the medical literature regarding obtaining blood return, as well as testimony from Nurse Downing and Cynthia Hurley, both of whom actually practice in pediatrics. App. Br. 13-14. This argument is not irrelevant, as it is further proof of Nurse Stobb's lack of experience or knowledge regarding *pediatric* nursing and IV administration.

Respondent incorrectly states in its brief that Nurse Stobbs "is qualified in the field of IV management." Resp. Br. 11. Nurse Stobbs was qualified as to *general nursing*, not the field of IV management. Trial Tr. 10:4-6, Dec. 22, 2020; Trial Tr. 78:1-9, Mar. 17, 2019. Moreover, Respondent argues that she was "not required to specifically practice in pediatric IV

management." Resp. Br. 11. However, the argument is not that Nurse Stobbs has to specifically practice in pediatrics. The issue is not over a *defect* in amount or quality of experience or knowledge. App. Br. 13. Rather, the issue is whether Nurse Stobbs possessed *any* of the required "knowledge, skill, experience, training or education" "acquired by reason of study or experience or both" such that she is "better qualified than the jury to form an opinion on" *pediatric* nursing and *pediatric* IV administration and monitoring. Rule 702, SCORE; *Gooding*, 326 S.C. at 253, 487 S.E.2d at 598; App. Br. 12-13. Nurse Stobbs must have gained knowledge or experience in *pediatric* nursing and IV administration by some means to be qualified to testified as to the standard of care of the same. She has no such knowledge or experience in *pediatric* nursing and IV administration, and therefore was not qualified to testified as to the standard of care for *pediatric* nursing and IV administration. App. Br. 12-15.

Respondent is incorrect that Appellant's arguments against the qualification of Nurse Stobbs goes to the weight and not admissibility of her testimony. Br. of Resp. 8. Similar to the orthopedic surgeon in *Botehlo*, Ms. Stobbs has had no personal experience or training at all in pediatric nursing or IV administration. App. Br. 13. Respondent is incorrect in that *Botehlo* is not easily distinguishable from the facts of this matter. Resp. Br. 10. In *Botehlo*, the court held that an orthopedic surgeon was not qualified to testify on the standard of care for podiatrist where the orthopedic surgeon 1) had no training in podiatry, 2) was not familiar with any journals or periodicals in podiatry, and 3) was not familiar with the surgical procedure performed. *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 65 (Ct. App. 1984). Similar to *Botehlo*, Nurse Stobbs 1) has had no training, education, or any experience at all in *pediatric* nursing or IV administration; 2) was not familiar with any medical literature regarding *pediatric* nursing or IV

administration and had not performed any research, independent study, or review any medical literature as to *pediatric* nursing and IV administration in preparation of formulating her opinions; and 3) has never cared for a *pediatric* patient and has never started or managed a *pediatric* IV. App. Br. 13; Trial Tr. 79:24-25, 108:22-110:21, 103:14-104:8, 108:22-110:21, 111:14-23, Mar. 17, 2019; Stobbs Dep. 13:9-24, 26:15-24. Thus, similar as to how the orthopedist in *Botehlo* “not versed at all in the practice of podiatry,” *McMillan v. Durant*, 312 S.C. 200, 204, 439 S.E.2d 829, 832 (1993) (referring to *Botehlo*), Nurse Stobbs is not versed at all in the practice of *pediatric* nursing and IV administration.

Respondent relies on *McMillian*, *Lee*, *Graves*, and *Creed* for its argument that Nurse Stobbs lack of experience in pediatrics is not sufficient in prohibiting her from testifying as to the standard of care for pediatric nursing and IV administration. Resp. Br. 8-10; *McMillan v. Durant*, 312 S.C. 200, 439 S.E.2d 829 (1993); *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995); *Graves v. CAS Med. Sys.*, 401 S.C. 63, 735 S.E.2d 650 (2012); *Creed v. Columbia*, 310 S.C. 342, 426 S.E.2d 785 (1993). However, these cases are easily distinguishable.

Unlike *McMillian*, where a neurosurgeon was qualified to testify as to the appropriate standard of care of nursing on the basis that he taught nursing courses at a university, *McMillan*, 439 S.E.2d at 833, and *Lee*, where a plastic surgeon who was qualified to testify as to where he was a professor who taught family practitioner residents how to identify skin cancers and perform biopsies, *Lee*, 457 S.E.2d at 346, Nurse Stobbs has not had any experience teaching any courses regarding pediatric nursing or pediatric IV administration. In fact, she has no experience—knowledge or skill, training or education—whatsoever in pediatric IV administration. App. Br. 12-13.

Unlike in *Graves*, where the doctor stayed current on sudden infant death syndrome (SIDS) literature and routinely encountered SIDS in her practice, *Graves*, 401 S.C. at 78, Nurse Stobbs was unfamiliar with the medical literature regarding pediatric IV administration and management and had not done any research during her time spent prepping for this trial. App. Br. 13. Further, not only does she not "routinely encounter" pediatrics in her practice, she has *never* treated a single pediatric patient during her *entire* career. App. Br. 12-13. She has never started or monitored an IV in a single pediatric patient in her nursing career. App. Br. 12-13.

This case is also not similar to *Creed*. In *Creed*, the general practitioner who was qualified to give an opinion on the plaintiff's mental and emotional injuries had personally examined the plaintiff and referred him to a neuro-psychologist as a part of his course of treatment. *Creed*, 426 S.E.2d at 786. In the present matter, Nurse Stobbs did not personally treat, examine, or care for the minor Respondent and did not refer him to an outside specialist as a part of his course of treatment. In fact, she has not personally treated or care for *any* pediatric patient. App. Br. 12-13.

Additionally, in its brief, Respondent maintains that Appellant relies on *Gooding* but that *Gooding* supports Respondent's position. Resp. Br. 10. However, the present matter is also distinguishable from *Gooding*. In *Gooding*, the EMT who was qualified to testify as to intubation procedure had personal, hands-on experience with intubation and had intubated over 100 patients. *Gooding*, 326 S.C. at 251. This case is about *pediatric* IV management, and Nurse Stobbs has had *no experience whatsoever* in pediatric IV management or pediatric nursing. App. Br. 12-13.

Respondent's expert Nurse Stobbs was the only witness it produced as it pertained to two critical issues. The jury returned a verdict that was excessive in light of the testimony and evidence presented at trial. Thus, the issue concerning her qualification or lack of *does* matter and *does* make a difference. App. Br. 15-16.

In its brief, Respondent incorrectly argues that Appellant's argument regarding Nurse Stobbs' testimony on the pediatric standard of care for IV administration and monitoring was not preserved for appeal. Resp. Br. 11-12. In its Motion in limine, counsel for Appellant made it known to the court that he felt like this was a situation in which Respondent was attempting to have her qualified in pediatric nursing. Trial Tr. 8:13-17, 8:20-9:19, Dec. 22, 2020. The Trial Court specifically indicated Ms. Stobbs would be qualified in general nursing and not pediatrics, as it acknowledged she had no prior experience with regards to pediatrics. Trial Tr. 8:18-19, 9:20-10:6, Dec. 22, 2020. In its decision, the Trial Court stated that it would qualify her for nursing care but not neonatal. Trial Tr. 10:5-6, Dec. 22, 2020. Respondent incorrectly maintains the position that Appellant's argument was not preserved but it was never objected to during trial. Br. of Resp. 11. However, during the qualification of Nurse Stobbs at trial, counsel for Appellant contemporaneously objected and stated on the record that Nurse Stobb's qualification was "subject to my prior objection." Trial Tr. 78:5-6, Mar. 17, 2019.

Nurse Stobbs was qualified as an expert in nursing, *general* nursing, not pediatrics or neonatal and not in the "field of IV management" as stated in Respondent's brief (Resp. Br. 11). Trial Tr. 10:4-6, Dec. 22, 2020; Trial Tr. 78:1-9, Mar. 17, 2019. As suspected, Nurse Stobbs did in fact testify during trial regarding the standard of care for *pediatric* nursing and IV

administration and care. All supporting arguments and authority as it pertains to Nurse Stobb's testimony regarding pediatric nursing and IV administration and monitoring have already been discussed in this brief, as well as Appellant's Initial Brief. *See* Rule 702, SCRE; *Gooding*, 326 S.C. 248, 487 S.E.2d 596; *Botehlo*, 282 S.C. 578, 320 S.E.2d 59; App. Br. 9-16.

II. GROSS NEGLIGENCE IS THE STANDARD THAT APPLIES IN THIS MATTER AND RESPONDENT FAILED TO MEET THEIR BURDEN

Gross negligence is the standard that applies in this case. App. Br. 17; Trial Tr. , 214:12-215:16, 434:10-17, Mar. 17, 2019. *Stewart* is the governing law in this matter. *See Stewart v. Richland Mem'l Hosp.*, 350 S.C. 589, 592, 567 S.E.2d 510, 511 (Ct. App. 2002). As defined by S.C. Code Ann. § 15-78-30(j) and *Smith v. TRMC*, Appellant is a governmental entity, and therefore this matter is strictly governed by the confines of the South Carolina Torts Claims Act. App. Br. 17; *see Smith v TRMC*, 713 S.E.2d 656 (Ct. App. 2011); S.C. Code Ann. §15-78-200. The South Carolina Torts Claims Act limits liability of a governmental entity unless there is gross negligence. S.C. Code Ann. § 15-78-60(25); App. Br. 17. Respondent argues that gross negligence is the applicable standard because "because it concerns a nurse's administration of medication and not 'supervision, protection, control, confinement, or custody' of a patient." Br. of Resp. 15, fn 2. However, although *Stewart* involved the custody of an inmate, it also involved the monitoring of him as a patient. *Stewart*, 350 S.C. 589, 591-592; Trial Tr. 213:14-22, Mar. 17, 2019. Therefore, the gross negligence standard is applicable in cases involving the monitoring of patients, and thus, as the Trial Court agreed, is applicable in this case.

Respondent is incorrect in its presumption that Appellant is arguing that the words "gross negligence" must have been used for the evidence of the same to exist. Resp. Br. 15. Appellant's

position is that Respondent failed to establish *any* evidence of gross negligence, and thus, they failed to meet their burden and a directed verdict should have been returned in favor of Appellant. App. Br. 18.

Respondent believes the issue in this matter is whether the IV was flushed before administering ampicillin, and Respondent's theory is based on "if it wasn't documented, it wasn't done." Resp. Br. 3. However, this theory is directly contradictory to the testimony as to the policies and procedures of pediatric nursing and IV administration at The Regional Medical Center (RMC) and is based on a complete misread of the policy itself. In its brief, Respondent maintains that there was evidence that RMC "consciously failed to do or document a saline flush." Resp. Br. 16. Respondent bases assertion by stating "RMC's policies require a saline flush prior to administering medication and documentation of that flush." Resp. Br. 16. However, this is factually incorrect and blatantly mischaracterizing the testimony as to what the policy requires.

Both Nurse Downing and Cynthia Hurley testified numerous times that flushing a site is part of the assessment with administering a medication, and there is no way to give the medication without flushing the IV first. Trial Tr. 272 25-273:8, 273:18-274:1, 276:22-25, 277:5-10, 280:2-281:1, 364:2-19, 365:9-13, Mar. 17, 2019. It is considered a part of the process and therefore it is not to be documented separately. *Id.* at 284:19-21. Even Respondent acknowledged in its brief that Nurse Downing testified it is her practice to flush prior to administering medication (Resp. Br. 3); that Downing testified flushing prior to administration of medication is "ingrained in you in nursing school" and "it makes no sense not to" flush (Resp. Br. 16); and that Downing testified there is "no way to really tell if the site is open and flowing without flushing it" (Resp. Br. 17).

The issue comes down to the fact that there are two types of flushes and different policies and procedures for each: 1) flushes done when administering medication, and 2) four-hour flushes that are automatically populated in the MAR computer system. The flushes that are given prior to and after administering medication are considered a part of the process for administering medication, and they are not to be documented separately in the MAR system. Trial Tr. 284:19-21, 336:19 -337:2, Mar. 17, 2019. In fact, there is not a flow sheet or space in which to document it. *Id.* at 284:19-21. In contrast, the flushes that task automatically in four-hour increments in the computer MAR program automatically populate when the ordering physicians puts in the order for the IV. *Id.* at 285:18-23. Although the timing of these flushes could align with the administration of medication, these flushes are not associated with medication administration. *Id.* at 275:23. These four-hour flushes are a part of an intermittent, not continuous, IV schedule, as was the case here, and are to be documented pursuant to RMC policy. *Id.* at 274:6-19, 274:23-275:1, 275:19-276:9, 364:14-19. Per RMC policy, infants are to be flushed in four-hour increments, which is a different in adult IV administration. *Id.* at 331:4-8. Nurse Downing and Cynthia Hurley both testified several times that although these four hour flushes automatically populate in the system to be tasked at a certain time, it is not always appropriate to do those flushes at that time. It would not be appropriate when a nurse has already flushed the IV prior to that time as part of the process of administering a medication. *Id.* at 331:1-3, 365:18-19. If a medication is already being administered when the four-hour flush tasks, it would not be appropriate to flush at that time and would instead be appropriate once that medication has finished being administered. *Id.* at 285:2-7. It would also not be appropriate to flush if it has infiltrated. *Id.* at 285:7-9, 343:4-8.

The very notable and important distinctions between these two flushes that were discussed at length during trial. Respondent is basing its position on that Downing did not remember doing a flush prior to administering the ampicillin and "if something is not documented, then it was not done." Resp. Br. 17. Respondent is misreading the RMC policy, mischaracterizing the testimony, and attempting to make it seem like Nurse Downing did not follow the correct policy, when in fact, she and Appellant's expert Cynthia Hurley, testified that she did, in fact, follow RMC policy and procedure. Although Nurse Stobbs could not recall specifically flushing at that particular time due the length of time that has transpired, she testified that flushing prior to administering medication is a part of the process, is "ingrained in you in nursing school," and "it makes no sense not to" flush. *Id.* at 280:21-281:1. Moreover, she testified it was not documented because it was not supposed to be, as it was considered a part of the process for administering medication, and there was not a place in the computer system to document it separately. *Id.* at 272:25-273:8, 273:12-14.

Not only did Nurse Downing testify that she complied with the policy and that at no time she did see an infiltratin score of 5, Trial Tr. 303:25-305:21, Mar. 17, 2019, Cynthia Hurley, in her testimony, gave a detailed description and timeline of the flushes that Nurse Downing performed in her treatment and care of the minor. Nurse Downing began working at 6:45 pm and got a report saying the patient's hand was flushing well. Trial Tr. 327:12, Mar. 17, 2019. At 7:30 pm, Nurse Downing wrote her nurse's note and documents indicate the patient was resting in his mother's arms and the IV flushing properly. *Id.* at 328:6, 333:25-334:3, 336:11-16. The first IV check was at 7:44. *Id.* at 328:7, 21-24. A four-hour flush was tasked at 8 pm, but a previous nurse had already flushed when administering an antibiotic, so it did not make sense to do it at the time

and was instead done at 9:19 p.m. *Id.* at 330:9-331:10. At 10:05 pm Nurse Downing performed an IV check and flush. *Id.* at 333:4-10. At 11:08 p.m. Nurse Downing administered ampicillin, which would have included a flush before and after administration of medication. *Id.* at 336:19-337:2. At 11:23 p.m. she checked the IV; it was documented that the IV infiltration score was 0, phlebitis score was 0, and there were no problems. *Id.* at 337:8-338:8. Nurse Downing went in again at 11:44 p.m. for another IV administration and flush. *Id.* at 338:10-17. Vitals were taken at 11:59 p.m. and were normal. *Id.* at 338:19-21.

A four-hour flush was tasked at midnight; however, it tasked after Claraforan, an antibiotic, was given at 11:44 p.m. *Id.* at 339:1-9. Since it had just been flushed during that process of administering that medication, the IV was flushed after the completion of the administration of Claraforan. *Id.* at 339:1-12. It would have made no sense to give it at midnight. *Id.* at 365:18-19. Nurse Downing checked the IV at 12:37 a.m. and performed the flush at 1:04 a.m. *Id.* at 339:11-12. The minor had a phlebitis score of zero, infiltration zero, no signs of complication, and was sleeping. *Id.* at 307:4-9, 339:15-23.

Nurse Downing then checked on the minor as a part of her periodic nursing rounds. *Id.* at 339:24-340:3. At 2:30 a.m. a note was made in the nursing charts that the patient was asleep, no signs of distress, and will continue to monitor. *Id.* at 341:7-12. At 2:41 a.m. Nurse Downing performed another IV check. *Id.* at 340:9-12. At 2:43 vitals were assessed by a nursing assistant and were confirmed to be okay by Nurse Downing at 2:49 a.m. *Id.* at 340:22-341:6. At 4:04 Nurse Downing performed another IV assessment that showed an infiltration score of zero and phlebitis score of zero. *Id.* at 341:14-24. Cynthia Hurley testified that this 4:04 a.m. assessment "certainly met the standard of care." *Id.* at 350:9-14.

Ampicillin medication was administered at 4:27 a.m.. *Id.* at 341:25-342:4. Nurse Downing testified that when she gave the medication, she assessed the site and it was 0 and flushing well. *Id.* at 292:12-14. A four-hour flush tasked at 4:45 a.m., but Nurse Downing and Cynthia Hurley both testified that it was not appropriate to flush at that time because medication was already infusing and was not appropriate to flush after the medication was finished being administered because the IV had infiltrated. *Id.* at 285:4-5, 342:22 -343:8. The medical records indicate at 4:50 a.m. Nurse Downing had a discussion with the Respondent Tekeyah Hamilton about the infiltration, discharged the IV antibiotics, stopped the pump from administering anymore ampicillin, removed dressing, removed peripheral IV removed, noted catheter intact, and called the physician. *Id.* at 343:21-345:3, 346:17-21. Nurse Downing testified that she went in as soon as the alarm sounded, and "you do the best you can" with regards to charting real time because "[o]bviously, at the moment the more pressing circumstance would be to assess the patent and follow proper procedures for removing an IV." *Id.* at 286: 22-287:5. Cynthia Hurley testified that Nurse Downing took the appropriate course of action. *Id.* at 343:14-20.

At 5:16 and 5:17 a.m., vitals were confirmed and the IV was removed. *Id.* at 347:3-4. At 6 am the patient was assessed and was asleep. *Id.* at 347:7-10. At 6:22 and 6:26 a.m. vitals were confirmed, and at 6:45 a.m., Nurse Downing gave a shift report to another nurse as her shift was ending. *Id.* at 347:13-14.

Cynthia Hurley testified that not only did Nurse Downing abide by the standard of care and do everything she was supposed to do, but she actually exceeded the standard of care. *Id.* at 347:19, 352:8 - 354:13, 356:20-357:4, 371:22-23. Ms. Hurley testified that according to RMC's policy, "The phlebitis and infiltration scale is to be utilized to address IV site conditions a

minimum of once per shift. That's all she had to do." *Id.* at 353:11-18. However, Nurse Downing checked on the minor and the IV about every hour and gave seven flushes during her twelve hour shift when the policy required one flush every four hours. *Id.* at 353:11-14. Nurse Downing assessed the IV 19:44, 20:54, 22:05, 23:23, 0:37, 1:00, 2:42 and 4:04. *Id.* at 354:3-10. She only had to do one of these assessment per RMC policy. *Id.* at 331:6-8; 354:11-13. This is evidence that Nurse Downing not only followed protocol, but she *exceeded* it and exceeded the standard of care required.

Contrary to Respondent's brief, Respondent did not put forth any evidence of conscious failure to act or intentionality. In fact, Nurse Stobbs had no opinion as to the intentional conduct of Nurse Downing. Br. of App. 19. Respondent failed to put forth evidence that Nurse Stobbs failed to abide by RMC policy, and in fact, there was much testimony to the contrary. Furthermore, Nurse Stobbs agreed that just because there is an IV infiltration does not mean there is negligence and that it is a known risk and admitted to having had IVs infiltrate without having been negligent herself. Br. of App. 19. This is not a situation of "competing evidence" such that "evidence yields more than one reasonable inference or its inference is in doubt" as suggested in Respondent's brief. *See* Resp. Br. 15 & 17. Respondent did not put forth "any evidence. . .to support the jury verdict." *See* Resp. Br. 17. Respondent did not put forth any evidence establishing gross negligence, and therefore did not meet their burden and the jury's verdict is not supported by the evidence. A directed verdict or JNOV should have been granted.

III. RESPONDENT TEKAYAH HAMILTON'S VERDICT AWARD WAS EXCESSIVE AS SHE WAS LIMITED TO PAST AND FUTURE MEDICAL DAMAGES

As discussed previously, this case is subject to the limitations of the South Carolina Torts Claims Act. In *Wright*, the court in finding that a parent may recover medical expenses separately from the child's claim, provided that parent's claim for loss of services and medical expenses resulting from the injury of a minor child is within the tort claims act statutory definition of "loss." *Wright v. Colleton Cnty. Sch. Dist.*, 301 S.C. 282, 289-90, 391 S.E.2d 564 (1990).

Respondent relies on *Doe v. Greenville County School District*. Resp. Br. 32-34. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007). In *Doe*, the parents argued that the trial court erred in dismissing their claim for loss of consortium as it pertained to their child. The Supreme Court disagreed. What Respondent is relying on in the case is a text pertaining to a description of what was allowed at common law.

At common law, a father possessed the right to maintain an action for the injuries of his minor child. This right was based upon the concept that a father was entitled to compensation for the loss of services and earning capacity of his minor child. Additionally, the father could recover for other pecuniary losses, including medical expenses incurred as a result of the injury.

Id. at 68 (internal citations omitted). The Court went on to explain that in *Taylor*, the Court, in declining to recognize a cause of action for loss of parental consortium, "held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature." *Id.* at 69 (quoting *Taylor v. Medenica*, 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996)). The Court further explained that in *Kirkland*, the South Carolina District Court adopted the *Taylor* analysis and found "that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium." *Id.* (quoting *Kirkland v. Sam's East, Inc.*, 411 F.Supp.2d 639, 641 (D.S.C.2005)). The Court in *Doe*

extended *Taylor* and held "that South Carolina law does not recognize claims for loss of filial consortium" as "[s]uch rights did not exist under the common law, and the legislature has not provided such a right by statute." *Id.*

...our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

Id. 69-70.

In 2017 the Court was presented with the issue of whether a minor may bring an action for her own medical expenses. *Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017).

The Court stated that this invoked the "real party in interest" requirement of Rule 17(a) of the South Carolina Rules of Civil Procedure (at 479-80) and found that a parent is the proper party in interest with respect to past and future medical expenses while the child is a minor. *Id.* at 479-80.

Based on previous argument regarding Respondent's failure to establish evidence of gross negligence, Appellant maintains its position that a directed verdict, JNOV, or in the alternative, a new trial, should have been granted, as the verdict rendered was shockingly disproportionate, wholly unsupported by and contradictory to the evidence presented. However, in the event the court disagrees, Appellant believes its motion for a new trial *nisi remittitur* should have been granted, as the verdict was, at the very least, merely excessive in light of the evidence presented, and the damages are subject to the above limitations.

Loss of services is not at issue in this case. Therefore, Respondent Tekeyah Hamilton is limited to past and future medical damages only. Respondent presented past and future medical

costs in the amount \$20,854.00. Trial Tr. 412:24 - 413:12, Mar. 17, 2019. This included \$4,699 TRMC bills; \$635 for Dr. Devito; future surgery \$2500; \$12,000 future hospital charge; and \$1,020 for steroidal injection. *Id.* As loss of service is not at issue in this matter, these past and future medical bills, which total \$20,854.00, is all Respondent Tekayah Hamilton is entitled to recover. Therefore, the jury verdict for Respondent Tekayah Hamilton in the amount of \$135,477.00 must be reduced to \$20,854.00.

IV. OTHER ARGUMENTS: PHOTOGRAPHS, REQUEST TO ADMIT, TESTIMONY OF CYNTHIA HURLEY. EXCESSIVE DAMAGES REGARDING MINOR

For sake of brevity, as a response to Respondent's arguments as to photographs of minor's hand, Request to Admit, testimony of Cynthia Hurley regarding gross negligence, and excessive verdict rendered to minor, please see Appellant's Initial Brief.

CONCLUSION

For the reasons stated, Appellant respectfully requests the Appellate Court to reverse the decision of the Trial Court and dismiss this action with prejudice or, in the alternative, reverse the decision of the Trial Court and grant Appellant a new trial.

Respectfully submitted,

April 2, 2021

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

RECEIVED

May 20 2021

SC Court of Appeals

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor
child under the age of 18, ... Respondent,

v.

Regional Medical Center, ... Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert and allowed her to testify about the standard of care that applies to adults and children?
- II. Whether the lower court correctly denied RMC's motions for a directed verdict and JNOV where there is evidence of gross negligence in the record?
- III. Whether the lower court properly exercised its discretion to admit photographs of R.J.'s hand where the photographs corroborate Tekayah and Dr. DeVito's testimony and demonstrate the nature and severity of the injury?
- IV. Whether the lower court properly exercised its discretion to exclude Ms. Hurley's opinion on gross negligence because expert testimony on issues of law is inadmissible?
- V. Whether the lower court properly exercised its discretion to publish RMC's requests for admission to the jury for its consideration along with all other evidence?
- VI. Whether the lower court properly exercised its discretion to deny RMC's motions for a new trial or, alternatively, a new trial *nisi remittitur*, where the verdicts are not excessive?

STATEMENT OF THE CASE

This is an appeal from a jury verdict for the Plaintiffs in a medical negligence trial arising out of an IV infiltration burn injury of a five-week-old boy. The lower court granted in part and denied in part the Defendant's post-trial motions.

On October 7, 2015, Respondent Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a minor child under the age of eighteen, (collectively "Hamilton") filed this action against Appellant the Regional Medical Center ("RMC") for medical negligence. (R. pp. 17-23). RMC filed an answer generally denying the allegations. (R. pp. 29-33).

The parties tried the case from May 7-9, 2018, before the Honorable Edgar W. Dickson. (R. p. 60). The jury returned a verdict finding RMC gross negligently and awarding Tekayah \$135,477.00 and her child \$1,127,280.00. (R. p. 535).

On May 17, 2018, RMC filed two post-trial motions. It filed a post-trial motion for judgment notwithstanding the verdict or, alternatively, for a new trial or a new trial *nisi remittitur*. (R. pp. 536-49). RMC also filed a motion to reduce the child's damages to the \$300,000.00 statutory cap pursuant to S.C. Code § 15-78-120(a) (2005) and to reduce Tekayah's damages to the amount of the medical expenses. (R. pp. 552-54). Hamilton filed a memorandum in opposition to the motions. (R. pp. 556-71).

On October 25, 2019, the lower court granted the motion to reduce the child's damages to \$300,000.00 and denied all other motions. (R. pp. 2-10). On November 19, 2019, RMC filed a notice of appeal. (R. p. 585).

FACTS

On October 25, 2014, Robert Lee M., Jr., ("R.J.") was admitted to RMC for a high fever. (R. p. 97). Five days later, R.J. left the hospital with a third-degree burn injury to his right hand because the IV antibiotics RMC administered infiltrated and burned his hand rather than entering his vein. (R. pp. 117, 233). R.J. was five weeks old. (R. p. 97).

Jamie Downing is an RMC nurse who treated R.J. during his hospital admission. She had worked as a nurse for less than three months and been allowed to work on her own for about two weeks when she treated R.J. (R. pp. 271-72).

RMC did not initially know the cause of R.J.'s fever but started him on an IV antibiotic therapy in case he had an infection. (R. p. 97). RMC's policies state that, before putting medication into an IV, the nurse is required to flush the IV with normal saline. (R. pp. 98-99, 301, 495). The saline flush is a way for the nurse to make sure the IV is properly in the vein so that the medicine will go into the vein and not the skin. (R. pp. 110, 159). Infiltration occurs when medication inserted into an IV goes somewhere besides the vein and can cause injury. (R. pp. 110, 144).

In the early morning of October 28, 2014, Downing administered the antibiotic ampicillin into R.J.'s IV. (R. p. 101). About twenty minutes later, R.J.'s hand was swollen with a dark spot and he was "really crying" so much that Tekayah buzzed the nurses' station. (R. pp. 163-64, 299). Tekayah described R.J.'s hand as turning black with a lump full of fluid on it that burst the next day. (R. pp. 165-66, 168). The antibiotic Downing gave R.J. through the IV caused a third-degree burn to his right hand because it infiltrated outside of his vein. (R. pp. 112, 117, 289 lns. 2-5).

The parties disputed whether Downing flushed the IV with saline before she administered the ampicillin. R.J.'s medical records do not document a saline flush before the antibiotic. (R. p. 101). RMC's policies state: "Flushing the INT with saline is to be documented on the eMAR [electronic medical record]." (R. p. 495 no. 12). Downing testified RMC's policies "are direct instructions" and there is "not room for interpretation" of them. (R. p. 273). Hamilton's expert witness testified: "If it's not documented, it wasn't done." (R. pp. 104 ln. 25, 111, 159). Downing does not remember administering a saline flush prior to ampicillin that morning but testified it is her practice to flush prior to giving medication. (R. p. 288).

R.J. left RMC on October 30, 2015, with a burn injury that required fifteen visits to a wound care center. (R. p. 168). Dr. Peter DeVito, an expert in plastic surgery, examined R.J. in February 2015, when he was four months old. (R. p. 231, 233). He testified R.J.'s burn injury was "too contaminated for a skin graft" and took "a lot of wound care to heal." (R. p. 233, 235). The burn resulted in keloid scar tissue. (R. p. 233). A keloid is a "tumor of scar tissue" that "invades" the skin surrounding it and causes painful burning and itching symptoms. (R. p. 233).

On October 7, 2015, Hamilton filed this action against RMC for medical negligence. (R. pp. 17-23).

RMC filed two pre-trial motions relevant to this appeal. First, it moved to exclude Monica Stobbs, Hamilton's nursing expert, from testifying at trial. (R. pp. 522-25). RMC argued Nurse Stobbs was not qualified to testify about IV therapy for pediatric patients because she had not administered IV therapy to a pediatric patient and did not review literature specifically about IV therapy for a pediatric patient. (R. pp. 522-25, 44-45). Hamilton argued that Nurse Stobbs testified the administration and monitoring of an IV is the same for a pediatric and adult patient, and RMC's argument goes to Nurse Stobbs' credibility rather than her qualifications. (R. p. 43). The lower court ruled it would qualify Nurse Stobbs as a nursing care expert and RMC could "make all the hay you want to" about her pediatric experience. (R. pp. 45-46).

Second, RMC argued three photographs of R.J.'s hand should be excluded because they are inflammatory. (R. pp. 48-49). The lower court reviewed the photos and denied the motion. (R. pp. 50-51).

On May 7-9, 2018, the parties tried the case before the Honorable Edgar W. Dickson. (R. p. 60). The parties' experts disagreed as to whether Downing performed a saline flush before administering the antibiotic to R.J. and whether the IV management standard of care is the same for adult and pediatric patients.

Nurse Stobbs testified the standard of care for IV management is the same for pediatric and adult patients. (R. pp. 94-95, 114, 119-20, 126, 141-42). The nurse must flush the IV with saline before administering medication to ensure that the IV is going into the vein. (R. pp. 110, 112, 115-16). This is required by RMC's policies and procedures. (R. p. 495). Nurse Stobbs testified that RMC breached the standard of care because Downing did not do a saline flush before administering the medication to R.J. on October 28. (R. pp. 116-17, 159).

After deliberating for three hours, the jury returned a verdict finding RMC's gross negligence caused R.J.'s injuries. (R. pp. 444, 447, 455-56, 535). The jury awarded Tekayah \$135,477.00 and R.J. \$1,127,280.00. (R. p. 535).

RMC filed two post-trial motions. First, it moved for JNOV or, in the alternative, a new trial. Relevant to this appeal, RMC argued: (1) Nurse Stobbs was not qualified to testify about pediatric IV management, (2) Hamilton did not establish RMC's gross negligence, (3) the lower court should have excluded photographs of R.J.'s hand, (4) the lower court should have allowed RMC's expert, Cynthia Hurley, to testify that RMC was not grossly negligent, (5) the lower court should not have allowed Hamilton to publish to the jury her responses to RMC's requests to admit, and (6) the lower court should grant a new trial absolute or *nisi remittitur* because the verdict is disproportionate to the evidence. (R. pp. 536-49).

Second, RMC moved to reduce R.J.'s damages to the \$300,000.00 statutory cap in the South Carolina Tort Claims Act and to reduce Tekayah's damages to \$20,854.00, the amount of the medical expenses. (R. pp. 552-54).

Hamilton filed a memorandum in opposition to the motions. (R. pp. 556-71). On October 25, 2019, the lower court issued an Order granting RMC's motion to reduce R.J.'s damages to the statutory cap of \$300,000.00 but denying the motion to reduce Tekayah's damages. (R. pp. 5-7). The court denied the motion for JNOV and in the alternative a new trial absolute or *nisi remittitur* in its entirety. (R. pp. 7-10).

STANDARD OF REVIEW

Because there are multiple standards of review applicable to this appeal, the standard of review is addressed in the argument section for each issue.

ARGUMENT

The evidence in this case came down to a factual dispute about Downing's conduct and a battle of the experts. This is commonplace. The jury believed and accepted Hamilton's presentation of the facts. Over the course of the trial, based on the evidence admitted, the principal breach of the standard of care presented to the jury was that RMC, through Downing, failed to perform a saline flush before administering the IV medication. (R. p. 395). The issue Respondents presented to the jury was "did the nurse at The Regional Medical Center fail to flush?" (R. p. 395 lns. 12-13). This makes all of RMC's discussion about blood returns and other IV management irrelevant.

The majority of the issues on appeal are subject to an abuse of discretion standard, and the evidence in the record and the applicable law demonstrate that the lower court properly exercised its discretion. As to the remaining issue of RMC's motion for a JNOV, there is ample evidence that RMC breached the standard of care. RMC's disagreement with Hamilton's expert is nothing more than a jury issue. This Court should affirm.

I. THE LOWER COURT CORRECTLY QUALIFIED NURSE STOBBS AS AN EXPERT AND ALLOWED HER TO TESTIFY ABOUT THE STANDARD OF CARE.

The lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert. (R. p. 93). "The qualification of an expert witness and the admissibility of the expert's testimony are each matters largely within the trial judge's discretion." *McMillan v. Durant*, 312 S.C. 200, 204, 439 S.E.2d 829, 831 (1993). "[W]e will not reverse absent an abuse of that discretion." *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). "An abuse of discretion occurs when the circuit court's rulings either lack evidentiary support or are controlled by an error of law." *Id.* at 74, 735 S.E.2d at 831 (internal quotation marks omitted).

RMC does not dispute Nurse Stobbs' qualifications as a nurse or ability to testify about IV management. Instead, it argues mainly that this case is about pediatric nursing such that pediatric nursing and not "general nursing" is the issue. (Br. of App. pp. 11-12). RMC then argues that Nurse Stobbs is not qualified to testify about pediatric nursing IV management and, in doing so at trial, she testified outside of the scope of her nursing qualifications. (Br. of App. p. 10). The lower court correctly rejected these arguments, and this Court should affirm.

A. The applicable standard of care is the same regardless of whether the patient is an adult or a child.

RMC's first argument is irrelevant because it does not affect the applicable standard of care. It is undisputed that in pediatric **and** adult IV management, the standard of care is to flush the IV with saline before administering a medication. (R. pp. 276, 278, 345-46, 374).

The difference between an adult and pediatric patient that RMC complains about is that a pediatric vein is smaller than an adult vein. (Br. of App. p. 11). That physiological difference does not change the standard of care to flush an IV site before administering medication or to follow RMC's policy to document a saline flush. Therefore, in response to all of RMC's arguments about Nurse Stobbs, its complaint does not make a difference for the evidence in this case. *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make any difference, doesn't matter."). The Court may affirm the qualification of Nurse Stobbs on this basis alone.

RMC is incorrect that this case is about pediatric nursing. (Br. of App. pp. 10-12). This case is about the IV management safety practice of doing and documenting a saline flush before administering medication. (R. pp. 395, 420). Nurse Stobbs testified "the same safety practices" and "rules" are used for every patient "whether it's a baby or an adult."¹ (R. pp. 94-95). Downing

¹ Nurse Stobbs maintained that the age of a patient does not alter IV management "in terms of the safety practices." (R. p. 126). She testified that a vein is the same in an adult and a child. (R. pp. 119-20). Physiological differences in adults and children mean "their body size may be different"

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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May 20 2021

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

SC Court of Appeals

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor
child under the age of 18, ... Respondent,

v.

Regional Medical Center, ... Appellant.

FINAL BRIEF OF RESPONDENT

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and Hurley testified that a saline flush is always required before administering medication. (R. pp. 276, 278, 345-46, 374). Even if there existed a relevant difference in the IV management of pediatric and adult patients, it was for the jury to decide if and how that affected the applicable standard of care. *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006) (“The factfinder may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case.”). The lower court did not err in qualifying Nurse Stobbs as a nursing expert when nursing IV management principles apply to the facts of the case.

B. The lower court correctly held Nurse Stobbs’ testimony satisfies Rule 702, SCRE.

RMC argues the lower court erred in qualifying Nurse Stobbs to testify about IV management in a case involving a pediatric patient because she did not treat pediatric patients and her testimony is, according to RMC, contrary to literature. (Br. of App. pp. 12-14). The lower court correctly exercised its discretion in ruling that RMC’s arguments go to the weight and not the admissibility of her testimony. (R. pp. 45-46).

A person may be qualified as an expert based on “knowledge, skill, experience, training, or education.” Rule 702, SCRE. “The test for qualification is a relative one that is dependent on the particular witness’s reference to the subject.” *Lee v. Suess*, 318 S.C. 283, 285, 457 S.E.2d 344, 346 (1995). In deciding whether to admit expert testimony, the court makes three inquiries: whether (1) “the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury,” (2) the expert has “acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter, although he ***need not be a specialist in***

but “does not mean that their vein would be different.” (R. p. 141). “[T]he management for IV therapy in terms of safety practices and what the rules are, it’s exactly the same.” (R. p. 142 Ins. 11-13).

the particular branch of the field,” and (3) the substance of the testimony is reliable. *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (internal quotation marks omitted) (emphasis added). RMC disputes only the second inquiry.

An expert witness is not required to be a specialist in the particular branch of his or her profession involved in a case. On the contrary, “[a] physician is not incompetent to testify merely because he is not a specialist in the particular branch of his profession involved. The fact that he is not a specialist goes to the weight of his testimony, not its admissibility.” *Creed v. Columbia*, 310 S.C. 342, 345, 426 S.E.2d 785, 786 (1993) (internal citation omitted). Our courts regularly apply this principle in the medical negligence context.

For example, in *Creed*, a “general practitioner” was qualified “to give an opinion on [the plaintiff’s] mental and emotional injuries.” *Id.* 344-45, 426 S.E.2d at 786.

A neurosurgeon was qualified to testify about the appropriate standard of nursing care. *McMillan v. Durant*, 312 S.C. 200, 204-05, 439 S.E.2d 829, 831-32 (1993); *see also Lee v. Suess*, 318 S.C. 283, 285, 457 S.E.2d 344, 345 (1995) (describing *McMillan* as holding “a medical practitioner’s experience teaching in a particular specialty and his professional interaction with practitioners of that specialty are facts sufficient to support his qualification as an expert”).

A plastic surgeon was qualified to testify as an expert in the field of family practice because the surgeon taught family practitioner residents. *Lee*, 318 S.C. at 285, 457 S.E.2d at 345-46. The expert’s “limited exposure to the field of family practice merely goes to the weight of his testimony and not its admissibility.” *Id.* at 286, 457 S.E.2d at 346.

A neonatologist was qualified to testify about sudden infant death syndrome, even though she testified “that she would not consider herself a SIDS expert,” because “an expert need not be

a specialist in the particular branch of the field.” *Graves v. CAS Med. Sys.*, 401 S.C. 63, 78, 735 S.E.2d 650, 657 (2012) (internal quotation marks omitted).

All of these cases support the lower court’s decision to qualify Nurse Stobbs as an expert regardless of her lack of hands-on experience with pediatric IV patients because that criticism goes to the weight of her testimony and not its admissibility. Nurse Stobbs worked for over thirty years as a nurse. (R. p. 92). For twenty-one of those years, she worked at Massachusetts General Hospital, “which is Harvard’s Hospital” and “the number one hospital in the country.” (R. p. 92 lns. 3-6). She was certified in IV therapy, administered “thousands” of IVs in her career, and primarily provided IV therapy to her patients. (R. p. 92). She was amply qualified to testify about IV management in this case.

RMC relies on *Botehlo v. Bycura*, 282 S.C. 578, 320 S.E.2d 59 (Ct. App. 1984), for its assertion that Nurse Stobbs must have treated pediatric patients to be qualified to testify about IV management. (Br. of App. p. 12). In *Botehlo*, this Court ruled that an orthopedic surgeon was not an expert in podiatric standards of care, in part, because he “testified that he is not familiar with the standards of professional care generally observed by podiatrists” and “was not familiar with the surgical procedure [the defendant] performed on [the plaintiff].” *Id.* at 587, 320 S.E.2d at 65. In *McMillan v. Durant*, 312 S.C. 200, 439 S.E.2d 829 (1993), the Supreme Court described the orthopedist expert in *Botehlo* as “not versed at all in the practice of podiatry.” *Id.* at 204, 439 S.E.2d at 832. This case is easily distinguishable.

Nurse Stobbs testified the standard of care for IV management is the same for a baby or an adult. (R. p. 95 lns. 1-6). Her thirty years of experience in administering thousands of IVs is evidence that supports the lower court’s decision to find her familiar with the standards of professional care, unlike the expert in *Botehlo*.

RMC also relies on *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 487 S.E.2d 596 (1997). (Br. of App. pp. 12-14). However, *Gooding* supports Hamilton's position. In a medical malpractice action against an anesthesiologist regarding an intubation procedure, the Supreme Court held an EMT/paramedic who intubated over 100 patients and taught intubation procedures was qualified in the field of intubation. *Id.* at 251, 253, 487 S.E.2d at 597-98. It explained "[t]here was no requirement that [plaintiff]'s expert witness be an anesthesiologist in order to testify about intubation procedures." *Id.* at 253, 487 S.E.2d at 598. In this case, Nurse Stobbs is qualified in the field of IV management and she is not required to specifically practice in pediatric IV management to testify about IV management procedures.

RMC's disagreement with Nurse Stobbs' opinions (Br. of App. p. 13) are (and were in this case) subjects for cross-examination. The lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert, and this Court should affirm.

C. RMC did not preserve an argument about the scope of Nurse Stobbs' testimony and, regardless, she testified according to her qualifications as a nursing expert.

RMC's argument that Nurse Stobbs' testimony exceeded the scope of her qualifications is unpreserved, abandoned, and legally incorrect.

"Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." *State v. Sheppard*, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). RMC never objected during trial that any of Nurse Stobbs' testimony exceeded the scope of her qualifications. It cites to only two pages of the pre-trial motion *in limine* hearing and does not specify what trial testimony is allegedly outside of the scope of her expertise. (Br. of App. p. 15). "Making a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a motion *in limine* is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is

introduced.” *State v. Moses*, 390 S.C. 502, 511, 702 S.E.2d 395, 400 (Ct. App. 2010) (internal quotation marks omitted). The issue is unpreserved.

The issue is also abandoned because RMC does not cite legal authority and makes only a conclusory, one-paragraph argument. (Br. of App. pp. 14-15). See *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”); *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”).

Finally, RMC’s argument on the merits is incorrect. The lower court qualified Nurse Stobbs “as an expert in nursing.” (R. p. 93). Nurse Stobbs repeatedly testified that her opinions on IV management applied to adults and children, making RMC’s attempt to separate the two irrelevant. Her testimony was consistent with her qualifications and area of expertise.

D. Even if error, the admission of Nurse Stobbs’ testimony was harmless.

Even if the Court finds the lower court erred in qualifying Nurse Stobbs or that her testimony exceeded the scope of her qualification, it should still affirm because any such error was harmless. “The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (internal quotation marks omitted). The court does “not weigh the evidence when determining this.” *In re Bilton*, 432 S.C. 157, 167, 851 S.E.2d 442, 447 (Ct. App. 2020). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from

its relationship to the entire case.” *In re Care & Treatment of Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014) (internal quotation marks omitted).

Any alleged error did not contribute to the verdict because Nurse Stobbs’ testimony on the standard of care was cumulative to other evidence. “The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.” *Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009).

Hamilton’s theory of liability was RMC’s failure to perform and document a saline flush before administering the medication to R.J. (R. pp. 395, 398-99, 405, 420). RMC’s policies and procedures admitted into evidence establish the standard of care to flush with saline and document it on the medical record. (R. pp. 491-98). RMC’s expert, Cynthia Hurley, testified that the standard of care is to perform a saline flush prior to administering medication. (R. pp. 345-46, 374). Nurse Stobbs testified R.J.’s medical records do not document a saline flush prior to Downing administering the medication, and RMC does not argue that she is unqualified to read medical records. Nurse Stobbs’ standard of care testimony was cumulative to other evidence.

RMC attacked Nurse Stobbs’ experience and credibility throughout the trial. (R. pp. 87-88, 118-27, 139-42). It criticized Nurse Stobbs for saying something allegedly contrary to articles on IV management. However, Ms. Downing testified that she had never reviewed those articles prior to RMC’s attorney giving them to her and that reviewing such articles is not common practice for a nurse. (R. p. 291). RMC disputed Nurse Stobbs’ qualifications in its closing argument:

She’s never practiced clinical pediatric nursing. She’s never started an IV on a child. And more importantly, the issue in this case, she’s never maintained, managed and monitored an IV. **She is not qualified.**

• • •

[Y]ou have one nurse who’s never been an expert before, Ms. Stobbs, who’s never practiced in this area. She can’t tell you what pediatric nursing is. She can’t tell

you what the literature is. . . . She'd been a nurse for over thirty-three years and guess how many pediatric IVs she started? The same amount as me, none.

* * *

[S]he has never done this the first shift in her life.

. . . [Downing started more pediatric IVs] a lot more than Nurse Stobbs who, again, has started zero.

* * *

My witness [Hurley] is more qualified to be an expert [than Stobbs]. My expert is certainly more qualified to be an expert. They could have got a true expert. Ask yourself, why don't they have a pediatric expert? Why don't they have an expert that was qualified for monitoring and managing pediatric IVs? It is because they couldn't get one? Again, use your common sense.

(R. pp. 409-11, 417) (emphasis added). The lower court charged the jury it could disregard an expert's opinion if it decided "an expert witness's opinion is not based on sufficient education or experience or if you decide that the reasons given in support of the opinion are not sound." (R. p. 430).

Given the cumulative nature of Nurse Stobbs' challenged testimony and RMC's blatant attack on her qualifications, any error in qualifying her and admitting her testimony was harmless and RMC suffered no prejudice.

II. THE LOWER COURT CORRECTLY DENIED RMC'S MOTIONS FOR DIRECTED VERDICT OR JNOV BECAUSE THERE IS EVIDENCE OF GROSS NEGLIGENCE.

The lower court correctly denied RMC's motions for directed verdict and JNOV because there is evidence that, viewed in a light most favorable to Hamilton, supports a reasonable inference of gross negligence.²

² A "governmental entity is not liable for a loss resulting from: . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . patient, . . . of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25) (2005). Hamilton argued at trial that a medical

“When reviewing the trial court’s ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012). “In considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight. When considering a JNOV, neither an appellate court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) (internal quotation and alteration marks omitted). “The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt.” *RFT Mgmt. Co.*, 399 S.C. at 332, 732 S.E.2d at 171 (internal quotation marks and citation omitted).

RMC’s assertion that Hamilton “failed to provide *any* evidence or testimony of gross negligence” is wholly without merit and seems based on an incorrect assumption that a witness must have used the words “gross negligence” for evidence of it to exist. (Br. of App. pp. 18-19).

Our Courts define “gross negligence in a number of ways.” *Hollins v. Richland Cnty. Sch. Dist. One*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993). “[I]t is the failure to exercise slight care.” *Bass v. S.C. Dep’t of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 259 (2015) (internal quotation marks omitted). “Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.”

malpractice, not a gross negligence, standard applies to this case because it concerns a nurse’s administration of medication and not “supervision, protection, control, confinement, or custody” of a patient. (R. pp. 66-67, 323, 444-45). Given the jury’s verdict and RMC’s arguments, Hamilton argues based on the gross negligence standard. (R. p. 564 n.3). However, this case should not be construed as establishing that the gross negligence standard in S.C. Code Ann. § 15-78-60(25) applies to a nurse’s administration of medication.

Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 331, 566 S.E.2d 536, 544 (2002) (internal quotation marks omitted). Gross negligence is “also defined [] as a relative term that means the absence of care that is necessary under the circumstances.” *Id.* at 332, 566 S.E.2d at 544 (internal quotation marks omitted). While “[g]ross negligence is ordinarily a mixed question of law and fact,” “[i]n most cases, [it] is a factually controlled concept whose determination best rests with the jury.” *Id.* at 332, 566 S.E.2d at 545 (internal quotation marks omitted).

Under any definition of gross negligence, there is evidence of it in the record. There is evidence that RMC consciously failed to do or document a saline flush and that it was incumbent upon RMC to do those things. RMC’s policies **require** a saline flush prior to administering medication and documentation of that flush. (R. pp. 491-98, 103-04, 159). Nurse Stobbs testified that Downing failed to do or document a flush before administering the medication to R.J. (R. pp. 117, 159). If RMC (and nursing standards of care) required a saline flush prior to administering medication, then the inference in a light most favorable to Hamilton is that the failure to do it shows an absence of care that is necessary under the circumstances. *See Jinks v. Richland Cnty.*, 355 S.C. 341, 348, 585 S.E.2d 281, 285 (2003) (citing to evidence that the defendant failed to follow its policies as evidence of gross negligence).

Downing testified that a saline flush prior to administering medicine is “ingrained in you in nursing school” and “it makes no sense not to” flush. (R. pp. 288-89, 301). Downing testified there is “no way to really tell if the site is open and flowing without flushing it.” (R. pp. 310-11). If it makes no sense not to do a flush, then the failure to do it is the failure to exercise slight care.

Evidence that, once the IV infiltrated and began to harm R.J., RMC failed to respond to Tekayah’s call for help for at least twenty minutes is also evidence that it failed to exercise slight care and consciously failed to care for a patient. (R. pp. 163-64, 293).

RMC's evidentiary arguments merely show differing inferences to be drawn from the evidence. However, competing evidence is not a permissible basis to reverse the denial of a motion for JNOV. The Court must "examin[e] the record to discern whether there was any evidence put forward at trial to support the jury verdict." *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 574, 780 S.E.2d 252, 260 (2015). Evidence that a defendant "acted with slight care" along with "evidence in the record that [the defendant] acted with gross negligence" is sufficient to support a jury's verdict of gross negligence. *Id.* at 574, 780 S.E.2d at 260.

Finally, to the extent RMC is arguing that a witness must have testified using the words "gross negligence" (Br. of App. p. 19), there is no legal support for the proposition that an expert must use magic words. *See, e.g., Stallings v. Ratliff*, 292 S.C. 349, 353, 356 S.E.2d 414, 417 (Ct. App. 1987) ("The issue of breach of duty does not turn on a ritual incantation of certain magic words by an expert witness."). The substance of the testimony and the jury's consideration of it are what matter. Further, as discussed below in Argument section IV, expert testimony on a legal conclusion is improper.

Hamilton presented evidence that Downing did not remember doing a saline flush before she administered the medicine that burned R.J., there is no documentation of a saline flush, and if something is not documented, then it was not done. (R. pp. 104, 111, 159, 288). Viewing that evidence in a light most favorable to Hamilton, a jury could have (and did) find that RMC's conduct amounted to gross negligence. The evidence "support[s] the jury's verdict," and this Court should affirm. *Bass*, 414 S.C. at 573, 780 S.E.2d at 259.

III. THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING THE PHOTOGRAPHS OF R.J.'S HAND.

Hamilton submitted into evidence three photographs of R.J.'s hand. (R. pp. 463-65, 68-70). Two photographs show R.J.'s hand shortly after the burn injury occurred and the lump full

of fluid on his hand burst. (R. pp. 165-68, 463, 465). One photograph shows R.J.'s hand with a scar on the last day of his treatment at the wound center. (R. pp. 464, 170).

RMC argues that the alleged prejudicial effect of the photographs outweighed their probative value under Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .").

"A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) (internal quotation marks omitted). "The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." *State v. Rosemond*, 335 S.C. 593, 596, 518 S.E.2d 588, 589-90 (1999). The lower court properly exercised its discretion by balancing the probative value of the photos against any unfair prejudice and admitting them into evidence. (R. pp. 46-51, 8).

Probative Value

The photos had probative value in establishing and proving damages, especially the condition of R.J.'s hand at the time of the burn because he was too young to testify. The photos had probative value in showing the healing process and, importantly, in helping Dr. DeVito to explain and corroborate his testimony.

Photographs are admissible when they "clearly demonstrate the extent and nature of the injuries in a way that would not be as easily understood based on the testimony alone." *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (affirming the admission of autopsy photos of a two-year-old child). Tekayah used the photographs to explain the nature of R.J.'s injury at the time of the burn. (R. pp. 166-70). Dr. DeVito used the photos to describe the layers of skin and tissue injured by the infiltration, explain some of the healing process, explain the type of scar

and his proposed treatment for it, and support his opinion as to the level of pain R.J. would have felt from this type of burn at the time of the injury and throughout the healing process. (R. pp. 234-36, 241). R.J. could not tell the jury what he felt, and the photographs aided in explaining that to the jury.

“A test to determine whether the trial judge abused his discretion is whether the photographic evidence serves to corroborate the testimony of witnesses offered at trial.” *State v. Vang*, 353 S.C. 78, 88, 577 S.E.2d 225, 230 (Ct. App. 2003). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) (affirming the admission of photographs of the victim’s stab wounds in his hospital bed). Hamilton used the photographs to corroborate Tekayah’s testimony about the appearance and state of the injury at the time it occurred and to corroborate Dr. DeVito’s testimony describing the injury, the healing process, and that R.J. suffered pain. (R. pp. 166-71, 234-36, 241). RMC challenged Hamilton’s damages and tried to focus the jury on the fact that R.J.’s hand healed to a scar rather than the condition of his hand right after the burn occurred. (R. pp. 89-90). This makes the corroborating probative value of the photographs very high. *See State v. Gray*, 408 S.C. 601, 613, 759 S.E.2d 160, 166-67 (Ct. App. 2014) (“Photos that corroborate important testimony on issues significant to the case may have very high probative value . . .”).

Unfair Prejudice

RMC argues three reasons why the lower court should have excluded the photos: they were (1) not necessary to substantiate Hamilton’s case because RMC did not dispute that R.J. suffered an injury, (2) “grotesque, up-close images” that make the wound look bigger than it was, and (3) not representative of the state of R.J.’s hand at the time of trial. (Br. of App. pp. 21-22). These arguments show only that the evidence is prejudicial, as “[a]ll evidence is meant to be,” and do not

rise to the level unfair prejudice. *State v. Gray*, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014). “Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” *Id.* at 616, 759 S.E.2d at 168.

As to RMC’s first argument, its acknowledgment that R.J. suffered an injury does not eliminate the need for Hamilton to establish for the jury the nature and severity of the injury. RMC essentially wants the Court to hold that, when a defendant admits an injury occurred and the injury heals some by the time of trial, the condition of the injury when it occurred is unfairly prejudicial evidence. That is not the law, and RMC cites no case with that ruling.

As to RMC’s second argument, that the injury is, as the lower court stated, “hard to look at,” does not make photographs of it unfairly prejudicial. (R. p. 8). “Numerous jurisdictions have found that photos are not inadmissible merely because they are gruesome, especially where, as here, the photos simply mirror the unfortunate reality of the case.”³ *State v. Collins*, 409 S.C. 524, 535-36, 763 S.E.2d 22, 28 (2014). Because the photos in this case merely show the reality of the injury to the jury, they are not unfairly prejudicial.

RMC incorrectly argues that the photos make the injury look bigger than its actual size. Each photograph has a scale of reference. Two of them include adult fingers holding R.J.’s hand,

³ Our courts regularly allow the admission of photographs that are arguably “grotesque.” *See Gray*, 408 S.C. at 609, 617, 759 S.E.2d at 164, 169 (affirming the admission of eleven “graphic” before-and-after autopsy photos, including the victim’s “exposed skull and brain”); *State v. Holder*, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) (affirming the admission of autopsy photos of a two-year-old victim of child abuse “[a]lthough the photographs were graphic”); *State v. Jarrell*, 350 S.C. 90, 106-07, 564 S.E.2d 362, 371 (Ct. App. 2002) (affirming the admission of autopsy photos of a ten-month-old sexual abuse victim because they corroborated and helped the jury understand testimony).

and one includes R.J.'s head. (R. pp. 463-65). There is no basis to assume the photos enlarged the injury.

As to RMC's third argument, that R.J.'s burn wound healed by the time of trial does not make an image of it at the time of the burn unfairly prejudicial. Hamilton asked the jury to award damages for the injury from the time it occurred. Evidence showing the injury, particularly in light of R.J.'s inability to testify, does not suggest a "decision on an improper basis" but, rather, a decision based on the reality of the injury. *State v. Gray*, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014).

The photos are not *unfairly* prejudicial.

Balance

"The trial judge must balance the prejudicial effect of graphic photographs against their probative value." *State v. Vang*, 353 S.C. 78, 87, 577 S.E.2d 225, 229 (Ct. App. 2003). The lower court ruled that, although the photographs "are hard to look at, there is little doubt the photographs are relevant to corroborate the injury." (R. p. 8). The evidence and law support the lower court's conclusion that any danger of unfair prejudice does not substantially outweigh the probative value of the photos. This Court should affirm.

IV. THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION TO EXCLUDE MS. HURLEY'S TESTIMONY ON GROSS NEGLIGENCE.

The lower court properly exercised its discretion to prohibit RMC from asking its nursing expert, Cynthia Hurley, whether RMC committed "negligence" or "gross negligence." The admissibility of expert testimony is a matter "largely within the trial judge's discretion." *McMillan v. Durant*, 312 S.C. 200, 204, 439 S.E.2d 829, 831 (1993). The Court "will not reverse absent an abuse of that discretion." *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

RMC made a directed verdict motion arguing that, because Nurse Stobbs did not use the words “gross negligence” in her testimony, Hamilton failed to introduce evidence of gross negligence. (R. pp. 320, 321 lns. 23-25, 322). After the court denied the motion, Hamilton moved to exclude RMC from asking its expert, Ms. Hurley, whether RMC committed gross negligence. (R. pp. 325-29). The lower court granted the motion because Hurley is not qualified to testify about the legal concepts of negligence and gross negligence, and RMC could elicit testimony about those topics without using the exact legal terminology. (R. pp. 327-28). The lower court properly exercised its discretion.

While RMC characterizes the testimony as an opinion on “an ultimate issue” under Rule 704, SCRE, the lower court correctly analyzed the testimony as a legal conclusion (R. pp. 327-28, 8), and correctly ruled it inadmissible because, “[i]n general, expert testimony **on issues of law** is inadmissible.” *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (emphasis in original).⁴ This Court recently reiterated that “expert testimony on issues of law is rarely admissible. The common law and the federal rules of evidence forbid opinions on issues of law, except foreign law.” *Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020) (internal citations omitted).

In *Carter*, which RMC does not address in its brief, an appellant proffered expert testimony that a warrant lacked probable cause. 429 S.C. at 312, 838 S.E.2d at 531. This Court affirmed the lower court’s decision to exclude the testimony because “the expert’s proffered testimony on probable cause was a legal conclusion.” *Id.* at 313, 838 S.E.2d at 531. Looking to the advisory committee note to Federal Rule of Evidence 704, the Court explained:

⁴ RMC’s attempt to distinguish this case from *Dawkins* is unconvincing. (Br. of App. p. 26). RMC did ask Hurley to make a legal conclusion on gross negligence. As RMC acknowledged in its closing argument, “Judge Dickson’s going to charge you on gross negligence.” (R. p. 412).

an opinion on the ultimate issue has to be “otherwise admissible,” meaning in the context here that it must be helpful to the jury as required by Rule 702, SCRE, and satisfy the strictures of Rule 403, SCRE. The opinion here was not helpful to the jury because it stated a legal conclusion and essentially told the jury what result to reach on the probable cause question.

Id. at 313, 838 S.E.2d at 531. The same reasoning applies to this case.

Hurley’s opinion was not helpful because it would have confused and misled the jury as to the meaning of gross negligence. During the proffer, Hurley testified RMC’s conduct was not negligent or grossly negligent. (R. pp. 388-89). On cross-examination, she defined “gross negligence” as “[a]ctually causing a problem and knowing that you did it. Hurting someone intentionally.” (R. p. 390). That is not the correct legal definition of gross negligence. The lower court charged the jury that “[g]ross negligence is the intentional, conscious failure to do something which is incumbent upon one to do, or the doing of a thing intentionally that one ought not do. . . . gross negligence is the failure to exercise slight care.” (R. p. 433). Because Hurley’s definition of gross negligence is contrary to the legal definition of gross negligence, it would have confused and misled the jury, Rule 403, SCRE, and “also risked treading on the trial judge’s role as the sole source of the law in the trial,” *Carter*, 429 S.C. at 314, 838 S.E.2d at 532.

Hurley’s opinion also “essentially told the jury what result to reach on” the gross negligence question. *Id.* at 313, 838 S.E.2d at 531. RMC asked Hurley her opinion as to whether it “was grossly negligent in its care and treatment of” R.J. (R. p. 389). The verdict form asked the jury “Do you find the Defendant was grossly negligent?” (R. p. 535). The admission of Hurley’s testimony would have impermissibly allowed an “expert to define [gross negligence] to the jury and apply [her] view of the facts to [her] definition of law,” which “ran the risk of misleading the jury and telling them what their verdict should be.” *Carter*, 429 S.C. at 314, 838 S.E.2d at 532. The proffered question was undoubtedly an “attempt[] to usurp” the jury’s role in determining

whether RMC was grossly negligent. *Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003).

The decision of the United States District Court for the District of South Carolina in *Hermitage Industries v. Schwerman Trucking Co.*, 814 F. Supp. 484 (D.S.C. 1993), is instructive on this issue and, for brevity, Hamilton incorporates the reasoning of the decision into this brief. The Court excluded expert testimony on the legal conclusion of negligence because “the proffered testimony of defendant’s expert witness that plaintiff was ‘negligent’ constitutes a legal conclusion and is therefore inadmissible.” *Id.* at 487.

Alternatively, even if the Court finds error in the lower court’s ruling, it is harmless and RMC suffered no prejudice from the exclusion because Hurley made it apparent to the jury that she believed Downing satisfied the standard of care and RMC did nothing wrong. Hurley testified four times to her opinion that Downing’s treatment met the standard of care. (R. pp. 356 lns. 15-18 ; 359 lns. 9-13; 361 lns. 8-10; 365 lns. 21-25). She testified that Downing’s treatment met RMC’s policy expectations, “exceeded the standard of care,” and was “an outstanding job.” (R. pp. 356, 361-62, 366). The jury understood that Hurley did not think RMC was grossly negligent.

The lower court properly exercised its discretion to exclude Hurley’s testimony on the legal conclusion of RMC’s gross negligence, and this Court should affirm.

V. THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION TO PUBLISH THE REQUESTS FOR ADMISSION TO THE JURY.

The court properly exercised its discretion to publish the requests to admit to the jury so it could consider them along with all of the other evidence. “A trial court has particularly wide discretion in ruling on Rule 403 objections.” *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) (internal quotation marks omitted).

Hamilton moved to admit the requests to admit as a stipulation (R. p. 259) and asked to explain to the jury “what a request to admit is” (R. p. 264), but the lower court denied those requests and only allowed Hamilton to read the exact language of the requests and answers to the jury (R. pp. 264-65). The jury was free to accept or reject the requests to admit just like any other evidence.

Under Rule 43(g), SCRCF, “[c]ounsel for any party may read his pleadings to the jury.” Even when a pleading, including a request for admission, is later amended, both the original and the amended answer may be published to the jury for it to consider along with all of the other evidence.⁵

RMC made two objections to the evidence. It argued (1) the purpose of the requests was to obtain an independent medical examination, and (2) the prejudicial effect of the requests outweighed the probative value under Rule 403, SCRE, because the requests would confuse the jury by telling them “a verdict had to be awarded” and “effectively” directing a verdict of liability for Hamilton. (R. pp. 258-64) (Br. of App. pp. 28-30). The lower court properly acted within its discretion to rule these arguments did not require exclusion of the evidence.

As to the first argument, the reason RMC sent the requests to admit does not dictate their admissibility, especially when RMC did not limit the requests to a specific purpose. That RMC intended to use the requests to admit to get an independent medical examination under Rule 35(a), SCRCF, does not remove them from Rule 43(g), SCRCF.

⁵ “Once an answer to a Request for Admissions is amended under Rule 36, both the initial answer and the amended answer may be published to the jury. The jury may consider the initial answers as evidence, while the party who made such answers is free to explain why it was made and amended. . . . It was for the jury to weigh the evidence along with [other evidence].” *Tuomey Reg’l Medical Ctr. v. McIntosh*, 315 S.C. 189, 191, 432 S.E.2d 485, 487 (1993) (internal citation, quotation marks, and alterations omitted).

Regardless, even if the Court considers RMC's argument, the language of the requests shows they were not limited solely to Rule 35(a). Rule 35(a), SCRCP, provides for an independent medical examination when "the *amount in controversy* exceeds \$100,000 actual damages." (emphasis added). RMC requested that Hamilton:

Admit the value of the amount in controversy in this action is less than \$100,000.00.

Admit the *value and amount in controversy* in this action is greater than \$100,000.00.

Admit the *value* of Plaintiff's actual damages exceeds \$100,000.00.

(R. p. 35) (emphasis added). The requests to admit went beyond the amount in controversy by asking Hamilton to admit the "value" of her actual damages. This supports the lower court's discretionary decision to publish the requests to admit to the jury.

As to RMC's Rule 403, SCRE, argument, the record supports the lower court's determination that the probative value of the evidence is not substantially outweighed by the danger of any unfair prejudice or confusion. The evidence had probative value in proving the amount of damages. In its post-trial motions and on appeal, RMC argues that the actual damages are only \$20,854.00—the amount of the medical bills. (Br. of App. pp. 37-38). RMC cannot assert that the "value of Plaintiff's actual damages exceeds \$100,000.00" so it can get an independent medical examination and then deny the possibility of that damages value in front of the jury.

RMC's argument that it suffered unfair prejudice because the jury would believe it had to find RMC liable and award damages is incorrect. Both parties argued about liability and damages in their closing arguments. (R. pp. 396-425). The court charged the jury on its duty "to evaluate the evidence and determine which evidence convinces you it is true." (R. p. 429 lns. 23-25). It charged the jury to determine if RMC acted with gross negligence and, if applicable, to choose an amount of damages. (R. pp. 432-39). It instructed the jury to "assess the amount that *you* find to

be justified by a preponderance of the evidence” and to “place a value on each element of the damage in accord with the evidence presented.” (R. p. 436) (emphasis added). There is “a sound presumption of appellate practice, that jurors are reasonable and generally follow the instructions they are given.” *Arnold v. State*, 309 S.C. 157, 166, 420 S.E.2d 834, 838 (1992). The verdict form asked the jury to decide whether “the Defendant was grossly negligent” and, if so, to “state the amount of damages, *if any*,” sustained by R.J. and Tekayah. (R. p. 535) (emphasis added). The jury knew that it must decide liability and damages.

The responses to the requests for admission were merely one piece of evidence. RMC was free to produce other, contradictory evidence, which it did. Just like any other evidence, the jury was free to accept or reject the requests for admission. The evidence and law support the lower court’s decision, and this Court should affirm.

Finally, any error in publishing the admissions to the jury was harmless because, as explained below, there was ample other evidence that Hamilton’s damages exceeded \$100,000.00.

VI. THE LOWER COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION FOR A NEW TRIAL OR *NISI REMITTITUR*.

The lower court did not abuse its discretion in denying RMC’s new trial motions based on the alleged excessiveness of the verdicts and the thirteenth juror doctrine. “The jury’s determination of damages is entitled to substantial deference. The denial of a new trial motion is within the discretion of the trial court and, absent an abuse of discretion, it will not be reversed on appeal.” *Clark v. S.C. Dep’t of Pub. Safety*, 353 S.C. 291, 309-10, 578 S.E.2d 16, 25 (Ct. App. 2002).

The lower court maintained R.J.’s \$1,127,280.00 verdict but reduced it to the \$300,000.00 cap in the Tort Claims Act, and maintained Tekayah’s verdict of \$135,477.00. (R. pp. 9-10). This Court “must accord the trial court’s decision great deference, and respect its superior position to

gauge credibility and the field of evidence.” *Nestler v. Fields*, 426 S.C. 34, 41, 824 S.E.2d 461, 465 (Ct. App. 2019) (internal quotation marks omitted).

“A verdict which may be supported by *any* rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained is not excessive.” *King v. Daniel Int’l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982) (emphasis added). RMC moved for a new trial on three grounds—thirteenth juror doctrine, new trial absolute when a verdict is grossly excessive or inadequate, or a new trial *nisi remittitur* or *additur* when the verdict is merely excessive or inadequate. See *Burke v. AnMed Health*, 393 S.C. 48, 55-57, 710 S.E.2d 84, 88-89 (Ct. App. 2011) (listing the three general grounds for a new trial). “Compelling reasons [] must be given to justify invading the jury’s province in this manner.” *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995). The lower court correctly found the verdicts were not excessive in the first place—a basis to affirm as to all three alleged grounds for a new trial in this case.

If the court first finds the verdict excessive, it must determine whether it is merely excessive or grossly excessive. A merely excessive verdict is one that the court views as “not in accord with accepted judicial standards for measuring damages under the facts of the particular case.” *Bowers v. Charleston & W. Carolina R.R. Co.*, 210 S.C. 367, 375, 42 S.E.2d 705, 708 (1947). A grossly excessive verdict is one “deemed to be the result of a disregard of the facts and of the instructions of the Court, and to be due to passion and prejudice rather than reason.” *Id.* at 375, 42 S.E.2d at 708. “[T]o warrant a new trial absolute, the verdict reached must be so grossly excessive as to clearly indicate the influence of an improper motive on the jury.” *Holroyd v. Requa*, 361 S.C. 43, 66, 603 S.E.2d 417, 429 (Ct. App. 2004).

In determining whether a verdict amount is excessive, “the facts must be viewed in the light most favorable to the plaintiff and, where the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive.” *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). RMC presents no compelling reason for the Court to invade the jury’s province. Viewing the evidence in a light most favorable to Hamilton, it bears a reasonable relationship to the character and extent of the injuries sustained and supports the lower court’s finding that neither verdict was excessive.

A. The evidence supports the jury’s verdict for R.J.

Hamilton presented ample evidence of R.J.’s damages to support the jury’s verdict. There is evidence R.J. suffered a permanent injury. There is evidence R.J. suffered past, present, and future pain and suffering, mental and emotional anguish, anxiety, and loss of enjoyment of life.

“An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself.” *Boan v. Blackwell*, 343 S.C. 498, 501-02, 541 S.E.2d 242, 244 (2001). “Separate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant’s negligence.” *Id.* at 502, 541 S.E.2d at 244. “One cannot easily or with any mathematical certainty place a value on the amount of a person’s pain and suffering.” *Smalls v. S.C. Dep’t of Educ.*, 339 S.C. 208, 218, 528 S.E.2d 682, 687 (Ct. App. 2000).

RMC argues “there was little testimony regarding pain and suffering.” (Br. of App. p. 33). This is false. There is evidence R.J. experienced pain at the time of the infiltration, during the healing process, and after the scar formed. When the nurses finally called a doctor to look at R.J.’s hand, it was swollen with “a big black scar and it was a bubble” on top of his hand full of fluid.

(R. pp. 165-66). R.J. cried during every one of the fifteen visits to the wound care center. (R. pp. 168-69). Dr. DeVito testified the “whole nature of the wound is painful.” (R. p. 236). R.J. could not crawl with his hand out and Hamilton “constantly” watched him to make sure he did not hit it on something or make it bleed. (R. p. 172).

The infiltration resulted in keloid scar tissue that “invades” the skin surrounding it and causes painful burning and itching symptoms. (R. p. 233). Dr. DeVito testified some patients describe the pain “as if someone were putting hot needles to the skin.” (R. p. 233). Dr. DeVito saw R.J. weeks before trial but testified he “couldn’t even examine the child” because R.J. pulled his hand back and withdrew, it is still “a source of pain for him,” and the examination “was really an ordeal.” (R. pp. 242-43).

R.J. was three-years-old at the time of trial, and Hamilton testified he suffered complications from his scar. (R. pp. 171-72). His hand cramps up and he complains about itching and cannot sit still when it hurts. (R. p. 171). Hamilton massages his hand and does hand exercises with him using a ball. (R. p. 171).

Dr. Davis and Dr. DeVito agreed that R.J. will have a permanent scar regardless of any future treatment. (R. pp. 225-26, 242). R.J.’s skin will never be normal again. (R. p. 243). He does not have sweat glands or hair follicles on his right hand. (R. p. 243). Even slightly bumping R.J.’s hand could cause a blister or ulcer. (R. p. 244). The court charged the jury that R.J.’s life expectancy was 73.76 years. (R. p. 439).

RMC argues that the functionality of R.J.’s hand is a basis to find the damages excessive. (Br. of App. p. 34). This misstates the testimony and fails to view it in a light most favorable to Hamilton. During all of the functionality tests that Dr. Davis performed, R.J. complained that his hand felt tight. (R. p. 220). Dr. Davis testified that scars have a negative psychological impact on

a person regardless of functional abilities. (R. pp. 217-18). Almost four years after the infiltration, R.J. still complained of itching on the scar site. (R. pp. 218-19). Dr. DeVito testified R.J. “has some limitation” compared to a child with no scar because R.J. would not even let Dr. DeVito touch the hand during the examination. (R. p. 255). Tekayah testified that she limits R.J.’s activities for fear that he will injure his hand. (R. p. 173). That R.J. has functionality in his hand does not decrease the significance, frequency, or intensity of his regular emotional and physical pain from the scar.

“[A] verdict which may be supported by any rational view of the evidence, or as to which reasonable and disinterested men might draw different inferences, is not of this class” of excessive verdicts. *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of “probably the highest verdict in a personal injury case in the history of this State”). That RMC disagrees with the jury’s damages determination does not make it excessive. Further, that R.J.’s verdict of \$1,127,280.00 is “54 times” the medical expenses (Br. of App. p. 35), is not a basis for finding it excessive. RMC does not cite any law requiring that a verdict amount must be within a certain multiplier of alleged actual damages. On the contrary, the law is that there is no yardstick or measure for determining non-economic damages. *See Knoke v. S.C. Dep’t of Parks, Rec. & Tourism*, 324 S.C. 136, 142, 478 S.E.2d 256, 258-59 (1996) (stating “intangible damages” “cannot be determined by any fixed measure”); *Lucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976) (stating non-economic damages “are intangibles, the value of which cannot be determined by any fixed yardstick”). Further, R.J.’s medical expenses are Tekayah’s damages and, therefore, cannot be used as the “yardstick” for his measure of damages.

An award of \$1,127,280.00 for a child who will have to endure a scar and the daily physical and emotional pain and limitations associated with it for his *entire life* is neither merely nor grossly excessive.

B. The evidence supports the jury's verdict for Tekayah.

Hamilton presented ample evidence of Tekayah's damages to support the jury's verdict. A parent can recover medical expenses, loss of services, and other pecuniary losses arising out of the injuries of a minor child. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 68, 651 S.E.2d 305, 307-08 (2007).

The medical bills totaled \$20,854.00. (R. pp. 423, 506-09). Dr. DeVito's recommended surgical treatment for R.J.'s scar will cost approximately \$2,500.00 for the surgical fee and in excess of \$12,000.00 for other associated costs such as the anesthesia, hospitalization, the operating room, and testing. (R. pp. 246-47). Dr. DeVito testified that R.J. would need steroid injections "indefinitely" and each injection costs \$85.00. (R. pp. 240, 510-12).

RMC argues Hamilton did not establish the scar treatment. (Br. of App. p. 34). This is incorrect. Tekayah testified that she did not want to have surgery on R.J.'s hand at the time of trial because he was so young and had already been through a lot. (R. pp. 185-86). Dr. Davis testified that giving the steroid treatment to a three-year-old is "not easy" and "not successful at that age" because it is traumatic for the child and requires a sedative. (R. pp. 222-23). Dr. DeVito testified that Keloid scars are difficult to treat with steroids because penetrating "a hard scar with a needle and syringe is . . . like trying to inject the paint on [a] wall." (R. pp. 237-38). Even an alternative vaccination gun that uses high pressure is "painful." (R. pp. 238-39). Dr. DeVito found it "very understandable" that Tekayah may not want to put R.J. through that pain at three-years-old and agreed it is a "painful dilemma" for a child. (R. pp. 240-41). Based on that testimony, the jury

could have accepted Hamilton, Dr. DeVito, and Dr. Davis's testimony that it is best to wait to pursue scar treatment until R.J. is older. That Tekayah is choosing to wait does not mean she cannot recover for the future treatment.

The lower court considered that Tekayah missed work for a year because she could not trust anyone to properly watch out for R.J.'s hand. (R. pp. 172, 6). The lower court considered that Tekayah would remain R.J.'s guardian for an additional fifteen years from the date of trial. (R. p. 7).

RMC incorrectly argues that Tekayah's damages are limited to only the medical expenses. (Br. of App. p. 37). A parent may recover for loss of a child's services and earning capacity (which are not at issue here), as well as "*other* pecuniary losses, *including* medical expenses incurred as a result of the injury." *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 68, 651 S.E.2d 305, 308 (2007). That the court listed medical expenses as included within the category of "pecuniary losses" necessarily means that a parent's recovery is not limited to medical expenses.

An award of \$135,477.00 for R.J.'s past and future medical expenses, as well as Tekayah's pecuniary loss for missed work, travel expenses, and constant daily watching over and caring for R.J. is neither merely nor grossly excessive.

CONCLUSION

For these reasons, the Court should affirm the lower court.

Respectfully submitted,

May 20, 2021

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 20 2021

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor
child under the age of 18,.....Respondent,

v.

Regional Medical Center,.....Appellant.

PROOF OF SERVICE

The undersigned certifies that a copy of the Final Brief of Respondent and Certificate of
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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the Final Brief of Respondent complies with Rule
211(b), SCACR.

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minor child under the age of 18,..... Respondent

v.

Regional Medical Center, ...Appellant

FINAL BRIEF OF THE REGIONAL MEDICAL CENTER

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Trial Court abused its discretion in qualifying Respondent's Expert Monica Stobbs as a general nurse and in permitting her to testify as to the standard of care for pediatric IV administration.
2. Whether Appellant is entitled to a reversal on the grounds that the lower court should have granted a directed verdict in favor of Appellant as Respondent did not establish gross negligence.
3. Whether the Trial Court abused its discretion by allowing, over objection, the admission of prejudicial photographs of the minor child to the jury.
4. Whether the Trial Court abused its discretion in prohibiting Appellant's expert Cynthia Hurley from testifying in front of the jury as to whether the Appellant was grossly negligent or negligent.

5. Whether the Trial Court abused its discretion in permitting the Request for Admission to be published to the jury.
6. Whether the Trial Court abused its discretion in not granting a new trial absolute or new trial *nisi remittitur* when the verdict was grossly excessive and shockingly disproportionate and contrary to the evidence admitted at trial, or, at the very minimum, was at least merely excessive given the evidence.

STATEMENT OF THE CASE

This matter arises out of an IV infiltration to a minor child which occurred during an admission at The Regional Medical Center from October 25 through October 30, 2014. On October 7, 2015, Plaintiff "Respondent" Tekayah Hamilton filed a Summons and Complaint (R. pp. 12 - 28) alleging medical malpractice in the Orangeburg County Court of Common Pleas on behalf of herself individually, and as a parent and guardian ad litem for Robert Lee M., Jr., a minor child under the age of eighteen. The Defendant ("Appellant") The Regional Medical Center and Jamie Downing, RN, filed its Answer to the Complaint (R. pp. 29-33) on November 30, 2015, denied liability and any wrongdoing, and asserted numerous affirmative defenses. Jamie Downing, RN, was dismissed from the action on June 29, 2016, pursuant to the Tort Claims Act.

The action came to a Jury Trial beginning May 7, 2018, in front of Judge Edgar W. Dickson in Orangeburg County, South Carolina. *See* Trial Tr. Mar. 19, 2019 (R. pp. 60 - 462) & Trial Tr. Dec. 22, 2020 (R. pp. 37-59). Appellant presented three pretrial motions *in limine*. *See* Def.'s Mot. in lim. to Exclude Photos (R. pp. 533-534), Def.'s Mot. in lim. to Exclude Monica Stobbs Testimony (R. pp. 522-532), Trial Tr. Dec. 22, 2020 (R. pp. 37-59). In its first motion,

Appellant moved that Respondent's expert, Monica Stobbs, should not be qualified as an expert witness in this matter and allowed testify to the standard of care for pediatric nursing on the ground that she lacked the required qualifications. In its second Motion, Appellant moved to exclude photographs of the minor child's hands on the ground that the probative value of the photographs was substantially outweighed by the danger of unfair prejudice. In its third and final motion, Appellant moved to exclude hearsay testimony of the Respondent. The Trial Court denied the Appellant's motions regarding Monica Stobbs and the photographs and granted the motion to exclude the hearsay testimony. On May 9, 2018, the Jury returned a verdict for the Respondent Robert Lee Middleton Jr., in the amount of \$1,127,280.00 and for Respondent Tekayah Hamilton in the amount of \$135,477.00 (R. p. 535).

On May 17, 2018, Appellant filed two post trial motions. Appellant filed a Notice of Motion and Motion for JNOV or in the alternative Motion for New Trial (R. pp. 536-550) and a Post Trial Motion For Reduction to Statutory Cap (R. p. 552-554). Respondent filed a memorandum in opposition to Appellant's motions on June 13, 2018 (R. p. 556-571). On June 27, 2018, Appellant filed a response to the Respondent's Memorandum in Opposition (R. pp. 572-584). On October 25, 2019, the Trial Court issued its Order Granting Appellant's Motion for Reduction to Statutory Cap and Denying Appellant's Motion for JNOV or in the Alternative a New Trial (R. pp. 1-10).

Appellant timely filed a Notice of Appeal on November 19, 2019 (R. p. 585-597).

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN QUALIFYING RESPONDENT'S EXPERT MONICA STOBBS AS A GENERAL NURSE AND IN

**PERMITTING HER TO TESTIFY AS TO THE STANDARD OF CARE FOR
PEDIATRIC IV ADMINISTRATION.**

STANDARD OF REVIEW

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion." *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596 (1997) (citing *McGee v. Bruce Hosp. System*, 321 S.C. 340, 468 S.E.2d 633 (1996); see, e.g., *Fields v. The Reg'l Med. Ctr. of Orangeburg*, 363 S.C. 19, 25, 609 S.E.2d 506 (2005)). "Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. 19 at 25. "In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; see, e.g., *Gooding v. St. Francis Xavier Hosp.*, 454 S.E.2d 328, 330 (Cl. App. 1995). "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 252 (citing *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995)); *Fields*, 363 S.C. at 26. "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Fields*, 363 S.C. at 26 (citing *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (2001)). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

ARGUMENT

A. THE TRIAL COURT'S ERROR WAS AN ABUSE OF DISCRETION.

Appellant argues that the Trial Court erred in ruling that Monica Stobbs, R.N., was qualified as an expert in general nursing ("Nursing 101") (Trial Tr. 7-10, 10:4-6, Dec. 22, 2020 (R. pp. 43-46); Trial Tr. 78:1-19, Mar. 17, 2019 (R. p. 93)) and in allowing her to testify to the standard of care for pediatric nursing IV management. Def's Mot. *in lim.* to Exclude Monica Stobbs Testimony (R. p. 522-532), Def's Mot. for JNOV or in the alt. Motion for New Trial 4-5 (R. pp. 539-540); Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 6 (R. p. 7). Appellant argues that this an error that amounted to an abuse of discretion because the case was about pediatric, not adult, nursing and IV medicine; Ms. Stobbs failed to meet the qualifications as set forth in the South Carolina Rules of Evidence 702 and *Gooding*; and the court allowed Ms. Stobbs to testify outside of the scope of her expert qualification in this matter.

1. THIS MATTER WAS ABOUT PEDIATRICS, NOT GENERAL NURSING.

Appellant first argues that the Trial Court's error in qualifying Ms. Stobbs amounts to an abuse of discretion because there was no basis or rationale for qualifying Ms. Stobbs as an expert in general nursing in this matter. Pediatric nursing, not general nursing or "Nursing 101" (Trial Tr. 8:4-11, Dec. 22, 2020 (R. p. 44)), was the issue in this case. Medical literature indicates a clear distinction between IV administration and management for pediatrics and adults.¹ Veins in

¹ The Infusion Nurses Society: Infusion Therapy in Clinical Practice, 2nd. eds Hankins J, Lonsway RA, Hendrick C and Perdue MB. Saunders, St. Louis, MO 2001, 561 "Children present a wide variety of physical characteristics different from those in adults. In addition, premature infants and newborns vary greatly from older children in their anatomy and physiology. These characteristics affect the ability of neonates and infants to cope with environmental stress and to manage the metabolism, absorption, distribution, and excretion of medications and solutions. Although body systems in infants and children are different from those in adults, for the purpose of this text, only those related to infusion therapy are addressed in detail."

infants are “obviously smaller” and can be “threadlike.”² Trial Tr. 105:3-13, Mar. 17 2019 (R. p. 120). “Vein fragility and the high acuity levels of young patients can increase the likelihood of infiltration and extravasation, resulting in significant morbidity.”³ *Id.* at 129:19-130:1 (R. p. 144-145). Furthermore, testimony from Appellant’s expert and Nurse Downing, both of whom have extensive experience in pediatric nursing and IV administration (Trial Tr. 298:8-299:1 (R. pp. 306-307), 323:10-324:21 (R. pp. 332-333), 350:15-19 (R. p. 359), Mar. 17, 2019), revealed distinct differences between pediatrics and adult IV management (Trial Tr. 266:11-25 (R. p. 274), 331:11-332:24 (R. pp. 340-341), Mar. 17, 2019). Pediatric patients and their veins are smaller, more fragile, and more mobile and therefore need to be more frequently assessed, whereas adults are more stable, have bigger veins, and thus, nurses are able to use larger catheters. *Id.* Because there is a clear distinction in pediatrics and adult IV care and the issue here was pediatrics, it was manifestly arbitrary, unfair, and unreasonable, and thus, an abuse of discretion, to qualify and allow the testimony of a general nurse who never practiced pediatric nursing.

2. MONICA STOBBS FAILED TO MEET THE REQUIREMENTS OF RULE 702 OF THE SOUTH CAROLINA RULES OF EVIDENCE AND *GOODING*.

In order to be qualified as an expert witness, a person must have the “knowledge, skill, experience, training or education” in order to testify. Rule 702, SCRE. “To be competent to testify as an expert, ‘a witness must have acquired by reason of study or experience or both such

² *Id.* at 562 “The size of venous and arterial vessels in the infant and child are obviously smaller than those in the adult. Although the vessels are anatomically positioned in the same locations throughout life, their sometimes-threadlike characteristics and tendency to hide make them difficult to locate in the young patient.”

³ *Policies and Procedures from Fusion Nursing of the Pediatric Patient*, The Infusion Nurses Society, *supra* at 125.

knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter." *Gooding*, 326 S.C. at 253, 487 S.E.2d at 598 (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995); see, e.g., *State v. Douglas*, 367 S.C. 498, 508-509, 626 S.E.2d 59 (Ct. App. 2006); *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 65 (Ct. App. 1984) (holding that an orthopedic surgeon was not qualified to testify on the standard of care for podiatrist where the orthopedic surgeon had no training in podiatry, was not familiar with any journals or periodicals in podiatry, and was not familiar with the surgical procedure performed).

Appellant argues the Trial Court's error amounts of abuse of discretion because, as per the requirements of South Carolina Rules of Evidence 702 and *Botehlo*, Ms. Stobbs was not qualified to testify as to pediatric IV administration, as her experience has only been to general, adult IV administration. Trial Tr. 8:13-9:19, Dec. 22, 2020 (R. pp. 44-45); Def's Mot. *in lim.* to Exclude Monica Stobbs Testimony (R. pp. 522-532). The issue is not over a *defect* in amount or quality of experience or knowledge but rather, much like *Botehlo*, is over whether she possessed *any* of the required knowledge or experience. Similar to the orthopedic surgeon in *Botehlo*, Ms. Stobbs has had no personal experience or training at all in pediatric nursing or IV administration. Trial Tr. 103:14-104:8 (R. pp. 118-119), 108:22-110:21 (R. pp. 123-125), Mar. 17, 2019. Ms. Stobbs has never cared for a pediatric patient and has never started or managed a pediatric IV. *Id.* at 79:24-25 (R. p. 94), 108:22-110:21 (R. pp. 123-125); Stobbs Dep. 13:9-24 (R. p. 526). Additionally, Ms. Stobbs does not have any education or knowledge as to pediatric nursing or IV administration. Ms. Stobbs testified that she did not perform any research, independent study, or

review any medical literature in preparation of formulating her opinions. Trial Tr. 111:14-23, Mar. 17, 2019 (R. p. 126); Stobbs Dep. 26:15-24 (R. p. 527).

Ms. Stobbs proved her lack of knowledge and expertise by making baseless and inaccurate claims and testifying directly contradictory to the literature. Ms. Stobbs' opinion is premised on her belief that the standard of care for IV management is the same for pediatric patients as it is for adults. Trial Tr. 111:22-23, Mar. 17, 2019 (R. p. 126); Stobbs Dep. 13:13-18 (R. p. 526). Her opinions are based on the speculative belief that pediatric patients are simply little adults. She believes the standard of care for both pediatrics and adults is "simple nursing 101." *Id.* at 96:22-23 (R. p. 111); Stobbs Dep. 26:17 (R. p. 527). Although she acknowledged that the literature indicates children have a wide variety of physical characteristics that differ from adults, including smaller, "obviously threadlike" veins, it is her opinion that a "vein is a vein." Trial Tr. 104:20-105:23 (R. pp. 119-120), 126:1-15 (R. p. 141), 128:1-5 (R. p. 143), Mar. 17, 2019. She also testified that she disagreed with literature provided by Respondent that stated "[l]arger amounts of subcutaneous fat in children can make the identification of an early infiltration difficult;"⁴ however, she admitted she had no literature with her to support her opinion. *Id.* at 130:10-131:25 (R. pp. 145-146).

Ms. Stobbs further proved her lack of knowledge concerning pediatric IV administration when she testified that she "should get blood return from a vein whether it's a baby or whether it's an adult." Stobbs Dep. 32:24-33:7 (R. p. 528-529). Trial Tr. 97:2-3 (R. p. 112), 110:22-24 (R. p. 125), 133:2-14 (R. p. 148), 133:20-134:13 (R. pp. 148-149), Mar. 17, 2019. This is directly

⁴ The Infusion Nurses Society, *supra*

contrary to the literature.⁵ Trial Tr. 104:16-106:2 (R. pp. 119-121), 351:7-14 (R. p. 360), Mar. 17, 2019. Although Ms. Stobbs has obtained blood returns in adult patients, she has never attempted to obtain one in a pediatric patient, and therefore, she does not know what it could do to a pediatric vein. Trial Tr., 134:20-135:8, Mar. 17, 2019 (R. pp. 149-150). On the contrary, Appellant's expert, Cindy Hurley, and Nurse Downing both testified that trying to obtain a blood return in a pediatric is inappropriate because it could cause the vein to collapse or result in a false reading. Trial Tr. 271:8-21 (R. p. 279), 347:20-25-349:14 (R. pp. 356-358), Mar. 17, 2019.

Thus, Ms. Stobbs failed to meet the requirements of SCRE 702 and *Gooding*. The sole purpose of an expert is to educate a jury on the subject matter of his or her expertise, and that is impossible to do without prior experience or study. Without proper education, training, or experience regarding pediatric administration and management, Ms. Stobbs was not more qualified than the jury to form an opinion as to the same. Therefore, Appellant asserts it was arbitrary, unfair, and unreasonable, thus an abuse of discretion, to permit Ms. Stobbs to testify as an expert in the standard of care for pediatric IV administration and administration.

3. THE CONTENT OF MS. STOBBS' TESTIMONY EXCEEDED THE QUALIFICATION OF THE TRIAL COURT.

Lastly, Appellant argues that the Trial Court's error amounts to abuse of discretion because it allowed Ms. Stobbs to provide expert testimony beyond the scope for what she had been qualified in this matter. During the Motion *in limine* hearing, the Trial Court specifically

⁵ "The Infusion Nurses Society, *supra* at 422." "Checking for a blood return, or backflow of blood, is not a reliable method for determining the absence of an infiltration. A blood return may not be present when small veins are used because they may not permit blood flow around the cannula; one may think the infusion has infiltrated when it has not."

indicated Ms. Stobbs would be qualified in general nursing and not pediatrics, as it acknowledged she had no prior experience with regards to pediatrics. Trial Tr. 8:18-19, 9:20-10:6, Dec. 22, 2020 (R. pp. 44-46). Despite this, during trial the Trial Court allowed Ms. Stobbs to testify as to the standard of care of pediatric nursing and IV administration. This was clearly beyond the scope of the Trial Court's qualification of her as an expert witness. Therefore, Appellant maintains that it was manifestly arbitrary, unfair, and unreasonable, and thus, an abuse of discretion, to allow Ms. Stobbs to testify regarding the standard of care for pediatric IV administration and management.

B. THE TRIAL COURT'S ABUSE OF DISCRETION WAS NOT HARMLESS

Appellant asserts this error was not harmless and was highly prejudicial to Appellant's case. "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding. Rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v Douglas*, 367 S.C. at 519-520 (citations omitted). "Error is harmless where it could not reasonably have affected the result of the trial." *Id.* at 520 (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)). "The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence." *Id.* at 520 (citations omitted); *see also, McGee*, 468 S.E.2d at 636 (allowing an expert to testify about the placement of catheters was harmless as it was cumulative to other evidence). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." *State v. Douglas*, 367 S.C. at 508 (citations omitted).

Given the arguably excessive verdict (Trial Tr. 446:18-447:1, Mar. 17, 2019 (R. pp. 457-458)) in light of no other testimony or evidence as to Appellant's negligence (*see infra* Argument II), Appellant asserts the error in allow Ms. Stobbs' qualification and testimony was not harmless. Appellant asserts that had Ms. Stobbs not been qualified as an expert and allowed to testify as to the standard of care for pediatric IV management, then the Respondent could not meet its burden of proof which would have resulted in a directed verdict against Respondent. Ms. Stobbs' testimony was not cumulative to other testimony or evidence presented. She was the only witness offered by Plaintiff on two critical issues. Appellant further asserts that the excessive verdict demonstrates that there is reasonable probability that the jury was highly influenced by Ms. Stobbs' testimony. Thus, Appellant asserts this error not harmless, but rather was highly prejudicial to Appellant's defense of the matter. Therefore, because the Trial Court's error amounted to an abuse of discretion and this error was not harmless, the Trial Court's ruling is warranted a reversal on this ground.

II. APPELLANT IS ENTITLED TO A REVERSAL ON THE GROUNDS THAT THE LOWER COURT SHOULD HAVE GRANTED A DIRECTED VERDICT IN FAVOR OF APPELLANT AS RESPONDENT DID NOT ESTABLISH GROSS NEGLIGENCE.

STANDARD OF REVIEW

"When reviewing the denial of a motion for directed verdict or JNOV, this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Welch v. Epstein*, 342 S.C. 279, 299-300, 536 S.E.2d 408 (2000) (citations omitted). "In ruling on a motion for directed verdict, it is the duty of the court to view the evidence and all inferences which may reasonably be drawn

therefrom in the light most favorable to the non-moving party." *Hollins v. Richland Cnty. Sch. Dist. One*, 310 S.C. 486, 427 S.E.2d 654, 655 (1993) (citing *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776 (1962)). "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Welch*, 342 S.C. at 300 (citing *Steinke v. S.C. Dept. of Labor, Licensing, & Reg.*, 336 S.C. 373, 520 S.E.2d 142(1999)). "Th[e] Court will reverse the trial court only when there is no evidence to support the ruling below." *Id.* (citations omitted). "When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.* (citations omitted). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Id.* (citing *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 415 S.E.2d 393 (1992)). "The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision." *Id.* (citations omitted).

ARGUMENT

Gross negligence is the standard that applies in this matter. *See Stewart v. Richland Mem'l Hosp.*, 350 S.C. 589, 592, 567 S.E.2d 510, 511 (2002) (holding gross negligence was the standard, as per the South Carolina Torts Claim Act, that the plaintiff had to prove in a matter where a nurse in a hospital was involved in restraining and monitoring the plaintiff). Appellant is a government entity, as defined by the statute, S.C. Code Ann. § 15-78-30(j); and *Smith v. TRMC*, 713 S.E.2d 656 (Ct. App. 2011) thus, this matter is restricted to the confines prescribed within the South Carolina Torts Claims Act, S.C. Code Ann. § 15-78-200. Per the South Carolina Torts Claims Act §15-78-60(25),

The governmental entity *is not liable* for a loss resulting from . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, *except when the responsibility or duty is exercised in a grossly negligent manner*

S.C. Code Ann. § 15-78-60(25) (Cum. Supp. 1991) (emphasis added). Moreover, the Torts Claims Act "must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f) and § 15-78-200. Therefore, gross negligence is the applicable standard, and the facts must be applied in such a way to limit the liability on the State.

This Court has defined gross negligence in a number of ways. "Gross negligence is the intentional failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275 (2007); *see, e.g., Clyburn v. Sumter Cnty. Dist. Seventeen*, 317 S.C. 50, 451 S.E. 2d 885, 887 (1994); *Richardson v. Hambright*, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988). It is the "failure to exercise slight care." *Id.* Gross negligence has also been defined as "a relative term, and means the absence of care that is necessary under the circumstances." *Hollins v. Richland Cnty. Sch. Dist. One*, 427 S.E.2d at 656 (quoting *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629 (1952)). Furthermore, "[w]hile gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Etheredge*, 341 S.C. at 310; *see, e.g., Clyburn*, 451 S.E. 2d at 887-88.

Appellant maintains that the Trial Court erred in refusing to grant Appellant's motion for directed verdict (Trial Tr. 311:8-313:3 (R. pp. 320-322), 315:2-23 (R. p. 324), 382:8-21 (R. p.

391), Mar. 17, 2019), or Appellant's motion for JNOV or a new trial as there was not more than one inference as to whether Appellant acted with gross negligence (Def. Mot. for JNOV or in the alt. Motion for New Trial 5-6 (R. pp. 540-541); Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 6-7 (R. pp. 7-8). This was not a case of credibility issue or conflict in evidence or testimony. Rather, Respondent failed to provide *any* evidence or testimony of gross negligence; and thus, no reasonable jury could have made any finding of such.

Respondent did not submit any question to its own expert about whether Nurse Stobbs or Appellant were grossly negligent. Moreover, when asked by counsel for Appellant, Respondent's expert had no opinion as to the intentional conduct of Nurse Downing. Trial Tr. 132:24-25, 133:17-19, Mar. 17, 2019 (R. pp. 147-148). Respondent's expert further agreed that just because an IV infiltrated does not automatically warrant a conclusion that there was negligence. *Id.* at 139:7-16. In fact, she agreed that infiltration is a known risk. *Id.* at 112:2-24 (R. p. 127), 139:4-6 (R. p. 154) Respondent's expert herself testified that she has had IVs infiltrate without her having been negligent and has known other nurses who had IVs infiltrate without them being negligent. *Id.* at 138:10-139:3 (R. pp. 153-154).

Nurse Downing testified that she acted in accordance with how she was trained with respect to pediatric IV administration. She testified regarding her knowledge on the differences between adult and pediatric IV administration and monitoring. *Id.* at 266:11-269:23 (R. pp. 274-277), 271:8-21 (R. p. 279). She testified that she checked on the patient regularly and assessed the IV to make sure it was in properly and the medication was being administered as it should be. She testified that at no time during her assessment and monitoring of the minor

Respondent did she see an infiltration score of anything other than zero. *Id.* at 303:25-305:19 (R. pp. 311-313). She further testified that she followed the required protocol regarding flushing, always flushed the IV prior to administering medication, and documented her interactions with the patient into the hospital computer system as required. *Id.* at 272:9-274:19 (R. pp. 280-282); 274:23-275:1 (R. pp. 282-283); 275:19-276:9 (R. pp. 283-284); 276:22-277:10 (R. pp. 284-285); 280: 2-3, 6-10, 13-18 (R. p. 288); 280:21-281:1 (R. pp. 288-289); 299:13-303:22 (R. pp. 307-311). This is evidence that Nurse Downing, at the very minimum exercised at least slight care.

Moreover, Cindy Hurley, Appellant's expert who has had extensive experience working in pediatric nursing (*Id.* at 323:10-324:21 (R. pp. 332-333), 350:15-19 (R. p. 359)), testified that Nurse Downing actually exceeded the standard and the hospital's policy and procedure requirements by checking on him seven times during her twelve hour shift when she was only required to check on him once (*Id.* at 327:21-331:10 (R. pp. 336-340), 333:2-347:25 (R. pp. 342-356), 349:15-350:14 (R. pp. 358-359), 352:8-354:13 (R. pp. 361-363), 356:20-357:4 (R. pp. 365-466)). Certainly, if there was no evidence of negligence, but rather there was testimony that the standard was actually exceeded, there could not possibly have been any gross negligence or any inference of the same as a matter of law.

Even in the light most favorable to the non-moving party, there was no evidence or testimony presented establishing an inference or possibility of gross negligence on the part of Appellant. Respondent had the burden, and they failed to meet that burden. Respondent failed to demonstrate through evidence or testimony that Nurse Downing failed to exercise slight care or intentionally failed to do what she ought to have done in the care and treatment of the minor

Respondent. Because Respondent failed to meet their burden of establishing any inference of gross negligence, and the courts favor limitations on liability on the State, the Trial Court erred by not granting a directed verdict in favor of Appellant. Thus, the decision must be reversed on this ground.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING, OVER OBJECTION, THE ADMISSION OF PREJUDICIAL PHOTOGRAPHS OF THE MINOR CHILD TO THE JURY.

STANDARD OF REVIEW

"[T]he admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. 19 at 25. "[T]he trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; *Gooding*, 454 S.E.2d at 30. "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 487 (citing *Lee*, 318 S.C. 283, 457 S.E.2d 344); *Fields*, 363 S.C. at 26. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

ARGUMENT

Rule 403 of the South Carolina Rules of Evidence states, "[a]lthough relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "To constitute

unfair prejudice, the photographs must create ‘an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690 (2009) (quoting *State v. Jackson*, 364 S.C. 329, 334 (2005)).

“Photographs calculated to arouse the sympathy or prejudice the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226 (2010).

In a Motion *in limine*, Appellant argued against the admission of photographs (Pltf.'s Exs. 1-3 (R. pp. 463-465) of the minor Respondent's hand into evidence, Trial Tr. 10-15, Dec. 22, 2020 (R. pp. 46-51); Def.'s Notice of Motion & Motion *in limine* to Exclude Photos (R. pp. 533-534). Appellant believes that the court erred in allowing the admission of the photographs (Trial Tr. 14:24-15:14, Dec. 22, 2020 (R. pp. 50-51)) and testimony during trial as to the same (Trial Tr. 151:7-152:15 (R. pp. 166-167), 154:20-156:3 (R. pp. 169-171), 228:1-230:15 (R. pp. 234-236), 235:8-236:4 (R. pp. 241-242), Mar. 17, 2019). Def.'s Motion for JNOV or in the alt. Mot. for New Trial 6-7 (R. pp. 541-542); Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 7 (R. p. 8). First, these photographs were not necessary to substantiate the Respondent's case. The fact that there was a wound was never disputed, and at no time did Appellant's argue that the infiltration did not occur or was not the cause of the wound. Trial Tr. 3:13-18, Dec. 22, 2020 (R. p. 39); Trial Tr. 399:3-5, Mar. 17, 2019 (R. p. 409). The Respondent had ample other evidence of the wound, such as the wound center records (Pltf.'s Ex. 6), testimony by the witnesses, and presentation of the minor child at trial (Trial Tr. 158:15-159:25, Mar. 17, 2019 (R. pp. 173-174)), that were less prejudicial than the photographs of the open flesh wound.

Second, these were grotesque, up-close images of the wound that made them appear substantially large than they were in reality. One of the photographs was actually quite blurry. Moreover, the photographs did not include a scale to indicate measurements and proportions. As such, Appellant argues that these images were graphic, inflammatory, and not an accurate reflection of the child's hand and injuries. Trial Tr. 12:23-14:1, Dec. 22, 2020 (R. pp. 48-50); Def.'s Notice of Motion & Motion *in limine* to Exclude Photos (R. pp. 533-534); Def.'s Motion for JNOV or in the alt. Mot. for New Trial 6-7 (R. pp. 541-542). The photos, by their very nature, had a prejudicial tendency to arouse the emotions of the jury. *Id.* Moreover, the photographs did not reflect the current state of the wound. The minor child appeared during trial and showed the jury his scar, which did not appear as it did in the photographs. Trial Tr. 158:15-159:25, Mar. 17, 2019 (R. pp. 173-174). There was also testimony, including from Respondent's own expert, that the child's scar appeared healed since February 2015 and did not look like the photographs shown. *Id.* at 243:12-20 (R. p. 249); 245:2-3, 5-8 (R. p. 251). Thus, as the photographs were not necessary to determine the identity of the child or that the injury had occurred; were grotesque, up-close images not appropriately scaled; and were not representative of the nature of the child's scar, Appellant asserts the admission of the photographs and testimony of the same was in error.

Appellant further asserts this error amounted to prejudice based upon the excessive verdict in favor of Respondent. Due to the excessive jury award, the Appellant is left to conclude that the admission of the grotesque, up-close nature of the photographs were designed to and succeeded in arousing the sympathy of the jury. As stated above, the photographs were not necessary to establish identity or that the infiltration did occur and was the cause of the wound, the photographs were of little probative value. Appellant argues that any probative value they

may have had was substantially outweighed by the fact that they were grotesque, up-close images of the open wound, not to scale, and not representative of the actual appearance of minor's scar. Despite hearing testimony that the minor child's scar has been healed since February 2015 (*Id.* at 245:2-8 (R. p. 251)), is well-healed and stable (*Id.* at 191:17-192:3 (R. pp. 206-207)), does not appear as it did in the photographs, and, in fact, seeing this for themselves, the jury return a grossly excessive verdict in favor of Respondent. Thus, this leaves Appellant to conclude that, without any additional presentation from the Respondent of evidence of gross negligence on the part of Appellant, the jury must have been highly persuaded by these grotesque images. Thus, Appellant asserts the admission of these photographs were highly prejudicial to its defense.

Therefore, Appellant asserts the admission of the photographs was in error, was highly prejudicial to Appellant's defense, and their admission and the allowance testimony to the same an abuse of discretion by the Trial Court, thereby warranting a reversal of the Trial Court's decision.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN PROHIBITING APPELLANT'S EXPERT CYNTHIA HURLEY FROM TESTIFYING IN FRONT OF THE JURY AS TO WHETHER THE APPELLANT WAS GROSSLY NEGLIGENT OR NEGLIGENT.

STANDARD OF REVIEW

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion." *Gooding*, 326 S.C. at 252 (citing *McGee v. Bruce Hospital System*, 321 S.C. 340, 468 S.E.2d 633 (1996); *see, e.g., Fields*, 363 S.C. at 25.

"Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. at 25. "In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; *see, e.g., Gooding*, 454 S.E.2d at 330. "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 252 (citing *Lee*, 318 S.C. 283, 457 S.E.2d 344); *Fields*, 363 S.C. 19 at 26. "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Fields*, 363 S.C. at 26 (citing *Means*, 348 S.C. at 166, 558 S.E.2d at 924). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

ARGUMENT

During trial, Respondent asked the court to prohibit Appellant's expert from testifying as to any legal conclusion. Trial Tr. 316:2-7, Mar. 17, 2019 (R. p. 325). Appellant argues that the court erred prohibiting counsel for Appellant from asking its expert in front of the jury whether she believed Appellant was negligent or grossly negligent and instead forcing counsel for Appellant to ask her outside the presence of the jury in a proffer. *Id.* at 316:2-320:1 (R. pp. 325-329), 378:1-381:13 (R. pp. 387-390); Def.'s Motion for JNOV or in the alt. Motion for New Trial 7-8 (R. pp. 542-543); Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the alt. for a New Trial 7 (R. p. 8). It was her opinion via the proffer that Nurse Downing, and therefore TRMC, was not negligent and was not grossly

neglect. (*Id.* at 380:3-18 (R. p. 389)). Appellant argues that the Trial Court's error in not allowing this testimony has amounted to an abuse of discretion because it was allowed under the Rules of Evidence and case law, and it resulted in prejudice to the Appellant and the presentation of its defense on the matter.

Pursuant to the South Carolina Rules of Evidence, “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Rule 704, SCRE. “There is no invasion of the province of the jury, for the jury retains its power and duty to judge both the credibility of the witness and the weight to be given to his opinion.” *Redman v. Ford Motor Co.*, 253 S.C. 266, 278, 170 S.E.2d 207 (1969). In *Dawkins*, the court held that “[i]n general, expert testimony on issues of law is inadmissible. *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433 (2003). However, the court has held “that the trial judge has the discretion to permit expert testimony on the ultimate issue before the jury.” *Redman*, 253 S.C. at 278 (citing *O’Kelley v. Mut. Life Ins. Co.*, 197 S.C. 109, 14 S.E.2d 582 (1941)); *see, e.g., Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 403, 237 S.E.2d 753 (1977).

Appellant's expert, Cindy Hurley, testified as to the standard of care for pediatric nursing and her opinions as to whether Nurse Stobbs complied with that standard. Trial Tr. 327:21-24 (R. p. 336), 328-331:10 (R. pp. 337-340), 333:2-347:25 (R. pp. 342-356), 349:15-350:14 (R. pp. 358-359), 352:8-354:13 (R. pp. 361-363), 356:20-357:4 (R. pp. 365-366), Mar. 17, 2019. For reasons previously discussed, the ultimate issue, the burden which Respondent had to establish, was gross negligence. Given her extensive experience and knowledge regarding pediatric nursing and IV administration (*Id.* at 323:10-324:21 (R. pp. 332-333), 350:15-19 (R. p. 359)), Appellant

sought to ask Ms. Hurley whether she believed Nurse Stobbs and Appellant hospital acted with negligence or gross negligence (*Id.* at 316:14-21 (R. p. 325), 318:1-5 (R. p. 327)). Ms. Hurley could not be prohibited from testifying to this solely on the grounds that it was the ultimate issue in this matter. *See* Rule 704. Moreover, counsel for Appellant was not asking Ms. Hurley to give an opinion as to an issue of law, as this was not possible since Ms. Hurley was a nurse and not a legal expert. Asking Ms. Hurley this question should not have led to any confusion, as the jury was aware that Ms. Hurley was an expert in nursing, not law. Unlike in *Dawkins*, Ms. Hurley did not make, and was not asked to make, a legal argument nor she did offer these opinions in a written affidavit. Appellant wanted to simply asked its expert what her opinion was based on her experience and background as a pediatric nurse.

Earlier in the trial proceedings, counsel for Appellant had asked Respondent's expert the same questions regarding her opinions as to negligence and intentionality on the part of Appellant hospital and Nurse Stobbs, without any objection from counsel for Respondent. Trial Tr. 132:24-25 (R. p. 147), 133:17-19 (R. p. 148), 138:10-139:16 (R. pp. 153-154), Mar. 17, 2019. Appellant thought that asking Ms. Hurley the same questioning would assist the jury in its decision and in weighing and comparing the testimony of both expert witnesses in this matter. Thus, because the jury did retain its power in judging the experts' credibility, allowing this part of Ms. Hurley's testimony would not have usurped its role. Therefore, Appellant argues that the Trial Court's ruling denying this portion of Ms. Hurley's testimony was arbitrary, unreasonable, and unfair to the presentations of Appellant's defense of this matter; thus, Defendants assert it was error for this to be kept from the jury for its consideration.

Appellant further assert that this error resulted in prejudice to Appellant's defense of this matter. The jury returned a grossly excessive verdict in favor of Respondent (Trial Tr. 446:18-447:1, Mar. 17, 2019 (R. pp. 457-458)), despite not hearing any testimony or seeing any evidence of gross negligence. Therefore, the Appellant is left to conclude that not being allowed to ask its expert this important question did, in fact, affect the results of the trial. Appellant maintains that the purpose of the question was to ask its expert her opinion, based on her experience in pediatric nursing, and this would have helped educate and better inform the jury. Thus, not allowing the testimony in the presence of the jury was prejudicial to Appellant.

Therefore, the Trial Court abused its discretion in not allowing Ms. Hurley's testimony regarding gross negligence in front of the presence of the jury, and the decision must be reversed.

V. THE TRIAL COURT ABUSED ITS DISCRETION IN PERMITTING THE REQUEST FOR ADMISSION TO BE PUBLISHED TO THE JURY.

STANDARD OF REVIEW

"[T]he admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. at 25 "[T]he trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; *Gooding*, 454 S.E.2d at 330. "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 487 (citing *Lee*, 318 S.C. 283, 457 S.E.2d 344); *Fields*, 363 S.C. at 26. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

ARGUMENT

Appellant asserts that the publication of its Request to Admit was an error that prejudiced Appellant's defense of the matter and amounted to an abuse of discretion by the Trial Court. Trial Tr. 250:21-258:25, Mar. 17, 2019 (R. pp. 257-265); Def.'s Motion for JNOV or in the alt. Motion for New Trial 8-10 (R. p. 543-545); Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the alt. for a New Trial 8 (R. p. 9); Def. RTA (R. pp. 35-36). Appellant concedes this is an unusual circumstance and the case law seems to only address issues for withdrawal by the admitting party. As per Rule 36(b) of the South Carolina Rules of Civil Procedure, "[t]he Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining or defense on the merits." Rule 36, SCRCPP; *see, e.g., Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen*, 347 S.C. 545, 557, 556 S.E.2d 718, 724 (Ct. App. 2001) ("The trial court may allow a party to amend or withdraw its answers to a request to admit when: (1) the presentation of the merits is furthered by the amendment; and (2) the party who obtained the admission cannot demonstrate prejudice because of the amendment."). However, Appellant asserts that, pursuant to Rule 403 of the South Carolina Rules of Evidence, publishing the Request to Admit was in error and was highly prejudicial to the Appellant, as it did nothing but confuse the issues for the jury. Trial Tr. 251:24-11 (R. p. 258), 253:9-18 (R. p. 260), 255:20-257:5 (R. pp. 262-264). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or

misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE.

In its Request to Admit, Appellant asked Respondent to admit or deny that the amount in controversy and amount of Respondent's actual damage exceeded one hundred thousand dollars. Trial Tr. 258:18-25, Mar. 17, 2019 (R. p. 265); Def.'s RTA (R. pp. 35-36). The Request to Admit were not a stipulation under South Carolina Rules of Civil Procedure Rule 43(k)⁶ but rather a discovery tool. Trial Tr. 253:9-18, Mar. 17, 2019 (R. p. 260). *See* The purpose of the request to admit was to obtain an Independent Medical Examination under Rule 35(a)⁷ of the South Carolina Rules of Civil Procedure, not for Respondent to represent that Appellant admitted the damages were in excess of \$100,000.00. *Id.* at 251:24-252:6 (R. pp. 258-259). Although facts may be stipulated under the rule, these Request to Admit were subjective, as they went to damages. Because the purpose was for obtaining were to obtain Respondent's view of the case in order to obtain an Independent Medical Examination under South Carolina Civil Procedure Rule 35(a), these were subjective, not factual, and thus, could not be stipulated. *Id.* at 253:21-254:11 (R. pp. 260-261).

⁶ Rule 43(k), SRCRP. “No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SRCRP.”

⁷ Rule 35(a), SRCP. “In any case in which the amount in controversy exceeds \$100,000 actual damages, and the mental or physical condition . . . of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. . . .”

Although the Trial Court stated that the modification of the Request to Admit would have to go to the merits, not damages, *Id.* at 254:12-255:17 (R. pp. 261-262), Appellant argued that that publication to the jury would prejudice the merits of its defense, *Id.* at 255:20-257:5 (R. pp. 262-264). Reading the Request to Admit to the jury had the effect of confusing them as to the issues in dispute and the purpose of the Request to Admit. Allowing the Request to Admit to be published to the jury made the effect that a verdict had to be awarded for Respondent in the amount of at least \$100,000.00. *Id.* at 252:8-11 (R. p. 259), 255:20-257:5 (R. pp. 262-264). This effectively directed a verdict of liability in the Respondent's favor, thereby impeding presentation of the merits of Appellant's case. Throughout the case, liability was contested, and Appellant maintained that it was not negligent. Therefore, publishing the Request to Admit to the jury subserved and impeded the presentation of the merits of the defense.

Appellant argued that the burden was on the Respondent to show that they would be prejudiced if the Request to Admit were not allowed to be published. *Id.* at 256:22-25 (R. p. 263). Appellant argued that they would not be able to meet that burden, as Respondent certainly had every right to argue for whatever verdict amount they wanted. *Id.* at 256:25-257:3 (R. pp. 263-264). Appellant, on the other hand, would be and was in fact highly prejudiced by allowing the admission of the Request to Admit. Moreover, The Request to Admit was not mentioned in Respondent's pretrial brief. Pltf.'s Pretrial Br. Respondent intentionally failed to mention the Request to Admit to Appellant's counsel until they were about to publish it to the jury. This highly prejudiced Appellant, as it had no time to prepare argument or rebuttal evidence. Thus, when balancing the little, if any, probative value of the Request to Admit with the high amount of

confusion and prejudicial effect publishing it would and did have, the admission of the Request to Admit was improper under Rule 403.

As such, the Trial Court should have not have allowed the admission into evidence of the Request for Admission because it was of little probative value and was highly prejudicial to Appellant as it directly confused the issues and impeded the merits of the Appellant's case. Thus, the decision of the Trial Court must be reversed.

VI. THE TRIAL COURT ABUSED ITS DISCRETION IN NOT GRANTING A NEW TRIAL ABSOLUTE OR NEW TRIAL *NISI REMITTITUR* WHEN THE VERDICT WAS GROSSLY EXCESSIVE AND SHOCKINGLY DISPROPORTIONATE AND CONTRARY TO THE EVIDENCE ADMITTED AT TRIAL, OR, AT THE VERY MINIMUM, WAS AT LEAST MERELY EXCESSIVE GIVEN THE EVIDENCE.

STANDARD OF REVIEW

The decision to grant or deny a new trial absolute based on the excessiveness of a verdict rests in the sound discretion of the trial court and ordinarily will not be disturbed on appeal. An abuse of discretion occurs if the trial court's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law.

Welch, 342 S.C. at 302 (citing *Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct.App.1996)); see, e.g., *Stevens v. Allen*, 336 S.C. 439, 446, 520 S.E.2d 625 (Ct. App. 1999). "In deciding whether to assess error when a new trial motion is denied, this Court must consider the testimony and reasonable inferences therefrom in the light most favorable to the nonmoving party." *Welch*, 342 S.C. at 302-03 (citing *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct.App.1996)).

ARGUMENT

A. THE TRIAL COURT ERRED IN NOT GRANTING A NEW TRIAL ABSOLUTE BECAUSE THE VERDICT WAS GROSSLY EXCESSIVE AND SHOCKINGLY DISPROPORTIONATE AND CONTRARY TO THE EVIDENCE ADMITTED AT TRIAL.

When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice. The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded. In other words, to warrant a new trial absolute, the verdict reached must be so 'grossly excessive' as to clearly indicate the influence of an improper motive on the jury.

Welch, 342 S.C. at 302 (citations omitted); *see, e.g., Stevens*, 336 S.C. at 447 ("The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives."); *Duncan v. Hampton Cnt. Sch. Dist. No. 2*, 235 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1990); *see also, Sullivan v. Davis*, 317 S.C. 462, 467, 454 S.E.2d 907, 912 (Ct. App. 1995) (holding that the Trial Court abused its discretion in not granting the new trial absolute motion when the verdict was "shockingly disproportionate" to the evidence presented); *Zorn v. Crawford*, 252 S.C. 127, 138, 165 S.E.2d 640, 646 (1969) (granting a new trial in a wrongful death action where "a verdict of \$250,000.00 for the actual damages sustained by the beneficiaries . . . [was] not supported by the

evidence and [could] only be explained upon the basis of sympathy, passion, or prejudice on the part of the jury").

The term "passion and prejudice" does not "necessarily imply bad faith, wrongful purpose, or moral delinquency," but rather, results when the award is "against the overwhelming weight of the evidence." *Beasley v. Ford Motor Co.*, 237 S.C. 506, 513, 117 S.E.2d 863, 867 (1961). "Ordinarily the only means of discovering the existence of passion and prejudice as influencing the verdict is by comparing the amount of the verdict with the evidence before the trial court." *Nelson v. Charleston W.C. Ry. Co.*, 231 S.C. 351, 362, 98 S.E.2d 798, 802 (S.C. 1957). However, in some instances,

[t]he size of the verdict alone may show that it must have been the result of passion or prejudice, as for instance, when it is apparent that the award is obviously so disproportionate to the injury proved as to justify the conclusion that the verdict is not the result of the cool and dispassionate discretion of the jury.

Id. (quoting 15 Am. Jur., *Damages* § 205, p. 623); *see also, Smalls v. Springs Indus., Inc.* 292 S.C. 481, 486, 357 S.E.2d 452, 455 (1987) (stating that under the facts of the case, "the size of the jury's verdict alone establishes it is grossly excessive"). For further clarification,

[a] close analysis of the results reached in the cases justifies the statement that the courts generally grant relief if convinced that the verdict substantially exceeds any rational appraisal or estimate of the damages even though the inference of passion, prejudice, partiality, or other improper motive on the part of the jury is no more natural or reasonable than the inference of mistake or misapprehension on their part.

Beasley, 237 S.C. at 512-513 (quoting 15 Am. Jur. *Damages* § 205, p. 623).

In this matter, the jury returned a verdict in the amount of \$1,127,280 for the minor and \$135,477.00 for Respondent Tekayah Hamilton. Trial Tr. 446:18-447:1, Mar. 17, 2019 (R. pp.

457-458); (R. p. 535). Subsequently, Appellant filed a Motion for Judgment Notwithstanding the Verdict or in the alternative Motion for New Trial, in which one of the grounds for a new trial absolute was because the verdict was grossly excessive as compared to the evidence presented at trial. Def.'s Mot. for JNOV or in the alt. Mot. for New Trial 11-13 (R. pp. 546-548). Appellant asserts the Trial Court's denial of its motion on this ground was an error in law, as the verdict was grossly excessive and shockingly disproportionate, wholly unsupported by and contradictory to the evidence presented a trial for the following reasons. Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 8 (R. p. 9)

First, there was little testimony regarding any pain and suffering. Dr. Devito testified that the minor seemed to be experiencing pain during his examination of him, although Dr. Davis testified that during his examination of the minor, the minor denied any pain, burning, or itching (*Id.* at 192:13-25 (R. p. 207)). Dr. Davis testified that Respondent Tekayah Hamilton told him the minor would ask her if he could scratch it. (*Id.* at 192:25-193:2 (R. pp. 207-208)). The only testimony from Respondent Hamilton regarding pain was some itching and cramping that is alleviated with some exercises and crying during the infiltration and wound care follow up treatment.

Second, there was testimony establishing that very little has been done or is planned in regards to treatment. The minor treated at the wound care center at The Regional Medical Center immediately after the infiltration occurred and for a short period of time in 2015. *See* Plf.'s Ex. 6. He saw Respondent's expert Dr. Devito on February 2, 2015; March 5, 2015; and did not go back to him for three years until March 2018. Trial Tr. 163:13-15, 23-25 (R. p. 178); 165:10-12 (R. p.

180), Mar. 17, 2019. At the time of trial, the minor was not currently on any medications for this wound. *Id.* at 169:16-18 (R. p. 184). Nonsurgical options, such as steroidal injections and compression, have been recommended by both the physician referred by Respondent's lawyer and the court-appointed plastic surgeon; however, the minor has not gotten this treatment. *Id.* at 163:13-18 (R. p. 178), 163:23-164:13 (R. pp. 178-179), 195:23-196:18 (R. pp. 210-211), 198:20-199:15 (R. pp. 213-214), 248:23-249:17 (R. pp. 254-255). Surgery had also been recommended by both physicians as another method of treatment to improve the scar (*Id.* at 195:23-196:18 (R. pp. 210-211), 238:5 (R. p. 244)), but Respondent Tekayah Hamilton testified she has no plans for surgery at this time, although she testified she may consider it when the minor is older (*Id.* at 170:3-4, 11-15 (R. p. 185); 171:10-1 (R. p. 186)). Although surgery would improve the appearance of the scar, surgery is not needed for any functionality reasons. *Id.* at 210:2-12 (R. p. 225).

Third, although there is scar tissue (*Id.* at 191:5-14 (R. p. 206)) and the scar is permanent (*Id.* at 210:23-211:5 (R. pp. 225-226)), his hand is fully functioning (*Id.* at 193:3-195:22 (R. pp. 208-210)), and the wound is "well-healed" and "stable" (*Id.* at 191:17-192:3 (R. pp. 206-207)) and will not get worse (*Id.* at 199:16-25 (R. p. 214)). There are no functional deficits and "nothing inhibiting full functioning of the wrist": no diminished finger strength, no impairment of the tendons or wrist, and no issue with range of motion of the wrist. *Id.* at 192:6-12 (R. p. 207), 193:3-2-195:22 (R. pp. 208-210). The child "should have normal functionality throughout the rest of his life." *Id.* at 194:14-15 (R. p. 209). The child will be able to do things a normal child would, such as a throwing a ball, playing a music instrument, holding a fishing pole, writing and drawing, and driving a car. *Id.* at 200:25-202:9 (R. pp. 215-217).

As the evidence presented cannot support a \$1,127,280 verdict for the minor and \$135,477.00 for Respondent Tekayah Hamilton, the size of the verdict alone is sufficient to show that the jury must have been moved by passion or prejudice. The verdict of \$1,127,280 for minor Respondent is 54 times the amount of actual damages of \$20,854. This is grossly excessive and shocks the conscience, as there was little testimony of pain and suffering; there is no ongoing treatment or plans for any in the future; the scar is well-healed and stable; and there are no functionality deficits. Additionally, the \$135,477.00 verdict for Respondent Tekayah Hamilton is also grossly excessive, as past and future medical damages only amount to \$20,854.00 (*Id.* at 412:24-413:12 (R. pp. 422-423)); she testified she has no plans for the child to undergo any steroidal injections or scar revision surgery (*Id.* at 170:3-4 (R. p. 185)); and she is not entitled to any pain or suffering.

Thus, the verdict in this matter is "without any rational support whatever in the evidence and is so grossly excessive as to show that the jury was actuated by considerations not founded on the evidence and/or the instructions of the court." *Joyner v. St. Matthews Builders*, 263 S.C. 136, 140-41, 208 S.E.2d 48, 50 (1974) (granting a new trial due to the "actual damages" being so manifestly and grossly excessive"). Given the complete lack of any cognizable basis to support the damages award, it is clear that in awarding these amounts for both the minor and his mother, the jury did not pay attention to the jury instructions. "[I]t is fundamental that a jury must abide by the judge's charge, be it right or wrong. Where the jury renders a verdict in disregard of his charge, it is error for the judge not to grant a new trial upon motion." *Southeastern Mobile Homes Inc., v. Walicki*, 282 S.C. 298, 302, 317 S.E.2d 773 (Ct. App. 1984). Appellant is left to conclude that, in light of the excessive verdict as compared to the evidence of actual damages,

the jury arrived at its award as a result of passion, caprice, or other improper motives. "If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice or some other influence outside the evidence, the trial judge must grant a new trial absolute, not a new trial *nisi remittitur*." *Welch*, 342 S.C. at 303 (citing *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993)). Therefore, it was an abuse of discretion for the Trial Court not to grant Appellant's motion for a new trial absolute based on the grossly excessive verdict, and thus, the decision must be reversed.

B. IN THE ALTERNATIVE, IF THE APPELLANT COURT DOES NOT BELIEVE THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE MOTION FOR A NEW TRIAL ABSOLUTE, APPELLANT ASSERTS THAT THE TRIAL COURT ABUSED ITS DISCRETION BY NOT GRANTING ITS MOTION FOR NEW TRIAL *NISI REMITTITUR* BECAUSE THE VERDICT WAS, AT THE VERY LEAST, MERELY EXCESSIVE.

The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive. Indeed, when the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to reduce the verdict by the granting of a new trial *nisi remittitur*. A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.

Welch, 342 S.C. at 303 (citations omitted); see, e.g., *RRR, Inc v. Toggas*, 378 S.C. 174, 183, 662 S.E.2d 438 (Ct. App. 2008) ("[T]he circuit court alone has the power to grant a new trial nisi when it finds the amount of the verdict to be merely inadequate or excessive."); *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877 (Ct. App. 2007) (stating that the court "may grant a

new trial nisi additur or remittitur when it finds the verdict is merely inadequate or excessive.”); *Becker v. Walmart Stores, Inc.*, 339 S.C. 629, 636, 529 S.E.2d 758 (Ct. App. 2000) (affirming trial court’s granting of motion for remittitur on grounds that amount awarded by jury was “merely excessive”). "In considering a motion for new trial *nisi*, the trial court must evaluate the adequacy of the verdict in light of the evidence presented." *Welch*, 342 S.C. at 303 (citing *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct.App.2000)).

In its motion, Appellant asked the Trial Court that if did not agree with Appellant that the verdict is grossly excessive to the extent of shocking the conscience and did not appear to be motivated by considerations such as passion, caprice or prejudice, then to grant a new trial *nisi remittitur* because the verdict was, at the very least, merely excessive. Def.'s Mot. for JNOV or in the alt. Mot. for New Trial 11-14 (R. pp. 546-549). The Trial Court denied Appellant's motion for a new trial *nisi remittitur*, although it did grant, in part, Appellant's motion to cap the damages as required by the South Carolina Torts Claims Act (§15-78-10, et seq.). Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 4-6, 8 (R. pp. 5-7, 9); Def.'s Post Trial Mot. for Reduction to Statutory Cap (R. pp. 552-554). The Trial Court capped the judgment for the minor at \$300,000.00 because §15-78-120(a)(1) provides a maximum of \$300,000.00 for a loss arising from a single occurrence.

Additionally, Appellant moved for a reduction in Respondent Tekayah Hamilton's verdict, which was in the amount of \$135,477.00, as she was only entitled to past and future medical costs, which totaled \$20,854.00. Trial Tr. 412:24-413:12 (R. pp. 422-423); Def.'s Post Trial Mot. for Reduction to Statutory Cap (R. p. 552-554). *See, Patton v. Miller*, 420 S.C. 471, 804 S.E.2d

252 (2017) (a parent is the proper party in interest with respect to past and future medical expenses while the child is a minor); *Wright v. Colleton Cnty. Sch. Dist.*, 301 S.C. 282, 289-90, 391 S.E.2d 564 (1990) (finding that a parent may recover medical expenses separately from the child's claim). However, the Trial Court denied Appellant's motion to reduce the verdict for Respondent Tekayah Hamilton.

Even after capping the minor's judgment at \$300,000.00 as required by §15-78-120(a)(1), the judgment is still, at the very minimum, merely excessive. As discussed above, there was no testimony of current, ongoing treatment or plans for any in the future, and there was little testimony of pain or suffering. The wound is well-healed (Trial Tr. 191:17-192:3, Mar. 17, 2019 (R. pp. 206-207)), and the hand fully functioning (*Id.* at 193:3-195:22 (R. pp. 208-210)). The jury saw this for themselves. Moreover, the verdict for Respondent Tekayah Hamilton in the amount of \$135,477.00 was also, at the very minimum, merely excessive, as she testified she has no plans for steroidal injections or surgery (*Id.* at 170:3-4 (R. p. 185)), and the only evidence of actual damages, past and future medical expenses, were in the amount of \$20,854 (*Id.* at 412:24-413:12 (R. pp. 422-423)). She was not entitled to any damages for pain and suffering. Therefore, the verdict rendered by the jury, as well as the statutory cap placed on the minor's verdict, was at least merely excessive as compared to the evidence presented at trial. As such, the Trial Court abused its discretion in denying Appellant's alternative motion for new trial *nisi remittitur*.

Since the verdict was grossly excessive or at least merely excessive, the Trial Court's error in not granting either a new trial absolute or in the alternative a new trial *nisi remittitur* amounted to an abuse of discretion, and the decision must be reversed.

CONCLUSION

For the reasons stated, Appellant respectfully requests the Appellate Court to reverse the decision of the Trial Court and dismiss this action with prejudice or, in the alternative, reverse the decision of the Trial Court and grant Appellant a new trial.

Respectfully submitted,

May 20, 2021

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a
minor child under the age of 18, ... Respondent

v.

Regional Medical Center, ...Appellant

PROOF OF SERVICE

I certify that I have served the Final Brief of The Regional Medical Center, by depositing
a copy of it in the United States Mail, a postage prepaid, and via email on May 20, 2021,
addressed to the attorneys of record, Jonathan F. Krell, Esquire, Post Office Box 299, Charleston,
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THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211, SCACR.

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SC Court of Appeals

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FINAL REPLY BRIEF OF THE REGIONAL MEDICAL CENTER

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May 31, 2021

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I. THIS CASE IS ABOUT PEDIATRIC NURSING AND IV ADMINISTRATION AND MONITORING AND RESPONDENT'S EXPERT MONICA STOBBS FAILED TO MEET THE REQUIREMENTS OF RULE 702, SCRE, AND GOODING AS IT PERTAINED TO PEDIATRICS

In its brief, Respondent falsely states that Appellant is incorrect about this case being about pediatric nursing, and instead, characterizing it as "IV management safety practice of doing and documenting a saline flush before administering medication." (Br. of Resp. 8) Respondent falsely characterizes Appellant's discussion of blood return and IV management irrelevant on the basis that this case is about whether a flush was done, (Br. of Resp. 6), and that Appellant's arguments regarding Nurse Downing's qualifications are mute or "does not make a difference." (Br. of Resp. 7) on the basis that the standard of care is the same for pediatrics and adults.

This case *is* about pediatric nursing, and there *are* differences between pediatrics and adults and the care provided to each during IV administration and monitoring. App. Br. 11 (App. Final Br. 11). There are various physiological differences that vary greatly among infants, children, and adults. App. Br. 11 fn 1, 2, 3 (App. Final Br. 11-12). Veins in infants are "obviously smaller" and can be "threadlike." App. Br. 11 fn 2 (App. Final Br. 12). "Vein fragility and the high acuity levels of young patients can increase the likelihood of infiltration and extravasation, resulting in significant morbidity." App. Br. 11-12, fn 3 (App. Final Br. 12). Since infants, children, and adults are all different, there are different procedures in place, different equipment used, and different techniques utilized in the IV administration. Trial Tr. 331:4-17; 332:7-12, 15-20, Mar. 17, 2019 (R. pp. 340-341). It requires a certain skill. *Id.* at 332:7-9 (R. p. 341).

As this matter was about pediatric nursing, not general nursing, to testify as to the standard of care regarding *pediatric* standard of care for IV administration and monitoring, Nurse Stobbs was required, by Rule 702 of the South Carolina Rules of Evidence, to possess the "knowledge, skill, experience, training or education" as it pertained to *pediatrics*. Rule 702, SCRE. "To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter.'" *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997) (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995); see, e.g., *State v. Douglas*, 367 S.C. 498, 508-509, 626 S.E.2d 59 (Ct. App. 2006); *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 65 (Ct. App. 1984). Nurse Stobbs fails to meet the requirements of both Rule 702 and *Gooding* as to *pediatric* nursing and IV administration. App. Br. 12-15 (App. Final Br. 12-15). Nurse Stobbs has never cared for a pediatric patient; has never started or managed a pediatric IV; does not have any education or knowledge as to pediatric nursing or IV administration; and did not perform any research, independent study, or review any medical literature in preparation of formulating her opinions. App. Br. 13 (App. Final Br. 13-14). Moreover, Nurse Stobbs actually testified in direct contradiction with the medical literature regarding obtaining blood return, as well as testimony from Nurse Downing and Cynthia Hurley, both of whom actually practice in pediatrics. App. Br. 13-14 (App. Final Br. 14-15). This argument is not irrelevant, as it is further proof of Nurse Stobb's lack of experience or knowledge regarding *pediatric* nursing and IV administration.

Respondent incorrectly states in its brief that Nurse Stobbs "is qualified in the field of IV management." Resp. Br. 11. Nurse Stobbs was qualified as to *general nursing*, not the field of IV management. Trial Tr. 10:4-6, Dec. 22, 2020 (R. p. 46); Trial Tr. 78:1-9, Mar. 17, 2019 (R. p. 93). Moreover, Respondent argues that she was "not required to specifically practice in pediatric IV management." Resp. Br. 11. However, the argument is not that Nurse Stobbs has to specifically practice in pediatrics. The issue is not over a *defect* in amount or quality of experience or knowledge. App. Br. 13 (App. Final Br. 13). Rather, the issue is whether Nurse Stobbs possessed *any* of the required "knowledge, skill, experience, training or education" "acquired by reason of study or experience or both" such that she is "better qualified than the jury to form an opinion on" *pediatric nursing and pediatric IV administration and monitoring*. Rule 702, SCRE; *Gooding*, 326 S.C. at 253, 487 S.E.2d at 598; App. Br. 12-13 (App. Final Br. 12-13). Nurse Stobbs must have gained knowledge or experience in *pediatric nursing and IV administration* by some means to be qualified to testified as to the standard of care of the same. She has no such knowledge or experience in *pediatric nursing and IV administration*, and therefore was not qualified to testified as to the standard of care for *pediatric nursing and IV administration*. App. Br. 12-15 (App. Final Br. 12-15).

Respondent is incorrect that Appellant's arguments against the qualification of Nurse Stobbs goes to the weight and not admissibility of her testimony. Br. of Resp. 8. Similar to the orthopedic surgeon in *Botehlo*, Ms. Stobbs has had no personal experience or training at all in pediatric nursing or IV administration. App. Br. 13 (App. Final Br. 13). Respondent is incorrect in that *Botehlo* is not easily distinguishable from the facts of this matter. Resp. Br. 10. In *Botehlo*, the court held that an orthopedic surgeon was not qualified to testify on the standard of care for

podiatrist where the orthopedic surgeon 1) had no training in podiatry, 2) was not familiar with any journals or periodicals in podiatry, and 3) was not familiar with the surgical procedure performed. *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 65 (Ct. App. 1984). Similar to *Botehlo*, Nurse Stobbs 1) has had no training, education, or any experience at all in *pediatric* nursing or IV administration; 2) was not familiar with any medical literature regarding *pediatric* nursing or IV administration and had not performed any research, independent study, or review any medical literature as to *pediatric* nursing and IV administration in preparation of formulating her opinions; and 3) has never cared for a *pediatric* patient and has never started or managed a *pediatric* IV. App. Br. 13 (App. Final Br. 13-14); Trial Tr. 79:24-25 (R. p. 94), 108:22-110:21 (R. p. 123), 103:14-104:8 (R. pp. 118-119), 111:14-23 (R. p. 126), Mar. 17, 2019; Stobbs Dep. 13:9-24 (R. p. 518), 26:15-24 (R. p. 519). Thus, similar as to how the orthopedist in *Botehlo* "not versed at all in the practice of podiatry," *McMillan v. Durant*, 312 S.C. 200, 204, 439 S.E.2d 829, 832 (1993) (referring to *Botehlo*), Nurse Stobbs is not versed at all in the practice of *pediatric* nursing and IV administration.

Respondent relies on *McMillian*, *Lee*, *Graves*, and *Creed* for its argument that Nurse Stobbs lack of experience in pediatrics is not sufficient in prohibiting her from testifying as to the standard of care for pediatric nursing and IV administration. Resp. Br. 8-10; *McMillan v. Durant*, 312 S.C. 200, 439 S.E.2d 829 (1993); *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995); *Graves v. CAS Med. Sys.*, 401 S.C. 63, 735 S.E.2d 650 (2012); *Creed v. Columbia*, 310 S.C. 342, 426 S.E.2d 785 (1993). However, these cases are easily distinguishable.

Unlike *McMillian*, where a neurosurgeon was qualified to testify as to the appropriate standard of care of nursing on the basis that he taught nursing courses at a university, *McMillan*,

439 S.E.2d at 833, and *Lee*, where a plastic surgeon who was qualified to testify as to where he was a professor who taught family practitioner residents how to identify skin cancers and perform biopsies, *Lee*, 457 S.E.2d at 346, Nurse Stobbs has not had any experience teaching any courses regarding pediatric nursing or pediatric IV administration. In fact, she has no experience—knowledge or skill, training or education—whatsoever in pediatric IV administration. App. Br. 12-13 (App. Final Br. 13).

Unlike in *Graves*, where the doctor stayed current on sudden infant death syndrome (SIDS) literature and routinely encountered SIDS in her practice, *Graves*, 401 S.C. at 78, Nurse Stobbs was unfamiliar with the medical literature regarding pediatric IV administration and management and had not done any research during her time spent prepping for this trial. App. Br. 13 (App. Final Br. 13-14). Further, not only does she not "routinely encounter" pediatrics in her practice, she has *never* treated a single pediatric patient during her *entire* career. App. Br. 12-13 (App. Final Br. 13). She has never started or monitored an IV in a single pediatric patient in her nursing career. App. Br. 12-13 (App. Final Br. 13).

This case is also not similar to *Creed*. In *Creed*, the general practitioner who was qualified to give an opinion on the plaintiff's mental and emotional injuries had personally examined the plaintiff and referred him to a neuro-psychologist as a part of his course of treatment. *Creed*, 426 S.E.2d at 786. In the present matter, Nurse Stobbs did not personally treat, examine, or care for the minor Respondent and did not refer him to an outside specialist as a part of his course of treatment. In fact, she has not personally treated or care for *any* pediatric patient. App. Br. 12-13 (App. Final Br. 13).

Additionally, in its brief, Respondent maintains that Appellant relies on *Gooding* but that *Gooding* supports Respondent's position, Resp. Br. 10. However, the present matter is also distinguishable from *Gooding*. In *Gooding*, the EMT who was qualified to testify as to intubation procedure had personal, hands-on experience with intubation and had intubated over 100 patients. *Gooding*, 326 S.C. at 251. This case is about *pediatric* IV management, and Nurse Stobbs has had *no experience whatsoever* in pediatric IV management or pediatric nursing. App. Br. 12-13 (App. Final Br. 13).

Respondent's expert Nurse Stobbs was the only witness it produced as it pertained to two critical issues. The jury returned a verdict that was excessive in light of the testimony and evidence presented at trial. Thus, the issue concerning her qualification or lack of *does* matter and *does* make a difference. App. Br. 15-16 (App. Final Br. 17).

In its brief, Respondent incorrectly argues that Appellant's argument regarding Nurse Stobbs' testimony on the pediatric standard of care for IV administration and monitoring was not preserved for appeal. Resp. Br. 11-12. In its Motion in limine, counsel for Appellant made it known to the court that he felt like this was a situation in which Respondent was attempting to have her qualified in pediatric nursing. Trial Tr. 8:13-17, 8:20-9:19, Dec. 22, 2020 (R. pp. 44-45). The Trial Court specifically indicated Ms. Stobbs would be qualified in general nursing and not pediatrics, as it acknowledged she had no prior experience with regards to pediatrics. Trial Tr. 8:18-19, 9:20-10:6, Dec. 22, 2020 (R. pp. 44-46). In its decision, the Trial Court stated that it would qualify her for nursing care but not neonatal. Trial Tr. 10:5-6, Dec. 22, 2020 (R. p. 46). Respondent incorrectly maintains the position that Appellant's argument was not preserved

but it was never objected to during trial. Br. of Resp. 11. However, during the qualification of Nurse Stobbs at trial, counsel for Appellant contemporaneously objected and stated on the record that Nurse Stobb's qualification was "subject to my prior objection." Trial Tr. 78:5-6, Mar. 17, 2019 (R. p. 93).

Nurse Stobbs was qualified as an expert in nursing, *general* nursing, not pediatrics or neonatal and not in the "field of IV management" as stated in Respondent's brief (Resp. Br. 11). Trial Tr. 10:4-6, Dec. 22, 2020 (R. p. 46); Trial Tr. 78:1-9, Mar. 17, 2019 (R. p. 93). As suspected, Nurse Stobbs did in fact testify during trial regarding the standard of care for *pediatric* nursing and IV administration and care. All supporting arguments and authority as it pertains to Nurse Stobb's testimony regarding pediatric nursing and IV administration and monitoring have already been discussed in this brief, as well as Appellant's Initial Brief. *See* Rule 702, SCRE; *Gooding*, 326 S.C. 248, 487 S.E.2d 596; *Botehlo*, 282 S.C. 578, 320 S.E.2d 59; App. Br. 9-16 (App. Final Br. 9-17).

II. GROSS NEGLIGENCE IS THE STANDARD THAT APPLIES IN THIS MATTER AND RESPONDENT FAILED TO MEET THEIR BURDEN

Gross negligence is the standard that applies in this case. App. Br. 17 (App. Final Br. 18); Trial Tr. 214:12-215:16, 434:10-17 (R. p. 445), Mar. 17, 2019. *Stewart* is the governing law in this matter. *See Stewart v. Richland Mem'l Hosp.*, 350 S.C. 589, 592, 567 S.E.2d 510, 511 (Ct. App. 2002). As defined by S.C. Code Ann. § 15-78-30(j) and *Smith v. TRMC*, Appellant is a governmental entity, and therefore this matter is strictly governed by the confines of the South Carolina Torts Claims Act. App. Br. 17 (App. Final Br. 18); *see Smith v. TRMC*, 713 S.E.2d 656 (Ct. App. 2011); S.C. Code Ann. §15-78-200. The South Carolina Torts Claims Act limits

liability of a governmental entity unless there is gross negligence. S.C. Code Ann. § 15-78-60(25); App. Br. 17 (App. Final Br. 18-19). Respondent argues that gross negligence is the applicable standard because "because it concerns a nurse's administration of medication and not 'supervision, protection, control, confinement, or custody' of a patient." Br. of Resp. 15, fn 2. However, although *Stewart* involved the custody of an inmate, it also involved the monitoring of him as a patient. *Stewart*, 350 S.C. 589, 591-592; Trial Tr. 213:14-22, Mar. 17, 2019. Therefore, the gross negligence standard is applicable in cases involving the monitoring of patients, and thus, as the Trial Court agreed, is applicable in this case.

Respondent is incorrect in its presumption that Appellant is arguing that the words "gross negligence" must have been used for the evidence of the same to exist. Resp. Br. 15. Appellant's position is that Respondent failed to establish *any* evidence of gross negligence, and thus, they failed to meet their burden and a directed verdict should have been returned in favor of Appellant. App. Br. 18 (App. Final Br. 20).

Respondent believes the issue in this matter is whether the IV was flushed before administering ampicillin, and Respondent's theory is based on "if it wasn't documented, it wasn't done." Resp. Br. 3. However, this theory is directly contradictory to the testimony as to the policies and procedures of pediatric nursing and IV administration at The Regional Medical Center (RMC) and is based on a complete misread of the policy itself. In its brief, Respondent maintains that there was evidence that RMC "consciously failed to do or document a saline flush." Resp. Br. 16. Respondent bases assertion by stating "RMC's policies require a saline flush prior to administering medication and documentation of that flush." Resp. Br. 16. However, this is factually incorrect and blatantly mischaracterizing the testimony as to what the policy requires.

Both Nurse Downing and Cynthia Hurley testified numerous times that flushing a site is part of the assessment with administering a medication, and there is no way to give the medication without flushing the IV first. Trial Tr. 272 25-273:8 (R. pp. 280-281), 273:18-274:1 (R. pp. 281-282), 276:22-25 (R. p. 284), 277:5-10 (R. p. 285), 280:2-281:1 (R. pp. 288-289), 364:2-19 (R. p. 373), 365:9-13 (R. p. 374), Mar. 17, 2019. It is considered a part of the process and therefore it is not to be documented separately. *Id.* at 284:19-21 (R. p. 292). Even Respondent acknowledged in its brief that Nurse Downing testified it is her practice to flush prior to administering medication (Resp. Br. 3); that Downing testified flushing prior to administration of medication is “ingrained in you in nursing school” and “it makes no sense not to” flush (Resp. Br. 16); and that Downing testified there is “no way to really tell if the site is open and flowing without flushing it” (Resp. Br. 17).

The issue comes down to the fact that there are two types of flushes and different policies and procedures for each: 1) flushes done when administering medication, and 2) four-hour flushes that are automatically populated in the MAR computer system. The flushes that are given prior to and after administering medication are considered a part of the process for administering medication, and they are not to be documented separately in the MAR system. Trial Tr. 284:19-21 (R. p. 292), 336:19 -337:2 (R. pp. 345-346), Mar. 17, 2019. In fact, there is not a flow sheet or space in which to document it. *Id.* at 284:19-21 (R. p. 292). In contrast, the flushes that task automatically in four-hour increments in the computer MAR program automatically populate when the ordering physicians puts in the order for the IV. *Id.* at 285:18-23 (R. p. 293). Although the timing of these flushes could align with the administration of medication, these flushes are not associated with medication administration. *Id.* at 275:23 (R. p. 283). These four-

hour flushes are a part of an intermittent, not continuous, IV schedule, as was the case here, and are to be documented pursuant to RMC policy. *Id.* at 274:6-19 (R. p. 282), 274:23-275:1 (R. pp. 282-283), 275:19-276:9 (R. pp. 283-284), 364:14-19 (R. p. 373). Per RMC policy, infants are to be flushed in four-hour increments, which is a different in adult IV administration. *Id.* at 331:4-8 (R. p. 340). Nurse Downing and Cynthia Hurley both testified several times that although these four hour flushes automatically populate in the system to be tasked at a certain time, it is not always appropriate to do those flushes at that time. It would not be appropriate when a nurse has already flushed the IV prior to that time as part of the process of administering a medication. *Id.* at 331:1-3 (R. p. 340), 365:18-19 (R. p. 374). If a medication is already being administered when the four-hour flush tasks, it would not be appropriate to flush at that time and would instead be appropriate once that medication has finished being administered. *Id.* at 285:2-7 (R. p. 293). It would also not be appropriate to flush if it has infiltrated. *Id.* at 285:7-9 (R. p. 293), 343:4-8 (R. p. 352).

The very notable and important distinctions between these two flushes that were discussed at length during trial. Respondent is basing its position on that Downing did not remember doing a flush prior to administering the ampicillin and "if something is not documented, then it was not done." Resp. Br. 17. Respondent is misreading the RMC policy, mischaracterizing the testimony, and attempting to make it seem like Nurse Downing did not follow the correct policy, when in fact, she and Appellant's expert Cynthia Hurley, testified that she did, in fact, follow RMC policy and procedure. Although Nurse Stobbs could not recall specifically flushing at that particular time due the length of time that has transpired, she testified that flushing prior to administering medication is a part of the process, is "ingrained in you in

nursing school,”and “it makes no sense not to” flush. *Id.* at 280:21-281:1 (R. pp. 288-289).

Moreover, she testified it was not documented because it was not supposed to be, as it was considered a part of the process for administering medication, and there was not a place in the computer system to document it separately. *Id.* at 272:25-273:8 (R. pp. 280-281), 273:12-14 (R. p. 281)

Not only did Nurse Downing testify that she complied with the policy and that at no time she did see an infiltration score of 5, Trial Tr. 303:25-305:21, Mar. 17, 2019 (R. pp. 311-313), Cynthia Hurley, in her testimony, gave a detailed description and timeline of the flushes that Nurse Downing performed in her treatment and care of the minor. Nurse Downing began working at 6:45 pm and got a report saying the patient's hand was flushing well. Trial Tr. 327:12, Mar. 17, 2019 (R. p. 336). At 7:30 pm, Nurse Downing wrote her nurse's note and documents indicate the patient was resting in his mother's arms and the IV flushing properly. *Id.* at 328:6 (R. p. 337), 333:25-334:3 (R. pp. 342-343), 336:11-16 (R. p. 345). The first IV check was at 7:44. *Id.* at 328:7, 21-24 (R. p. 337). A four-hour flush was tasked at 8 pm, but a previous nurse had already flushed when administering an antibiotic, so it did not make sense to do it at the time and was instead done at 9:19 p.m. *Id.* at 330:9-331:10 (R. pp. 339-340). At 10:05 pm Nurse Downing performed an IV check and flush. *Id.* at 333:4-10 (R. p. 342). At 11:08 p.m. Nurse Downing administered ampicillin, which would have included a flush before and after administration of medication. *Id.* at 336:19-337:2 (R. pp. 345-346). At 11:23 p.m. she checked the IV; it was documented that the IV infiltration score was 0, phlebitis score was 0, and there were no problems. *Id.* at 337:8-338:8 (R. pp. 346-347). Nurse Downing went in again at 11:44 p.m. for

another IV administration and flush. *Id.* at 338:10-17 (R. p. 347). Vitals were taken at 11:59 p.m. and were normal. *Id.* at 338:19-21 (R. p. 347).

A four-hour flush was tasked at midnight; however, it tasked after Claraforan, an antibiotic, was given at 11:44 p.m. *Id.* at 339:1-9 (R. p. 348). Since it had just been flushed during that process of administering that medication, the IV was flushed after the completion of the administration of Claraforan. *Id.* at 339:1-12 (R. p. 348). It would have made no sense to give it at midnight. *Id.* at 365:18-19 (R. p. 374). Nurse Downing checked the IV at 12:37 a.m. and performed the flush at 1:04 a.m. *Id.* at 339:11-12 (R. p. 348).. The minor had a phlebitis score of zero, infiltration zero, no signs of complication, and was sleeping. *Id.* at 307:4-9 (R. p. 315), 339:15-23 (R. p. 348).

Nurse Downing then checked on the minor as a part of her periodic nursing rounds. *Id.* at 339:24-340:3 (R. p. 348-349). At 2:30 a.m. a note was made in the nursing charts that the patient was asleep, no signs of distress, and will continue to monitor. *Id.* at 341:7-12 (R. p. 350). At 2:41 a.m. Nurse Downing performed another IV check. *Id.* at 340:9-12 (R. p. 349). At 2:43 vitals were assessed by a nursing assistant and were confirmed to be okay by Nurse Downing at 2:49 a.m. *Id.* at 340:22-341:6 (R. pp. 349-350). At 4:04 Nurse Downing performed another IV assessment that showed an infiltration score of zero and phlebitis score of zero. *Id.* at 341:14-24 (R. p. 350). Cynthia Hurley testified that this 4:04 a.m. assessment "certainly met the standard of care." *Id.* at 350:9-14 (R. p. 359).

Ampicillin medication was administered at 4:27 a.m.. *Id.* at 341:25-342:4 (R. pp. 350-351). Nurse Downing testified that when she gave the medication, she assessed the site and it was 0 and flushing well. *Id.* at 292:12-14 (R. p. 300). A four-hour flush tasked at 4:45 a.m., but

Nurse Downing and Cynthia Hurley both testified that it was not appropriate to flush at that time because medication was already infusing and was not appropriate to flush after the medication was finished being administered because the IV had infiltrated. *Id.* at 285:4-5 (R. p. 293), 342:22-343:8 (R. pp. 351-352). The medical records indicate at 4:50 a.m. Nurse Downing had a discussion with the Respondent Tekeyah Hamilton about the infiltration, discharged the IV antibiotics, stopped the pump from administering anymore ampicillin, removed dressing, removed peripheral IV removed, noted catheter intact, and called the physician. *Id.* at 343:21-345:3 (R. pp. 352-354), 346:17-21 (R. p. 355). Nurse Downing testified that she went in as soon as the alarm sounded, and "you do the best you can" with regards to charting real time because "[o]bviously, at the moment the more pressing circumstance would be to assess the patent and follow proper procedures for removing an IV." *Id.* at 286: 22-287:5 (R. pp. 294-295). Cynthia Hurley testified that Nurse Downing took the appropriate course of action. *Id.* at 343:14-20 (R. p. 352).

At 5:16 and 5:17 a.m., vitals were confirmed and the IV was removed. *Id.* at 347:3-4 (R. p. 356). At 6 am the patient was assessed and was asleep. *Id.* at 347:7-10 (R. p. 356). At 6:22 and 6:26 a.m. vitals were confirmed, and at 6:45 a.m., Nurse Downing gave a shift report to another nurse as her shift was ending. *Id.* at 347:13-14 (R. p. 356).

Cynthia Hurley testified that not only did Nurse Downing abide by the standard of care and do everything she was supposed to do, but she actually exceeded the standard of care. *Id.* at 347:19 (R. p. 356), 352:8 - 354:13 (R. pp. 361-363), 356:20-357:4 (R. pp. 365-366), 371:22-23 (R. p. 380). Ms. Hurley testified that according to RMC's policy, "The phlebitis and infiltration scale is to be utilized to address IV site conditions a minimum of once per shift. That's all she

had to do." *Id.* at 353:11-18 (R. p. 362). However, Nurse Downing checked on the minor and the IV about every hour and gave seven flushes during her twelve hour shift when the policy required one flush every four hours. *Id.* at 353:11-14 (R. p. 362). Nurse Downing assessed the IV 19:44, 20:54, 22:05, 23:23, 0:37, 1:00, 2:42 and 4:04. *Id.* at 354:3-10 (R. p. 363). She only had to do one of these assessment per RMC policy. *Id.* at 331:6-8 (R. p. 340), 354:11-13 (R. p. 363). This is evidence that Nurse Downing not only followed protocol, but she *exceeded* it and exceeded the standard of care required.

Contrary to Respondent's brief, Respondent did not put forth any evidence of conscious failure to act or intentionality. In fact, Nurse Stobbs had no opinion as to the intentional conduct of Nurse Downing. Br. of App. 19 (App. Final Br. 19). Respondent failed to put forth evidence that Nurse Stobbs failed to abide by RMC policy, and in fact, there was much testimony to the contrary. Furthermore, Nurse Stobbs agreed that just because there is an IV infiltration does not mean there is negligence and that it is a known risk and admitted to having had IVs infiltrate without having been negligent herself. Br. of App. 19 (App. Final Br. 19). This is not a situation of "competing evidence" such that "evidence yields more than one reasonable inference or its inference is in doubt" as suggested in Respondent's brief. *See* Resp. Br. 15 & 17. Respondent did not put forth "any evidence. . .to support the jury verdict." *See* Resp. Br. 17. Respondent did not put forth any evidence establishing gross negligence, and therefore did not meet their burden and the jury's verdict is not supported by the evidence. A directed verdict or JNOV should have been granted.

III. RESPONDENT TEKAYAH HAMILTON'S VERDICT AWARD WAS EXCESSIVE AS SHE WAS LIMITED TO PAST AND FUTURE MEDICAL DAMAGES

As discussed previously, this case is subject to the limitations of the South Carolina Torts Claims Act. In *Wright*, the court in finding that a parent may recover medical expenses separately from the child's claim, provided that parent's claim for loss of services and medical expenses resulting from the injury of a minor child is within the tort claims act statutory definition of "loss." *Wright v. Colleton Cnty. Sch. Dist.*, 301 S.C. 282, 289-90, 391 S.E.2d 564 (1990).

Respondent relies on *Doe v. Greenville County School District*. Resp. Br. 32-34. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007). In *Doe*, the parents argued that the trial court erred in dismissing their claim for loss of consortium as it pertained to their child. The Supreme Court disagreed. What Respondent is relying on in the case is a text pertaining to a description of what was allowed at common law.

At common law, a father possessed the right to maintain an action for the injuries of his minor child. This right was based upon the concept that a father was entitled to compensation for the loss of services and earning capacity of his minor child. Additionally, the father could recover for other pecuniary losses, including medical expenses incurred as a result of the injury.

Id. at 68 (internal citations omitted). The Court went on to explain that in *Taylor*, the Court, in declining to recognize a cause of action for loss of parental consortium, "held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature." *Id.* at 69 (quoting *Taylor v. Medenica*, 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996)). The Court further explained that in *Kirkland*, the South Carolina District Court adopted the *Taylor* analysis and found "that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium." *Id.* (quoting *Kirkland v. Sam's East, Inc.*, 411 F.Supp.2d 639, 641 (D.S.C.2005)). The Court in *Doe*

extended *Taylor* and held "that South Carolina law does not recognize claims for loss of filial consortium" as "[s]uch rights did not exist under the common law, and the legislature has not provided such a right by statute." *Id.*

...our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

Id. 69-70.

In 2017 the Court was presented with the issue of whether a minor may bring an action for her own medical expenses. *Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017).

The Court stated that this invoked the "real party in interest" requirement of Rule 17(a) of the South Carolina Rules of Civil Procedure and found that a parent is the proper party in interest with respect to past and future medical expenses while the child is a minor. *Id.* at 479-80.

Based on previous argument regarding Respondent's failure to establish evidence of gross negligence, Appellant maintains its position that a directed verdict, JNOV, or in the alternative, a new trial, should have been granted, as the verdict rendered was shockingly disproportionate, wholly unsupported by and contradictory to the evidence presented. However, in the event the court disagrees, Appellant believes its motion for a new trial *nisi remittitur* should have been granted, as the verdict was, at the very least, merely excessive in light of the evidence presented, and the damages are subject to the above limitations.

Loss of services is not at issue in this case. Therefore, Respondent Tekeyah Hamilton is limited to past and future medical damages only. Respondent presented past and future medical

costs in the amount \$20,854.00. Trial Tr. 412:24 - 413:12, Mar. 17, 2019 (R. pp. 422-423). This included \$4,699 TRMC bills; \$635 for Dr. Devito; future surgery \$2500; \$12,000 future hospital charge; and \$1,020 for steroidal injection. *Id.* As loss of service is not at issue in this matter, these past and future medical bills, which total \$20,854.00, is all Respondent Tekayah Hamilton is entitled to recover. Therefore, the jury verdict for Respondent Tekayah Hamilton in the amount of \$135,477.00 must be reduced to \$20,854.00.

IV. OTHER ARGUMENTS: PHOTOGRAPHS, REQUEST TO ADMIT, TESTIMONY OF CYNTHIA HURLEY. EXCESSIVE DAMAGES REGARDING MINOR

For sake of brevity, as a response to Respondent's arguments as to photographs of minor's hand, Request to Admit, testimony of Cynthia Hurley regarding gross negligence, and excessive verdict rendered to minor, please see Appellant's Initial Brief.

CONCLUSION

For the reasons stated, Appellant respectfully requests the Appellate Court to reverse the decision of the Trial Court and dismiss this action with prejudice or, in the alternative, reverse the decision of the Trial Court and grant Appellant a new trial.

Respectfully submitted,

May 31, 2021

/s/ Michael C. Tanner

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RECEIVED

Jun 01 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a
minor child under the age of 18, ... Respondent

v.

Regional Medical Center, ...Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211, SCACR.

May 31, 2021

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PROOF OF SERVICE

I certify that I have served a copy of the Final Reply Brief by depositing a copy of same in the
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Tekayah Hamilton, individually and as parent and
guardian ad litem for Robert Lee M. Jr., a minor child
under the age of 18, Respondent,

v.

Regional Medical Center, Appellant.

Appellate Case No. 2019-001921

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 6008
Heard December 8, 2022 – Filed August 2, 2023

AFFIRMED

Michael C. Tanner, of Michael C. Tanner, LLC, of
Bamberg, and Morgan Rebekkah Long, of Michael
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Jonathan F. Krell, of Uricchio Howe Krell Jacobson
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of Williams & Williams, of Orangeburg; and Kathleen
Chewning Barnes, of Barnes Law Firm, LLC, of
Hampton, all for Respondent.

KONDUROS, J.: In this medical negligence action, Regional Medical Center (Regional) appeals the trial court's (1) determinations of issues concerning expert witnesses, (2) admission of photographs, (3) publishing requests to admit to the jury, and (4) denial of its motions for a directed verdict and for a new trial absolute or new trial *nisi remittitur*. We affirm.

FACTS/PROCEDURAL HISTORY

On October 25, 2014, a five-week old child, Robert Lee M., Jr. (Minor), was admitted to Regional for a high fever. Jamie Downing worked at Regional as a nurse and treated Minor during his hospital stay. Medical personnel at Regional did not initially know the cause of Minor's fever but on the day of his admission, they started him on IV antibiotic therapy in case he had an infection. In the early morning of October 28, 2014, Downing administered an antibiotic, ampicillin, into Minor's IV. Shortly thereafter, Minor's hand became swollen with a dark spot and his mother, Tekayah Hamilton, called the nurses' station because Minor was "really crying." The antibiotic Downing gave Minor through the IV caused a third-degree burn to his hand because it infiltrated outside of his vein. On October 30, 2014, Minor was discharged from Regional.

On October 7, 2015, Hamilton, individually and as parent and guardian ad litem for Minor, filed an action against Regional¹ for medical negligence. Regional answered, denying liability and any wrongdoing and asserting numerous affirmative defenses.

Prior to trial, Regional moved to exclude Hamilton's expert, Monica Stobbs, a nurse, from being qualified as an expert witness "in administering/managing pediatric IV therapy." Regional argued Stobbs was not qualified to testify about IV therapy for pediatric patients because she had not administered IV therapy to a pediatric patient and did not review literature specifically about IV therapy for pediatric patients. Hamilton argued the administration and monitoring of an IV is the same for a pediatric or an adult patient and Regional's argument went to Stobbs's credibility rather than her qualifications. The trial court determined it

¹ Downing was also named as a defendant in the complaint but was dismissed from the action on June 29, 2016, pursuant to the South Carolina Tort Claims Act. See S.C. Code Ann. § 15-78-70(c) (2005) (requiring a person who brings an action against a governmental entity under the Tort Claims Act to "name as a party defendant only the agency or political subdivision for which the employee was acting").

would qualify Stobbs as a nursing care expert and Regional could "make all the hay you want to" about her pediatric experience.

Regional also moved to exclude photographs of Minor's hand on the ground that the danger of unfair prejudice substantially outweighed the probative value of the photographs. The trial court denied that motion as well.

At trial, Hamilton's expert witness, Stobbs, testified the standard of care for IV management is the same for pediatric and adult patients. She indicated that before administering medication through an IV, a nurse must flush the IV with saline to ensure the IV is actually going into the vein and not instead into the skin. She explained saline would not harm the area and cause a burn type of injury if it went into the surrounding tissue of the vein, unlike like an antibiotic which could if it did not go directly into the vein. Stobbs testified that Regional's policies and procedures for IV therapy state a saline flush should be given. Stobbs provided that Minor's medical chart indicated his IV was flushed on several occasions before the medication was administered but that on the occasion when the injury occurred, the chart did not indicate the IV was flushed. Stobbs noted Regional's policies and procedures state that the flush should be documented on the medication record. Stobbs stated: "If it's not documented, it wasn't done." Stobbs testified that Regional breached the standard of care by not documenting the saline flush and by not staying with Minor for at least five minutes after starting medication.

Downing testified that at the time she treated Minor, she had worked as a nurse at Regional for less than three months and had been allowed to work on her own for about two weeks. Downing stated Regional's policies and procedures "are direct instructions" and there is "not room for interpretation" of them. Downing testified that Regional's policies require a saline flush before putting medication into an IV. She believed the policies require flushing be documented on the electronic medical record only when not associated with giving a medication. Downing testified she could not specifically remember administering a saline flush prior to ampicillin that morning but testified her practice is to flush prior to giving medication. Downing stated Minor's medical records indicated a saline flush was given every four hours but Regional's system provided no way to document giving a saline flush before an antibiotic.

Hamilton testified that early in the morning on October 28, Minor's hand swelled and turned black with a "bubble," which burst the following day. She introduced photographs and testified they accurately showed Minor's hand at the time the injury occurred. Hamilton provided she does "a lot of hand motion things with

[Minor] because his hand . . . cramp[s] up." She testified he sometimes has itching and irritation under the skin and tells her it hurts. Hamilton explained she was hesitant to have Minor get injections into the injury site because he had already gone through so much. She was afraid that if he received injections, he would need to have his hand and arm wrapped and would not be able to do anything. She testified that after the initial injury, he could not crawl because of his hand and she had to constantly watch him to make sure he did not hurt himself. During Hamilton's testimony, Minor was brought into the court room for the jury to observe his hand. Hamilton testified she lives in Santee but she takes Minor to MUSC in Charleston to see two doctors.

Minor visited a wound care center fifteen times due to his injury. Dr. Peter DeVito, an expert in plastic surgery, examined Minor in February 2015, when he was four months old. Dr. DeVito testified the injury was "too contaminated for a skin graft" and took "a lot of wound care" and time to heal. Dr. DeVito believed the burn resulted in a keloid. He explained a keloid is "a tumor of scar tissue" that "invades" the normal skin surrounding it and causes burning and itching. He testified that some areas of the injury were painful while other parts were not due to the nerve damage but that "[t]he whole nature of the wound [wa]s painful." During Dr. DeVito's testimony, Hamilton entered medical bills into evidence. Hamilton also questioned Dr. DeVito as to the cost of surgery to repair Minor's hand. He provided it could cost \$6,500 to \$14,500 or even more if a hospital stay needed to be extended.

During trial, Hamilton moved to publish certain requests to admit from Regional as a stipulation.² Those requests to admit stated:

1. Admit the value of the amount in controversy in this action is less than \$100,000.00.

. . . .

2. Admit the value and amount in controversy in this action is greater than \$100,000.00.

. . . .

3. Admit the value of Plaintiff's actual damages exceeds \$100,000.00.

Hamilton denied the first request to admit and admitted the second and third.

² The Record contains Hamilton's responses to the requests to admit but does not contain Regional's document in which it made the requests.

Regional objected, arguing the purpose of the requests was to obtain an independent medical examination (IME) under Rule 35, SCRCF,³ and it was not a stipulation or admission. Regional asserted the prejudicial effect of publishing the requests outweighed the probative value under Rule 403, SCRE, because it would "reemphasiz[e] for the jury" Hamilton's position that "the case is worth more than a [\$100,000]." Hamilton asked to "explain to the jury what a request to admit is." The trial court allowed Hamilton to read the exact language of the requests and answers to the jury with no explanation.

After Hamilton rested, Regional made a directed verdict motion, arguing Hamilton failed to present any evidence of gross negligence, particularly because Stobbs did not testify Regional was grossly negligent. The trial court denied the motion. Thereafter, Hamilton moved to exclude Regional from asking its expert, Cindy Hurley, a nurse, whether Regional committed gross negligence. The trial court granted the motion because Hurley was not qualified to testify about the legal concepts of negligence and gross negligence and Regional could elicit testimony about those topics without using the exact legal terminology.⁴

Following Regional's presentation of its case, it renewed its motion for a directed verdict, which the trial court again denied. After the parties made their closing arguments and the trial court gave the jury instructions, the jury deliberated and found Regional was grossly negligent; the gross negligence proximately caused Minor's and Hamilton's injuries; Minor sustained actual damages of \$1,127,280; and Hamilton sustained actual damages of \$135,477.

Regional filed a posttrial motion for judgment notwithstanding the verdict (JNOV), for a new trial absolute, or alternatively, for a new trial *nisi* remittitur. Regional also filed a motion to reduce Minor's damages to the \$300,000 statutory cap

³ See Rule 35(a), SCRCF ("In any case in which the amount in controversy exceeds \$100,000 actual damages, and the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control.").

⁴ The trial court allowed Regional to proffer Hurley's testimony as to if Regional was negligent or grossly negligent.

pursuant to the Tort Claims Act⁵ and to reduce Hamilton's damages to the amount of the medical expenses, which it asserted was \$20,854. Hamilton filed a memorandum in opposition to the motions. The trial court granted the motion to reduce Minor's damages to \$300,000 and denied all other motions. This appeal followed.

STANDARD OF REVIEW

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law" *Byrd ex rel. Julia B. v. McLeod Physician Assocs. II*, 427 S.C. 407, 412, 831 S.E.2d 152, 154 (Ct. App. 2019) (quoting *Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006)). Additionally, the jury's factual findings will not be disturbed unless the record contains no evidence to reasonably support those findings. *Id.*

LAW/ANALYSIS

I. Hamilton's Expert Testimony

Regional maintains the trial court abused its discretion in qualifying Hamilton's expert Stobbs as a general nurse and in permitting her to testify as to the standard of care for pediatric IV administration. Regional argues the case was about pediatric—not adult—nursing and IV medicine; Stobbs failed to meet the qualifications as set forth in Rule 702, SCRE, and *Gooding v. St. Francis Xavier Hospital*⁶; and the court allowed Stobbs to testify outside of the scope of her expert qualification. We disagree.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. "In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather, should make an inquiry broad in scope." *Watson v. Ford Motor Co.*, 389 S.C. 434, 447, 699 S.E.2d 169, 176 (2010). "All expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical, or

⁵ See S.C. Code Ann. § 15-78-120(a)(1) (2005) (providing "no person shall recover in any action or claim brought hereunder a sum exceeding [\$300,000] because of loss arising from a single occurrence").

⁶ 326 S.C. 248, 487 S.E.2d 596 (1997).

otherwise." *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

"The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. The qualification of a witness as an expert is within the trial court's discretion, and this [c]ourt will not reverse that decision absent an abuse of discretion." *Watson*, 389 S.C. at 447, 699 S.E.2d at 176 (citation omitted). "The qualification of an expert witness and the admissibility of the expert's testimony are each matters largely within the trial [court's] discretion." *McMillan v. Durant*, 312 S.C. 200, 204, 439 S.E.2d 829, 831 (1993). "An abuse of discretion occurs when the [trial] court's rulings 'either lack evidentiary support or are controlled by an error of law.'" *Graves*, 401 S.C. at 74, 735 S.E.2d at 655 (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

"To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'" *Gooding*, 326 S.C. at 252-53, 487 S.E.2d at 598 (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995), *overruled on other grounds by I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000)). For expert testimony to be admissible, "the expert must have 'acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter,' although he 'need not be a specialist in the particular branch of the field.'" *Graves*, 401 S.C. at 74, 735 S.E.2d at 655 (quoting *Watson*, 389 S.C. at 446, 699 S.E.2d at 175); *see also Melton v. Medtronic, Inc.*, 389 S.C. 641, 655, 698 S.E.2d 886, 893 (Ct. App. 2010) ("Expert testimony need not come from a specialist in the same field as the defendant."). "The test is a relative one, depending on the particular witness's reference to the subject; an expert is not limited to any class of persons acting professionally." *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 64 (Ct. App. 1984). "The fact that a witness is not a specialist in the particular branch involved affects only the weight of the witness's testimony, and affords no basis for completely rejecting it." *Bonaparte v. Floyd*, 291 S.C. 427, 439, 354 S.E.2d 40, 48 (Ct. App. 1987).

"In *Creed v. City of Columbia*, a general practitioner was allowed to testify as an expert witness on the mental and emotional damages suffered by a tort victim, even where the [defendant] objected to the evidence because the expert was not a neurologist or psychologist." *McMillan*, 312 S.C. at 204, 439 S.E.2d at 831 (citing *Creed v. City of Columbia*, 310 S.C. 342, 426 S.E.2d 785 (1993)). In that case, the

supreme court determined "[a] physician is not incompetent to testify merely because he is not a specialist in the particular branch of his profession involved." *Creed*, 310 S.C. at 345, 426 S.E.2d at 786. The court held, "The fact that [the physician was] not a specialist [went] to the weight of his testimony, not its admissibility." *Id.*

In *Botehlo*, this court affirmed the grant of summary judgment to the defendant podiatrist when the plaintiff submitted expert testimony by an orthopedic surgeon as to the standard of care for a podiatrist. 282 S.C. at 585-87, 320 S.E.2d at 64-65. The court recognized the standard of care for a podiatrist is different from that of a physician or surgeon. *Id.* at 585, 320 S.E.2d at 64. The court noted the orthopedic surgeon had no knowledge of or experience in the practice of podiatry. *Id.* at 587, 320 S.E.2d at 65. The court found the plaintiff "had to present evidence on the standard of care required of podiatrists, not physicians and surgeons." *Id.* at 585, 320 S.E.2d at 64.

In *McMillan*, the supreme court determined the trial court did not abuse its discretion in admitting the expert's testimony. 312 S.C. at 205, 439 S.E.2d at 832. The supreme court stated, "[T]he expert physician was thoroughly examined as to his credentials and background, which included his professional interaction with a multitude of various nursing staffs and his teaching nursing courses at" universities. *Id.* The court noted the hospital "based its objection to the physician's qualification as an expert on nursing on the contention that a neurosurgeon was not qualified to testify about the appropriate standard of nursing care." *Id.* The court found, "The fact that the expert was a physician and not a nurse would merely go to the weight of his testimony, not to its admissibility. As a teacher in the field of nursing, the neurosurgeon here . . . was amply qualified to render an opinion in the field of nursing." *Id.*

In *Gooding*, the plaintiff patient "sought to have [an emergency medical technician (EMT) and paramedic] qualified as an expert witness in intubation, not as an expert in the field of anesthesiology. [The EMT's] training and experience qualified him to testify as an expert in the limited area of intubation." 326 S.C. at 253, 487 S.E.2d at 598. "There was no requirement that [the plaintiff's] expert witness be an anesthesiologist in order to testify about intubation procedures." *Id.* "The fact that [the EMT] may have had less medical training and education than [the anesthesiologist defendant] is relevant to his credibility as a witness and affects the weight, not the admissibility of his testimony." *Id.* at 253-54, 487 S.E.2d at 598. Accordingly, both the supreme court and this court found the EMT

"should have been permitted to testify as an expert witness." *Id.* at 254, 487 S.E.2d at 598.

In the present case, the trial court did not abuse its discretion in allowing Stobbs to testify as an expert witness. Regional's concerns with Stobbs not having experience in pediatric IVs as opposed to general IV knowledge went to the weight of the evidence, not Stobbs's qualification as an expert. Stobbs testified that there was not a difference in the IV treatment for children and adults. Therefore, we affirm the trial court's qualification of her as an expert witness.⁷

II. Directed Verdict and JNOV

Regional asserts because Hamilton did not establish gross negligence, the trial court erred by denying its motions for a directed verdict and JNOV. It contends because it is a governmental entity, Hamilton was required to prove gross negligence. Regional maintains Hamilton failed to demonstrate through evidence or testimony that Downing failed to exercise slight care or intentionally failed to do what she ought to have done in the care and treatment of Minor. It argues because Hamilton failed to provide any evidence or testimony of gross negligence, no reasonable jury could have made any such finding. We disagree.

When ruling on a directed verdict or JNOV motion, the trial court must view the evidence and the inferences that reasonably can be drawn from it in the light most

⁷ To the extent Regional argues Stobbs's testimony exceeded the scope for which the trial court qualified her, we find this issue unpreserved. "[A]n expert's testimony may not exceed the scope of his expertise." *State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011). In its motion in limine, Regional argued Hamilton was "actually trying [to] qualify[] [Stobbs] as a pediatric nurse or a nurse familiar with pediatric IVs." The trial court qualified Stobbs as a nursing care expert, "[n]ot neonatal or anything like that." At the beginning of Stobbs's testimony, Hamilton stated she was introducing Stobbs as an expert in nursing, and the trial court informed the jury she was qualified as an expert in nursing. At this point, Stobbs had testified regarding only her educational and employment background. Regional asked the court to note its prior objection for the record; Regional made no further objection regarding her qualification. Once Stobbs provided testimony Regional believed exceeded her qualification in nursing, Regional was required to object at that point. *See Cogdill v. Watson*, 289 S.C. 531, 537, 347 S.E.2d 126, 130 (Ct. App. 1986) ("The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object.").

favorable to the nonmoving party. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). This court must follow the same standard. *Welch v. Epstein*, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). "If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury." *Chaney v. Burgess*, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965). The issue must be submitted to the jury if material evidence tends to establish the issue in a reasonable juror's mind. *Parrish v. Allison*, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007). The appellate court will reverse the trial court's ruling only when no evidence supports the ruling or when an error of law controls the ruling. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006). "[N]either the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006).

"When reviewing a motion for directed verdict, this court . . . may only reverse a jury's verdict if the factual findings implicit within it are contrary to the only reasonable inference from the evidence." *Maher v. Tietex Corp.*, 331 S.C. 371, 376, 500 S.E.2d 204, 207 (Ct. App. 1998). An appellate court must affirm a trial court's denial of a directed verdict motion unless it determines the jury could not reasonably have found in favor of the nonmoving party. *Broyhill v. Resol. Mgmt. Consultants, Inc.*, 401 S.C. 466, 472, 736 S.E.2d 867, 870 (Ct. App. 2012). The appellate court must determine whether a verdict for the nonmoving party would be reasonably possible if the facts were liberally construed in that party's favor. *Erickson*, 368 S.C. at 463, 629 S.E.2d at 663.

A "governmental entity is not liable for a loss resulting from . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . patient . . . of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25) (2005). Gross negligence is the absence of care necessary under the circumstances. *Grooms v. Marlboro Cnty. Sch. Dist.*, 307 S.C. 310, 313, 414 S.E.2d 802, 804 (Ct. App. 1992). "It 'connotes the failure to exercise a slight degree of care.'" *Id.* (quoting *Wilson v. Etheredge*, 214 S.C. 396, 400, 52 S.E.2d 812, 814 (1949)). "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989), *aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990) (per curiam). Gross negligence concerns the intentional, conscious failure to do something that it is incumbent upon one to do or the intentional doing of a thing one ought not to do. *Grooms*,

307 S.C. at 313, 414 S.E.2d at 804. "[T]he fact that the [defendant] might have done more does not negate the fact that it exercised 'slight care.'" *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 312, 534 S.E.2d 275, 278 (2000).

"Additionally, while gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Id.* at 310, 534 S.E.2d at 277. "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." *Faile v. S.C. Dep't of Juv. Just.*, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002).

The trial court properly denied Regional's motions for directed verdict and JNOV. Hamilton's expert was not required to state that Minor's treatment at Regional amounted to gross negligence.⁸ The testimony presented a question of fact for the jury as to whether the facts amounted to gross negligence. Accordingly, we affirm the denial of the motions.

III. Photographs

Regional argues the trial court abused its discretion by admitting into evidence photographs of Minor's hand. It contends the photographs were not necessary to substantiate Hamilton's case because it did not dispute the existence of a wound and Hamilton had ample other evidence of the wound that was less prejudicial than the photographs. It maintains the photographs were grotesque, up-close images that made the wound appear substantially larger than reality and the photographs did not include a scale to indicate measurements and proportions. Regional argues the photographs were graphic, inflammatory, and not an accurate reflection of the child's hand and injuries. It asserts the photographs, by their very nature, had a prejudicial tendency to arouse the emotions of the jury. Regional further contends the photographs did not reflect the current state of the wound. It asserts Minor appeared during trial and showed the jury his scar, which did not appear as it did in

⁸ Hamilton notes that she "argued at trial that a medical malpractice, not a gross negligence, standard applies to this case because it concerns a nurse's administration of medication and not 'supervision, protection, control, confinement, or custody' of a patient." But she states that due to the jury's verdict and Regional's arguments, her argument on appeal is based on the gross negligence standard. However, she asserts this case should not be construed as establishing that the gross negligence standard in section 15-78-60(25) applies to a nurse's administration of medication.

the photographs. It argues that witnesses, including Hamilton's own expert, testified the scar appeared healed since February 2015 and did not look like the photographs shown. Accordingly, it maintains the photographs were of little probative value. Regional contends the excessive jury verdict demonstrates the prejudice from the photographs and the purpose of the photographs was to arouse the sympathy of the jury. We disagree.

"The trial court has broad discretion in the admission or rejection of evidence and will not be overturned unless it abuses that discretion." *Johnson v. Sam Eng. Grading, Inc.*, 412 S.C. 433, 448, 772 S.E.2d 544, 551 (Ct. App. 2015) (quoting *Davis v. Traylor*, 340 S.C. 150, 157, 530 S.E.2d 385, 388 (Ct. App. 2000)). "The trial court's ruling on the admission of evidence will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 108, 498 S.E.2d 395, 404 (Ct. App. 1998). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Id.*

"As a general rule, all relevant evidence is admissible. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (citation omitted) (quoting Rule 401, SCORE). "Evidence is relevant and admissible if it tends to establish or make more or less probable some matter in issue." *Hoefner v. Citadel*, 311 S.C. 361, 365, 429 S.E.2d 190, 192 (1993).

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCORE. "A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *Johnson v. Horry Cnty. Solid Waste Auth.*, 389 S.C. 528, 534, 698 S.E.2d 835, 838 (Ct. App. 2010) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)).

"Demonstrative evidence includes items such as a photograph, chart, diagram, or video animation that explains or summarizes other evidence and testimony. Such

evidence has secondary relevance to the issues at hand; it is not directly relevant, but must rely on other material testimony for relevance." *Clark v. Cantrell*, 339 S.C. 369, 383, 529 S.E.2d 528, 535 (2000). "Demonstrative evidence is distinguishable from exhibits that comprise 'real' or substantive evidence, such as the actual murder weapon or a written document containing allegedly defamatory statements." *Id.*

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. If [an] offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) (citation omitted).

"Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder." *Collins*, 409 S.C. at 535, 763 S.E.2d at 28. "[I]t is the duty of courts and juries to examine the evidence in even the most unpleasant of circumstances: 'Courts and juries cannot be too squeamish about looking at unpleasant things, objects, or circumstances in proceedings to enforce the law and especially if truth is on trial.'" *Id.* (quoting *Nichols v. State*, 100 So. 2d 750, 756 (Ala. 1958)). "The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it." *Id.* (quoting *Nichols*, 100 So. 2d at 756); *id.* ("Even the most gruesome photographs may be admissible if they tend to shed light on any issue, to corroborate testimony, or if they are essential in proving a necessary element of a case, are useful to enable a witness to testify more effectively, or enable the jury to better understand [the] testimony. Other acceptable purposes are to show the condition of the victims' bodies, the probable type or location of the injuries, and the position in which the bodies were discovered." (alteration by court) (quoting *Camargo v. State*, 940 S.W.2d 464, 467 (Ark. 1997))).

"Numerous jurisdictions have found that photos are not inadmissible merely because they are gruesome, especially where . . . the photos simply mirror the unfortunate reality of the case." *Id.* at 535-36, 763 S.E.2d at 28. "As one court has stated, 'The law is well settled that the mere fact that a photograph is gruesome is not a reason for its non admission.'" *Id.* at 536, 763 S.E.2d at 28 (quoting *State v. Ernst*, 114 A.2d 369, 373 (Me. 1955)).

"Moreover, the standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE[,] is whether there is a danger of *unfair* prejudice that *substantially* outweighs the probative value of the evidence." *Id.*

In *Holmes v. Black River Electric Cooperative, Inc.*, the defendant asserted "pictures of [the plaintiff's] injured and amputated arm should not have been admitted in evidence because they may have aroused the sympathy of the jury to [the defendant's] prejudice." 274 S.C. 252, 258, 262 S.E.2d 875, 878 (1980). The defendant argued "the injuries depicted by the photographs were hideous, grotesque, and grossly unfair" but did not contend the photographs did not accurately reflect the plaintiff and the injuries at the time taken. *Id.* The supreme court stated the photographs undoubtedly "prejudiced the defendant's case in the sense that they were detrimental, but they showed a condition [that the plaintiff] was entitled to either describe to the jury in words or by pictures, or a combination of the two." *Id.* The court held, "This demonstrative evidence aided the jury in its evaluation of the injuries and pain suffered." *Id.* The court found the photographs were not introduced "for the sole purpose of inflaming the minds of the jury; they served the proper purpose of bringing vividly to the jurors the details of tremendous injuries." *Id.* Accordingly, the court held the trial court did not abuse its discretion in admitting the photographs into evidence. *Id.*

In the present case, the photographs at issue were relevant as the injury was to Minor's hand. Particularly given Minor's age, the photographs were helpful in showing what the injury was like for him. The photographs helped corroborate the testimony concerning the extent of the injury. Regional provides no support for its argument that the jury could consider the injury in only its current state and not when it occurred or was still healing. Further, the danger of unfair prejudice does not substantially outweigh the probative value. Accordingly, the trial court did not abuse its discretion in allowing the photographs. Therefore, we affirm the trial court's admission of the photographs of Minor's injured hand.

IV. Regional's Expert Testimony

Regional asserts the trial court abused its discretion in prohibiting its expert Hurley from testifying as to whether Regional was grossly negligent or negligent. It argues it was not asking Hurley to give an opinion as to an issue of law, as this was not possible because Hurley was a nurse and not a legal expert. It contends that asking Hurley this question should not have led to any confusion, as the jury was aware that Hurley was an expert in nursing, not law. Regional maintains that the purpose of the question was to ask its expert her opinion, based on her experience in pediatric nursing, and this would have helped educate and better inform the jury. Regional further asserts that this error prejudiced it as evidenced by the fact that the jury returned a grossly excessive verdict. We disagree.

"The trial court's ruling on the admission of evidence will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." *Hawkins*, 330 S.C. at 108, 498 S.E.2d at 404. "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields*, 363 S.C. at 26, 609 S.E.2d at 509.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." *Graves*, 401 S.C. at 73-74, 735 S.E.2d at 655 (quoting Rule 702, SCRE). The supreme court has held that "[w]hile it is true that 'an opinion . . . is not objectionable because it embraces an ultimate issue to be decided by the trier of fact,'" an affidavit that "attempted to usurp the trial court's role in determining whether" a party was entitled to summary judgment was inadmissible. *Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003) (omission by court) (quoting Rule 704, SCRE). "In general, expert testimony **on issues of law** is inadmissible." *Id.* at 66, 580 S.E.2d at 437. In *O'Quinn v. Beach Associates*, the supreme court found "testimony . . . was offered to establish a conclusion of law within the exclusive province of the court and thus was properly excluded." 272 S.C. 95, 107, 249 S.E.2d 734, 740 (1978).

"Generally, '[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.' However, expert testimony on issues of law is rarely admissible." *Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020) (alteration by court) (quoting Rule 704, SCRE). In excluding opinion testimony in the form of a legal conclusion, "courts have advanced such reasons as it allows a witness to tell the jury what verdict to reach, it tends to confuse jurors, and . . . it increases the likelihood that jurors will look to the witness rather than the trial [court] for guidance as to the law." *Hermitage Indus. v. Schwerman Trucking Co.*, 814 F. Supp. 484, 486 n.4 (D.S.C. 1993).

"The common law and the federal rules of evidence forbid opinions on issues of law, except foreign law." *Carter*, 429 S.C. at 313, 838 S.E.2d at 531. "Rule 704, SCRE, is identical to Rule 704 of the Federal Rules of Evidence as it existed before a 1984 amendment." *Id.* "The federal advisory committee note emphasizes that Rule 704's 'abolition of the ultimate issue rule does not lower the bar so as to admit all opinions,' because an opinion on the ultimate issue has to be 'otherwise admissible'" *Id.* In *Carter*, this court found this meant the opinion "must be

helpful to the jury as required by Rule 702, SCRE, and satisfy the strictures of Rule 403, SCRE." *Id.* The court determined the opinion in that case "was not helpful to the jury because it stated a legal conclusion and essentially told the jury what result to reach on the probable cause question." *Id.*

"[S]everal courts have held that the term 'negligence' conveys a legal conclusion and is therefore inadmissible." *Hermitage Indus.*, 814 F. Supp. at 487 (citing *Shahid v. City of Detroit*, 889 F.2d 1543, 1547 (6th Cir. 1989); *Andrews v. Metro N. Commuter R.R. Co.*, 882 F.2d 705, 709 (2d Cir. 1989)). "With respect to negligence actions, an opinion phrased in terms of negligence itself, involving not only the formulation of a legal standard by the witness but also one substantially immune to exploration, seems calculated to confuse or mislead rather than assist the trier." *Id.* (quoting Michael H. Graham, *Federal Practice and Procedure* § 6661, at 319 (interim ed. 1992)). "[T]he term 'negligence' in the common vernacular encompasses a much broader standard" than the legal definition. *Id.* "While there are undoubtedly non-lawyers whose definition of the term 'negligent' more closely resembles the legal term, the conclusion is inescapable that the legal definition of the term has a separate meaning which is distinct from the common vernacular." *Id.* In *Hermitage Industries*, the South Carolina federal district court found "the proffered testimony of [the] defendant's expert witness that [the] plaintiff was 'negligent' constitute[d] a legal conclusion and [wa]s therefore inadmissible." *Id.*

When a plaintiff "relies solely upon the opinion of medical experts to establish a causal connection between the alleged negligence and the injury, the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of most probably resulted from the defendant's negligence." *Ellis v. Oliver*, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996). "[T]he highly technical nature of malpractice litigation" mandates this rule. *Id.* Because "many malpractice suits involve ailments and treatments outside the realm of ordinary lay knowledge, expert testimony is generally necessary." *Id.*

The trial court did not abuse its discretion by preventing Regional from asking Hurley explicitly if Regional committed negligence or gross negligence. Asking Hurley that question would have been asking her to form a legal conclusion, which would have been inadmissible. The fact that she is a nurse and not a lawyer or other legal expert does not make a difference; her answer could confuse the jury particularly because negligence could have a broader meaning outside of the legal definition. Accordingly, we affirm the trial court's prohibiting Hurley from testifying if she believed Regional was negligent or grossly negligent.

V. Requests to Admit

Regional maintains the trial court abused its discretion in permitting the requests to admit to be published to the jury. Regional asserts the publication prejudiced it, violating Rule 403, SCRE, because the publication only confused the issues for the jury. Regional concedes this is an unusual circumstance and the case law seems to address only issues with withdrawal by the admitting party. Regional asserts the requests to admit were not stipulations under Rule 43(k), SCRCP,⁹ but rather were a discovery tool. It contends the purpose of the requests to admit was to obtain an IME, not for Hamilton to represent that Regional admitted the damages exceeded \$100,000. Regional contends that although facts may be stipulated, the requests to admit were subjective, as they went to damages. It argues that because the purpose for the requests was to get Hamilton's view of the case in order to obtain an IME, the requests were subjective, not factual, and thus, could not be stipulated. It maintains that allowing the requests to admit to be published caused the jury to believe it had to award a verdict of at least \$100,000. Regional argues this effectively directed a verdict of liability in Hamilton's favor, thereby impeding presentation of the merits of its case. We disagree.

The South Carolina Rules of Civil Procedure provide:

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of [the rules of discovery] set forth in the request that relate to statements or opinions of fact or of the application of law to fact

Rule 36(a), SCRCP.

"Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Rule 36(b), SCRCP.
"Requests for [a]dmissions [a]re just as binding as pleadings on the parties"

⁹ Rule 43(k), SCRCP ("No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.").

Scott v. Greenville Hous. Auth., 353 S.C. 639, 648, 579 S.E.2d 151, 156 (Ct. App. 2003). "The efficacy of these admissions is akin to the doctrine of judicial estoppel: an admission precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an amendment to or revocation of the admission as allowed under the rules." *Com. Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 554, 556 S.E.2d 718, 723 (Ct. App. 2001) (footnote omitted). "Admissions under Rule 36 are treated as admissions in pleadings." *Id.* at 554-55, 556 S.E.2d at 723 (citing James F. Flanagan, *South Carolina Civil Procedure* 304 (1996) ("Admissions are similar to pleadings."); *Pulte Home Corp. v. Woodland Nursery & Landscapes, Inc.*, 496 S.E.2d 546, 548 (Ga. Ct. App. 1998) ("In form and substance [a response to a request to admit] is comparable to an admission in pleadings or stipulation of facts and as such is generally regarded as a judicial admission rather than evidentiary admission of a party.")). "Pleadings are not evidence." 71 C.J.S. *Pleading* § 1; *see also Sears v. Smith*, 142 S.E.2d 792, 795 (Ga. 1965) ("Pleadings per se are not evidence . . ."); *TNT Cattle Co. v. Fife*, 937 N.W.2d 811, 831 (Neb. 2020) ("The pleadings in a cause are not a means of evidence, but a waiver of all controversy, so far as the opponent may desire to take advantage of them, and therefore, a limitation of the issues.").

Similarly, "[j]udicial admissions . . . 'are 'not evidence at all but rather have the effect of withdrawing a fact from contention.'"" *Wells Fargo Bank, N.A. v. Mesh Suture, Inc.*, 31 F.4th 1300, 1313 (10th Cir. 2022) (quoting *Keller v. United States*, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995)). "In the same category are admissions in response to a request to admit under" Rule 36 of the Federal Rules of Civil Procedure. 2 Kenneth S. Broun et al., *McCormick On Evidence* § 254 n.12 (Robert P. Mosteller ed., 8th ed.).

"[R]equests to admit are not submitted to the jury; rather, the proper course of action is to publish the admissions to the jury." *Scott*, 353 S.C. at 649, 579 S.E.2d at 156; *see also* Rule 43(g), SCRCP ("Counsel for any party may read his pleadings to the jury. . .").

"Once an answer to a [r]equest for [a]dmissions is amended under Rule 36, both the initial answer and the amended answer may be published to the jury." *Tuomey Reg'l Med. Ctr., Inc. v. McIntosh*, 315 S.C. 189, 191, 432 S.E.2d 485, 487 (1993). "The jury may consider the initial answers as evidence, while the party who made such answers 'is free to explain why it was made and [amended].'" *Id.* (alteration by court) (quoting Charles Alan Wright & Arthur R. Miller, *Federal Practice and*

Procedure: Civil § 2264 at 745 (1970)). "It was for the jury to weigh the evidence along with" the answers to the requests for admissions. *Id.*

As Regional acknowledges, case law is limited on this issue, as most of the law speaks to conflicts over publishing to the jury requests to admit *responses*. Here, the dispute is over publishing the actual request. However, based on the South Carolina Rules of Civil Procedure, publishing requests to admit is proper. Rule 403, SCRE, does not apply to the publication of a request to admit. Moreover, in addition to the requests to admit that the damages, amount in controversy, or value were over \$100,000, a request to admit "the value of the amount in controversy in this action is less than [\$100,000]" was also published to the jury. The trial court also instructed the jury to evaluate the evidence and if it decided any damages were warranted, it was to determine the amount. *See McLean v. Godwin Props., Inc.*, 292 S.C. 518, 522, 357 S.E.2d 473, 475 (Ct. App. 1987) ("[A] jury is presumed to understand the charge."). Accordingly, the trial court did not err in allowing the requests to admit to be published to the jury.

VI. New Trial Absolute or New Trial *Nisi* Remittitur

Regional asserts the trial court abused its discretion in not granting a new trial absolute when the verdict was grossly excessive and shockingly disproportionate and contrary to the evidence admitted at trial. It contends (1) little testimony was given regarding any pain and suffering; (2) testimony was given establishing that very little has been done or is planned in regards to treatment; and (3) although there is scar tissue and the scar is permanent, the hand is fully functioning, and the wound is "well-healed" and "stable" and will not get worse. Regional argues the evidence presented cannot support a \$1,127,280 verdict for Minor and \$135,477 for Hamilton, and thus, the size of the verdict alone is sufficient to show that the jury must have been moved by passion or prejudice. It asserts the verdict of \$1,127,280 for Minor is 54 times the amount of actual damages of \$20,854, which is grossly excessive and shocks the conscience. It further contends the \$135,477 verdict for Hamilton is also grossly excessive, as past and future medical damages only amount to \$20,854, she testified she has no plans for Minor to undergo any steroidal injections or scar revision surgery, and she is not entitled to any pain or suffering.

In the alternative, Regional argues the verdict was, at the very least, merely excessive entitling it to a new trial *nisi* remittitur. It contends that even after capping Minor's judgment at \$300,000 as required by the Tort Claims Act, the judgment is still, at the very minimum, merely excessive. Moreover, it contends

the amount awarded to Hamilton was also, at the very minimum, merely excessive. We disagree.

In reviewing the jury's verdict, appellate courts give great deference to the trial court because the trial court "possesses a better-informed view of the damages than" an appellate court because the trial court "heard the evidence and is more familiar with the evidentiary atmosphere at trial." *Vinson v. Hartley*, 324 S.C. 389, 405-06, 477 S.E.2d 715, 723 (Ct. App. 1996). "Accordingly, the decision to grant a new trial is left to the sound discretion of the trial court and generally will not be disturbed on appeal." *Wright v. Craft*, 372 S.C. 1, 36, 640 S.E.2d 486, 505 (Ct. App. 2006). "An abuse of discretion occurs when the trial court's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law." *Id.* "In deciding whether to assess error when a new trial motion is denied, this [c]ourt must consider the testimony and reasonable inferences therefrom in the light most favorable to the nonmoving party." *Id.* (alteration by court) (quoting *Welch*, 342 S.C. at 302-03, 536 S.E.2d at 420). "[T]he jury's determination of damages is entitled to substantial deference." *Welch*, 342 S.C. at 303, 536 S.E.2d at 420.

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial [court] must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015) (quoting *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530, 431 S.E.2d 557, 558 (1993)).

"[W]hen the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to reduce the verdict by the granting of a new trial *nisi remittitur*." *Welch*, 342 S.C. at 303, 536 S.E.2d at 420. "A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice[,] or prejudice." *Id.* "The denial of a motion for a new trial *nisi* is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). "In considering a motion for new trial *nisi*, the trial court must evaluate the adequacy of the verdict in light of the evidence presented." *Welch*, 342 S.C. at 303, 536 S.E.2d at 420.

"If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice[,] or some other influence outside the evidence, the trial [court]

must grant a new trial absolute, not a new trial *nisi remittitur*." *Id.* "The trial [court] must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption[,] or some other improper motives." *Vinson*, 324 S.C. at 404, 477 S.E.2d at 723. "To warrant a new trial, the verdict must be so grossly excessive as to clearly indicate the influence of an improper motive on the jury." *Wright*, 372 S.C. at 36, 640 S.E.2d at 505. "The failure of the trial [court] to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this [c]ourt will grant a new trial absolute." *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993).

The trial court did not abuse its discretion in denying Regional's motion for a new trial absolute or a new trial *nisi remittitur*. The record contains evidence to support the damages award. The verdict does not shock the conscience or clearly indicate it was reached as the result of passion, caprice, prejudice, partiality, corruption or other improper motives. Additionally, the verdict was not excessive. Moreover, the trial court substantially reduced the damages awarded for Minor pursuant to the Tort Claims Act. Accordingly, we affirm the denial of the motions.

CONCLUSION

Based on the foregoing, the trial court did not abuse its discretion in qualifying Hamilton's expert witness and allowing her to testify as to the standard of care, prohibiting Regional's expert from testifying as to whether Regional was grossly negligent or negligent, or admitting the photographs of Minor's hand. Additionally, the trial court did not err in publishing the requests to admit to the jury. Further, the trial court did not err in denying Regional's motion for a directed verdict or abuse its discretion in denying Regional's motion for a new trial absolute or new trial *nisi remittitur*. Accordingly, the trial court's determinations are

AFFIRMED.

HEWITT and VINSON, JJ., concur.

The South Carolina Court of Appeals

Tekayah Hamilton, individually and as parent and
guardian ad litem for Robert Lee M. Jr., a minor child
under the age of 18, Respondent,

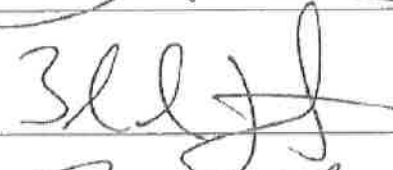
v.

Regional Medical Center, Appellant.

Appellate Case No. 2019-001921

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

Michael C. Tanner, Esquire

Jonathan F Krell, Esquire

David Reynolds Williams, Esquire

FILED
Sep 21 2023

Kathleen Chewning Barnes, Esquire
Morgan Rebekkah Long, Esquire
Virginia Watson Williams, Esquire
Winnifa Brown-Clark
The Honorable Edgar W. Dickson

FILED
Sep 21 2023

(Order pp. 4-6) (R. pp. __). The court denied the motion for JNOV and in the alternative a new trial absolute or *nisi remittitur* in its entirety. (Order pp. 6-9) (R. pp. __).

STANDARD OF REVIEW

Because there are multiple standards of review applicable to this appeal, the standard of review is addressed in the argument section for each issue.

ARGUMENT

The evidence in this case came down to a factual dispute about Downing's conduct and a battle of the experts. This is commonplace. The jury believed and accepted Hamilton's presentation of the facts. Over the course of the trial, based on the evidence admitted, the principal breach of the standard of care presented to the jury was that RMC, through Downing, failed to perform a saline flush before administering the IV medication. (Trial Tr. p. 386) (R. p. __). The issue Respondents presented to the jury was "did the nurse at The Regional Medical Center fail to flush?" (Trial Tr. p. 386 lns. 12-13) (R. p. __). This makes all of RMC's discussion about blood returns and other IV management irrelevant.

The majority of the issues on appeal are subject to an abuse of discretion standard, and the evidence in the record and the applicable law demonstrate that the lower court properly exercised its discretion. As to the remaining issue of RMC's motion for a JNOV, there is ample evidence that RMC breached the standard of care. RMC's disagreement with Hamilton's expert is nothing more than a jury issue. This Court should affirm.

I. THE LOWER COURT CORRECTLY QUALIFIED NURSE STOBBS AS AN EXPERT AND ALLOWED HER TO TESTIFY ABOUT THE STANDARD OF CARE.

The lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert. (Trial Tr. p. 78) (R. p. __). "The qualification of an expert witness and the admissibility of the expert's testimony are each matters largely within the trial judge's discretion." *McMillan v.*

Durant, 312 S.C. 200, 204, 439 S.E.2d 829, 831 (1993). “[W]e will not reverse absent an abuse of that discretion.” *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). “An abuse of discretion occurs when the circuit court’s rulings either lack evidentiary support or are controlled by an error of law.” *Id.* at 74, 735 S.E.2d at 831 (internal quotation marks omitted).

RMC does not dispute Nurse Stobbs’ qualifications as a nurse or ability to testify about IV management. Instead, it argues mainly that this case is about pediatric nursing such that pediatric nursing and not “general nursing” is the issue. (Br. of App. pp. 11-12). RMC then argues that Nurse Stobbs is not qualified to testify about pediatric nursing IV management and, in doing so at trial, she testified outside of the scope of her nursing qualifications. (Br. of App. p. 10). The lower court correctly rejected these arguments, and this Court should affirm.

A. The applicable standard of care is the same regardless of whether the patient is an adult or a child.

RMC’s first argument is irrelevant because it does not affect the applicable standard of care. It is undisputed that in pediatric **and** adult IV management, the standard of care is to flush the IV with saline before administering a medication. (Trial Tr. pp. 268, 270, 336-37, 365) (R. pp.).

The difference between an adult and pediatric patient that RMC complains about is that a pediatric vein is smaller than an adult vein. (Br. of App. p. 11). That physiological difference does not change the standard of care to flush an IV site before administering medication or to follow RMC’s policy to document a saline flush. Therefore, in response to all of RMC’s arguments about Nurse Stobbs, its complaint does not make a difference for the evidence in this case. *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (“[W]hatever doesn’t make any difference, doesn’t matter.”). The Court may affirm the qualification of Nurse Stobbs on this basis alone.

RMC is incorrect that this case is about pediatric nursing. (Br. of App. pp. 10-12). This case is about the IV management safety practice of doing and documenting a saline flush before administering medication. (Trial Tr. pp. 386, 410) (R. pp. __). Nurse Stobbs testified “the same safety practices” and “rules” are used for every patient “whether it’s a baby or an adult.”¹ (Trial Tr. pp. 79-80) (R. pp. __). Downing and Hurley testified that a saline flush is always required before administering medication. (Trial Tr. pp. 268, 270, 336-37, 365) (R. pp. __). Even if there existed a relevant difference in the IV management of pediatric and adult patients, it was for the jury to decide if and how that affected the applicable standard of care. *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006) (“The factfinder may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case.”). The lower court did not err in qualifying Nurse Stobbs as a nursing expert when nursing IV management principles apply to the facts of the case.

B. The lower court correctly held Nurse Stobbs’ testimony satisfies Rule 702, SCRE.

RMC argues the lower court erred in qualifying Nurse Stobbs to testify about IV management in a case involving a pediatric patient because she did not treat pediatric patients and her testimony is, according to RMC, contrary to literature. (Br. of App. pp. 12-14). The lower court correctly exercised its discretion in ruling that RMC’s arguments go to the weight and not the admissibility of her testimony. (Pretrial Tr. pp. 9-10) (R. p. __).

A person may be qualified as an expert based on “knowledge, skill, experience, training, or education.” Rule 702, SCRE. “The test for qualification is a relative one that is dependent on

¹ Nurse Stobbs maintained that the age of a patient does not alter IV management “in terms of the safety practices.” (Trial Tr. p. 111) (R. p. __). She testified that a vein is the same in an adult and a child. (Trial Tr. pp. 104-05) (R. pp. __). Physiological differences in adults and children mean “their body size may be different” but “does not mean that their vein would be different.” (Trial Tr. p. 126) (R. p. __). “[T]he management for IV therapy in terms of safety practices and what the rules are, it’s exactly the same.” (Trial Tr. p. 127 lns. 11-13) (R. p. __ lns. 11-13).

the particular witness's reference to the subject." *Lee v. Suess*, 318 S.C. 283, 285, 457 S.E.2d 344, 346 (1995). In deciding whether to admit expert testimony, the court makes three inquiries: whether (1) "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury," (2) the expert has "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter, although he *need not be a specialist in the particular branch of the field*," and (3) the substance of the testimony is reliable. *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (internal quotation marks omitted) (emphasis added). RMC disputes only the second inquiry.

An expert witness is not required to be a specialist in the particular branch of his or her profession involved in a case. On the contrary, "[a] physician is not incompetent to testify merely because he is not a specialist in the particular branch of his profession involved. The fact that he is not a specialist goes to the weight of his testimony, not its admissibility." *Creed v. Columbia*, 310 S.C. 342, 345, 426 S.E.2d 785, 786 (1993) (internal citation omitted). Our courts regularly apply this principle in the medical negligence context.

For example, in *Creed*, a "general practitioner" was qualified "to give an opinion on [the plaintiff's] mental and emotional injuries." *Id.* 344-45, 426 S.E.2d at 786.

A neurosurgeon was qualified to testify about the appropriate standard of nursing care. *McMillan v. Durant*, 312 S.C. 200, 204-05, 439 S.E.2d 829, 831-32 (1993); *see also Lee v. Suess*, 318 S.C. 283, 285, 457 S.E.2d 344, 345 (1995) (describing *McMillan* as holding "a medical practitioner's experience teaching in a particular specialty and his professional interaction with practitioners of that specialty are facts sufficient to support his qualification as an expert").

A plastic surgeon was qualified to testify as an expert in the field of family practice because the surgeon taught family practitioner residents. *Lee*, 318 S.C. at 285, 457 S.E.2d at 345-46. The

expert's "limited exposure to the field of family practice merely goes to the weight of his testimony and not its admissibility." *Id.* at 286, 457 S.E.2d at 346.

A neonatologist was qualified to testify about sudden infant death syndrome, even though she testified "that she would not consider herself a SIDS expert," because "an expert need not be a specialist in the particular branch of the field." *Graves v. CAS Med. Sys.*, 401 S.C. 63, 78, 735 S.E.2d 650, 657 (2012) (internal quotation marks omitted).

All of these cases support the lower court's decision to qualify Nurse Stobbs as an expert regardless of her lack of hands-on experience with pediatric IV patients because that criticism goes to the weight of her testimony and not its admissibility. Nurse Stobbs worked for over thirty years as a nurse. (Trial Tr. p. 77) (R. p. __). For twenty-one of those years, she worked at Massachusetts General Hospital, "which is Harvard's Hospital" and "the number one hospital in the country." (Trial Tr. p. 77 lns. 3-6) (R. p. __). She was certified in IV therapy, administered "thousands" of IVs in her career, and primarily provided IV therapy to her patients. (Trial Tr. p. 77) (R. p. __). She was amply qualified to testify about IV management in this case.

RMC relies on *Botehlo v. Bycura*, 282 S.C. 578, 320 S.E.2d 59 (Ct. App. 1984), for its assertion that Nurse Stobbs must have treated pediatric patients to be qualified to testify about IV management. (Br. of App. p. 12). In *Botehlo*, this Court ruled that an orthopedic surgeon was not an expert in podiatric standards of care, in part, because he "testified that he is not familiar with the standards of professional care generally observed by podiatrists" and "was not familiar with the surgical procedure [the defendant] performed on [the plaintiff]." *Id.* at 587, 320 S.E.2d at 65. In *McMillan v. Durant*, 312 S.C. 200, 439 S.E.2d 829 (1993), the Supreme Court described the orthopedist expert in *Botehlo* as "not versed at all in the practice of podiatry." *Id.* at 204, 439 S.E.2d at 832. This case is easily distinguishable.

Nurse Stobbs testified the standard of care for IV management is the same for a baby or an adult. (Trial Tr. p. 80 lns. 1-6) (R. p. _). Her thirty years of experience in administering thousands of IVs is evidence that supports the lower court's decision to find her familiar with the standards of professional care, unlike the expert in *Botehlo*.

RMC also relies on *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 487 S.E.2d 596 (1997). (Br. of App. pp. 12-14). However, *Gooding* supports Hamilton's position. In a medical malpractice action against an anesthesiologist regarding an intubation procedure, the Supreme Court held an EMT/paramedic who intubated over 100 patients and taught intubation procedures was qualified in the field of intubation. *Id.* at 251, 253, 487 S.E.2d at 597-98. It explained "[t]here was no requirement that [plaintiff]'s expert witness be an anesthesiologist in order to testify about intubation procedures." *Id.* at 253, 487 S.E.2d at 598. In this case, Nurse Stobbs is qualified in the field of IV management and she is not required to specifically practice in pediatric IV management to testify about IV management procedures.

RMC's disagreement with Nurse Stobbs' opinions (Br. of App. p. 13) are (and were in this case) subjects for cross-examination. The lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert, and this Court should affirm.

C. RMC did not preserve an argument about the scope of Nurse Stobbs' testimony and, regardless, she testified according to her qualifications as a nursing expert.

RMC's argument that Nurse Stobbs' testimony exceeded the scope of her qualifications is unpreserved, abandoned, and legally incorrect.

"Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." *State v. Sheppard*, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). RMC never objected during trial that any of Nurse Stobbs' testimony exceeded the scope of her qualifications. It cites to only two pages of the pre-trial motion *in limine*

hearing and does not specify what trial testimony is allegedly outside of the scope of her expertise. (Br. of App. p. 15). “Making a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a motion *in limine* is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.” *State v. Moses*, 390 S.C. 502, 511, 702 S.E.2d 395, 400 (Ct. App. 2010) (internal quotation marks omitted). The issue is unpreserved.

The issue is also abandoned because RMC does not cite legal authority and makes only a conclusory, one-paragraph argument. (Br. of App. pp. 14-15). *See Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”); *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”).

Finally, RMC’s argument on the merits is incorrect. The lower court qualified Nurse Stobbs “as an expert in nursing.” (Trial Tr. p. 78) (R. p. __). Nurse Stobbs repeatedly testified that her opinions on IV management applied to adults and children, making RMC’s attempt to separate the two irrelevant. Her testimony was consistent with her qualifications and area of expertise.

D. Even if error, the admission of Nurse Stobbs’ testimony was harmless.

Even if the Court finds the lower court erred in qualifying Nurse Stobbs or that her testimony exceeded the scope of her qualification, it should still affirm because any such error was harmless. “The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (internal

quotation marks omitted). The court does “not weigh the evidence when determining this.” *In re Bilton*, 432 S.C. 157, ___, 851 S.E.2d 442, 447 (Ct. App. 2020). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” *In re Care & Treatment of Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014) (internal quotation marks omitted).

Any alleged error did not contribute to the verdict because Nurse Stobbs’ testimony on the standard of care was cumulative to other evidence. “The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.” *Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009).

Hamilton’s theory of liability was RMC’s failure to perform and document a saline flush before administering the medication to R.J. (Trial Tr. pp. 386, 389-90, 396, 410) (R. pp. __). RMC’s policies and procedures admitted into evidence establish the standard of care to flush with saline and document it on the medical record. (Pl’s Exh. 5) (R. p. __). RMC’s expert, Cynthia Hurley, testified that the standard of care is to perform a saline flush prior to administering medication. (Trial Tr. pp. 336-37, 365). Nurse Stobbs testified R.J.’s medical records do not document a saline flush prior to Downing administering the medication, and RMC does not argue that she is unqualified to read medical records. Nurse Stobbs’ standard of care testimony was cumulative to other evidence.

RMC attacked Nurse Stobbs’ experience and credibility throughout the trial. (Trial Tr. pp. 72-73, 103-12, 124-27) (R. pp. __). It criticized Nurse Stobbs for saying something allegedly contrary to articles on IV management. However, Ms. Downing testified that she had never reviewed those articles prior to RMC’s attorney giving them to her and that reviewing such articles

it not common practice for a nurse. (Tr. p. 283). RMC disputed Nurse Stobbs' qualifications in its closing argument:

She's never practiced clinical pediatric nursing. She's never started an IV on a child. And more importantly, the issue in this case, she's never maintained, managed and monitored an IV. **She is not qualified.**

[Y]ou have one nurse who's never been an expert before, Ms. Stobbs, who's never practiced in this area. She can't tell you what pediatric nursing is. She can't tell you what the literature is. . . . She'd been a nurse for over thirty-three years and guess how many pediatric IVs she started? The same amount as me, none.

[S]he has never done this the first shift in her life.

. . . [Downing started more pediatric IVs] a lot more than Nurse Stobbs who, again, has started zero.

My witness [Hurley] is more qualified to be an expert [than Stobbs]. My expert is certainly more qualified to be an expert. They could have got a true expert. Ask yourself, why don't they have a pediatric expert? Why don't they have an expert that was qualified for monitoring and managing pediatric IVs? It is because they couldn't get one? Again, use your common sense.

(Trial Tr. pp. 399-401, 407) (R. p. _) (emphasis added). The lower court charged the jury it could disregard an expert's opinion if it decided "an expert witness's opinion is not based on sufficient education or experience or if you decide that the reasons given in support of the opinion are not sound." (Trial Tr. p. 419) (R. p. _).

Given the cumulative nature of Nurse Stobbs' challenged testimony and RMC's blatant attack on her qualifications, any error in qualifying her and admitting her testimony was harmless and RMC suffered no prejudice.

II. THE LOWER COURT CORRECTLY DENIED RMC'S MOTIONS FOR DIRECTED VERDICT OR JNOV BECAUSE THERE IS EVIDENCE OF GROSS NEGLIGENCE.

The lower court correctly denied RMC's motions for directed verdict and JNOV because there is evidence that, viewed in a light most favorable to Hamilton, supports a reasonable inference of gross negligence.²

"When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012). "In considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight. When considering a JNOV, neither an appellate court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) (internal quotation and alteration marks omitted). "The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt." *RFT Mgmt. Co.*, 399 S.C. at 332, 732 S.E.2d at 171 (internal quotation marks and citation omitted).

RMC's assertion that Hamilton "failed to provide *any* evidence or testimony of gross negligence" is wholly without merit and seems based on an incorrect assumption that a witness must have used the words "gross negligence" for evidence of it to exist. (Br. of App. pp. 18-19).

² A "governmental entity is not liable for a loss resulting from: . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . patient, . . . of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25) (2005). Hamilton argued at trial that a medical malpractice, not a gross negligence, standard applies to this case because it concerns a nurse's administration of medication and not "supervision, protection, control, confinement, or custody" of a patient. (Trial Tr. pp. 52-53, 217-19, 314, 433-34) (R. pp. __). Given the jury's verdict and RMC's arguments, Hamilton argues based on the gross negligence standard. (Pl's Memo. in Opp. to Def. Mot. for JNOV p. 9 n.3). However, this case should not be construed as establishing that the gross negligence standard in S.C. Code Ann. § 15-78-60(25) applies to a nurse's administration of medication.

Our Courts define “gross negligence in a number of ways.” *Hollins v. Richland Cnty. Sch. Dist. One*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993). “[I]t is the failure to exercise slight care.” *Bass v. S.C. Dep’t of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 259 (2015) (internal quotation marks omitted). “Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 331, 566 S.E.2d 536, 544 (2002) (internal quotation marks omitted). Gross negligence is “also defined [] as a relative term that means the absence of care that is necessary under the circumstances.” *Id.* at 332, 566 S.E.2d at 544 (internal quotation marks omitted). While “[g]ross negligence is ordinarily a mixed question of law and fact,” “[i]n most cases, [it] is a factually controlled concept whose determination best rests with the jury.” *Id.* at 332, 566 S.E.2d at 545 (internal quotation marks omitted).

Under any definition of gross negligence, there is evidence of it in the record. There is evidence that RMC consciously failed to do or document a saline flush and that it was incumbent upon RMC to do those things. RMC’s policies **require** a saline flush prior to administering medication and documentation of that flush. (Pl.’s Exh. 5; Trial Tr. pp. 88-89, 144) (R. pp. __). Nurse Stobbs testified that Downing failed to do or document a flush before administering the medication to R.J. (Trial Tr. pp. 102, 144) (R. pp. __). If RMC (and nursing standards of care) required a saline flush prior to administering medication, then the inference in a light most favorable to Hamilton is that the failure to do it shows an absence of care that is necessary under the circumstances. *See Jinks v. Richland Cnty.*, 355 S.C. 341, 348, 585 S.E.2d 281, 285 (2003) (citing to evidence that the defendant failed to follow its policies as evidence of gross negligence).

Downing testified that a saline flush prior to administering medicine is “ingrained in you in nursing school” and “it makes no sense not to” flush. (Trial Tr. pp. 280-81, 293) (R. pp. __).

Downing testified there is “no way to really tell if the site is open and flowing without flushing it.” (Trial Tr. pp. 302-03) (R. p. _). If it makes no sense not to do a flush, then the failure to do it is the failure to exercise slight care.

Evidence that, once the IV infiltrated and began to harm R.J., RMC failed to respond to Tekayah’s call for help for at least twenty minutes is also evidence that it failed to exercise slight care and consciously failed to care for a patient. (Trial Tr. pp. 148-50, 285) (R. pp. _).

RMC’s evidentiary arguments merely show differing inferences to be drawn from the evidence. However, competing evidence is not a permissible basis to reverse the denial of a motion for JNOV. The Court must “examin[e] the record to discern whether there was any evidence put forward at trial to support the jury verdict.” *Bass v. S.C. Dep’t of Soc. Servs.*, 414 S.C. 558, 574, 780 S.E.2d 252, 260 (2015). Evidence that a defendant “acted with slight care” along with “evidence in the record that [the defendant] acted with gross negligence” is sufficient to support a jury’s verdict of gross negligence. *Id.* at 574, 780 S.E.2d at 260.

Finally, to the extent RMC is arguing that a witness must have testified using the words “gross negligence” (Br. of App. p. 19), there is no legal support for the proposition that an expert must use magic words. *See, e.g., Stallings v. Ratliff*, 292 S.C. 349, 353, 356 S.E.2d 414, 417 (Ct. App. 1987) (“The issue of breach of duty does not turn on a ritual incantation of certain magic words by an expert witness.”). The substance of the testimony and the jury’s consideration of it are what matter. Further, as discussed below in Argument section IV, expert testimony on a legal conclusion is improper.

Hamilton presented evidence that Downing did not remember doing a saline flush before she administered the medicine that burned R.J., there is no documentation of a saline flush, and if something is not documented, then it was not done. (Trial Tr. pp. 89, 96, 144, 280) (R. pp. _).

Viewing that evidence in a light most favorable to Hamilton, a jury could have (and did) find that RMC's conduct amounted to gross negligence. The evidence "support[s] the jury's verdict," and this Court should affirm. *Bass*, 414 S.C. at 573, 780 S.E.2d at 259.

III. THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING THE PHOTOGRAPHS OF R.J.'S HAND.

Hamilton submitted into evidence three photographs of R.J.'s hand. (Pl's Exhs. 1-3; Trial Tr. pp. 54-56). Two photographs show R.J.'s hand shortly after the burn injury occurred and the lump full of fluid on his hand burst. (Trial Tr. pp. 150-53; Pl's Exhs. 1, 3) (R. pp. __). One photograph shows R.J.'s hand with a scar on the last day of his treatment at the wound center. (Pl's Exh. 2; Trial Tr. p. 155) (R. p. __).

RMC argues that the alleged prejudicial effect of the photographs outweighed their probative value under Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .").

"A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) (internal quotation marks omitted). "The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." *State v. Rosemond*, 335 S.C. 593, 596, 518 S.E.2d 588, 589-90 (1999). The lower court properly exercised its discretion by balancing the probative value of the photos against any unfair prejudice and admitting them into evidence. (Pre-Trial Tr. pp. 10-15; Order p. 7) (R. pp. __).

Probative Value

The photos had probative value in establishing and proving damages, especially the condition of R.J.'s hand at the time of the burn because he was too young to testify. The photos

had probative value in showing the healing process and, importantly, in helping Dr. DeVito to explain and corroborate his testimony.

Photographs are admissible when they “clearly demonstrate the extent and nature of the injuries in a way that would not be as easily understood based on the testimony alone.” *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (affirming the admission of autopsy photos of a two-year-old child). Tekayah used the photographs to explain the nature of R.J.’s injury at the time of the burn. (Trial Tr. pp. 151-55) (R. pp. __). Dr. DeVito used the photos to describe the layers of skin and tissue injured by the infiltration, explain some of the healing process, explain the type of scar and his proposed treatment for it, and support his opinion as to the level of pain R.J. would have felt from this type of burn at the time of the injury and throughout the healing process. (Trial Tr. pp. 228-30, 235). R.J. could not tell the jury what he felt, and the photographs aided in explaining that to the jury.

“A test to determine whether the trial judge abused his discretion is whether the photographic evidence serves to corroborate the testimony of witnesses offered at trial.” *State v. Vang*, 353 S.C. 78, 88, 577 S.E.2d 225, 230 (Ct. App. 2003). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) (affirming the admission of photographs of the victim’s stab wounds in his hospital bed). Hamilton used the photographs to corroborate Tekayah’s testimony about the appearance and state of the injury at the time it occurred and to corroborate Dr. DeVito’s testimony describing the injury, the healing process, and that R.J. suffered pain. (Trial Tr. pp. 151-11, 228-30, 235) (R. pp. __). RMC challenged Hamilton’s damages and tried to focus the jury on the fact that R.J.’s hand healed to a scar rather than the condition of his hand right after the burn occurred. (Trial Tr. pp. 74-75) (R. pp. __). This makes the corroborating probative value of the

photographs very high. *See State v. Gray*, 408 S.C. 601, 613, 759 S.E.2d 160, 166-67 (Ct. App. 2014) (“Photos that corroborate important testimony on issues significant to the case may have very high probative value . . .”).

Unfair Prejudice

RMC argues three reasons why the lower court should have excluded the photos: they were (1) not necessary to substantiate Hamilton’s case because RMC did not dispute that R.J. suffered an injury, (2) “grotesque, up-close images” that make the wound look bigger than it was, and (3) not representative of the state of R.J.’s hand at the time of trial. (Br. of App. pp. 21-22). These arguments show only that the evidence is prejudicial, as “[a]ll evidence is meant to be,” and do not rise to the level unfair prejudice. *State v. Gray*, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014). “Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” *Id.* at 616, 759 S.E.2d at 168.

As to RMC’s first argument, its acknowledgment that R.J. suffered an injury does not eliminate the need for Hamilton to establish for the jury the nature and severity of the injury. RMC essentially wants the Court to hold that, when a defendant admits an injury occurred and the injury heals some by the time of trial, the condition of the injury when it occurred is unfairly prejudicial evidence. That is not the law, and RMC cites no case with that ruling.

As to RMC’s second argument, that the injury is, as the lower court stated, “hard to look at,” does not make photographs of it unfairly prejudicial. (Order p. 7) (R. p. __). “Numerous jurisdictions have found that photos are not inadmissible merely because they are gruesome,

especially where, as here, the photos simply mirror the unfortunate reality of the case.”³ *State v. Collins*, 409 S.C. 524, 535-36, 763 S.E.2d 22, 28 (2014). Because the photos in this case merely show the reality of the injury to the jury, they are not unfairly prejudicial.

RMC incorrectly argues that the photos make the injury look bigger than its actual size. Each photograph has a scale of reference. Two of them include adult fingers holding R.J.’s hand, and one includes R.J.’s head. (Pl’s Exhs. 1-3) (R. pp. __). There is no basis to assume the photos enlarged the injury.

As to RMC’s third argument, that R.J.’s burn wound healed by the time of trial does not make an image of it at the time of the burn unfairly prejudicial. Hamilton asked the jury to award damages for the injury from the time it occurred. Evidence showing the injury, particularly in light of R.J.’s inability to testify, does not suggest a “decision on an improper basis” but, rather, a decision based on the reality of the injury. *State v. Gray*, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014).

The photos are not *unfairly* prejudicial.

Balance

“The trial judge must balance the prejudicial effect of graphic photographs against their probative value.” *State v. Vang*, 353 S.C. 78, 87, 577 S.E.2d 225, 229 (Ct. App. 2003). The lower court ruled that, although the photographs “are hard to look at, there is little doubt the photographs

³ Our courts regularly allow the admission of photographs that are arguably “grotesque.” *See Gray*, 408 S.C. at 609, 617, 759 S.E.2d at 164, 169 (affirming the admission of eleven “graphic” before-and-after autopsy photos, including the victim’s “exposed skull and brain”); *State v. Holder*, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) (affirming the admission of autopsy photos of a two-year-old victim of child abuse “[a]lthough the photographs were graphic”); *State v. Jarrell*, 350 S.C. 90, 106-07, 564 S.E.2d 362, 371 (Ct. App. 2002) (affirming the admission of autopsy photos of a ten-month-old sexual abuse victim because they corroborated and helped the jury understand testimony).

are relevant to corroborate the injury.” (Order p. 7) (R. p. __). The evidence and law support the lower court’s conclusion that any danger of unfair prejudice does not substantially outweigh the probative value of the photos. This Court should affirm.

IV. THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION TO EXCLUDE MS. HURLEY’S TESTIMONY ON GROSS NEGLIGENCE.

The lower court properly exercised its discretion to prohibit RMC from asking its nursing expert, Cynthia Hurley, whether RMC committed “negligence” or “gross negligence.” The admissibility of expert testimony is a matter “largely within the trial judge’s discretion.” *McMillan v. Durant*, 312 S.C. 200, 204, 439 S.E.2d 829, 831 (1993). The Court “will not reverse absent an abuse of that discretion.” *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

RMC made a directed verdict motion arguing that, because Nurse Stobbs did not use the words “gross negligence” in her testimony, Hamilton failed to introduce evidence of gross negligence. (Trial Tr. pp. 311, 312 Ins. 23-25, 313) (R. pp. __). After the court denied the motion, Hamilton moved to exclude RMC from asking its expert, Ms. Hurley, whether RMC committed gross negligence. (Trial Tr. pp. 316-20) (R. pp. __). The lower court granted the motion because Hurley is not qualified to testify about the legal concepts of negligence and gross negligence, and RMC could elicit testimony about those topics without using the exact legal terminology. (Trial Tr. pp. 318-19) (R. pp. __). The lower court properly exercised its discretion.

While RMC characterizes the testimony as an opinion on “an ultimate issue” under Rule 704, SCRE, the lower court correctly analyzed the testimony as a legal conclusion (Trial Tr. pp. 318-19; Order p. 7) (R. pp. __), and correctly ruled it inadmissible because, “[i]n general, expert testimony **on issues of law** is inadmissible.” *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433,

437 (2003) (emphasis in original).⁴ This Court recently reiterated that “expert testimony on issues of law is rarely admissible. The common law and the federal rules of evidence forbid opinions on issues of law, except foreign law.” *Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020) (internal citations omitted).

In *Carter*, which RMC does not address in its brief, an appellant proffered expert testimony that a warrant lacked probable cause. 429 S.C. at 312, 838 S.E.2d at 531. This Court affirmed the lower court’s decision to exclude the testimony because “the expert’s proffered testimony on probable cause was a legal conclusion.” *Id.* at 313, 838 S.E.2d at 531. Looking to the advisory committee note to Federal Rule of Evidence 704, the Court explained:

an opinion on the ultimate issue has to be “otherwise admissible,” meaning in the context here that it must be helpful to the jury as required by Rule 702, SCRE, and satisfy the strictures of Rule 403, SCRE. The opinion here was not helpful to the jury because it stated a legal conclusion and essentially told the jury what result to reach on the probable cause question.

Id. at 313, 838 S.E.2d at 531. The same reasoning applies to this case.

Hurley’s opinion was not helpful because it would have confused and misled the jury as to the meaning of gross negligence. During the proffer, Hurley testified RMC’s conduct was not negligent or grossly negligent. (Trial Tr. pp. 379-80) (R. pp. __). On cross-examination, she defined “gross negligence” as “[a]ctually causing a problem and knowing that you did it. Hurting someone intentionally.” (Trial Tr. p. 381) (R. p. __). That is not the correct legal definition of gross negligence. The lower court charged the jury that “[g]ross negligence is the intentional, conscious failure to do something which is incumbent upon one to do, or the doing of a thing intentionally that one ought not do. . . . gross negligence is the failure to exercise slight care.” (Trial Tr. p. 422)

⁴ RMC’s attempt to distinguish this case from *Dawkins* is unconvincing. (Br. of App. p. 26). RMC did ask Hurley to make a legal conclusion on gross negligence. As RMC acknowledged in its closing argument, “Judge Dickson’s going to charge you on gross negligence.” (Trial Tr. p. 402) (R. p. __).

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

MAR
Medications

Admin Date/Time: 10/26/2014 04:25
Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))
Charted Date/Time: 10/26/2014 04:25
Admin Details: Auth (Verified)
PRN Medication Effectiveness: Yes; Patient Response to Medication: Temperature decreased; Temperature Method: Rectal; Temperature Rectal: 37.5
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Morton RN, Teresa L 10/26/2014 04:25; VERIFY: Morton RN, Teresa L 10/26/2014 04:25

Admin Date/Time: 10/26/2014 02:49
Medication Name: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))
Charted Date/Time: 10/26/2014 02:49
Ingredients: acetaminophen oral liquid INFANT (0-2 years) 60 mg 1 mL
Admin Details: (Auth) Oral
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Morton RN, Teresa L 10/26/2014 02:49; VERIFY: Morton RN, Teresa L 10/26/2014 02:49
Reason for Medication: Morton RN, Teresa L 10/26/2014 02:49
Fever

Admin Date/Time: 10/26/2014 02:49
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/26/2014 02:49
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:00; Perform: Morton RN, Teresa L 10/26/2014 02:49; VERIFY: Morton RN, Teresa L 10/26/2014 02:49

Admin Date/Time: 10/25/2014 23:31
Medication Name: ampicillin (ampicillin Injection PEDIATRIC)
Charted Date/Time: 10/25/2014 23:32
Ingredients: ampicillin 425 mg; sterSol20 4.25 mL
Admin Details: (Auth) IV Syringe
Action Details: Order: Boltin, Megan Shuler 10/25/2014 22:55; Perform: Morton RN, Teresa L 10/26/2014 23:32; VERIFY: Morton RN, Teresa L 10/25/2014 23:32

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for the patient via Horizon Patient Folder.
Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0013



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Bollin MD, Megan Shuler
Attending: Bollin MD, Megan Shuler

MAR

Medications

Admin Date/Time: 10/25/2014 23:31
Medication Name: sodium chloride (*INT FLUSH)
Charted Date/Time: 10/25/2014 23:32
Ingredients: *INT FLUSH 1 mL
Admin Details: (Auth) IV Push, *Right Hand
Action Details: Order: Bollin, Megan Shuler 10/25/2014 22:00; Perform: Morton RN, Teresa L 10/25/2014 23:31; VERIFY: Morton RN, Teresa L 10/25/2014 23:31
Early/Late Reason: Morton RN, Teresa L 10/25/2014 23:31
Patient Not Available/Off Unit

Admin Date/Time: 10/25/2014 23:30
Medication Name: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)
Charted Date/Time: 10/25/2014 23:32
Ingredients: sterSol20 4.25 mL; cefo1REC 425 mg
Admin Details: (Auth) IV Syringe
Action Details: Order: Bollin, Megan Shuler 10/25/2014 22:55; Perform: Morton RN, Teresa L 10/25/2014 23:32; VERIFY: Morton RN, Teresa L 10/25/2014 23:32

Medication History

Medication History

Order: ampicillin (ampicillin injection PEDIATRIC)
Order Start Date/Time: 10/28/2014 05:00
Order Status: Completed Clinical Category: Medications Medication Type: Inpatient
End-state Date/Time: 10/28/2014 04:27 End-state Reason:
Ordering Physician: Bollin, Megan Shuler Consulting Physician:
Entered By: Hagwood, Brian Kip on 10/25/2014 22:55
Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/28/14 5:00:00 AM EDT, Stop date 10/28/14 4:27:11 AM EDT, Infuse over 20 minute
Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin injection PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0014



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient:	[REDACTED]	Admit/Discharge	10/25/2014
MRN:	[REDACTED]	Discharge Date:	10/30/2014
Account Number:	[REDACTED]	Admitting:	Boltin MD, Megan Shuler
DOB/AGE/SEX:	[REDACTED] 8 months Male	Attending:	Boltin MD, Megan Shuler
Location:	2E; 2350; 01		

Medication History

Medication History

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/28/2014 00:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/27/2014 23:44

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Reese RN, Angella E on 10/25/2014 22:53

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/28/14 12:00:00 AM EDT, Stop date 10/27/14 11:44:47 PM EDT, Infuse over 30 minute

Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation per package insert

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/28/2014 00:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/28/2014 01:04

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Craft RN, Susan M on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/28/14 12:00:00 AM EDT

Order Comment: As needed

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/27/2014 23:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/27/2014 23:09

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/27/14 11:00:00 PM EDT, Stop date 10/27/14 11:09:03 PM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0015



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/27/2014 20:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/27/2014 21:19

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Craft RN, Susan M on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/27/14 8:00:00 PM EDT

Order Comment: As needed

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/27/2014 17:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/27/2014 17:48

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/27/14 5:00:00 PM EDT, Stop date 10/27/14 5:48:59 PM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/27/2014 16:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/27/2014 16:08

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Reese RN, Angella E on 10/25/2014 22:53

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/27/14 4:00:00 PM EDT, Stop date 10/27/14 4:08:22 PM EDT, Infuse over 30 minute

Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation per package insert

Request ID: 5707699

Print Date/Time 06/12/2015
08:36

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TRMC0016



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 6 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/27/2014 16:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/27/2014 16:08

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Craft RN, Susan M on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/27/14 4:00:00 PM EDT

Order Comment: As needed

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/27/2014 12:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/27/2014 11:43

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Craft RN, Susan M on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/27/14 12:00:00 PM EDT

Order Comment: As needed

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/27/2014 11:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/27/2014 11:43

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/27/14 11:00:00 AM EDT, Stop date 10/27/14 11:43:45 AM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial, [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin injection PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0017



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/27/2014 08:00
Order Status: Completed Clinical Category: Medications Medication Type: Inpatient
End-state Date/Time: 10/27/2014 08:09 End-state Reason:
Ordering Physician: Boltin, Megan Shuler Consulting Physician:
Entered By: Reese RN, Angella E on 10/25/2014 22:53
Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/27/14 8:00:00 AM EDT, Stop date 10/27/14 8:09:14 AM EDT, Infuse over 30 minute
Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation per package insert

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/27/2014 08:00
Order Status: Completed Clinical Category: Medications Medication Type: Inpatient
End-state Date/Time: 10/27/2014 08:09 End-state Reason:
Ordering Physician: Boltin, Megan Shuler Consulting Physician:
Entered By: Craft RN, Susan M on 10/25/2014 22:00
Order Details: 1 mL, Injection, IV Push, Start date 10/27/14 8:00:00 AM EDT
Order Comment: As needed

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/27/2014 06:00
Order Status: Completed Clinical Category: Medications Medication Type: Inpatient
End-state Date/Time: 10/27/2014 04:38 End-state Reason:
Ordering Physician: Boltin, Megan Shuler Consulting Physician:
Entered By: Boltin, Megan Shuler on 10/26/2014 22:00
Order Details: 1 mL, Injection, IV Push, Start date 10/27/14 6:00:00 AM EDT
Order Comment: As needed

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0018



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/27/2014 05:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/27/2014 04:36

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/27/14 5:00:00 AM EDT, Stop date 10/27/14 4:36:09 AM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/27/2014 02:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/27/2014 04:36

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/27/14 2:00:00 AM EDT

Order Comment: As needed

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/27/2014 00:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 22:56

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Reese RN, Angelia E on 10/25/2014 22:53

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/27/14 12:00:00 AM EDT, Stop date 10/26/14 10:56:39 PM EDT, Infuse over 30 minute

Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation per package insert

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0019



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Bolin MD, Megan Shuler
Attending: Bolin MD, Megan Shuler

Medication History

Medication History

Order: ampicillin (ampicillin injection PEDIATRIC)

Order Start Date/Time: 10/26/2014 23:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 22:56

End-state Reason:

Ordering Physician: Bolin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/26/14 11:00:00 PM EDT, Stop date 10/26/14 10:56:38 PM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. :
[100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin injection
PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile
water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/26/2014 22:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 22:56

End-state Reason:

Ordering Physician: Bolin, Megan Shuler

Consulting Physician:

Entered By: Bolin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/26/14 10:00:00 PM EDT

Order Comment: As needed

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/26/2014 18:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 18:18

End-state Reason:

Ordering Physician: Bolin, Megan Shuler

Consulting Physician:

Entered By: Bolin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/26/14 6:00:00 PM EDT

Order Comment: As needed

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

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TRMC0020

Patient:	[REDACTED]	Admit/Discharge	10/25/2014
MRN:	[REDACTED]	Discharge Date:	10/30/2014
Account Number:	[REDACTED]	Admitting:	Boltin MD, Megan Shuler
DOB/AGE/SEX:	[REDACTED] 8 months Male	Attending:	Boltin MD, Megan Shuler
Location:	2E; 2350; 01		

Medication History

Medication History

Order: ampicillin (ampicillin injection PEDIATRIC)

Order Start Date/Time: 10/26/2014 17:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 18:18

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/26/14 5:00:00 PM EDT, Stop date 10/26/14 6:18:44 PM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/26/2014 15:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 15:52

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/26/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/26/14 3:00:00 PM EDT, Stop date 10/26/14 3:52:21 PM EDT, Infuse over 30 minute

Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation per package insert

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/26/2014 14:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 14:33

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/26/14 2:00:00 PM EDT

Order Comment: As needed

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.

Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0021



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/26/2014 11:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 11:23

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/26/14 11:00:00 AM EDT, Stop date 10/26/14 11:23:04 AM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection PEDIATRIC 100 mg/kg 10/26/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/26/2014 10:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 09:21

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/26/14 10:00:00 AM EDT

Order Comment: As needed

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/26/2014 07:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/26/2014 07:17

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/26/14 7:00:00 AM EDT, Stop date 10/26/14 7:17:29 AM EDT, Infuse over 30 minute

Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation per package insert

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.

Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0022



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/26/2014 06:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/26/2014 05:07

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/26/14 6:00:00 AM EDT

Order Comment: As needed

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/26/2014 05:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/26/2014 05:07

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/26/14 5:00:00 AM EDT, Stop date 10/26/14 5:07:37 AM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/26/2014 02:00

Order Status: Completed

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/26/2014 02:49

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/26/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/26/14 2:00:00 AM EDT

Order Comment: As needed

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.

Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0023



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/25/2014 23:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/25/2014 23:32

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/25/14 11:00:00 PM EDT, Stop date 10/25/14 11:32:07 PM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial. :
[100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection
PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile
water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: ampicillin (ampicillin Injection PEDIATRIC)

Order Start Date/Time: 10/25/2014 23:00

Order Status: Discontinued Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/29/2014 01:24

End-state Reason:

Ordering Physician: Clunis MD, Derrick Oliver

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:52

Order Details: neonatal sepsis, 425 mg, IV Syringe, q6hr interval, Routine, Start date 10/25/14 11:00:00 PM EDT, 7 day,
Physician Stop, Stop date 10/29/14 1:24:00 AM EDT, Infuse over 20 minute

Order Comment: 100 mg/ml concentration add 5 ml of sterile water to ampicillin 500 mg vial.
[100 mg/1 ml] withdraw dose from vial as requested per order based on concentration Target Dose: ampicillin Injection
PEDIATRIC 100 mg/kg 10/25/2014 22:53:05 100 mg/ml concentration add 5 ml of sterile
water to ampicillin 500 mg vial. [100 mg/1 ml] withdraw dose from vial as requested per order based on concentration

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/25/2014 23:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/25/2014 23:32

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Hagwood, Brian Kip on 10/25/2014 22:55

Order Details: neonatal sepsis, 425 mg, IV Syringe, Start date 10/25/14 11:00:00 PM EDT, Stop date 10/25/14 11:32:08 PM EDT, Infuse over 30 minute

Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation
per package insert

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.

Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0024



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] 8 months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Boltin MD, Megan Shuler
Attending: Boltin MD, Megan Shuler

Medication History

Medication History

Order: cefotaxime (CLAFORAN PEDIATRIC SYRINGE)

Order Start Date/Time: 10/25/2014 23:00

Order Status: Discontinued Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/29/2014 01:24

End-state Reason:

Ordering Physician: Clunis MD, Derrick Oliver

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:53

Order Details: neonatal sepsis, 425 mg, IV Syringe, q8hr Interval, Routine, Start date 10/25/14 11:00:00 PM EDT, 7 day, Physician Stop, Stop date 10/29/14 1:24:00 AM EDT, Infuse over 30 minute

Order Comment: Target Dose: CLAFORAN PEDIATRIC SYRINGE 100 mg/kg 10/25/2014 22:53:18 see new preparation per package insert

Order: acetaminophen (acetaminophen oral liquid INFANT (0-2 years))

Order Start Date/Time: 10/25/2014 22:00

Order Status: Discontinued Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/31/2014 00:05

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:00

Order Details: 60 mg = 0.6 mL, Liquid, Oral, q4hr Interval, PRN Fever, Routine, Start date 10/25/14 10:00:00 PM EDT, Administer for fever GREATER than 101 degF

Order Comment: Target Dose: acetaminophen oral liquid INFANT (0-2 years) 15 mg/kg 10/25/2014 22:00:02

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/25/2014 22:00

Order Status: Completed Clinical Category: Medications Medication Type: Inpatient

End-state Date/Time: 10/25/2014 23:32

End-state Reason:

Ordering Physician: Boltin, Megan Shuler

Consulting Physician:

Entered By: Boltin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, Start date 10/25/14 10:00:00 PM EDT

Order Comment: As needed

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.

Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0025



the Regional Medical Center

Regional Medical Center
3000 St Matthews Road
Orangeburg, SC 29118-
(803) 395-2200

Patient: [REDACTED]
MRN: [REDACTED]
Account Number: [REDACTED]
DOB/AGE/SEX: [REDACTED] months Male
Location: 2E; 2350; 01

Admit/Discharge 10/25/2014
Discharge Date: 10/30/2014
Admitting: Bollin MD, Megan Shuler
Attending: Bollin MD, Megan Shuler

Medication History

Medication History

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/25/2014 22:00

Order Status: Discontinued

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/29/2014 01:25

End-state Reason:

Ordering Physician: Clunis MD, Derrick Oliver

Consulting Physician:

Entered By: Bollin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, As Directed, PRN, Other (see comment), Start date 10/25/14 10:00:00 PM EDT

Order Comment: Flush Protocol

Order: sodium chloride (*INT FLUSH)

Order Start Date/Time: 10/25/2014 22:00

Order Status: Discontinued

Clinical Category: Medications

Medication Type: Inpatient

End-state Date/Time: 10/29/2014 01:25

End-state Reason:

Ordering Physician: Clunis MD, Derrick Oliver

Consulting Physician:

Entered By: Bollin, Megan Shuler on 10/25/2014 22:00

Order Details: 1 mL, Injection, IV Push, q4hr Interval, Start date 10/25/14 10:00:00 PM EDT

Order Comment: As needed

History and Physical Reports

Document Name

Document Status

Performed By

Signed By

Authenticated By

History and Physical

Auth (Verified)

Bollin, Megan Shuler (10/25/2014 22:20)

Bollin, Megan Shuler (10/25/2014 22:57)

Bollin, Megan Shuler (10/25/2014 22:57); Bollin, Megan

Shuler (10/25/2014 22:57)

General Admission H&P

Patient: [REDACTED]

Age: 4 weeks Sex: Male DOB: [REDACTED]

Associated Diagnoses: None

Author: Bollin, Megan Shuler

Basic Information

Admit Information: 30 day old AA male infant admitted for neonatal fever.

Source of history: Mother.

Present at bedside: Mother.

Request ID: 5707699

Print Date/Time 06/12/2015
06:36

All tests performed at RMC Laboratory, 3000 St Matthews Road, Orangeburg, SC, unless otherwise noted.

Additional clinical information may be available for the patient via Horizon Patient Folder.

Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

TRMC0026

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

RECEIVED

Appellate Case No. 2019-001921

SEP 29 2021

SC Court of Appeals

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a
minor child under the age of 18, Respondent,

v.

Regional Medical Center, Appellant.

AMENDED RECORD ON APPEAL

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the Regional Medical Center

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

Page: 1 of 9

Manual: Nursing

PURPOSE: To effectively initiate, maintain, monitor and discontinue intravenous access for continuous or intermittent fluids and/or medications.

To control the rate of fluid administration.

To prevent infection or other complications during Intravenous access maintenance.

POLICY: The Registered Nurse and the specifically trained Licensed Practical Nurse or Licensed Radiology technologist are to initiate, maintain, monitor and discontinue intravenous access/therapy as prescribed by a physician's order.

NOTE: Qualified ED RNs may insert external jugular peripheral IVs in adult patients.

SUPPLIES: IV Start Kit
Saline flush kit
IV catheter or Butterfly [appropriate size]
Prescribed IV solution and tubing
Buretrol – if patient 12 years of age and under
Appropriate needleless devices
Infusion Control Device



Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

Page: 2 of 9

Manual: Nursing

PROCEDURE

1. Prior to initiating IV access:
 - Check physician's order;
 - Wash hands;
 - Assemble supplies;
 - Identify patient noting name and date of birth;
 - Explain the procedure to the patient;
 - Utilize standard precautions.
2. Considerations for site selection include:
 - Start distally and work up extremity;
 - Avoid areas of flexion and lower extremities to minimize complications;
 - Select vein and appropriately sized catheter on the basis of the intended purpose and duration of use, known complications [e.g., phlebitis and infiltration], and experience of individual catheter operators.
 - Apply a tourniquet 2-6 inches above the proposed site to impede venous flow without arterial occlusion. [A radial pulse should be felt.]
3. Tips to dilate vein include:
 - Apply digital pressure just above selected insertion site;
 - Ask the patient to open and close fist repeatedly;
 - Warm compresses may be used for difficult access;
 - Lower site below level of heart.
4. For children 2 months of age and under the site is to be prepared per protocol:
 - Cleanse with povidone iodine in a circular motion applying friction, starting friction from the center [insertion site] moving outward to the periphery until a 2" diameter has been cleansed.
 - Allow the povidone iodine to air dry.
 - Remove the povidone iodine with alcohol using the same circular motion applying friction.
 - Allow to air dry.

NOTE: If the patient is allergic to iodine, prep with alcohol only using two alcohol preps or alternative method ordered by physician.

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

Page: 3 of 9

Manual: Nursing

5. For patients over 2 months of age, the site is to be prepared per protocol:
- Before skin prep, clip hair as needed [do not shave];
 - Cleanse with Chlorhexidine by pinching the wings on the applicator to break the ampule and release the antiseptic. Do not touch the sponge. Wet the sponge by repeatedly pressing and releasing the sponge against the treatment area until liquid is visible on the skin.
 - Use repeated back and forth strokes of the sponge for approximately 30 seconds. Completely wet the treatment area with antiseptic. Allow the area to air dry for approximately 30 seconds. Do not blot or wipe dry.
- NOTE:** If the patient is allergic to Chlorhexidine or isopropyl alcohol, prep with Betadine or alternative method ordered by the physician.
6. The IV protective catheter is to be inserted using sterile technique:
- Ensure catheter hub and primary push-off tab are fully seated to the needle housing assembly;
 - Hold catheter by ribbed needle housing with the thumb and fingers on opposite sides. The needle bevel and push-off tab should be in the up position;
 - Stabilize dilated vein by anchoring vein with thumb and gently stretching the skin downward;
 - Insert the needle into the skin and vein at an appropriate angle, usually 20-35 degrees;
 - Blood flashback may occur before the catheter tip is fully in the vein, since the catheter is shorter than the needle. Slight advancement of the catheter and needle together will assure full catheter entry into the vein.
 - Hold needle housing stable, thread the desired length of the catheter forward into vein by pushing tab forward. As the catheter is threaded, the needle guard will cover the needle.
 - Do not force if resistance is met.
 - Do not re-insert needle into the catheter at any time as needle could cut catheter causing a catheter embolus.
 - Stabilize device at push-off tab and withdraw needle into needle guard by retracting the ribbed needle housing until securely locked into place. The needle will "click" when locked.
 - Apply digital pressure to the vein just above the tip of the catheter and secure catheter hub.

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

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Manual: Nursing

- Remove needle guard by twisting slightly and pulling it out of the catheter hub.
 - Collect blood sample, if applicable. [Withdraw blood prior to flushing catheter with normal saline.]
 - Release tourniquet.
 - Connect primed INT/IV set and luer lock in place, ensuring a secure connection.
 - Dispose of secured needle in proper sharps container.
7. A butterfly needle is to be inserted utilizing sterile technique:
- Pinch wings together maintaining sterility of needle.
 - Insert butterfly needle into the skin with bevel upward at a 45 degree angle. Decrease the angle of the needle until almost level with the skin surface, and direct it toward the vein.
 - Proceed carefully until the vein is punctured indicated by the presence of "flash" directly behind or below the button.
 - Continue to advance [exerting a gentle lifting pressure to avoid piercing the opposite wall of the vein] until the needle is well within the vein.
 - Release tourniquet;
 - Collect blood sample, if applicable. [Withdraw blood prior to flushing catheter with normal saline.]
 - Connect primed INT/IV set and luer lock in place, ensuring a secure connection.
8. Insertion attempts are to be documented:
- All pertinent data to include date, time, site of insertion, catheter gauge, number of sticks, and staff member initiating IV access is to be documented.
 - If more than 2 attempts to start intravenous access are necessary, assistance is to be obtained from a nurse experienced in starting IV's.
 - After four attempts at initiating IV access, the physician may be notified for further instructions.

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

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Manual: Nursing

9. IV site dressing is to be applied over the IV insertion site to securely anchor the catheter/needle, avoid irritating motion and to avoid transport of cutaneous bacteria to the venipuncture site:
 - Skin prep may be used to secure dressing.
 - Tape is not to be applied under the transparent dressing.
 - Transparent dressing is to be applied over IV site to cover hub only, not junction of tubing and hub, to allow for easier tubing changes;
 - The date, catheter/needle gauge, and initials of staff member initiating access are to be noted and securely attached to the dressing;
 - Transparent dressing does not need to be changed unless integrity of the dressing is disturbed.
10. Protocol for collecting blood sample from IV site:
 - If blood is drawn when IV initiated, blood is to be collected prior to flushing of catheter with normal saline.
 - If blood is drawn from an established IV site, 3 mls of blood is to be discarded prior to collecting blood sample.
11. INT Protocol for Flushing:
 - Swab injection cap with Site Scrub.
 - Instill the saline flush via endcap to flush access: maintaining positive pressure on plunger while infusing last 1/4 ml of saline flush as the clamp is closed.
12. Protocols for INT flushes to minimize clot formation: **[See attached]**
 - Adolescents [13 - 18 years] and adults are to have INT flushed with 3 mls of saline on insertion, after administration of each medication, or a minimum of every 8 hours/PRN;
 - The pediatric [12 years of age and younger and younger] is to have INT flushed with 1 ml of saline [preservation free] on insertion, after administration of each medication, or a minimum of every 4 hours/PRN;
 - Flushing the INT with saline is to be documented on the eMAR.

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

Page: 6 of 9

Manual: Nursing

13. IV Related Monitoring/Care:

- A buretrol is to be utilized for all patients 12 years of age and under. Fluid volume of buretrol is to be limited to hourly infusion rate.
[Exception : NBN – volume of buretrol is to equal IV rate for 4 hours]
- IV site is to be checked hourly and PRN with appropriate documentation.
- Phlebitis/Infiltration scale [attached] is to be utilized to address IV site condition a minimum of once per shift, unless complications warrant additional evaluations.
- An Event Record is to be completed when IV complications are identified.
- IV intake is to be recorded per policy or as ordered with appropriate documentation in CERNER [right click on IVF on eMAR to enter volume or enter amount manually based on IV pump primary volume.
- IV site is to be changed every 3 days unless a physician order is obtained to use for a longer time frame.
- IV access initiated outside RMC or with poor asepsis is to be restarted within 24 hours.
- IV tubing is to be changed every 3 days. Exception :
 - EMS tubing – change on admission ;
 - Propofol tubing – change every 12 hours ;
 - TPN/PPN tubing/filter – change every 24 hours.
- A change sticker is to be applied to the IV tubing to indicate the day tubing is to be changed.
- With intermittent therapy, cap off end of IV tubing with Dual Luer Lock Cap [blue dead end cap]. Use a new cap each time [do not leave tubing open to air].

Note : ~~In an emergency, if EMS tubing has to be used prior to changing, a needle-lock device is to be attached to the Y-port for Clearlink access.~~

14. KVO Rate: [Keep Vein Open]

- Utilize appropriate size bag to total 24 hours volume [i.e. 500 ml bag of IVF's for adults; 250 ml bag for all others].
- The KVO rate for an adult patient is not to exceed 25 mls/hour unless specifically ordered otherwise by the physician.
- The KVO rate for a renal patient is not to exceed 10 mls/hr unless specifically ordered otherwise by the physician.
- The KVO rate for a pediatric patient is not to exceed 5 mls/hr unless specifically ordered otherwise by the physician.

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

Page: 7 of 9

Manual: Nursing

15. Infusion Control Devices:

- An infusion control device is to be utilized for all IV infusions.
Exceptions:
 - Infusion control device may not be warranted when transporting a patient between nursing units unless the IV solution is medicated.
 - Non-medicated IVF at KVO rate may be regulated by roller clamp.
 - When IVF bolus is required.

16. IV Access Removal:

- Carefully remove the transparent dressing with alcohol, taking care not to disturb the catheter/needle.
- A 2 x 2 sterile pad or alcohol-swab is to be placed just above the IV site.
- Without pressure, the device is to be quickly withdrawn pulling straight back to avoid tearing the vein.
- If butterfly used:
 - Place a gauze pad over the venipuncture site, covering the body of the device;
 - While needle still inside vein, grasp body of device with thumb and middle finger and activate button with tip of index finger [without impeding retraction of the needle at the end of the set].
 - withdraw by grasping the translucent yellow safety shield grip area with the thumb and index finger with opposite hand, grasp tubing between thumb and index finger, push yellow shield forward until safety shield is locked in place.
- Confirm that needle is shielded and dispose of device in approved sharps container.
- Immediately apply pressure and maintain the pressure to the site with the gauze until bleeding is stopped to prevent hematoma formation or/and blood oozing out of the vein.
- A band-aid or pressure dressing is to be applied as indicated.
- For removal of external jugular [EJ] catheters:
 - Apply direct pressure with gauze for at least 5 minutes;
 - Apply pressure dressing;
 - Instruct patient to continue manual pressure to site for an additional ten minutes to minimize hematoma formation.

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

Page: 8 of 9

Manual: Nursing

- The venipuncture site is to be assessed for redness, swelling, or formation of a hematoma.
- The intravenous access device is to be assessed for integrity. The physician is to be notified if the integrity of the catheter has been compromised.
- Document the discontinuation of the IV access, site, and access device integrity.

17. Cultures:

- Cultures of IV catheter and/or fluid may be required if either is the suspected cause of infection in a patient.
- Each specimen is to be labeled with patient information, noting the type of specimen, date and time of collection, and the **CERNER** logon name of staff member collecting the specimen.
- If IV fluids is the suspected source of infection:
 - Aseptically withdraw 20 mls of fluid into syringe and place in sterile specimen container.
 - The lot number of IV fluid container is to be recorded on the specimen container label and comment section of computer generated order.
 - Send to lab immediately.
- If IV cannula is the suspected source of infection:
 - Prep insertion site.
 - Aseptically remove the cannula.
 - Clip cannula tip with sterile scissors and drop tip into a sterile container.
 - Label and send to lab immediately.

Subject: Intravenous Therapy
[Peripheral Access]

TJC Function: PC

Page: 9 of 9

Manual: Nursing

Vice President, Patient Care Services/Date

Chairman of Infection Control Comm./Date

References:	
N	• INS Guidelines • CDC Standards for Intravenous Therapy

Written: 1/00, 5/00, 2/03, 3/04, 3/06, 4/13
{IVAccess.Doc}



the Regional Medical Center

Subject: Medication Management:
Parenteral Medications

TJC Function: MM

Page: 1 of 4

Manual: Nursing & Pharmacy

PURPOSE: To define a process for parenteral administration of medications.

POLICY: The licensed nursing staff [after completion of appropriate education] is to administer parenteral medications as prescribed by the physician. The RN must administer IV push [bolus] medication and perform IV admixtures per the Nurse Practice Act when permitted per policy.

Only the pharmacy staff compounds or admixes sterile medications, including intravenous admixtures, except in emergencies, when the drug is to be used immediately, when not feasible [i.e. when the product is compounded, it has limited stability] or in ED, OR or other settings where a licensed independent practitioner controls the preparation of the medication.

PROCEDURE:

1. Refer to Medication Administration table [attached] for techniques for intradermal, subcutaneous, intramuscular and Z-track injections.
2. Injection site is to be documented using appropriate abbreviations:

RD	-	right deltoid
LD	-	left deltoid
RG	-	right gluteal
LG	-	left gluteal
RT	-	right lateral (lower) thigh
LT	-	left lateral (lower) thigh
LA	-	left arm
RA	-	right arm
ABD	-	abdomen
3. When allowed per policy, the licensed nurse is to prepare the parenteral [IM, subcutaneous, intradermal, etc.] medication immediately prior to administration.

Subject: Medication Management:
Parenteral Medications

TJC Function: MM

Page: 2 of 4

Manual: Nursing & Pharmacy

4. The process for reconstituting of powdered medications when allowed per policy:
 - Inject the amount of diluent required per manufacturer into the vial of medication [preservative free sterile water, normal saline or other suitable preservative free diluent is to be utilized for newborns and pediatric patients up to 3 months of age];
 - Mix the solution by shaking gently;
 - Label multidose vial with:
 - time and date of reconstitution
 - amount and type of diluent added
 - equivalent dosage per ml
 - initials of staff reconstituting the medication.
 - Refrigerate when indicated.
 - Discard per policy.
5. To administer IV medications to pediatric patients/newborns:
 - Obtain prepared medication from Pharmacy;
 - Medications for pediatric patients [12 years of age or younger] are to be in a syringe rather than a minibag.
 - For IVF rates greater than 15 ml/hour, add medication to burette and fill with fluid volume to equal hourly infusion rate [medication volume plus fluid volume to equal hourly IV rate]; then infuse at prescribed rate.
 - When monitoring drug levels [i.e. Theophylline, Gentamicin, etc.], the medication is to be administered via a medfusion syringe pump.
 - For IVF rates less than 15 ml/hour and medication volumes less than 2 mls, use syringe pump. If not available:
 - close roller clamp;
 - pinch tubing below lower "y" port;
 - inject medication slowly into lower "y" port;
 - release tubing;
 - restart IV at prescribed rate.
6. To administer IV push medications, the RN is to:
 - Dilute appropriate medications with normal saline or sterile water to promote ease of calculation and accuracy of dosage or obtain premixed diluted medication, if available.
Ex. [Morphine 10 mg/ml diluted with 9 mls NS = 1 mg/ml]
 - The syringe of diluted medication is to be labeled with dosage of medication, amount of diluent, resultant concentration, date/time and initials of person preparing medication.

Subject: Medication Management:
Parenteral Medications

TJC Function: MM

Page: 3 of 4

Manual: Nursing & Pharmacy

- Check compatibility of IV medication and IV solution; if incompatibility noted, flush line with NS before and after medication administration.
 - Close roller clamp or pinch IV tubing, wipe lower "y" port injection cap with an alcohol swipe, inject small amount of medication slowly. Open roller clamp and re-adjust flow rate or release IV tubing to flush line.
 - If medication requires further dilution, medication may be administered via infusing IV fluids using upper "y" port to administer medication.
 - Document medication and dosage administered, duration of administration and drug effect/adverse reactions.
7. When an IV additive is not available in a premixed solution and when permitted per policy, the RN is to compound the admixture:
- Obtain the required medication dose and type/amount of diluent;
 - Wipe the injection port of the diluent container and add the prescribed dose of medication utilizing aseptic technique
 - Mix the solution thoroughly;
 - Label the solution using a red "medication added" sticker [refer to policy "Medication Management: Labeling"].
 - Refer to policy "Medication Management: Compounding" for additional information.
8. To administer a continuous IV medicated infusion:
- Utilize the standardized premixed solution or pharmacy staff (or RN in emergency situation) is to prepare the medicated infusion according to the "Red Medication Booklet".
 - Utilize IV pump to deliver the prescribed dose via the specific drug dosing parameters.
 - Document the infusion admixture, to include the type and amount of medication and diluent and the prescribed dose with equivalent ml/hour rate. Also document when the infusion was initiated and ended.
9. Refer to the "Red Medication Booklet" for protocols to titrate or taper the medicated IV infusions.

Subject: Medication Management:
Parenteral Medications

TJC Function: MM

Page: 4 of 4

Manual: Nursing & Pharmacy



Chairperson P&T Committee/Date



Pharmacy Director/Date



VP - Patient Services/Date

References	
E	• RMC P&T Committee
N	• 2012 Hospital Accreditation Standards

Written: 5/78, 5/81, 11/83, 1/86, 9/86, 11/87, 10/89, 10/93, 2/97, 8/99, 10/02, 2/03, 8/05, 6/12

Techniques for administration of medication by injections:

Reminders for all injections:

- Cleanse site with alcohol prep, wiping from center out to the periphery;
- Express the air bubbles from the syringe leaving 0.1 ml at the tip so that all medication will be expelled;
- After medication is administered, activate safety device and discard in the sharps container.

Type injection: Subcutaneous
Site of injection: Upper lateral aspect of arm, anterior portion of thigh, abdomen
Needle: 25 – 26 gauge, 3/8 - 5/8 inch needle
Fluid Amount: Usually 2 mls or less
Administration:

- Insert needle at a 45 or 90 degree angle depending on patient size;
- Inject medication slowly;
- Withdraw needle quickly and apply pressure unless contraindicated.

Type injection: Intramuscular
Site of injection: Larger muscle masses as deltoid muscle, gluteal muscles and vastus lateralis
Needle: Appropriate size gauge and length for patient [gauges 22 or 23]
Fluid Amount: Usually 2 mls or less
Administration:

- Insert needle at a 90 degree angle
- Pull back on plunger [if blood return noted, discard and prepare another dose of medication]
- Inject medication slowly;
- Withdraw needle at same angle as inserted;
- Apply pressure and/or massage injection site unless contraindicated.

Type injection: Intradermal
Site of injection: Medial forearm [back surfaces for allergy testing]
Needle: 26 gauge, 3/8 inch needle
Fluid Amount: Usually 0.5 mls or less
Administration:

- Pull the patient's skin taut;
- Insert needle at 10 – 15 degree angle with bevel of needle facing up;
- Inject medication slowly, observing for wheals and blanching [normal];
- Withdraw needle, wiping are gently if necessary

Type injection: Z-track [for administration of irritating medications]
Site of injection: IM site [preferably in a larger, deeper muscle]
Needle:

- Appropriate size gauge and length for patient
- Apply new needle to syringe after preparing medication so no solution remains on outside of needle shaft

Fluid Amount: Usually 2 mls or less
Administration:

- Pull overlying skin and subcutaneous tissue approximately 1 – 1½ inches laterally to the side
- Insert needle at a 90 degree angle
- Pull back on plunger [if blood return noted, discard and prepare another dose of medication]
- Inject medication slowly;
- Leave needle inserted for 10 seconds to allow the medication to disperse evenly;
- Release the skin after withdrawing the needle [leaves zigzag path that seals the needle tract].

ITEMIZED BILL

PAGE 1

DATE 06/09/2015
TIME 01:10:01 PMREGIONAL MEDICAL CENTER
3000 ST. MATTHEWS ROAD
ORANGEBURG SC 291181442

PATIENT CONTROL NUMBER

PATIENT NAME

MEDICAL RECORD NUMBER

BEGINNING DATE OF SERVICE
110314ENDING DATE OF SERVICE
112814

REV CODE	PROCEDURE DESCRIPTION	HCPCS/ RATES	DATE	UNITS	CHARGE AMOUNT	NC CHARGE AMOUNT
0272	WND KLING GAUZE		110514	1	78.00	
0272	WND KLING GAUZE		110614	1	78.00	
0272	WND KLING GAUZE		111114	3	234.00	
0272	DRESSING, MEDIHONEY 2X2	46196	111114	1	18.00	
0272	WND KLING GAUZE		111314	1	78.00	
0272	DRESSING, MEDIHONEY 2X2	46196	111814	1	18.00	
0272	DRESSING, MEDIHONEY 2X2	46196	112814	1	18.00	
0420	WND PT DEBRIDEMENT/SKIN	0759759GP	111914	1	199.00	
0940	WND LOW FREQUENCY ULTRAS	07610	110314	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	110514	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	110614	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	111114	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	111314	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	111414	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	111814	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	0761059	111914	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	112114	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	112414	1	225.00	
0940	WND LOW FREQUENCY ULTRAS	07610	112614	1	225.00	
0001	PAGE 1 OF 1			21	3196.00	
0001	TOTAL			21	3196.00	

PLAINTIFF'S
EXHIBIT

ITEMIZED BILL

PAGE 1

DATE 06/09/2015
TIME 10:19:59 AMREGIONAL MEDICAL CENTER
3000 ST. MATTHEWS ROAD
ORANGEBURG SC 291181442PATIENT CONTROL NUMBER
[REDACTED]PATIENT NAME
[REDACTED]MEDICAL RECORD NUMBER
[REDACTED]BEGINNING DATE OF SERVICE
111114ENDING DATE OF SERVICE
112814

REV CODE	PROCEDURE DESCRIPTION	HCPCS/ RATES	DATE	UNITS	CHARGE AMOUNT	NC CHARGE AMOUNT
0510	WND OP FACILITY FEE LEVE	99213	111114	1	237.00	
0510	WND OP FACILITY FEE LEVE	9921325	111914	1	237.00	
0510	WND OP FACILITY FEE LEVE	9921325	112114	1	237.00	
0510	WND OP FACILITY FEE LEVE	99213	112814	1	237.00	
0001	PAGE 1 OF 1			4	948.00	
0001	TOTAL			4	948.00	

From 10/01/14 To 06/09/15
 Statement of Account
 TRMC HOSPITALIST WOUND CENTER
 3000 ST MATTHEWS RD
 ORANGEBURG SC 29118-1442

Page 1

Account [REDACTED]

Business Phone 803-395-4566
 Registration Phone

Statement Date 06/09/15

Federal ID No. [REDACTED]

BC 10 TIKAYAH JEWEL HAMILTON
 FC [REDACTED]
 NC [REDACTED]

- - Patient Name - -

- - Misc Remarks - -

Date	Patient	Code	PL	Mod	Description	Units	Doctor	Amount
11/19/14	ROBERT	99213	22		OFFICE/OUTPATIE	1.000	Gehling, Ma	89.00
					VISIT EST			
11/26/14	ROBERT	12			[REDACTED]		Gehling, Ma	29.35-
11/26/14	ROBERT	99912			[REDACTED]		Gehling, Ma	59.65-
12/05/14	ROBERT	99212	22		OFFICE/OUTPATIE	1.000	Gehling, Ma	65.00
					VISIT EST			
01/09/15	ROBERT	12			[REDACTED]		Gehling, Ma	14.93-
01/09/15	ROBERT	99912			[REDACTED]		Gehling, Ma	50.07-
10/31/14	ROBERT	99214	22		OFFICE/OUTPATIE	1.000	Gehling, Ma	140.00
					VISIT EST			
02/25/15	ROBERT	12			[REDACTED]		Gehling, Ma	45.39-
02/25/15	ROBERT	99912			[REDACTED]		Gehling, Ma	94.61-
11/21/14	ROBERT	99213	22		OFFICE/OUTPATIE	1.000	Gehling, Ma	89.00
					VISIT EST			
03/18/15	ROBERT	12			[REDACTED]		Gehling, Ma	58.70-
03/18/15	ROBERT	99912			[REDACTED]		Gehling, Ma	119.30-
11/28/14	ROBERT	99213	22		OFFICE/OUTPATIE	1.000	Gehling, Ma	89.00
					VISIT EST			
03/02/15	ROBERT	99212	22		OFFICE/OUTPATIE	1.000	Gehling, Ma	65.00
					VISIT EST			
04/06/15	ROBERT	12			[REDACTED]		Gehling, Ma	14.93-

04/06/15 ROBERT 99912
50.07-

~~XXXXXXXXXXXX~~

Gehling, Ma

Total Listed:	.00
Total Not Listed:	.00
Balance Due:	.00

Peter C. de Vito, M.D.
PLASTIC AND RECONSTRUCTIVE SURGERY
1050 ST. ANDREWS BLVD.
CHARLESTON, SOUTH CAROLINA 29407

TELEPHONE (843) 571-2350

02/03/15

Jonathan Krell, Esquire
P O Box 399,
Charleston SC, 29401

RECEIVED

Dear Mr. Krell

This letter is regarding the future medical treatment required to assist Robert Middleton; these are a direct result of the accident which occurred on October 2014, when my patient sustained injuries. The following treatments and fees would be recommended:

Intralesional injections with cortico-steroids at a fee of \$85.00 per injection.
The patient will need these treatments at monthly intervals for an indefinite period, to obtain the desired softening.

The surgical fee for scar revision with possible skin graft of the right hand would be \$2,500.00. The hospital, operating room, and anesthesia fees could range from \$4,000.00 to \$12,000.00 or more depending upon the length of stay, etc.

It should be understood, however, that while these procedures will improve the scarring, the patient will still be left with noticeable scars due to the nature of the injury.

If further information is needed to assist my patient, please do not hesitate to contact my office.

Very truly yours,

Peter C. de Vito, M.D.

Peter C. de Vito, M.D., F.A.C.S.
DBNR

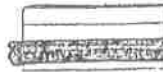
PCD:pdv



Peter C. DeVito, M.D.
1050 St. Andrews Boulevard
Charleston, SC 29407

(843)571-2350

THIS IS A STATEMENT OF YOUR ACCOUNT AS OF THE FOLLOWING DATE. ANY CHARGES OR
PAYMENTS MADE AFTER THE DATE WILL APPEAR ON THE NEXT STATEMENT.



4/23/18



ESTABLISHED
% PER
MONTH

equal
to
%

ESTABLISHED
% PER
MONTH

After review by the undersigned of all the billing data reported by the physician, the amount of each bill is determined and no further claims are made against the physician's account.

DATE	PROCEDURE	PATIENT NAME	DOCTOR	CHARGES	CREDITS	BALANCE
1/26/15	Atty J Krell				500.00	-500.00
2/2/15	Consult, Exam & Evaluation		Peter C. DeVito	500.00		0.00
3/2/15	Estab Patient follow up (15)		Peter C DeVito	30.00		30.00
4/23/18	Estab Patient follow up (15)		Peter C. DeVito	75.00		105.00
Current 75.00 30 Days 0.00 60 Days 0.00 90 Days 0.00 120 Days 0.00 150+Days 30.00						Please Pay This Amount 105.00

FEB-1-2015 12:38 FROM:

TO:5774179

P.2/4

Peter C. DeVito, M.D.
1050 St. Andrews Boulevard
Charleston, SC 29407

(843)571-2350

THIS IS A STATEMENT OF ACCOUNT FOR THE DATE ANY PAYMENT ON
THIS STATEMENT MUST BE MADE WITHIN THE DATE OF THE STATEMENT



2/2/15



ADMINISTRATIVE	DATE	BY	INITIALS

THIS STATEMENT IS THE PROPERTY OF THE HOSPITAL. IT IS TO BE KEPT IN THE OFFICE OF THE PHYSICIAN. IT IS NOT TO BE LOANED, REPRODUCED OR COPIED. IT IS TO BE DESTROYED AFTER THE PHYSICIAN'S DEATH.

DATE	PROCEDURE	PATIENT NAME	DOCTOR	CHARGES	CREDIT	BALANCE
1/28/15	Ally J Kral				500.00	-500.00
2/2/15	Consult, Exam & Evaluation		Peter C. deVito	500.00		0.00

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
) CASE NUMBER: 2015-CP-38 011,334

TEKAYAH HAMILTON, INDIVIDUALLY
AND AS PARENT AND GUARDIAN AD
LITEM FOR ROBERT LEE M., JR.
A MINOR CHILD UNDER THE AGE
OF EIGHTEEN,

Plaintiffs,

v.

REGIONAL MEDICAL CENTER AND
JAMIE DOWNING, RN,

Defendants.

AFFIDAVIT OF MONICA
STORBS, RN, JEN
15 OCT - 7 P 4:29
CLERK OF COURT
JANITA D. CLARK

PERSONALLY, appeared before me, the undersigned, who being duly sworn, under the penalties of perjury, says as follows:

1. I am a licensed registered nurse in the state of South Carolina.
2. My education, training and experience are set forth in the attached curriculum vitae (attached hereto as Exhibit 1).
3. My education, training and experience qualify me to render expert opinions regarding the care rendered to Robert Lee M., Jr.
4. I am familiar with the standard of care for what a reasonable, prudent nurse would do or not do in administering IV medication, including but not limited to the intravenous administration of antibiotics including similar situations to that of Robert Lee M., Jr.
5. I reviewed the medical records of Robert Lee M., Jr., which consist, in part, of records from Regional Medical Center located at 3000 St. Matthews Rd., Orangeburg, SC 29118. These are the types of records and documents which I normally consider in rendering an expert medical opinion.



6. After review of the afore mentioned medical records, it is my opinion to reasonable degree of medical certainty that Regional Medical Center and the nursing staff while in the course and scope of its employment at Regional Medical Center committed negligent acts or omissions in its care of Robert Lee M., Jr.
7. On October 25, 2014 Robert Lee M., Jr., was admitted to Regional Medical Center for the treatment of neo-natal fever. During the course of treatment at Regional Medical Center, the nursing staff administered intravenous antibiotic medication to Robert Lee M., Jr. Without intending to limit the scope of my opinions, below are some of the breaches of the standard of care for the administration of IV medication to Robert Lee M., Jr.:
 - a. Failing and neglecting to properly inspect the IV site on October 28, 2014 at approximately 4:27 a.m. prior to the administration of antibiotic medication.
 - b. Failing and neglecting to properly monitor the IV site after the administration of the antibiotic medication.
8. Further, it is my opinion, to a reasonable degree of medical certainty that the actions or inactions of the defendants most probably caused and/or contributed to the injuries and damages suffered by Robert Lee M., Jr.
9. This Affidavit is given in compliance with the South Carolina Code of Laws which do not require me to state all negligent acts or omissions by any defendant. Additionally, I reserve the right to supplement or amend this Affidavit or any testimony by me after receiving additional medical records, documents, depositions and/or information.

Signature Page to Follow

Monica Stokes
MONICA STOKES, RN, BSN

SWORN TO AND SUBSCRIBED BEFORE ME

This 12th day of March, 2015

Chris M. [Signature] SEAL

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 08/15/2024

Monica Stobbs, RN, BSN
164 Market Street, Suite 295
Charleston, SC 29401
TEL: (857) 334-5310 EMAIL: monicastobbs@gmail.com

PROFESSIONAL BACKGROUND

- 2012 – Present MEDICAL UNIVERSITY OF SOUTH CAROLINA, Charleston, SC
Per Diem Nurse at this Level One Trauma Center
♦ Clinical areas of practice include Adult General Medicine & Surgery
- 1990 – 2012 MASSACHUSETTS GENERAL HOSPITAL, Boston, MA
Per Diem Nurse at this Harvard affiliated hospital
♦ Clinical areas of expertise include Trauma Surgery; Orthopaedics, Neurosurgery, General Surgery, Acute Medical & Cardiac Units
♦ Interface daily with nationally recognized physicians in collaborative patient care
♦ Provide advanced in-patient care using state of the art equipment (including ventilator & cardiac monitoring)--
♦ Certified IV Therapy Instructor; BCLS; EKG interpretation
- 1994 - 1996 MA DEPARTMENT OF PUBLIC HEALTH, Boston, MA
Nurse Consultant
♦ Monitored seven (7) Long-Term Health Care facilities in MA for Quality Assurance, Regulatory Compliance and Standards of Clinical Practice
♦ Identified substandard areas of health care delivery
♦ Assisted facilities in developing plans of correction for substandard areas of practice
♦ Reported directly to MA's top three (3) Health Care officials
♦ One (1) of two (2) nurses in the country to perform this role
- 1986 - 1990 NEW YORK HOSPITAL-CORNELL MEDICAL CENTER, New York, NY
Acting Head Nurse on an Open Heart Surgery Critical Care Unit
1986 - 1989 Senior Staff Nurse in this 1,000 Bed Metropolitan Hospital
- 1988 - 1989 WASHINGTON UNIVERSITY MEDICAL CENTER, St. Louis, MO
Per Diem Nurse (General Medical/Surgical Units Organ Transplant & Critical Care Units)
♦ Performed basic & advanced nursing skills in a variety of settings including Critical Care & Organ Transplant Units

PAGE 2 of 2

M. Stobbs, RN, BSN

1983 - 1985

ST. LOUIS UNIVERSITY HOSPITAL, St. Louis, MO

Charge Nurse/Staff Nurse (Cardiology & Head/Neck Surgical Unit)

- Provided direct patient care including EKG recognition, respiratory & intravenous therapy, advanced physical assessments

EDUCATION:

BSN - May 1983, Creighton University School of Nursing
Current License in the State of SC

Presentations:

- Evaluating Spine Injury Claims; NCAI & APTLA Medical-Malpractice Seminar; Raleigh, NC; Nov 2011. CLE credited.
- Evaluating Spine Injury Claims; South Carolina Bar Association; Columbia, SC; October 2012. CLE credited.
- Evaluating Spine Injury Claims; United States Attorney Office, Southern District of Illinois; October 2013. CLE credited.
- Evaluating Spine Injury Claims; United States Attorney Office, Southern District of Florida; February 2014. CLE credited.

Publications:

- D.C. Trial Lawyers Association (DCTLA) Quarterly Journal; "Evaluating Spine Injury Claims". January 2012.
- The Nurse's Note
 - o "Spine Arthritis & Back Injury Claims; Jan 2010
 - o "Spine Surgery: Complications of Spinal Fusion Surgery"; Feb 2010
 - o "Evaluating Breast Cancer Cases"; March 2010
 - o "Orthopaedic Emergencies: Acute Compartment Syndrome"; April 2010
 - o "Case Report: Plaintiff Wins 1.1 Million in ACS Case"; May 2010
 - o "Medical Chronology A Critical Tool for Winning Your Case"; June 2010
 - o "Evaluating Brain Injury Cases"; July 2010
 - o "Sleep Deprivation"; August 2010
 - o "Spinal Disc Replacement Surgery"; Sept 2010
 - o "Evaluating Cancer Claims"; Oct 2010
 - o "Emergency Room Practice: Imaging Protocols for Abdominal Pain"; Nov 2010.

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8 of any signs and symptoms of swelling?

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10 Q. All right. How many times have you given a

11 peripheral IV to, with a 24 gauge needle to a

12 pediatric patient?

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14 patient. I've administered thousands to adults.

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22 Q. Let me finish. Because you have no experience in

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25 You should get blood return from a vein whether

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24 Q. All right. Tell me why?

25 A. Because when theres an infiltration of the vein and

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

Tekayah Hamilton, individually and)
as parent and guardian ad litem for)
Robert Lee M., Jr., a minor child)
under the age of eighteen,)

C/A No.: 2015-CP-38-01234

Plaintiff,)

-vs-)

**NOTICE OF MOTION AND
MOTION IN LIMINE TO EXCLUDE
MONICA STOBBS TESTIMONY**

Regional Medical Center)

Defendant.)

Defendant, The Regional Medical Center, (hereinafter TRMC), by and through the undersigned, hereby states the following for TRMC's Motion in Limine:

1. The Plaintiff commenced this action alleging Medical Malpractice against the Defendant, TRMC. The matter is scheduled for a date certain trial on May 7, 2018. Defendant TRMC is moving pursuant to this Motion in Limine to exclude Monica Stobbs, RN from testifying as a medical expert in administering/managing pediatric IV therapy.

2. Monica Stobbs is not qualified to testify as to IV Therapy for pediatric patients. There is a clear distinction between treatment of adults and pediatric patients, particularly neonates and infants. Monica Stobbs testified to the fact she never cared for and managed any pediatric patient with a peripheral IV and did not research any treatises or other journals regarding the treatment of pediatric peripheral IV treatment. Her contention that IV management for

pediatric patients is the same for adults is simply not accurate and contrary to modern medicine and the literature. Monica Stobbs has never started an IV on a pediatric patient.

3. In order to qualify an expert they must have the "knowledge, skill, experience, training or education" in order to testify. SCRF 702. "To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter.'" *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Cl. App. 1995); see also *Botehlo v. Bycura*, 282 S.C. 578, 587, 320 S.E.2d 59, 65 (1984) (orthopedic surgeon was not qualified to testify on the standard of care for podiatrist where orthopedic surgeon had no training in podiatry, was not familiar with any journals or periodicals in podiatry, and was not familiar with the surgical procedure performed).

4. Ms. Stobb's expert opinion is premised on her belief that the standard of care for IV management is the same for pediatric patients as it is for adults. Stobbs Depo. pg. 13 ll. 13-18 (Exhibit 1). There is a clear distinction between IV management in adults than pediatric patients.¹ Veins in infants are "obviously smaller" and they can be "threadlike".² In Ms. Stobb's deposition she testified to the fact she never treated a pediatric patient with IV therapy indicating

¹The Infusion Nurses Society: *In fusion Therapy in Clinical Practice*, 2nd. eds Hankins J, Lonsway RA, Hedrick C and Perdue MB. Saunders, St. Louis, MO 2001, 561 "Children present a wide variety of physical characteristics different from those in adults. In addition, premature infants and newborns vary greatly from older children in their anatomy and physiology. These characteristics affect the ability of neonates and infants to cope with environmental stress and to manage the metabolism, absorption, distribution, and excretion of medications and solutions. Although body systems in infants and children are different from those in adults, for the purpose of this text, only those related to infusion therapy are addressed in detail." (Exhibit 5).

²*Id.* at 562 "The size of venous and arterial vessels in the infant and child are obviously smaller than those in the adult. Although the vessels are anatomically positioned in the same locations throughout life, their sometimes-threadlike characteristics and tendency to hide make them difficult to locate in the young patient." (Exhibit 6).

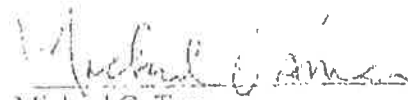
her lack of skill and experience in the subject matter, Stobbs Depo. pg. 13 ll. 9-24. She further testified she did not read any literature regarding the management of IV's in pediatric patients in preparing for this matter showing she lacks both knowledge and education. Stobbs Depo. pg. 26 ll. 15-24. (Exhibit 2). Her entire expert opinion is based on her speculative belief that pediatric patients are simply little adults. She stated "[t]aking care of an IV is an IV whether it's a baby or an adult." Stobbs Depo. pg. 13 ll. 15-16. And that the standard of care is the same, it is simply "nursing 101." Stobbs Depo. pg. 26 ll. 17. She is under the belief that she "should get blood return from a vein whether it's a baby or whether it's an adult." Stobbs Depo. pg. 32 & 33 ll. 24-7 (Exhibits 3 & 4). This is directly contrary to the literature.³ Because Ms. Stobbs lacks any experience, skill, training, knowledge, or education and her testimony is premised on her experience managing adult patients Ms. Stobbs is not qualified to give an expert opinion on IV therapy in pediatric patients, as she will not assist the jury as she is not qualified on the subject matter.

5. Similar to the facts in *Botehlo*, 282 S.C. 578, Ms. Stobbs, while a nurse, has not administered IV therapy or cared for a pediatric patient with IV therapy, similar to how the orthopedic surgeon was not familiar with the procedure performed by the podiatrist. Likewise, Ms. Stobbs has not reviewed any literature regarding IV therapy in pediatric patients, the same as the orthopedic surgeon not having reviewed any journals or periodicals for podiatry. *Id.* The only distinction is that here Ms. Stobbs is a nurse. Ms. Stobbs has not started or managed an IV on a pediatric patient. Using the requirements of the *Botehlo* case, Ms. Stobbs is not qualified to give an expert opinion on pediatric IV therapy. *Id.*

³*Id.* at 422 "Checking for a blood return, or backflow of blood, is not a reliable method for determining the absence of an infiltration. A blood return may not be present when small veins are used because they may not permit blood flow around the cannula; one may think the infusion has infiltrated when it has not." (Exhibit 7).

WHEREFORE, defendant the Regional Medical Center (TRMC) hereby prays this Court
issue its Order granting its Motion in Limine excluding Monica Stobb's testimony as an expert.

MICHAEL C. TANNER, L.L.C.



Michael C. Tanner

PO Box 1061

Bamberg, SC 29003

(803) 245-9153

Attorney for Defendants

Bamberg, SC

May 1, 2018

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Exhibit 4

Chapter

30

Intravenous Therapy in Children

Anne Marie Frey, BSN, CRNI*

ANATOMIC AND PHYSIOLOGIC DIFFERENCES IN CHILDREN

Physiologic system development in children

Body composition

PEDIATRIC DEVELOPMENTAL AND ASSESSMENT CONSIDERATIONS

History

Physical assessment

FLUID THERAPY

Maintenance fluid requirements

Replacement (deficit) therapy

FLUID VOLUME DEFICIT

Isotonic

Hypotonic

Hypertonic

OTHER INTRAVENOUS THERAPIES

Medication administration

Parenteral nutrition

Transfusion therapy

Exchange transfusion

PERIPHERAL ACCESS

Site selection

Peripheral sites

Peripheral access devices

Venipuncture

Heparin locks versus saline locks

Complications

CENTRAL ACCESS

Central venous catheters

OTHER INTRAVASCULAR ROUTES

Umbilical vein versus artery

Intraosseous routes

ADMINISTRATION EQUIPMENT

Containers

Administration sets

Electronic monitoring devices

ALTERNATIVE SITE INFUSION THERAPY

Subcutaneous care

Home infusion therapy

SUMMARY

Starting and maintaining intravenous (IV) therapies in children poses unique challenges to the clinicians responsible for their care. Children are not only very different from adults, but they also display variations among their different age groups. These differences include physical, physiologic, developmental, cognitive, and emotional variables. When any type of infusion therapy is used in a child, a great responsibility is placed on the nurse. Accordingly, the nurse performing IV techniques in children should be highly skilled in the basic IV therapy applications and knowledgeable of the child's developmental stage. Most of the basic principles of safe administration of IV solutions and medications are the same, regardless of the patient's age. However, special considerations are necessary to safeguard the child undergoing these procedures; these measures include the need to calculate small doses and low infusion rates, to choose appropriate venipuncture sites and equipment, and to develop creative measures to distract curious little minds and hands.

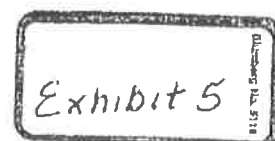
This chapter focuses on the needs of children as they relate to infusion therapy and on the unique aspects of caring for children and their families.

ANATOMIC AND PHYSIOLOGIC DIFFERENCES IN CHILDREN

Children present a wide variety of physical characteristics different from those in adults. In addition, premature infants and newborns vary greatly from older children in their anatomy and physiology. These characteristics affect the ability of neonates and infants to cope with environmental stresses and to manage the metabolism, absorption, distribution, and excretion of medications and solutions. Although body systems in infants and children are different from those in adults, for the purpose of this text, only those related to infusion therapy are addressed in detail.

The newborn's adjustment to extrauterine life is a complex physiologic process. The first 24 hours of life are the most critical as the newborn makes the respiratory and circulatory transition to extrauterine life. During this period, there is a much higher incidence of death than in the remainder of the neonatal period. All of the body systems undergo change after

*The author and editors wish to acknowledge the contributions made by Corinne Wheeler, an author of this chapter in the first edition of *Intravenous Nursing: Clinical Principles and Practice*.



Physiology
10 birth, and most of them remain immature for a while. During infancy (birth to 12 months of age), physical and developmental changes occur more rapidly than during any other period. The infant's head and body grow very rapidly during this period, and major body systems undergo a progressive maturation process. In healthy infants, the birth weight is usually doubled at 6 months and tripled at 1 year. During infancy, certain critical developmental tasks that affect nursing care are mastered. However, each child has his or her own pace of development; no two children of the same age are at the same exact stage of development and maturation.

Biologic development in the toddler period (12 to 36 months) is less dramatic than during infancy. Body systems continue to mature, resulting in many children reaching full maturation by the end of the toddler period. Growth slows during this time. Birth weight is quadrupled by 36 months, and the height at age 3 years is generally about half the adult height. Head circumference growth slows, and chest circumference exceeds the size of both the head and the abdomen. The toddler is able to participate in an increased number of activities as a result of gross and fine motor skill advancement. In toddlers, IV connections must be taped and secured and equipment kept outside of the child's reach.

Early childhood (36 months to 6 years), also referred to as the *preschool period*, is a time of growth stabilization. The average annual weight gain is about 5 pounds (2.3 kg); the increase in height ranges from 2.5 to 3 inches (6.4 to 7.6 cm). Most of the height growth occurs in the legs, leading to a more slender physical appearance. The preschooler's more mature body system enables him or her to tolerate moderate physiologic stress. Skills mastered during the toddler period are refined during this time and include a rapidly developing ability to understand and use language. Expected levels of growth and development must be attained for the child to refine these skills in preparation for the next stage of childhood, school age.

The school-age period (6 to 12 years of age) is a time of gradual growth and development until the end of the period, sometimes referred to as *prepubescence*. The school-age child will grow an average of 2 inches (5 cm) and gain 4.5 to 6.5 pounds (2 to 3 kg) annually. Until prepubescence, there is little difference in size between males and females; toward the end of this stage, however, a growth spurt occurs. Girls first surpass boys in both height and weight. Body proportions approach adult measurements by the end of the school-age period.

Adolescence is the period of transition from childhood to young adulthood. This period is divided into three subages: early adolescence (11 to 13 years), middle adolescence (13 to 15 years), and late adolescence (15 years and older). The changes occurring during adolescence are primarily puberty, growth, and personality. The central nervous system is inundated with hormonal activity, and dramatic and obvious growth changes are noted in both boys and girls. Both sexes develop secondary sexual characteristics and grow larger. Less obvious is the maturation of the reproductive system. This stage is often turbulent for adolescents because they are on a constant emotional roller coaster, attempting to master the developmental tasks for adulthood.

Physiologic system development in children

Thermoregulation. The large surface area in relation to volume, thin layer of subcutaneous fat, and unique hemoglobin producing heat predispose the neonate to excessive heat loss. Measures must be taken to protect the newborn from hypothermia during all aspects of care, including obtaining vascular access and site care. Unlike the adult, the chilled neonate does not shiver but uses the mechanism of nonshivering thermogenesis to increase heat production. In response to hypothermia, norepinephrine is secreted by the sympathetic nerve endings. This action stimulates the breakdown of brown fat to generate heat, allowing distribution of the heated blood through the body.

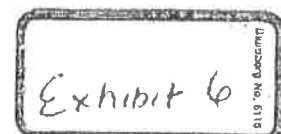
Increased metabolism as a response to hypothermia results in higher oxygen and caloric requirements. A healthy infant can usually tolerate increased oxygen consumption; however, a sick infant is predisposed to cold stress and hypoglycemia. Cold stress begins as the infant requires an increase in oxygen and caloric consumption. The activation of norepinephrine stimulates the metabolism, and anaerobic glycolysis results. The lactic acid produced by this process, combined with the acid end products of brown fat metabolism, can lead to acidosis.¹

This process of thermoregulation continues throughout the infant's first several months of life. During infancy, the child's ability to shiver increases. The older infant usually has acquired the benefit of insulation by the gradual growth of adipose tissue. By early childhood, the skin is thicker, and the body has a high percentage of fat and a decreased surface area/volume ratio; these factors enable the preschooler to better cope with environmental cold.

The nurse performing such procedures as venipuncture on an infant must maintain a neutral thermal environment for the infant to prevent the possibility of cold stress. A neutral thermal environment is one that permits the infant to maintain a normal core temperature with minimum oxygen consumption and caloric expenditure. The neutral thermal environment for smaller infants is 35.4° plus or minus 0.5° C (95.7° plus or minus 1° F) and for larger infants is 32.5° plus or minus 1.4° (90.5° plus or minus 2.5° F).²

To help infants stay warm, nurses can use radiant warming panels, incubators, cotton blankets, and head coverings (e.g., piece of stockinet knotted at one end) and ensure that only the extremity of the IV insertion site is exposed. Blankets can be warmed in warming units or in clean, unoccupied incubators. A warming lamp, placed at the recommended safe distance from the infant, can be used to prevent hypothermia if an infant must be removed from a neutral thermal environment.

Vessel size. The size of venous and arterial vessels in the infant and child are obviously smaller than those in the adult. Although the vessels are anatomically positioned in the same locations throughout life, their sometimes-threadlike characteristics and tendency to hide make them difficult to locate in the young patient. Applying heat to the extremity before performing venipuncture facilitates venous identification and catheter insertion.



Patient assessment. A complete assessment of the patient, the IV site, the involved extremity, and the infusion system may be necessary to determine the presence of an infiltration. The site around the tip of the cannula and the extremity should be inspected for swelling, blanching, stretched skin, firm tissues, and coolness. It may be helpful to compare the site with the same area on the opposite extremity. If both extremities appear edematous, the patient's medical status should be evaluated. Patients with hemodynamic problems, such as congestive heart failure, toxic conditions, compromised kidney function, hypothermia, and vascular insufficiency, are particularly prone to vascular edema. The immobilized patient or the patient with muscular weakness or paralysis of an extremity may experience edema of the extremity that is totally unrelated to a problem at the IV site.

If an assessment of the involved extremity and the patient's medical status are inconclusive, pressure should be applied to the vein with a finger or tourniquet about 2 inches above the insertion site (it must be above the tip of the cannula). If the cannula is in the vein, this pressure will slow or stop the infusion rate. If the infusion continues despite the venous obstruction, an infiltration has occurred.

Checking for a blood return, or backflow of blood, is not a reliable method for determining the absence of an infiltration. A blood return may not be present when small veins are used because they may not permit blood flow around the cannula; one may think the infusion has infiltrated when it has not. In addition, veins that have had previous punctures or that are very fragile may seep fluid at a site above or below the vein cannula entry point; a blood return may be present, yet an infiltration is occurring. The movement of a cannula, such as in-and-out motions, can also cause the skin and the vein entry site to enlarge, allowing fluid to seep at the vein entry site, causing an infiltration.

Nursing interventions. To prevent or minimize infiltration-associated problems (Box 24-3), it is imperative that the cannula be discontinued once an infiltration has been identified. The type of solution being infused should also be considered. If the solution is isotonic and has a normal pH, the patient may not feel much discomfort unless a large amount of fluid has infiltrated. In these cases, warm compresses, such as warm, moist towels or chemical packs, may help alleviate the discomfort and help absorb the infiltration by increasing circulation to the affected area. Sloughing can occur from the application of warm compresses to an area infiltrated with certain medications, such as potassium chloride. In these instances, the application of cold compresses is preferred.² Established policies and procedures should dictate the use of compresses. The involved extremity should be elevated to improve circulation and to help absorb infiltrated fluid.

If weeping of the tissues occurs because of an extensive infiltration or loose thin tissue, as is often present in the elderly, it may be necessary to apply a sterile dressing to the affected area. It is usually better to leave these areas open because the dressing necessitates the use of gauze and possibly tape, which can increase tissue damage. If a dressing is used, it should be applied loosely. Extreme care should be given to prevent infection. The physician should be notified and measures should be

Box 24-3 Effects of an Infiltration

- Depresses the patient of the prescribed rate of medication and solution is critical for successful therapy
- Limits mobility of an extremity
- Limits availability of veins for therapy
- Causes tissue damage
- Causes unnecessary patient discomfort

carried out as ordered. If an infusion is needed, a cannula is placed in the opposite extremity or in a site above and away from the previous site.

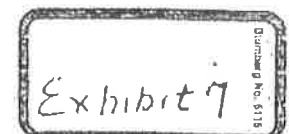
Preventive measures. Not all infiltrations can be prevented, but adherence to certain measures can minimize their severity. Flexion areas should be avoided if possible. The cannula should be taped securely, and the site should be protected from excessive movement or pressure by use of an armboard and restraints. Restraints must be applied with extreme caution and within the guidelines established by JCAHO.¹ Restraints should be well padded and applied in a manner that will not cause nerve damage, constrict circulation, or cause pressure areas. They should be removed at frequent intervals and range-of-motion exercises performed. Inadequate or improper use of armboards or restraints can cause very serious complications; policies and procedures should be established to guide their use.

Patient education can be a key factor in the prevention and early recognition of the signs and symptoms of an infiltration. Patient knowledge about the care of the IV site and system can prevent activities that may cause an infiltration, such as manipulating the cannula, pulling on the tubing, picking at the dressing, and using the extremity excessively. A patient who knows what to look for can alert the nurse to the early signs of an infiltration, and immediate care can be rendered, thereby preventing the possibility of more serious complications.

Extravasation. Extravasation is the inadvertent administration of a vesicant solution or medication into the surrounding tissues. A vesicant solution is a solution or medication that causes the formation of blisters, with subsequent sloughing of tissues occurring from tissue necrosis (Fig. 24-3).

Patient assessment. It is essential that an extravasation be noted early, before extensive fluid is allowed to infiltrate the interstitial tissues. A complete assessment of the patient, the IV site, the involved extremity, and the infusion system should be performed at regular intervals. The flow rate should never be increased to determine the infiltration of a vesicant, nor should a blood return be used as a reliable method to determine an infiltration. Fluid can seep into the tissues from a previous puncture site or around the vein insertion site and increase the potential for tissue necrosis (refer to Infiltration for the assessment process).

Initial indications that tissue sloughing may occur include pain or burning at the site with progression to erythema and edema. Tissue sloughing is usually apparent within 1 to 4 weeks because of tissue necrosis. Necrosis can involve a small or a large area, including underlying connective tissues, muscles, tendons, and bone, necessitating surgical intervention.



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FIRST JUDICIAL CIRCUIT

Tekayah Hamilton, individually and)
as parent and guardian ad litem for)
Robert Lee M., Jr., a minor child)
under the age of eighteen,)

C/A No : 2015-CP-38-01234

Plaintiff,)

-VS-)

**NOTICE OF MOTION AND
MOTION IN LIMINE TO
EXCLUDE PHOTOGRAPHS**

The Regional Medical Center)

Defendants.)

Defendants, The Regional Medical Center, (hereinafter TRMC), by and through the undersigned, hereby states the following for TRMC's Motion in Limine:

1. The Plaintiff commenced this action alleging Medical Negligence against the Defendant, TRMC. The matter is scheduled for a date certain trial on May 7, 2018. Defendants are moving pursuant to this Motion in Limine to exclude photographs of the Plaintiff's injuries;

2. Rule 403 of the SCRE states, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "A trial court has particularly wide discretion in ruling on Rule 403 objections." *Busillo v. City of North Charleston*, 404 S.C. 604, 610, 745 S.E.2d 142 (2013). "To constitute unfair prejudice, the photographs must create 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'"

State v. Holder, 382 S.C. 278, 290, 676 S.E.2d, 690, 697 (2012) (quoting *State v. Jackson*, 364 S.C. 329, 334, 613 S.E.2d 374 (2005)).

3. At trial, Plaintiff intends to introduce photographs of injuries to the Right hand of Plaintiff that were sustained while the plaintiff was a one-month old infant. The images are grotesque, close-up images of the infant's open wounds. These close-up images will create an undue tendency to suggest a decision on an emotional basis and are highly prejudicial to the defendant.

4. There is no scale in the pictures to reflect the actual size of the wound, and the close-up nature of the photos makes the wounds appear substantially larger than they are in reality. The images do not reflect the minor's hand currently, as the plaintiff's hand has healed with some scarring. Further, Plaintiff, Tekayah Hamilton is able to testify to the nature of the wound and have an expert to testify to the injury giving the alternative forms of evidence that are less prejudicial to the defendant. The probative value of these photographs of an open flesh wound are substantially outweighed by the prejudice defendants will face in these are introduced to the jury.

WHEREFORE, defendant The Regional Medical Center (TRMC) hereby prays this Court issue its Order granting its Motion in Limine excluding photographs of the minor's injuries.

MICHAEL C. TANNER, L.L.C.


Michael C. Tanner
PO Box 1061
Bamberg, SC 29003
(803) 245-9153
Attorney for Defendants

Bamberg, SC
May 1, 2018

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

TEKAYAH HAMILTON,
Individually and as Parent Guardian
Ad Litem for [REDACTED]

CASE NO.: 2015-CP-38-01234

Plaintiff,

vs.

VERDICT FORM

THE REGIONAL MEDICAL CENTER,

Defendant.

We, the jury, by unanimous consent, have responded to the following questions:

1. Do you find that the Defendant was grossly negligent?
☒ YES - Go to Question 2
☐ NO - Stop deliberations
2. Was the defendant's gross negligence a proximate cause of the Plaintiff's injuries?
☒ YES - Go to Question 3
☐ NO - Stop deliberations
3. Please state the amount of damages, if any, sustained by the minor plaintiff [REDACTED]
[You are to determine only the total amount of the plaintiff's damages
and enter that amount below.]

\$ 1,127,280.00 Actual Damages

Please state the amount of damages, if any, sustained by the Plaintiff Tekayah Hamilton,
Individually and as Parent Guardian Ad Litem for Robert Lee Middleton Jr. [You
are to determine only the total amount of the plaintiff's damages and enter that amount
below.]

\$ ~~135,477.00~~ Actual Damages

SIGNED:


JURY FOREPERSON

DATED:

5-9-2018, ORANGEBURG, SC.

PLEASE NOTIFY THE BAILIFF WHEN YOU HAVE COMPLETED THE VERDICT FORM.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
TEKAYAH HAMILTON,	)	Case No.: 2015-CP-38-01234
Individually and as Parent Guardian	)	
Ad Litem for ROBERT LEE M. JR.,	)	
	)	
Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION FOR JNOV OR
	)	IN THE ALTERNATIVE
	)	MOTION FOR NEW
Vs.	)	TRIAL
	)	
THE REGIONAL MEDICAL CENTER,	)	
	)	
Defendant.	)	
	)	

FILED FOR RECORD
2015-CP-38-01234

TO: JONATHAN F. KRELL, ESQUIRE, AND DAVID WILLIAMS,
ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE, Defendant reserves its right to assert the statutory caps in its separate post-trial motion, that as soon as counsel may be heard, the defendant The Regional Medical Center (TRMC), by and through its undersigned attorney, pursuant to Rules 50 and 59 of the South Carolina Rules of Civil Procedure, move the court for (1) judgment notwithstanding the verdict ("JNOV"); (2) a new trial absolute; or (3) a new trial nisi remittitur.

LAW

Rule 50(b) of the South Carolina Rules of Civil Procedure allows that, "a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict." A motion for judgment notwithstanding the verdict and for a new trial may be made in the alternative. Rule 50, SCRPC.

THIS IS A TRUE COPY
W. H. HARRIS JR.
CLERK OF COURT
ORANGEBURG COUNTY, SC

TRMC renews its motion for directed verdict made at the close of Plaintiff's case in chief and renewed at the close of all the evidence. There is no legally sufficient basis for a jury to find that TRMC is liable for damages in this case.

The trial judge may reverse a jury's verdict when a review of the record discloses no evidence which reasonably supports the factual finding necessary to sustain the verdict. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993). While the Court is concerned with the existence of evidence, not its weight, *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003), and may not decide credibility issues or to resolve conflicts in the testimony or the evidence, *id.* At 320, 585 S.E.2d at 274, JNOV is warranted when there is no evidence to support the ruling or where the ruling is controlled by an error of law. *Hinkle v. National Cas. Ins. Co.*, 354 S.C. 92, 579 S.E.2d 616 (2003).

The thirteenth juror doctrine "entitles the trial judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict, and then to grant a new trial based solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)). As the thirteenth juror, the trial judge hands the jury by refusing to agree with the jury's unanimous verdict and casting his or her vote against it, resulting in a verdict which is no longer unanimous. *Id.*

The Court may grant a new trial, sitting as the thirteenth juror, when it is convinced that a new trial is necessary on the basis of the facts. *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 722 (Cl. App. 1996). Under the thirteenth juror doctrine, a new trial may be granted where the court merely finds that "the verdict is unsupported by

the evidence," that "the verdict is inconsistent and reflects the jury's confusion," or that "justice has not prevailed." *Id.* at 404, 477 S.E.2d at 722-23; *see also Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 552-593 S.E.2d 504, 508 (Ct. App. 2004) (granting new trial where "the evidence does not justify the verdict"); *Norton*, 350 S.C. at 480, 567 S.E.2d 855 (granting new trial when court "disapproves of the verdict on factual grounds"); *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 631, 578 S.E.2d 746, 747 (Ct. App. 2003) (characterizing the use of doctrine as "granting a new trial upon the facts").

The Court's discretion in granting or denying a new trial under the thirteenth juror doctrine is "funded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them." *Vinson*, 324 S.C. at 404, 477 S.E.2d at 723 (quoting *Fallon v. Rucks*, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950)). Consequently, the Court is entitled to "weigh the evidence and rely on his or her view of the circumstances." *Sorin Equip. Co. V. The Firm, Inc.*, 323 S.C. 359, 364, 474 S.E.2d 819, 822 (Ct. App. 1996).

Importantly, this Court need not provide any reasons for its exercise of this thirteenth juror power aside from a finding that the Court disapproves and rejects the verdict based on the facts and evidence. *Howard v. Roberson*, 376 S.C. 143, 654 S.E.2d 877 (Ct. App. 2007). Further, this Court's exercise of its thirteenth juror power will not be disturbed on appeal in the absence of a misuse of the power. *Trivelas*, 357 S.C. 545, 593 S.E.2d 504 (holding that a circuit court's order granting a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by the evidence or the conclusion reached was controlled by an error of law).

As set forth below in the grounds asserted for judgment as a matter of law, the jury's verdict is unsupported by the evidence as set forth herein. First, Plaintiff's presented no evidence that defendant was grossly negligent. Defendant asserts that plaintiff's expert was not properly qualified and as such, no testimony she made should have been offered to the jury. There is no justification for a \$1,127,280.00 award of damages in this case to the minor child and \$135,477.00 to the mother. Therefore, the verdict should be set aside with a new trial ordered. *See, e.g., Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990) (upholding the grant of the excise of the trial court's thirteenth juror authority because the verdict was not in accordance with the facts.)

The Defendant asserts it is entitled to an order of JNOV or a new trial absolute on these separate grounds:

I. Monica Stobbs was not qualified to give an opinion on the standard of care of pediatric nursing and pediatric IV administration.

Monica Stobbs should not have been allowed to testify to the standard of care for pediatric nursing IV management. In order to qualify an expert, a witness must have the "knowledge, skill, experience, training or education" in order to testify. SCRE 702. "To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter.'" *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995); *see also Botehlo v. Bycura*, 282 S.C. 578, 587, 320 S.E.2d 59, 65 (1984) (orthopedic surgeon was not qualified to testify on the standard of care for podiatrist where orthopedic surgeon had no

training in podiatry, was not familiar with any journals or periodicals in podiatry and was not familiar with the surgical procedure performed).

Similar to the facts in *Botelho*, 282 S.C. 578, Ms. Stobbs, while a nurse, has not administered IV therapy or cared for a pediatric patient with IV therapy, similar to how the orthopedic surgeon was not familiar with the procedure performed by the podiatrist. Likewise, Ms. Stobbs had not reviewed any literature regarding IV therapy in pediatric patients, the same as the orthopedic surgeon not having reviewed any journals or periodicals for podiatry. *Id.* The only distinction is that here Ms. Stobbs is a nurse. Ms. Stobbs has not started or managed an IV on a pediatric patient. Using the requirements of the *Botelho* case, Ms. Stobbs was not qualified to give an expert opinion on pediatric IV therapy. *Id.* Therefore defendants are entitled to JNOV or in the alternative a new trial.

II. The Court should have directed a verdict in favor of TRMC as Plaintiff's did not establish Gross Negligence.

Plaintiffs failed to establish the elements of Gross Negligence. The Tort Claims Act "limits government liability regarding the supervision, protection, and control of a patient," and Plaintiffs were required to prove gross negligence. *See Stewart v. Richland Memorial Hosp.* 350 S.C. 589, 592, 567 S.E.2d 510, 511 (2002). "Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. [internal citations omitted] It is the failure to exercise slight care. "*Etheredge v. Richland School Dist. One*, 341 S.C. 307, 311 (2007). "While gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Id.*

Plaintiff failed to establish Defendant was grossly negligent. Plaintiff's expert testified that she had no opinion as to whether or not Defendant intentionally harmed Plaintiff. Plaintiff's expert was not qualified to give an opinion on the standard of care of pediatric IV administration or monitoring. She also had no experience and did not research the treaties and was therefore not qualified to give an opinion. There was no evidence that TRMC employee Jamic Downing acted with any form of intent to cause harm. Plaintiffs failed to establish a material element of gross negligence, intent.

What the evidence did show was that Jamie Downing inspected the IV site 7 times in the twelve-hour shift, while she was only required to inspect it once a shift. Jamie Downing testified that she flushed the site prior to administering the antibiotics and Cynthia Hurly testified that Jamic Downing exceeded the standard of care. This is evidence that Defendant exercised greater than slight care, and as such, cannot be grossly negligent. *See Etheredge*, 341 S.C. 307.

The evidence presented shows that Defendant exercised greater than slight care and that Plaintiffs have failed to prove the element of intent. The only reasonable inference is that defendant exercised slight care and should have been granted a directed verdict. Therefore, defendants are entitled to JNOV, or to trial *de novo*.

III. Trial Judge erred by not excluding the prejudicial photographs of Robert Middleton, Jr.'s injuries to the Jury.

Rule 403 of the SCRE states, "[a]lthough relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "To constitute unfair prejudice, the photographs must create 'an undue tendency to suggest a decision on an improper basis,

commonly, though not necessarily, an emotional one.” *State v. Holder*, 382 S.C. 278, 290 (2012) (quoting *State v. Jackson*, 364 S.C. 329, 334 (2005)).

The photographs of [REDACTED]’s hand should have been excluded from the jury as the prejudicial effect substantially out-weighted the probative value. Due to the excessive jury award, defendant is left to conclude that the photographs substantially prejudiced the defendants. The photographs were grotesque, close-up images of the infant’s open wound. One of the photographs was quite blurry. There was no scale in the photographs. At no time did defendants argue that the infiltration was not the cause of the wound, and the fact that there was a wound was never disputed.

Due to the excessive jury award, defendant is left to conclude that the jury reached their decision on an emotional basis when they saw the enlarged picture of the infant’s open flesh wound. Therefore, defendants are entitled to a new trial absolute.

IV. Cynthia Hurley should have been permitted to testify to whether or not Defendant was grossly negligent or negligent.

“Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Rule 704, SCRE. “We have held, however that the trial judge has the discretion to permit expert testimony on the ultimate issue before the jury.” *Redman v. Ford Motor Co.*, 253 S.C. 266, 278 (1969) (citing *O’Kelley v. Mutual Life Insurance Co.*, 197 S.C. 108 (1941)). “There is no invasion of the province of the jury, for the jury retains its power and duty to judge both the credibility of the witness and the weight to be given to his opinion.” *Redman*, 253 S.C. at 278; *but see Dawkins v. Fields*, 354 S.C. 58 (2003) (“In general, expert testimony on issues of law is inadmissible.”). “We have heretofore held that the trial judge may in his discretion permit a qualified expert to testify as to his

opinion on the ultimate issue before the jury." *Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 403 (1977).

Here, TRMC's expert, Ms. Hurley's, testimony was primarily on the standard of care and that Nurse Downing complied with the standard. Unlike the *Dawkins*, 354 S.C. 58, there was no affidavit in the present case, and the testimony was not legal argument. In that case the court was concerned with an expert affidavit that read like legal argument. Additionally, Ms. Hurley was not attempting to usurp the roll of the jury, the proffered testimony was whether or not defendants were grossly negligent. The evidence is not objectionable just because it embraces the ultimate issue. See Rule 704, SCRE. The trial court erred by not allowing Cynthia Hurley testify to the ultimate issue as her testimony would not usurp the roll of the jury as they still determined her credibility. Therefore, defendant is entitled to a new trial absolute.

V. The Request to Admit should not have been published to the Jury.

The Request to Admit should not have been published to the Jury and prejudiced the Defendant. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. Rule 36 (b) of the South Carolina Rules of Civil Procedure states,

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be sub-served thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining or defense on the merits Any admission made by a party under this rule is for the

purpose of pending action only and is not an admission by him for any other purpose.

RULE 36, SCRPC; *see also Commerce Center of Greenville, Inc. V. W. Powers McElveen*, 347 S.C. 545, 557, 556 S.E.2d 718, 724 (Ct. App. 2001) (" The trial court may allow a party to amend or withdraw its answers to a request to admit when: (1) the presentation of the merits is furthered by the amendment; and (2) the party who obtained the admission cannot demonstrate prejudice because of the amendment."). Defendant asserts that Plaintiff was not prejudiced by withdrawal of these Requests, which was denied by the Court.

Defendant concedes this is an unusual circumstance and the case law addresses issues for withdrawal by the admitting party. The Court should have permitted withdrawal of the RTA because the Plaintiffs could not show that withdrawal would prejudice them in maintaining the merits. Here the Request to Admit (RTA) was highly prejudicial to the defendant and did nothing but confuse the issues. At all times Defendant maintained that they were not negligent. By introducing the RTA to the jury, it had the effect as if Defendant admitted they were negligent. At no time did the Defendant admit negligence. The RTA had the opposite effect because Plaintiffs admitted the amount in controversy was more than \$100,000. The RTA request number 1 stated, "Admit the value of the amount in controversy in this action is less than \$100,000." The plaintiff denied this. This directly confuses the issues and is highly prejudicial to any probative value it may have.

The purpose of the request to admit was to obtain an Independent Medical Examination, not for Plaintiffs to represent that Defendant admitted the damages were in excess of \$100,000.00.

Further, the Request to Admit was not mentioned in Plaintiff's pretrial brief. Plaintiffs intentionally failed to mention it to Defendant's counsel until they were about to publish the RTA to the Jury. This highly prejudiced the defendant, as they had no time to prepare argument and was unable to get rebuttal evidence. Therefore, defendants are entitled to a new trial.

VI. Jury Charges

Defendant contends they are entitled to a new trial as the requested jury charges were not charged to the jury.

"Ordinarily a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." *Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct.App.2000). "Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error." *Id.* "Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error." *Id.*

Fairchild v. South Carolina Dept. Of Transp., 398 S.C. 90, 104, 727 S.E.2d 407, 414 (2012). To warrant reversal, the refusal must be both erroneous and prejudicial. *E.ison v. Parts, Distributors, Inc.*, 302 S.C. 299, 395 S.E.2d 740 (Ct. App. 1990). Defendants should have had the following jury charges.

"I instruct you that the practice of nursing is an art, not a science, and in providing nursing care a nurse is not required to be all knowing and all wise."

"While a Nurses mistake or error in judgment alone would not support a verdict for the plaintiffs in a malpractice lawsuit, if the nurse fails to comply with a recognized

standard of nursing care which would be exercised by a similar nurse under the same or similar circumstances, then liability would attach to the nurse's mistake or error in judgment if it proximately results in injury to the patient."

"I instruct you that the law does not require of a nurse absolute accuracy either in practice or in judgment. Nor does the law hold a nurse to the standard of infallibility. It does not even require of a nurse the utmost degree of care and skill of which the human mind is capable." *see generally Wall v. Suits*, 38 S.C. 377, 383-84 (1995) (discussing physician).

Therefore, defendants should be granted a new trial absolute.

VII. This Court should grant a new trial absolute because the jury verdict is shockingly disproportionate to the evidence admitted at trial.

Defendant is entitled to a new trial on the grounds that the Jury's verdict was grossly excessive and contrary to the evidence.

In addition, a trial judge is required to grant a new trial absolute when the amount of the verdict is "so grossly . . . excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." *Waring v. Johnson*, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000); *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996); *Duncan v. Hampton County School Dist. No. 2*, 235 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1990) ("The trial court must grant a new trial absolute if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive."). The term "passion and prejudice" does not "necessarily imply bad faith, wrongful purpose, or moral delinquency," but rather, results

when the award is "against the overwhelming weight of the evidence," *Beasley v. Ford Motor Co.*, 237 S.C. 506, 513, 117 S.E.2d 863, 867.

Importantly, it is an abuse of discretion not to grant a new trial absolute when the verdict is "shockingly disproportionate" to the evidence presented at trial. *Sullivan v. Porter*, 317 S.C. 462, 467, 454 S.E.2d 907, 912 (Cl. App. 1995). "Ordinarily the only means of discovering the existence of passion and prejudice as influencing the verdict is by comparing the amount of the verdict with the evidence before the trial court." *Id.* at 362, 98 S.E.2d at 802. However, in some instances, the "size of the verdict alone may show that it must have been the result of passion or prejudice." *Id.* (internal citation omitted); see also *Small v. Springs Indus., Inc.* 292 S.C. 481, 486, 357 S.E.2d 452, 455 (1987) ("The size of the jury's verdict alone establishes it is grossly excessive under the facts of this case.").

This case falls squarely within the holding in *Sullivan*. The size of the verdict alone is sufficient to show that the jury must have been moved by passion or prejudice. The evidence presented cannot support a \$1,127,280.00 verdict for the claims asserted by the Plaintiffs. The verdict in this case is "without any rational support whatever in the evidence and is so grossly excessive as to show that the jury was actuated by considerations not founded on the evidence and/or the instructions of the court." *Joyner v. St. Mathews Builders*, 263 S.C. 136, 140-41, 208 S.E.2d 48, 50 (1974) (granting a new trial due to the "actual damages being so manifestly and grossly excessive").

Given the complete lack of any cognizable basis to support the damages award, the \$1,127,280.00 actual damages award to the minor cannot stand. See *Zorn v. Crawford*, 252 S.C. 127, 138, 165 S.E.2d 640, 646 (1969) (granting a new trial in a

wrongful death action where "a verdict of \$250,000.00 for the actual damages sustained by the beneficiaries . . . [was] not supported by the evidence and [could] only be explained upon the basis of sympathy, passion or prejudice on the part of the jury"). Therefore, this Court should vacate the award or order a new trial.

The only evidence of damages was \$20,854 in medical bills, some pain and a scar while the jury returned a verdict for \$1,127,280.00. The verdict is 54 times the amount of actual damages, this is grossly excessive and shocks the conscience. It is clear that the Jury did not pay attention to the jury instructions. The \$135,477.00 jury verdict for Tekeyah Hamilton is further evidence of the jury failing to apply the law as charged. Plaintiff's mother testified she has no plans for the child to undergo any steroid injections or scar revision surgery. Defendant is left to conclude that the jury arrived at its award as a result of passion, caprice, or other improper motives, particularly in light of the excessive verdict compared to the evidence of actual damages. Where a jury renders a verdict in disregard of the charge, it is error for the trial judge not to grant a new trial upon motion. *See, Southeastern Mobile Homes Inc. v. Walicki*, 282 SC. 298, 317 S.E.2d 773 (Cl. App. 1984). Therefore, this Court should vacate the award and order a new trial *de novo*.

VIII. The Court should grant a new trial nisi remittitur because the jury rendered an excessive verdict compared to the evidence offered by plaintiffs.

If the Court denies the JNOV and new trial absolute motions it should next proceed to consider and grant a new trial nisi remittitur because the damages awarded by the jury are clearly excessive compared to the evidence presented at trial. This court "may grant a new trial nisi remittitur when it finds the verdict is merely inadequate or excessive." *Howard v. Roberson*, 376 S.C. 143 (2007). "The consideration of a motion

for a new trial nisi remittitur requires the court to consider the adequacy of the verdict in light of the evidence presented.” *Waring v. Johnson*, 341 S.C. 248 (Ct. App. 2000).

“The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive.” See, e.g., *Rush v. Blanchard*, 310 S.C. 372 (1993)(affirming trial court’s remittitur); *RRR, Inc v. Toggas*, 378 S.C. 174 (Ct. App. 2009 (“[T]he circuit court . . . has the power to grant a new trial nisi when it finds the amount of the verdict to be merely inadequate or excessive”); *Becker v. Walmart Stores, Inc.*, 339 S.C. 629 (Ct. App. 2000) (affirming trial court’s granting of motion for remittitur on grounds that amount awarded by jury was “merely excessive”).

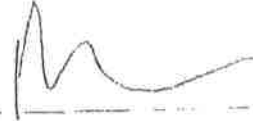
Here the jury’s verdict was grossly excessive. The jury returned a verdict that was 54 times the actual damages. The jury returned a verdict for \$1,127,280 for the child and another \$135,477 for Tekayah Hamilton, when the actual damages were only \$20,854. There is no evidence to support such a verdict. [REDACTED] still has full use of his hand and he has a scar that will improve with surgery. There’s no logical conclusion as to why the jury returned such a verdict and no evidence supports the excessiveness of the verdict. If Defendant’s are not granted JNOV or a New Trial Absolute, defendants in the alternative ask for a new trial nisi remittitur.

CONCLUSION

WHEREFORE, defendant TRMC based on all of the foregoing reasons, respectfully request this Court reconsider its decisions and issue and order granting TRMC JNOV or in the alternative, grant Defendant’s a new trial absolute, and grant such other and further relief as may be just and proper.

COUNSEL FOR DEFENDANT RESPECTFULLY REQUEST ORAL
ARGUMENT.

MICHAEL C. TANNER, J.L.C.



Michael C. Tanner
PO Box 1061
Bamberg, SC 29003
(803)245-9153
Attorney for Defendants

Bamberg, SC

May 17, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

I, Michael C. Tanner, attorney for defendant, The Regional Medical Center of Orangeburg and Calhoun Counties, in the case of Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a minor child under the age of eighteen v. Regional Medical Center, case number 15-CP-38-1234 hereby certify that I have served the Notice Of Motion And Motion For JNOV Or In The Alternative Motion For New Trial by mailing a copy of same, with postage prepaid, by United States mail to the person(s) at the address(es) indicated as follows:

Honorable Edgar W. Dickson
Post Office Box 1949
Orangeburg, S.C. 29116

Jonathan F. Krell, Esquire
P.O. Box 399
Charleston, SC 29402

David Williams, Esquire
P.O. Box 1084
Orangeburg, SC 29116

MICHAEL C. TANNER, L.L.C.

By:



Michael C. Tanner
P.O. Box 1061
Bamberg, SC 29003
(803) 245-9153
Attorney for Defendant

Bamberg, S.C.

May 17, 2018

ATTEST: TRUE COPY
Winnona B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

TEKAYAH HAMILTON,
Individually and as Parent Guardian
Ad Litem for ROBERT LEE M. JR.,

) Case No.: 2015-CP-38-01234

) Plaintiff,

) POST TRIAL MOTION FOR
) REDUCTION TO STATUTORY
) CAP

) vs.

) THE REGIONAL MEDICAL CENTER,

) Defendant.

FILED FOR RECORD
MICHAEL C. CLARK
JUL 17 2015

TO: JONATHAN F. KRELL, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE, reserving its rights to be heard in the separate post-trial motions, that as soon as counsel may be heard, the defendant The Regional Medical Center (TRMC), by and through its undersigned attorney, will move before this Honorable Court for the following Post-Trial Relief:

1. Defendants are invoking the statutory cap on damages pursuant to the South Carolina Tort Claims Act (§15-78-10, et seq.). Section § 15-78-120(a) provides as follows:

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits: (1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

"Provisions establishing limitations upon and exemptions from liability of a governmental entity *must be liberally construed* in favor of limiting liability." *Plyler v. Burns*, 373 S.C. 637, 651 (2007) (citing *Steinke v. South Carolina Dep't of Labor*,

Licensing and Regulation, 336 S.C. 373 (1999)); *see also* S.C. Code Ann. §15-78-20(f) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must be liberally construed* in favor of limiting the liability of the State.").

2. The Jury returned a verdict for the minor [REDACTED] for \$1,127,280.00. This amount is excessively higher than the statutory cap and as a matter of law must be reduced to \$300,000.00, pursuant to § 15-78-120 (a).

3. Defendant asserts Tekayah Hamilton's jury verdict must be reduced to \$20,854.00.

4. A parent is the proper party in interest with respect to past medical expenses and future medical expenses while the child is a minor. *See, Patton v. Miller*, 420 S.C. 471 (2017). Under the Tort Claims Act, a parent may recover medical expenses separately from the parents claim. *See, Wright v. Colleton County School Dist.*, 301 S.C. 282 (1990).

5. The Jury returned a verdict for Tekayah Hamilton for \$135,477.00. Pursuant to South Carolina law, Tekayah Hamilton's damages are limited to past and future medical expenses only as set forth above. The only evidence presented to the jury of medical expenses, past and future, were the amount of \$20,854.00. Tekayah Hamilton's damages must be reduced to the amount of \$20,854.00 for past and future medical expenses for the minor. She is not entitled to any pain and suffering.

WHEREFORE Defendants pray that this Honorable Court reduce the Jury Verdict to \$300,000.00 for [REDACTED] and to \$20,854.00 for Tekayah Hamilton making

the verdict in Compliance with the South Carolina Tort Claims Act and grant such other relief as the Court deems just and proper.

MICHEL C. TANNER, L.L.C.



Michel C. Tanner
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Bamberg, S.C., 29003
Attorneys for Defendant

Bamberg, S.C.

May 17, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

I, Michael C. Tanner, attorney for defendant, The Regional Medical Center of Orangeburg and Calhoun Counties, in the case of Tekayah Hamilton, Individually and as parent and guardian ad litem for Robert Lee M., Jr., a minor child under the age of eighteen v. Regional Medical Center, case number 15-CP-38-1234 hereby certify that I have served the Post Trial Motion For Reduction To Statutory Cap by mailing a copy of same, with postage prepaid, by United States mail to the person(s) at the address(es) indicated as follows:

Honorable Edgar W. Dickson
Post Office Box 1949
Orangeburg, S.C. 29116

Jonathan F. Krell, Esquire
P.O. Box 399
Charleston, SC 29402

David Williams, Esquire
P.O. Box 1084
Orangeburg, SC 29116

FILED FOR RECORD
MAY 17 2018
CLERK

MICHAEL C. TANNER, L.L.C.

By:


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Bamberg, S.C.

May 17, 2018

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Tekayah Hamilton, individually and as
parent and guardian ad litem for Robert Lee
M. Jr., a minor child under the age of 18,

Plaintiff,

vs.

Regional Medical Center

Defendant.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO. 2015-CP-38-01234

) PLAINTIFF'S MEMORANDUM IN
) OPPOSITION TO DEFENDANT'S
) MOTION FOR JNOV OR IN THE
) ALTERNATIVE MOTION FOR NEW
) TRIAL/NEW TRIAL *NISI*
) REMITTITUR AND IN OPPOSITION
) TO DEFENDANT'S MOTION FOR
) REDUCTION TO STATUTORY CAP

Plaintiff submits this Memorandum in Opposition to Defendant's ("Defendant") motion for a new trial or, alternatively, for a new trial *nisi remittitur*.

Plaintiff's opposition to Defendant's motion is based on this memorandum of law and any exhibits filed along with this memorandum, the pleadings, and applicable law; all evidence and arguments presented during the trial of this case; as well as any other memorandum of law or arguments that Plaintiff may submit to the Court at or prior to a hearing on the motions. The Court should deny Defendant's motions and withstand the jury's award in the amount of \$135,477.00 for Plaintiff Tekayah Hamilton ("Tekayah") and modifying the amount to Plaintiff Robert Lee M. Jr. ("RJ") to \$1,065,000.00.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of Defendant's failure to implement policies, procedures, and equipment to allow Defendant to properly monitor an IV with ampicillin administered to RJ on or about October 28, 2014, while a patient at Defendant's facility in Orangeburg, South Carolina. Plaintiff's complaint alleges medical negligence, specifically the following:

ATTEST: TRUE COPY
Winnia S. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

The impression of the treating physician was high fever and admission to the hospital was necessary in order to work up CBC, LP, blood and urine cultures. It was decided to begin Ampicillin and Claforan. Pl.'s Complaint par.11

Defendant Regional, by and through its agents and/or employees, and Defendant Downing¹, owed Plaintiff a duty of care to use that degree of care and skill which ordinarily employed by the profession generally, under similar conditions and in like surrounding circumstances. Pl.'s Complaint par.33.

Defendants breached that duty of care and were negligent, grossly negligent, careless, willful, wanton, and reckless in the following particulars:

- a) In failing to use reasonable medical care in accordance with the recognized standards of acceptable professional practice in medicine during the care, diagnosis and treatment of Plaintiff;
- b) In failing to act with ordinary and reasonable care in accordance with the recognized standards of acceptable professional practice in medicine;
- c) In failing to follow the Infusion Nurse Society publication on *Policies and Procedures for infusion Nursing of the Pediatric Patient*;
- d) In failing to pursue such appropriate medical modalities and treatments which could have avoided this type of injury and permanent damage;
- e) In failing to act and behave in the same or similar manner that reasonably competent doctors and healthcare facilities and staff would have behaved or acted in the same or similar conditions;
- f) In failing and neglecting to properly inspect the IV site on October 28, 2014, at approximately 4:27 a.m. prior to the administration of antibiotic medication;
- g) In failing and neglecting to properly monitor the IV site after the administration of antibiotic medication;
- h) In failing to adequately train and supervise its medical staff;
- i) In failing to provide the safest care and treatment to Plaintiff; and
- j) For such other acts and omissions that may become more apparent through the discovery of this matter.

Pl.'s Complaint par. 34. Plaintiff attached an affidavit to her complaint by Monica Stobbs, RN, BSN, clarifying and reiterating the breaches in the standard of care by Defendant Regional, by and through its employees, causing harm to RJ and Tekayah. Specifically, Defendant Regional failed to properly monitor RJ's IV site prior to and after administering medication.

At trial Plaintiff offered Monica Stobbs, RN, BSN, as well as Dr. DeVito regarding RJ's future care and Plaintiff herself took the stand. Plaintiff also called nurse Jamie Downing, RN,

¹ Defendant Downing was dismissed as a party after the original summons and complaint was filed.

and published Plaintiff's answers to Defendant's First Set of Requests to Admit to the jury. RJ's medical records and bills were submitted as evidence along with several pictures of his injury and numerous policies and procedures of Defendant Regional.

Defendant called Dr. Davis to dispute RJ's future care, Nurse Jamie Downing, and Cynthia Hurley as their standard of care of expert. Defendant also submitted pictures of RJ's injuries, select medical records and select policies and procedures. Defendant moved for a directed verdict at the end of Plaintiff's case and its own. Defendant has now filed motions for a new trial, new trial nisi remittitur, and reduction to conform to the statutory cap.

STANDARD OF REVIEW

A motion for judgment notwithstanding the verdict may only be granted if no reasonable jury could have reached the challenged verdict. RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). A jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. Curcio v. Caterpillar, Inc., 355 S.C.316, 320, 585 S.E.2d 272, 274 (2003). In ruling on a motion for judgment notwithstanding the verdict, the trial court must view the evidence and all inferences reasonably drawn therefrom in the light most favorable to the opposing party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

The thirteenth juror doctrine is the method used by the trial court to grant a new trial upon a finding that the evidence presented at trial did not support the jury's verdict. Curtis v. Blake, 392 S.C. 494, 505, 709 S.E.2d 79, 85 (Ct. App. 2011). If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, impulse, prejudice, or some other influence outside the evidence, the trial court must grant anew trial absolute. Id. at 500, 709 S.E.2d at 82. Compelling reasons must be presented to support the trial judge's invasion of the jury's

province, merely highlighting that the verdict is greater than the amount of monetary damages is not enough as such other non-monetary factors must be considered as well. Id. at 501, 709 S.E.2d at 83.

I. The jury's verdict reflects the evidence presented and should only be reduced to a total of \$1.2 Million

Ample evidence was presented to the jury to sustain Ms. Hamilton's recovery of \$135,477.00, and to sustain RJ's recovery, only reducing it to \$1,065,000.00, to bring the total recovery within the statutory cap of \$1,200,000.00.

Under South Carolina common law, a parent may recover for her child's medical expenses, loss of services, and other economic losses as a result of incurred medical expenses. See Wright v. Colleton County School District, 391 S.E. 2d 564 (1990) and Doe v. Greenville County School District, 375 S.C. 63 (2007). At trial, Plaintiff presented past and potential future medical expenses of approximately \$20,824.00. The future expenses include potential surgeries for RJ's scars. Ms. Hamilton also testified to the financial burden on her to take time off of work and travel expenses related to getting RJ to medical treatment appointments. Ms. Hamilton further testified that she has to keep an extra close eye on RJ to prevent reinjury of his hand and to protect his hand from over-exposure. Finally, there was testimony to support the psychological and social affect the scar will have on RJ, which will certainly affect RJ who is currently three years old. She will remain his guardian at least until he is eighteen, fifteen more years. There is evidence to support the award of \$135,477.00 for Ms. Hamilton. It is not unreasonable for a jury to make this award in light of the evidence which exists to support it.

Defendant argues RJ's recovery should be reduced to \$300,000.00 under section 15-78-120(a). However, Defendant ignores the entirety of the Torts Claims Act and the evidence to trigger the \$1.2 Million cap.

The South Carolina Tort Claims Act allows for a maximum recovery out of a single occurrence of one million two hundred thousand dollars when the injury is caused by any licensed physician or dentist. S.C. Code Ann. §15-78-120(a)(4). Subsection (5) reads that subsection (a)(4)

shall in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan.

Id. Defendant argued at trial, and the court agreed, that Plaintiff was required to prove gross negligence of Defendant pursuant to section 15-78-60(25) because the conduct at issue concerned Defendant's "responsibility or duty including but no limited to supervision, protection, control, confinement or custody of any...patient...of any governmental entity." S.C. Code Ann. §15-78-60(25). Indeed, the verdict form asked the jury to find if Defendant, The Regional Medical Center, was grossly negligent² in its supervision, protection, etcetera of RJ.

Additionally, under the Tort Claims Act, individual employees cannot be named. S.C. Code Ann. §15-78-70. *See also* S.C. Code Ann. §15-78-20(g) (indicating the inclusion of physicians under the Tort Claims Act and justification for the higher limits thereunder). Thus, the totality of Defendant's conduct is to be considered and is not limited to just the acts of Nurse Downing, but to the entirety of the conduct surrounding the alleged gross negligence and the resulting damages. This position is consistent with Defendant's consistent position that it is not subject to the South Carolina Medical Malpractice Act. *See* Exhibit A. This position is also echoed in the verdict form, which asked for a general verdict. Because there were multiple issues, including the conduct of Defendant's nurses and conduct of Defendant's physicians, the general

² Plaintiff's position at trial was that the medical malpractice standard of care applied, not a gross negligence standard as argued by Defendant at trial and charged by the judge. For purposes of Defendant's motions and the law of the case as it stands now, Plaintiff's present arguments based on the gross negligence standard.

verdict form encapsulates all of those issues, sustaining the \$1.2 million cap applicable to physicians.

Section 15-78-20(g) explains the importance of including physicians and dentists under the Tort Claims Act stating that patients “deserve accountable and competent health care, regardless of the public or private character of the provider” and the need to “attract qualified physicians and dentists.” S.C. Code Ann. §15-78-20(g). In this vein, limitations still exist on what can be recovered in lawsuits involving medical malpractice, but they are “higher limits [as] recognition by the General Assembly of significantly higher damages in cases of medical malpractice.” *Id.* The Nurse Practice Act explains the hierarchy of physicians over advanced practice registered nurses, and then all nurses. S.C. Code Ann. 40-33-20 *et al.* This supervision is particularly emphasized when “administering and delivering medications and treatments as prescribed by an authorized licensed provider” and “providing for the maintenance of safe and effective nursing care rendered directly or indirectly.” S.C. Code Ann. §40-33-20(47).

The allegations in Plaintiff’s Complaint and expert affidavit certainly address Defendant’s conduct in its entirety by and through its healthcare providers, including the conduct of physicians. *See* Factual and Procedural History *supra*. Likewise, the testimony at trial indicated the involvement of physicians. Ms. Stobbs testified proper administration of a saline flush prior to administration of the ampicillin at 4:27 a.m. on October 28, 2014, would have prevented the injury to RJ. She explained the administration of saline is administering medicine. The medical record, as well as Nurse Downing’s testimony, indicated that Dr. Boltin, also an employee of Defendant, ordered the administration of the ampicillin, which would include the saline flush, for RJ. Nurse Downing could not have administered the ampicillin and saline flush without a doctor’s order. She was subject to the supervision of Dr. Boltin. Through Dr. Boltin’s orders Nurse Downing was

responsible for the supervision of RJ, again that conduct falling under section 15-78-60(25). Because of the medical care rendered and the causal connection between the orders from Dr. Boltin, being carried out by Nurse Downing, the \$1.2 million cap applies to this case. Thus, after accounting for the \$135,477.00 awarded to Ms. Hamilton, RJ's award should be reduced to \$1,065,000.00.

Such an award to RJ is supported by the evidence. Testimony provided the basis for RJ's past, present, and future pain and suffering, mental and emotional anguish, anxiety, and loss of enjoyment of life. In its closing, Plaintiff's counsel asked the jury to award RJ a per diem amount for the remainder of his life to compensate him for those damages, suggesting \$25.00 or \$50.00 per day. RJ's life expectancy is approximately 73.76 years under section 19-1-150, or approximately 26,940 days. The jury's award of \$1,127,280.00 divided by 26,940 is approximately \$42.00 per day for the rest of his life. Given the severity of the permanent scar, the apparent suffering it has caused and will cause RJ, the jury's verdict is reasonably related to the evidence presented and does not shock the conscience.

Additionally, evidence was produced that the medical recording system did not allow the nurse to follow the policies and procedures. These policies and procedures were promulgated by the MEC, which is a solely physician entity. Therefore, the evidence is that the policies and procedures were implemented in a grossly negligent manner by the physicians. Naming The Regional Medical Center is naming physicians.

There was also evidence presented that Dr. Boltin was in the room close by RJ with the IV at the time the four-hour check was due and when the flush was due but did nothing to require the flush.

Finally, Defendant failed to raise an objection during the trial regarding Plaintiff counsel seeking to incite the jury's emotions, passion, or prejudice. The jury's verdict should be upheld and only modified to fit within the \$1.2 million statutory cap.

II. Monica Stobbs, RN, BSN, was qualified to testify regarding the proximate cause of RJ's injuries

"All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 143 (2010) (internal quotation marks omitted). "[O]nly after the trial court has found that [1] expert testimony is necessary to assist the jury in resolving factual questions, [2] the expert is qualified in the particular area, and [3] the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate." *Watson v. Ford Motor Co.*, 389 S.C. 434, 446-47, 699 S.E.2d 169, 175 (2010)."

Plaintiff offered Monica Stobbs as an expert in nursing, particularly regarding the nursing standard of care in monitoring RJ's IV site. The trial judge allowed her to be admitted as a nurse, not a pediatric nurse, indicating Defendant would be able to question her credibility in comparison to Defendant's pediatric nurse expert, but that Ms. Stobbs was indeed qualified to testify regarding the nursing standard of care.

In her testimony, Ms. Stobbs recognized the IV had been placed and medication, including Ampicillin, was administered for over 48 hours without incident. However, leading into the third day, October 27th, Defendant Regional's medical record indicated below standard monitoring of the site, including untimely and incomplete assessments of the IV site, insufficient flushing, and other below the standard care in maintaining and monitoring the IV site which led to the RJ's injuries. She explained that assessment, flushing, and other procedures for monitoring and

inspecting an IV site prior to the administration of medicine and after the administration of medication are the same regardless of the patient's age.

Defendant submitted literature to Ms. Stobbs which conceded the similarities in monitoring an IV site whether the patient was a baby or an adult. Likewise, Defendant's expert agreed and only differentiated that placing the IV and identifying the IV site on an infant could be different from that with an adult. The placing and identification of RJ's site was not the proximate cause of his injuries. Defendant's expert also differed with Ms. Stobbs in that pulling back on the needle to verify proper location of the needle would not be done with a minor. Ms. Stobbs testified that is only one option in assessing an IV site, not the only tool and not the proximate cause of RJ's injuries. As such, any difference in qualifications that may exist between a pediatric nurse and an adult nurse were of no significance in determining the proximate cause of RJ's injuries.

III. There was ample evidence of gross negligence³ to substantiate the jury's verdict

Plaintiff testified that she was in the room with RJ during the early morning hours of October 28, 2014, when the ampicillin was administered at about 4:27 a.m. by Nurse Downing. The order was to continuously infuse the antibiotic over 20 minutes. Shortly after the ampicillin was started, Plaintiff noticed a visible change in RJ's demeanor, his uncontrollable crying, and apparent discomfort. She repeatedly buzzed for assistance, but to no avail. No one from Defendant responded until approximately 4:50 a.m. when it was documented that RJ was fussy and that the hand was puffy with bruising. The jury could infer from this testimony, and rightly so, that Plaintiff was ignored for over 20 minutes by Defendant, leaving RJ in wretched pain and ultimately a permanent scar. The jury was charged that gross negligence "is the intentional, conscious failure

³ Again, Plaintiffs position at trial was that the medical malpractice standard of care applied, not a gross negligence standard as argued by Defendant at trial and charged by the judge. For purposes of Defendant's motions and the law of the case as it stands now, Plaintiffs present arguments based on the gross negligence standard.

to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do...the failure to exercise slight care." Ignoring a patient's requests for help for such an extended period of time could certainly be interpreted by the jury as conscious failure to respond.

Additionally, the testimony and evidence revealed that there were multiple, repeated mistakes in the medical records. There were several failures to document the condition of the IV site and several failures to document flushing the site before administering the medication, despite the policies and procedures requiring the same. The jury could have interpreted this as repeated conscious or reckless disregard to do the task incumbent upon Defendant to do.

Finally, Defendant's physicians via the MEC implemented a system of policies and procedures which go with the standard of care, but the nurses, whom the physicians supervise and are responsible for, were not able to fulfill and meet those expectations due to the flawed electronic medical recording system. Furthermore, Dr. Boltin and the nurses ignored the electronic reminder to flush every four hours, intentionally overriding the prompt and not complying with the policies and procedures of the hospital. This conduct could certainly give rise to intentional conduct and/or failure to exercise slight care by the physicians and nurses.

IV. The photographs of RJ's injuries were not prejudicial

The trial judge properly exercised his discretion in allowing the photographs of RJ's injuries. The relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court. The trial judge must balance the prejudicial effect of graphic photographs against their probative value. State v. Yang, 353 S.C. 78, 87, 577 S.E.2d *250 225, 229 (Cl.App. 2003). A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances. State

v. Hamilton, 344 S.C. at 357, 543 S.E.2d at 593. Admitting photographs which serve to corroborate testimony is not an abuse of discretion. State v. Rosemond 335 S.C. 593 at 597, 518 S.E.2d 588 at 590; see State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct.App. 2002). However, photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). "To constitute unfair prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" State v. Kelley, 460 S.E.2d 368 at 370-71 (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)). A trial judge is not required to exclude relevant evidence merely because it is unpleasant or offensive. Davis v. Traylor, 340 S.C. 150, 530 S.E.2d 385, 387 (Ct.App.2000).

Plaintiff submitted three pictures of the wound and scar at various points in the healing process for the jurors to see from their seats in the jury panel. All three had an object to which the size of the wound and/or scar could be related to: (1) wound – adult thumb, (2) wound – RJ's head, more particularly his ear, and (3) scar – adult thumb. Then, RJ himself presented his hand to the jury for them to see the injury as it is today, giving further reference for the pictures as produced. Defendant also submitted a picture of the injury which was small in size. It was so small that it had to be passed around to the jury, held in each juror's hand, with the ability to analyze up close.

Defendant argues the pictures should have been excluded because they were "grotesque, up-close images of the infants open wound," "one was quite blurry", and "there was no scale in the photographs." Defendant also argues it never disputed the wound existed or that the infiltration caused the wound. However, Defendant did dispute the amount of damages that should be awarded to Plaintiff for that wound, necessitating Plaintiff fully presenting its evidence to that

regard. Also, it is an exercise in speculation and conjecture, at best, whether a more prejudicial effect results from being able to see a picture from a distance versus being able to hold it in your hands and examine it closely. Defendant had no scale to its picture. Plaintiff offered the most definitive scale possible, RJ himself. If one of the pictures was blurry -- how does that create a prejudicial affect? The fact is it was a horrible injury which was ugly, unpleasant, and offensive in its nature. Plaintiff did nothing to enhance that reality, merely showed it to the jury. It would have been prejudicial to Plaintiff to NOT show those pictures and misrepresenting to the jury the exact nature of what RJ experienced. The trial judge properly exercised his discretion in permitting the pictures because they accurately reflected the facts of the case.

V. The trial judge properly exercised his discretion in not allowing Cynthia Hurley to testify as to whether or not Defendant was grossly negligent

Defendant properly recognizes the law that it is in the trial judge's discretion "to permit expert testimony on the ultimate issue before the jury." Redman v. Ford Motor Co., 253 S.C. 266, 278. The trial judge did just that in allowing Ms. Hurley to testify as to what could constitute gross negligence, but not the term "gross negligence" itself.

"In general, expert testimony on issues of law is inadmissible." Dawkins v. Fields, 354 S.C. 58 (2003). However, an expert's otherwise admissible opinion is not inadmissible simply because it embraces the ultimate issue to be decided. Id. The distinction between medical malpractice and negligence claims is subtle, with no rigid analytical line separating the two causes of action. Dawkins v. Union Hosp. Dist., 408 S.C. 171, 176, 758 S.E.2d 501, 503-04 (2014). "In medical malpractice actions, expert testimony is required to establish both the duty owed to the patient and the breach of that duty, unless the subject matter of the claim falls within a layman's common knowledge or experience." Id. The requisite expert testimony assists the jury in making a more accurate determination of fault regarding whether a negligence in rendering medical care

proximately caused the patient's injury. *Id.* Based on this law, the trial judge properly allowed Ms. Hurley to testify as to the appropriate standard of care, which she did. She testified that there was no intentional conduct, which can be gross negligence under South Carolina, and further testified that Nurse Downing met or exceeded the standard of care while caring for RJ. It was very clear for the jury that Ms. Hurley had no critique at all of Nurse Downing's or Defendant's care of RJ. Obviously, the jury chose not to believe her.

VI. The Requests to Admit were properly published to the Jury

The trial judge properly exercised his discretion in accordance with the rules in allowing Plaintiff to publish to the jury the requests to admit submitted by Defendant to Plaintiff. The South Carolina Rules of Civil Procedure plainly state "any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission...the Court *may* permit withdrawal...when the presentation of the merits of the action will be sub-served thereby and the party who obtained (Defendant in this instance) fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining or defense of the merits." SCRCP Rule 36. Defendant argues publishing the requests to admit to the jury had the effect of Defendant admitting they were not negligent, confused the jury, and Plaintiff would not be prejudiced in withdrawing the requests.

If anything, the requests to admit suggested a potential value of the damages to the jury of greater than \$100,000.00. The jury's award to Plaintiff individually exceeded that amount by thirty-five thousand dollars and the award to RJ exceeded that amount by more than one million dollars. To suggest the jury's decision hinged on the requests to admit thus seems absurd. Furthermore, for the jury to be confused by the admissions and think that Defendant was admitting negligence, they would have had to ignore Defendant's entire case as well as its attack on all of

Plaintiff's witnesses. There could be no doubt that Defendant disputed liability when its expert testified Nurse Downing exceeded the standard of care. There could be no doubt that Defendant disputed damages when it accused RJ's mother of denying her child car for his scar because he had rickets and because it was expensive to obtain.

Finally, the rule states "the party who obtained the admission" must show that it is not prejudiced in withdrawing the admission. SCRCP Rule 36. Plaintiff did not obtain the admission and thus has nothing to demonstrate. If the court would require Plaintiff to do so in this instance, then the prejudice is clear: although Defendant denies liability, it admits there is value to the damages. Defendant indeed admits in its own post-trial motion briefs that it never denied there was an injury that resulted from the infiltration at their hospital. Allowing the admissions is consistent with Defendant's position, absolutely confirming the merits, Defendant's merits, of the case.

VII. The jury charges sufficiently enabled the jury to understand fully the law of the case and issues involved

The trial judge properly charged the jury with the law applicable to the nursing standard of care even while omitting the exact language requested by Defendant. "The substance of the law is what must be instructed by the jury, not any particular verbiage." State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994); *See also* Keaton v. Greenville Hospital System, 334 S.C. 448 (1999). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." Bragg v. Hi-Ranger, Inc., 319 S.C. 531, 462 S.E.2d 321, 330 (Ct. App. 1995) (*citing* Manning v. Dial, 271 S.C. 79, 245 S.E.2d 120 (1978)).

In this case, the trial judge charged the jury on standard of care and breach of standard of care, which together echo, if not in the exact verbiage, the specific charge that Defendant requested.

Standard of care

The plaintiff must prove the standard of care the defendant owed in treating the plaintiff.

When a nurse treats a patient, the law *does not require perfection or infallibility*. The law does require that the nurse use that degree of knowledge, care, and skill ordinarily possessed and used by nurses in good standing in the nurse's field of medicine, under the same or similar circumstances and that the nurse follow the generally accepted practices and procedures in the profession.⁴

A nurse is not an insurer of health and is not required to guarantee results. A nurse undertakes only to meet the standard of skill possessed generally by others practicing in the field of nursing under same or similar circumstances.

Breach of the standard of care

The plaintiff must prove that the defendant negligently departed from the standard of care in treating the plaintiff.

Negligence is the failure to do what an ordinary careful nurse in the nurse's field of medicine would have done under the same or similar circumstances, or the doing of something that an ordinary careful nurse would not have done under the same or similar circumstances.

The mere fact that a treatment does not benefit the patient or that it even harms the patient, is not in and of itself, negligence. A bad result, injury, death, or failure to cure, is not enough, alone, to show that the defendant was negligent. In considering whether the defendant made a reasonable decision, you must

⁴ Durham v. Vinson, Op. No. 25872 (S.C. Sup. Ct. filed September 13, 2004); Bessinger v. DeLoach, 230 S.C. 1, 94 S.E.2d 3 (1956); Jernigan v. King, 312 S.C. 331, 440 S.E.2d 379 (Ct. App. 1993).

consider the decision in relation to the facts as they existed at the time, and not in light of what hindsight may reveal.

Jury Charges (emphasis added). These charges in essence incorporate the ideas and principles in Defendant's requested charge including "a nurse is not required to be all knowing and all wise" and "the law does not require of a nurse absolute accuracy either in practice or in judgment." Furthermore, Defendant cannot point to any incorrect statement in the judge's charges, only wishes to add some exact verbiage. There is no reversible error. The trial judge accurately stated the substance of the law and there is absolutely no prejudice to Defendant in not including the exact verbiage. Indeed, to add that verbiage would only seem to overemphasize and exaggerate that law to the jury, prejudicing Plaintiff.

CONCLUSION

For the reasons stated above and based on any additional argument at a hearing on this motion, the Court should deny Defendant's motion for JNOV, a new trial or a new trial nisi remittitur, withstand the jury's award in the amount of \$135,477.00 for Plaintiff Tekayah Hamilton and modify the amount to Plaintiff Robert Lee M. Jr. to \$1,065,000.00.

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June 12, 2018

Orangeburg, South Carolina

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

TEKAYAH HAMILTON,
Individually and as Parent Guardian
Ad Litem for ROBERT LEE M. JR.,

) Case No.: 2015 CP-38-01234

) Plaintiff,

) vs.

) THE REGIONAL MEDICAL CENTER,

) Defendant.

) Defendant's Response to Plaintiff's
) Memorandum in Opposition to
) Defendant's Motion For JNOV
) or In the Alternative Motion for
) New Trial *Nisi Remittur* and in
) Opposition to Defendant's
) Reduction to Statutory Cap

TO: JONATHAN F. KRELL, ESQUIRE AND DAVID W. CLARK,
ATTORNEYS FOR PLAINTIFF

FILED FOR RECORD
WENDY B. CLARK
JAN 27 PM 5:17
CLERK OF COURT

NOW COMES DEFENDANT, and states the following in Response to Plaintiff's Memorandum in Opposition to Defendant's Motion For JNOV or in the alternative motion for new trial/new trial *Nisi Remittitur* and in Opposition to Defendants Motion For Reduction to statutory Cap:

Defendants reiterate and incorporate by reference herein, the arguments contained in Defendant's Post Trial Motion For Reduction To Statutory Cap and Defendant's Notice of Motion And Motion For JNOV or In The Alternative Motion For New Trial.

REPLY ARGUMENT

1: The Statutory Cap is \$300,000.00 as this is a Nursing issue and there is no evidence of Physician malpractice and the Plaintiff's never alleged any malpractice by a Physician.

Plaintiffs argue for the first time in the memorandum the \$1.2 million-dollar cap for physicians is applicable to this case. However, there were never any allegations in the

Complaint alleging physician malpractice. This case has always been about the pediatric nursing standard of care and whether that standard was breached in a grossly negligent manner. Because this is only a nursing issue, the statutory cap of \$300,000.00 applies.

The statutory cap is \$300,000.00 according to the S. C. Tort Claims Act. Section § 15-78-120(a) provides as follows:

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits: (1) **Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.**

SC Code Ann. § 15-78-120(a) (1). Whereas § 15-78-120(a)(3), regarding physicians and dentists, states:

(3) No person may recover in any action or claim brought hereunder against any **governmental entity and caused by the tort of any licensed physician** or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

S.C. Code Ann. § 15-78-120 (a)(3). "Provisions establishing limitations upon and exemptions from liability of a governmental entity *must be liberally construed* in favor of limiting liability." *Plyler v. Burns*, 373 S.C. 637, 651 (2007) (citing *Steinke v. South*

Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373 (1999)); see also S.C. Code Ann. §15-78-20(f) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must be liberally construed* in favor of limiting the liability of the State.").

Plaintiff's Complaint does not allege any breaches of the standard of care by a TRMC employed physician. There was no testimony at trial that a TRMC employed physician allegedly violated the standard of practice in treating the child. Monica Stobbs is not a physician and therefore did not testify as to the standard of care for a physician. Further, as defendant asserts, Monica Stobbs was not qualified to testify about pediatric nursing standard of care, it only follows she is even more unqualified to testify to the standard of care for a pediatrician. Plaintiff offered no testimony on physician malpractice, which was also not plead. TRMC was not on notice of any alleged physician malpractice.

The words "and caused by the tort of any licensed physician" in section § 15-78-120 (a)(3) of the S. C. Code, means that the tort *must* have been caused by a licensed physician or dentist in order to trigger the statutory cap of \$1.2 million dollars. As such, the words "any" and "except" in the section 15-78-120(a)(1) applies for all other actions not caused by a physician or dentist. The code states, "For *any* action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits: (1) *Except* as provided in Section 15-78-120(a)(3)," (Emphasis added)

A plain reading of the statute is clear. In order to trigger the \$1.2 million-dollar cap, the tort must be caused by a licensed physician, if not the \$300,000.00 cap applies.

As stated above, there has been no allegations or evidence or testimony that any TRMC physician breached the standard of care. It is abundantly clear the \$300,000 cap applies.

In order to allege and prove physician negligence, specifically, plaintiff must present evidence of the generally recognized practice and procedures that would be exercised by competent practitioners in the defendant's field under the same or similar circumstances, and that the defendant departed from the recognized generally accepted standards, practices and procedures in the manner alleged by the plaintiff. Gooding v. Saint Francis Xavier Hospital, 326 S.C. 248, 487 S.E.2d 596 (1997). Plaintiff must use expert testimony to establish both the standard of care and the deviation thereof, and that the said deviation was the proximate cause of plaintiff's injury. Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633, (1986); Carver v. Medical Society of South Carolina, 286 S.C. 347, 334 S.E.2d 125 (S.C. App. 1985). Plaintiff must also establish the standard of care and deviation therefrom for a nurse. McMillan v. Durant, 312 S.C. 200, 439 S.E.2d 829 (1993). Plaintiff offered no such evidence.

The Plaintiff is also required to establish proximate cause as well as negligence and expert testimony is necessary to establish proximate cause. Bramlette v. Charter Medical Columbia, 302 S.C. 68, 393 S.E.2d 914 (1990) and Botchlo v. Byaura, 282 S.C. 578, 320 S.E.2d 59 (S.C.Apps. 1984). Proximate cause requires proof of (1) causation in fact and (2) legal cause. Causation in fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence. Legal cause is proved by establishing foreseeability. Bramlette, supra. Therefore, only the nursing liability cap of \$300,000.00 applies.

II: Tekayah Hamilton's award must be reduced to \$20,854.00.

The maximum jury award for Tekayah Hamilton was only to allow her to recover the past and future medical expenses of the minor child and therefore she can only recover \$20,854.00.

A parent is the proper party in interest with respect to past medical expenses and future medical expenses while the child is a minor. *See, Patton v. Miller*, 420 S.C. 471 (2017). Under the Tort Claims Act, a parent may recover medical expenses and loss of services separately from the child's claim. *See, Wright v. Colleton County School Dist.*, 301 S.C. 282 (1990). A parent may not recover loss of filial consortium in South Carolina. *See, Doe v. Greenville Cnty. School Dist.*, 375 S.C. 63 (2007).

The jury returned a verdict for Tekayah Hamilton for \$135,477.00. Pursuant to South Carolina law, Tekayah Hamilton's damages are limited to past and future medical expenses only as set forth above, as that was the only evidence presented. The only evidence presented to the jury of medical expenses, past and future, was the amount of \$20,854.00. Tekayah Hamilton's damages must be reduced to the amount of \$20,854.00 for past and future medical expenses for the minor. She is not entitled to any pain and suffering. *Doe, supra*.

Plaintiffs argued in the memorandum that the financial burden of taking time off work and travel expenses justify the award. There was no evidence presented at trial that Tekayah Hamilton was making or would have made six-figures in the few month period during the incident and recovery. It is even more unreasonable to suggest that travel expenses to and from the Regional Medical Center amounted to \$114,623 dollars. Additionally, there was no evidence of travel cost or time off from work submitted to the jury.

There is no evidence of the loss of services presented at trial, and pursuant to South Carolina case law there is no loss for filial consortium, *Doe v. Greenville Cnty. School Dist.*, 375 S.C. 63 (2007). The law is clear Tekeyah's damages are limited to past and future medical expenses only until the child is 18. The only evidence presented to the jury is that of \$20,854.00. Therefore, Tekayah Hamilton's verdict must be reduced to the amount of \$20,854.00, if defendant's other relief is not granted.

III. The Court Should Grant a New trial absolute because the Jury verdict is shockingly disproportionate to the evidence admitted at trial.

There is no evidence to uphold a jury verdict of \$1,127,280 for the child or \$135,477 for the mother. The only evidence of damages was \$20,854 in medical bills, some pain and a scar. The jury verdict is 54 times the amount of actual damages. Defendant reiterates and realleges herein its argument made in its Motion for JNOV/New Trial as if referenced herein.

A trial Judge is required to grant a new trial absolute when the amount of the verdict is "so grossly . . . excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." *Waring v. Johnson*, 341 S.C. 248 (Cl. App. 200). The term "passion and prejudice" does not necessarily imply bad faith, wrongful purpose, or moral delinquency," but rather, results when the award is "against the overwhelming weight of the evidence." *Beasley v. Ford Motor Co.* 237 S.C. 506. (1961).

Here the award is against the overwhelming weight of the evidence. The jury verdict is 54 times the actual damages. Plaintiff's closing argument is not evidence. It is obvious that the jury returned a verdict on the result of passion and prejudice when the

verdict is 54 times the actual damages. Therefore, defendants are entitled to a new trial absolute.

IV. The Court should have directed a verdict in favor of TRC as Plaintiffs did not establish Gross Negligence.

Plaintiffs were required to prove gross negligence. *See generally Stewart v. Richland Memorial Hosp.*, 350 S.C. 589 (2002). "Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one out not to do. [internal citations omitted]. It is the failure to exercise slight care." *Etheridge v. Richland School dist. One*, 341 S.C. 307, 311 (2000).

The evidence shows that the defendants exercised more than slight care. Jamie Downing inspected the IV site 7 times in a twelve-hour shift when the requirement was once every 12 hours. The only pediatric nurse expert, Cynthia Hurly, testified that Jamie Downing exceeded the standard of care. Plaintiff's expert, which defendant denies is an expert, testified that she had no opinion that Jamie Downing intended to harm the minor. There was no evidence of intent, which is required for gross negligence and the evidence shows that Jamie Downing exercised more than slight care.

Further, there were not multiple repeated mistakes in the medical records, plaintiff's expert misinterpreted the records and policies. At no time did plaintiff's present evidence that MEC medical recording system was flawed. Plaintiff's expert was not familiar with the medical recording system and had no experience in operating it. There was also no evidence offered at trial that Dr. Boltin ignored or intentionally override the reminder to flush every four hours. This allegation is raised for the first time in plaintiff's memorandum. Defendant asserts in Section I above this is improper.

There was no evidence of malpractice by Dr. Boltin. Plaintiff's expert testified that after the infiltration she had no criticism to the treatment the child received. She is again, not competent to render opinions as to physician treatment and standard of practice. There were no allegations pled against Dr. Boltin as set forth above and she did not testify to same. There was no evidence of any physician malpractice.

Plaintiffs cannot meet the elements of gross negligence. There was no evidence of intent, and the evidence presented reveals defendants exercised more than slight care. Therefore, defendants should have been granted a directed verdict, as more fully set forth in this Motion for JNOV/New Trial.

V. Monica Stobbs is not qualified to give an opinion as to pediatric IV management.

In order to qualify an expert, a witness must have the "knowledge, skill, experience, training or education" in order to testify. Rule 702, SCRE. "To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter." *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 253 487 S.E.2d 596, 598 (1997) (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Cl. App. 1995)).

Monica Stobbs was not qualified to give opinions on the standard of care that would have applied to Jamic Downing. She never managed, monitored, or started a pediatric IV. Ms. Stobbs did not do any research on the literature prior to forming any opinions.

This case is similar to the *Botelho v. Bycura*, where an orthopedic surgeon was not qualified to testify on the standard of care for podiatrist where the orthopedic surgeon

had no training in podiatry, was not familiar with any journals or periodicals in podiatry and was not familiar with the surgical procedure performed, 282 S.C. 578, 320 S.E.2d 59 (1984).

Ms. Stobbs testified that medical record indicated insufficient monitoring of the site, incomplete assessments and insufficient flushing. Ms. Stobbs never used the Electronic System implemented by TRMC, and she misinterpreted the medical records. Ms. Stobbs was not qualified to testify about any of that, because she never used the system.

Ms. Stobbs testimony cannot be used to establish the standard of care for monitoring a pediatric IV site. She simply, stated Defendants broke the rules. She had no experience or knowledge to explain the rules that were allegedly broken. Her testimony was prejudicial as she had no experience monitoring pediatric IV sites or the medical records. She has never managed or maintained a pediatric IV site.

Monica Stobbs testimony should have been excluded and therefore defendants are entitled to a JNOV or in the alternative a new trial.

VI. The Request to Admit should have not be published to the Jury

Defendants concede that this is an unusual instance. However, the Request to Admit should not have been published to the Jury. Defendant asserts that the probative value of the Request to Admit was substantially outweighed by the prejudicial affect.

Here, Plaintiff's Counsel intentionally failed to even mention to Defendant's counsel that it intended to publish the request to the Jury. Plaintiff's pre-trial brief was silent on the issue. Defendants were unaware, until at the close of plaintiff's case, when plaintiff's counsel suddenly sprung it on defendant's counsel stating it was a stipulation.

There was never any discussion prior about the request to admit. Such tactics are highly prejudicial as defendants had not time to gather rebuttal evidence.

The Request to Admit did nothing but confuse the issues and was highly prejudicial to defendant. It had the effect of admitting negligence, there was no probative value to the Request to Admit. Plaintiff could show no prejudice by the exclusion of the evidence. There was no probative value to the request to admit. The purpose of the request was to obtain an independent medical examination.

The request to admit should not have been published to the Jury and therefore defendants are entitled to a new trial.

The Request to Admit should not have been published to the Jury and prejudiced the defendant. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. Rule 36 (b) of the South Carolina Rules of Civil Procedure states,

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be sub-served thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining or defense on the merits. Any admission made by a party under this rule is for the purpose of pending action only and is not an admission by him for any other purpose.

RULE 36, SCRCF; *see also Commerce Center of Greenville, Inc. V. W. Powers McElveen*, 347 S.C. 545, 557, 556 S.E.2d 718, 724 (Ct. App. 2001) ("The trial court may allow a party to amend or withdraw its answers to a request to admit when: (1) the

presentation of the merits is furthered by the amendment; and (2) the party who obtained the admission cannot demonstrate prejudice because of the amendment." Defendant asserts that plaintiff was not prejudiced by withdrawal of these Requests, which was denied by the Court.

South Carolina's case law addresses issues for withdrawal by the admitting party. The Court should have permitted withdrawal of the RTA because the plaintiffs could not show that withdrawal would prejudice them in maintaining the merits. Here the Request to Admit (RTA) was highly prejudicial to the defendant and did nothing but confuse the issues. At all times defendant maintained that they were not negligent. By introducing the RTA to the jury, it had the effect as if defendant admitted they were negligent. At no time did the defendant admit negligence. The RTA had the opposite effect because plaintiffs admitted the amount in controversy was more than \$100,000. The RTA request number 1 stated, "Admit the value of the amount in controversy in this action is less than \$100,000." The plaintiff denied this. This directly confuses the issues and is highly prejudicial to any probative value it may have.

The purpose of the request to admit was to obtain an Independent Medical Examination, not for plaintiffs to represent that defendant admitted the damages were in excess of \$100,000.00. Therefore, defendants are entitled to a new trial.

VII: The probative value of the photographs was substantially outweighed by unfair prejudice.

Rule 403 of the SCRE states, "[a]lthough relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "To constitute unfair prejudice, the

photographs must create "an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." *State v. Holder*, 382 S.C. 278, 290(2012) (quoting *State v. Jackson*, 364 S.C. 329, 334 (2005)).

The Court should have excluded the photographs from the jury. In plaintiff's memorandum it states "the fact is it was a horrible injury which was ugly, unpleasant, and offensive in its nature." Pl. Memo. In Opposition pg 12. That is indicative of how prejudicial the photographs were to defendant. As shown at trial, there was ample evidence to prove an injury occurred. No witness disputed the injury had occurred. Plaintiff argues that the photograph that defendant introduced was small and had to be passed around and further that plaintiffs did nothing to enhance the photo. However, the plaintiff's photographs were enhanced, they were blown up, completely out of proportion to its relative size on top of the fact all of the photos were originally close-ups. As to the photograph that Defendant passed around, it was not the photograph of the open flesh wound, it was a photograph of the scar.

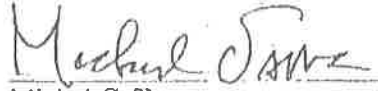
Given the excessive jury verdict it is evident that the jury returned a verdict on a result of passion and prejudice. Therefore, defendants should be granted a new trial absolute.

CONCLUSION

WHEREFORE, defendant TRMC asserts that based on all of the foregoing reasons contained in this Response, as well as those in the prior two filed Motions, the defendant respectfully requests this Court reconsider its decisions and issue and order granting TRMC JNOV or in the alternative, grant dDefendant's a new trial absolute, and

grant such other and further relief as contained herein and such other relief as may be just and proper.

MICHEL C. TANNER, L.L.C.

A handwritten signature in dark ink, appearing to read "Michel C. Tanner", written over a horizontal line.

Michel C. Tanner
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Bamberg, S.C., 29003
Attorneys for Defendant

Bamberg, S.C.

June 22, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

CASE NO.: 2015-CP-38-01234

Tekayah Hamilton, individually and as parent and guardian ad litem for [REDACTED]
a minor child under the age of eighteen,

Respondent,

v.

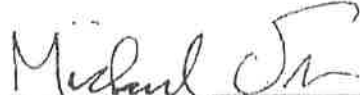
The Regional Medical Center

Defendant.

NOTICE OF APPEAL

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SC Court of Appeals

Appellant, The Regional Medical Center appeals the attached Order of the Honorable
Edgar W. Dickson dated October 25, 2019, and filed October 25, 2019. Appellant received
written notice of entry of this Order on October 25, 2019.


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Attorneys for Respondent

November 19, 2019

Orangeburg Common Pleas

Case Caption: Tekayah Hamilton , plaintiff, et al VS Regional Medical Center ,
defendant, et al
Case Number: 2015CP3801234
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2019-10-25 11:31:39 page 10 of 10

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Tekayah Hamilton, individually and as parent
and guardian ad litem for Robert Lee M. Jr., a
minor child under the age of 18,

Plaintiff

vs.

Regional Medical Center

Defendant

COURT OF COMMON PLEAS

CIVIL ACTION NO. 2015-CP-02 01234

ORDER GRANTING DEFENDANT'S
MOTION FOR REDUCTION TO
STATUTORY CAP AND DENYING
DEFENDANT'S MOTION FOR JNOV OR
IN THE ALTERNATIVE FOR A NEW
TRIAL

This case was tried before a jury in this Court on or about May 9, 2018. The jury returned a verdict finding Defendant was grossly negligent and awarded \$1,127,280.00 to the minor plaintiff Robert Lee M. Jr., and \$135,477.00 to Plaintiff Tekayah Hamilton. Defendant filed two, separate post-trial motions, one to reduce the award to the statutory cap and a JNOV or in the alternative for a new trial. After review of the motions, memoranda of counsel and supporting documents, I grant in part Defendant's Motion for Reduction to Statutory Cap and deny Defendant's Motion for JNOV or in the Alternative for New Trial.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of Defendant's alleged failure to implement policies, procedures, and equipment to allow Defendant to properly monitor an IV with ampicillin administered to RJ on or about October 28, 2014, while a patient at Defendant's facility in Orangeburg, South Carolina. Plaintiff's complaint alleges medical negligence, specifically the following:

The impression of the treating physician was high fever and admission to the hospital was necessary in order to work up CBC, LP, blood and urine cultures. It was decided to begin Ampicillin and Claforan. Pl.'s Complaint par. 11

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SC Court of Appeals

Defendant Regional, by and through its agents and/or employees, and Defendant Downing¹ owed Plaintiff a duty of care to use that degree of care and skill which ordinarily employed by the profession generally, under similar conditions and in like surrounding circumstances. Pl.'s Complaint par. 33

Plaintiff asserts Defendants breached that duty of care and were negligent, grossly negligent, careless, willful, wanton, and reckless in the following particulars:

- a) In failing to use reasonable medical care in accordance with the recognized standards of acceptable professional practice in medicine during the care, diagnosis and treatment of Plaintiff;
- b) In failing to act with ordinary and reasonable care in accordance with the recognized standards of acceptable professional practice in medicine;
- c) In failing to follow the Infusion Nurse Society publication on *Policies and Procedures for infusion Nursing of the Pediatric Patient*;
- d) In failing to pursue such appropriate medical modalities and treatments which could have avoided this type of injury and permanent damage;
- e) In failing to act and behave in the same or similar manner that reasonably competent doctors and healthcare facilities and staff would have behaved or acted in the same or similar conditions;
- f) In failing and neglecting to properly inspect the IV site on October 28, 2014, at approximately 4:27 a.m. prior to the administration of antibiotic medication;
- g) In failing and neglecting to properly monitor the IV site after the administration of antibiotic medication;
- h) In failing to adequately train and supervise its medical staff;
- i) In failing to provide the safest care and treatment to Plaintiff; and
- j) For such other acts and omissions that may become more apparent through the discovery of this matter.

Pl.'s Complaint par. 34. Plaintiff attached an affidavit to her complaint by Monica Stobbs, RN, BSN, clarifying and reiterating the breaches in the standard of care by Defendant TRMC, by and through its employees, causing harm to RJ and Tekayah. Specifically, Plaintiff alleged Defendant Regional failed to properly monitor RJ's IV site prior to and after administering medication. Plaintiff did not offer any testimony at trial as to any alleged physician malpractice.

This matter was filed pursuant to South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et Seq. I find that defendant TRMC is a governmental healthcare facility and is afforded the protections of the South Carolina Tort Claims Act, as defined by the Act.

¹ Defendant Downing, a registered nurse, was dismissed as a party after the original Summons and Complaint was filed.

At trial Plaintiff offered Monica Stobbs RN BSN as well as Dr. DeVito regarding RJ's future care and Plaintiff herself took the stand. Plaintiff also called nurse Jamie Downing, RN, and published Plaintiff's answers to Defendant's First Set of Requests to Admit to the jury. RJ's medical records and bills were submitted as evidence along with several pictures of his injury and numerous policies and procedures of Defendant Regional.

Defendant called Dr. Davis to dispute RJ's future care. Nurse Jamie Downing, testified along with Cynthia Hurley as to standard of care and expert issues. Defendant also submitted pictures of RJ's injuries, select medical records and select policies and procedures. Defendant moved for a directed verdict at the end of Plaintiff's case and its own. The Court denied both motions for directed verdict.

Defendant TRMC filed two separate post trial motions. The first post trial motion was a reduction of the damage caps to reduce the child's award to \$300,000.00 and the second was to reduce the mother's jury award to \$20,854.00 pursuant to the Tort Claims Act §15-78-120(a) (1). I find that Defendant TRMC's motion for JNOV/New Trial contained the following grounds: Defendant asserted plaintiff's witness, Monica Stobbs, was not qualified to render pediatric nursing opinions; Defendant TRMC asserted that Plaintiff did not establish gross negligence as required by the Tort Claims Act; Defendant TRMC asserts it was prejudiced by photographs submitted to the jury; Defendant TRMC asserts it was error to not allow its expert to testify to an opinion on gross negligence when Plaintiff's expert was allowed to render such opinion; Defendant TRMC asserts it was an error to publish its answers to Request to Admit to the jury; Defendant TRMC alleges it should be granted a new trial as certain jury charges were not given and finally Defendant's motion stated that the verdict was excessive. In ruling on all of these motions, the court has reviewed the motions submitted by Defendant TRMC, the memoranda of

both parties and a review of the applicable law. The Court incorporates all of Defendant's arguments raised in Defendant's motions and memoranda herein, as if repeated verbatim.

STANDARD OF REVIEW

A motion for judgment notwithstanding the verdict may only be granted if no reasonable jury could have reached the challenged verdict. RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). A jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. Curcio v. Caterpillar, Inc., 355 S.C.316, 320, 585 S.E.2d 272, 274 (2003). In ruling on a motion for judgment notwithstanding the verdict, the trial court must view the evidence and all inferences reasonably drawn therefrom in the light most favorable to the opposing party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

The thirteenth juror doctrine is the method used by the trial court to grant a new trial upon a finding that the evidence presented at trial did not support the jury's verdict. Curtis v. Blake, 392 S.C. 494, 505, 709 S.E.2d 79, 85 (Ct. App. 2011). If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, impulse, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. Id. at 500, 709 S.E.2d at 82. Compelling reasons must be presented to support the trial judge's invasion of the jury's province, merely highlighting that the verdict is greater than the amount of monetary damages is not enough as such other non-monetary factors must be considered as well. Id. at 501, 709 S.E.2d at 83.

ANALYSIS

First, this Court finds that the statutory cap on damages pursuant to the South Carolina Tort Claims Act (§ 15-78-10, et seq.) is applicable to this case. This action against TRMC is

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subject to the Tort Claims Act §15-78-10, et seq. Specifically, the Act provides that no person shall recover a sum exceeding three hundred thousand dollars because of a loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved unless otherwise provided S.C. Code Ann. § 15-78-120(a)(1).

In this case, the jury returned a verdict for the minor [REDACTED] ("RJ"), in the amount of \$1,127,280.00 and separately for his mother, Tekayah Hamilton, in the amount of \$135,477.00. Defendant believes that the award to RJ should be reduced to the statutory cap of \$300,000 and further argues that the award to Tekayah Hamilton should be reduced to \$20,854. In response, Plaintiff's posits that since this single occurrence involved the totality of Defendant's conduct, which encompasses the alleged conduct of Defendant's physicians, then the applicable recovery cap of \$1,200,000.00 contained in section 15-78-120(a)(3) applies.

Plaintiff's Complaint did not contain any allegations of physician malpractice and I do not find that Plaintiff offered any testimony that a physician breached the standard of care and alleged deviation of same. Plaintiff offered no expert testimony as to this issue at trial.

This Court agrees that the \$1,127,280.00 award to RJ should be reduced to \$300,000.00 pursuant to section 15-78-120(a)(1). As set forth above, the jury verdict for RJ must be reduced pursuant to the Tort Claims Act. Although a doctor ordered the medication and its administration, the crux of Plaintiff's case and the evidence presented at trial was that a nurse breached the applicable standard of care. I find that Plaintiff offered no evidence showing a physician was involved in any of the allegations in this matter. Furthermore, Defendant is correct that the evidence at trial showed RJ's mother incurred \$20,854.00 in past medical expenses. However, the jury was presented evidence that Ms. Hamilton would be required to bear the financial burden to take time off of work and travel for any future expenses. Because she

will remain his guardian for at least fifteen more years, this Court finds the award reasonable. Therefore, this Court finds that the award of \$1,127,280.00 to RJ should be reduced to \$300,000.00. Further, the award of \$133,477.00 to Ms. Hamilton should remain without alteration. The Court denies Defendant's motion to reduce Ms. Hamilton's verdict to \$20,854.00 pursuant to the Tort Claims Act.

Next, Defendant asserts that Monica Stobbs was not qualified to give an opinion on the standard of care of pediatric nursing and pediatric IV administration. Nurse Stobbs testified she never managed, maintained or started Pediatric IV's, nor did she review any literature on these issues. She did testify she did these tasks on adult patients. Once qualified, she testified that the assessment, flushing, and other procedures for monitoring and inspecting an IV site prior to the administration of medicine and after the administration of medication are the same regardless of the patient's age. Therefore, this Court sees no reason to depart from its earlier ruling that Monica Stobbs was properly qualified as an expert in nursing, but not as a pediatric nurse. The Court denies the Defendant's motion raised on this ground.

Similarly, Defendant argues that this Court should have directed a verdict in its' favor because Gross Negligence was not established. The determination of gross negligence is a mixed question of law and fact and should be presented to the jury when evidence supports it. Stanley v. City of Holly Beach, 331 S.C. 192, 205, 500 S.E.2d 160, 168 (Ct. App. 1998), *aff'd*, 339 S.C. 406, 529 S.E.2d 543 (2000). In this case, an inference that Ms. Downing failed to flush the child's IV is an inference that she failed to use slight care. Further, Plaintiff presented evidence that at least 20 minutes passed between RJ's reaction to the ampicillin and the time Defendant's employees responded to Ms. Hamilton's requests for assistance.

Additionally, witnesses testified that in the medical field if isn't written down (documented), then it did not happen. Evidence of several failures to document the condition of the IV in question was presented at trial. Because the evidence presented could give rise to intentional conduct and/or a failure to exercise slight care, this Court finds that the evidence presented supported the Jury's finding of Gross Negligence. Defendant's Motion on this ground is denied.

Defendant next argues that the probative value of the photographs of RJ's injuries was substantially outweighed by unfair prejudice. Photographs may be admitted corroborating testimony, however, photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. State v. Jackson, 364 S.C. 329, 613 S.E.2d 374 (2005). This Court reviewed the photographs prior to their publication.

Although, given the nature of the injury and the child's age, they are hard to look at, there is little doubt the photographs are relevant to corroborate the injury. The photographs were admitted for the purpose of proving the injury and this Court sees no reason to depart from its earlier ruling permitting the pictures because they accurately reflected the facts of the case. Defendant's Motion is denied as to this ground.

Defendant also argues that Defendant's expert, Cynthia Hurley, should have been permitted to testify as to whether or not she believed its' employees were grossly negligent or negligent. Defendant asserts this evidence was proper under Rule 704, SCRE. In general, an expert's testimony on issues of law is inadmissible but not because it simply embraces the ultimate issue. Dawkins v. Fields, 354 S.C. 58 (2003). The Court declines to grant the Defendant's motion on this ground.

The Defendant raised in its motion for JNOV/New Trial the argument that it has been prejudiced by the publication of Request to Produce pursuant to Rule 36, SCRPC. The Court having considered this motion, declines to order a new trial on this ground.

Defendant moved for a new trial as to certain jury charges set forth in its motion of JNOV/New Trial, which are incorporated herein by reference, were not charged to the jury. The Court declines to grant Defendant's motion on this ground, which is denied.

The Defendant requested a new trial based upon the view that the jury verdict was grossly excessive and contrary to the evidence. Defendant asserts in its memoranda that the verdict was 54 times the amount of the actual damages and was a result of passion, caprice, or prejudice. The Court has considered the argument of the Defendant in its memoranda as set forth above, which is incorporated by reference. The Court denies Defendant's motion for a new trial based upon this ground.

Defendant additionally raised that if the Court denied its JNOV or new trial absolute motions it should grant a new trial nisi remittitur as it asserted the damages for excessive compared to the evidence presented at trial. After considering this argument, the court denies to grant the Motion on this ground.

The Court has considered all the issues raised by the Defendant in its post trial motions and denies the motion for JNOV/New Trial as set forth above and partially grants Defendant's motion to reduce the verdict to the Tort Claims Act liability cap. Accordingly, and for these reasons.

IT IS THEREFORE ORDERED, that Defendant's Motion for post-trial relief of 1.) JNOV and 2.) a new trial absolute are DENIED. The Defendant's motion of reduction of damages to the

State and the defendant's motion to set aside the jury verdict. The defendant's motion to reduce the mother's verdict is denied.

AND IT IS SO ORDERED

Resident Judge Edgar W. Dickson
The First Judicial Circuit

August 2019
Orangeburg, South Carolina

ORANGEBURG, SOUTH CAROLINA - COMMON PLEAS COURT - JUDGE EDGAR W. DICKSON

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

CASE NO.: 2015-CP-38-01234

Tekayah Hamilton, individually and as parent and guardian ad litem for [REDACTED]
a minor child under the age of eighteen, ... Respondent,

v.

The Regional Medical Center Defendant.

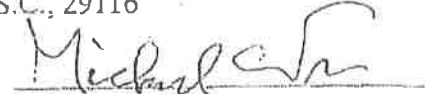
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SC Court of Appeals

I certify that I have served the Notice of Appeal on Tekayah Hamilton, by depositing a copy of it in the United States Mail, postage prepaid, on November 19, 2019, addressed to her attorneys of record, Jonathan F. Krell, Esquire, Post Office Box 299, Charleston, S.C., and David R. Williams, Esquire, Post Office Box 1084, Orangeburg, S.C., 29116



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November 19, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a
minor child under the age of 18, Respondent,

v.

Regional Medical Center, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record of Appeal complies with Rule 210(g), SCACR.

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April 30, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

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Honorable Edgar W. Dickson, Circuit Court Judge

SEP 29 2021

Appellate Case No. 2019-001921

SC Court of Appeals

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr.,
minor child under the age of 18, Respondent,

v.

Regional Medical Center, Appellant.

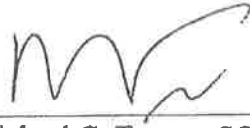
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I certify that I have served a copy of the Amended Record on Appeal by depositing a copy of
same via e-mail on September 27, 2021, addressed to the Respondent's attorney as follows:

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Jan 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton,
Jr., a minor child under the age of eighteen,..... Respondent

v.

The Regional Medical Center, ...Appellant

INITIAL BRIEF OF THE REGIONAL MEDICAL CENTER

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January 21, 2021

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Trial Court abused its discretion in qualifying Respondent's Expert Monica Stobbs as a general nurse and in permitting her to testify as to the standard of care for pediatric IV administration.
2. Whether Appellant is entitled to a reversal on the grounds that the lower court should have granted a directed verdict in favor of Appellant as Respondent did not establish gross negligence.
3. Whether the Trial Court abused its discretion by allowing, over objection, the admission of prejudicial photographs of the minor child to the jury.
4. Whether the Trial Court abused its discretion in prohibiting Appellant's expert Cynthia Hurley from testifying in front of the jury as to whether the Appellant was grossly negligent or negligent.
5. Whether the Trial Court abused its discretion in permitting the Request for Admission to be published to the jury.
6. Whether the Trial Court abused its discretion in not granting a new trial absolute or new trial *nisi remittitur* when the verdict was grossly excessive and shockingly disproportionate and contrary to the evidence admitted at trial, or, at the very minimum, was at least merely excessive given the evidence.

STATEMENT OF THE CASE

This matter arises out of an IV infiltration to a minor child which occurred during an admission at The Regional Medical Center from October 25 through October 30, 2014. On October 7, 2015, Plaintiff "Respondent" Tekayah Hamilton filed a Summons and Complaint alleging medical malpractice in the Orangeburg County Court of Common Pleas on behalf of herself individually, and as a parent and guardian ad litem for Robert Lee M., Jr., a minor child under the age of eighteen. The Defendant ("Appellant") The Regional Medical Center and Jamie Downing, RN, filed its Answer to the Complaint on November 30, 2015, denied liability and any wrongdoing, and asserted numerous affirmative defenses. Jamie Downing, RN, was dismissed from the action on June 29, 2016, pursuant to the Tort Claims Act.

The action came to a Jury Trial beginning May 7, 2018, in front of Judge Edgar W. Dickson in Orangeburg County, South Carolina. *See* Trial Tr. Mar. 19, 2019 & Trial Tr. Dec. 22, 2020. Appellant presented three pretrial motions *in limine*. *See* Def.'s Mot. in lim. to Exclude Photos., Def.'s Mot. in lim. to Exclude Monica Stobbs Testimony, Trial Tr. Dec. 22, 2020. In its first motion, Appellant moved that Respondent's expert, Monica Stobbs, should not be qualified as an expert witness in this matter and allowed testify to the standard of care for pediatric nursing on the ground that she lacked the required qualifications. In its second Motion, Appellant moved to exclude photographs of the minor child's hands on the ground that the probative value of the photographs was substantially outweighed by the danger of unfair prejudice. In its third and final motion, Appellant moved to exclude hearsay testimony of the Respondent. The Trial Court denied the Appellant's motions regarding Monica Stobbs and the photographs and granted the motion to exclude the hearsay testimony. On May 9, 2018, the Jury returned a verdict for the

Respondent Robert Lee Middleton Jr., in the amount of \$1,127,280.00 and for Respondent Tekayah Hamilton in the amount of \$135,477.00.

On May 17, 2018, Appellant filed two post trial motions. Appellant filed a Notice of Motion and Motion for JNOV or in the alternative Motion for New Trial and a Post Trial Motion For Reduction to Statutory Cap. Respondent filed a memorandum in opposition to Appellant's motions on June 13, 2018. On June 27, 2018, Appellant filed a response to the Respondent's Memorandum in Opposition. On October 25, 2019, the Trial Court issued its Order Granting Appellant's Motion for Reduction to Statutory Cap and Denying Appellant's Motion for JNOV or in the Alternative a New Trial.

Appellant timely filed a Notice of Appeal on November 19, 2019.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN QUALIFYING RESPONDENT'S EXPERT MONICA STOBBS AS A GENERAL NURSE AND IN PERMITTING HER TO TESTIFY AS TO THE STANDARD OF CARE FOR PEDIATRIC IV ADMINISTRATION.

STANDARD OF REVIEW

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion." *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596 (1997) (citing *McGee v. Bruce Hosp. System*, 321 S.C. 340, 468 S.E.2d 633 (1996); *see, e.g., Fields v. The Reg'l Med. Ctr. of Orangeburg*, 363 S.C. 19, 25, 609 S.E.2d 506 (2005)). "Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. 19 at 25. "In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; *see, e.g., Gooding v.*

St. Francis Xavier Hosp., 454 S.E.2d 328, 330 (Ct. App. 1995). "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 252 (citing *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995)); *Fields*, 363 S.C. at 26. "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Fields*, 363 S.C. at 26 (citing *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (2001)). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

ARGUMENT

A. THE TRIAL COURT'S ERROR WAS AN ABUSE OF DISCRETION.

Appellant argues that the Trial Court erred in ruling that Monica Stobbs, R.N., was qualified as an expert in general nursing ("Nursing 101") (Trial Tr. 7-10, 10:4-6, Dec. 22, 2020 & Trial Tr. 78:1-19, Mar. 17, 2019) and in allowing her to testify to the standard of care for pediatric nursing IV management. Def's Mot. *in lim.* to Exclude Monica Stobbs Testimony, Def's Mot. for JNOV or in the alt. Motion for New Trial 4-5; Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 6. Appellant argues that this an error that amounted to an abuse of discretion because the case was about pediatric, not adult, nursing and IV medicine; Ms. Stobbs failed to meet the qualifications as set forth in the South Carolina Rules of Evidence 702 and *Gooding*; and the court allowed Ms. Stobbs to testify outside of the scope of her expert qualification in this matter.

1. THIS MATTER WAS ABOUT PEDIATRICS, NOT GENERAL NURSING.

Appellant first argues that the Trial Court's error in qualifying Ms. Stobbs amounts to an abuse of discretion because there was no basis or rationale for qualifying Ms. Stobbs as an expert in general nursing in this matter. Pediatric nursing, not general nursing or "Nursing 101" (Trial Tr. 8:4-11, Dec. 22, 2020), was the issue in this case. Medical literature indicates a clear distinction between IV administration and management for pediatrics and adults.¹ Veins in infants are "obviously smaller" and can be "threadlike."² Trial Tr. 105:3-13, Mar. 17 2019. "Vein fragility and the high acuity levels of young patients can increase the likelihood of infiltration and extravasation, resulting in significant morbidity."³ *Id.* at 129:19-130:1. Furthermore, testimony from Appellant's expert and Nurse Downing, both of whom have extensive experience in pediatric nursing and IV administration (Trial Tr. 298:8-299:1, 323:10-324:21, 350:15-19, Mar. 17, 2019), revealed distinct differences between pediatrics and adult IV management (Trial Tr. 266:11-25, 331:11-332:24, Mar. 17, 2019). Pediatric patients and their veins are smaller, more fragile, and more mobile and therefore need to be more frequently assessed, whereas adults are more stable, have bigger veins, and thus, nurses are able to use larger catheters. *Id.* Because there is a clear distinction in pediatrics and adult IV care and the issue here was pediatrics, it was

¹ *The Infusion Nurses Society: Infusion Therapy in Clinical Practice*, 2nd. eds Hankins J, Lonsway RA, Hendrick C and Perdue MB. Saunders, St. Louis, MO 2001, 561 "Children present a wide variety of physical characteristics different from those in adults. In addition, premature infants and newborns vary greatly from older children in their anatomy and physiology. These characteristics affect the ability of neonates and infants to cope with environmental stress and to manage the metabolism, absorption, distribution, and excretion of medications and solutions. Although body systems in infants and children are different from those in adults, for the purpose of this text, only those related to infusion therapy are addressed in detail."

² *Id.* at 562 "The size of venous and arterial vessels in the infant and child are obviously smaller than those in the adult. Although the vessels are anatomically positioned in the same locations throughout life, their sometimes-threadlike characteristics and tendency to hide make them difficult to locate in the young patient."

³ *Policies and Procedures from Fusion Nursing of the Pediatric Patient*, The Infusion Nurses Society, *supra* at 125.

manifestly arbitrary, unfair, and unreasonable, and thus, an abuse of discretion, to qualify and allow the testimony of a general nurse who never practiced pediatric nursing.

2. MONICA STOBBS FAILED TO MEET THE REQUIREMENTS OF RULE 702 OF THE SOUTH CAROLINA RULES OF EVIDENCE AND *GOODING*.

In order to be qualified as an expert witness, a person must have the "knowledge, skill, experience, training or education" in order to testify. Rule 702, SCRE. "To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter.'" *Gooding*, 326 S.C. at 253, 487 S.E.2d at 598 (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995); see, e.g., *State v. Douglas*, 367 S.C. 498, 508-509, 626 S.E.2d 59 (Ct. App. 2006); *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 65 (Ct. App. 1984) (holding that an orthopedic surgeon was not qualified to testify on the standard of care for podiatrist where the orthopedic surgeon had no training in podiatry, was not familiar with any journals or periodicals in podiatry, and was not familiar with the surgical procedure performed).

Appellant argues the Trial Court's error amounts of abuse of discretion because, as per the requirements of South Carolina Rules of Evidence 702 and *Botehlo*, Ms. Stobbs was not qualified to testify as to pediatric IV administration, as her experience has only been to general, adult IV administration. Trial Tr. 8:13-9:19, Dec. 22, 2020; Def's Mot. *in lim.* to Exclude Monica Stobbs Testimony. The issue is not over a *defect* in amount or quality of experience or knowledge but rather, much like *Botehlo*, is over whether she possessed *any* of the required knowledge or experience. Similar to the orthopedic surgeon in *Botehlo*, Ms. Stobbs has had no personal experience or training at all in pediatric nursing or IV administration. Trial Tr. 103:14-

104:8,108:22-110:21, Mar. 17, 2019. Ms. Stobbs has never cared for a pediatric patient and has never started or managed a pediatric IV. *Id.* at 79:24-25, 108:22-110:21; Stobbs Dep. 13:9-24. Additionally, Ms. Stobbs does not have any education or knowledge as to pediatric nursing or IV administration. Ms. Stobbs testified that she did not perform any research, independent study, or review any medical literature in preparation of formulating her opinions. Trial Tr. 111:14-23, Mar. 17, 2019; Stobbs Dep. 26:15-24.

Ms. Stobbs proved her lack of knowledge and expertise by making baseless and inaccurate claims and testifying directly contradictory to the literature. Ms. Stobbs' opinion is premised on her belief that the standard of care for IV management is the same for pediatric patients as it is for adults. Trial Tr. 111:22-23, Mar. 17, 2019. Mar. 17, 2019; Stobbs Dep. 13:13-18. Her opinions are based on the speculative belief that pediatric patients are simply little adults. She believes the standard of care for both pediatrics and adults is "simple nursing 101." *Id.* at 96:22-23; Stobbs Dep. 26:17. Although she acknowledged that the literature indicates children have a wide variety of physical characteristics that differ from adults, including smaller, "obviously threadlike" veins, it is her opinion that a "vein is a vein." Trial Tr. 104:20-105:23, 126:1-15, 128:1-5, Mar. 17, 2019. She also testified that she disagreed with literature provided by Respondent that stated "[l]arger amounts of subcutaneous fat in children can make the identification of an early infiltration difficult;"⁴ however, she admitted she had no literature with her to support her opinion. *Id.* at 130:10-131:25.

Ms. Stobbs further proved her lack of knowledge concerning pediatric IV administration when she testified that she "should get blood return from a vein whether it's a baby or whether it's an adult." Stobbs Dep. 32:24-33:7. Trial Tr. 97:2-3, 110:22-24, 133:2-14, 133:20-134:13,

⁴ The Infusion Nurses Society, *supra*

Mar. 17, 2019. This is directly contrary to the literature.⁵ Trial Tr. 104:16-106:2, 351:7-14, Mar. 17, 2019. Although Ms. Stobbs has obtained blood returns in adult patients, she has never attempted to obtain one in a pediatric patient, and therefore, she does not know what it could do to a pediatric vein. Trial Tr., 134:20-135:8, Mar. 17, 2019. On the contrary, Appellant's expert, Cindy Hurley, and Nurse Downing both testified that trying to obtain a blood return in a pediatric is inappropriate because it could cause the vein to collapse or result in a false reading. Trial Tr. 271:8-21, 347:20-25-349:14, Mar. 17, 2019.

Thus, Ms. Stobbs failed to meet the requirements of SCRE 702 and *Gooding*. The sole purpose of an expert is to educate a jury on the subject matter of his or her expertise, and that is impossible to do without prior experience or study. Without proper education, training, or experience regarding pediatric administration and management, Ms. Stobbs was not more qualified than the jury to form an opinion as to the same. Therefore, Appellant asserts it was arbitrary, unfair, and unreasonable, thus an abuse of discretion, to permit Ms. Stobbs to testify as an expert in the standard of care for pediatric IV administration and administration.

3. THE CONTENT OF MS. STOBBS' TESTIMONY EXCEEDED THE QUALIFICATION OF THE TRIAL COURT.

Lastly, Appellant argues that the Trial Court's error amounts to abuse of discretion because it allowed Ms. Stobbs to provide expert testimony beyond the scope for what she had been qualified in this matter. During the Motion *in limine* hearing, the Trial Court specifically indicated Ms. Stobbs would be qualified in general nursing and not pediatrics, as it

⁵ "The Infusion Nurses Society, *supra* at 422." "Checking for a blood return, or backflow of blood, is not a reliable method for determining the absence of an infiltration. A blood return may not be present when small veins are used because they may not permit blood flow around the cannula; one may think the infusion has infiltrated when it has not."

acknowledged she had no prior experience with regards to pediatrics. Trial Tr. 8:18-19, 9:20-10:6, Dec. 22, 2020. Despite this, during trial the Trial Court allowed Ms. Stobbs to testify as to the standard of care of pediatric nursing and IV administration. This was clearly beyond the scope of the Trial Court's qualification of her as an expert witness. Therefore, Appellant maintains that it was manifestly arbitrary, unfair, and unreasonable, and thus, an abuse of discretion, to allow Ms. Stobbs to testify regarding the standard of care for pediatric IV administration and management.

B. THE TRIAL COURT'S ABUSE OF DISCRETION WAS NOT HARMLESS

Appellant asserts this error was not harmless and was highly prejudicial to Appellant's case. "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding. Rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v Douglas*, 367 S.C. at 519-520 (citations omitted). "Error is harmless where it could not reasonably have affected the result of the trial." *Id.* at 520 (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)). "The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence." *Id.* at 520 (citations omitted); *see also, McGee*, 468 S.E.2d at 636 (allowing an expert to testify about the placement of catheters was harmless as it was cumulative to other evidence). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." *State v. Douglas*, 367 S.C. at 508 (citations omitted).

Given the arguably excessive verdict (Trial Tr. 446:18-447:1, Mar. 17, 2019) in light of no other testimony or evidence as to Appellant's negligence (*see infra* Argument II), Appellant asserts the error in allow Ms. Stobbs' qualification and testimony was not harmless. Appellant

asserts that had Ms. Stobbs not been qualified as an expert and allowed to testify as to the standard of care for pediatric IV management, then the Respondent could not meet its burden of proof which would have resulted in a directed verdict against Respondent. Ms. Stobbs' testimony was not cumulative to other testimony or evidence presented. She was the only witness offered by Plaintiff on two critical issues. Appellant further asserts that the excessive verdict demonstrates that there is reasonable probability that the jury was highly influenced by Ms. Stobbs' testimony. Thus, Appellant asserts this error not harmless, but rather was highly prejudicial to Appellant's defense of the matter. Therefore, because the Trial Court's error amounted to an abuse of discretion and this error was not harmless, the Trial Court's ruling is warranted a reversal on this ground.

II. APPELLANT IS ENTITLED TO A REVERSAL ON THE GROUNDS THAT THE LOWER COURT SHOULD HAVE GRANTED A DIRECTED VERDICT IN FAVOR OF APPELLANT AS RESPONDENT DID NOT ESTABLISH GROSS NEGLIGENCE.

STANDARD OF REVIEW

"When reviewing the denial of a motion for directed verdict or JNOV, this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Welch v. Epstein*, 342 S.C. 279, 299-300, 536 S.E.2d 408 (2000) (citations omitted). "In ruling on a motion for directed verdict, it is the duty of the court to view the evidence and all inferences which may reasonably be drawn therefrom in the light most favorable to the non-moving party." *Hollins v. Richland Cnty. Sch. Dist. One*, 310 S.C. 486, 427 S.E.2d 654, 655 (1993) (citing *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776 (1962)). "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Welch*, 342 S.C. at 300 (citing

Steinke v. S.C. Dept. of Labor, Licensing, & Reg., 336 S.C. 373, 520 S.E.2d 142(1999)). "Th[c] Court will reverse the trial court only when there is no evidence to support the ruling below." *Id.* (citations omitted). "When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.* (citations omitted). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Id.* (citing *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 415 S.E.2d 393 (1992)). "The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision." *Id.* (citations omitted).

ARGUMENT

Gross negligence is the standard that applies in this matter. *See Stewart v. Richland Mem'l Hosp.*, 350 S.C. 589, 592, 567 S.E.2d 510, 511 (2002) (holding gross negligence was the standard, as per the South Carolina Torts Claim Act, that the plaintiff had to prove in a matter where a nurse in a hospital was involved in restraining and monitoring the plaintiff). Appellant is a government entity, as defined by the statute, S.C. Code Ann. § 15-78-30(j); and *Smith v TRMC*, 713 S.E.2d 656 (Ct. App. 2011) thus, this matter is restricted to the confines prescribed within the South Carolina Torts Claims Act, S.C. Code Ann. § 15-78-200. Per the South Carolina Torts Claims Act §15-78-60(25),

The governmental entity *is not liable* for a loss resulting from . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, *except when the responsibility or duty is exercised in a grossly negligent manner*

S.C. Code Ann. § 15-78-60(25) (Cum. Supp. 1991) (emphasis added). Moreover, the Torts Claims Act "must be liberally construed in favor of limiting the liability of the State." S.C. Code

Ann. § 15-78-20(f) and § 15-78-200. Therefore, gross negligence is the applicable standard, and the facts must be applied in such a way to limit the liability on the State.

This Court has defined gross negligence in a number of ways. "Gross negligence is the intentional failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275 (2007); *see, e.g., Clyburn v. Sumter Cnty. Dist. Seventeen*, 317 S.C. 50, 451 S.E.2d 885, 887 (1994); *Richardson v. Hambright*, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988). It is the "failure to exercise slight care." *Id.* Gross negligence has also been defined as "a relative term, and means the absence of care that is necessary under the circumstances." *Hollins v. Richland Cnty. Sch. Dist. One*, 427 S.E.2d at 656 (quoting *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629 (1952)). Furthermore, "[w]hile gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Etheredge*, 341 S.C. at 310; *see, e.g., Clyburn*, 451 S.E.2d at 887-88.

Appellant maintains that the Trial Court erred in refusing to grant Appellant's motion for directed verdict (Trial Tr. 311:8-313:3, 315:2-23, 382:8-21, Mar. 17, 2019), or Appellant's motion for JNOV or a new trial as there was not more than one inference as to whether Appellant acted with gross negligence (Def. Mot. for JNOV or in the alt. Motion for New Trial 5-6; Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 6-7). This was not a case of credibility issue or conflict in evidence or testimony. Rather, Respondent failed to provide *any* evidence or testimony of gross negligence; and thus, no reasonable jury could have made any finding of such.

Respondent did not submit any question to its own expert about whether Nurse Stobbs or Appellant were grossly negligent. Moreover, when asked by counsel for Appellant, Respondent's expert had no opinion as to the intentional conduct of Nurse Downing. Trial Tr. 132:24-25, 133:17-19, Mar. 17, 2019. Respondent's expert further agreed that just because an IV infiltrated does not automatically warrant a conclusion that there was negligence. *Id.* at 139:7-16. In fact, she agreed that infiltration is a known risk. *Id.* at 112:2-24, 139:4-6. Respondent's expert herself testified that she has had IVs infiltrate without her having been negligent and has known other nurses who had IVs infiltrate without them being negligent. *Id.* at 138:10-139:3.

Nurse Downing testified that she acted in accordance with how she was trained with respect to pediatric IV administration. She testified regarding her knowledge on the differences between adult and pediatric IV administration and monitoring. *Id.* at 266:11-269:23, 271:8-21. She testified that she checked on the patient regularly and assessed the IV to make sure it was in properly and the medication was being administered as it should be. She testified that at no time during her assessment and monitoring of the minor Respondent did she see an infiltration score of anything other than zero. *Id.* at 303:25-305:19. She further testified that she followed the required protocol regarding flushing, always flushed the IV prior to administering medication, and documented her interactions with the patient into the hospital computer system as required. *Id.* at 272:9-274:19, 274:23-275:1, 275:19-276:9, 276:22-277:10, 280: 2-3, 280:6-10, 280: 13-18, 280:21-281:1, 299:13-303:22. This is evidence that Nurse Downing, at the very minimum exercised at least slight care.

Moreover, Cindy Hurley, Appellant's expert who has had extensive experience working in pediatric nursing (*Id.* at 323:10-324:21, 350:15-19), testified that Nurse Downing actually exceeded the standard and the hospital's policy and procedure requirements by checking on him

seven times during her twelve hour shift when she was only required to check on him once (*Id.* at 327:21-331:10, 333:2-347:25, 349:15-350:14, 352:8-354:13, 356:20-357:4). Certainly, if there was no evidence of negligence, but rather there was testimony that the standard was actually exceeded, there could not possibly have been any gross negligence or any inference of the same as a matter of law.

Even in the light most favorable to the non-moving party, there was no evidence or testimony presented establishing an inference or possibility of gross negligence on the part of Appellant. Respondent had the burden, and they failed to meet that burden. Respondent failed to demonstrate through evidence or testimony that Nurse Downing failed to exercise slight care or intentionally failed to do what she ought to have done in the care and treatment of the minor Respondent. Because Respondent failed to meet their burden of establishing any inference of gross negligence, and the courts favor limitations on liability on the State, the Trial Court erred by not granting a directed verdict in favor of Appellant. Thus, the decision must be reversed on this ground.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING, OVER OBJECTION, THE ADMISSION OF PREJUDICIAL PHOTOGRAPHS OF THE MINOR CHILD TO THE JURY.

STANDARD OF REVIEW

"[T]he admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. 19 at 25. "[T]he trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; *Gooding*, 454 S.E.2d at 30. "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 487 (citing *Lee*, 318 S.C. 283, 457 S.E.2d 344); *Fields*, 363 S.C. at 26. "To

warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

ARGUMENT

Rule 403 of the South Carolina Rules of Evidence states, "[a]lthough relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "To constitute unfair prejudice, the photographs must create 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690 (2009) (quoting *State v. Jackson*, 364 S.C. 329, 334 (2005)). "Photographs calculated to arouse the sympathy or prejudice the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions." *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226 (2010).

In a Motion *in limine*, Appellant argued against the admission of photographs (Pltf.'s Exs. 1-3) of the minor Respondent's hand into evidence. Trial Tr. 10-15, Dec. 22, 2020; Def.'s Notice of Motion & Motion *in limine* to Exclude Photos. Appellant believes that the court erred in allowing the admission of the photographs (Trial Tr. 14:24-15:14, Dec. 22, 2020) and testimony during trial as to the same (Trial Tr. 151:7-152:15, 154:20-156:3, 228:1-230:15, 235:8-236:4, Mar. 17, 2019). Def.'s Motion for JNOV or in the alt. Mot. for New Trial 6-7; Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 7. First, these photographs were not necessary to substantiate the

Respondent's case. The fact that there was a wound was never disputed, and at no time did Appellant's argue that the infiltration did not occur or was not the cause of the wound. Trial Tr. 3:13-18, Dec. 22, 2020; Trial Tr. 399:3-5, Mar. 17, 2019. The Respondent had ample other evidence of the wound, such as the wound center records (Pltf.'s Ex. 6), testimony by the witnesses, and presentation of the minor child at trial (Trial Tr. 158:15-159:25, Mar. 17, 2019), that were less prejudicial than the photographs of the open flesh wound.

Second, these were grotesque, up-close images of the wound that made them appear substantially large than they were in reality. One of the photographs was actually quite blurry. Moreover, the photographs did not include a scale to indicate measurements and proportions. As such, Appellant argues that these images were graphic, inflammatory, and not an accurate reflection of the child's hand and injuries. Trial Tr. 12:23-14:1, Dec. 22, 2020; Def.'s Notice of Motion & Motion *in limine* to Exclude Photos; Def.'s Motion for JNOV or in the alt. Mot. for New Trial 6-7. The photos, by their very nature, had a prejudicial tendency to arouse the emotions of the jury. *Id.* Moreover, the photographs did not reflect the current state of the wound. The minor child appeared during trial and showed the jury his scar, which did not appear as it did in the photographs. Trial Tr. 158:15-159:25, Mar. 17, 2019. There was also testimony, including from Respondent's own expert, that the child's scar appeared healed since February 2015 and did not look like the photographs shown. *Id.* at 243:12-20, 245:2-3, 245:5-8. Thus, as the photographs were not necessary to determine the identity of the child or that the injury had occurred; were grotesque, up-close images not appropriately scaled; and were not representative of the nature of the child's scar, Appellant asserts the admission of the photographs and testimony of the same was in error.

Appellant further asserts this error amounted to prejudice based upon the excessive verdict in favor of Respondent. Due to the excessive jury award, the Appellant is left to conclude that the admission of the grotesque, up-close nature of the photographs were designed to and succeeded in arousing the sympathy of the jury. As stated above, the photographs were not necessary to establish identity or that the infiltration did occur and was the cause of the wound, the photographs were of little probative value. Appellant argues that any probative value they may have had was substantially outweighed by the fact that they were grotesque, up-close images of the open wound, not to scale, and not representative of the actual appearance of minor's scar. Despite hearing testimony that the minor child's scar has been healed since February 2015 (*Id.* at 245:2-8), is well-healed and stable (*Id.* at 191:17-192:3), does not appear as it did in the photographs, and, in fact, seeing this for themselves, the jury return a grossly excessive verdict in favor of Respondent. Thus, this leaves Appellant to conclude that, without any additional presentation from the Respondent of evidence of gross negligence on the part of Appellant, the jury must have been highly persuaded by these grotesque images. Thus, Appellant asserts the admission of these photographs were highly prejudicial to its defense.

Therefore, Appellant asserts the admission of the photographs was in error, was highly prejudicial to Appellant's defense, and their admission and the allowance testimony to the same an abuse of discretion by the Trial Court, thereby warranting a reversal of the Trial Court's decision.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN PROHIBITING APPELLANT'S EXPERT CYNTHIA HURLEY FROM TESTIFYING IN FRONT OF THE JURY AS TO WHETHER THE APPELLANT WAS GROSSLY NEGLIGENT OR NEGLIGENT.

STANDARD OF REVIEW

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion." *Gooding*, 326 S.C. at 252 (citing *McGee v. Bruce Hospital System*, 321 S.C. 340, 468 S.E.2d 633 (1996); *see, e.g., Fields*, 363 S.C. at 25.

"Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. at 25. "In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; *see, e.g., Gooding*, 454 S.E.2d at 330.

"An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 252 (citing *Lee*, 318 S.C. 283, 457 S.E.2d 344); *Fields*, 363 S.C. 19 at 26. "A trial court's ruling on the admissibility of an expert's

testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Fields*, 363 S.C. at 26 (citing *Means*, 348 S.C. at 166, 558 S.E.2d at 924). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof."

Fields, 363 S.C. at 26 (citations omitted).

ARGUMENT

During trial, Respondent asked the court to prohibit Appellant's expert from testifying as to any legal conclusion. Trial Tr. 316:2-7, Mar. 17, 2019. Appellant argues that the court erred prohibiting counsel for Appellant from asking its expert in front of the jury whether she believed Appellant was negligent or grossly negligent and instead forcing counsel for Appellant to ask her outside the presence of the jury in a proffer. *Id.* at 316:2-320:1, 378:1-381:13; Def.'s Motion for JNOV or in the alt. Motion for New Trial 7-8; Court's Order Granting Def.'s Motion for

Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the alt. for a New Trial 7.

It was her opinion via the proffer that Nurse Downing, and therefore TRMC, was not negligent and was not grossly neglect. (*Id.* at 380:3-18). Appellant argues that the Trial Court's error in not allowing this testimony has amounted to an abuse of discretion because it was allowed under the Rules of Evidence and case law, and it resulted in prejudice to the Appellant and the presentation of its defense on the matter.

Pursuant to the South Carolina Rules of Evidence, “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Rule 704, SCRE. “There is no invasion of the province of the jury, for the jury retains its power and duty to judge both the credibility of the witness and the weight to be given to his opinion.” *Redman v. Ford Motor Co.*, 253 S.C. 266, 278, 170 S.E.2d 207 (1969). In *Dawkins*, the court held that “[i]n general, expert testimony on issues of law is inadmissible. *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433 (2003). However, the court has held “that the trial judge has the discretion to permit expert testimony on the ultimate issue before the jury.” *Redman*, 253 S.C. at 278 (citing *O’Kelley v. Mut. Life Ins. Co.*, 197 S.C. 109, 14 S.E.2d 582 (1941)); *see, e.g., Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 403, 237 S.E.2d 753 (1977).

Appellant's expert, Cindy Hurley, testified as to the standard of care for pediatric nursing and her opinions as to whether Nurse Stobbs complied with that standard. Trial Tr. 327:21-24, 328-331:10, 333:2-347:25, 349:15-350:14, 352:8-354:13, 356:20-357:4, Mar. 17, 2019. For reasons previously discussed, the ultimate issue, the burden which Respondent had to establish, was gross negligence. Given her extensive experience and knowledge regarding pediatric nursing and IV administration (*Id.* at 323:10-324:21, 350:15-19), Appellant sought to ask Ms. Hurley

whether she believed Nurse Stobbs and Appellant hospital acted with negligence or gross negligence (*Id.* at 316:14-21, 318:1-5). Ms. Hurley could not be prohibited from testifying to this solely on the grounds that it was the ultimate issue in this matter. *See* Rule 704. Moreover, counsel for Appellant was not asking Ms. Hurley to give an opinion as to an issue of law, as this was not possible since Ms. Hurley was a nurse and not a legal expert. Asking Ms. Hurley this question should not have led to any confusion, as the jury was aware that Ms. Hurley was an expert in nursing, not law. Unlike in *Dawkins*, Ms. Hurley did not make, and was not asked to make, a legal argument nor she did offer these opinions in a written affidavit. Appellant wanted to simply asked its expert what her opinion was based on her experience and background as a pediatric nurse.

Earlier in the trial proceedings, counsel for Appellant had asked Respondent's expert the same questions regarding her opinions as to negligence and intentionality on the part of Appellant hospital and Nurse Stobbs, without any objection from counsel for Respondent. Trial Tr. 132:24-25, 133:17-19; 138:10-139:16, Mar. 17, 2019. Appellant thought that asking Ms. Hurley the same questioning would assist the jury in its decision and in weighing and comparing the testimony of both expert witnesses in this matter. Thus, because the jury did retain its power in judging the experts' credibility, allowing this part of Ms. Hurley's testimony would not have usurped its role. Therefore, Appellant argues that the Trial Court's ruling denying this portion of Ms. Hurley's testimony was arbitrary, unreasonable, and unfair to the presentations of Appellant's defense of this matter; thus, Defendants assert it was error for this to be kept from the jury for its consideration.

Appellant further assert that this error resulted in prejudice to Appellant's defense of this matter. The jury returned a grossly excessive verdict in favor of Respondent (Trial Tr. 446:18-

447:1, Mar. 17, 2019). despite not hearing any testimony or seeing any evidence of gross negligence. Therefore, the Appellant is left to conclude that not being allowed to ask its expert this important question did, in fact, affect the results of the trial. Appellant maintains that the purpose of the question was to ask its expert her opinion, based on her experience in pediatric nursing, and this would have helped educate and better inform the jury. Thus, not allowing the testimony in the presence of the jury was prejudicial to Appellant.

Therefore, the Trial Court abused its discretion in not allowing Ms. Hurley's testimony regarding gross negligence in front of the presence of the jury, and the decision must be reversed.

V. THE TRIAL COURT ABUSED ITS DISCRETION IN PERMITTING THE REQUEST FOR ADMISSION TO BE PUBLISHED TO THE JURY.

STANDARD OF REVIEW

"[T]he admission or exclusion of evidence in general is within the sound discretion of the trial court." *Fields*, 363 S.C. at 25 "[T]he trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Id.*; *Gooding*, 454 S.E.2d at 330. "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 487 (citing *Lee*, 318 S.C. 283, 457 S.E.2d 344); *Fields*, 363 S.C. at 26. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

ARGUMENT

Appellant asserts that the publication of its Request to Admit was an error that prejudiced Appellant's defense of the matter and amounted to an abuse of discretion by the Trial Court. Trial

Tr. 250:21-258:25, Mar. 17, 2019; Def.'s Motion for JNOV or in the alt. Motion for New Trial 8-10; Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the alt. for a New Trial 8; Def. RTA. Appellant concedes this is an unusual circumstance and the case law seems to only address issues for withdrawal by the admitting party. As per Rule 36(b) of the South Carolina Rules of Civil Procedure, "[t]he Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining or defense on the merits." Rule 36, SCRCPP; *see, e.g., Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen*, 347 S.C. 545, 557, 556 S.E.2d 718, 724 (Ct. App. 2001) ("The trial court may allow a party to amend or withdraw its answers to a request to admit when: (1) the presentation of the merits is furthered by the amendment; and (2) the party who obtained the admission cannot demonstrate prejudice because of the amendment."). However, Appellant asserts that, pursuant to Rule 403 of the South Carolina Rules of Evidence, publishing the Request to Admit was in error and was highly prejudicial to the Appellant, as it did nothing but confuse the issues for the jury. Trial Tr. 251:24-11, 253:9-18, 255:20-257:5. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

In its Request to Admit, Appellant asked Respondent to admit or deny that the amount in controversy and amount of Respondent's actual damage exceeded one hundred thousand dollars. Trial Tr. 258:18-25, Mar. 17, 2019; Def.'s RTA. The Request to Admit were not a stipulation

under South Carolina Rules of Civil Procedure Rule 43(k)⁶ but rather a discovery tool. Trial Tr. 253:9-18, Mar. 17, 2019. *See* The purpose of the request to admit was to obtain an Independent Medical Examination under Rule 35(a)⁷ of the South Carolina Rules of Civil Procedure, not for Respondent to represent that Appellant admitted the damages were in excess of \$100,000.00. *Id.* at 251:24-252:6. Although facts may be stipulated under the rule, these Request to Admit were subjective, as they went to damages. Because the purpose was for obtaining were to obtain Respondent's view of the case in order to obtain an Independent Medical Examination under South Carolina Civil Procedure Rule 35(a), these were subjective, not factual, and thus, could not be stipulated. *Id.* at 253:21-254:11.

Although the Trial Court stated that the modification of the Request to Admit would have to go to the merits, not damages, *Id.* at 254:12-255:17, Appellant argued that that publication to the jury would prejudice the merits of its defense, *Id.* at 255:20-257:5. Reading the Request to Admit to the jury had the effect of confusing them as to the issues in dispute and the purpose of the Request to Admit. Allowing the Request to Admit to be published to the jury made the effect that a verdict had to be awarded for Respondent in the amount of at least \$100,000.00. *Id.* at 252:8-11, 255:20-257:5. This effectively directed a verdict of liability in the Respondent's favor, thereby impeding presentation of the merits of Appellant's case. Throughout the case, liability

⁶ Rule 43(k), SRCRP. "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SRCRP."

⁷ Rule 35(a), SRCP. "In any case in which the amount in controversy exceeds \$100,000 actual damages, and the mental or physical condition . . . of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. . . ."

was contested, and Appellant maintained that it was not negligent. Therefore, publishing the Request to Admit to the jury subserved and impeded the presentation of the merits of the defense.

Appellant argued that the burden was on the Respondent to show that they would be prejudiced if the Request to Admit were not allowed to be published. *Id.* at 256:22-25. Appellant argued that they would not be able to meet that burden, as Respondent certainly had every right to argue for whatever verdict amount they wanted. *Id.* at 256:25-257:3. Appellant, on the other hand, would be and was in fact highly prejudiced by allowing the admission of the Request to Admit. Moreover, The Request to Admit was not mentioned in Respondent's pretrial brief. Pltf.'s Pretrial Br. Respondent intentionally failed to mention the Request to Admit to Appellant's counsel until they were about to publish it to the jury. This highly prejudiced Appellant, as it had no time to prepare argument or rebuttal evidence. Thus, when balancing the little, if any, probative value of the Request to Admit with the high amount of confusion and prejudicial effect publishing it would and did have, the admission of the Request to Admit was improper under Rule 403.

As such, the Trial Court should have not have allowed the admission into evidence of the Request for Admission because it was of little probative value and was highly prejudicial to Appellant as it directly confused the issues and impeded the merits of the Appellant's case. Thus, the decision of the Trial Court must be reversed.

VI. THE TRIAL COURT ABUSED ITS DISCRETION IN NOT GRANTING A NEW TRIAL ABSOLUTE OR NEW TRIAL *NISI REMITTITUR* WHEN THE VERDICT WAS GROSSLY EXCESSIVE AND SHOCKINGLY DISPROPORTIONATE AND

CONTRARY TO THE EVIDENCE ADMITTED AT TRIAL, OR, AT THE VERY MINIMUM, WAS AT LEAST MERELY EXCESSIVE GIVEN THE EVIDENCE.

STANDARD OF REVIEW

The decision to grant or deny a new trial absolute based on the excessiveness of a verdict rests in the sound discretion of the trial court and ordinarily will not be disturbed on appeal. An abuse of discretion occurs if the trial court's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law.

Welch, 342 S.C. at 302 (citing *Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct.App.1996)); see, e.g., *Stevens v. Allen*, 336 S.C. 439, 446, 520 S.E.2d 625 (Ct. App. 1999). "In deciding whether to assess error when a new trial motion is denied, this Court must consider the testimony and reasonable inferences therefrom in the light most favorable to the nonmoving party." *Welch*, 342 S.C. at 302-03 (citing *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct.App.1996)).

ARGUMENT

A. THE TRIAL COURT ERRED IN NOT GRANTING A NEW TRIAL ABSOLUTE BECAUSE THE VERDICT WAS GROSSLY EXCESSIVE AND SHOCKINGLY DISPROPORTIONATE AND CONTRARY TO THE EVIDENCE ADMITTED AT TRIAL.

When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice. The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded. In other words, to warrant a new trial absolute, the verdict reached must be so 'grossly excessive' as to clearly indicate the influence of an improper motive on the jury.

Welch, 342 S.C. at 302 (citations omitted); see, e.g., *Stevens*, 336 S.C. at 447 ("The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so

as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives."); *Duncan v. Hampton Cnt. Sch. Dist. No. 2*, 235 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1990); *see also*, *Sullivan v. Davis*, 317 S.C. 462, 467, 454 S.E.2d 907, 912 (Ct. App. 1995) (holding that the Trial Court abused its discretion in not granting the new trial absolute motion when the verdict was "shockingly disproportionate" to the evidence presented); *Zorn v. Crawford*, 252 S.C. 127, 138, 165 S.E.2d 640, 646 (1969) (granting a new trial in a wrongful death action where "a verdict of \$250,000.00 for the actual damages sustained by the beneficiaries . . . [was] not supported by the evidence and [could] only be explained upon the basis of sympathy, passion, or prejudice on the part of the jury").

The term "passion and prejudice" does not "necessarily imply bad faith, wrongful purpose, or moral delinquency," but rather, results when the award is "against the overwhelming weight of the evidence." *Beasley v. Ford Motor Co.*, 237 S.C. 506, 513, 117 S.E.2d 863, 867 (1961). "Ordinarily the only means of discovering the existence of passion and prejudice as influencing the verdict is by comparing the amount of the verdict with the evidence before the trial court." *Nelson v. Charleston W.C. Ry. Co.*, 231 S.C. 351, 362, 98 S.E.2d 798, 802 (S.C. 1957). However, in some instances,

[t]he size of the verdict alone may show that it must have been the result of passion or prejudice, as for instance, when it is apparent that the award is obviously so disproportionate to the injury proved as to justify the conclusion that the verdict is not the result of the cool and dispassionate discretion of the jury.

Id. (quoting 15 Am. Jur., *Damages* § 205, p. 623); *see also*, *Smalls v. Springs Indus., Inc.* 292 S.C. 481, 486, 357 S.E.2d 452, 455 (1987) (stating that under the facts of the case, "the size of the jury's verdict alone establishes it is grossly excessive"). For further clarification,

[a] close analysis of the results reached in the cases justifies the statement that the courts generally grant relief if convinced that the verdict substantially exceeds any rational appraisal or estimate of the damages even though the inference of passion, prejudice, partiality, or other improper motive on the part of the jury is no more natural or reasonable than the inference of mistake or misapprehension on their part.

Beasley, 237 S.C. at 512-513 (quoting 15 Am. Jur. *Damages* § 205, p. 623).

In this matter, the jury returned a verdict in the amount of \$1,127,280 for the minor and \$135,477.00 for Respondent Tekayah Hamilton. Trial Tr. 446:18-447:1, Mar. 17, 2019.

Subsequently, Appellant filed a Motion for Judgment Notwithstanding the Verdict or in the alternative Motion for New Trial, in which one of the grounds for a new trial absolute was because the verdict was grossly excessive as compared to the evidence presented at trial. Def.'s Mot. for JNOV or in the alt. Mot. for New Trial 11-13. Appellant asserts the Trial Court's denial of its motion on this ground was an error in law, as the verdict was grossly excessive and shockingly disproportionate, wholly unsupported by and contradictory to the evidence presented a trial for the following reasons. Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 8.

First, there was little testimony regarding any pain and suffering. Dr. Devito testified that the minor seemed to be experiencing pain during his examination of him, although Dr. Davis testified that during his examination of the minor, the minor denied any pain, burning, or itching (*Id.* at 192:13-25). Dr. Davis testified that Respondent Tekayah Hamilton told him the minor would ask her if he could scratch it. (*Id.* at 192:25-193:2). The only testimony from Respondent Hamilton regarding pain was some itching and cramping that is alleviated with some exercises and crying during the infiltration and wound care follow up treatment.

Second, there was testimony establishing that very little has been done or is planned in regards to treatment. The minor treated at the wound care center at The Regional Medical Center immediately after the infiltration occurred and for a short period of time in 2015. *See* Plf.'s Ex. 6. He saw Respondent's expert Dr. Devito on February 2, 2015; March 5, 2015; and did not go back to him for three years until March 2018. *Id.* at 163:13-15, 163:23-25, 165:10-12. At the time of trial, the minor was not currently on any medications for this wound. *Id.* at 169:16-18. Nonsurgical options, such as steroidal injections and compression, have been recommended by both the physician referred by Respondent's lawyer and the court-appointed plastic surgeon; however, the minor has not gotten this treatment. *Id.* at 163:13-18, 163:23-164:13, 195:23-196:18, 198:20-199:15, 248:23-249:17. Surgery had also been recommended by both physicians as another method of treatment to improve the scar (*Id.* at 195: 23-196:18; 238:5), but Respondent Tekayah Hamilton testified she has no plans for surgery at this time, although she testified she may consider it when the minor is older (*Id.* at 170:3-4, 170:11-15, 171:10-13). Although surgery would improve the appearance of the scar, surgery is not needed for any functionality reasons. *Id.* at 210:2-12.

Third, although there is scar tissue (*Id.* at 191:5-14) and the scar is permanent (*Id.* at 210:23-211:5), his hand is fully functioning (*Id.* at 193:3-195:22), and the wound is "well-healed" and "stable" (*Id.* at 191:17-192:3) and will not get worse (*Id.* at 199:16-25). There are no functional deficits and "nothing inhibiting full functioning of the wrist": no diminished finger strength, no impairment of the tendons or wrist, and no issue with range of motion of the wrist. *Id.* at 192:6-12, 193:3-2-195:22. The child "should have normal functionality throughout the rest of his life." *Id.* at 194:14-15. The child will be able to do things a normal child would, such as a throwing a ball, playing a music instrument, holding a fishing pole, writing and drawing, and driving a car. *Id.* at 200:25-202:9.

As the evidence presented cannot support a \$1,127,280 verdict for the minor and \$135,477.00 for Respondent Tekayah Hamilton, the size of the verdict alone is sufficient to show that the jury must have been moved by passion or prejudice,. The verdict of \$1,127,280 for minor Respondent is 54 times the amount of actual damages of \$20,854. This is grossly excessive and shocks the conscience, as there was little testimony of pain and suffering; there is no ongoing treatment or plans for any in the future; the scar is well-healed and stable; and there are no functionality deficits. Additionally, the \$135,477.00 verdict for Respondent Tekayah Hamilton is also grossly excessive, as past and future medical damages only amount to \$20,854.00 (*Id.* at 412:24-413:12); she testified she has no plans for the child to undergo any steroidal injections or scar revision surgery (*Id.* at 170:3-4); and she is not entitled to any pain or suffering.

Thus, the verdict in this matter is "without any rational support whatever in the evidence and is so grossly excessive as to show that the jury was actuated by considerations not founded on the evidence and/or the instructions of the court." *Joyner v. St. Matthews Builders*, 263 S.C. 136, 140-41, 208 S.E.2d 48, 50 (1974) (granting a new trial due to the "actual damages" being so manifestly and grossly excessive"). Given the complete lack of any cognizable basis to support the damages award, it is clear that in awarding these amounts for both the minor and his mother, the jury did not pay attention to the jury instructions. "[I]t is fundamental that a jury must abide by the judge's charge, be it right or wrong. Where the jury renders a verdict in disregard of his charge, it is error for the judge not to grant a new trial upon motion." *Southeastern Mobile Homes Inc., v. Walicki*, 282 S.C. 298, 302, 317 S.E.2d 773 (Cl. App. 1984). Appellant is left to conclude that, in light of the excessive verdict as compared to the evidence of actual damages, the jury arrived at its award as a result of passion, caprice, or other improper motives. "If the

amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice or some other influence outside the evidence, the trial judge must grant a new trial absolute, not a new trial *nisi remittitur*." *Welch*, 342 S.C. at 303 (citing *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993)). Therefore, it was an abuse of discretion for the Trial Court not to grant Appellant's motion for a new trial absolute based on the grossly excessive verdict, and thus, the decision must be reversed.

B. IN THE ALTERNATIVE, IF THE APPELLANT COURT DOES NOT BELIEVE THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE MOTION FOR A NEW TRIAL ABSOLUTE, APPELLANT ASSERTS THAT THE TRIAL COURT ABUSED ITS DISCRETION BY NOT GRANTING ITS MOTION FOR NEW TRIAL *NISI REMITTITUR* BECAUSE THE VERDICT WAS, AT THE VERY LEAST, MERELY EXCESSIVE.

The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive. Indeed, when the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to reduce the verdict by the granting of a new trial *nisi remittitur*. A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.

Welch, 342 S.C. at 303 (citations omitted); see, e.g., *RRR, Inc v. Toggas*, 378 S.C. 174, 183, 662 S.E.2d 438 (Ct. App. 2008) ("[T]he circuit court alone has the power to grant a new trial nisi when it finds the amount of the verdict to be merely inadequate or excessive."); *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877 (Ct. App. 2007) (stating that the court "may grant a new trial nisi additur or remittitur when it finds the verdict is merely inadequate or excessive."); *Becker v. Walmart Stores, Inc.*, 339 S.C. 629, 636, 529 S.E.2d 758 (Ct. App. 2000) (affirming trial court's granting of motion for remittitur on grounds that amount awarded by jury was

“merely excessive”). "In considering a motion for new trial *nisi*, the trial court must evaluate the adequacy of the verdict in light of the evidence presented." *Welch*, 342 S.C. at 303 (citing *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct.App.2000)).

In its motion, Appellant asked the Trial Court that if did not agree with Appellant that the verdict is grossly excessive to the extent of shocking the conscience and did not appear to be motivated by considerations such as passion, caprice or prejudice, then to grant a new trial *nisi remittitur* because the verdict was, at the very least, merely excessive. Def.'s Mot. for JNOV or in the alt. Mot. for New Trial 11-14. The Trial Court denied Appellant's motion for a new trial *nisi remittitur*, although it did grant, in part, Appellant's motion to cap the damages as required by the South Carolina Torts Claims Act (§15-78-10, et seq.). Court's Order Granting Def.'s Motion for Reduction to Statutory Cap & Denying Def.'s Motion for JNOV or in the Alt. for a New Trial 4-6, 8; Def.'s Post Trial Mot. for Reduction to Statutory Cap. The Trial Court capped the judgment for the minor at \$300,000.00 because §15-78-120(a)(1) provides a maximum of \$300,000.00 for a loss arising from a single occurrence.

Additionally, Appellant moved for a reduction in Respondent Tekayah Hamilton's verdict, which was in the amount of \$135,477.00, as she was only entitled to past and future medical costs, which totaled \$20,854.00. Trial Tr. 412:24-413:12; Def.'s Post Trial Mot. for Reduction to Statutory Cap. *See, Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017) (a parent is the proper party in interest with respect to past and future medical expenses while the child is a minor); *Wright v. Colleton Cnty. Sch. Dist.*, 301 S.C. 282, 289-90, 391 S.E.2d 564 (1990) (finding that a parent may recover medical expenses separately from the child's claim). However, the Trial Court denied Appellant's motion to reduce the verdict for Respondent Tekayah Hamilton.

Even after capping the minor's judgment at \$300,000.00 as required by §15-78-120(a)(1), the judgment is still, at the very minimum, merely excessive. As discussed above, there was no testimony of current, ongoing treatment or plans for any in the future, and there was little testimony of pain or suffering. The wound is well-healed (Trial Tr. 191:17-192:3, Mar. 17, 2019), and the hand fully functioning (*Id.* at 193:3-195:22). The jury saw this for themselves. Moreover, the verdict for Respondent Tekayah Hamilton in the amount of \$135,477.00 was also, at the very minimum, merely excessive, as she testified she has no plans for steroidal injections or surgery (*Id.* at 170:3-4), and the only evidence of actual damages, past and future medical expenses, were in the amount of \$20,854 (*Id.* at 412:24-413:12). She was not entitled to any damages for pain and suffering. Therefore, the verdict rendered by the jury, as well as the statutory cap placed on the minor's verdict, was at least merely excessive as compared to the evidence presented at trial. As such, the Trial Court abused its discretion in denying Appellant's alternative motion for new trial *nisi remittitur*.

Since the verdict was grossly excessive or at least merely excessive, the Trial Court's error in not granting either a new trial absolute or in the alternative a new trial *nisi remittitur* amounted to an abuse of discretion, and the decision must be reversed.

CONCLUSION

For the reasons stated, Appellant respectfully requests the Appellate Court to reverse the decision of the Trial Court and dismiss this action with prejudice or, in the alternative, reverse the decision of the Trial Court and grant Appellant a new trial.

Respectfully submitted,

January 21, 2021

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Jan 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appeal No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton, Jr., a minor child under the age of eighteen, ... Respondent,

v.

The Regional Medical Center Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter of The Regional Medical Center, by depositing a copy of it in the United States Mail, postage prepaid, and via e-mail, on January 21, 2021, addressed to the attorneys of record, Jonathan F. Krell, Esquire, Post Office Box 299, Charleston, S.C., 29402, and David R. Williams, Esquire, Post Office Box 1084, Orangeburg, S.C., 29116, and Kathleen Chewning Barnes, Esquire, Post Office Box 897, Hampton, S.C., 29924.

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SC Court of Appeals

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Jenny Abbott Kitchings
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RE: Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton, Jr., a minor child under the age of eighteen v. The Regional Medical Center
Case No.: 2015-CP-38-01234
Appellate Case No.: 2019-001921

Dear Ms. Kitchings:

Enclosed for filing please find the Initial Brief of The Regional Medical Center and, Designation of Matter and Proof of Service in this matter.

Yours Truly,


Michael C. Tanner

MCT/ljs

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Mar 24 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor
child under the age of 18, ... Respondent,

v.

Regional Medical Center, ... Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert and allowed her to testify about the standard of care that applies to adults and children?
- II. Whether the lower court correctly denied RMC's motions for a directed verdict and JNOV where there is evidence of gross negligence in the record?
- III. Whether the lower court properly exercised its discretion to admit photographs of R.J.'s hand where the photographs corroborate Tekayah and Dr. DeVito's testimony and demonstrate the nature and severity of the injury?
- IV. Whether the lower court properly exercised its discretion to exclude Ms. Hurley's opinion on gross negligence because expert testimony on issues of law is inadmissible?
- V. Whether the lower court properly exercised its discretion to publish RMC's requests for admission to the jury for its consideration along with all other evidence?
- VI. Whether the lower court properly exercised its discretion to deny RMC's motions for a new trial or, alternatively, a new trial *nisi remittitur*, where the verdicts are not excessive?

STATEMENT OF THE CASE

This is an appeal from a jury verdict for the Plaintiffs in a medical negligence trial arising out of an IV infiltration burn injury of a five-week-old boy. The lower court granted in part and denied in part the Defendant's post-trial motions.

On October 7, 2015, Respondent Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a minor child under the age of eighteen, (collectively "Hamilton") filed this action against Appellant the Regional Medical Center ("RMC") for medical negligence. (Cmpl't.) (R. pp. __). RMC filed an answer generally denying the allegations. (Ans.) (R. pp. __).

The parties tried the case from May 7-9, 2018, before the Honorable Edgar W. Dickson. (Order) (R. p. __). The jury returned a verdict finding RMC gross negligently and awarding Tekayah \$135,477.00 and her child \$1,127,280.00. (verdict form) (R. p. __).

On May 17, 2018, RMC filed two post-trial motions. It filed a post-trial motion for judgment notwithstanding the verdict or, alternatively, for a new trial or a new trial *nisi remittitur*. (Mot. for JNOV) (R. pp. __). RMC also filed a motion to reduce the child's damages to the \$300,000.00 statutory cap pursuant to S.C. Code § 15-78-120(a) (2005) and to reduce Tekayah's damages to the amount of the medical expenses. (Mot. to Reduce) (R. pp. __). Hamilton filed a memorandum in opposition to the motions. (Memo. in Opp.) (R. pp. __).

On October 25, 2019, the lower court granted the motion to reduce the child's damages to \$300,000.00 and denied all other motions. (Order) (R. pp. __). On November 19, 2019, RMC filed a notice of appeal. (Not.) (R. p. __).

FACTS

On October 25, 2014, Robert Lee M., Jr., ("R.J.") was admitted to RMC for a high fever. (Trial Tr. p. 82) (R. p. __). Five days later, R.J. left the hospital with a third-degree burn injury to his right hand because the IV antibiotics RMC administered infiltrated and burned his hand rather than entering his vein. (Trial Tr. pp. 102, 227) (R. pp. __). R.J. was five weeks old. (Trial Tr. p. 82) (R. p. __).

Jamie Downing is an RMC nurse who treated R.J. during his hospital admission. She had worked as a nurse for less than three months and been allowed to work on her own for about two weeks when she treated R.J. (Tr. pp. 263-64) (R. pp. __).

RMC did not initially know the cause of R.J.'s fever but started him on an IV antibiotic therapy in case he had an infection. (Trial Tr. p. 82) (R. p. __). RMC's policies state that, before putting medication into an IV, the nurse is required to flush the IV with normal saline. (Trial Tr. pp. 83-84, 293; Pl's Exh. 5) (R. pp. __). The saline flush is a way for the nurse to make sure the IV is properly in the vein so that the medicine will go into the vein and not the skin. (Trial Tr. pp. 95,

144) (R. pp. __). Infiltration occurs when medication inserted into an IV goes somewhere besides the vein and can cause injury. (Trial Tr. pp. 95, 129) (R. pp. __).

In the early morning of October 28, 2014, Downing administered the antibiotic ampicillin into R.J.'s IV. (Trial Tr. p. 86) (R. p. __). About twenty minutes later, R.J.'s hand was swollen with a dark spot and he was "really crying" so much that Tekayah buzzed the nurses' station. (Trial Tr. pp. 148-49, 291) (R. pp. __). Tekayah described R.J.'s hand as turning black with a lump full of fluid on it that burst the next day. (Trial Tr. pp. 150-51, 153) (R. pp. __). The antibiotic Downing gave R.J. through the IV caused a third-degree burn to his right hand because it infiltrated outside of his vein. (Trial Tr. pp. 97, 102, 281 Ins. 2-5) (R. pp. __).

The parties disputed whether Downing flushed the IV with saline before she administered the ampicillin. R.J.'s medical records do not document a saline flush before the antibiotic. (Trial Tr. p. 86) (R. p. __). RMC's policies state: "Flushing the INT with saline is to be documented on the eMAR [electronic medical record]." (Pl.'s Exh. 5 p. 5 no. 12) (R. p. __ no. 12). Downing testified RMC's policies "are direct instructions" and there is "not room for interpretation" of them. (Trial Tr. p. 265) (R. p. __). Hamilton's expert witness testified: "If it's not documented, it wasn't done." (Trial Tr. p. 89 ln. 25, p. 96, p. 144) (R. pp. __). Downing does not remember administering a saline flush prior to ampicillin that morning but testified it is her practice to flush prior to giving medication. (Trial Tr. p. 280) (R. p. __).

R.J. left RMC on October 30, 2015, with a burn injury that required fifteen visits to a wound care center. (Trial Tr. p. 153) (R. p. __). Dr. Peter DeVito, an expert in plastic surgery, examined R.J. in February 2015, when he was four months old. (Trial Tr. pp. 225, 227) (R. p. __). He testified R.J.'s burn injury was "too contaminated for a skin graft" and took "a lot of wound care to heal." (Trial Tr. pp. 227, 229) (R. p. __). The burn resulted in keloid scar tissue. (Trial Tr. p. 227) (R. p.

__). A keloid is a “tumor of scar tissue” that “invades” the skin surrounding it and causes painful burning and itching symptoms. (Trial Tr. p. 227) (R. p. __).

On October 7, 2015, Hamilton filed this action against RMC for medical negligence. (Cmplt.) (R. pp. __).

RMC filed two pre-trial motions relevant to this appeal. First, it moved to exclude Monica Stobbs, Hamilton’s nursing expert, from testifying at trial. (Mot. in Limine to exclude Stobbs) (R. p. __). RMC argued Nurse Stobbs was not qualified to testify about IV therapy for pediatric patients because she had not administered IV therapy to a pediatric patient and did not review literature specifically about IV therapy for a pediatric patient. (Mot. in Limine; Pretrial Tr. pp. 8-9) (R. p. __). Hamilton argued that Nurse Stobbs testified the administration and monitoring of an IV is the same for a pediatric and adult patient, and RMC’s argument goes to Nurse Stobbs’ credibility rather than her qualifications. (Pretrial Tr. p. 7) (R. p. __). The lower court ruled it would qualify Nurse Stobbs as a nursing care expert and RMC could “make all the hay you want to” about her pediatric experience. (Pretrial Tr. pp. 9-10) (R. p. __).

Second, RMC argued three photographs of R.J.’s hand should be excluded because they are inflammatory. (Pretrial Tr. pp. 12-13) (R. pp. __). The lower court reviewed the photos and denied the motion. (Pretrial Tr. pp. 14-15) (R. pp. __).

On May 7-9, 2018, the parties tried the case before the Honorable Edgar W. Dickson. (Trial Tr. p. 1) (R. p. __). The parties’ experts disagreed as to whether Downing performed a saline flush before administering the antibiotic to R.J. and whether the IV management standard of care is the same for adult and pediatric patients.

Nurse Stobbs testified the standard of care for IV management is the same for pediatric and adult patients. (Trial Tr. pp. 79-80, 99, 104-05, 111, 126-27) (R. pp. __). The nurse must flush the

IV with saline before administering medication to ensure that the IV is going into the vein. (Trial Tr. pp. 95, 97, 100-01) (R. pp. __). This is required by RMC's policies and procedures. (Pl.'s Exh. 5 p. 5 no. 12) (R. p. __). Nurse Stobbs testified that RMC breached the standard of care because Downing did not do a saline flush before administering the medication to R.J. on October 28 (Tr. pp. 101-02, 144).

After deliberating for three hours, the jury returned a verdict finding RMC's gross negligence caused R.J.'s injuries. (Tr. pp. 433, 436, 444-45; verdict form) (R. pp. __). The jury awarded Tekayah \$135,477.00 and R.J. \$1,127,280.00. (verdict form) (R. p. __).

RMC filed two post-trial motions. First, it moved for JNOV or, in the alternative, a new trial. Relevant to this appeal, RMC argued: (1) Nurse Stobbs was not qualified to testify about pediatric IV management, (2) Hamilton did not establish RMC's gross negligence, (3) the lower court should have excluded photographs of R.J.'s hand, (4) the lower court should have allowed RMC's expert, Cynthia Hurley, to testify that RMC was not grossly negligent, (5) the lower court should not have allowed Hamilton to publish to the jury her responses to RMC's requests to admit, and (6) the lower court should grant a new trial absolute or *nisi remittitur* because the verdict is disproportionate to the evidence. (Mot.) (R. pp. __).

Second, RMC moved to reduce R.J.'s damages to the \$300,000.00 statutory cap in the South Carolina Tort Claims Act and to reduce Tekayah's damages to \$20,854.00, the amount of the medical expenses. (Mot.) (R. pp. __).

Hamilton filed a memorandum in opposition to the motions. (Memo. in Opp.) (R. pp. __). On October 25, 2019, the lower court issued an Order granting RMC's motion to reduce R.J.'s damages to the statutory cap of \$300,000.00 but denying the motion to reduce Tekayah's damages.