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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, III, Circuit Court Judge

Case No.: 2009-CP-42-5373

James Hoftiezer, as Personal Representative for the Estate of Martha Hoftiezer. Appellant,

v.

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin, Westmoreland and Coley, P.A.,
and Spartanburg Regional Health Services District, Inc., d/b/a Spartanburg
Regional Healthcare System Respondents.

RECORD ON APPEAL
VOLUME 1

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SC Court of Appeals

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FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL
CASE

COUNTY OF Spartanburg
IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-42-5373

James Hoftiezer, as personal representative

Dr. Mark Hicklin, et al.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

This matter was before the Court on the defendant's motion for summary judgment.

Based on the arguments presented, a review of the case law, and documents in the file, the motion is granted as to Hicklin, and THWC Pa. The plaintiff's argument of tolling the statute of limitations does not change the substance of the Tort Claims Act.

As to SRHSD, the Court believes it too is entitled to a grant of summary judgment. The secretary of state documents do not justify the application of estoppel or equitable tolling of the statute of limitations. The secretary of state documents can be read as misleading since they do contain the term "eleemosynary." The disclaimer, however, also informs the reader that anyone who relies on these documents "does so at his own risk". Also, the cases offered by the plaintiff all seem to have a common thread, that it was the party against whom estoppel was being used that had committed some affirmative wrong-doing, such as failing to name a registered agent or moving without any known forwarding address. There is no allegation that SRHSD caused the error on the secretary of state's web page. Even in the case that was before Circuit Judge Williams, there appear to be facts very different than here, as it relates to the efforts of SRHSD and the doctor's group to show to the public that they were all part of the SRHSD (applying a reasonable man standard.....the Court cannot find that the standard of review is the reasonable attorney). From

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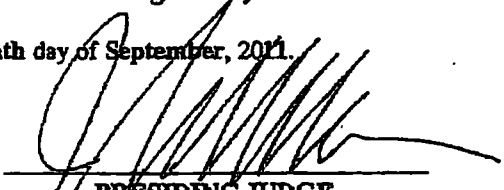
the information provided to this Court, the only reasonable conclusion is that in the present case, the affiliation with SRHSD was on signs, letterheads, billings, etc., at the times the deceased was a patient of the doctors. Thus, the evidence seems clear that at the time treatment was rendered, Ms. Hoftiezer would have known her doctors were affiliated with SRHSD unlike Mr. Shaver in Judge Williams' case. Also, it appears the affiliation with SRHSD would have been known when certain medical records were requested by the personal representative. Again, unlike the case before Judge Williams, this Court cannot locate sufficient information from which it can infer wrongful conduct on the part of SRHSD or the doctors.

The Court requests the defendant's attorney to prepare an order fully addressing the statute of limitation issues.

The Court commends the attorneys for the excellent briefing and arguments.

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

Dated at Spartanburg, South Carolina, this twenty-eighth day of September, 2011.


PRESIDING JUDGE

This judgment was entered on the 28 day of Sept 20 11, and a copy mailed first class this 28 day of Sept, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Perry D. Boulier
(864) 594-5304
ATTORNEY(S) FOR PLAINTIFF

Ruskin C. Foster
(803) 726-0123
ATTORNEY(S) FOR DEFENDANT


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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal
Representative for the Estate of
Martha Sue Hoftiezer,

Plaintiff,

vs.

D. MARK HICKLIN, M.D.,
DRS. TAYLOR, HICKLIN,
WESTMORELAND AND COLEY, P.A.,
and SPARTANBURG REGIONAL
HEALTH SERVICES DISTRICT, INC.,
db/a Spartanburg Regional
Healthcare System,

Defendants.

ORDER GRANTING DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT

C.A. Number: 2009-CP-42-5373

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FACTS

Plaintiff's decedent, Martha Sue Hoftiezer, saw Defendant D. Mark Hicklin, M.D. ("Dr. Hicklin") on July 31, 2006 for treatment in his office. On August 4, 2006, Ms. Hoftiezer went into cardiac arrest and died. Plaintiff brings this action for damages, claiming negligence on the part of Defendants in the care and treatment of Ms. Hoftiezer. Plaintiff initiated this action by the filing of a Notice of Intent to File Suit on February 26, 2009. Plaintiff filed his Summons and Complaint on October 1, 2009.

Defendants contend that Defendant Spartanburg Regional Health Services District, Inc. ("SRHS") is a political subdivision of the State of South Carolina and entitled to the protection of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-

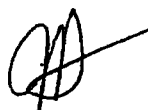


10, et seq. (the "Tort Claims Act"). Defendants further contend that Dr. Hicklin was an employee of SRHS and that Defendant Drs. Taylor, Hicklin, Westmoreland and Coley, P.A. (and its predecessor and successor designations) ("THWC") was owned by SRHS at all times referenced in the Plaintiff's Complaint. As a result, Defendants argue that Dr. Hicklin and THWC cannot be sued individually in this matter and that Plaintiff's suit should be dismissed for failure to commence this action within two years as is required by the Tort Claims Act.

The parties have conducted discovery related to the application of the Tort Claims Act and issues related to the statute of limitations issue pursuant to Consent Scheduling Order entered by this Court. The matter is now before the Court on Defendants' Motion for Summary Judgment. This motion was heard by the Court on September 1, 2011. For the reasons set forth, the Court grants Defendants' Motion for Summary Judgment.

STANDARDS OF LAW

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003).



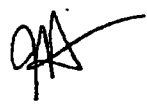
FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issues before the Court can be summarized as follows: 1) Can Plaintiff maintain a separate action against Dr. Hicklin and/or TWHC?, and 2) Is SRHS equitably estopped from asserting the Tort Claims Act's two year statute of limitations or was the statute of limitations equitably tolled in this action?

1. **SRHS is a political subdivision of the State of South Carolina and is entitled to the protections of the Tort Claims Act.**

The Tort Claims Act provides the exclusive remedy "for any tort committed by a governmental entity, its employees, or its agents." S.C. Code Ann. § 15-78-29(b). The term "governmental entity" includes political subdivisions of the State. S.C. Code Ann. § 15-78-30(d). "Political Subdivision" expressly includes a "governmental health care facility" "which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance," tax-exempt, and does not accrue net income for the benefit of an individual or non-governmental entity. S.C. Code Ann. § 15-78-30(h), (j). County or municipal governments may form regional health services districts by enactment of the local governing body(s). S.C. Code Ann. § 44-7-2010, et seq.

Based upon the evidence presented by the parties, the Court finds that SRHS was created by the adoption of Ordinance No. 557 by Spartanburg County Council on April 10, 1995 and the filing of a Certificate of Incorporation with the Secretary of State's office on May 1, 1995. Ordinance No. 557 expressly provides that SRHS is a political



subdivision of the State and is subject to the Tort Claims Act. Nothing has been enacted, amended, or filed altering SRHS's status as a governmental entity subject to the Tort Claims Act. Because SRHS was formed pursuant to the above-cited statutes, the Court finds that SRHS is a political subdivision of the State of South Carolina and is entitled to the protections of the Tort Claims Act.

2. Plaintiff cannot maintain independent actions against Dr. Hicklin or THWC because of their affiliation with SRHS.

As stated above, the Court finds that SRHS is a governmental entity entitled to the protection of the Tort Claims Act. The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable for his actions individually or independently from his governmental employer. S.C. Code Ann. § 15-78-70. The governmental entity must be substituted as the sole Defendant for all allegations concerning alleged wrongdoing of its employees. S.C. Code Ann. § 15-78-70(c).

Based upon the evidence presented by the parties, the Court finds that THWC has been wholly-owned by SRHS since August 11, 1994. THWC was not a separate legal entity engaged in the practice of medicine nor did it provide any medical care to Plaintiff's decedent on the date of the care and treatment at issue in this case. Likewise, the Court finds that Dr. Hicklin has been an employee of SRHS since August 11, 1994. Plaintiff argues that even if Dr. Hicklin was an employee of SRHS, he is not entitled to the protections of the Tort Claims Act because he reported income from a non-

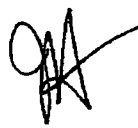
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governmental source. See S.C. Code Ann. § 15-78-30(c). The Court finds that Plaintiff's contention, even if true, is without merit because Plaintiff admitted that the reported income is not in any way related to the services provided to Ms. Hoftiezer at issue in this case. The undisputed evidence in this case shows that Dr. Hicklin was acting within the course and scope of his employment with SRHS at the time of the care and treatment at issue.

Because THWC was owned by SRHS and Dr. Hicklin was an employee of SRHS at all times relevant to this case, the Court finds that THWC and Dr. Hicklin are entitled to the protections of the Tort Claims Act. As such, THWC and Dr. Hicklin cannot be held liable individually or independently from SRHS, and Defendants' motion for summary judgment is granted as to THWC and Dr. Hicklin. Accordingly, pursuant to Section 15-78-70 of the Tort Claims Act, SRHS should be the sole Defendant in this case.

3. **SRHS is not equitably estopped from the application of the two-year statute of limitations nor is the two-year statute of limitations equitably tolled in this case.**

Because SRHS is entitled to the protection of the Tort Claims Act, any action brought against it must be commenced within two years. S.C. Code Ann. § 15-78-110. Plaintiff admits that by filing his Notice of Intent to File Suit on February 26, 2009, he failed to commence his action within two years. However, Plaintiff makes numerous arguments that SRHS should be equitably estopped from asserting the two-year statute of limitations or the two-year statute of limitations should be equitably tolled. Plaintiff argues: (1) the South Carolina Secretary of State's website codes SRHS as a "non profit"



organization and codes certain filings of SRHS as "eleemosynary" filings; (2) the South Carolina Medical Board's website does not indicate that Dr. Hicklin is an employee of SRHS or that THWC is owned by SRHS; (3) the medical records produced pre-litigation were deficient compared to those produced during litigation; (4) THWC's signage at its office did not state it was owned by SRHS; and (5) THWC held itself out as a private, for profit, general partnership.

Based upon the evidence presented by the parties, the Court finds Plaintiff's arguments unpersuasive. The Secretary of State's website listing for SRHS could be read as misleading because it contains the terms "non profit" and "eleemosynary." However, the disclaimer found on the website also informs the reader that one who relies on the website information "does so at his own risk." If Plaintiff had requested the actual documents on file with the Secretary of State concerning SRHS, it would have been evident that SRHS is a governmental entity subject to the Tort Claims Act. As noted above, the documents filed by SRHS with the Secretary of State expressly establish its status as a political subdivision of the State of South Carolina and a governmental entity. SRHS is not responsible for the manner in which the Secretary of State maintains its website, and the documents filed by SRHS are public documents available to Plaintiff or his counsel.

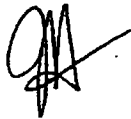
Likewise, the mere fact that the South Carolina Medical Board's website does not note Dr. Hicklin's employment status with SRHS is of no import to the issues before the Court. Plaintiff's argument would deprive SRHS of the protection of the Tort Claims Act



for reasons entirely out of SRHS' control. Equitable estoppel should not be applied under these facts.

In American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E. 2d 181 (Ct. App. 2009), the Court held that equitable tolling should be rarely applied and noted that it is reserved for "extraordinary circumstances". Id. at 582. American Legion discussed Hooper v. Ebenezer Senior Servs. and Rehab. Ctr., 377 S.C. 217, 659 S.E. 2d 213 (Ct. App. 2008) which Plaintiff cites in this case. American Legion noted that Hooper also required extraordinary circumstances for the application of equitable tolling and further noted that if the statutory deadline for filing has passed, the Plaintiff needs to show that he was "induced or tricked by the defendant's misconduct into allowing the filing deadline to pass." Id. At 583. The Court went on to note that Hooper also required a showing of due diligence by the Plaintiff. Id. With regard to the conduct of the defendant that justifies the application of equitable tolling, the Court stated: "It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant or is prevented in some extraordinary way from asserting his or her rights. However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation." (emphasis supplied). Id.

With regard to equitable estoppel against a governmental entity such as SRHS, American Legion held that three elements must be shown: 1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; 2) justifiable reliance on the government's conduct; and 3) a prejudicial change in position. Id. at 584. The Court



further noted: "Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests." Id. In American Legion, the Court found that equitable estoppel would not lie against a governmental entity even though the governmental entity's employee provided the plaintiff with erroneous information in contradiction to the statute at issue in that case. Id.

Likewise, the Court notes that the cases offered by Plaintiff in support of its estoppel and tolling arguments all have a common thread in that the party against whom estoppel was being used had committed some affirmative wrong-doing, such as failing to name a registered agent or moving without any known forwarding address. While Hooper holds that fraud or misrepresentation by the defendant is not required for equitable tolling to apply, it plainly held that when a plaintiff misses the statutory deadline, the plaintiff must show that he was induced or tricked by the defendant's misconduct into missing the statute of limitations. In essence, the estopped party is responsible for action or inaction on its part that caused some detrimental reliance by the other party.

Applying the principles outlined in American Legion and Hooper, the Court finds that the facts of this case do not warrant the application of either equitable tolling or equitable estoppel. From the information provided to the Court by the parties, the Court finds that Dr. Hicklin and THWC's affiliation with SRHS was on signs, letterheads, business cards, and billing correspondence at the time the decedent was a patient of Dr. Hicklin and THWC at issue in this matter. Plaintiff argued that SRHS failed to provide

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complete medical records when Plaintiff initially requested the records in 2006. Nonetheless, the form that Plaintiff executed in 2006 to obtain records from Dr. Hicklin's office bore the SRHS logo and clearly suggested the affiliation between SRHS and Dr. Hicklin. Thus, the evidence is clear that at the time treatment was rendered to the decedent, a reasonable person would have or should have known that Dr. Hicklin and THWC were affiliated with SRHS.

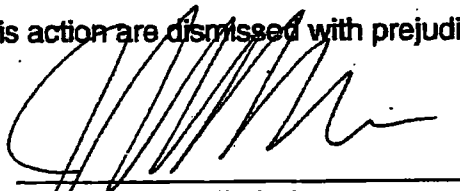
With regard to the information on the Secretary of State's website, this court is guided by the holding in American Legion. Certainly, if equitable estoppel would not lie in a case where a governmental entity disseminated erroneous information about a statute, it cannot lie where the Secretary of State's website erroneously classified SRHS as a charitable entity. This is particularly true given the disclaimer found on the website and the availability of the documents actually filed by SRHS concerning its legal status.

While having no precedential effect on this Court, Plaintiff also argued strongly in support of his argument the reasoning set forth in the Circuit Court Order entered in Shaver v. Hill, et al., C/A No. 07-CP-38-553 (Cl. Common Pleas, 1st Judicial Circuit, October 18, 2007). However, even in that matter, there appear to be facts very distinguishable from those present in this matter as it relates to the efforts of SRHS, Dr. Hicklin, and THWC to demonstrate to the public that Dr. Hicklin was an employee of SRHS and THWC was wholly-owned by SRHS.

The Court thus finds that under the facts present in this case, the application of equitable estoppel or equitable tolling is not warranted and the Tort Claims Act's two-year statute of limitations should be applied.

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is granted and that Plaintiff's Complaint and this action are dismissed with prejudice.

IT IS SO ORDERED.


J. Mark Hayes II, Judge
Seventh Judicial Circuit

October 19, 2011
Spartanburg, South Carolina

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SPARTANBURG COUNTY
BY  D.C.
DATED 10/19/11

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

James Hofstiezer, as Personal Representative of the
Estate of Martha Sue Hofstiezer,

Plaintiff(s)

vs.

D. Mark Hicklin, M.D. and Drs. Taylor, Hicklin,
Westmoreland and Coley, P.A.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

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2009-CP-42-0801

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MARC KITCHENS

(Please Print)

Submitted By: Ruskin C. Foster

Address: 500 Taylor Street, Columbia, SC 29201

SC Bar #: 2096

Telephone #: 803-726-0123

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Other:

E-mail: rfoster@cklawgroup.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply).

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☒ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (5180)		

Submitting Party Signature:

Date:

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

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

James Hofstiezer, as Personal
Representative for the Estate of Martha
Sue Hofstiezer,

Plaintiff,

vs.

D. Mark Hicklin, M.D. and Drs. Taylor,
Hicklin, Westmoreland and Coley, PA,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

2009-CP-42-

0801

NOTICE OF INTENT TO FILE SUIT
(S.C. Code §15-79-125)
(Survival Action and Wrongful Death)

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JANICE KITCHENS

TO ALL NAMED DEFENDANTS:

This Notice of Intent to File Suit is submitted in compliance with the provisions of S.C. Code §15-79-125 (A). Compliance by Plaintiffs with the requirements of S.C. Code §15-79-125 (A) does not waive or modify their right to file a civil suit against Defendants in any court of competent jurisdiction. Plaintiff asserts as different claimants actions for survival and wrongful death as further set forth herein.

A. PARTIES

The Plaintiff above-named is entitled to relief on the following grounds:

1. The Plaintiff is a citizen and resident of the County of Spartanburg, State of South Carolina and the Personal Representative of the Estate of Martha Sue Hofstiezer.
2. Upon information and belief, Defendant D. Mark Hicklin, M.D. (hereinafter referred to as Defendant Hicklin) is a citizen and resident of the County of Spartanburg, State of South Carolina.
3. Defendant Drs. Taylor, Hicklin, Westmoreland and Coley, PA (hereinafter referred to as Defendant Drs. Taylor Hicklin) was, at all times mentioned herein a corporation

organized under the law of the State of South Carolina which owns property and transacts business in the County of Spartanburg, State of South Carolina and was, at all times mentioned herein a licensed medical provider doing business in the County of Spartanburg in Spartanburg, South Carolina. At all times mentioned herein, Defendant Hicklin was an agent and/or employee of Defendant Drs. Taylor Hicklin and as such, Defendant Drs. Taylor Hicklin is vicariously liable for the negligence of Defendant Hicklin.

4. Accordingly, Spartanburg County is the appropriate venue for litigating the issues in this matter.

5. That at all times mentioned herein there existed a patient/physician relationship between Plaintiff's decedent, Martha Hofstiezer and Defendants.

B. SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.

6. Plaintiff's decedent, Martha Sue Hofstiezer presented to her family physician, Defendant Hicklin on or about July 31, 2006 complaining of chest discomfort. She was assured it was not cardiac and given Steripred 10mgs.

7. Plaintiff's decedent went into cardiac arrest on August 4, 2006.

8. EMS was called and transported Plaintiff's decedent to Greenville Memorial Hospital where attempts were made to save Ms. Hofstiezer but were unsuccessful.

9. Ms. Hofstiezer died on August 4, 2006.

FIRST CAUSE OF ACTION
(Survival Action)

10. Plaintiff adopts the allegations of paragraphs one through nine and incorporates the same herein by reference as if stated verbatim.

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MARCO MITCHELL

11. Plaintiff intends to bring this action pursuant to South Carolina Code Ann. §15-5-90 et. seq., as amended (Survival of right of action) in regard to the estate of Martha Sue Hofmeier.

12. Defendants named hereinabove had a duty to treat Plaintiff's decedent at a level that met or exceeded the nationally recognized standard of care, which was breached.

13. Defendants named hereinabove were negligent, grossly negligent, willful, wanton and reckless in their treatment of the Plaintiff's decedent and performed their duties towards Plaintiff's decedent in a manner well beneath the nationally recognized standard of care for the same or similar healthcare providers in the same or similar circumstances.

14. Defendants, individually and/or by and through their agents, employees, servants, representatives and/or partners, breached their duties in their care and treatment of Plaintiff's decedent in one or more of the following particulars, acts or omissions:

- a. In failing to properly evaluate Plaintiff's decedent's medical needs at the initial visit;
- b. In failing to order further testing on July 31, 2006;
- c. In failing to properly examine, diagnose, treat and refer patient in a timely fashion;
- d. In failing to exercise that degree or skill ordinarily used by physicians and/or healthcare providers used under the same or similar circumstances;
- e. Such additional and further particulars as it may be learned through discovery and/or proven at trial.

15. That as a direct and proximate result of the acts and/or omissions of Defendants

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set out hereinabove, Plaintiff was made to suffer significant pain and suffering, mental anguish, psychological and emotional upset, loss of enjoyment of life, knowledge of impending death and ultimate death as well as medical expenses and burial expenses.

16. That because of the acts and/or omissions of Defendants as enumerated hereinabove which resulted both proximately and directly in the damages also set out above, the Plaintiffs personal representative seeks a reasonable amount of actual damages against the Defendants as well as an exemplary amount of punitive damages.

SECOND CAUSE OF ACTION
(Wrongful Death Action)

17. Plaintiff adopts the allegations of paragraphs one through sixteen and incorporates the same herein by reference as if stated verbatim.

18. Plaintiff brings this action pursuant to South Carolina Code Ann. §15-51-10 et seq. as amended in regards to the wrongful death of Martha Hoftiezer. Her statutory beneficiaries under §15-51-20 of the South Carolina Code of Laws are Richard A. Hoftiezer, Joan M. Hoftiezer, Sandra L. Hoftiezer, James A. Hoftiezer and Debra R. Schad.

19. Defendants named hereinabove had a duty to treat Plaintiff's decedent at a level that met or exceeded the nationally recognized standard of care, which was breached.

20. Defendants named hereinabove were negligent, grossly negligent, and reckless in their treatment of the Plaintiff's decedent and performed their duties towards Plaintiff's decedent in a manner well beneath the nationally recognized standard of care for the same or similar healthcare providers in the same or similar circumstances.

21. Defendants, individually and/or by and through their agents, employees, servants, representatives and/or partners, breached their duties in their care and treatment of Plaintiff's

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decedent in one or more of the following particulars, acts or omissions:

- a. In failing to properly evaluate Plaintiff's decedent's medical needs at the initial visit;
- b. In failing to order further testing on July 31, 2006;
- c. In failing to properly examine, diagnose, treat and refer patient in a timely fashion;
- d. In failing to exercise that degree or skill ordinarily used by physicians and/or healthcare providers used under the same or similar circumstances; and
- e. Such additional and further particulars as it may be learned through discovery and/or proven at trial.

22. That as a direct and proximate result of the acts and/or omissions of Defendants set out hereinabove, Plaintiff was made to suffer significant pain and suffering, mental anguish, psychological and emotional upset, loss of enjoyment of life, knowledge of impending death and ultimate death as well as medical expenses and burial expenses.

23. That because of the acts and/or omissions of Defendants as enumerated hereinabove which resulted both proximately and directly in the damages also set out above, the Plaintiffs personal representative seeks a reasonable amount of actual damages against the Defendants as well as an exemplary amount of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in the following particulars to wit:

- a. A reasonable amount of actual damages;
- b. For an exemplary amount of punitive damages;

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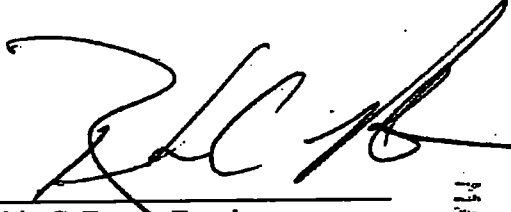
- c. For the costs and disbursements of this action;
- d. For such other and further relief as this Court may deem just and proper.

C. STANDARD INTERROGATORIES - Rule 33(b) SCRPC

The information requested in the standard interrogatories found in Rule 33(b) of the South Carolina Rules of Civil Procedure is attached hereto.

D. AFFIDAVIT OF EXPERT

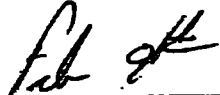
Attached are expert affidavits of Johnathan Maltz, M.D. and Morton J. Kern, M.D..


Ruskin C. Foster, Esquire
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, SC 29201
Phone: (803) 726-0123
Facsimile: (803) 252-7145
ATTORNEYS FOR THE PLAINTIFF

MARC KITCHENS

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_____, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

James Hoftiezer, as Personal)
Representative for the Estate of Martha)
Sue Hoftiezer,)

Plaintiff,)

vs.)

D. Mark Hicklin, M.D. and Drs. Taylor,)
Hicklin, Westmoreland and Coley, PA,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.:

2009-CP-42-0801

**PLAINTIFF'S RESPONSES TO
INTERROGATORIES**

TO DEFENDANTS:

Plaintiff hereby responds to Standard Interrogatories as follows, but reserves the right to supplement responses:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

a. Richard A. Hoftiezer

Mr. Hoftiezer is Plaintiff's decedent's husband in the above-referenced matter and is expected to testify as to his knowledge and recollection of the facts and circumstances surrounding this case and to the loss of his wife.

b. James A. Hoftiezer

Mr. Hoftiezer is the son of the deceased Plaintiff and is the named Plaintiff and Personal Representative in the above-referenced matter. Mr. Hoftiezer and is expected to testify as to his knowledge and recollection of the facts and circumstances surrounding this case and to the loss of his mother.

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SPARTANBURG COUNTY

c. Mrs. Joan Marie Hofstiezer

Ms. Hofstiezer is Plaintiff's decedent's daughter and is expected to testify as to her knowledge of the facts and circumstances surrounding this case and as to Plaintiff's pain and suffering.

d. Ms. Sandra Lynn Hofstiezer

Ms. Hofstiezer is Plaintiff's decedent's daughter and is expected to testify as to her knowledge of the facts and circumstances surrounding this case and as to Plaintiff's pain and suffering and as to the loss of her mother.

e. Debra Rae Hofstiezer Schad

Ms. Schad is Plaintiff's decedent's daughter and is expected to testify as to her knowledge of the facts and circumstances surrounding this case and as to Plaintiff's pain and suffering and the loss of her mother.

f. Mr. William Schadd

Mr. Schadd is Plaintiff's decedent's son-in-law and is expected to testify as to his knowledge of the facts and circumstances surrounding this case and as to families' pain and suffering.

g. Bethany Jill Heller

Ms. Heller is Plaintiff's decedent's daughter-in-law and is expected to testify as to her knowledge of the facts and circumstances surrounding this case and as to Plaintiff's pain and suffering.

h. Dr. Mark Hicklin

Dr. Hicklin is a named Defendant in the above-referenced matter and is expected to testify as to his knowledge and recollection of the facts and circumstances surrounding this case

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MARC KITCHENS

and in regards to his medical treatment of Plaintiff.

- i. Any and all individuals listed in Greenville Memorial Hospital Records.
- j. Dr. Michael Ward
Office of the Medical Examiner
Memorial Medical Office Building
890 West Faris Road, Suite 110
Greenville, SC 29605

Dr. Ward was the medical examiner who prepared and/or signed off on the Report of Findings and gave the Final Anatomical Diagnosis for Plaintiff's decedent.

- k. Any and all individuals listed in all medical records of Plaintiff's decedent.
- l. Any and all witnesses listed by opposing counsel.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: Plaintiff is in possession of records from Dr. Hicklin's office, Greenville Memorial Hospital, Office of the Medical Examiner as well as medical bills and receipts from the burial and funeral arrangements. These documents will be provided to Defendants upon service of Notice of Intent.

3. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

RESPONSE:

- a. Drs. Taylor Hicklin, Westmoreland and Coley
- b. Greenville Memorial Hospital
- c. Spartanburg Regional Medical Center
- d. Medical costs and damages are being gathered and will be supplemented at a later time.

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

RESPONSE: N/A

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

RESPONSE: Plaintiff suffered mental anguish, psychological and emotional distress, loss of enjoyment of life, fear of impending death and ultimately death as well as medical expenses. The actual medical costs are being gathered and will be supplemented upon receipt. The medical bills will be provided upon request.

6. List the name and address of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE:

Dr. Jonathan Maltz

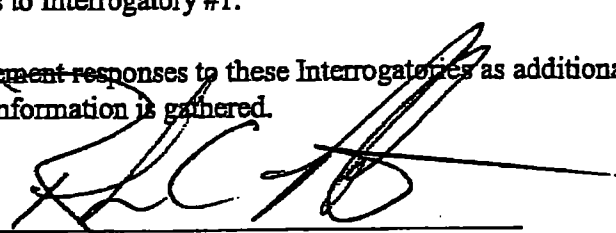
Morton J. Kern, M.D.

Plaintiff reserves the right to elicit expert testimony from any and all medical providers, as well as Defendants' experts.

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

RESPONSE: Please see responses to Interrogatory #1.

Plaintiff reserves the right to supplement responses to these Interrogatories as additional documents are received and as additional information is gathered.



Ruskin C. Foster
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, SC 29201
(803) 726-0123
Attorneys for the Plaintiff

Columbia, South Carolina
, 2009

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

James Hofstiezer, as Personal
Representative for the Estate of Martha
Sue Hofstiezer,

Plaintiff,

vs.

D. Mark Hicklin, M.D. and Drs. Taylor,
Hicklin, Westmoreland and Coley, PA,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

2009-CP-42-

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**AFFIDAVIT OF
MORTON J. KERN, M.D.**

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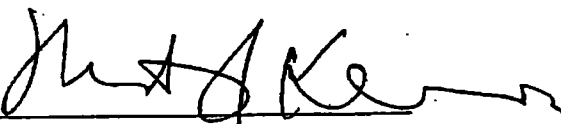
PERSONALLY APPEARED BEFORE ME, Morton J. Kern, M.D., who after being duly
sworn, deposed and says the following:

1. I am a citizen and resident of LA County, State of California.
2. I am a physician licensed to practice medicine in the State of California.
3. I am board certified in the field of Cardiology. I am familiar with the standard of care required of physicians practicing in the area of cardiology and internal medicine and the opinions given in this affidavit are given to a reasonable degree of medical certainty.
4. I have reviewed the medical records of Martha Hofstiezer. My opinions in this case are based upon records reviewed and are subject to change if any additional information is presented.
5. To a reasonable degree of medical certainty, there was a deviation from the standard of care in the treatment rendered to Ms. Hofstiezer by Dr. Mark Hicklin and Drs. Taylor, Hicklin, Westmoreland and Coley, PA.
6. It is my opinion that since Ms. Hofstiezer initially presented with complaints of chest pain that Dr. Hicklin should have done an EKG or sent her to the emergency room to have tests run and instead, she was discharged and a note was made that she was assured the complaints were not cardiac in nature.
7. It is my opinion that if tests had been run, it would have revealed a cardiac diagnosis and allowed for earlier treatment, which, in my opinion would have saved her life.

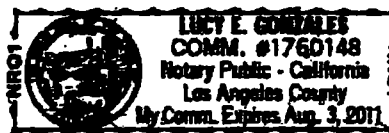
8. The departures from the standard of care on the parts of Dr. Mark Hicklin and Drs. Taylor, Hicklin, Westmoreland and Coley, PA led to a delay in diagnosis which caused a delay in treatment and Plaintiff's death.

7. It is my opinion that to a reasonable degree of medical certainty that the care given by Dr. Mark Hicklin and Drs. Taylor, Hicklin, Westmoreland and Coley, PA was a direct and proximate cause of the injuries and ultimate death of Martha Hofstetzer.

FURTHER AFFIANT SAYETH NOT.


Morton J. Kern, M.D.

SWORN before me this 13 day
of June, 2008
Lily E. Gonzales
Notary Public for California
My Commission expires: August 3, 2011



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ACKNOWLEDGMENT

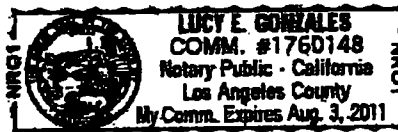
State of California
County of Orange

On June 13, 2008 before me, Lucy E Gonzales Notary Public
(Insert name and title of the officer)

personally appeared Morton Keen MD
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Lucy E Gonzales

(Seal)

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MARCO KITCHENS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Civil Action No.:
	)	
James Hofstiezer, as Personal	)	
Representative for the Estate of Martha	)	
Sue Hofstiezer,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	JONATHAN MALTZ, M.D.
D. Mark Hicklin, M.D. and Drs. Taylor,	)	
Hicklin, Westmoreland and Coley, PA,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Jonathan Maltz, M.D., who after being duly sworn, deposed and says the following:

1. I am a citizen and resident of Montgomery County, State of Maryland.
2. I am a physician licensed to practice medicine in the State of Maryland.
3. I am board certified in the field of family practice. I am familiar with the standard of care required of physicians practicing in the area of family practitioners and the opinions given in this affidavit are given to a reasonable degree of medical certainty.
4. I have reviewed the medical records of Martha Hofstiezer. My opinions in this case are based upon records reviewed and are subject to change if any additional information is presented.
5. To a reasonable degree of medical certainty, there was a deviation from the standard of care in the treatment rendered to Ms. Hofstiezer by Dr. Mark Hicklin and Drs. Taylor, Hicklin, Westmoreland and Coley, PA.
6. It is my opinion that since Ms. Hofstiezer initially presented with complaints of chest pain that Dr. Hicklin should have done an EKG and cardiac enzymes or sent her to the emergency room to have tests run and instead, she was discharged and a note was made that she was assured the complaints were not cardiac in nature.
7. It is my opinion that if tests had been run, it would have revealed a cardiac diagnosis and allowed for earlier treatment, which, in my opinion would have saved her life.

8. The departures from the standard of care on the parts of Dr. Mark Hicklin and Drs. Taylor, Hicklin, Westmoreland and Coley, PA led to a delay in diagnosis which caused a delay in treatment and Plaintiff=s death.

7. It is my opinion that to a reasonable degree of medical certainty that the care given by Dr. Mark Hicklin and Drs. Taylor, Hicklin, Westmoreland and Coley, PA was a direct and proximate cause of the injuries and ultimate death of Martha Hoftiezer.

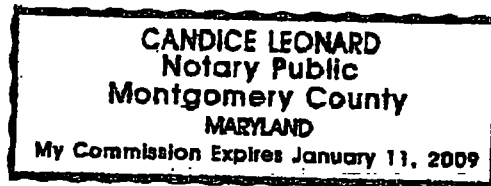
FURTHER AFFIANT SAYETH NOT.

Jonathan Maltz
Jonathan Maltz, M.D.

SWORN before me this 1st day
of August, 2008

Candice Leonard
Notary Public for Maryland

My Commission expires: _____



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MARC KITCHENS

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

James Hoftiezer, as Personal
Representative for the Estate of Martha
Sue Hoftiezer,

Plaintiff,

vs.

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin
Westmoreland and Coley, P.A., and
Spartanburg Regional Health Services
District, Inc. d/b/a Spartanburg Regional
Healthcare System,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

2009-CP-42-5373

SUMMONS

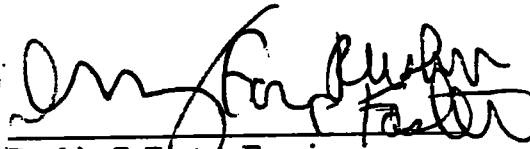
(Medical Malpractice)

(Jury Trial Demanded)

(Survival Action and Wrongful Death)

TO ALL NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned at 500 Taylor Street, Columbia, South Carolina 29201, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Complaint within thirty days, judgment by default will be rendered against you for the relief demanded in the Complaint.



Ruskin C. Foster, Esquire
Mike Kelly Law Group, LLC
500 Taylor Street, Columbia, SC 29201
Phone: (803) 726-0123
Facsimile: (803) 252-7145
ATTORNEYS FOR THE PLAINTIFF

Sept 30, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

James Hoftiezer, as Personal Representative of the
Estate of Martha Sue Hoftiezer,

Plaintiff(s)

vs.

D. Mark Hicklin, M.D. et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP -

2009-CP-42-5373

(Please Print)

Submitted By: Ruskin C. Foster

Address: 500 Taylor Street, Columbia, SC 29201

SC Bar #: 2096

Telephone #: 803-726-0123

Fax #: 803-252-7145

Other:

E-mail: rfoster@mklawgroup.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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

You are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

Civil Action No.:

James Hoftiezer, as Personal)
Representative for the Estate of Martha)
Sue Hoftiezer,)

Plaintiff,)

vs.)

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin)
Westmoreland and Coley, P.A., and)
Spartanburg Regional Health Services)
District, Inc. d/b/a Spartanburg Regional)
Healthcare System,)

Defendants.)

2009-CP-42-

5373

COMPLAINT

(Medical Malpractice)

(Jury Trial Demanded)

(Survival Action and Wrongful Death)

TO ALL NAMED DEFENDANTS:

The Plaintiff complaining of the Defendants, would respectfully allege and show
unto the Court as follow:

A. PARTIES

The Plaintiff above-named is entitled to relief on the following grounds:

1. The Plaintiff is a citizen and resident of the County of Spartanburg, State of South Carolina and the Personal Representative of the Estate of Martha Sue Hoftiezer.

2. Upon information and belief, Defendant D. Mark Hicklin, M.D. (hereinafter referred to as Defendant Hicklin) is a citizen and resident of the County of Spartanburg, State of South Carolina.

3. Defendant Drs. Taylor, Hicklin, Westmoreland and Coley (hereinafter referred to as Defendant Drs. Taylor Hicklin) were, upon information and belief, at all times mentioned herein a private physicians practice organized under the law of the State of South Carolina which

MARC KITCHENS

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owns property and transacts business in the County of Spartanburg, State of South Carolina and held themselves out to be a private practice. That at all times mentioned herein were licensed medical provider doing business in the County of Spartanburg in Spartanburg, South Carolina. Defendant Hicklin was an agent and/or employee of Defendant Drs. Taylor Hicklin and as such, Defendant Drs. Taylor Hicklin is vicariously liable for the negligence of Defendant Hicklin.

4. Defendant Spartanburg Regional Health Services District Inc. d/b/a Spartanburg Regional Medical Center (hereinafter referred to as Defendant Spartanburg Regional) was, at all times mentioned herein an Eleemosynary corporation organized under the law of the State of South Carolina which owns property and transacts business in the County of Spartanburg, State of South Carolina and was, at all times mentioned herein a licensed medical provider doing business in the County of Spartanburg in Spartanburg, South Carolina. As such, Defendant Spartanburg Regional is vicariously liable for the acts and omissions of its agents, employees, independent contractors, servants.

5. Accordingly, Spartanburg County is the appropriate venue for litigating the issues in this matter.

6. That at all times mentioned herein there existed a patient/physician relationship between Plaintiff's decedent, Martha Hofstiezer and Defendants.

B. SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.

7. Plaintiff's decedent, Martha Sue Hofstiezer presented to her family physician, Defendants Hicklin and Defendant Taylor Hicklin on or about July 31, 2006 complaining of chest discomfort. She was assured it was not cardiac and given Steripred 10mgs.

8. Plaintiff's decedent went into cardiac arrest on August 4, 2006.

9. EMS was called and transported Plaintiff's decedent to Greenville Memorial Hospital where attempts were made to save Ms. Hofstiezer but were unsuccessful.

10. Ms. Hofstiezer died on August 4, 2006.

FIRST CAUSE OF ACTION
(Survival Action)

11. Plaintiff adopts the allegations of paragraphs one through ten and incorporates the same herein by reference as if stated verbatim.

12. Plaintiff intends to bring this action pursuant to South Carolina Code Ann. §15-5-90 et. seq., as amended (Survival of right of action) in regard to the estate of Martha Sue Hofstiezer.

13. Defendants named hereinabove had a duty to treat Plaintiff's decedent at a level that met or exceeded the nationally recognized standard of care, which was breached.

14. Defendants named hereinabove were negligent, grossly negligent, willful, wanton and reckless in their treatment of the Plaintiff's decedent and performed their duties towards Plaintiff's decedent in a manner well beneath the nationally recognized standard of care for the same or similar healthcare providers in the same or similar circumstances.

15. Defendants, individually and/or by and through their agents, employees, servants, representatives and/or partners, breached their duties in their care and treatment of Plaintiff's decedent in one or more of the following particulars, acts or omissions:

- a. In failing to properly evaluate Plaintiff's decedent's medical needs at the initial visit;
- b. In failing to order further testing on July 31, 2006;
- c. In failing to properly examine, diagnose, treat and refer patient in a timely

fashion;

- d. In failing to exercise that degree or skill ordinarily used by physicians and/or healthcare providers used under the same or similar circumstances;
- e. Such additional and further particulars as it may be learned through discovery and/or proven at trial.

16. That as a direct and proximate result of the acts and/or omissions of Defendants set out hereinabove, Plaintiff was made to suffer significant pain and suffering, mental anguish, psychological and emotional upset, loss of enjoyment of life, knowledge of impending death and ultimate death as well as medical expenses and burial expenses.

17. That because of the acts and/or omissions of Defendants as enumerated hereinabove which resulted both proximately and directly in the damages also set out above, the Plaintiffs personal representative seeks a reasonable amount of actual damages against the Defendants as well as an exemplary amount of punitive damages.

SECOND CAUSE OF ACTION
(Wrongful Death Action)

18. Plaintiff adopts the allegations of paragraphs one through seventeen and incorporates the same herein by reference as if stated verbatim.

19. Plaintiff brings this action pursuant to South Carolina Code Ann. §15-51-10 et seq. as amended in regards to the wrongful death of Martha Hoftiezer. Her statutory beneficiaries under §15-51-20 of the South Carolina Code of Laws are Richard A. Hoftiezer, Joan M. Hoftizer, Sandra L. Hoftiezer, James A. Hoftiezer and Debra R. Schad.

20. Defendants named hereinabove had a duty to treat Plaintiff's decedent at a level that met or exceeded the nationally recognized standard of care, which was breached.

21. Defendants named hereinabove were negligent, grossly negligent, and reckless in their treatment of the Plaintiff's decedent and performed their duties towards Plaintiff's decedent in a manner well beneath the nationally recognized standard of care for the same or similar healthcare providers in the same or similar circumstances.

22. Defendants, individually and/or by and through their agents, employees, servants, representatives and/or partners, breached their duties in their care and treatment of Plaintiff's decedent in one or more of the following particulars, acts or omissions:

- a. In failing to properly evaluate Plaintiff's decedent's medical needs at the initial visit;
- b. In failing to order further testing on July 31, 2006;
- c. In failing to properly examine, diagnose, treat and refer patient in a timely fashion;
- d. In failing to exercise that degree or skill ordinarily used by physicians and/or healthcare providers used under the same or similar circumstances; and
- e. Such additional and further particulars as it may be learned through discovery and/or proven at trial.

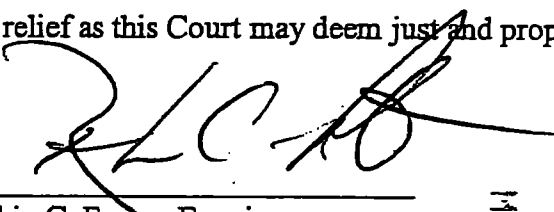
23. Plaintiff is informed and believes that as a direct and proximate result of the Defendants' acts or omissions, Martha Hoftiezer suffered permanent injury resulting in death, and as a result her statutory beneficiaries suffered unnecessary grief and sorrow; loss of her companionship; loss of financial support; loss of her love and affection; loss of her wisdom and experience; and the estate was caused to incur funeral expenses.

24. That because of the acts and/or omissions of Defendants as enumerated hereinabove which resulted both proximately and directly in the damages also set out above, the

Plaintiffs personal representative seeks a reasonable amount of actual damages against the Defendants as well as an exemplary amount of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in the following particulars to wit:

- a. A reasonable amount of actual damages;
- b. For an exemplary amount of punitive damages;
- c. For the costs and disbursements of this action;
- d. For such other and further relief as this Court may deem just and proper.



Ruskin C. Foster, Esquire
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, SC 29201
Phone: (803) 726-0123
Facsimile: (803) 252-7145
ATTORNEYS FOR THE PLAINTIFF

MARC KITCHENS

2009 OCT - 1 PM 1:10

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COURT

9-28, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal)
Representative for the Estate of)
Martha Sue Hoftiezer,)

Plaintiff,)

vs.)

D. MARK HICKLIN, M.D.,)
DRS. TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
db/a Spartanburg Regional)
Healthcare System,)

Defendants.)

ANSWER TO COMPLAINT

C.A. Number: 2009-CP-42-5373

JURY TRIAL DEMANDED

Defendants, answering Plaintiff's Complaint, state as follows:

1. All allegations contained in the Complaint which are not hereinafter admitted, qualified or otherwise explained are denied.

FOR A FIRST DEFENSE

2. Defendants are without sufficient information upon which to form a belief as to the allegations contained in Paragraph 1 of the Complaint and therefore the same are denied and strict proof demanded.

3. Paragraph 2 of the Complaint is admitted.

4. In response to the allegations contained in Paragraph 3 of the Complaint, Defendants admit that Defendant Dr. Hicklin is a licensed physician practicing medicine in Spartanburg County. Defendants further admit that Dr. Westmoreland and Dr. Coley are

licensed physicians who practice medicine in Spartanburg County in the same office as Defendant Dr. Hicklin. All remaining allegations contained in Paragraph 3 of the Complaint are denied.

5. In response to the allegations contained in Paragraph 4 of the Complaint, Defendants admit that Defendant Spartanburg Regional Health Services District, Inc., d/b/a Spartanburg Regional Medical Center (hereinafter "Spartanburg Regional") is a public hospital corporation duly organized and existing pursuant to the laws of the State of South Carolina which owns property and transacts business in Spartanburg County and is a licensed medical provider providing healthcare services in Spartanburg County. Spartanburg Regional further admits that it is vicariously liable for the acts and omissions of its employees who are acting within the course and scope of their employment. All remaining allegations contained in Paragraph 4 of the Complaint are denied.

6. Paragraph 5 of the Complaint is admitted.

7. In response to the allegations contained in Paragraph 6 of the Complaint, Defendants admit that a patient/physician relationship existed between Plaintiff's decedent and Defendant Dr. Hicklin. All remaining allegations contained in Paragraph 6 of the Complaint are denied.

8. In response to the allegations contained in Paragraph 7 of the Complaint, Defendants admit that Plaintiff's decedent was seen by Defendant Dr. Hicklin on July 31, 2006 and that she complained of chest discomfort. Defendants further admit that Defendant Dr. Hicklin reassured Plaintiff's decedent that she did not appear to be suffering from cardiac problems and that Plaintiff's decedent was given a prescription for Steripred 10mgs. Any remaining allegations contained in Paragraph 7 of the Complaint are denied.

9. Defendants are without sufficient information upon which to form a belief as to the allegations contained in Paragraphs 8, 9 and 10 of the Complaint and therefore the same are denied and strict proof demanded.

10. In response to the allegations contained in Paragraph 11 of the Complaint, Defendants reiterate Paragraphs 1 through 9 above.

11. In response to the allegations contained in Paragraph 12 of the Complaint, Defendants admit that Plaintiff brings an action pursuant to §15-5-90, *et. seq.* Of the South Carolina Code of Laws but expressly deny Plaintiff's entitlement to any relief against these Defendants.

12. The allegations set forth in Paragraph 13 of the Complaint constitute legal conclusions to which no response is required. Defendants expressly deny any acts of wrongdoing in this matter.

13. Paragraph 14, 15, 16, and 17 of the Complaint are denied.

14. In response to the allegations contained in Paragraph 18 of the Complaint, Defendants reiterate Paragraphs 1 through 13 above.

15. In response to the allegations contained in Paragraph 19 of the Complaint, Defendants admit that Plaintiff brings an action in this matter pursuant to §15-51-10, *et. seq.* of the South Carolina Code of Laws but Defendants expressly deny Plaintiff's entitlement to any relief against Defendants in this action.

16. Paragraph 20 of the Complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendants expressly deny any acts of wrongdoing in this matter.

17. Defendants deny Paragraphs 21, 22, 23, and 24 of the Complaint.

FOR A SECOND DEFENSE

18. Defendants reiterate Paragraphs 1 through 17 above.

19. At all times referenced in Plaintiff's Complaint, Spartanburg Regional was a public hospital corporation organized and existing pursuant to the laws of the State of South Carolina and a governmental subdivision of the State of South Carolina and was further the employer of Defendant Dr. Hicklin. Accordingly, Plaintiff's action is governed by and subject to the provisions of the South Carolina Tort Claims Act, as codified at §15-78-10, *et seq.*, of the South Carolina Code of Laws).

20. Plaintiff's recovery in this matter, if any, is subject to and limited by the provisions of §15-78-120(a) of the South Carolina Tort Claims Act.

FOR A THIRD DEFENSE

21. Defendants reiterate Paragraphs 1 through 20 above.

22. Plaintiff's prayer for the recovery of punitive damages in this matter is barred by the provisions of §15-78-120(b) of the South Carolina Tort Claims Act.

FOR A FOURTH DEFENSE

23. Defendants reiterate Paragraphs 1 through 22 above.

24. Plaintiff failed to properly commence this action within the time period prescribed by the governing statute of limitations as codified at §15-78-100(a) and §15-78-110 of the South Carolina Tort Claims Act.

FOR A FIFTH DEFENSE

25. Defendants reiterate Paragraphs 1 through 24 above.

26. Plaintiff's claim against Defendant Dr. Hicklin and Defendant Drs. Taylor, Hicklin, Westmoreland and Coley, P.A. is barred by the provisions of §15-78-70 of the South Carolina Tort Claims Act and Spartanburg Regional should be substituted as the sole defendant as to all allegations in this matter.

FOR A SIXTH DEFENSE

27. Defendants reiterate Paragraphs 1 through 26 above.

28. §15-78-60(20) of the South Carolina Tort Claims Act is pled in defense of this action.

FOR A SEVENTH DEFENSE

29. Defendants reiterate Paragraphs 1 through 29 above.

30. Defendants plead as a defense in this action any and all other applicable provisions of the South Carolina Tort Claims Act.

FOR AN EIGHTH DEFENSE

31. Defendants reiterate Paragraphs 1 through 30 above.

32. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against one or more of the Defendants in this action.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the same be dismissed, that they be granted their costs and disbursements in this action, and for such further relief as this court deems just and proper.

HOLCOMBE BOMAR, P.A.

By: 

Perry D. Boulier
Post Office Drawer 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Defendants

November 16, 2009

Spartanburg, South Carolina

DEFENDANTS DEMAND A JURY TRIAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, AS PERSONAL)
REPRESENTATIVE FOR THE)
ESTATE OF MARTHA SUE)
HOFTIEZER,)

Plaintiff,)

vs.)

D. MARK HICKLIN, M.D. DRS.)
TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
d/b/a Spartanburg Regional Medical)
Center,)

Defendants.)

CERTIFICATE OF SERVICE

C. A. No. 2009-CP-42-5373

I, the undersigned paralegal in the Law Offices of Holcombe Bomar, P. A., attorneys for the Defendants, do hereby certify that I have caused a copy of the hereinbelow listed pleadings to be mailed to all parties in this matter on the 16th day of November, 2009 as follows:

PLEADING: Answer

SERVED: Ruskin C. Foster, Esq.
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, South Carolina 29201

By: Roxanne R. Reynolds
Roxanne R. Reynolds, Certified PLS, Paralegal

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

James Hoffiezer, as Personal)
Representative for the Estate of Martha)
Sue Hoffiezer,)

Plaintiff,)

vs.)

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin)
Westmoreland and Coley, P.A., and)
Spartanburg Regional Health Services)
District, Inc. d/b/a Spartanburg Regional)
Healthcare System,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2009-CP-42-5373

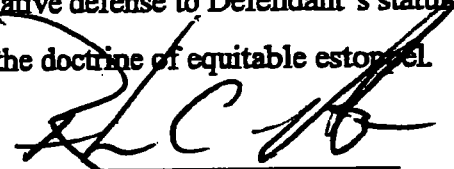
REPLY TO DEFENDANT'S ANSWER
(Medical Malpractice)
(Jury Trial Demanded)
(Survival Action and Wrongful Death)

TO ALL NAMED DEFENDANTS:

The Plaintiff, not waiving but specifically reserving its right to be heard under all Rule 12 Motions, replies to the Defendant's Answer herein and would respectfully show unto this Court that:

FOR A FIRST DEFENSE

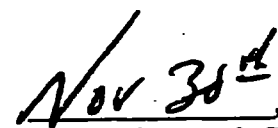
1. Plaintiff does hereby plead as an affirmative defense to Defendant's statute of limitations and governmental employee defenses, the doctrine of equitable estoppel.


Ruskin C. Foster, Esquire
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, SC 29201
Phone: (803) 726-0123
Facsimile: (803) 252-7145
ATTORNEYS FOR THE PLAINTIFF

MARC KITCHENS

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CLERK OF COURT
SPARTANBURG COUNTY


Nov 30th, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

James Hoftiezer, as Personal)
Representative for the Estate of Martha)
Sue Hoftiezer,)

Plaintiff,)

vs.)

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin)
Westmoreland and Coley, P.A., and)
Spartanburg Regional Health Services)
District, Inc. d/b/a Spartanburg Regional)
Healthcare System,)

Defendants.)

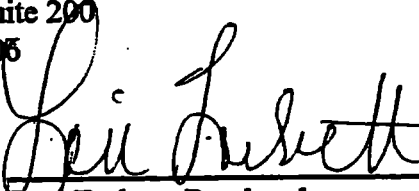
IN THE COURT OF COMMON PLEAS

Civil Action No.: 2009-CP-42-5373

CERTIFICATE OF SERVICE

I, Lori Torbett, of Mike Kelly Law Group, LLC, do hereby certify that a copy
of Plaintiff's Reply to Defendant's Answer was served on the Defendants, by e-mail and U.S. mail
this the 30 day of November, 2009, addressed as follows:

Perry D. Boulter, Esquire
Holcombe Bomar, P.A.
100 Dunbar Street, Suite 200
Spartanburg, SC 29305


Lori Torbett, Paralegal

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CLERK OF COURT
SPARTANBURG COUNTY
MARC KITCHENS

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

Civil Action No.: 2009-CP-42-5373

James Hofstiezer, as Personal)
Representative for the Estate of Martha)
Sue Hofstiezer,)

Plaintiff,)

vs.)

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin)
Westmoreland and Coley, P.A., and)
Spartanburg Regional Health Services)
District, Inc. d/b/a Spartanburg Regional)
Healthcare System,)

Defendants.)

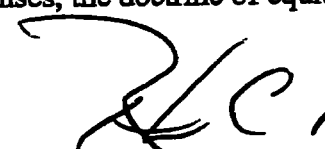
**AMENDED
REPLY TO DEFENDANT'S ANSWER
(Medical Malpractice)
(Jury Trial Demanded)
(Survival Action and Wrongful Death)**

TO ALL NAMED DEFENDANTS:

The Plaintiff, not waiving but specifically reserving its right to be heard under Rule 12 Motions, amends his reply to the Defendant's Answer herein and would respectfully show unto this Court that:

FOR A FIRST DEFENSE

1. Plaintiff does hereby plead as an affirmative defense to Defendant's statute of limitations and governmental employee defenses, the doctrine of equitable estoppel and tolling.


Ruskin C. Foster, Esquire
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, SC 29201
Phone: (803) 726-0123
Facsimile: (803) 252-7145
ATTORNEYS FOR THE PLAINTIFF


Nov. 18, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

Civil Action No.: 2009-CP-42-5373

James Hoftiezer, as Personal)
Representative for the Estate of Martha)
Sue Hoftiezer,)

Plaintiff,)

vs.)

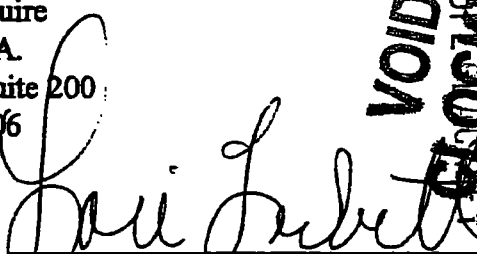
CERTIFICATE OF SERVICE

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin)
Westmoreland and Coley, P.A., and)
Spartanburg Regional Health Services)
District, Inc. d/b/a Spartanburg Regional)
Healthcare System,)

Defendants.)

I, Lori Torbett, of Mike Kelly Law Group, LLC, do hereby certify that a copy
of Plaintiff's Amended Reply was served on the Defendants, by e-mail and U.S. mail this 2nd
day of November, 2010, addressed as follows:

Perry D. Boulrier, Esquire
Holcombe Bomar, P.A.
100 Dunbar Street, Suite 200
Spartanburg, SC 29306


Lori Torbett, Paralegal

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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal
Representative for the Estate of
Martha Sue Hoftiezer,

Plaintiff,

v.

D. MARK HICKLIN, M.D., DRS.
TAYLOR, HICKLIN, WESTMORELAND
AND COLEY, P.A. and
SPARTANBURG REGIONAL HEALTH
SERVICES DISTRICT, INC., d/b/a
Spartanburg Regional Healthcare
System,

Defendants.

**AMENDED CONSENT
SCHEDULING ORDER**

C.A. Number: 09-CP-42-5373

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With consent of all counsel, the following Scheduling Order is hereby established in this case:

1. The parties agree that the initial threshold issue that must be resolved in this case is whether Plaintiff timely commenced this lawsuit under the applicable statute of limitations. The parties agreed that all discovery reasonably related to issues pertaining to the statute of limitations issue will be completed by **APRIL 1, 2011**.

2. Defendants shall file their Motion for Summary Judgment on the statute of limitations issue no later than **APRIL 15, 2011**.

3. Following the issuance of an Order either granting or denying Defendant's Motion for Summary Judgment, the parties are ordered to consult about the entry of a new Consent Scheduling Order. In the event no appeal is taken from the Court's Order

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disposing of Defendants' Motion for Summary Judgment, the parties will submit a new Scheduling Order for the Court's consideration within thirty (30) days after the time expires for any appeal to be perfected from such Order.

IT IS SO ORDERED.



The Honorable J. Mark Hayes, II
Judge for the Seventh Judicial Circuit

Dated: 2/22, 2011

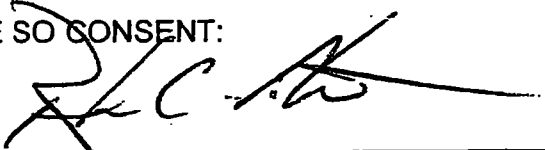
Spartanburg, South Carolina

(CONSENT SIGNATURE PAGES TO FOLLOW)

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

Hoftiezer v. Hicklin, et al
Case No.: 09-CP-42-5373
Consent Scheduling Order

WE SO CONSENT:



Ruskin C. Foster, Esq.
MIKE KELLY LAW GROUP, LLC
500 Taylor Street
Columbia, SC 29201
(803) 726-0123

Attorneys for Plaintiff

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M. HOPE BLACKLEY

Hoftiezer v. Hicklin, et al
Case No.: 09-CP-42-5373
Consent Scheduling Order

WE SO CONSENT:

HOLCOMBE BOMAR, P.A.

By: 

Perry D. Boulier
Post Office Drawer 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Defendants

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal)
Representative for the Estate of)
Martha Sue Hoftiezer,)

Plaintiff,)

vs.)

D. MARK HICKLIN, M.D.,)
DRS. TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
db/a Spartanburg Regional)
Healthcare System,)

Defendants.)

MOTION FOR SUMMARY JUDGMENT

C.A. Number: 2009-CP-42-5373

TO: RUSKIN C. FOSTER, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants, through their undersigned attorneys, will move on the tenth (10th) day after service of this Motion, or as soon thereafter as this matter can be heard, for an Order granting Defendants' summary judgment in this matter. This Motion is based on the provisions of Rule 56 of the South Carolina Rules of Civil Procedure and on the ground that the pleadings, depositions, Answers to Interrogatories, admissions on file and Affidavits in this matter show that there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law.

More particularly, this Motion is based on the following grounds:

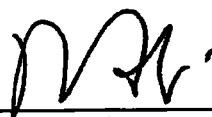
1. Defendant Spartanburg Regional Health Services District, Inc. is a public

hospital corporation and is a political subdivision of the State of South Carolina. Accordingly, Plaintiff's claim in this matter is governed by the provisions of the South Carolina Tort Claims Act as codified at §15-78-10, et seq. of the South Carolina Code of Laws (1976 as amended).

2. Plaintiff failed to commence this action within two (2) years from the date Plaintiff's loss was or should have been discovered and is thus barred by the provisions of §15-78-100(a) and §15-78-110 of the South Carolina Tort Claims Act.

Based on the above, Defendant Spartanburg Regional Health Services district, Inc. be granted in its favor in this matter and that Plaintiff's action be dismissed with prejudice.

HOLCOMBE BOMAR, P.A.

By: 

Perry D. Boulier
Attorneys for Defendants
Post Office Drawer 1897
Spartanburg, SC 29304
(864) 594-5300

April 15, 2011

Spartanburg, South Carolina

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal
Representative for the Estate of
Martha Sue Hoftiezer,

Plaintiff,

vs.

D. MARK HICKLIN, M.D.,
DRS. TAYLOR, HICKLIN,
WESTMORELAND AND COLEY, P.A.,
and SPARTANBURG REGIONAL
HEALTH SERVICES DISTRICT, INC.,
db/a Spartanburg Regional
Healthcare System,

Defendants.

AFFIDAVIT OF MARK HICKLIN, M.D.

C.A. Number: 2009-CP-42-5373

PERSONALLY APPEARED before me Mark Hicklin, M.D., who being duly sworn,
says as follows:

1. Affiant is a physician employed by Spartanburg Regional Health Services District, Inc. ("SRHSD"). This affidavit is based on Affiant's personal knowledge of all matters set forth in this affidavit.

2. Since August 11, 1994, including all times referenced in Plaintiff's Complaint in this matter, I was an employee of SRHSD (or its predecessor in interest) and continue to be employed by SRHSD. My employment contract in effect at the time of my treatment of Ms. Martha Sue Hoftiezer on July 31, 2006 is attached to this Affidavit as Exhibit "A".

3. Since August 11, 1994, including all times referenced in Plaintiff's Complaint in this matter, Drs. Westmoreland, Hicklin and Coley (and its predecessor designations) (the "practice group") has been a medical practice wholly owned by SRHSD (or its

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predecessor in interest) and is not a separate legal entity.

4. Since August 11, 1994, I have received my compensation and related benefits for medical services rendered from SRHSD (or its predecessor in interest). My W-2 for the year 2006, the year of my treatment of Ms. Hoftiezer at issue in this matter, is attached to this Affidavit as Exhibit "B," and said W-2 indicates that my employer was SRHSD. I have redacted my compensation information from said W-2 for privacy reasons.

5. Since at least 1999, including all times referenced in Plaintiff's Complaint in this matter, SRHSD has leased office space to provide my practice group with an office.

6. Since August 11, 1994, including all times referenced in Plaintiff's Complaint in this matter, SRHSD (or its predecessor in interest) has provided all of the equipment used by my practice group in our practice of medicine.

7. At the time of my treatment of Ms. Hoftiezer on July 31, 2006, my business cards (attached as Exhibit "C"), my practice group's envelopes (attached as Exhibit "D"), and my practice group's letterhead (attached as Exhibit "E") bore the title "Regional Physician Network" in the color scheme used by SRHSD for all of its entities. Additionally, on July 31, 2006, said envelopes and letterhead would have included the phrase "in affiliation with the Spartanburg Regional Healthcare System." Exhibit E appears as it would have appeared at the time of Ms. Hoftiezer's treatment on July 31, 2006. Exhibits C and D are identical to how the practices group's business cards and envelopes would have appeared at the time of Ms. Hoftiezer's treatment, excepting the change in address of the practice group from 391 East Henry Street, Spartanburg, S.C. 29302 to 120 Heywood Avenue, Suite 200, Spartanburg, S.C. 29302

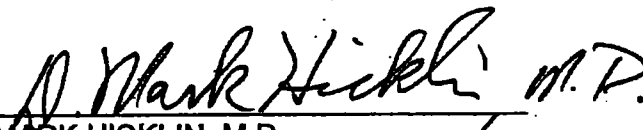
8. At the time of my treatment of Ms. Hoftiezer on July 31, 2006, my practice

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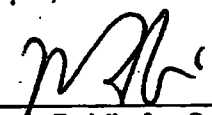
group's office was located at 391 East Henry Street, Spartanburg, SC 29302. My practice group's office displayed the color scheme of SRHSD, had signage indicating the group's affiliation with SRHSD, and did not display any evidence that our practice group was a legal entity in and of itself.

9. The pictures attached to this Affidavit as Exhibit "F" represents a true and accurate portrayal of the appearance of the signage of my practice group on July 31, 2006, the date of Ms. Hoffiezer's treatment at issue in this matter.

FURTHER AFFIANT SAYETH NOT.


MARK HICKLIN, M.D.

SWORN to and subscribed
before me this 14th day
of April, 2011.


_____(SEAL)
Notary Public for South Carolina

My Commission Expires: 1-23-2014

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M. HOPE BLACKLEY

EXHIBIT A

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO SC CODE SECTION 15-48-10 ET SEQ. AS MODIFIED HEREIN

PHYSICIAN EMPLOYMENT AGREEMENT

THIS PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") effective the 1st day of October, 2004, (the "Effective Date"), by and between Spartanburg Regional Health Services District, Inc., 101 E. Wood Street, Spartanburg, SC 29303, (the "District") and D. Mark Hicklin, M.D., 391 East Henry Street, Spartanburg, SC 29302, (the "Physician").

INTRODUCTION. District is a political subdivision of the State of South Carolina created on April 10, 1995, by Spartanburg County Council. The District has determined that there is a need for primary care physicians in the District's service area who are available to diagnose and treat patients in the physician office setting.

The District desires to employ qualified primary care physicians who are willing to provide needed professional medical services to the residents of District's service area.

Physician is a Board Certified/Board Eligible primary care physician licensed to practice medicine in the State of South Carolina.

The District desires to employ Physician and Physician desires to enter into the employ of the District according to the terms and conditions set forth in this Agreement.

Agreement. In consideration of the premises and the mutual promises and covenants stated below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do covenant, stipulate, and agree as follows:

1. **Employment of Physician.** The District shall employ Physician on a full time basis to provide professional and administrative direction, teaching and supervisory services in accordance with the terms of this Agreement.

1.1 **Professional Duties.** Physician shall provide professional medical services to the patients of the District at the practice location known as Westmoreland, Hicklin and Coley Regional Primary Health Center at Spartanburg, South Carolina, or at such other District facility(ies), as mutually agreed, (the "Practice Site"). By entering into this Agreement, Physician acknowledges that he has become an employee of the District and that he shall at all times, in the performance of his professional duties and other services provided under this Agreement, be subject to the rules governing District physicians, as such rules may be amended from time to time (the "District Rules").

1.2 **Availability.** Physician agrees to provide medical services at Practice Site on a full-time basis, which for purposes of this Agreement shall be defined as at least forty-six (46) weeks a year and thirty-six (36) hours per week during regular Practice Site office hours. Office hours shall

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be posted at the Practice Site and shall be consistent with similar medical practices in the community. Physician shall reasonably extend posted Practice Site office hours on a given day/date if patients who may not be treated between those hours present themselves for service. Physician shall also comply with additional requirements regarding practice coverage to be developed by the Physician and the District.

1.3 Staff Privileges. Physician shall, at all times, during the term of this Agreement, be and remain a member in good standing of the active medical staff with the facilities of the District.

1.4 Best Efforts. Physician will industriously pursue his profession in the best interest of the District and its patients.

1.5 Standards. Physician shall perform his duties under this Agreement in conformity with and shall comply with: (a) all applicable standards, rulings, regulation and requirements of the United States Department of Health and Human Services, the South Carolina Department of Health and Environmental Control, the Joint Commission on Accreditation of Healthcare Organizations and any federal, state, or local government agency, third party payer or accrediting body having jurisdiction over or providing reimbursement for the services provided by Physicians and any programs and services offered by the District; (b) the bylaws, policies, rules and regulations of the District (including those of any department, section or division thereof), District's medical staff and of managed care programs in which the District participates, as the same may be amended and in effect from time to time; (c) the policies and procedures established by the Governance Council of the Network; (d) the Principles of Medical Ethics of the American Medical Association; and (e) the standard of care required of physicians practicing in the State of South Carolina. Physician will carefully avoid any and all personal acts, habits and usages which might injure, directly or indirectly, his professional reputation or that of the District, or any employee of the District, or which might otherwise be detrimental to any interest of the District.

1.6 Administrative Duties. Physician shall perform such administrative duties on behalf of the District as are determined by the District to be reasonable and necessary to ensure the proper and efficient operation of the Practice Site.

1.7 Supervision of Non-Physician Personnel. Physician shall participate in the training and supervision of non-physician personnel performing services at the Practice Site and shall assist the District in the evaluation of such personnel's job performance.

1.8 Continuing Professional Education. Physician shall conscientiously participate at the District's expense in programs of formal and informal continuing medical education as directed by the District.

1.9 Health Status.

1.9.1 The parties acknowledge that during the term and any renewal terms of this Agreement, Physician must be able to appropriately and safely perform his duties hereunder. Physician is responsible for apprising the District of health factors that may affect performance of

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his professional and/or administrative duties, including health factors potentially affecting the health, safety or welfare of Physician or others. The District, in accordance with applicable laws, shall from time to time be entitled to make reasonable inquiries and require appropriate health screenings, both mental and physical, and testing concerning Physicians' ability to perform his duties. Such screenings and testing include, but are not limited to, testing for substance abuse and for communicable or infectious diseases, including sexually transmitted diseases.

1.9.2 The results of any testing, screening, or examination required herein will be maintained as confidential; provided, however, any positive test result (i) will be reported to appropriate authorities as required or allowed by applicable law and (ii) will be disclosed, in the sole discretion of the District, on a need to know basis in accordance with applicable laws. If Physician becomes infected with HIV or Hepatitis B, the District has the sole discretion not only to report Physician's condition in accordance with the applicable law but to determine Physician's appropriate scope of practice and resolve other relevant issues.

2. Physician's Representations and Warranties. Physician represents and warrants that:

2.1 Physician has never had his license to practice medicine revoked or suspended in any state.

2.2 There is no litigation, proceeding or governmental investigation, including, but not limited to, any malpractice, bankruptcy or exclusion proceeding, pending or threatened, against Physician, except as disclosed by Physician.

2.3 Physician has, in full force and effect, extended reporting endorsement coverage or is otherwise protected by valid medical malpractice insurance for any incidents occurring prior to employment by the District hereunder.

2.4 Physician shall execute any agreements necessary for participation by the District and Physician in, and reimbursement from, public or private third party payers including, but not limited to, Medicaid, Medicare, Network agreements and other private managed care programs with which the District and/or the Network otherwise contract as providers.

3. Compensation, Benefits and Assignment.

3.1 The District shall compensate physician in accordance with Exhibit A, attached hereto and incorporated by reference herein. The District shall also provide Physician with the fringe benefits package on Exhibit B, as that package is amended from time to time. The District shall bill payers for all professional services performed by Physician hereunder, and Physician hereby specifically reassigns to the District all rights to bill and receive payment for Physician's services. Physician shall provide the District with all information the District may require to complete the Form HCFA-855R for Medicare reassignment purposes. Further, the District is entitled to all other fees received or collected by Physician relating to the practice of medicine, including without limitation, all speaker fees, witness fees, drug studies consulting or report fees, if

performed during regular office hours. If Physician receives directly any payments whatsoever for medical or medical-related services, he will promptly transfer said payments to the District.

3.2 Physician shall promptly furnish the District or its billing agent with complete and accurate information as necessary to bill and collect fees for professional services rendered by Physician and, as indicated, other professional medical personnel at the Practice Site. Physician shall advise the District of any billing arrangements between Physician and any practitioner providing coverage for Physician. Physician shall consult with the District prior to making any billing adjustments, including extending professional courtesy to any physician (or members of that physician's family) who is or may be in a position to refer patients to the District or an entity affiliated with the District.

4. Disability. As used in this Agreement, the term "short-term disability" shall be as defined in District's benefit plan at the time of such disability; the term "long-term disability" shall mean the Physician's continuous and uninterrupted inability for a period of six (6) months or more to perform the duties required by this Agreement by reason of accident, illness or disease; provided, that brief and intermittent interruptions of the period of disability which are occasioned by attempts on the part of Physician to return to work or otherwise to perform his duties under this Agreement shall not, of and by themselves, prevent that period from being deemed one of continuous and uninterrupted inability to perform those duties. As used herein, the "onset" of Physician's disability shall be deemed to have occurred on the first day of such inability to perform his duties. Disability pay will be made according to the District's disability plan in effect at that time.

5. District's Duties. The District shall perform the following services for the Practice Site:

5.1 The District shall provide and maintain the Practice Site in order that Physician can conveniently treat patients.

5.2 The District shall provide supplies and such support personnel as are necessary to operate the Practice Site. The District's personnel responsibilities shall include providing additional physicians, physician assistants and nurse practitioners as the District reasonably determines are needed to assist Physician in rendering patient care at the Practice Site. The Physician shall be actively involved in the selection of additional physicians, physicians' assistants, and nurse practitioners.

5.3 The District shall, in cooperation with Physician, establish administrative and business practices at the Practice Site for the efficient and effective processing of patient inquiries, handling, and scheduling appointments, greeting and processing patients within the office, and billing for professional services rendered in accordance with legal, ethical and payor guidelines.

5.4 The District shall provide technical support and advice to Physician to assist Physician in complying with all applicable governmental laws and regulations related to his/her provision of services hereunder.

6. Term and Termination of the Agreement.

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6.1 Commencement This Agreement shall be in effect for an initial term of three (3) years, commencing on 10/1/04 and ending 9/30/07. Thereafter, this Agreement will be renewed for one (1) additional two (2) year term with its same terms and provisions, or on such other terms as may be mutually agreed upon by the parties, unless either the District or Physician provides the other party with written notice of its intent not to renew at least six (6) months prior to the end of term.

6.2 Automatic Termination - No Action Required This Agreement shall automatically terminate without the necessity of notice, upon the following:

6.2.1 If Physician's license to practice medicine in the State of South Carolina or right to prescribe controlled substances is suspended, revoked or otherwise terminated;

6.2.2 If Physician is excluded from participating in the Medicare or Medicaid programs; or

6.2.3 If Physician dies.

6.3 District's Right to Terminate Upon Notice The District may terminate this Agreement by giving written notice thereof, upon the following:

6.3.1 If the clinical privileges or medical staff membership of Physician at any hospital is suspended or terminated for a period of thirty (30) days or more for reasons related to Physician's competence or conduct;

6.3.2 If Physician is charged with a felony, any other crime involving fraud or dishonesty, or any act of misconduct which relates directly or indirectly to the rendering of ethical, professional services by Physician;

6.3.3 If Physician has a "disability" (as that term is defined in Section 4) for a period of six (6) months in any contract year, the District and the majority of employed physicians at the Practice Site, may choose to grant Physician a leave of absence. If a leave of absence is granted, and if such leave is for one (1) year or less, inclusive of the six (6) months, and if thereafter Physician is fully able to perform the duties he performed prior to his leave of absence, then Physician shall be entitled to return to a Network position;

6.3.4 If any restrictions or limitations are imposed by any governmental authority having jurisdiction over Physician or by any third party payor which prevents Physician from providing the services contemplated by this Agreement;

6.3.5 If Physician is found guilty of unprofessional, unethical, immoral or fraudulent conduct by any board, institution, organization or professional society having any privilege or right to pass upon the conduct of Physician or Physician resigns from any such institution, organization or society under threat of disciplinary action for professional misconduct;

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6.3.6 If Physician is found guilty of stealing or embezzling from the District or if Physician is found guilty of being intoxicated while on the job or if Physician is found guilty of abusing drugs;

6.4 Termination Subject to Opportunity to Cure. In addition to termination of this Agreement under Sections 6.1, 6.2 and 6.3, either party may terminate this Agreement in its sole discretion in the event of a significant breach by the other party of any of the material terms or conditions of this Agreement (such as, Physician's neglect of duties or violation of the Policies, Rules or Regulations of District, the Facilities of the District's Medical Staff, or the Network or District's failure to pay Physician on time) that said party fails to correct, as determined by the non-breaching party in its reasonable judgment, within thirty (30) days after written notice from the non-breaching party describing the breach. At or after the end of such thirty (30) day period, the non-breaching party choosing to terminate shall deliver to the breaching party written notice thereof, specifying the effective date of termination.

7. Covenants against Competition/Solicitation and Breach of Confidentiality.

7.1 Competition/Solicitation. As a material inducement to the District to employ Physician, Physician shall not, directly or indirectly, for himself or on behalf of any other person or entity, whether as a principal, agent, stockholder, partner, officer, member, director, sole proprietor, consultant, employee, independent contractor or otherwise for the period of Physician's employment, plus one (1) year:

7.1.1 plan, organize, operate, provide or otherwise be involved in the provision of medical services other than on behalf of District within a fifteen (15) mile radius of any District Practice Site where Physician has provided services other than as a locum tenens; provided, however, Physician may own an equity interest for investment purposes only of up to two percent (2%) of the outstanding capital stock of any corporation, publicly traded on a national stock exchange or the NASDAQ National Market System, which is competitive with the business activities being engaged in by District, so long as Physician is not a controlling person of, or a member of a group that controls, such corporation and Physician is not otherwise affiliated in any capacity with such corporation;

7.1.2 canvas or solicit patients of the District for the provision of medical services by himself or a third party, or otherwise advise, request, persuade or attempt to persuade such patients to discontinue or curtail their relationship with the District;

7.1.3 engage in any conduct intending or having the effect of persuading any payor or provider to discontinue or forego entering into any business or service relationship with the District for the provision of medical services;

7.1.4 send any written notice, participate in a direct mailing, or otherwise communicate with any patients of the District, except as directed by the District; or

7.1.5 solicit or in any manner attempt to solicit or induce any person employed by or serving as an agent of the District to terminate such person's association or contract of employment or agency, as the case may be, with the District.

7.1.6 Notwithstanding anything herein to the contrary, after Physician's last date of employment by the District, Physician may establish an independent practice (solo or group) which is owned, in whole or in part, by Physician, without regard to the covenants of Section 7.1 as applied to Section 7.1.1. Further, in doing so, Physician may inform patients of the District, in a written communication signed by Physician and the District, of the establishment of said independent practice and otherwise canvas or solicit patients of the District to utilize Physician's services at said independent practice. District and Physician shall cooperate and use best efforts to transfer custodial ownership of patient health records from District to Physician for any patient transitioning to Physician's independent practice. Physician shall continue to be bound, however, by Section 7.1.1 as it applies to Sections 7.1.3 and 7.1.5 in their entirety, as it applies to Section 7.1.4 to the extent that any written notice, mailing or other communication that is not done jointly with the District, and as it applies to Section 7.1.2 to the extent of all relationships a patient may have with the District for services other than those offered by Physician at Physician's independent practice site. At the termination of this Agreement, Physician will have a right of first refusal to purchase practice hard assets at the then fair market value.

7.2 Confidential Information. The term "Confidential Information" as used herein means (i) all information of the District of a business or technical nature including, but not limited to, patient and client lists, information relating to processes, plans, methods of doing business and special needs of referring doctors, clients and patients, that is disclosed to, learned or developed by Physician in the course of performance of his obligations hereunder; (ii) any such information previously known to Physician which relates to the operations of the Network or the activities at the Practice Site; or (iii) all information of any type which directly or indirectly relates to credentialing, peer review, utilization review, quality assurance and risk management activities. Physician acknowledges that such Confidential Information is of substantial value to the District. Accordingly, Physician hereby agrees that he shall not, directly or indirectly, without the express written consent of a duly authorized officer of the District, use for his own benefit or for the benefit of any other entity or person, or disclose or make accessible to anyone without a need to know, any Confidential Information. Unless waived in writing by the District, the provision contained herein shall survive the termination of Physician's employment hereunder, whether through nonrenewal of this Agreement or any other reasons whatsoever. However, nothing in this paragraph shall be construed to deny to any patient his or her medical records in accordance with applicable law. Further, notwithstanding the above, the use/disclosure restrictions set forth herein shall not apply to information (i) that is generally available to the public or becomes available other than as a result of disclosure by the Physician, (ii) that Physician is required to disclose to a governmental entity, or (iii) that is required by Physician to treat patient electing to continue treatment by Physician after termination of this Agreement.

7.3 Covenant Validity. Physician agrees that all of the restrictions set forth in this Section 7 including, but not limited to, the time period of restriction and the geographical areas of restriction ("the Limitations"), are fair and reasonable and are reasonably required to protect the

legitimate interests of the District, and its parent or subsidiary corporations, officers, directors, employees and affiliates. In the event that any of the restrictions, including but not limited to the Limitations, shall be declared by a court of competent jurisdiction to exceed the maximum restrictions such court deems reasonable and enforceable, the restrictions deemed reasonable and enforceable by the court shall become and thereafter be the maximum restriction in each regard, and those restriction shall remain enforceable to the fullest extent deemed reasonable by such court.

7.4 Remedies

7.4.1 Accounting for Profits. If Physician violates any of the provisions of this Section 7, District shall be entitled to an accounting and repayment of all profits, compensation, commissions, remuneration, or other benefits that Physician, directly or indirectly, has realized and/or may realize as a result of, growing out of, or in connection with, any such violation. This remedy shall be in addition to, and not in limitation of, any injunctive relief or other rights, remedies, or damages, to which the District is or may be entitled.

7.4.2 Injunctive Relief. Physician agrees that, in the event of any breach by Physician of any of the provisions of this Section 7, the District shall suffer irreparable harm for which the remedy of monetary damages may be inadequate. Therefore, in the event of a breach or threatened breach by Physician thereof, the District, in addition to, and not in limitation of, any other rights, remedies, or damages available to the District at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction, and permanent injunction in order to prevent or restrain any such breach by Physician or by Physician's partners, agents, representatives, servants, employers, employees, companies, consulting clients, and/or any and all persons directly or indirectly acting for or with Physician.

7.4.3 Enforcement. Notwithstanding the foregoing, if the restrictions specified above are judged unreasonable by any court of competent jurisdiction, the parties agree to reformation of such restriction by the court to limits which may reasonably grant the District maximum protection permitted by applicable law in such circumstances, and the parties will assert that such restrictions should be eliminated in their entirety by the court.

7.5 Set Off. In the event of any breach by Physician of the covenants set forth in Section 7, the District shall be entitled to set off the amounts to which the District may become entitled hereunder against payments, if any, becoming due to Physician as a result of any employment or other relationship between Physician and the District.

8. Practice of Medicine. Both parties acknowledge that Physician shall be solely and exclusively responsible for all medical care of patients and discharge of medical practice matters which are required by law to be made or performed by a medical doctor.

9. Arbitration. In the event of any controversy or claim arising out of or relating to any provision of this Agreement, or the breach, termination or validity thereof, the parties will attempt in good faith to resolve such controversy or claim. If the matter has not been resolved within sixty (60) days of the commencement of such discussions (which period may be extended by mutual

agreement), then the parties hereby agree to immediately submit the controversy to binding arbitration. The arbitration shall be conducted by a single arbitrator in accordance with the American Health Lawyers Association Alternative Dispute Resolution Rules of Procedure for Arbitration. The decision of the arbitrator shall be final. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Each party shall bear its own expenses and attorneys' fees incurred in the arbitration, except that the costs of the arbitrator shall be shared equally. The place of arbitration shall be Spartanburg, South Carolina.

10. Miscellaneous.

10.1 Waiver. No delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of either party of any right, power or privilege hereunder be construed as a waiver at any subsequent time of the same or another right, power or privilege.

10.2 Notices. All notices, demands, or other communications authorized or required to be given by any party pursuant to this Agreement shall be given in writing and either (a) delivered personally; (b) sent by overnight express delivery (for which written confirmation of delivery can be obtained from the carrier); or (c) sent by registered or certified U.S. mail, return receipt requested at the address designated in the first paragraph. The parties shall be responsible for notifying each other promptly in writing of any change of address.

10.3 Severability. Any provision of this Agreement which is unenforceable, invalid or contrary to law, shall be of no effect. However, all the remaining terms and provisions shall be fully effective according to the terms of this Agreement, as if such unenforceable or invalid portion had never been included. To this end, the provisions of this Agreement are deemed severable.

10.4 Assignment. The services provided by Physician under the terms of this Agreement are personal and may not be assigned or delegated without the written consent of the District. The District may assign or transfer its rights or obligations hereunder to any entity controlled by or under the common control of the District, or any entity subsequently controlling or operating all or substantially all of the assets of the District or those assets of the District relating to the operation of the Practice Site at which Physician is employed; provided that in that event, this Agreement shall be binding upon and inure to the benefit of such successor, and such successor shall discharge and perform all of the obligations of the District hereunder.

10.5 Amendments. This Agreement may be amended only by an instrument in writing signed by both parties.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

10.7 Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to this subject matter hereof and supersedes all prior negotiations, agreements, and understandings between the parties, whether written or oral.

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10.8 Confidentiality. Neither party shall disclose the contents of this Agreement or any other agreement simultaneously executed to any person, firm or entity, except the agents or representatives of the parties, except as required by law.

10.9 Word Forms. Whenever used herein, the singular includes the plural and the plural includes the singular. The use of any gender, tense or conjugation includes both genders and all tenses and conjugations.

10.10 Headings. The section or subsection headings have been included for convenience only and are not to be taken as an interpretation of any provision hereof.

10.11 Rights in Property. All title to supplies, fiscal records, charts, equipment and furnishings of the Practice Site shall remain in the District.

10.12 Operation of Law. In the event this Agreement, in whole or in part, is deemed to be contrary to local, state or federal law by counsel for the District or, in the opinion of counsel for the District, presents substantial legal risk to either party, the parties agree to use their best efforts to make changes to the Agreement to the minimum extent necessary to make the Agreement consistent with applicable law, trying to retain as closely as possible the original terms reflected in this Agreement. If the Agreement cannot be modified or amended in any way that is mutually agreeable to the parties and complies with applicable law after the parties have used their best efforts, then either party may terminate this Agreement.

10.13 Legal and Regulatory Compliance. The parties expressly acknowledge that it has been and continues to be their intent to comply with all federal, state, and local laws and regulations. It is not the purpose, nor is it a requirement of this Agreement or of any other agreement between the parties, to offer or receive any remuneration to induce or otherwise encourage the referral of any patient or to otherwise generate business for the District.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written above.

SPARTANBURG REGIONAL HEALTH SERVICES
DISTRICT, INC.

By: _____

Charles Townson, Senior VP/COO

PHYSICIAN

By: _____

D. Mark Hicklin, M.D.

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Definitions. For purposes of this Exhibit A, the following terms shall have the following meanings:

Net Revenue: Revenue from all payors for services personally provided by Physician less any refunds.

Relative Value Units: Relative Value Units ("RVUs") means the workload value (Physician work component) assigned to physician procedure and visit categories by current or future Medicare statistics, excluding RVUs from non-physician employees such as nurse practitioners and physician assistants and non-billable RVUs.

Productivity Incentive Formula: Physician's Productivity Incentive Formula is the total number of the Physician's RVUs in any contract year times the RVU rate.

	Physician's annual work RVU's	Compensation Rate
Level 1	0 to 3,265	
Level 2	3,266 to 3,600	
Level 3	3,601 to 3,922	
Level 4	3,923 to 4,300	
Level 5	4,301 to 4,670	
Level 6	4,671 to 5,692	
Level 7	5,693 and above	

Physician's Compensation

a. Physician's annual compensation will be Physician's work component of the Relative Value Units (RVUs) personally performed by Physician, excluding any income generated by Physician for the technical component of ancillary services, times the applicable RVU rate from the above table. See Exhibit A1 ("Sample Compensation Calculation"), which illustrates how compensation is calculated under different production scenarios at the above rates. Payments will be made in installments, pursuant to the District's employee payroll procedures, with the amount of Physician's draw based upon an agreed-upon estimate of Physician's prior year compensation; provided, however, said estimate shall not result in compensation that exceeds ninety percent (90%) of Physician's total compensation for the immediately preceding contract year. At the end of each quarter, Physician's RVU production will be reviewed. If the Physician's year to date compensation based on the Productivity Incentive Formula is greater than the draw year to date, then the additional compensation due will be paid within thirty (30) days of the end of that quarter. If the Physician's year to date compensation based on the Productivity Incentive Formula is less than the draw year to date, the Physician is in a deficit situation and an appropriate decrease will be made to the Physician's draw in the following quarter equal to the amount paid in excess of the draw year to date. Such deficit is the obligation of Physician to repay to the District. In the event there is no subsequent draw payment, Physician will repay the

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deficit to the District within thirty (30) days of notice thereof.

Ancillary services shall include injection administration and supplies and all "Designated Health Services" under the Stark Act, as amended from time to time. As of July 1, 2001, the "Designated Health Services" under Stark are comprised of the following: clinical laboratory services; physical therapy services; occupational therapy services; radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics and prosthetic devices and supplies; home health services; outpatient prescription drugs, and inpatient and outpatient hospital services.

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A sample compensation calculation, including base salary and potential productivity incentive, is attached as Exhibit A-1 to this Agreement.

EXHIBIT A-1
Sample Compensation Calculation

The following table gives examples of how Physician's compensation would be calculated in this Agreement at different levels of production.

If Total Annual Work RVUs Equals:	RVU rate level attained	Then the RVU Rate Equals:	Total Annual Compensation Equals:
3,000	1	\$ [REDACTED]	\$ [REDACTED]
3,300	2	\$ [REDACTED]	\$ [REDACTED]
3,800	3	\$ [REDACTED]	\$ [REDACTED]
4,000	4	\$ [REDACTED]	\$ [REDACTED]
4,500	5	\$ [REDACTED]	\$ [REDACTED]
5,000	6	\$ [REDACTED]	\$ [REDACTED]
6,000	7	\$ [REDACTED]	\$ [REDACTED]

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BENEFITS ARE SUBJECT TO AMENDMENT FROM TIME TO TIME

EXHIBIT B
Schedule of Benefits

1. **Health and Dental Insurance** - Individual and Family Coverage per the District's existing health plan cost and coverage.
2. **Life Insurance** - per District's existing plan, equal to Physician's annual earnings based on most current W-2 earnings.
3. **Short Term Disability** - Physician will be eligible for short term disability coverage per the District's plan in effect at that time following the Physician's completion of the District's ninety (90) day probation period.
4. **Long Term Disability** - Physician will be eligible for long term disability coverage per the District's plan in effect at that time following the Physician's completion of one year of employment with the District.
5. **Pension** - Physician will be eligible to participate in several deferred compensation plans, including 401(k), 457(b) and 457(f). Details regarding any of these options are available in the individual plan documents.

Physician will also be eligible to participate in the State of South Carolina's Retirement Plan (SCRCP) under the terms and conditions in effect from time to time. Currently, the Physician pays 6.0% of Physician's gross income into the plan, subject to a maximum contribution based on gross income as currently provided by the plan. The District pays 6.7% of the Physician's gross income into the plan, subject to a maximum contribution based on gross income as currently provided by the plan. Note that if Physician elects to participate in additional plans, the matching by the District will be decreased by the amount of matching in the SCRCP.

6. **Continuing Medical Education/ Professional Association** - covered by District up to maximum of \$5,500.00 total cost consistent with District's policy.
7. **Leave Days** - Physician will be entitled to Time Off (TO) of 30 days. TO represents holidays/vacation, sick days and CME. Unused TO will not be carried over from year to year.
8. **Malpractice Insurance** - The District shall provide and pay for professional liability insurance protecting Physician while rendering services on behalf of the District. This insurance shall be in amounts determined by the District. The District's policy does not require tail coverage by the District or the Physician upon termination of this agreement.

Upon termination of this Agreement, any unused portion of the insurance premium paid by the District shall be the property of the District.

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RECORDS

1 Wages, tips, other compensation	2 Federal income tax withheld	OMB No. 1545-0048	1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld	COPY B - To Be Filed With Employee's FEDERAL Tax Return	3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld		5 Medicare wages and tips	6 Medicare tax withheld

7 Employee's name, address, and ZIP code

SPBG REG HEALTH SERVICES DIST
101 EAST WOOD STREET
SPARTANBURG, SC 29303

c Employer's name, address, and ZIP code

SPBG REG HEALTH SERVICES DIST
101 EAST WOOD STREET
SPARTANBURG, SC 29303

7 Social security tax	8 Allocated tax	9a See instructions for box 12	7 Social security tax	8 Allocated tax	9a See instructions for box 12
9 Advance EIC payment	10 Dependent care benefits	9b	9 Advance EIC payment	10 Dependent care benefits	9b
11 Nonqualified plans	14 Other	12a	11 Nonqualified plans	14 Other	12a
b Employer's state income tax		12b	b Employer's state income tax		12b
		12c			12c
		12d			12d
		12e			12e
		12f			12f
		12g			12g
		12h			12h
		12i			12i
		12j			12j
		12k			12k
		12l			12l
		12m			12m
		12n			12n
		12o			12o
		12p			12p
		12q			12q
		12r			12r
		12s			12s
		12t			12t
		12u			12u
		12v			12v
		12w			12w
		12x			12x
		12y			12y
		12z			12z

e Employee's name, address, and ZIP code

D MARK HICKLIN

e Employee's name, address, and ZIP code

D MARK HICKLIN

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax
SC			SC		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form W-2 Wage and Tax Statement

2006

Dept. of the Treasury-IRS

The information is being
transmitted to the
Internal Revenue Service.

Form W-2 Wage and Tax Statement

2006

Dept. of the Treasury-IRS

This information is being furnished to the Internal Revenue Service. If you
are required to file a tax return, a separate copy of this statement may
be attached to your return. If you are not required to file a return, you
may discard this statement after you have filed your return.

Dept. of the Treasury-IRS

Form W-2 Wage and Tax Statement

2006

OMB No. 1545-0048

1 Wages, tips, other compensation	2 Federal income tax withheld	COPY 2 - For Employee's State, City or Local Income Tax Return	1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld		3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld		5 Medicare wages and tips	6 Medicare tax withheld

e Employee's name, address, and ZIP code

SPBG REG HEALTH SERVICES DIST
101 EAST WOOD STREET
SPARTANBURG, SC 29303

SPBG REG HEALTH SERVICES DIST
101 EAST WOOD STREET
SPARTANBURG, SC 29303

7 Social security tax	8 Allocated tax	9a See instructions for box 12	7 Social security tax	8 Allocated tax	9a See instructions for box 12
9 Advance EIC payment	10 Dependent care benefits	9b	9 Advance EIC payment	10 Dependent care benefits	9b
11 Nonqualified plans	14 Other	12a	11 Nonqualified plans	14 Other	12a
b Employer's state income tax		12b	b Employer's state income tax		12b
		12c			12c
		12d			12d
		12e			12e
		12f			12f
		12g			12g
		12h			12h
		12i			12i
		12j			12j
		12k			12k
		12l			12l
		12m			12m
		12n			12n
		12o			12o
		12p			12p
		12q			12q
		12r			12r
		12s			12s
		12t			12t
		12u			12u
		12v			12v
		12w			12w
		12x			12x
		12y			12y
		12z			12z

e Employee's name, address, and ZIP code

D MARK HICKLIN

e Employee's name, address, and ZIP code

D MARK HICKLIN

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax
SC			SC		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

EXHIBIT B

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CLERK OF COURT
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M. HOPE BLACKLEY

EXHIBIT C

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY



**REGIONAL
PHYSICIAN NETWORK**

Thomas W. Westmoreland, M.D.
D. Mark Hicklin, M.D.
Scott A. Coley, M.D.
Westmoreland, Hicklin, Coley
120 Heywood Avenue, Suite 200
Spartanburg, SC 29302
864-573-9595
Fax: 864-560-3850

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EXHIBIT D

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REGIONAL PHYSICIAN NETWORK

In affiliation with Spartanburg Regional Healthcare System

WESTMORELAND, HICKLIN AND COLEY
120 HEYWOOD AVENUE, SUITE 200 • SPARTANBURG, SOUTH CAROLINA 29302

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EXHIBIT E

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**REGIONAL
PHYSICIAN NETWORK**

THOMAS W. WESTMORELAND, M.D.
D. MARK HICKLIN, M.D.
SCOTT A. COLEY, M.D.

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EXHIBIT F



REGIONAL PHYSICIAN NETWORK

Thomas W.

Westmoreland, M.D.

D. Mark Hicklin, M.D.

Scott A. Coley, M.D.

391 East Henry Street

In Affiliation With Spartanburg
Regional Healthcare System

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal)
Representative for the Estate of)
Martha Sue Hoftiezer,)

Plaintiff,)

vs.)

D. MARK HICKLIN, M.D.,)
DRS. TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
db/a Spartanburg Regional)
Healthcare System,)

Defendants.)

AFFIDAVIT OF BRYAN M. McCain

C.A. Number: 2009-CP-42-5373

PERSONALLY APPEARED before me Bryan M. McCain, who being duly sworn,
deposes and says as follows:

1. Affiant is the Director of Operations of the Regional Physicians Network
Spartanburg Regional Health Services District, Inc. ("SRHSD"). This affidavit is based on
Affiant's personal knowledge of all matters set forth in this affidavit.

2. At the times referenced in Plaintiff's Complaint in this matter, Mark Hicklin
M.D. was an employee of SRHSD. Dr. Hicklin continues to be employed by SRHSD.

3. Drs. Westmoreland, Hicklin and Coley (and its predecessor designations)
(the "practice group") is a medical practice wholly owned by SRHSD and is not a separate
legal entity.

4. Any bill from Spartanburg Regional Healthcare System received by Ms.

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Hofftizer and/or her estate for treatment and care provided by the practice group since at least 1998 would have appeared in a format identical to the sample bill attached to this Affidavit as Exhibit A.

FURTHER AFFIANT SAYETH NOT.

Bryan M. McCain
BRYAN M. McCain

SWORN to and subscribed
before me this 14th day
of April, 2011.

Robin C. Deming (SEAL)
Notary Public for South Carolina

My Commission Expires: 11/15/2014

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PHYSICIANS BILLING SERVICE
PO BOX 2168
SPARTANBURG, SC 29304-2168

1V001662

SPARTANBURG SC 29301-1877



Welcome to Our New Statements!

As a result of suggestions made to us by patients just like you, we have re-designed our statement to provide you with complete, easy-to-read information about your bill. Thank you for your suggestions and your continued support. We are committed to continuing our efforts to improve the quality of service that we provide for you!

Page 1 of 2

Account Summary

Statement Date	03/18/2009
Patient Name	[REDACTED]
Medical Record Number	[REDACTED]
Amount Now Due	\$ 5.68

Insurance Information

PLEASE CONFIRM THIS INFORMATION IS CORRECT

Name

MEDICARE

For more information on Customer Service, please call 1-877-596-2455 or 804-560-1304 Monday - Friday 9:00 a.m. - 5:00 p.m.

About Your Statement

Thank you for choosing WESTMORELAND, HICKLIN AND COLEY as your healthcare provider. This statement summarizes services provided to you and the amount due for these services. Reference the back of this statement for a summary of charges for each account. Please note this is a statement for Physician Services Only. You may receive a separate bill for hospital fees.

This account is past due. Please pay your balance in full or contact our office to make payment arrangements. You may pay by cash, check, credit card or money order. If you have billing questions, please call 1-877-596-2455 or 804-560-1304.

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SPARTANBURG COUNTY
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Payment for Physician Services

DETACH HERE AND RETURN

Statement Date: 03/18/2009

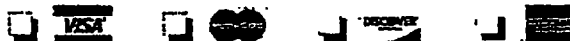
Patient	Location Code: WHC	Medical Record No.	Date Due	Amount Now Due	Payment Method
[REDACTED]		[REDACTED]	04/17/2009	\$ 5.68	

Check here if your address or insurance information has changed and complete information on back.

PHYSICIANS BILLING SERVICE
PO BOX 2168
SPARTANBURG, SC 29304-2168



For your convenience you may pay by Visa, MasterCard, Discover, American Express, personal check, or money order. (Please do not send cash.) Make checks payable to: PHYSICIANS BILLING SERVICE. If paying by credit card, indicate your card preference, provide the account information, and sign below.



Account No. _____

Expiration Date _____

Signature X _____

EXHIBIT A

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Patient Statement for [REDACTED]
A summary of charges, payments and adjustments is provided below.

Page 2 of 2
Statement Date: 03/18/2009
Medical Record Number: [REDACTED]

Invoice Number: [REDACTED]	Service Date: 08/28/08	Provider: SCOTT COLEY MD	
Charges	Charge	Account Activity	Amount
AUTOMATED HEMOGRAM - 85025	\$ 40.00	Total Charges	\$ 179.00
OFFICE/OUTPATIENT VISIT, NEW - 99203	\$ 139.00	Payor Payment	\$ -78.14
Total Charges	\$ 179.00	Payor Adjustment	\$ -83.92
		Patient Payment	\$ -11.26
		Amount Now Due For This Service	\$ 5.88

Do We Have Your Insurance Information ?

Accurate insurance information helps ensure prompt payments by your insurance company. If you were unable to provide your insurance information or if different than shown on the front of this page, please complete the section below and return this page or call our office. Thank you!
Mail this stub to the address on reverse side.

☐ Primary Insurance ☐ Medicare ☐ TRMO ☐ TRPO ☐ Other		☐ Secondary Insurance ☐ Medicare ☐ TRMO ☐ TRPO ☐ Other	
Insured Name _____		Insured Name _____	
Insurance Name _____		Insurance Name _____	
Address _____		Address _____	
City/State _____ Zip _____ Phone _____	City/State _____ Zip _____ Phone _____		
Group/Plan _____ ID# _____	Group/Plan _____ ID# _____		
Employer _____		Employer _____	

I authorize the hospital to submit any or all medical data to my insurance company, and authorize the assignment of any benefits or payments to the hospital. I understand I am financially responsible to the hospital for charges not covered by this authorization. Please return with copies of the front and back of your insurance card(s).

Signed _____ Date _____

CHANGE OF ADDRESS

Name _____ Phone _____

Address _____

City _____ State _____ Zip _____

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, AS PERSONAL)
REPRESENTATIVE FOR THE)
ESTATE OF MARTHA SUE)
HOFTIEZER,)

Plaintiff,)

vs.)

D. MARK HICKLIN, M.D. DRS.)
TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
d/b/a Spartanburg Regional Medical)
Center,)

Defendants.)

CERTIFICATE OF SERVICE

C. A. No. 2009-CP-42-5373

I, the undersigned paralegal in the Law Offices of Holcombe Bomar, P. A., attorneys
for the Defendants, do hereby certify that I have caused a copy of the hereinbelow listed
pleadings to be mailed to all parties in this matter on the 15th day of April, 2010 as follows:

PLEADING: Motion for Summary Judgment and Affidavit

SERVED: Ruskin C. Foster, Esq.
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, South Carolina 29201

By Roxanne R. Reynolds
Roxanne R. Reynolds, Certified PLS, Paralegal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, III, Circuit Court Judge

Case No.: 2009-CP-42-5373

RECEIVED

NOV 15 2011

SC Court of Appeals

James Hoftiezer, as Personal Representative for the Estate of Martha Hoftiezer. Appellant,

v.

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin, Westmoreland and Coley, P.A.,
and Spartanburg Regional Health Services District, Inc., d/b/a Spartanburg
Regional Healthcare System Respondents.

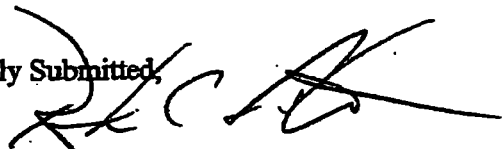
NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Plaintiff James Hoftiezer, as Personal Representative for the Estate of Martha Hoftiezer ("Appellant") hereby appeals the orders of the Honorable J. Mark Hayes, III dated September 28, 2011 and October 19, 2011, granting summary judgment on behalf of Respondents.

Copies of the orders granting summary judgment on behalf of Respondents are attached hereto and incorporated herein as Exhibit A and Exhibit B.

Respectfully Submitted,

By:


Ruskin C. Foster
Brad D. Hewett
Mike Kelly Law Group, LLC
500 Taylor Street
Post Office Box 8113
Columbia, South Carolina 29202
(803) 726-0123

Attorneys for Appellant

November 15th, 2011

Other Counsel of Record:

Perry D. Bouliez, Esq.
Holcombe Bomar, PA
P.O. Box 1897
Spartanburg, SC 29304

cc: The Honorable Hope Blackley

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, III, Circuit Court Judge

RECEIVED

NOV 15 2011

Case No.: 2009-CP-42-5373

SC Court of Appeals

James Hofstiezer, as Personal Representative for the Estate of Martha Hofstiezer.
.....Appellant,

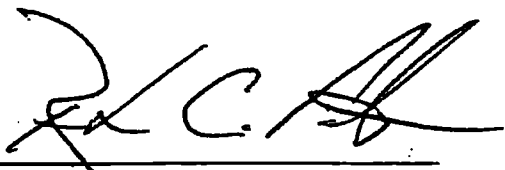
v.

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin, Westmoreland and Coley, P.A.,
and Spartanburg Regional Health Services District, Inc., d/b/a Spartanburg
Regional Healthcare System .
.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on D. Mark Hicklin, M.D., Drs. Taylor, Hicklin, Westmoreland and Coley, P.A., and Spartanburg Regional Health Services District, Inc., d/b/a Spartanburg Regional healthcare System by depositing a copy of it in the United States Mail, postage prepaid, on November 15, 2011, addressed to their attorney of record, Perry D. Boulter, Post Office Box 1897, Spartanburg, South Carolina 29304.

By:



Ruskin C. Foster
Brad D. Hewett
Mike Kelly Law Group, LLC
500 Taylor Street
Post Office Box 8113
Columbia, South Carolina 29202
(803) 726-0123
Attorneys for Appellant

November 5, 2011

STATE OF SOUTH CAROLINA

FORM 4

JUDGMENT IN A CIVIL
CASE

COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-42-5373

James Hoffler, as personal representative

Dr. Mark Hicklin, et al.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

BOX:

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

This matter was before the Court on the defendant's motion for summary judgment.

Based on the arguments presented, a review of the case law, and documents in the file, the motion is granted as to Hicklin, and THWC Pa. The plaintiff's argument of tolling the statute of limitations does not change the substance of the Tort Claims Act.

As to SRHSD, the Court believes it too is entitled to a grant of summary judgment. The secretary of state documents do not justify the application of estoppel or equitable tolling of the statute of limitations. The secretary of state documents can be read as misleading since they do contain the term "eleemosynary." The disclaimer, however, also informs the reader that anyone who relies on these documents "does so at his own risk". Also, the cases offered by the plaintiff all seem to have a common thread, that it was the party against whom estoppel was being used that had committed some affirmative wrong-doing, such as failing to name a registered agent or moving without any known forwarding address. There is no allegation that SRHSD caused the error on the secretary of state's web page. Even in the case that was before Circuit Judge Williams, there appear to be facts very different than here, as it relates to the efforts of SRHSD and the doctor's group to show to the public that they were all part of the SRHSD (applying a reasonable man standard.....the Court cannot find that the standard of review is the reasonable attorney). From

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CLERK

EXHIBIT

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the information provided to this Court, the only reasonable conclusion is that in the present case, the affiliation with SRHSD was on signs, letterheads, billings, etc., at the times the deceased was a patient of the doctors. Thus, the evidence seems clear that at the time treatment was rendered, Ms. Hofstetzer would have known her doctors were affiliated with SRHSD unlike Mr. Shaver in Judge Williams' case. Also, it appears the affiliation with SRHSD would have been known when certain medical records were requested by the personal representative. Again, unlike the case before Judge Williams, this Court cannot locate sufficient information from which it can infer wrongful conduct on the part of SRHSD or the doctors.

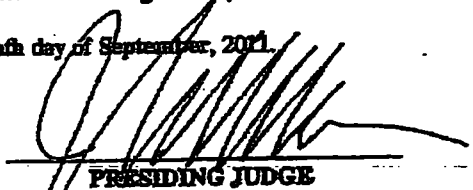
The Court requests the defendant's attorney to prepare an order fully addressing the statute of limitation issues.

The Court commends the attorneys for the excellent briefing and arguments.

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Dated at Spartanburg, South Carolina, this twenty-eighth day of September, 2011.


PRESIDING JUDGE

This judgment was entered on the 28th day of Sept, 2011, and a copy mailed first class this 28 day of Sept, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Perry D. Boulter
(864) 594-5304
ATTORNEY(S) FOR PLAINTIFF

Ruskin C. Foster
(803) 726-0123
ATTORNEY(S) FOR DEFENDANT


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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

JAMES HOFTIEZER, as Personal
Representative for the Estate of
Martha Sue Hoftiezer,

Plaintiff,

vs.

D. MARK HICKLIN, M.D.,
DRS. TAYLOR, HICKLIN,
WESTMORELAND AND COLEY, P.A.,
and SPARTANBURG REGIONAL
HEALTH SERVICES DISTRICT, INC.,
dba/a Spartanburg Regional
Healthcare System,

Defendants.

IN THE COURT OF COMMON PLEAS

ORDER GRANTING DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT

C.A. Number: 2009-CP-42-543

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FACTS

Plaintiff's decedent, Martha Sue Hoftiezer, saw Defendant D. Mark Hicklin, M.D. ("Dr. Hicklin") on July 31, 2006 for treatment in his office. On August 4, 2006, Ms. Hoftiezer went into cardiac arrest and died. Plaintiff brings this action for damages, claiming negligence on the part of Defendants in the care and treatment of Ms. Hoftiezer. Plaintiff initiated this action by the filing of a Notice of Intent to File Suit on February 26, 2009. Plaintiff filed his Summons and Complaint on October 1, 2009.

Defendants contend that Defendant Spartanburg Regional Health Services District, Inc. ("SRHS") is a political subdivision of the State of South Carolina and entitled to the protection of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-



10, et seq. (the "Tort Claims Act"). Defendants further contend that Dr. Hicklin was an employee of SRHS and that Defendant Drs. Taylor, Hicklin, Westmoreland and Coley, P.A. (and its predecessor and successor designations) ("THWC") was owned by SRHS at all times referenced in the Plaintiff's Complaint. As a result, Defendants argue that Dr. Hicklin and THWC cannot be sued individually in this matter and that Plaintiff's suit should be dismissed for failure to commence this action within two years as is required by the Tort Claims Act.

The parties have conducted discovery related to the application of the Tort Claims Act and issues related to the statute of limitations issue pursuant to Consent Scheduling Order entered by this Court. The matter is now before the Court on Defendants' Motion for Summary Judgment. This motion was heard by the Court on September 1, 2011. For the reasons set forth, the Court grants Defendants' Motion for Summary Judgment.

STANDARDS OF LAW

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issues before the Court can be summarized as follows: 1) Can Plaintiff maintain a separate action against Dr. Hicklin and/or TWHC?, and 2) Is SRHS equitably estopped from asserting the Tort Claims Act's two year statute of limitations or was the statute of limitations equitably tolled in this action?

1. SRHS is a political subdivision of the State of South Carolina and is entitled to the protections of the Tort Claims Act.

The Tort Claims Act provides the exclusive remedy "for any tort committed by a governmental entity, its employees, or its agents." S.C. Code Ann. § 15-78-20(b). The term "governmental entity" includes political subdivisions of the State. S.C. Code Ann. § 15-78-30(d). "Political Subdivision" expressly includes a "governmental health care facility" "which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance," tax-exempt, and does not accrue net income for the benefit of an individual or non-governmental entity. S.C. Code Ann. § 15-78-30(h), (i). County or municipal governments may form regional health services districts by enactment of the local governing body(s). S.C. Code Ann. § 44-7-2010, et seq.

Based upon the evidence presented by the parties, the Court finds that SRHS was created by the adoption of Ordinance No. 557 by Spartanburg County Council on April 10, 1995 and the filing of a Certificate of Incorporation with the Secretary of State's office on May 1, 1995. Ordinance No. 557 expressly provides that SRHS is a political

subdivision of the State and is subject to the Tort Claims Act. Nothing has been enacted, amended, or filed altering SRHS's status as a governmental entity subject to the Tort Claims Act. Because SRHS was formed pursuant to the above-cited statutes, the Court finds that SRHS is a political subdivision of the State of South Carolina and is entitled to the protections of the Tort Claims Act.

2. **Plaintiff cannot maintain independent actions against Dr. Hicklin or THWC because of their affiliation with SRHS.**

As stated above, the Court finds that SRHS is a governmental entity entitled to the protection of the Tort Claims Act. The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable for his actions individually or independently from his governmental employer. S.C. Code Ann. § 15-78-70. The governmental entity must be substituted as the sole Defendant for all allegations concerning alleged wrongdoing of its employees. S.C. Code Ann. § 15-78-70(c).

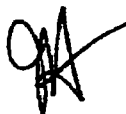
Based upon the evidence presented by the parties, the Court finds that THWC has been wholly-owned by SRHS since August 11, 1994. THWC was not a separate legal entity engaged in the practice of medicine nor did it provide any medical care to Plaintiff's decedent on the date of the care and treatment at issue in this case. Likewise, the Court finds that Dr. Hicklin has been an employee of SRHS since August 11, 1994. Plaintiff argues that even if Dr. Hicklin was an employee of SRHS, he is not entitled to the protections of the Tort Claims Act because he reported income from a non-

governmental source. See S.C. Code Ann. § 15-78-30(c). The Court finds that Plaintiff's contention, even if true, is without merit because Plaintiff admitted that the reported income is not in any way related to the services provided to Ms. Hoffiezer at issue in this case. The undisputed evidence in this case shows that Dr. Hicklin was acting within the course and scope of his employment with SRHS at the time of the care and treatment at issue.

Because THWC was owned by SRHS and Dr. Hicklin was an employee of SRHS at all times relevant to this case, the Court finds that THWC and Dr. Hicklin are entitled to the protections of the Tort Claims Act. As such, THWC and Dr. Hicklin cannot be held liable individually or independently from SRHS, and Defendants' motion for summary judgment is granted as to THWC and Dr. Hicklin. Accordingly, pursuant to Section 15-78-70 of the Tort Claims Act, SRHS should be the sole Defendant in this case.

3. SRHS is not equitably estopped from the application of the two-year statute of limitations nor is the two-year statute of limitations equitably tolled in this case.

Because SRHS is entitled to the protection of the Tort Claims Act, any action brought against it must be commenced within two years. S.C. Code Ann. § 15-78-110. Plaintiff admits that by filing his Notice of Intent to File Suit on February 26, 2009, he failed to commence his action within two years. However, Plaintiff makes numerous arguments that SRHS should be equitably estopped from asserting the two-year statute of limitations or the two-year statute of limitations should be equitably tolled. Plaintiff argues: (1) the South Carolina Secretary of State's website codes SRHS as a "non profit"



organization and codes certain filings of SRHS as "eleemosynary" filings; (2) the South Carolina Medical Board's website does not indicate that Dr. Hicklin is an employee of SRHS or that THWC is owned by SRHS; (3) the medical records produced pre-litigation were deficient compared to those produced during litigation; (4) THWC's signage at its office did not state it was owned by SRHS; and (5) THWC held itself out as a private, for profit, general partnership.

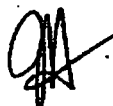
Based upon the evidence presented by the parties, the Court finds Plaintiff's arguments unpersuasive. The Secretary of State's website listing for SRHS could be read as misleading because it contains the terms "non profit" and "eleemosynary." However, the disclaimer found on the website also informs the reader that one who relies on the website information "does so at his own risk." If Plaintiff had requested the actual documents on file with the Secretary of State concerning SRHS, it would have been evident that SRHS is a governmental entity subject to the Tort Claims Act. As noted above, the documents filed by SRHS with the Secretary of State expressly establish its status as a political subdivision of the State of South Carolina and a governmental entity. SRHS is not responsible for the manner in which the Secretary of State maintains its website, and the documents filed by SRHS are public documents available to Plaintiff or his counsel.

Likewise, the mere fact that the South Carolina Medical Board's website does not note Dr. Hicklin's employment status with SRHS is of no import to the issues before the Court. Plaintiff's argument would deprive SRHS of the protection of the Tort Claims Act

for reasons entirely out of SRHS' control. Equitable estoppel should not be applied under these facts.

In American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E. 2d 181 (Ct. App. 2009), the Court held that equitable tolling should be rarely applied and noted that it is reserved for "extraordinary circumstances". Id. at 582. American Legion discussed Hooper v. Ebenezer Senior Servs. and Rehab. Ctr., 377 S.C. 217, 659 S.E. 2d 213 (Ct. App. 2008) which Plaintiff cites in this case. American Legion noted that Hooper also required extraordinary circumstances for the application of equitable tolling and further noted that if the statutory deadline for filing has passed, the Plaintiff needs to show that he was "induced or tricked by the defendant's misconduct into allowing the filing deadline to pass." Id. At 583. The Court went on to note that Hooper also required a showing of due diligence by the Plaintiff. Id. With regard to the conduct of the defendant, the Court justified the application of equitable tolling, the Court stated: "It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant or is prevented in some extraordinary way from asserting his or her rights. However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation." (emphasis supplied). Id.

With regard to equitable estoppel against a governmental entity such as SRHS, American Legion held that three elements must be shown: 1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; 2) justifiable reliance on the government's conduct; and 3) a prejudicial change in position. Id. at 584. The Court



further noted: "Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests." Id. In American Legion, the Court found that equitable estoppel would not lie against a governmental entity even though the governmental entity's employee provided the plaintiff with erroneous information in contradiction to the statute at issue in that case. Id.

Likewise, the Court notes that the cases offered by Plaintiff in support of its estoppel and tolling arguments all have a common thread in that the party against whom estoppel was being used had committed some affirmative wrong-doing, such as failing to name a registered agent or moving without any known forwarding address. While Hooper holds that fraud or misrepresentation by the defendant is not required for equitable tolling to apply, it plainly held that when a plaintiff misses the statutory deadline, the plaintiff must show that he was induced or tricked by the defendant's misconduct into missing the statute of limitations. In essence, the estopped party is responsible for action or inaction on its part that caused some detrimental reliance by the other party.

Applying the principles outlined in American Legion and Hooper, the Court finds that the facts of this case do not warrant the application of either equitable tolling or equitable estoppel. From the information provided to the Court by the parties, the Court finds that Dr. Hicklin and THWC's affiliation with SRHS was on signs, letterheads, business cards, and billing correspondence at the time the decedent was a patient of Dr. Hicklin and THWC at issue in this matter. Plaintiff argued that SRHS failed to provide

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complete medical records when Plaintiff initially requested the records in 2006. Nonetheless, the form that Plaintiff executed in 2006 to obtain records from Dr. Hicklin's office bore the SRHS logo and clearly suggested the affiliation between SRHS and Dr. Hicklin. Thus, the evidence is clear that at the time treatment was rendered to the decedent, a reasonable person would have or should have known that Dr. Hicklin and THWC were affiliated with SRHS.

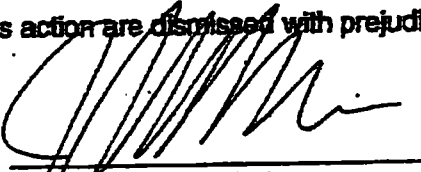
With regard to the information on the Secretary of State's website, this court is guided by the holding in American Legion. Certainly, if equitable estoppel would not lie in a case where a governmental entity disseminated erroneous information about a statute, it cannot lie where the Secretary of State's website erroneously classified SRHS as a charitable entity. This is particularly true given the disclaimer found on the website and the availability of the documents actually filed by SRHS concerning its legal status.

While having no precedential effect on this Court, Plaintiff also argued strongly in support of his argument the reasoning set forth in the Circuit Court Order entered in Shaver v. Hill, et al., C/A No. 07-CP-38-553 (Ct. Common Pleas, 1st Judicial Circuit, October 18, 2007). However, even in that matter, there appear to be facts very distinguishable from those present in this matter as it relates to the efforts of SRHS, Dr. Hicklin, and THWC to demonstrate to the public that Dr. Hicklin was an employee of SRHS and THWC was wholly-owned by SRHS.

The Court thus finds that under the facts present in this case, the application of equitable estoppel or equitable tolling is not warranted and the Tort Claims Act's two-year statute of limitations should be applied.

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is granted and that Plaintiff's Complaint and this action are dismissed with prejudice.

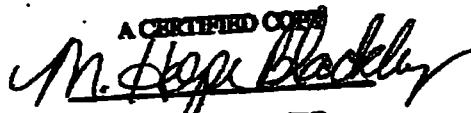
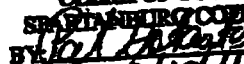
IT IS SO ORDERED.


J. Mark Hayes II, Judge
Seventh Judicial Circuit

October 19, 2011
Spartanburg, South Carolina

9.

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M. HOPE BLACKLEY

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SPARTANBURG COUNTY
BY  D.C.
DATED 10/19/11

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal)
Representative for the Estate of)
Martha Sue Hoftiezer,)

Plaintiff,)

vs.)

D. MARK HICKLIN, M.D.,)
DRS. TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
db/a Spartanburg Regional)
Healthcare System,)

Defendants.)

AFFIDAVIT OF MARK HICKLIN, M.D.

C.A. Number: 2009-CP-42-5373

PERSONALLY APPEARED before me Mark Hicklin, M.D., who being duly sworn,
says as follows:

1. Affiant is a physician employed by Spartanburg Regional Health Services District, Inc. ("SRHSD"). This affidavit is based on Affiant's personal knowledge of all matters set forth in this affidavit.

2. Since August 11, 1994, including all times referenced in Plaintiff's Complaint in this matter, I was an employee of SRHSD (or its predecessor in interest) and continue to be employed by SRHSD. My employment contract in effect at the time of my treatment of Ms. Martha Sue Hoftiezer on July 31, 2006 is attached to this Affidavit as Exhibit "A".

3. Since August 11, 1994, including all times referenced in Plaintiff's Complaint in this matter, Drs. Westmoreland, Hicklin and Coley (and its predecessor designations) (the "practice group") has been a medical practice wholly owned by SRHSD (or its

predecessor in interest) and is not a separate legal entity.

4. Since August 11, 1994, I have received my compensation and related benefits for medical services rendered from SRHSD (or its predecessor in interest). My W-2 for the year 2006, the year of my treatment of Ms. Hoftiezer at issue in this matter, is attached to this Affidavit as Exhibit "B," and said W-2 indicates that my employer was SRHSD. I have redacted my compensation information from said W-2 for privacy reasons.

5. Since at least 1999, including all times referenced in Plaintiff's Complaint in this matter, SRHSD has leased office space to provide my practice group with an office.

6. Since August 11, 1994, including all times referenced in Plaintiff's Complaint in this matter, SRHSD (or its predecessor in interest) has provided all of the equipment used by my practice group in our practice of medicine.

7. At the time of my treatment of Ms. Hoftiezer on July 31, 2006, my business cards (attached as Exhibit "C"), my practice group's envelopes (attached as Exhibit "D"), and my practice group's letterhead (attached as Exhibit "E") bore the title "Regional Physician Network" in the color scheme used by SRHSD for all of its entities. Additionally, on July 31, 2006, said envelopes and letterhead would have included the phrase "In affiliation with the Spartanburg Regional Healthcare System." Exhibit E appears as it would have appeared at the time of Ms. Hoftiezer's treatment on July 31, 2006. Exhibits C and D are identical to how the practices group's business cards and envelopes would have appeared at the time of Ms. Hoftiezer's treatment, excepting the change in address of the practice group from 391 East Henry Street, Spartanburg, S.C. 29302 to 120 Heywood Avenue, Suite 200, Spartanburg, S.C. 29302

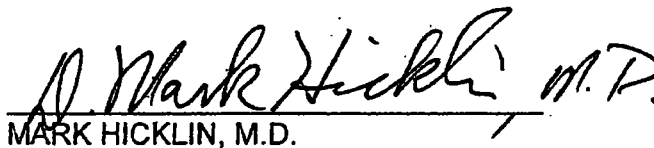
8. At the time of my treatment of Ms. Hoftiezer on July 31, 2006, my practice

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group's office was located at 391 East Henry Street, Spartanburg, SC 29302. My practice group's office displayed the color scheme of SRHSD, had signage indicating the group's affiliation with SRHSD, and did not display any evidence that our practice group was a legal entity in and of itself.

9. The pictures attached to this Affidavit as Exhibit "F" represents a true and accurate portrayal of the appearance of the signage of my practice group on July 31, 2006, the date of Ms. Hoftiezer's treatment at issue in this matter.

FURTHER AFFIANT SAYETH NOT.


MARK HICKLIN, M.D.

SWORN to and subscribed
before me this 14th day
of April, 2011.


_____(SEAL)
Notary Public for South Carolina

My Commission Expires: 1-23-2014

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal)
Representative for the Estate of)
Martha Sue Hoftiezer,)
)
Plaintiff,)

vs.)

SUPPLEMENTAL AFFIDAVIT OF
BRYAN M. McCain

D. MARK HICKLIN, M.D.,)
DRS. TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
db/a Spartanburg Regional)
Healthcare System,)
)
Defendants.)

C.A. Number: 2009-CP-42-5373

PERSONALLY APPEARED before me Bryan M. McCain, who being duly sworn,
deposes and says as follows:

1. Affiant is the Director of Operations of the Regional Physicians Network at Spartanburg Regional Health Services District, Inc. ("SRHSD"). This affidavit is based on Affiant's personal knowledge of all matters set forth in this affidavit.

2. At the times referenced in Plaintiff's Complaint in this matter, Mark Hicklin, M.D. was an employee of SRHSD. Dr. Hicklin continues to be employed by SRHSD.

3. Drs. Westmoreland, Hicklin and Coley (and its predecessor designations) (the "practice group") is a medical practice wholly owned by SRHSD and is not a separate legal entity.

4. On September 10, 2004, Spartanburg Regional Hospital System caused a tax offset letter to be mailed to Ms. Martha S. Hoftiezer for services rendered by the practice group. This letter was directed to Ms. Hoftiezer's home address of 617 Pine Hill Drive, Boiling Springs, SC 29316-7217. This mailing is evidenced by page 108 of the SRMC Tax Offset listing for mailings on September 10, 2004, attached hereto as Exhibit A. Proof of said mailing is further evidenced by the Certificate of Bulk Mailing for the sequence of mailings made on September 10, 2004, attached hereto as Exhibit B.

5. The tax offset letter received by Ms. Hoftiezer contained the letterhead and reply mailing address of Spartanburg Regional Hospital System ("SRHS"). Furthermore, said letter clearly indicated that SRHS intended to collect an amount due from Ms. Hoftiezer "which represents the fees, costs and expenses of medical treatment received at one of the Spartanburg Regional Hospital System's facilities." The tax offset letter received by Ms. Hoftiezer would have appeared in a format identical to the tax offset letter attached hereto as Exhibit C.

FURTHER AFFIANT SAYETH NOT.

Bryan M. McCain
BRYAN M. MCCAIN

SWORN to and subscribed
before me this 2nd day
of June, 2011.

Robin C. Deming (SEAL)
Notary Public for South Carolina

My Commission Expires: 11/15/2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2009-CP-42-05373

JAMES HOFTIEZER,

Plaintiff,

vs.

D. MARK HICKLIN, M.D., ET AL.,

Defendants.

COPY

TRANSCRIPT OF RECORD

September 1, 2011

Spartanburg, South Carolina

Ordered: October 16, 2011

Delivered: December 21, 2011

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Presiding Judge.

A P P E A R A N C E S:

MR. RUSS FOSTER, Esquire

Attorney Appearing for the Plaintiff

MR. PERRY BOULIER, Esquire

Attorney Appearing for the Defendants

I N D E X O F W I T N E S S E S

(No Witnesses were called by either party.)

A R G U M E N T S O F C O U N S E L

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Mr. Boulier:.....	3
Mr. Foster:.....	23
Mr. Boulier:.....	62
Mr. Foster:.....	69

I N D E X O F E X H I B I T S

Plaintiff's Exhibits:	Marked:	Received:
(None)		
Defendants' Exhibits	Marked:	Received:
(None)		
Court's Exhibits	Marked:	Received:
(None)		

Page:

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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

September 1, 2011

2:32 P.M.

(Off-the-Record Comments)

THE COURT: All right. I believe that we are here on the summary judgment motion that been filed by the Defense; is that correct?

MR. BOULIER: Yes, sir.

THE COURT: I'll be more than happy to hear from you.

MR. BOULIER: Thank you, Your Honor. I'm Perry Boulrier. I'm here on -- on behalf of the Defendants in this case. And this is a motion for summary judgment.

And, Your Honor, the fundamental issue in this case revolves around the statute of limitation.

And, as I'm sure the Court is well aware, we take the position that Spartanburg Regional is a governmental entity and it is entitled to the protection of the South Carolina Tort Claims Act, which, of course has a two-year statute of limitations.

And I -- I don't believe, Your Honor, there is any factual dispute in this case as to whether the two-year statute was met. I think it's -- it's clear that the action was initiated at the expiration of the two-year statute.

So, the question before the Court is -- is essentially whether the two-year statute should be

1 applied. And, if -- if I can, I'll go briefly through
2 the facts, Your Honor.

3 The -- the Plaintiff, the decedent in this case, Ms.
4 Hoftiezer, was a patient of my client, Dr. Mark Hicklin,
5 from Spartanburg Regional Healthcare System for a number
6 of years.

7 And she saw several different doctors in -- in the
8 group that practices there. They've had Dr. Taylor,
9 Westmoreland, and Hicklin over the last few years.

10 But the physicians in that office have been Dr.
11 Hicklin and Dr. Westmoreland and Dr. Couley (phonetic).
12 And she saw an assortment of those physicians over the
13 years.

14 But the visit that is at issue in this case occurred
15 on July 31, two thousand, six (2006) when she came to the
16 office with complaints of -- of chest discomfort and was
17 seen by Dr. Hicklin and subsequently sent home.

18 And she died four (4) days later on August 4th, two
19 thousand, six (2006). And the allegation in the case is
20 that she died from -- from heart problems that related to
21 the visit to Dr. Hicklin's office on July 31st of two
22 thousand, six (2006).

23 So, for purposes of this -- this motion and this
24 issue, Your Honor, I think it's clear that the action
25 accrued as of August 4, two thousand, six (2006) at the

1 latest.

2 And, so, the two-year statute of limitations that we
3 believe clearly applies in this case would have expired
4 August 4 -- no later than August 4, two thousand, eight
5 (2008).

6 The case was initiated, by the filing of service of
7 a notice of intent to file suit, consistent with the
8 formal form (phonetic) that was passed in two thousand,
9 five (2005).

10 That -- that was filed on February 10, two thousand,
11 nine (2009), which would have been some six months after
12 the expiration of the -- the two-year statute.

13 Our position in this case is -- is very
14 straightforward. We think that it is a -- as a matter of
15 law, Spartanburg Regional is a governmental entity and a
16 subdivision of the State of South Carolina. And I'll go
17 into more details about that in just a moment.

18 Because of that, they are clearly entitled to the
19 protection of the South Carolina Tort Claims Act, which
20 as we know, it is number Section 15-78-100 and 110. Both
21 provide for a two-year statute of limitations.

22 Dr. Hicklin and Drs. Taylor, Hicklin, and
23 Westmoreland, and Couley, P.A. are named as additional
24 Defendants in this case.

25 Dr. Hicklin, since 1994, has been an employee of

1 Spartanburg Regional Healthcare System. And, again, I'll
2 go into more details about that in just a moment.

3 The group that's name in this case actually is not a
4 PA. It was a group name under which Dr. Hicklin and his
5 -- his partners at that time practiced prior to their
6 employment with Spartanburg Regional.

7 It is not a separate legal entity. Dr. Hicklin has
8 received no income, from that partnership since 1994,
9 apart from income they received related to the lease of
10 the building.

11 So, the -- the undisputed evidence in this case is
12 that Dr. Hicklin has been, since 1994, an employee of
13 Spartanburg Regional.

14 And Taylor, Hicklin, and Westmoreland and Couley is
15 not a separate legal entity and certainly was not as of
16 the time that the care in question was rendered.

17 So, because Dr. Hicklin is an employee of
18 Spartanburg Regional, under Section 15-78-70 of the Tort
19 Claims Act, it's very clear that he cannot be held liable
20 number one individually.

21 And number two the provisions I believe in
22 Subsection (C) of that statute provide that Spartanburg
23 Regional has to be substituted as the defendant in place
24 of Dr. Hicklin as to all allegations concerning Dr.
25 Hicklin.

1 So, our primary contention, with regard to Dr.
2 Hicklin, is it's not even a -- a statute of limitations
3 issue so much, as because he's an employee of Spartanburg
4 Regional, legally he cannot be held individually liable
5 nor can he be named as an individual Defendant in this
6 case.

7 So, that's -- that's the threshold issue with --
8 with regard to Dr. Hicklin. And, again, the entity named
9 in this case is -- is not a separate entity, has not been
10 engaged in the practice of medicine since 1994.

11 Now, that -- that is our motion in a nutshell, Your
12 Honor. We have agreed in this case -- we entered into
13 scheduling order to conduct discovery related to the
14 statute of limitations issue, which we've done.

15 We have submitted to Your Honor depositions that
16 were taken of Dr. Hicklin. And his deposition was
17 limited to issues reasonably related to the statute of
18 limitations issue.

19 We've also submitted a depo -- a deposition that was
20 taken of Edmund Haskell (phonetic). And Mr. Haskell was
21 deposed in his capacity as the county attorney at the
22 time Spartanburg -- Spartanburg Regional Health Services
23 District was incorporated.

24 And, so, he was offered up as a 30(b)(6) designee on
25 certain topics related to the organization of that

1 entity.

2 And we've also provided Your Honor with the
3 deposition of Ned McCain (phonetic), who was an employee
4 with Spartanburg Regional involved with their physicians
5 network.

6 In terms of the application of the Tort Claims Act,
7 Your Honor, we -- we think this is, again, a very
8 straightforward issue.

9 We've attached to our memorandum, that was provided
10 to the Court yesterday, the articles of incorporation
11 that were filed with the South Carolina Secretary of
12 State in April of 1995.

13 And, pursuant to those provisions, it -- it was
14 incorporated as a -- a public hospital corporation in
15 this state.

16 The articles of incorporation or the certificate of
17 incorporation filed -- it was actually on May 1, 1995 --
18 makes expressed reference to Spartanburg County ordinance
19 number 557.

20 And that's important, Your Honor, because that's the
21 ordinance passed by the County Council in 1995 that
22 authorized the incorporation of the health services
23 district.

24 And, in fact, in this case the -- the Defendant --
25 one of the Defendants is Spartanburg Regional Health

1 Services District, which is an entity that was created by
2 virtue of this May, 1995 filing.

3 I would point out, as an aside, it was originally
4 called Spartanburg County Health Services District. It
5 was subsequently changed to Spartanburg Regional Health
6 Service District. But this entity has been in place
7 since 1995.

8 If you look at the ordinance, which is attached,
9 again, to our memo, ordinance Number 557 passed by County
10 Council to authorize the -- the creation of a health
11 services district, on Page 2 of that ordinance, under
12 Section 1, which has the subheading "Creation,";

13 If you look in there the -- the County Council
14 expressly provided that this entity was going to be a
15 political subdivision of the County of Spartanburg and
16 the State of South Carolina.

17 And they expressly provided that, that was intended
18 to be within the meaning of the Title 15, Chapter 78 of
19 the South Carolina Code.

20 (Clears throat)

21 MR. BOULIER: Excuse me. And, as we know, Title 15,
22 Chapter 78 is the South Carolina Tort Claims Act.

23 So, it was expressly provided in the documents that
24 created Spartanburg Regional Health Services District
25 that it would be a governmental entity.

1 It was intended to be a political subdivision of the
2 State of South Carolina and that the -- one of the
3 fundamental purposes of -- of this incorporation was to
4 ensure that it was entitled to receive the protection of
5 -- of the South Carolina Tort Claims Act.

6 So, we think those documents expressly, and as a
7 matter of law, establish Spartanburg Regional as a
8 governmental entity that is protected by the Tort Claims
9 Act and, therefore, the two-year statute of limitations
10 applies in this case.

11 Now, with regard to Dr. Hicklin, we've -- and -- and
12 at the time we filed the motion for summary judgment, we
13 filed an affidavit signed by Dr. Hicklin that's before
14 the Court.

15 And attached to that affidavit was a number of
16 documents. Included among those, Your Honor, was the
17 employment contract that Dr. Hicklin had as of the date
18 of the care and treatment he provided to Ms. Hoftiezer.
19 And that's entitled a "Physician Employment Agreement."

20 It expressly provides that Dr. Hicklin will be
21 employed by Spartanburg Regional Health Services
22 District.

23 So, by the expressed terms of that document, he was
24 an employee at all times he provided care.

25 We've also provided the Court with a redacted

1 version of Dr. Hicklin's W-2 that was issued to him in
2 two thousand, six (2006), the year that these -- this --
3 the -- the care in question was rendered.

4 And it clearly provides that Dr. Hicklin was an
5 employee. And it further sets forth that his employer
6 was Spartanburg Regional Health Services District, Inc.

7 So, we think as a matter of law, based on the
8 documents before this Court, based on all the evidence
9 before the Court, Dr. Hicklin clearly was an employee of
10 the District.

11 And because of that, as a matter of law, he cannot
12 be held individually liable in this case under Section
13 15-78-70 of the Tort Claims Act and should be dismissed
14 on that basis.

15 And, furthermore, any allegations concerning Dr.
16 Hicklin that Spartanburg Regional should be substituted
17 or should be considered the Defendant as to that -- as to
18 those allegations.

19 Now, the funda -- the -- the issues before the
20 Court, in terms of whether that statute applies, that --
21 that was raised by the Defendant, the first thing, Your
22 Honor, is -- is before you is a -- is a -- in essence a
23 -- a screen shot of a page from the -- the South Carolina
24 Secretary of State website.

25 And I believe this was attached as Exhibit 2 to Mr.

1 Haskell's deposition and my memorandum.

2 And I apologize. I erroneously said that was Exhibit
3 4 to Mr. McCain's deposition. But, in fact, if you look
4 at Mr. Haskell's deposition, it's Exhibit 2 to that
5 deposition.

6 And one of the fundamental contentions of -- of the
7 Plaintiff in this case, Your Honor, is that Spartanburg
8 Regional -- Spartanburg Regional, for purposes of this --
9 this case, should be considered a charitable
10 organization.

11 And, if they're a charitable organization, the
12 three-year statute of limitations would apply. And --
13 and one of the arguments raised by Plaintiff is that, if
14 you look at the Secretary of State website, it refers to
15 Spartanburg Regional Health Service District as a
16 eleemosynary corporation.

17 And, Your Honor, two or three points about that.
18 First, you can't consider what's on the -- the Secretary
19 of State's website without looking at the disclaimer
20 that's at the bottom of -- of this document, which is
21 present on the screen shot in the Secretary of State's
22 website.

23 And -- and it plainly says that, "This information
24 is provided as a convenience, that you should not rely on
25 the information on this summary by itself."

1 We have attached, Your Honor, again, to our
2 memorandum, certified copies of the actual documents from
3 the Secretary of State.

4 In fact, before the Court are all the documents
5 listed on this screen shot. And -- and all of those are
6 certified copies that we obtained from the Secretary of
7 State simply by sending a request to the Secretary of
8 State and asking them to provide us with -- with a copy
9 of those documents, which obviously Your Honor are -- are
10 public documents.

11 So, the fact that the Secretary of State, for
12 whatever reason, as a -- as a clerical task -- we don't
13 exactly know how they came up with this -- but the fact
14 that they -- they code this as an eleemosynary
15 corporation clearly doesn't undo what the documents
16 themselves say.

17 And the Secretary of State website, this screen
18 shot, is not a legal document. It's not a document
19 created by my client.

20 The expressed documents filed with the Secretary of
21 State, by their very terms state, that we are to be
22 considered a political subdivision protected by the South
23 Carolina Tort Claims Act.

24 So, we think the -- the Secretary of State screen
25 shot is -- is not either here nor there. And it really

1 has no impact at all on this issue and -- and shouldn't
2 be considered in that respect because the documents it
3 refers to may be obtained from the Secretary of State.
4 And we've -- we've filed certified copies of those
5 documents.

6 So -- so, again, we -- we don't think there's any
7 basis for the claim that -- that, that website somehow
8 alters the picture.

9 Now, the other argument being raised primarily by
10 the Plaintiff is that the -- the doctrine of equitable
11 estoppel should preclude Spartanburg Regional from
12 benefitting from the -- the two-year statute of
13 limitations.

14 And -- and the argument -- one of our arguments
15 made, Your Honor, is -- and -- and I got the brief this
16 morning.

17 And I've had a chance to look through it in -- in
18 some respect, but as I understand it, one of the
19 fundamental arguments is that, when the Plaintiff
20 requested the medical records of Spartanburg Regional,
21 they weren't not provided all the medical records.

22 And, Your Honor, candidly, I -- I have -- I have had
23 -- not had time to address that issue. The records have
24 just been submitted to the Court.

25 If the Court is going to base a decision in any part

1 on that, I -- I would request appropriate time from this
2 Court to respond to that -- that allegation.

3 But -- but the key point is this: If you look in
4 the records that were provided, I believe this was a part
5 of Exhibit 1, Your Honor. And I -- and I don't believe
6 there's a Bates number on it and -- Exhibit 2 -- I'm
7 sorry -- to the -- to the Plaintiff's memorandum.

8 MR. BOULIER: And, if I can approach, I'll just show
9 you the document.

10 (Document shown to opposing counsel.)

11 (Document handed up the Court.)

12 (Off-the-Record Comments)

13 MR. BOULIER: Your Honor, I believe it's -- it was
14 included in Exhibit 2 of their memorandum.

15 MR. FOSTER: Our Exhibit 2, yes, sir. Okay. Perry,
16 is that what you sent me?

17 MR. BOULIER: No, sir, it's what you sent us.

18 (Off-the-Record Discussion)

19 MR. FOSTER: I apologize, Your Honor. I just wanted
20 to make straight what we're looking at.

21 MR. BOULIER: It's part -- it's part of what you
22 sent us.

23 MR. FOSTER: In the brief?

24 MR. BOULIER: In -- in -- in the brief, right.

25 (Continued off-the-record discussion)

1 MR. BOULIER: In any event, Your Honor, the -- the
2 -- the important point is -- is the Plaintiff is now
3 contending that -- that they weren't provided all the
4 records and additional records were produced in
5 discovery.

6 If -- if you look in the documents, this -- this is
7 the authorization for the release of medical records that
8 was submitted by the Plaintiff to my client. And I
9 believe it's dated August of two thousand, six (2006).

10 And, so, that -- that's the release that the
11 Plaintiff contends in their brief we didn't properly
12 respond to and didn't provide them with all of the
13 records.

14 And my point, Your Honor, is this: If you look at
15 the top of that release, it plainly states "Spartanburg
16 Regional Healthcare System."

17 So, to the extent the Plaintiff is contending that
18 somehow this was a game of hide the ball, and that we
19 didn't -- we didn't allow them to know our affiliation
20 with Spartanburg Regional Healthcare System when we sent
21 out the medical records, the very release that was
22 provided to the Plaintiff in August of two thousand, six
23 (2006) to obtain the records, by its very terms, says
24 "Spartanburg Regional Healthcare System" plastered at the
25 top.

1 So, if we were trying to somehow hide this or cover
2 it up or as -- as Counsel suggest even unintentionally we
3 -- we did this, the very document that -- that was
4 provided to Mr. Hoftizer to obtain these records, at the
5 top says "Spartanburg Regional Healthcare System."

6 So, that's a very clear indication, Your Honor, that
7 -- that my client, Dr. Hicklin, was -- was affiliated
8 with Spartanburg Regional Healthcare System. Why else
9 would he have to sign a release with Spartanburg Regional
10 Healthcare System to get the records?

11 But the evidence doesn't stop there because, if the
12 Court considers all of the evidence that -- that we've
13 put in, I think it's very clear that the reasonable
14 person was on notice or should have been on notice that
15 Dr. Hicklin was -- was employed, affiliated, or a part of
16 Spartanburg Regional Healthcare System.

17 And we provided the Court with an abundance of -- of
18 evidence on that.

19 If you look at Dr. Hicklin's affidavit, we provided
20 copies of the business cards that they used, Your Honor.
21 That's Exhibit "C," which has "Regional Physician
22 Network" and has the -- the -- would have the coloring
23 and the -- and the logo of the hospital system.

24 Exhibit D to that affidavit -- do you need to catch
25 up with me, Your Honor?

1 (Brief Pause)

2 MR. BOULIER: This is, again, Dr. Hicklin's. It
3 should have been attached as part of our -- our motion
4 for summary judgement.

5 THE COURT: The motion or the memorandum?

6 MR. BOULIER: The -- the motion. And it was a
7 separate affidavit of Dr. Hicklin.

8 (Brief Pause while Court examines documents.)

9 THE COURT: "C"? Did you say "C"?

10 MR. BOULIER: "D."

11 THE COURT: "D"?

12 (Brief Pause)

13 MR. BOULIER: Exhibit "C" is the -- shows the
14 business card that they were using. And -- and, as Dr.
15 Hicklin's stated in his affidavit, this is what they were
16 using at the time in question.

17 Exhibit "D" is a copy of an envelope which, again,
18 says, "Regional Physician Network, an affiliation of
19 Spartanburg Regional Healthcare System."

20 And Exhibit "E," Your Honor, is letterhead, again,
21 bearing the same information. And, then, Exhibit "F,"
22 Your Honor, is that affidavit. And this is very
23 important.

24 This is a picture of the sign that would have been
25 in front of their office on the date of the care in

1 question in August of two thousand, six (2006). And,
2 then, you may recall their office used to be located on
3 Henry Street right -- right behind the Y. And, then,
4 they moved a few years ago over to Haywood -- Haywood
5 Avenue.

6 And -- and this was the sign that out front of their
7 office and had been for some period of time. And, again,
8 it clearly says "Regional Physician Network."

9 It was in the colors of Spartanburg Regional and it
10 says, "An affiliation of Spartanburg Regional Healthcare
11 System."

12 So, clearly, Your Honor, it's -- it's plain that any
13 reasonable person would have been on notice about the --
14 the connection between Dr. Hicklin and Spartanburg
15 Regional. But -- but we've provided more on top of that.

16 If -- if you look at the initial affidavit of Brian
17 M. McCain (phonetic), which, again, should have been
18 filed at the same time as Dr. Hicklin's, attached to that
19 affidavit, Your honor, is a copy of the bill that would
20 have been the billing format that was used at the time
21 period.

22 And, again, bills the patients received stated
23 "Sprnbg Regional Healthcare System Physician Billing
24 Service."

25 And, then, in addition to that, Your Honor, the

1 final piece that we think is -- is crucial on this whole
2 notion that we should be equitably estopped from claiming
3 that Dr. Hicklin was a employee of Spartanburg Regional,
4 is we -- we submitted -- we filed in June a supplemental
5 affidavit of Mr. McCain.

6 And this provides, Your Honor, that a letter was
7 sent -- would have been sent to Ms. Hoftiezer in two
8 thousand, four (2004) concerning an unpaid bill.

9 And, if you look at it, the -- the -- the format of
10 the letter is in September of two thousand, four (2004).
11 And at the top of the letter it says, "Spartanburg
12 Regional Hospital System."

13 And, so, Your Honor, there -- there are no bills --
14 there's no collection of services in this case by Dr.
15 Mark Hicklin. The bills were sent by Spartanburg
16 Regional.

17 This letter, which would have been sent September of
18 two thousand, four (2004) had Spartanburg Regional on it.

19 Their cards, the letterhead, the sign in front of
20 their office all bore the Spartanburg Regional flag if
21 you will. And they practiced under that -- under that
22 banner, Your Honor.

23 So -- so, the evidence in this case is overwhelming
24 that we aren't trying to hide anything. It's very clear
25 that Dr. Hicklin, after 1994, was part of Spartanburg

1 Regional Healthcare System.

2 And I don't think the law requires us to put up a
3 flashing neon sign, at the front of the office, saying
4 "These physicians are employees of Spartanburg Regional
5 Healthcare System."

6 I think you can -- you can -- a reasonable person,
7 based on this evidence, would -- would know or should
8 know or should be on notice of the fact that Dr. Hicklin
9 and Spartanburg Regional are -- are one and the same.

10 So -- so, that's -- that's the evidence that's --
11 that's before the Court on that issue. And, you know,
12 certain cases have been cited in -- in Plaintiff's memo.

13 Again, Your Honor -- you know, Counsel in his
14 defense, he gave the memo to me this morning and I was in
15 mediation until this afternoon. So, I've -- I've read
16 through it. But the cases cited we believe are
17 distinguishable with the -- the --

18 The documents on file, with the Secretary of State,
19 clearly, again, show the nature of the entity we are;
20 that the -- the registered agent was plainly stated.

21 And, so, Your Honor, I -- I would just say this in
22 -- in conclusion, in an effort to try to wrap up on a
23 timely basis, which I -- I know I rarely do.

24 But, as a matter of law, Spartanburg Regional is a
25 governmental entity protected by the Tort Claims Act.

1 Dr. Hicklin was an employee of Spartanburg Regional

2 There's an argument in Plaintiff's brief about an
3 entity called "Regional Health Plus," which was an entity
4 established by Spartanburg Regional related to additional
5 compensation that physicians can -- can pay.

6 But the clear point, though, Your Honor -- and, if
7 you look at the Tort Claims on the -- Claims Act on this,
8 it does say that, if a physician gets income from other
9 sources, they're not protected by the Tort Claims Act.

10 But what I think that's clearly intended to is a
11 situation where Dr. Hicklin practices during the day --
12 during the day as a -- as a family physician for
13 Spartanburg Regional, but he goes and he moonlights at
14 another hospital on the weekends, it's not protected by
15 the Tort Claims Act.

16 I think that's clearly what the provision cited by
17 Counsel is geared to. There's absolutely no proof at all
18 in this case, Your Honor, that Dr. Hicklin ever provided
19 any -- any of the services in question as anything other
20 than an employee. And, so, he clearly should be
21 dismissed.

22 And, then, Your Honor, in terms of this argument
23 about equitable estoppel, we would just submit that you
24 can't rely on the Secretary of State website. You have
25 to look at the documents.

1 And the evidence in this case is overwhelming: Even
2 the release signed by Plaintiff, in August of two
3 thousand six (2006), days after this incident occurred,
4 the release to get the records from Dr. Hicklin's office
5 said, "Spartanburg Regional Healthcare System."

6 And that's on top of all the signs, the cards, and
7 the other evidence that's -- that is present; the
8 correspondence that goes to patients. So, there's been
9 no effort here to hide anything, Your Honor.

10 And I'll -- I'll finish by saying this: Nobody ever
11 likes to have to stand up and -- and make an argument on
12 this issue.

13 And -- and we all make mistakes. But -- but we have
14 to base this case on -- on the facts and the law.

15 And we would respectfully submit to the Court
16 there's no material issue of fact on this issue: The
17 two-year statute of limitation applies and the Defendants
18 are entitled to summary judgment.

19 **THE COURT:** Thank you, sir.

20 **MR. FOSTER:** May it please the Court?

21 **THE COURT:** (Nods affirmatively.)

22 **MR. FOSTER:** Your Honor, Russ Foster, Tammy Fly
23 (phonetic) and this is Mr. James Hoftiezer. It's his
24 mother -- the decedent is his mother. Good to see you,
25 Judge.

1 Well, let me start, Judge, so, I can save you a
2 little bit of reading. And -- and I felt bad that ours
3 is so long with so many exhibits.

4 But, to save you a little bit of reading, let me
5 tell you some things that I agree with Mr. Boulrier on.

6 First of all -- now, please -- please make the
7 distinction: This is what we know now, not what we --
8 not what we're getting ready to argue to you, what we
9 knew when we started this lawsuit.

10 But after the depositions that we've taken, he and I
11 -- he and I agreed, mutually agreed, to take discovery
12 just on the -- just on this issue right here because --
13 and I'll tell you why in a minute. I'll get into more
14 detail.

15 But I agree with him. I mean, I'm satisfied now
16 that -- that -- that I know all of the facts that
17 Spartanburg, by whatever name it goes -- and, Judge, if
18 you started reading -- if you pulled up your computer and
19 started researching this thing, you would through several
20 names to find out what Spartanburg Regional Hospital's
21 real name is.

22 But, anyway, I'm convinced now that -- they've shown
23 me, through documents -- and you don't need to read all
24 -- all these -- all these documents -- their
25 incorporation and all that. They're a governmental

1 hospital.

2 Where I thought he was getting off -- and -- and,
3 Judge, let me mention this too: I'm sorry, Mr. Boulier,
4 but -- if you didn't get that until today, because that
5 memo was sent yesterday at the same time we sent the
6 Judge's.

7 And, if it didn't get to you till this morning --
8 until this morning, I don't know how that happened. But
9 -- but I didn't want you to think I sent it to you,
10 Judge, and not to Perry -- or Mr. Boulier.

11 And -- but, anyway, we would agree that it is a
12 governmental hospital based on the discovery we've done
13 and the depositions of the County Council that we've
14 taken, et cetera.

15 I -- we don't have a problem with that. And I
16 thought he misunderstood our argument when he was arguing
17 at first about that we were trying to make this into a
18 charitable hospital. We're not trying to make this into
19 a charitable hospital.

20 Judge, what we're here today trying to do is to seek
21 justice, Your Honor, is to get our day in court, and to
22 get this Court to invoke your inherit equitable powers
23 and to apply equitable tolling and/or equitable estoppel
24 to their assertion of the statute of limitations for
25 reasons that I'll get into, okay?

1 But let me tell you some other things. We -- we --
2 we don't argue with it. Judge, I've been the Tort Claims
3 Act for twenty (20) years (phonetic). I know what the
4 statute of limitation is.

5 He's exactly right on the two-years, the code
6 section, et cetera. And that Spartanburg Regional, but
7 for some of these acts in here, should be able to assert
8 that in most instances. And -- and ---

9 **THE COURT:** Well -- can I ask you a question then?

10 **MR. FOSTER:** Yes, sir.

11 **THE COURT:** Then, would you agree that your argument
12 of equitable tolling and equitable estoppel really only
13 applies to Spartanburg Regional and not to Dr. Hicklin
14 and the Hicklin, Westmoreland, Couley and this -- that it
15 only applies just to Spartanburg Regional?

16 **MR. FOSTER:** I would absolutely agree with that,
17 Your Honor. I'm not trying to take him out of the Tort
18 Claims Act, okay? And -- that that was one thing I
19 wanted to clear with you.

20 What we're trying to do is toll his equitable --
21 just fair -- fairness tolling of the statute, for the
22 reasons I'll get into, to put the proper -- and let me
23 tell you why we don't worry about that, Judge.

24 If we -- say I sue a governmental hospital. Say
25 it's Lexington, okay? We -- we don't concern ourselves

1 so long as we're under two years of who we name because,
2 if we name the doctors and it turns out they're employees
3 of the hospital, then, all we do is, per the Tort Claims
4 Act, is we substitute a name. And -- and everything goes
5 on; there's no problem.

6 So, that's -- that's -- that's not a problem.
7 Judge, let me make this one little distinction though,
8 okay?

9 I'm -- I'm conceding that point that we're not
10 trying to take him out of the Tort Claims Act except for
11 one little pin dot, okay? And that's that K-1 I'll talk
12 to you about.

13 I don't know whether that's something you're going
14 to want to hang your hat on or not; there's no case law.
15 Mr. Boulrier mentioned it a minute ago.

16 And that's way down in my memo and way down on my
17 list of things for you to consider, but -- but I do want
18 to leave that door open, okay?

19 But essentially we're not trying to except for that;
20 that K-1 where he did get money from a source other than
21 the hospital or an approved hospital pay plan. And ---

22 **THE COURT:** But there is no allegation, if I
23 understand -- and, again, I read very quickly -- but
24 there's no allegation, as I understand it, that -- of the
25 -- allegations that are in the complaint that any of

1 those services that might have been provided, by the
2 doctor to the Plaintiff, that they were done outside of
3 his work with Regional.

4 **MR. FOSTER:** There -- there are none. And we don't
5 allege that, Your Honor.

6 Your Honor, basically Ms. Hoftiezer -- Mr.
7 Hoftiezer's mother went to see Dr. Hicklin on July the
8 31st.

9 And, if you'll look at Exhibit 1, you'll see the
10 note, Your Honor, which was really -- except for flipping
11 back through and reading and getting a history on her to
12 see if she had, had any previous heart problems, it's
13 really -- the -- the effective evidence in this case as
14 far as a malpractice case is concern. (Phonetic)

15 She goes in there and she's complaining about chest
16 pains. And Dr. Hicklin, without running the proper
17 tests, diagnostic procedures, et cetera, assures her that
18 it's not cardiac.

19 And that was on July 31st. And four days later, Your
20 Honor, she dies of a heart attack.

21 We had -- now, Your Honor, we have affidavits. And
22 -- and I didn't put these in as exhibits, but I'll hand
23 these up. May I approach?

24 **THE COURT:** (Nods affirmatively.)

25 (Document handed up to the Court.)

1 MR. FOSTER: Just an exhibit about Kern (phonetic),
2 the other doctor.

3 MR. BOULIER: Oh, the expert?

4 MR. FOSTER: Yes. Any objection to that?

5 MR. BOULIER: I think it's a matter of -- I think
6 it's in the Court's file.

7 MR. FOSTER: It is. Your Honor, here are the two
8 affidavits of the two experts that we have.

9 Your Honor, we had these experts before two years
10 expired, okay? We had the experts two -- way before -- I
11 mean, not way before, but before the expiration of two
12 years.

13 I also defended the Tort Claims Act well enough --
14 long -- 20 years, long enough to know that had I -- had I
15 been, in a time crunch, that I could have filed a
16 verified claim and extended the statute of limitations
17 under the Tort Claims Act to three (3) years.

18 Now, just to make everything clear, Judge, this was
19 not a mistake. This was not where we made a mistake on
20 the date or we miscalen -- we calendared this case --
21 the statute of limitations for this case, we calendared
22 it for three (3) years; not two (2) years.

23 And -- and I'll explain to you why in a minute. But
24 I -- but I want to make it also clear, Judge, that the
25 that they talk about Ms. Hoftiezer, that she saw

1 or that she did, are totally irrelevant.

2 Ms. Hoftiezer is deceased, Your Honor. There's no
3 way we could get the information from Ms. Hoftiezer.

4 Mr. Hoftiezer had never been to the doctor with his
5 mother, so, he's -- he's the personal representative of
6 the estate. It's a wrongful death and survival suit.

7 There's no way we can get any -- this is me, Judge.
8 This is what my office did, okay, and what reasonably
9 prudent attorneys would have done in -- in our -- in the
10 same or similar circumstances; what we should have done.

11 **THE COURT:** Do -- do you mean I'm -- I'm supposed to
12 view these applications of the statute of limitations for
13 purposes of this litigation based upon -- not based upon
14 the actual client?

15 **MR. FOSTER:** Yes, sir. Yes, sir, I do. In a death
16 case I do, Your Honor, because there's no way we could
17 get any information from her.

18 Your Honor, her son had me in the case before the
19 expiration of two (2) years. I -- so, it was up to me to
20 know how to get experts, how to file this suit, what the
21 proper time frame was, and all of that.

22 So, we think that it should be viewed with an eye
23 toward what is reasonable and prudent -- what a
24 reasonable and prudent person and/or attorney would do
25 under the same or similar circumstances, Your Honor, as

1 far as -- as determining when the statute of limitations
2 would run.

3 And that's where the equitable tolling comes in,
4 Judge.

5 And -- and -- and let me -- let me just go through a
6 little bit of this with you. I wanted to see if there
7 was anything else that I wanted to tell you that we
8 weren't arguing about.

9 (Brief Pause)

10 MR. FOSTER: Okay. Let me start -- let me start at
11 the beginning, Judge. After the client called me, we
12 asked him to get the medical records.

13 Mr. Boulrier has shown you a cover sheet of where he
14 got medical records, not that, that would have meant
15 anything to him about the statute of limitations or
16 anything, but those were not provided to us.

17 What was provided -- that cover sheet was not. But
18 that was what was provided to us through discovery from
19 Mr. Boulrier after -- after the -- the lawsuit, the notice
20 of intent was filed.

21 Your Honor, Exhibit 1, if you'll look at Exhibit 1,
22 this is the stack of medical records that were provided
23 to Mr. Hoftiezer as personal representative of the
24 estate, okay?

25 There's not one thing in here that would give a

1 reasonable person any inkling that number one, Dr.
2 Hicklin was an employee of Spartanburg Regional or number
3 two, that Spartanburg Regional was a governmental
4 hospital.

5 **THE COURT:** Well, I -- I thought you said I was
6 supposed to view it from what the lawyer knew and not
7 what -- what was actually known by the parties.

8 **MR. FOSTER:** Well, I'm saying me, Judge. And I'm
9 mainly talking about me.

10 I went through here and I don't think there is
11 anything in here that would give a reasonable -- a
12 reasonable attorney reason to think that he was an
13 employee of Spartanburg Regional or that they were a
14 governmental hospital.

15 Now, let me tell you why, Judge. When these cases
16 come in, we do what we always do. We get -- we meet --
17 we meet with the client, talk with the client.

18 We get them to get the medical records. We go
19 through the medical records. And most times that's
20 enough, Judge.

21 You know, they've got Doctor So-and-so and so-and-
22 so, PA or however. And -- and that's enough, okay?

23 But we go further. We go to the Secretary of
24 State's office. We look at the Secretary of State web --
25 website to see what -- you know, if the hospital is

1 involved, to see what type of corporation they are and --
2 and that sort of thing, which we did in this case.

3 After we went through these records here, and the
4 Secretary -- let me jump out of order a minute and grab
5 the Secretary of State website, which is Exhibit --
6 Exhibit 4, which is -- which is -- which is -- is going
7 to be one of the keys in this case, Your Honor.

8 This is a public document. This is the Secretary of
9 State business filings. And the main case that I'll
10 talk about here in a few -- in just a minute, the *Hooper*
11 (phonetic) case that's cited in our brief and we provided
12 to you, says in there that -- that the public is entitled
13 to rely on these documents.

14 Judge, I'll -- I'll -- I'll go so far as to tell you
15 this: The LLR (phonetic) relies on these documents.

16 But what this document says is -- and -- and let me
17 tell you this too, Judge: We have another case that
18 involved the ER of Spartanburg that we were researching
19 at -- at or about the same time, a little bit before
20 this.

21 So, we had already pulled this up after we figured
22 out how to find out the right name, Spartanburg Regional
23 Health Service District, Inc. And I've always known it
24 as Spartanburg Regional Hospital.

25 So, we had already pulled this up and had this

1 information. And what it says in here -- I mean, it will
2 tell you. If you pull up different corporations, it will
3 tell you profit, non-profit. It -- it -- you know, et
4 cetera, et cetera.

5 It says, "State incorporation, South Carolina;
6 Organization, non-profit." And, then, at the bottom it
7 has "eleemosynary amendment, two thousand and eight
8 (2008)."

9 "Eleemosynary amendment, two thousand and seven
10 (2007)," "Eleomosynary amendment, two thousand and two
11 (2002)." I mean, the only reasonable conclusion I can
12 draw on that is this is a charitable hospital.
13 "Eleemosynary" means "charitable."

14 So, why they're filing eleemosynary amendments in
15 2008, 2007, et cetera, I mean, the only thing that could
16 mean -- that it meant to me was that it was a charitable
17 hospital.

18 Now, as to that disclaimer, Your Honor, he -- he
19 read it exactly right and he said "Whoever -- you know,
20 if you rely on this, this is for information. If you're
21 relying on it, you do it at your own risk," but there's a
22 part he left out of that too.

23 While they don't guaran -- they said they don't
24 guarantee the accuracy, reliability, or timeliness, they
25 said, "...of such information as it is the responsibility

1 of the business entity to inform the Secretary of State
2 of any updated information."

3 Now, why is that important? Because it leads us to
4 believe this is a charitable hospital; a charitable
5 hospital has a three-year statute of limitations.

6 This is why this, along with the medical records,
7 which gave us no indication to the contrary...

8 (Brief Pause)

9 MR. FOSTER: Oh, and the -- the medical board. We
10 also go to the medical board, under the LLR (phonetic),
11 Your Honor, and pull up Dr. Hicklin.

12 It doesn't have any indication -- there's nothing
13 that tells us anything about him being employed by
14 Spartanburg Regional.

15 It has hospital affiliations, "Spartanburg Regional
16 Medical Center" -- this is Exhibit 3 of our memorandum.
17 although, Judge, that's just where you have privileges.

18 Most doctors you pull up will have four or five
19 hospitals on there, wherever they -- or three or four or
20 -- it depends on how many hospitals that they have
21 privileges at.

22 That doesn't mean they're employed by them; it means
23 they have privileges there.

24 However, the Secretary of State, again, they have a
25 duty. So, we have, Your Honor -- what we had to go on,

1 we had the medical records, which just say at the top of
2 their notes...

3 (Brief Pause)

4 MR. FOSTER: Well, there was one or two I thought
5 with something on the top that just said Drs. Hicklin,
6 Couley, Taylor, or whatever arrangement it was in. But,
7 actually, that might be the other set.

8 These -- these don't even have that. They've got
9 "D. Mark Hickin" (phonetic) at the bottom.

10 None of them are on Spartanburg letterhead. None of
11 them are -- none of them have any reference, "This is
12 Spartanburg Regional," any kind of network, anything
13 else.

14 The only thing in there from Spartanburg that I
15 recall is there was a -- a radiology report and maybe a
16 lab report from the hospital, which we see in every
17 single medical file, because every doctor sends them to
18 the hospital to have this -- this work done.

19 Now, I will say this: There is -- is one lab work.
20 There's a CBC that they did in the office; they drew the
21 blood in these medical records that they gave Mr.
22 Hoftizer, when we were getting ready to file the suit,
23 from LabCorp of America.

24 And they don't send the -- the information back --
25 you know, I read that -- to Spartanburg Regional.

1 They send it -- the account is Taylor, Hicklin,
2 Westmoreland and Couley, 391 East Henry Street
3 (phonetic); not Spartanburg Regional, nothing to do with
4 Spartanburg Hospital.

5 So, these are the records that he got. We went on
6 this, we went on LLR. We went on the Secretary of State
7 website.

8 And we relied on that Secretary of State website
9 public documents and our own experience, Your Honor,
10 going through the records, in forming the opinion that
11 Spartanburg Regional was a charitable hospital.

12 They're all over. And this is getting to be -- this
13 is getting to be sort of the thing that's happening
14 around the state, Your Honor, as -- as you'll see as we
15 go on.

16 Now, Judge, this is Exhibit 1. This is what they
17 gave him (indicating). After Mr. Boulrier got involved in
18 the case, he gave me all of it.

19 This is -- this is not fair, Judge, for them to give
20 Mr. Hoftiezer this, as his mother's chart (indicating),
21 for us to go through to determine whether or not we
22 thought he had a case and give it to experts, when the
23 real chart is this (indicating), Your Honor. This is
24 what Mr. Boulrier sent us, okay?

25 Here's the real chart (indicating). It's in three

1 volumes, okay?

2 Now, there are documents in there that, if we went
3 through there, may give me some cause for concern and --
4 and maybe some notice to dig deeper. But, certainly,
5 there was nothing in what they provided to us.

6 That I submit to you, Judge, whether it's
7 intentional or not intentional -- and I know it happens
8 unintentionally a lot of times.

9 But regardless of whether it was intentional or
10 unintentional, it misled us.

11 Now, as to the Secretary of State, Your Honor, I
12 want to go back to that one more time as to the Secretary
13 of state and this eleemosynary amendment.

14 You'll see in our brief I took the County Council --
15 I took County Council's deposition because that's who I
16 was told could answer my questions about why this says
17 eleemosynary instead of governmental or something to that
18 effect or even just leave eleemosynary off.

19 And I asked him, I said, "Why -- what is this
20 eleemosynary amendment?" He said, "It's not an
21 eleemosynary..." I'm paraphrasing Judge; the exact
22 quotes are in the brief.

23 He said, "It not an eleemosynary amendment." I
24 said, "What about this eleemosynary amendment?" "It's not
25 an eleemosynary amendment."

1 "How about this eleemosynary amendment?" "It's not
2 one." "How about this one?" "It's not one." Okay?

3 So, I said, "Well, why in the world would the
4 Secretary of State have put eleemosynary on here if
5 there's -- if it's not an eleemosynary amendment?" He
6 said, "I have no idea. I don't know. I don't know why
7 they would do that.

8 Here's the problem, Judge: It's the business
9 entity's duty -- it's the business entity's duty to keep
10 this information accurate.

11 If you pulled it up today, it's -- I think I pulled
12 it up yesterday -- even after the deposition, Your Honor,
13 they have still not changed it.

14 So, they have still changed the Secretary of State's
15 -- their own website, the Secretary of State, where
16 they've got all of these eleemosynary amendments written
17 down here and "a non-profit" at the top making it look
18 like a charitable hospital.

19 Now, I shouldn't have to live in Spartanburg. Your
20 Honor, I know this all seems elementary to you because
21 you live here and you've grown up here, went to school
22 here. But I don't live in Spartanburg anymore.

23 And I -- I -- you know, we can't know about all the
24 hospitals. So, we do what we always do. And it's never
25 failed us before except one time in Orangeburg where they

1 started this same sort of I call it a game, Your Honor,
2 because it almost gets to be a sort of a shell game with
3 hospitals buying up the doctors' practices.

4 They're just doing that to bring them under the Tort
5 Claims Act. And I understand that.

6 They're not supposed to make it -- they don't have a
7 duty to make it easy on us, but they do have a duty not
8 to mislead us, Judge, not to give -- to disseminate
9 misinformation or information that might mislead somebody
10 into believing that they're something they're not.

11 Now, the County Attorney even admitted -- and you'll
12 see in my brief he admitted that that eleemosynary
13 amendment written on that sheet, which they have a duty
14 to keep accurate, according to the Secretary of State, he
15 said, "Yeah, I -- I can see where that could be
16 misleading as to being charitable."

17 I mean, he said that; that's under oath in his
18 deposition, Your Honor.

19 Now, Your Honor, this happened to -- this happened.
20 And -- and, Your Honor, I hope you're not offended that
21 I attached another Circuit Court order as an exhibit.
22 But there's no -- there wasn't any appellant law right on
23 point.

24 Judge Williams had run into the same problem -- and
25 I won't name the lawyers because they've very good

1 lawyers in the State of South Carolina -- had sued Dr.
2 Weathers and Nose (phonetic) down in Orangeburg.

3 The only difference really in that case and our case
4 I think is that they -- they -- they had a sign out in
5 front that said, "PA" but this lawyer -- but they had
6 actually been hired by the hospital. They sold their
7 practice to the hospital and went under the Tort Claims
8 Act.

9 Well, the lawyer calendared it for three years
10 because he had seen a sign that said, "Orangeburg
11 Surgical Associates, PA."

12 So, calendared it for three years and, then, he
13 filed it and they called him up and say, "Sorry, we're --
14 they're employees of the hospital; you missed the
15 statute."

16 And Judge Williams went through here, in very -- in
17 very much detail, and applied equitable -- and the
18 patient was living in that case, Your Honor -- equitable
19 tolling and equitable estoppel as for them to assert the
20 statute.

21 Now, Your Honor, what I'm saying is I -- we believe,
22 Judge, it is manifestly -- manifestly unfair for them to
23 have eleemosynary on the Secretary of State, give us a
24 less than complete set of the records when we ask for the
25 complete set of records to review to see whether there

1 was a case at all or not.

2 And also to have nothing anywhere that we could
3 find, including the board -- the medical board,
4 indicating that they're an employee to put somebody on
5 notice that they're on a two-year statute versus a three-
6 year statute, Your Honor.

7 And the main case we rely on, Your Honor, if you'll
8 -- we attached it. We sent this to you I believe; it's
9 case law.

10 If you don't have it, I've got another copy, the
11 *Hooper* case that was decided in two thousand, nine (2009)
12 by the Supreme Court.

13 **THE COURT:** Where would you have given that to me?

14 **MR. FOSTER:** I thought we sent you a stack of law,
15 but, Your Honor, we've got one right here for you.

16 (Documents handed up to the Court.)

17 **MR. FOSTER:** It should be about four or five cases
18 in, Your Honor, *Hooper vs. The Personal Representative of*
19 *the Estate of Robert Clinton* (phonetic).

20 (Off-the-Record Discussion)

21 **THE COURT:** Okay.

22 **MR. FOSTER:** Your Honor, this was a wrongful death
23 action against a nursing home, okay? And what happened
24 was, they had put misinformation on the Secretary of
25 State's website as to the registered agent.

1 And the lawyer was having a really hard time serving
2 because -- if you read through the case, it'll tell you
3 why. And he couldn't -- he couldn't get them served
4 because the registered agent moved or they had changed.

5 And he kept trying to serve them here and they
6 weren't there. But that's who it said on the Secretary
7 of State's website.

8 And the Supreme Court applied equitable tolling in
9 this case, Your Honor. And it -- it was a death case.

10 And I'm just -- I'll just briefly read some of this
11 to you because this is really part and parcel of -- of
12 what we're -- what we're here today for, Judge.

13 It says, "Tolling refers to the suspending or
14 stopping the running of a statute of limitations. It's
15 analogous to clock stopping and, then, restarting.

16 "Tolling may either temporarily suspend the running
17 of the statute of limitations period or delay the start
18 of the statute of limitations period."

19 And it says, "South Carolina law provides for
20 tolling the critical statute in certain circumstances."
21 And, then, it -- it has statutory provisions.

22 And it says, "In addition to these statutory tolling
23 mechanisms..." -- you know, like when a Defendant is
24 absent or something like that -- it says, "In addition to
25 these statutory tolling mechanisms, however, in order to

1 serve the ends of justice or a technical forfeiture would
2 unjustifiably prevent a trial on the merits, the doctrine
3 of equitable tolling may be applied to toll the running
4 of the statute of limitations.

5 "Equitable tolling is an non-statutory tolling
6 theory which suspends a limitation period." To go
7 further, it says, "Equitable tolling is judicially
8 created. It stems from the judiciary's inherent power to
9 formulate rules of procedure where justice demands it.

10 "Where a statute sets a limitation period for
11 action, Courts have invoked the equitable tolling
12 doctrine to suspend or extend the statutory period to
13 ensure fundamental practicality and fairness."

14 And, Judge, that's what we're here asking for today,
15 fundamental fairness and practicality and a trial on the
16 merits. We're not asking Your Honor to enter judgment
17 for us.

18 Mr. Hof -- this was Mr. Hoftiezer's mother, Your
19 Honor. We -- we as lawyers talk about this as charts and
20 patients and -- and documents.

21 This was his mom. And he loved her. And he wants
22 his day in court. And -- and I think fundamental
23 fairness requires that, Your Honor.

24 It says -- it goes further, Your Honor, in -- in
25 this case. It says that -- that you can apply this in a

1 variety of situations.

2 And most importantly it says, "The equitable power
3 of the Court is not bound by cast iron rules that exist
4 to do fairness and it flexible and adaptable to
5 particular exigencies -- exigencies, so, that relief will
6 be granted where in view of all the circumstances to deny
7 -- it would permit one party to suffer a gross wrong at
8 the hands of -- of the other.

9 "Equitable tolling may be applied where it is
10 justified under all circumstances. However, equitable
11 tolling is a doctrine that should be used sparingly and
12 only when the interest of justice compel its use."

13 And I agree with that, Judge; never asked a judge to
14 -- to apply this doctrine before. I've never had to
15 argue this doctrine before.

16 But -- but I submit to you -- and I still have,
17 Judge -- I -- I -- I know I'm running short on your
18 patience and time, but there is so much in here I just
19 wanted to at least briefly mention it, okay?

20 But ---

21 **THE COURT:** Briefly because I -- I think I've got --
22 the next two cases, are they already here?

23 **BAILIFF:** I think so, yes, sir.

24 **THE COURT:** All right. We're already almost thirty
25 (30) minutes long. Are they -- Mr. Bailiff, are they

1 biting at the bit to come in?

2 **BAILIFF:** I think so.

3 **THE COURT:** All right.

4 **BAILIFF:** I'll go check. Just a moment, Your Honor.

5 **(Brief Pause)**

6 **MR. FOSTER:** Could -- Your Honor, could I just
7 mention -- I apologize.

8 **(Brief Pause)**

9 **THE COURT:** All right. Go ahead until he comes back
10 in. What we might do, I might ask you all to take a
11 break and let me get the next case out of the way and,
12 then, come back.

13 **MR. FOSTER:** Okay. Okay. Thank you, Your Honor.

14 **THE COURT:** Go ahead.

15 **MR. FOSTER:** Okay. Where was I? Let's see...

16 **(Brief Pause)**

17 **MR. FOSTER:** At any rate, Your Honor, the trial
18 Court granted summary judgment. That was a -- a Master
19 in Equity granted summary judgement in the *Hooper* case.
20 And it was the -- and I think the Court of Appeals
21 affirmed it.

22 It was the Supreme Court that came out with this
23 opinion. And -- and in 2009 they ruled, the trial Court
24 and -- and the Court of Appeals.

25 And held that equitable tolling should apply in this

1 case and they shouldn't be -- it should be able to apply.

2 Now -- beg the Court's indulgence one moment, Your
3 Honor.

4 (Brief Pause)

5 MR. FOSTER: There's no question, Judge, that we
6 didn't file -- I mean, I wouldn't -- I'm not arguing with
7 him. It's obvious that we didn't file the case in the
8 two years. We could have but we didn't because we had it
9 calendared. (Phonetic)

10 (Brief Pause)

11 MR. FOSTER: I'll -- I'll -- I'll let Your Honor
12 inquire of -- of Counsel.

13 THE COURT: How much longer do you think you have on
14 your argument?

15 MR. FOSTER: Maybe ten, fifteen minutes, Your Honor.

16 THE COURT: Okay.

17 MR. FOSTER: I'm sorry. He took 30. I -- I knew it
18 would take me longer than him. He's got the easy part.

19 THE COURT: Somebody only requested thirty (30)
20 minutes and someone -- and whoever requested it, the
21 other side didn't bother to notice either that it was
22 going to be more.

23 MR. FOSTER: I'm sorry, Judge.

24 THE COURT: All right.

25 MR. FOSTER: He's the one who requested thirty (30)

1 minutes. I'm the one who failed to tell you it -- it
2 would be longer.

3 THE COURT: Okay.

4 MR. BOULIER: I didn't think he had anything to say,
5 Judge.

6 (Laughter)

7 THE COURT: Go ahead.

8 MR. FOSTER: Your Honor, the Supreme Court says as
9 to equitable tolling, "Hooper asserts she was entitled to
10 rely on public records in Ebenezer Fair (phonetic) in the
11 name of a viable registered agent with the South Carolina
12 Secretary of State as required by state law or in her
13 repeated attempts to affect service. (Phonetic)

14 "Hooper asserts, under all the circumstances, it
15 would be inequitable for Ebenezer to be allowed to
16 benefit from his conduct by obtaining -- by obtaining a
17 complete dismissal of her claim. We agree."

18 And, then, they -- they talk about the language that
19 I've read you about how -- talk about what tolling is and
20 how we have it and we do apply it.

21 And it's done to serve the ends of justice when this
22 would prevent a trial on the merits.

23 Your Honor, they made an argument in this case: They
24 say, "Well, he could have -- they could have served him
25 by publication or they could have done this or they could

1 have done that."

2 And the Court said, "Yeah, he could have done
3 that, but that's not what a reasonable person would have
4 done."

5 And -- and we -- what I'm trying to tell you is, we
6 did what we've always done. Unfortunately, until this is
7 resolved, and probably after this is resolved, I've had
8 to take -- I've had to -- I've turned down a lot of cases
9 simply because I've told my staff there is no more three-
10 year statute because -- if this is the way it's going to
11 be.

12 And -- and take this for example, Judge. If -- if
13 this is fair, okay, for them to put eleemosynary, give us
14 less than all of the records, which -- which is just --
15 it's wrong, Judge; that's wrong.

16 And you'll see when you compare the two sets of
17 records.

18 To put eleemosynary on the Secretary of State -- and
19 still not fix it. They still haven't fixed it even after
20 the deposition and they know it's on there wrong.

21 And to have nothing anywhere that would put me on
22 notice that this is a charitable hospital, we think is
23 highly inequitable for them to be able to assert the two-
24 year statute of limitations.

25 Obviously -- like I said, we're not trying to take

1 them out -- out of it, we're just trying to get our day
2 in court, Your Honor, to -- to resolve this on the merits
3 as is -- as is this strong South Carolina Court policy to
4 resolve matters on the merits.

5 And -- and summary judgement would be an improper
6 even if -- if there's a dispute about the inferences to
7 be drawn.

8 Now, Your Honor, Exhibit Number 5 to our -- our
9 docket [sic] is Judge Williams' order if you care to read
10 that. I know it's not binding on you and has no
11 precedential value, but it's the closest thing I could
12 come to anything with a case -- a case on point I mean.

13 Exhibit Number 6 to our deposition, Your Honor, is
14 not things -- I want you to misunderstand this. Exhibit
15 Number 6 has documents in there not that we relied on
16 because I didn't have -- let me tell you what happened.

17 When I filed the notice of intent, Judge, Mr.
18 Boulier called me up and said, "Russ, this is a
19 governmental hospital. You missed the statute."

20 Well, I walked straight out to my car and got into
21 my -- I think -- I think I did it that day -- and drove
22 straight to Spartanburg because I couldn't believe what I
23 was hearing.

24 And I went by the office over there and took
25 pictures. And, if you look at the pictures, this is just

1 -- and it's not what I relied on before, but it just
2 bolsters the fact that how people could be confused about
3 whether they're employees of Spartanburg Regional or not.

4 The side door has Westmoreland, Hicklin, and Couley,
5 Mds. The front door, which is the biggest door on there,
6 has that on there; has nothing about Spartanburg Regional
7 on there.

8 Every door on there has nothing about Spartanburg
9 Regional on there. There's a sign -- after Perry told me
10 there was a sign out by the street, I saw a sign out by
11 the street that says, "Spartanburg Regional."

12 But, you know -- and the sign on our building is
13 carved in stone "Suggs and Kelly" (phonetic). That
14 doesn't mean anybody that works in that building works
15 for Suggs and Kelly since Suggs and Kelly doesn't exist
16 anymore.

17 But I put that in there only -- only for you to see
18 how people can be fooled by this, Your Honor. Included
19 in there, again ---

20 **THE COURT:** But -- but you said you didn't rely on
21 that; is that correct?

22 **MR. FOSTER:** No, sir. But -- but included -- but
23 the only thing -- I'm just showing you what -- how -- how
24 it could be misleading and how other people can be
25 fooled. And no many -- no telling how many people have

1 been fooled by this.

2 **THE COURT:** Well, I'm still scratching my head over
3 the -- the standard that I apply. Do I apply the
4 reasonable lawyer standard or do I apply the reasonable
5 man standard that relates to your client?

6 **MR. FOSTER:** Your Honor, I think it's the reasonable
7 lawyer standard because Mr. Hoftiezer did everything he
8 needed to do.

9 He had it to me in plenty of time for me to decide
10 whether this was a two or three year statute. He brought
11 me the medical records that they provided, which was not
12 all the medical records.

13 I never had all of the medical records -- we thought
14 we had all of the medical records because that was -- he
15 asked for all of the medical records.

16 Mr. Boulrier provided us with three volumes. So, we
17 had way, way -- woefully deficient records. We didn't
18 know it at the time.

19 Plus, the website, plus the LLR. And nothing to
20 indicate otherwise, Your Honor. Once I see eleemosynary
21 on the Secretary of State website as to a hospital, I'm
22 not really concerned whether he's an employee or not
23 because it's three (3) years.

24 So, if I named him and Spartanburg turns -- he turns
25 up to be an employee of the hospital, all I've got to do

1 is substitute the hospital for -- for the doctor, which
2 is what we're asking to do in this case, Your Honor.

3 Now...

4 (Brief Pause)

5 MR. FOSTER: Your Honor, I think, after -- after you
6 read those two cases on equitable tolling and equitable
7 estoppel, ess -- essentially -- does Your Honor need to
8 go on with the other motions and...?

9 THE COURT: Well, I would like for you to get
10 finished. And, then, we will hear anything in reply;
11 take a break and let Mr. Boulrier do his reply and do the
12 other motions.

13 MR. FOSTER: Okay. Thank you, Your Honor.

14 THE COURT: Uh-huh (affirmative).

15 (Brief Pause)

16 MR. FOSTER: Judge, here's -- here's what I -- I
17 meant to say a minute ago and I wanted to tell you on
18 this Secretary of State thing, Judge. And I'm sorry if
19 my voice got a little loud.

20 Judge, if you -- you've got the inherent power to
21 invoke equitable tolling in this case and allow Mr.
22 Hoftiezer and his two sisters to have their day in court.
23 That doesn't mean we're going to win, but it means
24 they're going to get to have their day in court.

25 And -- and what I would submit to the Court is this,

1 Judge: If this is okay to do, if this Secretary of State
2 is okay to do, for that hospital not to make sure that
3 the information is accurate, as the website says they
4 have the duty to do -- and even after it's brought to
5 their attention in a deposition, they still don't change
6 it:

7 Judge, what is to stop any hospital, in any part of
8 this state, from putting on the Secretary of State that
9 they're eleemosynary when they're really governmental.
10 And, then, every time somebody files suit over the two
11 years, they go, "Oops, sorry, you missed the statute.
12 We're governmental."

13 "Well, no, but it says you're eleemosynary on the
14 Secretary..." "Well, you can't rely on that."

15 Now, Judge, that's wrong. That is unfair. And it's
16 wrong.

17 And it's unfair that they give us less than all the
18 medical records for our experts to review. That's wrong,
19 okay?

20 Then, we get three (3) volumes that may or may not
21 have put us on notice that we better double check our
22 status here and see what's going on.

23 We just think all and all, Judge, with a wrongful
24 death Defendant -- I mean, with a wrongful death
25 Plaintiff, a decedent -- she couldn't tell us anything.

1 He's never been to the doctor with her. I've never
2 been to see Dr. Hicklin.

3 We had to go on what we've always had to go on, what
4 a reasonable attorney -- just due diligence. And we
5 think we did do due diligence in this case, Your Honor.

6 When you read -- if you read the -- if you read the
7 whole memo and you look at the exhibits, Your Honor, it's
8 -- it's my point -- I believe you're going to say -- come
9 to the same conclusion.

10 Now, Your Honor, also as exhibits we attached --
11 you're going to wonder why we attached these unless you
12 read the brief really closely. We attached a lot of
13 internet sheets, okay, just to show you if -- how many
14 people have been fooled.

15 You go on all of these different internet face
16 sheets -- and we're not doing it for the truth of the
17 matter asserted, just -- just the fact that it was said.

18 And everything -- you know, what -- what you find is
19 David Hicklin, M.D., and Taylor, Westmoreland, & Hicklin,
20 391 West Henry, Spartanburg, South Carolina, phone
21 number, and the same phone number.

22 Nothing -- none of those -- I mean, there's even an
23 Ask.com here, Your Honor, that I saw the other day.

24 There's an Ask.com that lists Spartanburg Regional
25 Health Services District, Inc. as a private, not-for-

1 profit hospital.

2 So, they fooled Ans -- I'm sorry, Answers.com, not
3 Ask.com. They fooled them too.

4 **THE COURT:** Well, did they look at the Secretary of
5 State's web page?

6 **MR. FOSTER:** Sir?

7 **THE COURT:** Did they look at the Secretary of
8 State's web page?

9 **MR. FOSTER:** I don't know if they looked at it, Your
10 Honor, but they were fooled. And so were all these other
11 internet websites.

12 **THE COURT:** All right. So, you now make an argument
13 that anything that's out on the internet that's about
14 somebody or an organization, that that organization is
15 held to some type of responsibility ---

16 **MR. FOSTER:** No.

17 **THE COURT:** --- concerning that?

18 **MR. FOSTER:** No, sir. I -- I just wanted to bolster
19 the fact that we were misled, okay, and -- and apparently
20 so were a lot of other people.

21 We were misled by the Secretary of State's website,
22 which they had a duty to keep accurate. It says so right
23 on the form.

24 We were misled by the paucity of the medical records
25 that we got, none of which indicate he's an employee or

1 the practice is owned by the hospital.

2 And we were -- and we were misled by -- by his LLR
3 website that has no indication that he works for the
4 hospital, anything other than he's at 120 Haywood Avenue,
5 Suite 200, Spartanburg, South Carolina.

6 Now, Your Honor, on the -- and -- and contained
7 within the brief -- but I won't read the whole -- I'm not
8 trying to read the whole brief to you because hopefully
9 you'll -- you will take the time to do that.

10 But that Exhibit Number 9 is his K-1. And he told
11 me in his deposition that he thinks that's a quasi
12 insurance company and it depends on how many patients he
13 sees.

14 And that says "Health Plus, LLC," a limited
15 liability corporation.

16 And code section 15-78-30 and 15-78-70 both say that
17 if you get any money outside -- from any other source
18 other than the hospital, or an approved practice plan by
19 the hospital, then, you're not entitled to the protection
20 under the Tort Claims Act.

21 That's what I told you that -- that one little pin
22 dot, that one little asterisk when you said you're not
23 trying to take him out of the Tort Claims Act.

24 But we would certainly -- we would certainly give
25 that up, in return for our day in court, Your Honor,

1 under the Tort Claims Act.

2 Now, the last exhibit, Your Honor, is his deposition
3 in regard to that K-1. So, you -- you can see exactly
4 what he said as to that.

5 And, if you'll beg -- if I can beg your indulgence
6 one moment, I'll try to finish up, okay?

7 **THE COURT:** You need to hurry because you've already
8 gone over the ten to fifteen minutes that you asked for
9 before.

10 **MR. FOSTER:** Yes, sir.

11 **THE COURT:** And I will read everything before I make
12 a decision.

13 (Brief Pause)

14 **MR. FOSTER:** Oh, Your Honor, I just wanted to
15 address one thing that -- that -- that -- and -- and I
16 may have already done this -- that Mr. Boulrier said about
17 the fact that we put "PA" after the name.

18 I think my paralegal always put something after the
19 name because, like I told you, if it's wrong later and
20 they're employees, all we have to do is substitute.

21 So, that's -- that's not really that concerning to
22 us. We just want to make it clear that we're trying to
23 get the individual physician and the practice.

24 But, Your Honor, again -- and I'll -- and I'll sit
25 down after this: What we're asking you to do in this --

1 and I -- I know it's discretionary with Your Honor, but
2 what we're asking you to do is what we believe is the
3 fair thing to do.

4 We think what was done to us was unfair as far as
5 evaluating this case and being able to determine what
6 type of hospital this was, although I know the knee jerk
7 (phonetic) is up here; everybody seems to know.

8 We don't know that all over the state. We're asking
9 you to toll the statute of limitations equitably in your
10 equitable jurisdiction and/or to assert equitable
11 estoppel against the Defendants to assert the statute of
12 limitations based on the -- the miss -- the
13 misinformation, misrepresentation, whatever you want to
14 call it, on the Secretary of State's website;

15 The misrepresentation that the medical records that
16 we reviewed and had our experts to review to decide
17 whether to file a claim or not were woefully lacking.
18 And -- and in particular, Judge, lacked some documents
19 that had "Spartanburg Regional" heading on them.

20 And that this letterhead and all of these envelopes
21 that they say they sent to Ms. Hoftiezer, that -- that
22 does us no good with her being deceased, Your Honor.
23 Unfortunately, we couldn't discuss it with her.

24 And the only other thing I would say; they -- they
25 put in an exhibit and they said, "If we had sent her a

1 bill, here's what it would look like," and they put a
2 sample bill in there and marked out the name of the
3 patient.

4 And I wonder why they didn't send a real bill of Ms.
5 Hoftiezer; why they didn't attach one of those if -- if
6 the same was attached.

7 But we think based on all of the above, Your Honor,
8 and the case law that we've handed up and provided, that
9 Mr. Hoftiezer and his two sisters are entitled at least
10 to have this case decided on its merits and decide
11 whether or not Dr. Hicklin did anything wrong.

12 And we will be done. Your Honor, I appreciate you
13 listening.

14 **THE COURT:** All right, just one -- one quick
15 question, then, we'll -- we're going to need to take a
16 break.

17 The tax document that -- that was provided by Dr.
18 Hicklin, when was that provided?

19 **MR. FOSTER:** That was provided during discovery,
20 Your Honor. Mr. Boulrier and I agreed just to -- to do
21 discovery just on the statute issue.

22 And he provided me with the tax -- his tax return,
23 which had a K-1 on it, which shows that income. And he
24 -- and I said, "Well, do you know what year," because it
25 was all mixed up.

1 THE COURT: All I needed to know was when.

2 MR. FOSTER: All right.

3 THE COURT: All right. Let's take a break. Let's
4 see if we have three o'clock (3:00) or a three-thirty
5 (3:30)?

6 (Off-the-Record Comments)

7 (Whereupon, the proceeding was adjourned while other
8 matters were heard and, then, reconvened.)

9 THE COURT: All right. If I understand Mr.
10 Foster's position correctly, he wants me to apply a
11 standard that views it from a reasonable lawyer standard
12 or the -- what -- what the lawyer knew or did not know.
13 And -- and view that in relation to the equitable --
14 the two equitable doctrines that he is wishing me to
15 apply.

16 I -- I am -- if I understand your argument correctly
17 and -- and my questions to you and -- and correct me if
18 -- if I am wrong -- I do not believe that I could apply
19 those doctrines that you wish for me to apply to Dr.
20 Hicklin, Doctors Taylor, Hicklin, Westmoreland, and
21 Coley, PA, to alter the terms of the Tort Claims Act to
22 create liability where there would be no liability.

23 So, I don't believe -- I believe that it's proper to
24 remove Dr. Hicklin and -- and doctor -- and, then, that
25 firm, Taylor, Hicklin, Westmoreland, and Coley;

1 That they get removed regardless of the summary
2 judgement -- I mean, regardless of the statute of
3 limitations argument.

4 The statute of limitations argument only goes to
5 Spartanburg Regional Healthcare District d/b/a
6 Spartanburg Regional Healthcare System.

7 Now, I also believe there was -- in Mr. Boulier's
8 motion, there was an argument for -- that related to
9 punitive damages.

10 He didn't argue it, but I did not -- punitive
11 damages would also come out if that was in there because
12 that was -- that falls under the Tort Claims Act.

13 Your equitable argument is simply for application
14 either extending or tolling this -- the -- the Tort
15 Claims Act statute.

16 All right. So, I guess if -- I only need for you to
17 address that -- those equitable arguments.

18 **MR. BOULIER:** Yes, sir, I will. And I'll -- I'll be
19 as brief as I'm capable of -- of being, Your Honor.

20 **(Brief Pause)**

21 **MR. BOULIER:** I think, with all due respect, the
22 standard that -- that governs this is what the reasonable
23 person.

24 And -- and if Counsel is saying he's acting as an
25 agent of -- of the personal representative, so be it.

1 But I think the question here is what would a reasonable
2 person have been on notice of?

3 And -- and I think it's important and I think the
4 law is very clear that a personal representative stands
5 in the shoes of the decedent. So, I think all of the
6 information we supplied to the Court on that issue is
7 extremely pertinent.

8 We've provided you with a picture of the sign that
9 was in front of the office at the time of the care in
10 question.

11 And -- and, so, I think you -- you got to analyze it
12 in terms of a reasonable person aware of all of these
13 facts; would they have been on notice that -- that Dr.
14 Hicklin was part of Spartanburg Regional Healthcare
15 System?

16 And, again, the very document the Plaintiff filled
17 out in this case to ask for the records in August of two
18 thousand, six (2006) said "Spartanburg Regional
19 Healthcare System" at the top of it.

20 So, that's -- that's notice from the get go. And,
21 then, when you consider -- and also -- and that would put
22 a reasonable person on notice that I better consider
23 Spartanburg Regional Healthcare System's role in this
24 doctor's practice.

25 And that would put you on notice to look at all

1 these other things.

2 And at the same -- on the same date, when that form
3 was filled out, with Spartanburg Regional Healthcare
4 System at the top, the sign that we've attached a picture
5 of, as part of Dr. Hicklin's affidavit, was sitting in
6 front of their office on that day.

7 So -- and I think Counsel was very candid when he
8 drove up and saw the sign that's out there now. And he
9 couldn't possibly have relied on that; the sign in place
10 was there the same day they -- they requested the
11 records.

12 So, there was plenty of evidence at the time the
13 records were requested that would put a reasonable person
14 on notice that Dr. Hicklin was part of Spartanburg
15 Regional Healthcare System, number one.

16 And number two, with regard to the medical records,
17 Your Honor, with all due respect, I have to object to
18 this issue to this extent: The first time that -- that
19 we were -- that -- that this issue was raised with us was
20 -- was today when -- when we got the brief.

21 And I -- I absolutely accept Counsel's
22 representation that he intended to give me the brief
23 yesterday. I'm not in any way implying that -- that he
24 tried to sandbag me on that.

25 But the reality is with no affidavit before the

1 Court, on this medical record issue, I'm -- I'm frankly
2 standing here with no way to really respond to that
3 because I know for a fact, having represented medical
4 facilities and doctors' offices for years, someone who
5 has been a patient of the practice since 1984, which I
6 think is the case with Ms. Hoftiezer, you can have
7 several binders of records.

8 And -- and -- and they may have some of them in
9 storage. I -- I frankly don't know what happened with
10 that, Your Honor.

11 But I would -- I would submit this: Number one, if
12 that's going to be a lynchpin of the Court's decision, I
13 -- I would appreciate if the Court would give us the
14 opportunity to respond to that.

15 And number two I -- I think, with all due respect,
16 it's a red herring when you consider all of the other
17 evidence before the Court.

18 And -- and the final thing I want to address is the
19 whole issue with this website and the Hooper case.

20 Now, let me talk about the Hooper case first. And
21 it's -- it's kind of ironic because this -- this action
22 -- the -- the summons and complaint in this action, if my
23 memory serves me correct, was -- was filed in November of
24 two thousand, nine (2009), or late October of two
25 thousand, nine (2009).

1 The Hooper decision was issued in December of two
2 thousand, nine (2009). By that point, I had, had many
3 discussion with Counsel. I knew the issues we were going
4 to face in this case.

5 And I remember when the Hooper case came out. It
6 was one of those rare times I actually tried to read the
7 advance sheets.

8 And I remember looking at the Hooper case thinking,
9 "Well this is going to discuss the issues in our case."

10 And, Your Honor, I can tell you, if you read the
11 Hooper case closely, I think you'll be fully satisfied it
12 has absolutely no application to the facts of this case
13 for this reason:

14 In the Hooper case, Plaintiff's counsel went to the
15 Secretary of State. They got the name of the registered
16 agent who was on record with the Secretary of State, like
17 any plaintiff's attorney would do or any...

18 **(Off-the-Record Discussion)**

19 **(Brief Pause)**

20 **THE COURT:** Yes, sir?

21 **MR. BOULIER:** Okay. The registered agent that --
22 that was on record with the Secretary of State couldn't
23 be found anymore.

24 And the plaintiff's counsel in that case looked
25 diligently and they never could find anybody to serve the

1 papers on.

2 And the -- the argument that the nursing home was
3 making in that case was, "Well, you should have looked
4 harder. You should have gone to other methods."

5 That's fundamentally different than this case, your
6 Honor. The -- the elephant in the room on this issue is
7 this: Spartanburg Regional can't be held liable for what
8 the Secretary of State puts on its website.

9 We have no control over the Secretary of State's
10 website. We filed the correct documents with the
11 Secretary of State.

12 If the Secretary of State screwed up, and they put
13 on this piece of paper or -- or they put on this screen
14 shot on their website that Spartanburg Regional was a
15 for-profit hospital, are we now going to throw everything
16 out and say Spartanburg Regional doesn't get any
17 protection?

18 You know, the fact of the matter is the records are
19 accessible. The layout of -- of this screen shot is like
20 an index.

21 If you go to the RMC (phonetic) Office, you get an
22 index, but you have to look at the documents. And, with
23 all due respect, Your Honor, that's the mistake in this
24 case;

25 That's the elephant in the room. The documents were

1 on file.

2 And -- and you've got to go beyond. That's why the
3 disclaimer is at the bottom of this website.

4 And when it talks about updating the Secretary of
5 State, what it's talking about there, Your Honor, just
6 like the *Hooper* case.

7 If we change our registered agent or we decide we no
8 longer want to be a governmental entity, we've got to
9 file the correct papers with the Secretary of State's
10 website, so, that those are on file with the Secretary of
11 State, so, that the public can go to the Secretary of
12 State and get the actual document to see what the -- what
13 the entity is.

14 It's not based on this screen shot, Your Honor. And
15 -- and -- and that's the fundamental problem.

16 The argument -- and -- and counsel was candid with
17 the Court. He looked at that screen shot before he filed
18 this action.

19 And, so, the reality is here, Your Honor, that
20 everything -- there -- there was abundant notice of Dr.
21 Hicklin's affiliation with the hospital.

22 So -- and I agree with you that equitable tolling
23 has to -- that's an issue for the hospital. And -- and
24 there was abundant evidence that they put out there that
25 he was affiliated with them that would put the reasonable

1 person on notice that you have to bring Spartanburg
2 Regional into this case.

3 It was on the piece of paper that the Plaintiff
4 signed to get the records. It was out in front of their
5 office. And, if you go to the Secretary of State and you
6 get the documents, it's crystal clear in there what we
7 are.

8 And -- and so -- again, I -- I don't like making
9 this argument. And -- and Mr. Foster is a fantastic
10 lawyer.

11 But the reality is here, unfortunately -- and I
12 agree we all want our day in court, but the law and the
13 statute of limitations is very clear. And -- and
14 unfortunately we're in one of those situations where it
15 was missed.

16 There's not a legitimate basis here to toll it. And
17 -- and, with all due respect, the only appropriate remedy
18 here, based on the law, based on the statute, and based
19 on the evidence in front of the Court, is that this case
20 has to be dismissed by summary judgment.

21 **MR. FOSTER:** Briefly, Your Honor?

22 **THE COURT:** Briefly.

23 **MR. FOSTER:** Your Honor, in -- in all -- in all
24 fairness to Mr. Boulrier, I -- he asked me did I plan on
25 filing an affidavit by Mr. Hoftiezer. And I told him no,

1 but I did know that this issue was going to be argued
2 that he saw the sign.

3 Do you have any objection to me saying how these
4 records were procured and, then, perhaps -- Perry?

5 **MR. BOULIER:** Your -- Your Honor, my -- my only
6 concern is, again, my understanding was affidavits would
7 -- would be provided.

8 And the -- the affidavits we filed with the
9 information about the sign and whatnot because -- I -- I
10 have no objection to -- to Mr. Foster making the Court
11 aware. I just think we need to be on the record on -- on
12 our position. That's -- that's all.

13 **MR. FOSTER:** Well, I only ask because I didn't file
14 any affidavit about what their mom -- and he doesn't know
15 what his mom knew. But he got the records -- he didn't go
16 to the office to get the records.

17 He called and they said, "You got to call the record
18 producing company." And he called them and they said --
19 and they said, "Well..." And he said, "Well, I need them
20 quickly."

21 And they said, "Well, tomorrow we're going to be at
22 such and such a place." And he went and got the records.

23 Now, Your Honor, I think the elephant in the room
24 and the keys to the estoppel -- equitable tolling or
25 equitable estoppel or both is the miss -- is the

1 misleading, Your Honor.

2 The production by those doctors or Spartanburg
3 Regional, whoever -- and -- and I'm still not sure who is
4 responsible for it because we haven't gotten into the
5 merits of this case -- producing only that little stack
6 of records versus Mr. Boulrier who got all the records and
7 produced three volumes, which may or may not have put
8 either Mr. Hoftiezer or myself on notice that we should
9 dig deeper. But we weren't given those.

10 And -- and, as far as the Secretary of -- of the
11 State website, Your Honor, the -- the *Hooper* case says
12 that you're -- that -- that a lawyer is entitled to rely
13 -- the public is entitled to rely on those documents.

14 And nobody has ever I bet, in the history of the
15 world, gone down to the Secretary of State's office and
16 told them to pull the amendment to look at it before --
17 before they filed suit.

18 I mean, the *Hooper* case says you're -- that -- that
19 you're entitled to rely on those public documents. And
20 the Secretary of State says itself on the paper.

21 The disclaimer is saying, "If you rely on this
22 accuracy, you do it at your own risk. You can't come
23 back at us.

24 "But it is the duty of the business entity to keep
25 these accurate and correct," which they did not do.

1 And it's misleading, Judge. It's unfair and it's wrong.

2 And even, after they knew that, they didn't fix it.

3 **THE COURT:** But I'm not hearing -- and correct me if
4 I'm wrong -- if -- if you all know that this happened --
5 I'm not hearing that it was the Regional Medical Center
6 that made the representation to the Secretary of State's
7 office that they were an eleemosynary corporation at the
8 time.

9 I'm hearing that it was the Secretary of State's
10 office who, for whatever reason, put on the web -- their
11 web page that Spartanburg Regional was eleemosynary.

12 Now is that -- do I hear that -- is that correct?

13 **MR. FOSTER:** Yes, sir, yes, sir. But, then, they
14 have -- Spartanburg would have a duty, if it's incorrect.
15 It says so on the page.

16 They have a duty to make sure that the information
17 on there is accurate and to update it. And they did not
18 do that.

19 And they still haven't done that, even after they
20 know now that it is on there as -- after the county
21 attorney admitted to me, "Yeah, I think that could be
22 misleading," they still haven't corrected it.

23 And -- and -- and that's just wrong. I mean, I -- I
24 think we did -- we did the due diligence.

25 And, Your Honor, as -- as far as the standard goes,

1 if the Court believes -- and that's fine with me -- that
2 -- that Mr. Hoftiezer -- if -- if we go by a reasonable
3 man standard on this, certainly that would be less than
4 my standard.

5 He -- or I -- I asked him to get -- as -- as -- as
6 you would any client, to get the records, let's review
7 the records and see if anything in this case and see if
8 it's worth sending to the experts to look at. And there
9 was certainly nothing.

10 Now, this -- this form that Mr. Boulrier keeps
11 talking about that he signed to get the records, it may
12 have said that at the top and -- and have his signature
13 at the bottom, but those weren't sent back with him.

14 He never -- he never got a copy of that. That was
15 not in our stack what they gave him.

16 Our stack is attached in -- in -- and, if I need to
17 submit an affidavit, Your Honor, I would just ask for
18 leave to do that, but on my oath as an officer of this
19 Court, those are the records that were provided to him
20 and, then, to us.

21 And we provided them to Mr. Boulrier. And, then, he
22 provided us three volumes of records.

23 So, there were two wrongs in this case; one -- one
24 in the production of the records and two in the
25 misleading information on the Secretary of State's

1 website, which they had a duty to do.

2 And I think that, when Your Honor looks at the
3 totality of everything and all of the exhibits, Your
4 Honor, I mean, this case cries out for equitable tolling.

5 I -- I mean, it would be a travesty of justice, when
6 this case was ready to go, with our foot down on the
7 fires.

8 It could have easily been filed within two years had
9 there been any indicia in these medical records, the
10 Secretary of State's website, the LLR website on Dr.
11 Hicklin, that he was an employee of Spartanburg; that we
12 -- it could have been filed within two years.

13 And, Your Honor, as far as the statute of
14 limitations and the reason for the statute of
15 limitations, about witnesses being in the state and all
16 of that, none of that applies here.

17 Every -- you know, Ms. Hoftiezer is the only one
18 that died. All of them -- Dr. Hicklin is still here.
19 All the witnesses are still here.

20 All the records are still here. So, there's no
21 legal prejudice to them.

22 And we just believe that, when the Court considers
23 everything in totality, as -- as a whole, and looks at
24 everything, that you will agree that, that this -- this
25 is a case for equitable tolling, as was *Hooper* and as was

1 Judge Williams' order in the case against Orangeburg
2 Surgical Associates down there.

3 But, Judge, if -- if you would like -- if -- if the
4 Court has any doubt about that, we would ask for leave to
5 submit affidavits, if -- if -- if that's what you would
6 like to see, but we -- we -- we just think that this --
7 this -- this is the kind of scenario equitable tolling --
8 the doctrine of equitable tolling was created for.

9 That's what the Supreme Court said and I believe it.

10 **THE COURT:** All right.

11 **(Brief Pause)**

12 **THE COURT:** Mr. Boulrier, I -- I couldn't tell you
13 whether I would approach the -- that issue of the medical
14 records as minuscule or -- or it would be something that
15 would burst the dam.

16 So, if you want to send something in on the medical
17 records issue, you can because I don't know how
18 significant it -- it will be at this juncture.

19 I will take the medical records that you've given me
20 with the statements of Counsel as -- I don't think I need
21 another affidavit on that if -- if what you've told me is
22 what would be contained in those affidavits because they
23 were -- Mr. Boulrier is not contesting those
24 representations, so...

25 **MR. FOSTER:** It is, Your Honor. I consider myself

1 under oath any time I stand up and -- and make a
2 statement to the Court.

3 **THE COURT:** All right.

4 **MR. BOULIER:** And I understand the Court's
5 predicament on that issue. And -- and I think I'm on the
6 record.

7 One -- the one thing I would add, Your Honor, in
8 terms of the -- the production of the records and what I
9 discovered when I got involved -- Mr. Foster and I got
10 involved in discovery is, in -- in terms of the -- the
11 comment to the Court that there were three volumes of
12 records.

13 And what -- what happened was Ms. Hoftiezer had been
14 a patient of the practice since 1984. And there were
15 some records that were in storage that we had to go find.

16 And I -- and, again, I don't have a clue what
17 happened when they were produced in response to the
18 release of records.

19 I don't know if somebody went and just got the
20 volume that -- that was out there at that point.

21 And -- and that's my only comment. I haven't had an
22 opportunity to explore that.

23 Again, here today my position would be I don't think
24 it matters.

25 **THE COURT:** And it may not.

1 MR. BOULIER: So...

2 THE COURT: Okay. All right. Thank you all very
3 much.

4 MR. FOSTER: Your Honor, could I just put one thing
5 to make sure that you got ---

6 THE COURT: You need to make it quick because ---

7 MR. FOSTER: This won't take but a second.

8 THE COURT: --- I've got a conference call on hold
9 already.

10 MR. FOSTER: Okay. One -- one sentence: He had
11 mentioned that we had put in our -- in our complaint --
12 we knew about Spartanburg because we put it in our
13 complaint.

14 That was -- that was -- I -- I think he -- there was
15 some confusion there. We did not put them in our notice
16 of intent that we filed.

17 We just -- when Mr. Boulrier called me up and said,
18 "Russ, this is Perry. You missed it." We later, in the
19 complaint that was filed, after he told me that, we did.

20 I just wanted you to know when we knew about that
21 because otherwise there was certainly no indicia for him
22 or me -- for Mr. Hoftiezer or me to -- to have known that
23 the hospital was involved in it.

24 THE COURT: Okay.

25 MR. FOSTER: Thank you, Your Honor.

CERTIFICATION

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1 **MR. BOULIER:** Thank you, Judge.

2 **(Whereupon, the proceeding concluded at 4:59 p.m.)**

3 **REPORTER'S CERTIFICATE**

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 77, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

December 21, 2011

Handwritten signature of Pamela S. Faucette in cursive script, followed by the date 12/27/11.

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

Dr. Mark Hicklin (Direct)
Examination by Mr. Foster

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1 follows -- is grouped with the others that it's
2 2004, but that's an assumption, I suppose, because
3 there's no date on that piece of paper.

4 Q. And here's what I'm really trying to drive
5 at at the moment, and then we can possibly track
6 that down when Mr. Boulier gets together full tax
7 returns and takes a look at them. Do you see the
8 Regional HealthPlus, LLC, on there?

9 A. I do.

10 Q. Now, to me this indicates that you
11 received a K-1 from them. Is that correct? Or
12 does your wife?

13 A. No. It would be to me. I received income
14 from Regional HealthPlus.

15 Q. Let me just back up and ask you this so it
16 will be clear on the record.

17 You are married, are you not?

18 A. Yes.

19 Q. Does your wife work outside the home?

20 A. No.

21 Q. So any income on your joint income tax
22 returns would be income you generated?

23 A. Yes.

24 Q. Now, can you tell me -- we have the -- and
25 I'm certain on your copy it's blacked out too, the

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1 amount that you were paid by Regional HealthPlus,
2 LLC, but could you tell me what that is and what
3 they paid you for?

4 A. My understanding is that Regional
5 HealthPlus is basically like an insurance company,
6 and when it was formulated, local doctors had the
7 opportunity to invest in it, and I did that, and so
8 I own shares in that company, and there's a
9 distribution annually. That's what that
10 represents.

11 Q. How about Teppco Partners, LP, what is
12 that?

13 A. That's just a stock in an energy-type
14 corporation that I own. I'm sorry, what page is
15 that? I lost it.

16 MR. BOULIER: 61.

17 BY MR. FOSTER:

18 Q. 61.

19 A. I think that's basically a dividend on a
20 stock.

21 MR. FOSTER: Perry, can you help me with
22 this just for one second? This is a supplement to
23 Schedule E, and I'm not sure what Schedule E is.
24 Is there a Schedule E in here?

25 MR. BOULIER: I don't think so. What I

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1 A. No.

2 Q. Just one more thing on that HealthPlus.

3 Do you get money every year from HealthPlus?

4 A. Yes.

5 Q. Is it the same amount every year?

6 A. No, it's variable.

7 Q. Variable amounts?

8 A. Uh-huh.

9 Q. Until we talk to your accountant, you're
10 not exactly sure how they base it or what it's for
11 or --

12 A. Well, it is based on how many patients
13 that I take care of that are under that plan and
14 how the overall plan performs. I believe those are
15 the determinants. So it varies every year.

16 Q. Let me read you a description and see if
17 this rings any -- and I'm not trying to hide this
18 from you. This is something that I found on the
19 internet, but it says that -- here's you a copy.
20 And I know you didn't write this. That's why I'm
21 not making an exhibit out of this, you didn't
22 create this.

23 But it says, Regional HealthPlus, also
24 referred to as RHP, is a network of hospitals and
25 physicians that contracts with health care payors

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1 including managed care companies, third-party
2 administrators and self-insured employers.

3 By working in partnership and focusing on
4 putting the needs of patients first, Regional
5 HealthPlus has forged new ground in redefining the
6 way health care is delivered. Regional Health Care
7 Plus offers to its providers contract negotiations,
8 medical management, claims management and more.

9 Regional HealthPlus offers its patients
10 quality health care services from local physicians
11 and hospitals, integrated cost-effective approaches
12 to health care and innovative approaches to medical
13 management resulting in ongoing improvements in
14 effective clinical treatments and cost containment.

15 Do they refer patients to you from time to
16 time? Would that be why it's based on the number
17 of patients that you see, or do you know?

18 A. I don't know. I think -- I really -- I
19 don't know that answer.

20 Q. Fair enough. If you don't know, you don't
21 know.

22 But it is based on -- you said it is based
23 on the number of patients, the amount, that you
24 see?

25 A. Uh-huh, I think so.

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1 Q. And it's your understanding that there is
2 no, quote, practice plan for you guys, correct?

3 A. That is correct. Maybe explain what
4 you're talking about, because I --

5 Q. Well, the South Carolina Code refers to a
6 practice plan, and I just wondered if you had a
7 practice plan in effect in 2006.

8 MR. BOULIER: Let me say, Russ, in fair --
9 I'm not aware of any practice plan that existed for
10 Dr. Hicklin's group as defined by Section 15-78-70.
11 Fair enough?

12 MR. FOSTER: Fair enough.

13 MR. BOULIER: I think that term means
14 something to you and probably a different thing to
15 Dr. Hicklin.

16 MR. FOSTER: I think it probably does too.

17 MR. BOULIER: I'm not real sure what it
18 means in the code, but --

19 BY MR. FOSTER:

20 Q. Dr. Hicklin, I'll ask you so I can get
21 there more quickly, are prescriptions under a
22 certain tab in your chart?

23 A. Well, they're mentioned at the -- they
24 should be mentioned at the end of the plan in the
25 encounter note for a given visit. But call-in

1 A. To our centralized billing group,
2 Physician's Billing Service.

3 Q. How can we tell where this check went?

4 A. I can't from this document.

5 Q. Do some of the insurance checks go back to
6 the office and they deposit them?

7 A. No, sir.

8 Q. No insurance checks go to the office?

9 A. They go to our centralized billing
10 service, to a lockbox.

11 Q. Now, is there anywhere on here to indicate
12 that to a patient?

13 A. Indicate what?

14 Q. To indicate that this check would have
15 been remitted to Spartanburg Regional versus
16 Westmoreland and Hicklin?

17 A. Not that I'm aware of.

18 Q. Or anybody looking at it afterwards like
19 we're looking at it today, there's nothing in here
20 that indicates that it would go to central billing
21 at Spartanburg Regional, is there?

22 A. Not from this document.

23 Q. Now, we were talking about the structure.
24 Have you ever heard of Regional HealthPlus, LLC?

25 A. Yes.

1 Q. Can you tell me what Regional HealthPlus,
2 LLC, is?

3 A. Regional HealthPlus, LLC, is a contracting
4 group that has -- that it represents both employed
5 as well as independent physicians in the community
6 that deals with insurance carriers to contract for
7 a negotiated rate. As far as where it falls in the
8 corporate structure, I don't know.

9 Q. Is it part of the corporate structure of
10 the District?

11 A. Spartanburg District has some tie to it.
12 I don't know the details behind that.

13 Q. Do you know who would?

14 A. I don't know if Mr. Haskell would or not.

15 Q. And besides being the registered agent for
16 HealthPlus, Regional HealthPlus, Ingo Angermeier
17 is?

18 A. He is the president, CEO of Spartanburg
19 Regional Health Services District.

20 (DEPO. EXH. 4, Two-Page Document, was
21 marked for identification.)

22 BY MR. FOSTER:

23 Q. I'm going to show you what's been marked
24 as Exhibit Number 4, Mr. McCain, and ask you if
25 that's what looks like the Regional HealthPlus we

1 were just talking about?

2 A. Yes, that looks like the same Regional
3 HealthPlus.

4 Q. Let me read you a description I pulled off
5 the internet. I know you didn't generate this, and
6 I don't know who it was generated by. It was
7 generated by regionalhealthplus.com. So it was
8 generated by them.

9 But you say -- if I'm understanding you
10 correctly, you say somehow this is tied into the
11 corporate structure of the District?

12 A. As far as I know.

13 Q. I'm going to read you this description,
14 and see if you can help me out with this. Regional
15 HealthPlus, also referred to as RHP, is a network
16 of hospitals and physicians that contracts with
17 health care payors including managed care
18 companies, third-party administrators and
19 self-insured employers.

20 By working in partnership and focusing on
21 putting the needs of patients first, Regional
22 HealthPlus has forged new ground in redefining the
23 way health care is delivered. Regional HealthPlus
24 offers to its providers contract negotiations,
25 medical management, claims management, and more.

1 Regional HealthPlus offers its patients
2 quality health care services from local physicians
3 and hospitals, integrated cost-effective approaches
4 to health care and innovative approaches to medical
5 management resulting in ongoing improvements in
6 effective clinical treatments and cost containment.

7 Does that help you at all in any way to be
8 able to tell me how they fit into this whole scheme
9 of things?

10 A. I don't know how it would change what I
11 said earlier. I mean, it sounds similar.

12 Q. And let me ask you -- let me tell you
13 where I'm going with this. Down here it sounds as
14 though they have patients, okay. It says our --
15 Regional HealthPlus offers its patients. So do you
16 have any idea what sort of patients?

17 A. To my knowledge, they don't have patients
18 in the sense of a physician practice.

19 Q. Do they refer to the physicians? Let me
20 represent to you that Dr. Hicklin testified in his
21 deposition, and we have documents, that he received
22 income from HealthPlus on a K-1, okay? He was
23 under -- he is under the impression that it's
24 from -- that he had bought stock or it was some
25 sort of dividend or something, but he also

1 indicated to me that it depended on the number of
2 patients that he saw. Am I misquoting that?

3 MR. BOULIER: I think that's close, but
4 Mid can maybe address how the payments are made.

5 BY MR. FOSTER:

6 Q. I mean, I can't get verbatim with it
7 because I don't have it in front of me. We can ask
8 her to go back and read it, but it's going to take
9 a long -- but something to that effect. And what
10 I'm curious about is how this all -- does that help
11 any?

12 A. It does. Part of the contracting that
13 Regional HealthPlus does with the insurance
14 carriers, there is a withhold, a percentage
15 withhold. There is an administrative portion and a
16 quality portion.

17 The quality portion comes back to the
18 practice which is, in this particular case,
19 Spartanburg Regional, Westmoreland, Hicklin and
20 Coley, but it would come back to Spartanburg
21 Regional.

22 Q. Explain that to me in more detail, would
23 you? I'm sorry. I kind of got lost there when you
24 were saying that.

25 A. There is a -- for the payments that come 199

1 back and are processed, there is a withhold that
2 Regional HealthPlus has.

3 Q. What is a withhold?

4 A. Withhold is money withheld back. So if
5 there was to be a hundred dollar reimbursement on a
6 particular charge, then a portion of that would be
7 held back by Regional HealthPlus, and then at the
8 end of the year, they determine if you met the
9 quality indicators as specified due to the
10 contracting terms with the insurance carrier, but
11 there is also an administrative portion that is not
12 returned. That is just for them doing business and
13 negotiating those contracts on your practice's
14 behalf.

15 Q. Are they paying -- like there's a hundred
16 dollar charge for a patient to Dr. Hicklin, for
17 example. Are they paying that claim -- I mean that
18 bill?

19 A. The practice would pay that withhold
20 percent to Regional HealthPlus, and then Regional
21 HealthPlus holds it until the end of the year. And
22 I don't know what their year is, calendar or other
23 fiscal year. And then if they met the criteria,
24 then monies are returned back, if they met certain
25 quality metrics.

1 Q. So for each patient they would withhold a
2 certain amount?

3 A. On the contracted plans that Regional
4 HealthPlus has contracted with.

5 Q. And they have contracted with
6 Drs. Westmoreland, Taylor and Hicklin, correct?

7 A. Let me clarify. The practice by being a
8 member of Regional HealthPlus can partake in
9 contracts with BlueCross BlueShield, Aetna, CIGNA,
10 et cetera. When payments are returned back to the
11 practice, then a portion of those payments are
12 forwarded to Regional HealthPlus as a withhold
13 until that future date when they determine if
14 quality metrics have been made and then you would
15 get that portion back, but there is an
16 administrative portion that is not returned.

17 Q. But it's for each patient that they see?

18 A. It's based off of the claims that are
19 generated.

20 Q. Here's what I'm trying to get at. For
21 example, let's take this EOB. Let's take Exhibit 3
22 for example, okay?

23 A. Okay.

24 Q. HealthPlus would have withheld a certain
25 portion of the charge or the copayment that

1 Ms. Hoftiezer paid?

2 A. If this was a contract that Regional
3 HealthPlus has.

4 Q. What do you mean by if this was a
5 contract?

6 A. If Regional HealthPlus did not do the
7 contract with BlueCross on the practice's behalf,
8 then no, this would have gone straight to our
9 centralized billing company in its entirety. There
10 would be no withhold.

11 Q. And if BlueCross BlueShield of North
12 Carolina is part of -- if they've got them -- if
13 HealthPlus has them signed up, then it would be for
14 each patient -- then they would have withheld a
15 portion of Ms. Hoftiezer's?

16 A. When the payment came back, then we would
17 have sent money to Regional HealthPlus as that
18 withhold portion.

19 Q. And then HealthPlus would then pay
20 Dr. Hicklin?

21 A. Well, the practice gets the withhold back
22 for quality, and since that practice is in the
23 ownership of Spartanburg Regional, it would come
24 back to Spartanburg Regional in the practice's
25 name. Dr. Hicklin as a stockholder would receive

1 any monies that Regional HealthPlus generates based
2 off their administrative fees.

3 Q. I'm still -- and I'm going to struggle
4 through this with you, okay? I'm just using this
5 one for example.

6 A. Okay.

7 Q. Assuming for the purposes of my question
8 that BlueCross BlueShield of North Carolina is
9 contracted with HealthPlus, they would then take a
10 portion -- they would withhold a portion of every
11 patient's bill, correct, what's collected from the
12 patient and/or the insurer, correct?

13 A. Correct.

14 Q. Then if the practice and in this instance
15 Dr. Hicklin, if the practice met certain criteria,
16 then they would pay them that portion that they
17 withheld out of her payment from the insurance
18 company and her copay, whatever -- you know,
19 whatever portion they withheld they would then pay
20 to Dr. Hicklin at the end of the year if they met
21 the criteria?

22 A. Dr. Hicklin would only receive what other
23 stockholders receive as -- I don't want to call it
24 a dividend, but I guess -- I don't think it is tied
25 specifically to each claim.

1 Stockholders receive -- as a group of
2 stockholders, they are getting an allocated share
3 out based on a portion of that withhold. The
4 quality indicator does go back to the practice, but
5 that is not paid to Dr. Hicklin because we pay
6 Dr. Hicklin via his contract.

7 Q. Why does HealthPlus -- refamiliarize me
8 with who gets a K-1 and why.

9 A. Since he's a stockholder, he is receiving
10 payments from Regional HealthPlus thus generating
11 the K-1.

12 Q. But as a direct result of treating
13 patients? In other words, they withhold a certain
14 amount of each participating payor's payment and of
15 course the copay, any copay that --

16 A. The moneys that Regional HealthPlus
17 receives is a result of claims being filed to the
18 insurance carriers that they contract with.

19 Q. So they get the money first?

20 A. Not necessarily.

21 Q. What I'm trying to figure out is do they
22 get the money first and then keep a little bit and
23 forward on to the District or does the District get
24 it and give them back a little bit? Where do they
25 get their withhold from?

1 A. We receive the payment from -- we.
2 Spartanburg Regional would receive the payment from
3 BlueCross in this example if they were contracted
4 with Regional HealthPlus. And Spartanburg Regional
5 would cut a check to Regional HealthPlus for that
6 withhold portion.

7 Q. And then assuming -- and then assuming the
8 practice met the criteria, then they would be paid
9 by HealthPlus?

10 A. Correct.

11 Q. And it's based on the number of patients
12 seen is going to be the amount -- and the charges
13 therefore is going to determine the amount?

14 A. It's not necessarily the volume seen as
15 the money that is reimbursed by the payors.

16 Q. Let me see if I'm clear on this. However,
17 Westmoreland, Hicklin and Coley are not going to
18 get withhold payments from patients that weren't
19 theirs, correct?

20 A. To my knowledge, no.

21 Q. They would get withhold payments from
22 patients that were theirs if they met the criteria
23 at the end of the year?

24 A. Could you repeat that question?

25 Q. Westmoreland, Hicklin and Coley are not

1 going to get withhold payments from patients they
2 didn't see, they're going to get withhold payments
3 from patients they did see if they meet the
4 criteria, correct?

5 A. The withhold payment from the practice for
6 the quality indicator is directly attributable to
7 their patients. On the stock side, I don't know if
8 that is based on their patients or the pool of
9 administrative money that Regional HealthPlus has
10 to distribute.

11 Q. And Dr. Hicklin does not then take that
12 money on his K-1 and give it back to the hospital
13 because it's on his income tax return, correct?

14 A. For the stock dividend or payment from
15 Regional HealthPlus, correct, that is not turned
16 back over to Spartanburg Regional.

17 Q. And that's not addressed in his contract,
18 is it?

19 A. No, sir.

20 Q. I think I understand now. Maybe when I
21 read it again I'll do a little better.

22 Let me ask you this: In preparing for
23 this and/or at any other time, did you go through
24 Ms. Hoftiezer's billing records?

25 A. Only what's included in the --

1 Q. On those ledgers?

2 A. Yes, sir.

3 Q. And according to those ledgers, she was
4 never sent a bill, correct?

5 A. Let me look, double-check. And by bill,
6 do you mean statement or could you clarify that?

7 Q. Either one. By a statement you mean
8 here's what you've paid?

9 A. A statement would indicate that you owe
10 money.

11 Q. Okay. Let me just show you this and this
12 may speed it up. Does this EOB not show that she
13 paid a \$20 copayment at the time of her visit?
14 That shows that she owes a copayment?

15 A. Correct.

16 Q. So assuming she paid her \$20 at the
17 office, then there would have been no bill to send,
18 correct?

19 A. Correct.

20 Q. Can you look at the ledger and see if you
21 can tell that she paid her copay? And while you're
22 looking, let me ask you this: Isn't it the general
23 practice of the practices to ask for the copay upon
24 service?

25 A. Yes, sir.

Edwin Haskell (direct)
Examination by Mr. Foster

11

1 ME, HAS WRITTEN IN NONPROFIT. YOU SEE THAT, WHERE I
2 POINTED THAT OUT?

3 Q. YES, SIR, I DO.

4 A. I DID NOT HAVE ANY NOTES ON THIS EXCEPT FOR THE DATE,
5 THE SIGNATURE OF JEFF HORTON, MY SIGNATURE, AND THE
6 DATE. SO, TO ANSWER YOUR QUESTION, I HAVE NO IDEA
7 WHERE THIS ELEEMOSYNARY AMENDMENT CODE CAME FROM
8 BECAUSE I HAD NOTHING TO DO WITH THAT.

9 Q. SO YOU CAN SEE WHERE I WAS CONFUSED ON THIS.

10 A. CORRECT. BUT WHAT I'M SAYING IS THAT ANYTHING THAT WE
11 SUBMITTED WE'VE NEVER MADE REFERENCE TO ELEEMOSYNARY
12 AMENDMENT BECAUSE IT'S OUR POSITION IT'S A PUBLIC
13 HOSPITAL CORPORATION, IT'S NOT AN ELEEMOSYNARY
14 CORPORATION.

15 Q. I GOT YOU. OKAY, I UNDERSTAND WHAT YOU'RE SAYING.

16 A. THAT'S A PERFECT EXAMPLE TO SHOW HOW I DON'T KNOW WHERE
17 THEY GOT ELEEMOSYNARY AMENDMENT FROM.

18 Q. AND AS COUNTY COUNSEL AND AS A LAWYER YOU UNDERSTAND
19 THAT I CAN'T GET THESE DOCUMENTS FROM THE SECRETARY OF
20 STATE?

21 A. I DIDN'T KNOW THAT.

22 Q. DID YOU KNOW THAT?

23 A. I WAS NOT AWARE OF THAT.

24 Q. OFF THE RECORD.

25 (OFF THE RECORD; 9:22 - 9:23 A.M.)

Edwin Haskell (direct)
Examination by Mr. Foster

12

1 EXAMINATION RESUMED BY MR. FOSTER:

2 Q. WHAT YOU'RE TELLING ME, EDWIN, IS -- DO YOU MIND IF WE
3 DISPENSE WITH MR. HASKELL --

4 A. THAT'S FINE.

5 Q. -- AND THE FORMALITIES? I DON'T THINK THE JUDGE IS
6 GOING TO MIND READING THIS IN A DEPOSITION.

7 A. THAT'S FINE.

8 Q. BUT EDWIN, WHAT YOU'RE TELLING ME IS, FOR EXAMPLE, ON
9 EXHIBIT NUMBER 3, YOU SEND IN WHAT YOU'RE REQUIRED TO
10 SEND IN, WHICH ARE ARTICLES OF AMENDMENT TO THE
11 CERTIFICATE OF INCORPORATION FOR SPARTANBURG REGIONAL
12 HEALTH SERVICES DISTRICT, INC., AND WHAT YOU'RE TELLING
13 ME IS THAT NOWHERE IN HERE DID YOU CALL IT AN
14 ELEEMOSYNARY AMENDMENT AND YOU DON'T KNOW WHERE THAT
15 CAME FROM?

16 A. CORRECT.

17 Q. AND THAT'S CONFUSING TO YOU AS WELL AS ME. CORRECT?

18 A. YEAH, BECAUSE THAT'S NOT WHAT IT IS.

19 Q. ALL RIGHT. LET'S LOOK AT THIS FOR A MINUTE, AND THEN
20 WE'LL GO THROUGH THESE AND JUST MATCH THEM UP, AND I
21 THINK WE'RE PROBABLY DONE. OKAY?

22 A. OKAY.

23 Q. BUT JUST FOLLOW ME ON THIS, IF YOU WOULD. I TELL YOU
24 WHAT...

25 (OFF THE RECORD; 9:24 -- 9:26 A.M.)

Edwin Haskell (direct)
Examination by Mr. Foster

18

- 1 (PLAINTIFF'S EXHIBIT 6 MARKED)
- 2 EXAMINATION RESUMED BY MR. FOSTER:
- 3 Q. DO YOU KNOW WHY THAT SAYS NONPROFIT AMENDMENT?
- 4 A. WHERE?
- 5 Q. THE ONE YOU JUST HANDED ME, EXHIBIT NUMBER 6. I MEAN,
- 6 DO YOU KNOW WHY THE SECRETARY OF STATE LISTED IT AS A
- 7 ELEEMOSYNARY AMENDMENT AND THEN COMMENT, NONPROFIT
- 8 AMENDMENT?
- 9 A. NO, BECAUSE IT STATES IN THE FIRST PARAGRAPH IT'S A
- 10 PUBLIC HOSPITAL CORPORATION. I HAVE NO CLUE WHERE THEY
- 11 CAME UP WITH THAT.
- 12 Q. FAIR ENOUGH. CHRONOLOGICALLY LET'S MOVE UP TO THE NEXT
- 13 ONE, WHICH UNDER CODE, UNDER THE CORPORATION HISTORY
- 14 RECORD CODE, IT SAYS AGENT. CORRECT?
- 15 A. YES.
- 16 Q. AND THAT WAS ON 10/25/2004?
- 17 A. YES.
- 18 Q. AND ACCORDING TO THIS DOCUMENT, THAT CHANGED THE
- 19 REGISTERED AGENT FROM JOSEPH M. ODDIS TO -- WELL, IT
- 20 DOESN'T SAY TO WHOM, BUT IT CHANGED IT FROM HIM.
- 21 CORRECT?
- 22 A. TO JUDY HAMER.
- 23 Q. AND YOU BROUGHT THAT ALONG WITH YOU?
- 24 A. YES.
- 25 Q. AND WE'LL MARK THAT AS 7.

Edwin Haskell (direct)
Examination by Mr. Foster

20

1 EXAMINATION RESUMED BY MR. FOSTER:

2 Q. THAT WAS EXHIBIT NUMBER 3?

3 A. I BELIEVE. LET'S CHECK TO MAKE SURE. IT WAS ONE OF
4 THE EARLY ONES. THAT'S CORRECT.

5 Q. 1/8/2008?

6 A. CORRECT.

7 Q. AND YOU SAY THAT YOU DIDN'T WRITE "NONPROFIT" ON THERE;
8 SOMEBODY ELSE DID?

9 A. NO. AND, LIKE I SAID EARLIER, ALL OF THESE AMENDMENTS
10 STATE IN THE FIRST PARAGRAPH IT'S A PUBLIC HOSPITAL
11 CORPORATION.

12 Q. RIGHT.

13 A. OKAY? AND IT ALSO REFERENCES OTHER STATUTES WHICH ARE
14 CONSISTENT WITH AN ELEEMOSYNARY CORPORATION.

15 Q. OKAY. AND THEN THAT'S THE END OF THE AMENDMENTS.
16 CORRECT?

17 A. FROM THE DOCUMENT YOU'RE SHOWING ME, EXHIBIT 2.

18 Q. AND AS FAR AS YOU KNOW, THAT WOULD BE THE LAST
19 AMENDMENT THAT WAS MADE TO THE ORIGINAL ARTICLES OF
20 INCORPORATION?

21 A. CORRECT.

22 Q. NOW, AS AN ATTORNEY I'M SURE YOU'RE FAMILIAR WITH THE
23 WORD AND THE TERM ELEEMOSYNARY. CORRECT?

24 A. CORRECT.

25 Q. AND I THINK WE'RE ALL IN AGREEMENT HERE, ELEEMOSYNARY

Edwin Haskell (direct) Exam. by Mr. Foster
(Cross) Exam. By Mr. Boulier

21

1 MEANS CHARITABLE, DOES IT NOT?

2 A. THAT'S ONE OF THE DEFINITIONS, YES.

3 Q. ISN'T THAT THE PRIMARY USAGE THAT YOU'VE SEEN IN
4 CORPORATE LAW?

5 A. USUALLY THAT'S A GENERALLY ACCEPTED MEANING, YES, I
6 AGREE WITH THAT.

7 Q. OKAY. AND I BELIEVE YOU AGREE WITH ME THAT IF YOU
8 COMBINE NONPROFIT WITH ELEEMOSYNARY, ELEEMOSYNARY,
9 ELEEMOSYNARY, ELEEMOSYNARY, THERE CERTAINLY IS A
10 DISTINCT POSSIBILITY OF INTERPRETING, OF A REASONABLE
11 PERSON INTERPRETING THIS DOCUMENT AS BEING A CHARITABLE
12 ORGANIZATION?

13 A. THAT'S ONE OF THE INTERPRETATIONS I BELIEVE THAT COULD
14 BE MADE.

15 Q. I THINK THAT'S ALL I HAVE. CAN YOU GIVE ME A MINUTE?
16 (OFF THE RECORD; 9:37 -- 9:43 A.M.)

17 EXAMINATION BY MR. BOULIER:

18 Q. EDWIN, I'VE JUST GOT A FEW FOLLOW-UP QUESTIONS. WE'VE
19 WALKED THROUGH THE LIST THAT RUSS MARKED FROM THE
20 SECRETARY OF STATE'S OFFICE. THE DOCUMENT THAT'S BEEN
21 MARKED AS EXHIBIT 4, WHICH WAS THE MAY 1, 1995 ARTICLES
22 OF INCORPORATION --

23 A. CORRECT.

24 Q. -- WAS THAT THE DOCUMENT THAT CREATED THE HEALTH
25 SERVICES DISTRICT, WHAT WAS ORIGINALLY SPARTANBURG

Edwin Haskell (cross)
Examination by Mr. Boulier

22

1 COUNTY HEALTH SERVICES DISTRICT?

2 A. WELL, WE HAD AN ORDINANCE, WHICH IS ORDINANCE 557 THAT
3 COUNTY COUNCIL ADOPTED WHICH CREATED THE HEALTH
4 SERVICES DISTRICT. EXHIBIT 4 INCORPORATED --
5 INCORPORATED THE HEALTH SERVICES DISTRICT AS
6 SPARTANBURG COUNTY HEALTH SERVICES DISTRICT, INC., AND
7 EXHIBIT 4, OF COURSE, REFERENCED ORDINANCE NUMBER 557
8 AND ACTUALLY HAD IT ATTACHED TO THE ARTICLES OF
9 INCORPORATION. PARAGRAPH 13 REFERENCES ORDINANCE 557
10 AS BEING INCORPORATED BY REFERENCE INTO THE ARTICLES.

11 Q. SO THE ARTICLES OF INCORPORATION WITH THE ORDINANCE
12 INCORPORATED BY REFERENCE IS THE COMBINED DOCUMENT THAT
13 CREATED THE HEALTH SERVICES DISTRICT. CORRECT?

14 A. YEAH, IT CREATED THE PUBLIC CORPORATION WHICH
15 INCORPORATED IT. THE ORDINANCE CAN'T CREATE A
16 CORPORATION.

17 Q. RIGHT.

18 A. IT CREATES THE HEALTH SERVICES DISTRICT, AND
19 PLAINTIFF'S EXHIBIT 4 BASICALLY REFERENCED 557 AND UPON
20 PETITION OF THE INCORPORATORS COUNCIL HAS AUTHORIZED
21 THE INCORPORATION OF THE HEALTH SERVICES DISTRICT AS A
22 PUBLIC CORPORATION. DOES THAT ANSWER YOUR QUESTION?

23 Q. IT DOES. AND IN THE ORDINANCE WAS ONE OF THE PURPOSES
24 OF THIS INCORPORATION TO MAKE THE HEALTH SERVICES
25 DISTRICT ENTITY PROTECTED BY THE TORT CLAIMS ACT?

Edwin Haskell (cross)
Examination by Mr. Boulter

23

1 A. YES. THE ORDINANCE, ORDINANCE NUMBER 557, WE TOOK
2 PARTICULAR PAINS TO DO SO, AND IT REFERENCES IT BEING A
3 BODY POLITIC AND A POLITICAL SUBDIVISION, AND IT
4 REFERENCES TITLE 15, CHAPTER 78, WHICH IS, OF COURSE,
5 THE TORT CLAIMS ACT. THAT WAS PUT IN THERE TO REMOVE
6 ALL DOUBT THAT IT WAS IN FACT A GOVERNMENTAL ENTITY
7 SUBJECT TO THE TORT CLAIMS ACT WHEN WE CREATED THE
8 DISTRICT.

9 Q. AND THEN SUBSEQUENTLY AFTER THAT, I THINK MARKED AS
10 EXHIBIT 5 WAS AN AMENDMENT TO THE ARTICLES OF
11 INCORPORATION, AND THAT WAS DATED MAY 28, 1998?

12 A. THAT'S CORRECT. MAY 18, 1998.

13 Q. DID THAT DOCUMENT DO ANYTHING OTHER THAN CHANGE THE
14 NAME FROM SPARTANBURG COUNTY HEALTH SERVICES DISTRICT
15 TO SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.?
16 WAS THAT THE PURPOSE OF THAT DOCUMENT?

17 A. EXHIBIT 5?

18 Q. YES, SIR.

19 A. NOT SPECIFICALLY ON THIS ONE. THIS REFERENCED THE
20 ORDINANCE WHICH WAS ATTACHED AND IT SAID THAT THE -- IT
21 WAS TO MAKE CLEAR THAT THE -- THAT THE COUNTY
22 BOUNDARIES SHALL NEVER BE CONSTRUED TO CONSTITUTE A TAX
23 DISTRICT OR A BASIS FOR GENERAL OBLIGATION BONDS. SO
24 MAINLY IT DEALT WITH THAT PARTICULAR ISSUE THERE.

25 Q. DID IT ALSO CHANGE THE NAME?

Edwin Haskell (cross)
Examination by Mr. Boulter

24

1 A. I'M TRYING TO SEE. WAIT ONE MINUTE, PLEASE.

2 Q. IF YOU LOOK AT PARAGRAPH ONE OF THE ARTICLES, EDWIN.

3 A. OKAY. YEAH, I SEE THAT. YOU'RE RIGHT. I WAS LOOKING
4 AT THE ORDINANCE. YOU'RE CORRECT.

5 Q. DID THIS FILING CHANGE THE STATUS OF SPARTANBURG
6 REGIONAL HEALTH SERVICES DISTRICT, INC. FROM A PUBLIC
7 HOSPITAL CORPORATION OR FROM A GOVERNMENTAL SUBDIVISION
8 INTO ANYTHING ELSE?

9 A. NO.

10 Q. THE NEXT THING ON THE PRINTOUT FROM THE SECRETARY OF
11 STATE'S WEBSITE THAT'S MARKED AS EXHIBIT 2 TO YOUR
12 DEPOSITION AS A JANUARY 16, 2002 AMENDMENT, AND THAT
13 WAS MARKED AS EXHIBIT 6?

14 A. OKAY.

15 Q. WHAT WAS THE PURPOSE OF THIS FILING? I THINK FOR THE
16 RECORD THAT WAS SIGNED BY YOUR LAW PARTNER. CORRECT?

17 A. WILLIAM MCBEE SMITH, THAT'S CORRECT. PRIMARILY IT WAS
18 TO CHANGE THE EXPIRATION DATE OF APPOINTED TERMS OF
19 DIRECTORS, TO CHANGE IT TO SEPTEMBER 30. THAT WAS THE
20 PRIMARY PURPOSE OF IT.

21 Q. SO THAT JUST AFFECTED HOW MEMBERS OF THE BOARD OF
22 SPARTANBURG REGIONAL ARE APPOINTED?

23 A. CORRECT.

24 Q. DID IT CHANGE THE LEGAL STATUS OF THAT ENTITY?

25 A. NO, IT DID NOT.

Edwin Haskell (cross)
Examination by Mr. Boulter

25

1 Q. AND THEN THE NEXT FILING ON THE SECRETARY OF STATE
2 WEBSITE IS WHAT WE MARKED AS EXHIBIT 7, WHICH WAS AN
3 OCTOBER 25, 2004 FILING?

4 A. CORRECT.

5 Q. AND I THINK THAT WAS THE ONE THAT YOU SAID WAS ACTUALLY
6 PREPARED BY JUDY HAMER?

7 A. THAT'S CORRECT.

8 Q. AND SHE'S GENERAL COUNSEL AT SPARTANBURG REGIONAL?

9 A. CORRECT.

10 Q. AND THAT WAS TO CHANGE THE NAME OF THE REGISTERED
11 AGENT. CORRECT?

12 A. THAT'S CORRECT.

13 Q. AND YOU HAD NOTHING TO DO WITH THE PREPARATION OR
14 FILING OF THAT DOCUMENT?

15 A. THAT'S CORRECT.

16 Q. THEN THE NEXT THING ON THE LIST IS A JUNE 6, 2007
17 AMENDMENT, WHICH WAS MARKED AS EXHIBIT 8?

18 A. CORRECT.

19 Q. AND WERE YOU INVOLVED IN THE PREPARATION OR DRAFTING OF
20 THAT DOCUMENT?

21 A. I DRAFTED THIS DOCUMENT.

22 Q. AND WHAT WAS THE PURPOSE OF THAT FILING?

23 A. BASICALLY THIS DEALT WITH CHANGING THE COMPOSITION OF
24 THE BOARD, HOW THEY WERE APPOINTED. IT DEALT WITH
25 SINGLE-MEMBER DISTRICT, ADDRESSED SINGLE-MEMBER

Edwin Haskell (cross)
Examination by Mr. Boulter

26

1 DISTRICTS, AT-LARGE MEMBERS, AND HOW THAT WAS
2 APPOINTED.

3 Q. SO THAT WAS BASICALLY ANOTHER DOCUMENT THAT CHANGED OR
4 TWEAKED HOW THE BOARD MEMBERS ARE APPOINTED AT
5 SPARTANBURG REGIONAL?

6 A. RIGHT. THIS IS MORE OR LESS A HOUSECLEANING DOCUMENT
7 TO CORRECT SOME APPOINTMENT ISSUES THAT HAD ARISEN, AND
8 IT DID NOT CHANGE IN ANY WAY THE LEGAL ENTITY OR THE
9 LEGAL COMPOSITION OF THE PUBLIC HEALTH CORPORATION
10 SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.

11 Q. AND THE LAST FILING ON THE LIST WAS A JANUARY 8, 2008
12 FILING, WHICH IS EXHIBIT 3 TO YOUR DEPOSITION. DID YOU
13 PREPARE THAT DOCUMENT?

14 A. I DID.

15 Q. WHAT WAS THE PURPOSE OF THIS FILING?

16 A. THIS PROVIDED FOR SOME INPUT TO COUNTY COUNCIL BY THE
17 HOSPITAL OF WHICH BOARD MEMBERS WERE APPOINTED. THIS
18 WAS -- THE BOARD WANTED TO BASICALLY, BEING THE
19 HOSPITAL, WANTED TO BE IN A POSITION TO MAKE CERTAIN
20 RECOMMENDATIONS OF INDIVIDUALS TO BE APPOINTED TO THE
21 BOARD, AND THIS PROVIDED FOR THAT FRAMEWORK.

22 Q. SO ANOTHER DOCUMENT DEALING WITH THE BOARD APPOINTMENT
23 PROCESS?

24 A. CORRECT.

25 Q. DID IT MAKE ANY CHANGE TO THE LEGAL STATUS OR NATURE OF

Edwin Haskell (cross)
Examination by Mr. Boulier

27

1 THE PUBLIC HOSPITAL CORPORATION?

2 A. NO, IT DID NOT.

3 Q. NOW, UNDERSTANDING WHAT MR. FOSTER HAS SAID ABOUT THIS

4 PRINTOUT AND HOW THE SECRETARY OF STATE LISTS THESE

5 AMENDMENTS, AS THE ATTORNEY THAT PREPARED THE MAJORITY

6 OF THESE FILINGS, DID YOU BELIEVE YOU HAD ANY

7 OBLIGATION TO MAKE SURE THAT THE SECRETARY OF STATE

8 LISTED THEM CORRECTLY ON THEIR WEBSITE?

9 A. NO. IT NEVER CROSSED MY MIND. MY DUTY AND OBLIGATION

10 WAS TO PREPARE THE DOCUMENT AND CORRECTLY FILE IT.

11 WHEN I RECEIVED A CLOKED COPY BACK FROM THE SECRETARY

12 OF STATE, IN MY MIND MY FUNCTION HAD BEEN COMPLETED.

13 Q. THAT'S ALL I HAVE.

14 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED

15 AT 10:01 A.M.)

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SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.

Note: This online database was last updated on 2/21/2011 6:01:29 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Non Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	JUDY P HAMER
ADDRESS:	101 E WOOD ST
CITY:	SPARTANBURG
STATE:	SC
ZIP:	29303
SECOND ADDRESS:	

FILE DATE:	05/01/1995
EFFECTIVE DATE:	05/01/1995
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Eleemosynary Amendment	01/08/2008	AMENDMENT	
Eleemosynary Amendment	06/06/2007	AMD.	
Agent	10/25/2004	CHANGED REGISTERED AGENT FROM: JOSEPH M ODDIS	
Eleemosynary Amendment	01/16/2002	NONPROFIT AMENDMENT	Image
Eleemosynary Amendment	05/28/1998	CH FR/SPARTANBURG COUNTY HEALTH SERVICES DISTRICT, INC.	Image
Incorporation	05/01/1995	REGIONAL HEALTH SERVICE DISTRICT-PUBLIC CORP	Image



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Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201

Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

DEB114-0655 FILED 01/06/2008
SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, II
Filing Fee \$10.00 ORIG



ark Hammond

South Carolina Secretary of State

CERTIFIED TO BE A TRUE
AND TAKEN FROM THE
ORIGINAL

JAN 6 2011

SECRETARY OF STATE
OF SOUTH CAROLINA
CRETARY OF STATE
ARTICLES OF AMENDMENT (nonpro)
TO THE CERTIFICATE OF INCORPORATION
OF

SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.
(SC Code Sec 44-7-2154)

Spartanburg County Council by Ordinance No 557, as amended by Ordinance Nos. 649, O-01-22 and O-07-08 created Spartanburg Regional Health Services District, Inc as a public hospital corporation under Title 44 Chapter 7, Art 15 and Art 16 of the SC Code. The Certificate of Incorporation was filed with the Secretary of State May 1, 1995 and Articles of Amendment were filed with the Secretary of State on May 28, 1998

- 1 To change the appointment process for members of Spartanburg Regional Health Services District, Inc., as appointed by County Council to include participation by the Board of Trustees of Spartanburg Regional Health Services District, Inc., in the appointment process, to provide for one board member to be either an active or senior status member of the medical staff, and to limit the term of office for a member of the Board of Trustees to three consecutive terms of office.
2. Ordinance No. O-07-32 is attached and incorporated by which Spartanburg County Council provided for the above amendment
3. Except as amended herewith the Articles of Incorporation filed May 28, 1998 and May 1, 1995 are reaffirmed and shall continue in effect in all their terms

CERTIFICATE

SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC

It is expedient that the incorporation be amended as provided in the attached Ordinance No. O-07-32 and Articles of Amendment are approved for filing with the Secretary of State.

The effective date of the Articles of Amendment shall be the date of acceptance for filing by the Secretary of State.

This 17th day of December, 2007.



SPARTANBURG COUNTY COUNCIL

By [Signature]
Edwin C. Horton, Chairman

I, Edwin C. Haskell, an attorney licensed to practice in the State of South Carolina, certify that the public hospital corporation, to which this certificate relates, has complied with the requirements of Chapter 7 of Title 44 of the Code of Laws of South Carolina as amended relating to articles of amendment of health services district

[Signature]
Edwin C. Haskell, III

221

Date: December 17, 2007



NO. O-07-32

AN ORDINANCE

AMENDING ORDINANCE NOS. 557, 649, 0-01-22, AND 0-07-08 AND ARTICLES OF INCORPORATION TO CHANGE THE APPOINTMENT PROCESS FOR MEMBERS OF SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC. AS APPOINTED BY COUNTY COUNCIL TO INCLUDE PARTICIPATION BY THE BOARD OF TRUSTEES OF SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC. IN THE APPOINTMENT PROCESS, TO PROVIDE FOR ONE BOARD MEMBER TO BE EITHER AN ACTIVE OR SENIOR STATUS MEMBER OF THE MEDICAL STAFF, AND TO LIMIT THE TERM OF OFFICE FOR A MEMBER OF THE BOARD OF TRUSTEES TO THREE CONSECUTIVE TERMS OF OFFICE.

BE IT ORDAINED that Ordinance No 557, as amended by Ordinance Nos. 649, 0-01-22, and 0-07-08, is hereby amended to provide:

Section 1. Findings. Spartanburg County Council finds that it would be benefitted by receiving recommendations of potential appointees from the Board of Directors of Spartanburg Regional Health Services District, Inc. after a conflict of interest assessment for each potential appointee has been conducted and by mutual cooperation with the Board of Directors in making the final determination that an individual board member should not continue to serve

Section 2. Section 2(B) of Ordinance No 557, as amended, is hereby further amended by deleting the current language in its entirety and by substituting in its place the following language.

"(B) The Board shall consist of eleven (11) members appointed by Spartanburg County Council for four (4) years or until successors are appointed and assume office. The members of the Board serving on the effective date of this Ordinance shall continue to serve in their presently appointed capacities and terms subject to Sec. 2-121 Spartanburg County Code, provided, however, that the Spartanburg County Council and the Board will cooperate in making final determinations that an individual Board member should not continue to serve the duration of their appointment to

the Board for reasons provided in Sec 2-121 Spartanburg County Code. New appointments to the Board will be initiated by recommendations of potential appointees from the Board to the Spartanburg County Council after a conflict of interest assessment for each potential appointee has been conducted. Such recommendations by the Board shall be made to Spartanburg County Council prior to the expiration of the term of the Board member for which the new appointment is to be made. Should Spartanburg Council not approve a recommended potential appointee, the Board shall submit another potential appointee to Spartanburg County Council for consideration within thirty (30) days from the date County Council failed to approve the recommended potential appointee. Upon the failure of the Board to submit a potential appointee to Spartanburg County Council within the times set forth herein, Spartanburg County Council shall make the new appointment to the Board without the recommendation of the Board. Appointment of individuals to the Board should be governed by the needs of the Board for individuals with certain skills and abilities (i.e., business, financial, legal, medical, general public), however, overall Board membership should be reflective of the county's geographical and demographic population. No member of the Board shall receive compensation for services as a member of the Board. No member of the Board shall be an employee of the District or hold a salaried position in the service of the hospitals or hospital district. All members of the Board shall comply with the current hospital district conflicts of interest governance policy consistent with applicable federal law for tax exempt organizations and the State Ethics Act SC Code § 8-13-100 et seq which is currently on file in the County Administrator's office. The members of the board shall elect from their membership a chairman, vice-chairman and secretary."

Section 3. Section 2(C) of Ordinance No. 557, as amended, is hereby further amended by deleting the language "one (1) shall be an active member of the medical staff" and by substituting in its place the language "one (1) shall be either an active or senior status member of the medical staff."

Section 4. Section 2(E) of Ordinance No. 557, as amended, is hereby further amended by deleting the current language in its entirety and by substituting in its place the following language.

"The appointment of all persons to the Board shall be for four (4) years or until their successors have been appointed and qualify, or to fill a vacancy for the remaining balance of the four (4) years. Any term or partial term of office previously served by a person on

the Board of Directors of the District shall constitute a term of office No person shall serve more than three (3) consecutive terms of office as a member of the Board and is not eligible for reappointment notwithstanding any break in service "

Section 5. Section 2(F) of Ordinance No 557, as amended, is hereby further amended by deleting the language "If any medical doctor appointed to the Board should cease to be a member of the medical staff of the Spartanburg General Hospital System" and by substituting in its place the language "If any medical doctor appointed to the Board should cease to be a member of the active or senior status medical staff of the Spartanburg General Hospital System "

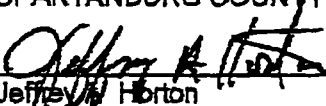
Section 6. The Articles of Amendment attached and incorporated are adopted, and filing with the Secretary of State authorized with all things required to be done to obtain the issuance of amendment to the charter

Section 7. Except as amended herein, the provisions of Ordinances Nos 557, 649 and C-01-22 and the Articles issued pursuant thereto are hereby reaffirmed

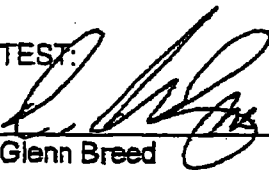
Section 8. This Ordinance shall take effect upon third reading approval

SPARTANBURG COUNTY COUNCIL

By


Jeffrey A. Horton
Chairman

ATTEST:


D. Glenn Breed
Spartanburg County Administrator

First Reading.	<u>October 15, 2007</u>
Second Reading	<u>November 19, 2007</u>
Third Reading	<u>December 17, 2007</u>

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND UNDER THE
ORIGINAL FILE

JAN 20 2011

John Miles
SECRETARY OF STATE

FILED

MAY - 1 1995

AM PM
7 8 9 10 11 12 1 2 3 4 5 6

STATE OF SOUTH CAROLINA

SECRETARY OF STATE

John Miles
SECRETARY OF STATE OF SOUTH CAROLINA

CERTIFICATE OF INCORPORATION

OF

SPARTANBURG COUNTY HEALTH SERVICES DISTRICT, INC

(South Carolina Code Section 44-7-2153)

Spartanburg County Council by Ordinance No 557 adopted on the 10th day of April, 1995, a copy of which is attached hereto and incorporated herein by reference, created the Spartanburg County Health Services District Upon the petition of the incorporators listed below, the Spartanburg County Council has authorized the incorporation of the Spartanburg County Health Services District as a public corporation under Title 44 Chapter 7, Article 15 and Article 16 of the South Carolina Code and in accordance with Ordinance No 557

- 1 The name of the proposed public corporation is SPARTANBURG COUNTY HEALTH SERVICES DISTRICT, INC
- 2 The initial registered office of the public corporation is 101 E Wood Street, Spartanburg, South Carolina 29303

and the initial registered agent at such address is Joseph M Oddis, President

- 3 The Health Services District shall cover all of Spartanburg

1



225

County and shall have the same boundaries as Spartanburg County

- 4 The period of duration of the corporation shall be perpetual
- 5 The corporation may be dissolved or this certificate of incorporation amended in such manner as may be specifically authorized by a duly adopted resolution of the board proposing such dissolution or amendment and approval of that resolution by County Council, or it may be dissolved or its certificate amended by the sole initiative and ordinance of County Council filed for record in the office of the Secretary of State Upon dissolution, title to the assets of the corporation shall vest in Spartanburg County or such other political subdivision of Spartanburg County as Spartanburg County Council may designate
- 6 The existence of the corporation shall begin as of the date of issuance of the charter by the Secretary of State
- 7 (A) The corporate powers and duties of the District shall be exercised by a board of directors (the "Board") to be comprised of eleven (11) members, who shall be legal residents of Spartanburg County, and shall be appointed by County Council as hereafter provided who shall serve until successors are appointed Successors shall be appointed by County Council in the same manner and subject to the same conditions as the original appointments
(B) The Board shall consist of eleven (11) members appointed by Spartanburg County Council for four (4) years or until

successors are appointed and assume office. The members of the Board serving on the effective date of this incorporation shall continue to serve in their presently appointed capacities. No member of the Board shall receive compensation for services as a member of the Board. No member of the Board shall be an employee of the Board or hold a salaried position in the service of the hospitals or hospital district. The members of the board shall elect from their membership a chairman, vice-chairman, and secretary.

(C) According to the procedure provided hereafter Spartanburg County Council shall appoint one (1) member from each county single member election district who shall be a resident of that district, referred to hereafter as district members, and five (5) at large members. Of such five (5) at large members, one (1) shall be a member of the medical staff of Spartanburg General Hospital System. After a district member has been appointed for a single member district the successor for that member shall be appointed from the same district. After a district member has been appointed for each single member district the remaining members provided for shall be appointed at large.

(D) All appointments made after a district member has been appointed for each single member district shall be at large members. It is intended that the above appointment procedure shall be the same as in former Ordinance No. 469 of Spartanburg County Council. If the number of county single

member election districts shall be increased by future reapportionment, the number of at large members shall be reduced accordingly and the number of district members increased accordingly and so appointed by County Council at the appropriate times

(E) The appointment of all persons to the Board shall be for four (4) years or until their successors have been appointed and qualify or to fill a vacancy for the remaining balance of the four (4) years Any term or partial term of office previously served by a person on the Board of Trustees of the Spartanburg General Hospital System shall constitute a term of office

(F) If any member of the Board shall cease to be a legal resident of Spartanburg County that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate If any medical doctor appointed to the Board should cease to be a member of the active medical staff of the Spartanburg General Hospital System, then that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate The County Administrator shall certify the appointment of all members of the board of the district in accordance with county procedures for appointment of members of boards and commissions

- 8 The number of directors constituting the initial board of directors of the corporation is 11 and the names and addresses

of the persons who are to serve as the directors until their successors are appointed and qualify are as follows

- 1) W Dewey Tullis, Sr.
District No 1
- 2) William Gregory Monroe.
District No 2
- 3) Ronald Allison.
District No 5
- 4) Ronald Mac Fields, Jr.
District No 6
- 5) Dr Julian C Josey, Jr.
At Large
- 6) Dr Mark D Visk.
At Large
- 7) Wendell G Cantrell.
District No 3
- 8) William M Cooper.
District No 3
- 9) Bobby Ivey.
District No 4
- 10) Danny R Smith.
District No 4
- 11) Frank B Stone.
District No 4

- 9 (A) The Board shall have the powers, duties, authority exemptions, privileges and emoluments of a governing board of a regional health services district as set forth in Article 15 and Article 16 of Chapter 7 of Title 44 of the Code of Laws of South Carolina, 1976, as now or hereafter amended, except for

the specific limitations of Paragraph 11 hereafter, and shall operate and manage the Spartanburg General Hospital System and the District's other health care facilities accordingly and pursuant to all such provisions. All provisions of federal statutes and regulations now or hereafter made or amended, necessary or desirable for carrying out the purposes and intentions of this ordinance shall be deemed incorporated herein and such authority vested in the Board without the necessity of amending the ordinance or this certificate of incorporation.

(B) The Board is specifically authorized and empowered to change the name and re-name the various campuses, locations, and buildings of Spartanburg General Hospital System as may be appropriate for identification within the district in the judgment of the Board.

- 10 The purpose of the corporation is to engage in the planning, establishing, financing, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, protecting, policing, or in other ways assisting in the development of hospitals, health care facilities, assistance or facilities for the aged, or other health care related facilities, to organize or cause to be organized under the laws of the state of South Carolina a subsidiary corporation or corporations for the purpose of transacting, promoting, or carrying on any governmental, for-profit, or non-profit activities permitted under South Carolina law, and all other

otherwise dispose of all or any portion of said campus properties except after three readings and public hearings conducted by the Board in accordance with the notice and time requirements of the Home Rule Act, of a Resolution setting forth all the terms and conditions of proposed sales and conveyances, including the general purposes, and authorizing the sale and conveyance, and thereafter with the approval of County Council

13 Ordinance No 557 of Spartanburg County is attached to this certificate of incorporation and incorporated herein by reference as fully as if set forth

14 The name and address of each incorporator is as follows.

1) William M. Cooper, _____

2) Wendell G. Cantrell, _____

3) Bobby Ivey, _____

related Purposes not in contravention of South Carolina law

11 The corporation and the board shall have the additional powers set forth in South Carolina Code Section 44- 7-2157 and Ordinance No 557, subject to the following specific limitations

- (a) Members of the Board shall be subject to Sec 2-121 Spartanburg County Code requirements for council-appointed boards
- (b) The Board shall promptly file a copy of its annual external audit with the County Administrator and such other financial and operational reports as the County Administrator shall request in writing from time to time
- (c) The board of directors of any subsidiary of the incorporated District shall be comprised of persons who are then current members of the Board of the Spartanburg County Health Services District, but this limitation shall not apply to for-profit or not-for-profit corporations which are not subsidiaries and are intentionally chartered or established as holding corporations or for joint ventures

12 The Board of the Spartanburg County Health Services District shall have the authority to sell, convey and dispose of real and personal property owned by the District except that if the original Spartanburg General Hospital System and B J Workman Memorial Hospital campus properties shall be vested in the District, the Board shall have no authority or power to sell, convey, exchange or

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

The undersigned William M Cooper, Wendell G Cantrell, and Bobby Ivey
do hereby certify that they are the incorporators of the Spartanburg County Health Services District, Inc, and are authorized to execute this verification, that each of the undersigned does hereby certify that he has read the foregoing document, understands the meaning and purport of the statements therein contained and the same are true to the best of his information and belief -

William M Cooper
William M Cooper

Wendell G Cantrell
Wendell G Cantrell

Bobby Ivey
Bobby Ivey

SUBSCRIBED AND SWORN TO BEFORE ME THIS

7th DAY OF April, 1995

Carroll A. Roberts (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 3-19-97

CERTIFICATE OF ATTORNEY

I, Roy McBee Smith, an attorney licensed to practice in the State of South Carolina, certify that the public corporation, to which this certificate relates, has complied with the requirements of Chapter 7 of Title 44 of the Code of Laws of South Carolina as amended relating to the organization and incorporation of health services districts

Date April 24, 1995

Roy McBee Smith

F:\CF\COUNTY\0400\ORDINANCE\K23

Revised 04/06/95

CERTIFICATE TO BE TRUE AND CORRECT
AS TAKEN FROM AND COMPALED BY THE
CLERK OF THE FILE IN THE OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF AMENDMENT
TO THE CERTIFICATE OF INCORPORATION
OF

JAN 26 2011 SPARTANBURG COUNTY HEALTH SERVICES DISTRICT,
(SC Code Sec. 44-7-2154)

Jim Milot											
SECRETARY OF STATE											
FILED											
MAY 28 1998											
AM PM											
7	8	9	10	11	12	1	2	3	4	5	6

True
SECRETARY OF STATE: *Jim Milot*
Spartanburg County Council by Ord. No. 557 created the Spartanburg County Health Services District, Inc. as a public hospital corporation under Title 44 Chapter 7, Art. 15 and Art. 16 of the SC Code. On May 18, 1998, County Council adopted Ord. No. 649 pursuant to Sec. 44-7-2154 amending the Certificate of Incorporation filed with the Secretary of State May 1, 1995.

1. The name of the corporation is changed to Spartanburg Regional Health Services District, Inc.
2. The boundaries of the County shall never be construed to constitute a tax district nor basis for general obligation bonds under any present or future legislation, nor to limit the functions of the regional health system beyond county or state lines.
3. The powers, duties, and authority of the board are also vested pursuant to Sec. 4-2-25 as necessary for the security, general welfare, and preservation of health in the region, such powers, and service in referral regions, being essential to adequate hospital facilities in the County.
4. The board shall have the powers, duties, and authority as provided for in the original Certificate of Incorporation, and as previously vested in the Spartanburg General Hospital System by ordinances of county council and acts of the legislature.
5. The regional health system shall provide medical services to residents of the County and in the referral region of the health system, and as otherwise may inure to the support of its facilities, without limitation by county or state lines.
6. All provisions of federal and state statutes and regulations now or hereafter made, necessary or desirable for carrying out the purposes of the regional hospital system shall be deemed incorporated herein by reference, and such authority vested in the board without the necessity of amending the ordinances or articles of incorporation.
7. The purpose is to engage in regional planning, establishing, constructing, maintaining, operating, health care and related facilities.
8. Ord. No. 649 is attached and incorporated. The board shall have the authority to sell and convey real and personal property, to invest revenues from operations, as it deems to the best advantage of the system, except as limited by Paragraph 12 of the original certificate of incorporation.

9. Except as amended the provisions of the original certificate of incorporation not in conflict herewith shall continue in effect.
F:\CF\COUNTY\0400\ORDINANCE\514



CERTIFICATE

SPARTANBURG COUNTY HEALTH SERVICES DISTRICT, INC.

It is expedient that the incorporation be amended as provided in Ord. No. 649 and the articles of amendment are approved for filing with the Secretary of State.

The effective date of the articles of amendment shall be the date of acceptance for filing by the Secretary of State.

This May day of 18th, 1998.

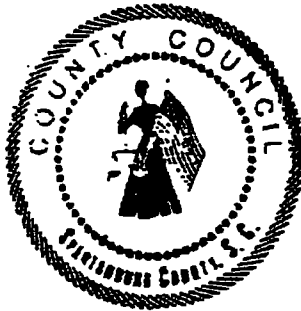
Spartanburg County Council

By: David G. Dennis
David G. Dennis, Chairman

I, Roy McBee Smith, an attorney licensed to practice in the State of South Carolina, certify that the public hospital corporation, to which this certificate relates, has complied with the requirements of Chapter 7 of Title 44 of the Code of Laws of South Carolina as amended relating to articles of amendment of health services districts.

Date: May 18, 1998

Roy McBee Smith
Roy McBee Smith



NO. 649

AN ORDINANCE

AMENDING ORDINANCE NO. 557 AND ARTICLES OF INCORPORATION TO ASSURE NO TAXATION, GENERAL OBLIGATION BONDS, OR LIMITATION OF FUNCTIONS, EXERCISING GENERAL WELFARE POWERS.

BE IT ORDAINED That Ordinance No. 557 is hereby amended to provide:

Sec. 1. County boundaries shall never be construed to constitute a tax district nor basis for general obligation bonds under any present or future legislation, nor to limit its functions beyond county or state lines. These ordinances and articles of incorporation are pursuant to Sec. 4-9-25 for general welfare and public health.

Sec. 2. The articles of amendment are approved and authorization is issued for filing with the Secretary of State, and for all things required to be done to obtain issuance of the amendments.

Sec. 3. Except as amended, Ordinance No. 557 shall apply to the same effect as to the original certificate of incorporation of Spartanburg County Health Services District, Inc.

Sec. 4. All ordinances and articles in conflict are, to the extent of conflict, repealed, and the articles of amendment approved and authorized for filing with the Secretary of State.

Sec. 5. This ordinance shall take effect upon third reading approval.

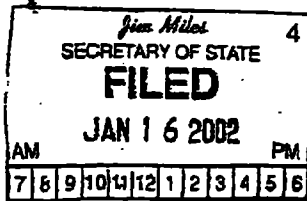
SPARTANBURG COUNTY COUNCIL

By: David G. Dennis, Sr.
DAVID G. DENNIS, SR.
Chairman

ATTEST: Roland H. Windham, Jr.
ROLAND H. WINDHAM, JR.
Spartanburg County Administrator

First Reading 03/16/98
Second Reading 03/20/98
Third Reading 05/18/98
F:\CF\HSP\0900\RES-ORD.M13

CERTIFIED COPY
Certified to be a true and correct
copy of the original
Paul A. Hinds
Paul A. Hinds
Clerk to Spartanburg County Council
Date: 05-14-98



STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF AMENDMENT
TO THE CERTIFICATE OF INCORPORATION
OF

JAN 26 2001

SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.
(SC Code Sec. 44-7-2154)

Spartanburg County Council by Ordinance No. 557, as amended by Ordinance No. 649 created Spartanburg Regional Health Services District, Inc. as a public hospital corporation under Title 44 Chapter 7, Art. 15 and Art. 16 of the SC Code. The Certificate of Incorporation was filed with the Secretary of State May 1, 1995 and Articles of Amendment were filed with the Secretary of State on May 28, 1998.

1. The expiration date of the appointed terms of the members of the Board of the Directors shall hereafter be September 30 of the year of expiration. The year of expiration for the terms of Directors serving on the effective date of this amendment shall remain unchanged.
2. Ordinance No. 0-01-22 is attached and incorporated by which Spartanburg County Council provided for the above amendment.
3. Except as amended herewith the Articles of Incorporation filed May 28, 1998 and May 1, 1995 are reaffirmed and shall continue in effect in all their terms.

CERTIFICATE

SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.

It is expedient that the incorporation be amended as provided in the attached Ordinance No. 0-01-22 and Articles of Amendment are approved for filing with the Secretary of State.

The effective date of the Articles of Amendment shall be the date of acceptance for filing by the Secretary of State.

This 28th day of December, 2001.

SPARTANBURG COUNTY COUNCIL

By: [Signature]
Karen Kane Floy, Chairperson

I, William McBee Smith, an attorney licensed to practice in the State of South Carolina, certify that the public hospital corporation, to which this certificate relates, has complied with the requirements of Chapter 7 of Title 44 of the Code of Laws of South Carolina as amended relating to articles of amendment of health services district.

[Signature]
William McBee Smith

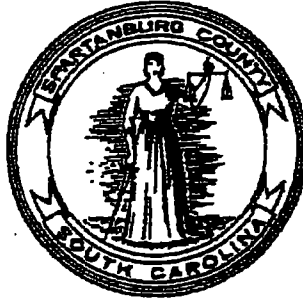
Date: 12-19-2001

02-002639CC



237

SRHS 147



NO. 0-01-22

AN ORDINANCE

AMENDING ORDINANCE NOS. 557 AND 649 AND ARTICLES OF INCORPORATION TO CHANGE THE EXPIRATION DATE OF TERMS OF DIRECTORS OF SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.

BE IT ORDAINED that Ordinance Nos. 557 and 649 are hereby amended to provide:

Section 1. Findings. The Board of Directors of Spartanburg Regional Health Services District, Inc. has amended its bylaws to adopt its fiscal year for election of officers of the board, and desires that Ordinance Nos. 557 and 649 be amended to also adopt that fiscal year for appointment of its Directors by County Council.

Section 2. Section 2 of Ordinance No. 557 is amended by adding the following at the end of paragraph (A):

"except that the expiration date of the appointed terms of Directors shall hereafter be September 30 of the year of expiration. The year of expiration for the terms of Directors serving on the effective date of this amendment shall remain unchanged."

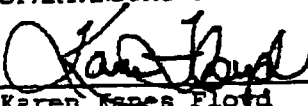
Section 3. The Articles of Amendment attached and incorporated are adopted, and filing with the Secretary of State authorized with all things required to be done to obtain the issuance of amendment to the charter.

Section 4. Except as amended, the provisions of Ordinances Nos. 557 and 649 and Articles issued pursuant thereto are reaffirmed.

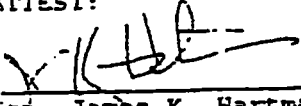
Section 5. This Ordinance shall take effect upon third reading approval.

SPARTANBURG COUNTY COUNCIL

By: _____


Karen Kanes Floyd
Chairperson

ATTEST:


Hon. James K. Hartmann
Spartanburg County Administrator

First Reading 10/15/01
Second Reading 11/19/01
Third Reading 12/17/01

F:\CH\H&P\SPS Directors Governance (Formerly Trustees)\ORDINANCE AMEND. 577 & 609 9-20-2007.mxd

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NOTICE OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT OR BOTH
OF A SOUTH CAROLINA
OR FOREIGN CORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Sections 33-5-102 and 33-15-108 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation submits the following information.

1. The name of the corporation is Spartanburg Regional Health Services District, Inc.
2. The corporation is (complete either a or b, whichever is applicable):
 - a. a domestic corporation incorporated in South Carolina on 5/11/95; or
 - b. a foreign corporation incorporated in _____ on _____, and
State Date
authorized to do business in South Carolina on _____
Date
2. The street address of the present registered office in South Carolina is 101 E. Wood Street
Street & Number
in the city of Spartanburg, South Carolina 29303
Zip Code
4. If the current registered office is to be changed, the street address to which its registered office is
to be changed is _____ in the city of _____ South
Street Address Carolina
Zip Code
5. The name of the present registered agent is Joseph M. Oddis
6. If the current registered agent is to be changed, the name of the successor registered agent is
Judy P. Hamer

* I hereby consent to the appointment as registered agent of the corporation:

Judy P. Hamer
Signature of New Registered Agent

7. The address of the registered office and the address of the business office of the registered agent, as changed, will be identical.
8. Unless a delayed date is specified, this will be effective upon acceptance for filing by the Secretary of State (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended _____).

*Pursuant to Sections 33-5-102(5) and 33-5-108(5) of the 1976 South Carolina Code of Laws, as amended, the written consent of the registered agent may be attached to this form.



041025-4132 FILED: 10/25/2004
SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, II
Filing Fee: \$10.00 ORIG
Mark Hammond South Carolina Secretary of State

Date 10/22/04

Name of Corporation

Spartanburg Reg. Health Services District, Inc.

Name of Corporation

Judy P. Hamer

Signature

Judy P. Hamer, General Counsel

Type or Print Name and Title

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy must be filed.
2. Filing Fee (payable to the Secretary of State at the time of filing this document) - \$10.00
3. Pursuant to Section 33-5-102(b) of the 1976 South Carolina Code of Laws, as amended, the registered agent can file this when the only change is the street address of the registered office. In this situation, the following statement should be typed on the form above the registered agent's signature: "The corporation has been notified of this change." In this case the filing fee is \$2.00.

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF AMENDMENT
TO THE CERTIFICATE OF INCORPORATION
OF

SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.
(SC Code Ann § 44-7-2154)

RECEIVED TO BE A PUBLIC
AS TAKEN FROM THE
2007



Spartanburg County Council by Ordinance No 557, as amended by Ordinance No 649 and No 0-01-22 created Spartanburg Regional Health Services District, Inc as a public hospital corporation under Title 44 Chapter 7, Art 15 and Art 16 of the SC Code The Certificate of Incorporation was filed with the Secretary of State on May 1, 1995 and Articles of Amendment were filed with the Secretary of State on May 28, 1998, and January 16, 2002, which are incorporated by reference

1 On April 16, 2007, Spartanburg County Council adopted Ordinance No 0-07-08 to provide for the Articles of Amendment to the Certificate of Incorporation filed with the Secretary of State on May 1, 1995 pursuant to S C Code Ann § 44-7-2145 (1976 as Amended) The Certificate of Incorporation filed May 1, 1995 is hereby amended to delete Sections 2(B), 2(C), 2(D) and 2(F) and to substitute the following amendments

"(B) The Board shall consist of eleven (11) members appointed by Spartanburg County Council for four (4) years or until successors are appointed and assume office The members of the Board serving on the effective date of this Ordinance shall continue to serve in their presently appointed capacities and terms subject to Sec 2-121 Spartanburg County Code No member of the Board shall receive compensation for services as a member of the Board No member of the Board shall be an employee of the Board or hold a salaned position in the service of the hospitals or hospital district All members of the Board shall comply with the current hospital district conflicts of interest governance policy consistent with applicable federal law for tax exempt organizations and the State Ethics Act Code § 8-13-100 et seq which is currently on file in the County Administrator's Office The members of the board shall elect from their membership a chairman, vice-chairman and secretary "

"(C) According to the procedure provided hereafter, Spartanburg County Council shall appoint eleven (11) at large members to the health service district board who shall be residents of the county Of such eleven (11) at large members, each county single member election district representative shall nominate one (1) at large member to the board, referred to hereafter as district members. Five (5) at large members, hereinafter referred to as county members, shall be appointed to the board upon the nomination of any county council representative Of such five (5) county members, one (1) shall be a member of the medical staff of the Spartanburg Regional Medical Center After a district member has been appointed, the successor for that member shall be appointed in the same manner "

"(D) If the number of county single member election districts shall be increased by future reapportionment, the number of county members shall be reduced accordingly and the number of district members increased accordingly and so appointed by County Council at the appropriate times "

"(F) If any member of the Board shall cease to be a legal resident of Spartanburg County that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate If any medical doctor appointed to the Board should cease to be a member of the active medical staff of the Spartanburg Regional Medical Center, then that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate If a finding is made by the Board that a member of the Board has violated any of the terms and conditons of the current hospital district conflict of interest governance policy as filed with the County Administrator,

FILED: 08/06/2007
SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC
Filing Fee \$10.00 ORIG
Mark Hammond
South Carolina Secretary of State

such finding shall be placed in writing, setting forth the factual basis and reasons thereof, and submitted to the chairman of County Council or his/her designee. Upon the concurrence of County Council with such finding, that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate. Upon certification by the County Administrator of the appointment of all members of the board of the district all prior special acts and county ordinances referring to the Spartanburg General Hospital System and Spartanburg Regional Medical Center shall be repealed, be null and void, and all powers and authority formerly vested in those entities vested in the Board of Directors of the District."

2 Ordinance No O-07-08, which Spartanburg County Council provided for the above amendment, is attached and incorporated herein by reference

3 Except as amended above, the Certificate of Incorporation filed May 1, 1995 and the Articles of Amendment filed May 28, 1998, and January 16, 2002, are reaffirmed and shall continue in effect in all their terms

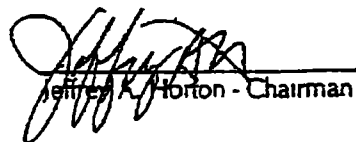
**CERTIFICATE
SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC.**

It is expedient that the incorporation be amended as provided in the attached Ordinance No O-07-08 and Articles of Amendment are approved for filing with the Secretary of State

The effective date of the Articles of Amendment shall be the date of filing with the Secretary of State

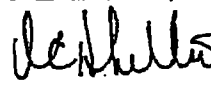
This 2nd day of May, 2007
SPARTANBURG COUNTY COUNCIL

By


Jeffrey K. Horton - Chairman

I, Edwin C. Haskell, III, an attorney licensed to practice in the State of South Carolina, certify that the governing body of the authorizing subdivision, to which this certificate relates, has complied with the requirements of S C Code Ann § 44-7-2154 (1976 as amended) relating to articles of amendment of health services districts

Date May 2, 2007


Edwin C. Haskell, III



NO. 0-07-08

AN ORDINANCE

AMENDING ORDINANCE NOS. 557, 649, and 0-01-22 AND ARTICLES OF INCORPORATION TO CHANGE THE RESIDENCE REQUIREMENT OF SINGLE MEMBER DISTRICT BOARD MEMBERS OF SPARTANBURG REGIONAL HEALTH SERVICES DISTRICT, INC AS APPOINTED BY COUNTY COUNCIL TO REQUIRE RESIDENCY IN THE COUNTY AND TO REQUIRE BOARD MEMBERS TO COMPLY WITH THE CURRENT HOSPITAL DISTRICT CONFLICTS OF INTEREST GOVERNANCE POLICY.

BE IT ORDAINED that Ordinance Nos. 557, 649, and 0-01-22 are hereby amended to provide

Section 1. Findings. Spartanburg County Council finds that the appointment of each district member of the governing board of the Spartanburg Regional Health Services District, Inc should be subject to nomination by each single member election district representative so long as the board member is a resident of the county

Section 2. Section 2(B) of Ordinance No. 557 is hereby amended by deleting the current language in its entirety and by substituting in its place the following language

"(B) The Board shall consist of eleven (11) members appointed by Spartanburg County Council for four (4) years or until successors are appointed and assume office. The members of the Board serving on the effective date of this Ordinance shall continue to serve in their presently appointed capacities and terms subject to Sec. 2-121 Spartanburg County Code. No member of the Board shall receive compensation for services as a member of the Board. No member of the Board shall be an employee of the District or hold a salaried position in the service of the hospitals or hospital district. All members of the Board shall comply with the current hospital district conflicts of interest governance policy consistent with applicable federal law for tax exempt organizations and the

State Ethics Act SC Code § 8-13-100 et seq which is currently on file in the County Administrator's office. The members of the board shall elect from their membership a chairman, vice-chairman and secretary "

Section 3. Section 2(C) of Ordinance No. 557 is hereby amended by deleting the current language in its entirety and by substituting in its place the following language:

"(C) According to the procedure provided hereafter, Spartanburg County Council shall appoint eleven (11) at large members to the health service district board who shall be residents of the county. Of such eleven (11) at large members, each county single member election district representative shall nominate one (1) at large member to the board, referred to hereafter as district members. Five (5) at large members, hereinafter referred to as county members, shall be appointed to the board upon the nomination of any county council representative. Of such five (5) county members, one (1) shall be an active member of the medical staff of the Spartanburg Regional Medical Center. After a district member has been appointed, the successor for that member shall be appointed in the same manner "

Section 4. Section 2(D) of Ordinance No. 557 is hereby amended by deleting the current language in its entirety and by substituting in its place the following language:

"(D) If the number of county single member election districts shall be increased by future reapportionment, the number of county members shall be reduced accordingly and the number of district members increased accordingly and so appointed by County Council at the appropriate times "

Section 5. Section 2(F) of Ordinance No. 557 is hereby amended by deleting the current language in its entirety and by substituting in its place the following language:

"(F) If any member of the Board shall cease to be a legal resident of Spartanburg County that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate. If any medical doctor appointed to the Board should cease to be a member of the active medical staff of the Spartanburg Regional Medical Center, then that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate. If a finding is made by the Board that a member of the Board has violated any of the terms and conditions of the current hospital district conflict of interest governance policy as filed with

the County Administrator, such finding shall be placed in writing, setting forth the factual basis and reasons thereof, and submitted to the chairman of County Council or his/her designee. Upon the concurrence of County Council with such finding, that person's position on the Board shall be vacated by operation of law and his/her appointment shall thereupon automatically terminate. Upon certification by the County Administrator of the appointment of all members of the board of the district all prior special acts and county ordinances referring to the Spartanburg General Hospital System and Spartanburg Regional Medical Center shall be repealed, be null and void, and all powers and authority formerly vested in those entities vested in the Board of Directors of the District."

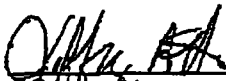
Section 6. The Articles of Amendment attached and incorporated are adopted, and filing with the Secretary of State authorized with all things required to be done to obtain the issuance of amendment to the charter.

Section 7. Except as amended herein, the provisions of Ordinances Nos 557, 649 and 0-01-22 and the Articles issued pursuant thereto are hereby reaffirmed.

Section 8. This Ordinance shall take effect upon third reading approval.

SPARTANBURG COUNTY COUNCIL

By


Jeffrey A. Horton
Chairman

ATTEST


D. Glenn Breed

Spartanburg County Administrator

First Reading	<u>February 19, 2007</u>
Second Reading	<u>March 19, 2007</u>
Third Reading	<u>April 16, 2007</u>

EXHIBIT A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 15 PM 2:29
M. HOPE BLACKLEY

THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO SC CODE SECTION 15-48-10 ET SEQ. AS MODIFIED HEREIN

PHYSICIAN EMPLOYMENT AGREEMENT

THIS PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") effective the 1st day of October, 2004, (the "Effective Date"), by and between Spartanburg Regional Health Services District, Inc., 101 E. Wood Street, Spartanburg, SC 29303, (the "District") and D. Mark Hicklin, M.D., 391 East Henry Street, Spartanburg, SC 29302, (the "Physician").

INTRODUCTION. District is a political subdivision of the State of South Carolina created on April 10, 1995, by Spartanburg County Council. The District has determined that there is a need for primary care physicians in the District's service area who are available to diagnose and treat patients in the physician office setting.

The District desires to employ qualified primary care physicians who are willing to provide needed professional medical services to the residents of District's service area.

Physician is a Board Certified/Board Eligible primary care physician licensed to practice medicine in the State of South Carolina.

The District desires to employ Physician and Physician desires to enter into the employ of the District according to the terms and conditions set forth in this Agreement.

Agreement. In consideration of the premises and the mutual promises and covenants stated below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do covenant, stipulate, and agree as follows:

1. Employment of Physician. The District shall employ Physician on a full time basis to provide professional and administrative direction, teaching and supervisory services in accordance with the terms of this Agreement.

1.1 Professional Duties. Physician shall provide professional medical services to patients of the District at the practice location known as Westmoreland, Hicklin and Colby Regional Primary Health Center at Spartanburg, South Carolina, or at such other District facility(ies), as mutually agreed, (the "Practice Site"). By entering into this Agreement, Physician acknowledges that he has become an employee of the District and that he shall at all times, in the performance of his professional duties and other services provided under this Agreement, be subject to the rules governing District physicians, as such rules may be amended from time to time (the "District Rules").

1.2 Availability. Physician agrees to provide medical services at Practice Site on a full-time basis, which for purposes of this Agreement shall be defined as at least forty-six (46) weeks a year and thirty-six (36) hours per week during regular Practice Site office hours. Office hours shall

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M. HOEHL

be posted at the Practice Site and shall be consistent with similar medical practices in the community. Physician shall reasonably extend posted Practice Site office hours on a given day/date if patients who may not be treated between those hours present themselves for service. Physician shall also comply with additional requirements regarding practice coverage to be developed by the Physician and the District.

1.3 Staff Privileges. Physician shall, at all times, during the term of this Agreement, be and remain a member in good standing of the active medical staff with the facilities of the District.

1.4 Best Efforts. Physician will industriously pursue his profession in the best interest of the District and its patients.

1.5 Standards. Physician shall perform his duties under this Agreement in conformity with and shall comply with: (a) all applicable standards, rulings, regulation and requirements of the United States Department of Health and Human Services, the South Carolina Department of Health and Environmental Control, the Joint Commission on Accreditation of Healthcare Organizations and any federal, state, or local government agency, third party payer or accrediting body having jurisdiction over or providing reimbursement for the services provided by Physicians and any programs and services offered by the District; (b) the bylaws; policies, rules and regulations of the District (including those of any department, section or division thereof), District's medical staff and of managed care programs in which the District participates, as the same may be amended and in effect from time to time; (c) the policies and procedures established by the Governance Council of the Network; (d) the Principles of Medical Ethics of the American Medical Association; and (e) the standard of care required of physicians practicing in the State of South Carolina. Physician will carefully avoid any and all personal acts, habits and usages which might injure, directly or indirectly, his professional reputation or that of the District, or any employee of the District, or which might otherwise be detrimental to any interest of the District.

1.6 Administrative Duties. Physician shall perform such administrative duties on behalf of the District as are determined by the District to be reasonable and necessary to ensure the proper and efficient operation of the Practice Site.

1.7 Supervision of Non-Physician Personnel. Physician shall participate in the training and supervision of non-physician personnel performing services at the Practice Site and shall assign the District in the evaluation of such personnel's job performance.

1.8 Continuing Professional Education. Physician shall conscientiously participate at the District's expense in programs of formal and informal continuing medical education as directed by the District.

1.9 Health Status.

1.9.1 The parties acknowledge that during the term and any renewal terms of this Agreement, Physician must be able to appropriately and safely perform his duties hereunder. Physician is responsible for apprising the District of health factors that may affect performance of

his professional and/or administrative duties, including health factors potentially affecting the health, safety or welfare of Physician or others. The District, in accordance with applicable laws, shall from time to time be entitled to make reasonable inquiries and require appropriate health screenings, both mental and physical, and testing concerning Physicians' ability to perform his duties. Such screenings and testing include, but are not limited to, testing for substance abuse and for communicable or infectious diseases, including sexually transmitted diseases.

1.9.2 The results of any testing, screening, or examination required herein will be maintained as confidential; provided, however, any positive test result (i) will be reported to appropriate authorities as required or allowed by applicable law and (ii) will be disclosed, in the sole discretion of the District, on a need to know basis in accordance with applicable laws. If Physician becomes infected with HIV or Hepatitis B, the District has the sole discretion not only to report Physician's condition in accordance with the applicable law but to determine Physician's appropriate scope of practice and resolve other relevant issues.

2. Physician's Representations and Warranties. Physician represents and warrants that:

2.1 Physician has never had his license to practice medicine revoked or suspended in any state.

2.2 There is no litigation, proceeding or governmental investigation, including, but not limited to, any malpractice, bankruptcy or exclusion proceeding, pending or threatened, against Physician, except as disclosed by Physician.

2.3 Physician has, in full force and effect, extended reporting endorsement coverage or is otherwise protected by valid medical malpractice insurance for any incidents occurring prior to employment by the District hereunder.

2.4 Physician shall execute any agreements necessary for participation by the District and Physician in, and reimbursement from, public or private third party payers including, but not limited to, Medicaid, Medicare, Network agreements and other private managed care programs with which the District and/or the Network otherwise contract as providers.

3. Compensation, Benefits and Assignment.

3.1 The District shall compensate physician in accordance with Exhibit A, attached hereto and incorporated by reference herein. The District shall also provide Physician with the fringe benefits package on Exhibit B, as that package is amended from time to time. The District shall bill payers for all professional services performed by Physician hereunder, and Physician hereby specifically reassigns to the District all rights to bill and receive payment for Physician's services. Physician shall provide the District with all information the District may require to complete the Form HCFA-855R for Medicare reassignment purposes. Further, the District is entitled to all other fees received or collected by Physician relating to the practice of medicine, including without limitation, all speaker fees, witness fees, drug studies consulting or report fees, if

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performed during regular office hours. If Physician receives directly any payments whatsoever for medical or medical-related services, he will promptly transfer said payments to the District.

3.2 Physician shall promptly furnish the District or its billing agent with complete and accurate information as necessary to bill and collect fees for professional services rendered by Physician and, as indicated, other professional medical personnel at the Practice Site. Physician shall advise the District of any billing arrangements between Physician and any practitioner providing coverage for Physician. Physician shall consult with the District prior to making any billing adjustments, including extending professional courtesy to any physician (or members of that physician's family) who is or may be in a position to refer patients to the District or an entity affiliated with the District.

4. Disability. As used in this Agreement, the term "short-term disability" shall be as defined in District's benefit plan at the time of such disability; the term "long-term disability" shall mean the Physician's continuous and uninterrupted inability for a period of six (6) months or more to perform the duties required by this Agreement by reason of accident, illness or disease; provided, that brief and intermittent interruptions of the period of disability which are occasioned by attempts on the part of Physician to return to work or otherwise to perform his duties under this Agreement shall not, of and by themselves, prevent that period from being deemed one of continuous and uninterrupted inability to perform those duties. As used herein, the "onset" of Physician's disability shall be deemed to have occurred on the first day of such inability to perform his duties. Disability pay will be made according to the District's disability plan in effect at that time.

5. District's Duties. The District shall perform the following services for the Practice Site:

5.1 The District shall provide and maintain the Practice Site in order that Physician can conveniently treat patients.

5.2 The District shall provide supplies and such support personnel as are necessary to operate the Practice Site. The District's personnel responsibilities shall include providing additional physicians, physician assistants and nurse practitioners as the District reasonably determines are needed to assist Physician in rendering patient care at the Practice Site. The Physician shall be actively involved in the selection of additional physicians, physicians' assistants, and nurse practitioners.

5.3 The District shall, in cooperation with Physician, establish administrative and business practices at the Practice Site for the efficient and effective processing of patient inquiries, handling and scheduling appointments, greeting and processing patients within the office, and billing for professional services rendered in accordance with legal, ethical and payor guidelines.

5.4 The District shall provide technical support and advice to Physician to assist Physician in complying with all applicable governmental laws and regulations related to his/her provision of services hereunder.

6. Term and Termination of the Agreement.

Hicklin, D. Mark, Primary Care Physician Employment Agreement, Fall Term 10'3-2004

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CLERK OF COURT
SPARTANBURG COUNTY

2011 APR 15 PM 2:29
M. HICKLIN
BY J. ACKLEY

6.1 Commencement. This Agreement shall be in effect for an initial term of three (3) years, commencing on 10/1/04 and ending 9/30/07. Thereafter, this Agreement will be renewed for one (1) additional two (2) year term with its same terms and provisions, or on such other terms as may be mutually agreed upon by the parties, unless either the District or Physician provides the other party with written notice of its intent not to renew at least six (6) months prior to the end of term.

6.2 Automatic Termination - No Action Required. This Agreement shall automatically terminate without the necessity of notice, upon the following:

6.2.1 If Physician's license to practice medicine in the State of South Carolina or right to prescribe controlled substances is suspended, revoked or otherwise terminated;

6.2.2 If Physician is excluded from participating in the Medicare or Medicaid programs; or

6.2.3 If Physician dies.

6.3 District's Right to Terminate Upon Notice. The District may terminate this Agreement by giving written notice thereof, upon the following:

6.3.1 If the clinical privileges or medical staff membership of Physician at any hospital is suspended or terminated for a period of thirty (30) days or more for reasons related to Physician's competence or conduct;

6.3.2 If Physician is charged with a felony, any other crime involving fraud or dishonesty, or any act of misconduct which relates directly or indirectly to the rendering of ethical, professional services by Physician;

6.3.3 If Physician has a "disability" (as that term is defined in Section 4) a period of six (6) months in any contract year, the District and the majority of employed physicians at the Practice Site, may choose to grant Physician a leave of absence. If a leave of absence is granted, and if such leave is for one (1) year or less, inclusive of the six (6) months, and if thereafter Physician is fully able to perform the duties he performed prior to his leave of absence, then Physician shall be entitled to return to a Network position;

6.3.4 If any restrictions or limitations are imposed by any governmental authority having jurisdiction over Physician or by any third party payor which prevents Physician from providing the services contemplated by this Agreement;

6.3.5 If Physician is found guilty of unprofessional, unethical, immoral or fraudulent conduct by any board, institution, organization or professional society having any privilege or right to pass upon the conduct of Physician or Physician resigns from any such institution, organization or society under threat of disciplinary action for professional misconduct;

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6.3.6 If Physician is found guilty of stealing or embezzling from the District or if Physician is found guilty of being intoxicated while on the job or if Physician is found guilty of abusing drugs;

6.4 Termination Subject to Opportunity to Cure. In addition to termination of this Agreement under Sections 6.1, 6.2 and 6.3, either party may terminate this Agreement in its sole discretion in the event of a significant breach by the other party of any of the material terms or conditions of this Agreement (such as, Physician's neglect of duties or violation of the Policies, Rules or Regulations of District, the Facilities of the District's Medical Staff, or the Network or District's failure to pay Physician on time) that said party fails to correct, as determined by the non-breaching party in its reasonable judgment, within thirty (30) days after written notice from the non-breaching party describing the breach. At or after the end of such thirty (30) day period, the non-breaching party choosing to terminate shall deliver to the breaching party written notice thereof, specifying the effective date of termination.

7. Covenants against Competition/Solicitation and Breach of Confidentiality.

7.1 Competition/Solicitation. As a material inducement to the District to employ Physician, Physician shall not, directly or indirectly, for himself or on behalf of any other person or entity, whether as a principal, agent, stockholder, partner, officer, member, director, sole proprietor, consultant, employee, independent contractor or otherwise for the period of Physician's employment, plus one (1) year.

7.1.1 plan, organize, operate, provide or otherwise be involved in the provision of medical services other than on behalf of District within a fifteen (15) mile radius of any District Practice Site where Physician has provided services other than as a locum tenens; provided, however, Physician may own an equity interest for investment purposes only of up to two percent (2%) of the outstanding capital stock of any corporation, publicly traded on a national stock exchange or the NASDAQ National Market System, which is competitive with the business activities being engaged in by District, so long as Physician is not a controlling person of, a member of a group that controls, such corporation and Physician is not otherwise affiliated in any capacity with such corporation;

7.1.2 canvas or solicit patients of the District for the provision of medical services by himself or a third party, or otherwise advise, request, persuade or attempt to persuade such patients to discontinue or curtail their relationship with the District;

7.1.3 engage in any conduct intending or having the effect of persuading any payor or provider to discontinue or forego entering into any business or service relationship with the District for the provision of medical services;

7.1.4 send any written notice, participate in a direct mailing, or otherwise communicate with any patients of the District, except as directed by the District; or

7.1.5 solicit or in any manner attempt to solicit or induce any person employed by or serving as an agent of the District to terminate such person's association or contract of employment or agency, as the case may be, with the District.

7.1.6 Notwithstanding anything herein to the contrary, after Physician's last date of employment by the District, Physician may establish an independent practice (solo or group) which is owned, in whole or in part, by Physician, without regard to the covenants of Section 7.1 as applied to Section 7.1.1. Further, in doing so, Physician may inform patients of the District, in a written communication signed by Physician and the District, of the establishment of said independent practice and otherwise canvas or solicit patients of the District to utilize Physician's services at said independent practice. District and Physician shall cooperate and use best efforts to transfer custodial ownership of patient health records from District to Physician for any patient transitioning to Physician's independent practice. Physician shall continue to be bound, however, by Section 7.1.1 as it applies to Sections 7.1.3 and 7.1.5 in their entirety, as it applies to Section 7.1.4 to the extent that any written notice, mailing or other communication that is not done jointly with the District, and as it applies to Section 7.1.2 to the extent of all relationships a patient may have with the District for services other than those offered by Physician at Physician's independent practice site. At the termination of this Agreement, Physician will have a right of first refusal to purchase practice hard assets at the then fair market value.

7.2 Confidential Information. The term "Confidential Information" as used herein means (i) all information of the District of a business or technical nature including, but not limited to, patient and client lists, information relating to processes, plans, methods of doing business and special needs of referring doctors, clients and patients, that is disclosed to, learned or developed by Physician in the course of performance of his obligations hereunder; (ii) any such information previously known to Physician which relates to the operations of the Network or the activities at the Practice Site; or (iii) all information of any type which directly or indirectly relates to credentialing, peer review, utilization review, quality assurance and risk management activities. Physician acknowledges that such Confidential Information is of substantial value to the District. Accordingly, Physician hereby agrees that he shall not, directly or indirectly, without the express written consent of a duly authorized officer of the District, use for his own benefit or for the benefit of any other entity or person, or disclose or make accessible to anyone without a need to know, any Confidential Information. Unless waived in writing by the District, the provision contained herein shall survive the termination of Physician's employment hereunder, whether through nonrenewal of this Agreement or any other reasons whatsoever. However, nothing in this paragraph shall be construed to deny to any patient his or her medical records in accordance with applicable law. Further, notwithstanding the above, the use/disclosure restrictions set forth herein shall not apply to information (i) that is generally available to the public or becomes available other than as a result of disclosure by the Physician, (ii) that Physician is required to disclose to a governmental entity, or (iii) that is required by Physician to treat patient electing to continue treatment by Physician after termination of this Agreement.

7.3 Covenant Validity. Physician agrees that all of the restrictions set forth in this Section 7 including, but not limited to, the time period of restriction and the geographical areas of restriction ("the Limitations"), are fair and reasonable and are reasonably required to protect the

Hicklin, D Mark. Primary Care Physician Employment Agreement, Pdf Time:10/27/2004

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legitimate interests of the District, and its parent or subsidiary corporations, officers, directors, employees and affiliates. In the event that any of the restrictions, including but not limited to the Limitations, shall be declared by a court of competent jurisdiction to exceed the maximum restrictions such court deems reasonable and enforceable, the restrictions deemed reasonable and enforceable by the court shall become and thereafter be the maximum restriction in each regard, and those restriction shall remain enforceable to the fullest extent deemed reasonable by such court.

7.4 Remedies

7.4.1 Accounting for Profits. If Physician violates any of the provisions of this Section 7, District shall be entitled to an accounting and repayment of all profits, compensation, commissions, remuneration, or other benefits that Physician, directly or indirectly, has realized and/or may realize as a result of, growing out of, or in connection with, any such violation. This remedy shall be in addition to, and not in limitation of, any injunctive relief or other rights, remedies, or damages, to which the District is or may be entitled.

7.4.2 Injunctive Relief. Physician agrees that, in the event of any breach by Physician of any of the provisions of this Section 7, the District shall suffer irreparable harm for which the remedy of monetary damages may be inadequate. Therefore, in the event of a breach or threatened breach by Physician thereof, the District, in addition to, and not in limitation of, any other rights, remedies, or damages available to the District at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction, and permanent injunction in order to prevent or restrain any such breach by Physician or by Physician's partners, agents, representatives, servants, employers, employees, companies, consulting clients, and/or any and all persons directly or indirectly acting for or with Physician.

7.4.3 Enforcement. Notwithstanding the foregoing, if the restrictions specified above are judged unreasonable by any court of competent jurisdiction, the parties agree to reformation of such restriction by the court to limits which may reasonably grant the District maximum protection permitted by applicable law in such circumstances, and the parties will assert that such restrictions should be eliminated in their entirety by the court.

7.5 Set Off. In the event of any breach by Physician of the covenants set forth in this Section 7, the District shall be entitled to set off the amounts to which the District may become entitled hereunder against payments, if any, becoming due to Physician as a result of any employment or other relationship between Physician and the District.

8. Practice of Medicine. Both parties acknowledge that Physician shall be solely and exclusively responsible for all medical care of patients and discharge of medical practice matters which are required by law to be made or performed by a medical doctor.

9. Arbitration. In the event of any controversy or claim arising out of or relating to any provision of this Agreement, or the breach, termination or validity thereof, the parties will attempt in good faith to resolve such controversy or claim. If the matter has not been resolved within sixty (60) days of the commencement of such discussions (which period may be extended by mutual

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agreement), then the parties hereby agree to immediately submit the controversy to binding arbitration. The arbitration shall be conducted by a single arbitrator in accordance with the American Health Lawyers Association Alternative Dispute Resolution Rules of Procedure for Arbitration. The decision of the arbitrator shall be final. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Each party shall bear its own expenses and attorneys' fees incurred in the arbitration, except that the costs of the arbitrator shall be shared equally. The place of arbitration shall be Spartanburg, South Carolina.

10. Miscellaneous.

10.1 Waiver. No delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of either party of any right, power or privilege hereunder be construed as a waiver at any subsequent time of the same or another right, power or privilege.

10.2 Notices. All notices, demands, or other communications authorized or required to be given by any party pursuant to this Agreement shall be given in writing and either (a) delivered personally; (b) sent by overnight express delivery (for which written confirmation of delivery can be obtained from the carrier); or (c) sent by registered or certified U.S. mail, return receipt requested at the address designated in the first paragraph. The parties shall be responsible for notifying each other promptly in writing of any change of address.

10.3 Severability. Any provision of this Agreement which is unenforceable, invalid or contrary to law, shall be of no effect. However, all the remaining terms and provisions shall be fully effective according to the terms of this Agreement, as if such unenforceable or invalid portion had never been included. To this end, the provisions of this Agreement are deemed severable.

10.4 Assignment. The services provided by Physician under the terms of this Agreement are personal and may not be assigned or delegated without the written consent of the District. The District may assign or transfer its rights or obligations hereunder to any entity controlled by or under the common control of the District, or any entity subsequently controlling or operating all substantially all of the assets of the District or those assets of the District relating to the operation of the Practice Site at which Physician is employed; provided that in that event, this Agreement shall be subject to the provisions hereof, be binding upon and inure to the benefit of such successor, and such successor shall discharge and perform all of the obligations of the District hereunder.

10.5 Amendments. This Agreement may be amended only by an instrument in writing signed by both parties.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

10.7 Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to this subject matter hereof and supersedes all prior negotiations, agreements, and understandings between the parties, whether written or oral.

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10.8 Confidentiality. Neither party shall disclose the contents of this Agreement or any other agreement simultaneously executed to any person, firm or entity, except the agents or representatives of the parties, except as required by law.

10.9 Word Forms. Whenever used herein, the singular includes the plural and the plural includes the singular. The use of any gender, tense or conjugation includes both genders and all tenses and conjugations.

10.10 Headings. The section or subsection headings have been included for convenience only and are not to be taken as an interpretation of any provision hereof.

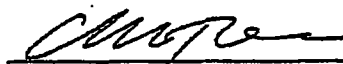
10.11 Rights in Property. All title to supplies, fiscal records, charts, equipment and furnishings of the Practice Site shall remain in the District.

10.12 Operation of Law. In the event this Agreement, in whole or in part, is deemed to be contrary to local, state or federal law by counsel for the District or, in the opinion of counsel for the District, presents substantial legal risk to either party, the parties agree to use their best efforts to make changes to the Agreement to the minimum extent necessary to make the Agreement consistent with applicable law, trying to retain as closely as possible the original terms reflected in this Agreement. If the Agreement cannot be modified or amended in any way that is mutually agreeable to the parties and complies with applicable law after the parties have used their best efforts, then either party may terminate this Agreement.

10.13 Legal and Regulatory Compliance. The parties expressly acknowledge that it has been and continues to be their intent to comply with all federal, state, and local laws and regulations. It is not the purpose, nor is it a requirement of this Agreement or of any other agreement between the parties, to offer or receive any remuneration to induce or otherwise encourage the referral of any patient or to otherwise generate business for the District.

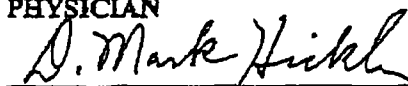
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

SPARTANBURG REGIONAL HEALTH SERVICES
DISTRICT, INC.

By: 

Charles Townison, Senior VP/COO

PHYSICIAN

By: 

D. Mark Hicklin, M.D.

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Definitions. For purposes of this Exhibit A, the following terms shall have the following meanings:

Net Revenue: Revenue from all payors for services personally provided by Physician less any refunds.

Relative Value Units: Relative Value Units ("RVUs") means the workload value (Physician work component) assigned to physician procedure and visit categories by current or future Medicare statistics, excluding RVUs from non-physician employees such as nurse practitioners and physician assistants and non-billable RVUs.

Productivity Incentive Formula: Physician's Productivity Incentive Formula is the total number of the Physician's RVUs in any contract year times the RVU rate.

	Physician's annual work RVU's	Compensation Rate
Level 1	0 to 3,265	██████████
Level 2	3,266 to 3,600	██████████
Level 3	3,601 to 3,922	██████████
Level 4	3,923 to 4,300	██████████
Level 5	4,301 to 4,670	██████████
Level 6	4,671 to 5,692	██████████
Level 7	5,693 and above	██████████

Physician's Compensation

a. Physician's annual compensation will be Physician's work component of the Relative Value Units (RVUs) personally performed by Physician, excluding any income generated by Physician for the technical component of ancillary services, times the applicable RVU rate from the above table. See Exhibit A1 ("Sample Compensation Calculation"), which illustrates how compensation is calculated under different production scenarios at the above rates. Payments will be made in installments, pursuant to the District's employee payroll procedures, with the amount of Physician's draw based upon an agreed-upon estimate of Physician's prior year compensation. provided, however, said estimate shall not result in compensation that exceeds ninety percent (90%) of Physician's total compensation for the immediately preceding contract year. At the end of each quarter, Physician's RVU production will be reviewed. If the Physician's year to date compensation based on the Productivity Incentive Formula is greater than the draw year to date, then the additional compensation due will be paid within thirty (30) days of the end of that quarter. If the Physician's year to date compensation based on the Productivity Incentive Formula is less than the draw year to date, the Physician is in a deficit situation and an appropriate decrease will be made to the Physician's draw in the following quarter equal to the amount paid in excess of the draw year to date. Such deficit is the obligation of Physician to repay to the District. In the event there is no subsequent draw payment, Physician will repay the

Hicklin, D. Mark, Primary Care Physician Employment Agreement, Fall Term 1993/2004

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deficit to the District within thirty (30) days of notice thereof.

Ancillary services shall include injection administration and supplies and all "Designated Health Services" under the Stark Act, as amended from time to time. As of July 1, 2001, the "Designated Health Services" under Stark are comprised of the following: clinical laboratory services; physical therapy services; occupational therapy services; radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics and prosthetic devices and supplies; home health services; outpatient prescription drugs, and inpatient and outpatient hospital services.

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A sample compensation calculation, including base salary and potential productivity incentive, is attached as Exhibit A-1 to this Agreement.

EXHIBIT A-1
Sample Compensation Calculation

The following table gives examples of how Physician's compensation would be calculated in this Agreement at different levels of production.

If Total Annual Work RVU's Equal:	RVU rate level attained	Then the RVU Rate Equals:	Total Annual Compensation Equals:
3,000	1	\$ [REDACTED]	\$ [REDACTED]
3,300	2	\$ [REDACTED]	\$ [REDACTED]
3,800	3	\$ [REDACTED]	\$ [REDACTED]
4,000	4	\$ [REDACTED]	\$ [REDACTED]
4,500	5	\$ [REDACTED]	\$ [REDACTED]
5,000	6	\$ [REDACTED]	\$ [REDACTED]
6,000	7	\$ [REDACTED]	\$ [REDACTED]

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BENEFITS ARE SUBJECT TO AMENDMENT FROM TIME TO TIME

EXHIBIT B
Schedule of Benefits

1. **Health and Dental Insurance** - Individual and Family Coverage per the District's existing health plan cost and coverage.
2. **Life Insurance** - per District's existing plan, equal to Physician's annual earnings based on most current W-2 earnings.
3. **Short Term Disability** - Physician will be eligible for short term disability coverage per the District's plan in effect at that time following the Physician's completion of the District's ninety (90) day probation period.
4. **Long Term Disability** - Physician will be eligible for long term disability coverage per the District's plan in effect at that time following the Physician's completion of one year of employment with the District.
5. **Pension** - Physician will be eligible to participate in several deferred compensation plans, including 401(k), 457(b) and 457(f). Details regarding any of these options are available in the individual plan documents.

Physician will also be eligible to participate in the State of South Carolina's Retirement Plan (SCRIP) under the terms and conditions in effect from time to time. Currently, the Physician pays 6.0% of Physician's gross income into the plan, subject to a maximum contribution based on gross income as currently provided by the plan. The District pays 6.7% of the Physician's gross income into the plan, subject to a maximum contribution based on gross income as currently provided by the plan. Note that if Physician elects to participate in additional plans, the matching by the District will be decreased by the amount of matching in the SCRIP.

6. **Continuing Medical Education/ Professional Association** - covered by District up to maximum of \$5,500.00 total cost consistent with District's policy.
7. **Leave Days** - Physician will be entitled to Time Off (TO) of 30 days. TO represents holidays/vacation, sick days and CME. Unused TO will not be carried over from year to year.
8. **Malpractice Insurance** - The District shall provide and pay for professional liability insurance protecting Physician while rendering services on behalf of the District. This insurance shall be in amounts determined by the District. The District's policy does not require tail coverage by the District or the Physician upon termination of this agreement.

Upon termination of this Agreement, any unused portion of the insurance premium paid by the District shall be the property of the District.

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EXHIBIT B

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OMB No. 1545-0048
COPY C - For EMPLOYEE'S RECORDS
 To be filled out by Employee (of Copy B)
 a Employer's name, address, and ZIP code

1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld

OMB No. 1545-0048
COPY B - To Be Filed With Employee's FEDERAL Tax Return
 c Employer's name, address, and ZIP code

1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld

SPBG REG HEALTH SERVICES DIST
 101 EAST WOOD STREET
 SPARTANBURG, SC 29303

SPBG REG HEALTH SERVICES DIST
 101 EAST WOOD STREET
 SPARTANBURG, SC 29303

7 Social security tax	8 Allocated tips	12a See instructions for box 12	7 Social security tax	8 Allocated tips	12a See instructions for box 12
9 Advance EIC payment	10 Dependent care benefits	12b	9 Advance EIC payment	10 Dependent care benefits	12b
11 Nonqualified plans	14 Other	12c	11 Nonqualified plans	14 Other	12c
b Employer's contribution number (EIN)		12d	b Employer's contribution number (EIN)		12d
d Employee's social security number		13 Statutory employee Retirement plan Third-party sick pay	d Employee's social security number		13 Statutory employee Retirement plan Third-party sick pay

e Employee's name, address, and ZIP code
 D MARK HICKLIN

e Employee's name, address, and ZIP code
 D MARK HICKLIN

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax
SC			SC		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form W-2 Wage and Tax Statement 2006
 This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a separate document or other action may be required on you if this income is taxable and you fail to report it.
 Dept. of the Treasury-IRS

Form W-2 Wage and Tax Statement 2006
 This information is being furnished to the Internal Revenue Service.
 Dept. of the Treasury-IRS

OMB No. 1545-0048
COPY 2 - For EMPLOYEE'S RECORDS
 To be filled out by Employee (of Copy B)
 a Employer's name, address, and ZIP code

1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld

OMB No. 1545-0048
COPY 2 - For EMPLOYEE'S RECORDS
 To be filled out by Employee (of Copy B)
 a Employer's name, address, and ZIP code

1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld

SPBG REG HEALTH SERVICES DIST
 101 EAST WOOD STREET
 SPARTANBURG, SC 29303

SPBG REG HEALTH SERVICES DIST
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7 Social security tax	8 Allocated tips	12a See instructions for box 12	7 Social security tax	8 Allocated tips	12a See instructions for box 12
9 Advance EIC payment	10 Dependent care benefits	12b	9 Advance EIC payment	10 Dependent care benefits	12b
11 Nonqualified plans	14 Other	12c	11 Nonqualified plans	14 Other	12c
b Employer's contribution number (EIN)		12d	b Employer's contribution number (EIN)		12d
d Employee's social security number		13 Statutory employee Retirement plan Third-party sick pay	d Employee's social security number		13 Statutory employee Retirement plan Third-party sick pay

e Employee's name, address, and ZIP code
 D MARK HICKLIN

e Employee's name, address, and ZIP code
 D MARK HICKLIN

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax
SC			SC		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

EXHIBIT C

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**REGIONAL
PHYSICIAN NETWORK**

Thomas W. Westmoreland, M.D.
D. Mark Hicklin, M.D.
Scott A. Coley, M.D.
Westmoreland, Hicklin, Coley
120 Heywood Avenue, Suite 200
Spartanburg, SC 29302
864-573-9595
Fax: 864-560-3850

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**REGIONAL
PHYSICIAN NETWORK**

In affiliation with Spartanburg Regional Healthcare System

WESTMORELAND, HICKLIN AND COLEY
120 HEYWOOD AVENUE, SUITE 200 • SPARTANBURG, SOUTH CAROLINA 29302

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THOMAS W. WESTMORELAND, M.D.
D. MARK HICKLIN, M.D.
SCOTT A. COLEY, M.D.

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EXHIBIT F

REGIONAL PHYSICIAN NETWORK

Thomas W.

Westmoreland, M.D.

D. Mark Hicklin, M.D.

Scott A. Coley, M.D.

891 East Henry Street

In Affiliation With Sparlunburg
Regional Healthcare System

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal)
Representative for the Estate of)
Martha Sue Hoftiezer,)

Plaintiff,)

vs.)

D. MARK HICKLIN, M.D.,)
DRS. TAYLOR, HICKLIN,)
WESTMORELAND AND COLEY, P.A.,)
and SPARTANBURG REGIONAL)
HEALTH SERVICES DISTRICT, INC.,)
db/a Spartanburg Regional)
Healthcare System,)

Defendants.)

AFFIDAVIT OF BRYAN M. McCain

C.A. Number: 2009-CP-42-5373

PERSONALLY APPEARED before me Bryan M. McCain, who being duly sworn,
deposes and says as follows:

1. Affiant is the Director of Operations of the Regional Physicians Network at Spartanburg Regional Health Services District, Inc. ("SRHSD"). This affidavit is based on Affiant's personal knowledge of all matters set forth in this affidavit.

2. At the times referenced in Plaintiff's Complaint in this matter, Mark Hicklin M.D. was an employee of SRHSD. Dr. Hicklin continues to be employed by SRHSD.

3. Drs. Westmoreland, Hicklin and Coley (and its predecessor designations) (the "practice group") is a medical practice wholly owned by SRHSD and is not a separate legal entity.

4. Any bill from Spartanburg Regional Healthcare System received by Ms.

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Hoftiezer and/or her estate for treatment and care provided by the practice group since at least 1998 would have appeared in a format identical to the sample bill attached to this Affidavit as Exhibit A.

FURTHER AFFIANT SAYETH NOT.

Bry M. McCain
BRYAN M. McCain

SWORN to and subscribed
before me this 14th day
of April, 2011.

Robin C. Deming (SEAL)
Notary Public for South Carolina

My Commission Expires: 11/15/2014

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EXHIBIT A

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Patient Statement for [REDACTED]
 A summary of charges, payments and adjustments is provided below.

Page 2 of 2
 Statement Date: 03/18/2009
 Medical Record Number: [REDACTED]

Invoice Number: [REDACTED]	Service Date: 08/28/08	Provider: SCOTT COLEY MD	
Charges	Charge	Account Activity	Amount
AUTOMATED HEMOGRAA	\$ 40.00	Total Charges	\$ 179.00
OFFICE/OUTPATIENT VISIT, NEW	\$ 139.00	Payor Payment	\$ -78.14
Total Charges	\$ 179.00	Payor Adjustment	\$ -83.92
		Patient Payment	\$ -11.26
Amount Now Due For This Service			\$ 5.88

Do We Have Your Insurance Information ?

Accurate insurance information helps ensure prompt payments by your insurance company. If you were unable to provide your insurance information for a different than shown on the front of this page, please complete the section below and return this page or call our office. Thank you.
 Mail this stub to the address on reverse side.

☐ Primary Insurance ☐ Medicare ☐ HMO ☐ PPO ☐ Other		☐ Secondary Insurance ☐ Medicare ☐ HMO ☐ PPO ☐ Other	
Insured Name _____		Insured Name _____	
Insurance Name _____		Insurance Name _____	
Address _____		Address _____	
City/State _____ Zip _____ Phone _____	City/State _____ Zip _____ Phone _____	City/State _____ Zip _____ Phone _____	City/State _____ Zip _____ Phone _____
Group/Plan _____ ID# _____		Group/Plan _____ ID# _____	
Employer _____		Employer _____	

I authorize the hospital to submit any or all medical data to my insurance company, and authorize the assignment of any benefits or payments to the hospital. I understand I am financially responsible to the hospital for charges not covered by this authorization. Please return with copies of the front and back of your insurance card(s).

Signed _____ Date _____

CHANGE OF ADDRESS

Name _____ Phone _____

Address _____

City/State _____ Zip _____

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PHYSICIANS BILLING SERVICE
PO BOX 2168
SPARTANBURG, SC 29304-2168

1V001662

SPARTANBURG SC 29301-1877



Welcome to Our New Statements!

As a result of suggestions made to us by patients just like you, we have re-designed our statement to provide you with complete, easy-to-read information about your bill. Thank you for your suggestions and your continued support. We are committed to continuing our efforts to improve the quality of service that we provide for you!

Page 1 of 2

Account Summary

Statement Date	03/18/2009
Patient Name	[REDACTED]
Medical Record Number	[REDACTED]
Amount Now Due	\$ 5.68

Insurance Information

PLEASE CONFIRM THIS INFORMATION IS CORRECT

Name

MEDICARE

If you need help, contact our Customer Service Department by calling 1-877-596-2465 or 804-560-1304 Monday - Friday 9:30 a.m. - 4:30 p.m.

About Your Statement

Thank you for choosing WESTMORELAND, HICKLIN AND COLEY as your healthcare provider. This statement summarizes services provided to you and the amount due for these services. Reference the back of this statement for a summary of charges for each account. Please note this is a statement for Physician Services Only. You may receive a separate bill for hospital fees.

This account is past due. Please pay your balance or contact our office to make payment arrangements. You may pay by cash, check, credit card, or money order. If you have billing questions, please call 1-877-596-2465 or 804-560-1304.

Payment for Physician Services

DETACH HERE AND RETURN

Statement Date 03/18/2009

Patient	Location Code: WHC	Medical Record No.	Date Due	Amount Now Due
[REDACTED]		[REDACTED]	04/17/2009	\$ 5.68

Check here if your address or insurance information has changed and complete information on back.

PHYSICIANS BILLING SERVICE
PO BOX 2168
SPARTANBURG, SC 29304-2168



For your convenience you may pay by Visa, MasterCard, Discover, American Express, personal check, or money order. (Please do not send cash.) Make checks payable to: PHYSICIANS BILLING SERVICE. If paying by credit card, indicate your card preference, provide the account information, and sign below.



Account No. _____

Expiration Date _____

Signature X _____



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 15 PM 2:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, AS PERSONAL
REPRESENTATIVE FOR THE
ESTATE OF MARTHA SUE
HOFTIEZER,

Plaintiff,

vs.

D. MARK HICKLIN, M.D. DRS.
TAYLOR, HICKLIN,
WESTMORELAND AND COLEY, P.A.,
and SPARTANBURG REGIONAL
HEALTH SERVICES DISTRICT, INC.,
d/b/a Spartanburg Regional Medical
Center,

Defendants.

CERTIFICATE OF SERVICE

C. A. No. 2009-CP-42-5373

I, the undersigned paralegal in the Law Offices of Holcombe Bomar, P. A., attorneys
for the Defendants, do hereby certify that I have caused a copy of the hereinbelow listed
pleadings to be mailed to all parties in this matter on the 15th day of April, 2011 as follows:

PLEADING: Motion for Summary Judgment and Affidavit
SERVED: Ruskin C. Foster, Esq.
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, South Carolina 29201

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 15 PM 2:29
M. HOPE BLACKLEY

By Roxanne R. Reynolds
Roxanne R. Reynolds, Certified PLS, Paralegal

Vol. I



Martie Hoffiezer

2/20/98

S: In with abdominal pain. She has had some mid to lower Abdominal pain over this last week. It started suddenly and is a little better now than it has been. No dysuria, urgency, or frequency, and no bowel changes. No fever.

O: patient is a little tender between the umbilical area and the suprapubic area. Active bowel sounds and no palpable masses. Surprisingly Urinalysis showed 3+ bacteria, 10-15 WBC's. I think we are dealing with a UTI but it is very different from any other UTI she has ever had.

P: Started her on Bactrim DS 1 b.i.d. for 10 days.
Push p.o. fluids.
Recheck urine after she finishes her meds.
Recheck p.r.n.

She is going to have some blood work drawn over the next couple of weeks for her yearly physical. I told her she needed to be fasting and we will get a CBC and hospital profile done.

TWW:hw

Date: 10-23-98 Reason for visit: Depress

See Her

DATE 5-26-98	TIME 1:30	CALLER SELF		PH. #
PT. Martha Hoftiezer	AGE 7/14/47	TEMP.	REC'D BY: MT	MD W
MESSAGE Phenobarb 100mg #100 (1 x day) for seizure control			DISPOSITION 5 lifts	
ALLERGY			HANDLED BY [Signature]	
DRUG STORE Walmart Westgate				

#60 -

DATE 6-5-98	TIME pm	CALLER Martha Hoftiezer		PH. #
PT.	AGE 7-14-47	TEMP.	REC'D BY: SNC	MD W
MESSAGE - PremPro - 1 a day #30 - Phenobarbital 100mg 1 a day #30 - Darvocet 75-100 PRN 1 q 4-6 hrs #60 - Ultram 50mg PRN 1 q 4-6 hrs #60			DISPOSITION all 4	
ALLERGY			HANDLED BY [Signature]	
DRUG STORE Eckerd's Hwy 9				

TAYLOR, WESTMORELAND,
AND HICKLIN
391 E. HENRY STREET
P. O. BOX 3258
SPARTANBURG, SC 29304

this blood work
related to W/C claim
7-1-97
PB-

Patient: <u>Arnette Hester</u>		Date: <u>2-12-97</u>	Test By: <u>W</u>	Time: <u>9:20</u>	MISC.	Chart #
HCT	SED RATE	BLOOD SUGAR	PROTHROMBIN	Ratio	DNF	OTHER:
<u>40.1</u>						

Patient: <u>Marie Hester</u>		Date: <u>2-12-98</u>	Test By: <u>7</u>	URINALYSIS		Chart #
VOD	SPR	Color	PH	Sp. Gr.	Glucose	Ketones
OC	WAC		5	1.020	-	-
CATH	CLER				-	-
					Protein	Blood
					-	tr
					Nitrite	Leuk
					-	tr
					Bili	-
					Urobili	-
MICROSCOPIC						
3+ Bact.						
10-15 wbc						3-5 Rbc

DATE 1/15/98	TIME 4:30	CALLER		PH. #
PT. Marty Hoffiezer	AGE 71	TEMP.	REC'D BY:	MD W
MESSAGE Refill		DISPOSITION REFILL		
ALLERGY No		HANDLED BY		
DRUG STORE Wal-Mart Supercenter				

per DW

*Aluminum 50mg
prescribed 0.625/2.5*

Marty Hoffiezer

1/15/98

In to check a lump on the buttocks. Has done very well with her right shoulder problem and ruptured rotator cuff. She feels well. She wants to continue some of her medication as needed for the shoulder, only when necessary. We refilled her Ultram 50 mg that she could use twice to four times a day if necessary. Also refilled her Prem Pro 0.625/2.5 1 daily and we let her continue that. The tiny lump on the buttock area was right at the gluteal fold on the right buttock. It turns out it is very shallow or superficial lump that is very suspicious of a sebaceous cyst. I told her at this point we would just ignore it unless it became a painful problem. She is reassured. She is to recheck otherwise pm. TWW:na

1-20-98

abd pain

1/30/98

2 refills DS

OK

JAN FRI 12:07 PM WAL*MART W GATE

PAI NO. 8045/49003

1. 1



WARNING: DO NOT USE
IF YOU ARE PREGNANT, PLANNING TO BECOME
PREGNANT, OR BREAST FEEDING YOUR CHILD
CONSULT YOUR DOCTOR OR PHARMACIST



PLEASE READ
DISCLOSED PATIENT INFORMATION



IT IS VERY IMPORTANT THAT YOU
TAKE OR USE THEM EXACTLY AS
DIRECTED. DO NOT STOP DOSES
OR DISCONTINUE USE UNLESS
DIRECTED BY YOUR DOCTOR.

RX 6870172 12/04/97
HOFTIEZER, MARTHA
PREMPRO 0.625-2.5 TAB WY-A

7000 FREDERICKSBURG
SPARTANBURG, SC 29301

(864) 574-1985

10-1035

HOFTIEZER, MARTHA DOB: 07-14-1947
PAI

12/04/97
PREMPRO 0.625-2.5 TAB WY-A
RX: 6870172 QTY: 28 TX: 1803016
TAKE ONE TABLET BY MOUTH
EVERY DAY

PRICE: 17.99 REFILLS: 0 RWW/RWW
WESTMORELAND, THOMAS
391 EAST HENRY ST DAW: 1
SPARTANBURG SC 29301
AW7534654 (864) 573-9585
NDC: 00046-0875 -02 WY-AYERS 476

RWW/RWW 12/04/97
HOFTIEZER, MARTHA

***** PHONE *****
***** DOCTOR *****

PREMPRO 0.625-2.5 TAB WY-A
TY 28 MFG WY-AYERST
WESTMORELAND, THOMAS
2 Refills - Dr. Must Authorize
ALL 24 HOURS AHEAD FOR FASTER REFILLS

Doctor Fax Line 864-585-3752

PT. REQUESTS REFILLS PLEASE

MD # 574-8825

THANKS

Box 37

X4

RX 6870172
12/04/97
QTY 28

HOFTIEZER, MARTHA
617 PINEHILL DR
SPARTANBURG, SC 29301

HOFTIEZER
MARTHA

PHONE
DOB: 07-14-1947
Date Filled: 12/04/97

2-98 8 FRI 12:07 PM WAL-MART W GATE

FAX NO. 8645749685

P. 2

ANY (OAP) INFORMATION
RECEIVED AFTER 5:00 PM
USE (OAP) FOR EXTENDED & CIP
COUNSELING/INFORMATION



OBTAIN MEDICAL ADVICE
BEFORE TAKING ANY MEDICATION
SINCE SOME MAY AFFECT THE
ACTION OF YOUR MEDICATION

RX 4461010 12/04/97
HOFTIEZER, MARTHA
PROPACET 100100-650 TAB TEVA

7600 GREENVILLE HWY
SPARTANBURG, SC 29301

(864) 574-1985

HOFTIEZER, MARTHA DOB: 07-14-1947
PAI

1D-1035

RX 4461010 RWW/RWW 12/04/97
HOFTIEZER, MARTHA
SPARTANBURG, SC 29301

***** PHONE *****
***** DOCTOR *****

PROPACET 100100-650 TAB TEVA
Subst. for DARVOCECT-N -100 TAB LILL
QTY 60 TEVA
May Refill 2 X by 12/27/97
WESTMORELAND, THOMAS

Orig Rx 06/27/97

Doctor Fax Line 864-585-5752

PT. REQUESTS REFILLS PLEASE

MD # 574-8825

THANKS

(864) 578-9514 12/04/97
PROPACET 100100-650 TAB TEVA
RX: 4461010 QTY: 60 TX: 1803014
TAKE ONE TABLET BY MOUTH
EVERY 4 OR 6 HOURS AS
NEEDED

PRICE: 6.58 REFILLS: 2 RWW/RWW
WESTMORELAND, THOMAS DAW: 0
391 EAST HENRY ST
SPARTANBURG SC 29301
AW7534654 (864) 578-9595
NDC: 00093-0590 -05 TEVA 2016

RX 4461010
12/04/97
QTY 60

HOFTIEZER, MARTHA
657 PINEHILL DR
SPARTANBURG, SC 29309

HOFTIEZER
MARTHA

PHONE # (864) 578-9514
DOB: 07-14-1947
Date Filled: 12/04/97

Handwritten signature/initials.

JAN- 2-98 FRI 12:08 PM WAL*MART W GATE

FAX NO. 8645749685

P. 3



ALWAYS TAKE YOUR MEDICATION
AS DIRECTED BY YOUR DOCTOR
DO NOT STOP TAKING YOUR MEDICATION
WITHOUT TALKING TO YOUR DOCTOR



KEEP OUT OF REACH
OF CHILDREN



OBTAIN MEDICAL ADVICE
BEFORE USING ANY MEDICATION
SINCE SOME MAY AFFECT THE
ACTION OF OTHER MEDICATIONS

RX 4461008 12/04/97
HOFTIEZER, MARTHA
PHENOBARB 100MG TAB LIL

IT IS VERY IMPORTANT THAT YOU
TAKE OR USE THIS EXACTLY AS
DESCRIBED. DO NOT STOP DRUGS
OR DISCONTINUE UNLESS
DIRECTED BY YOUR DOCTOR.

WESTMORELAND, THOMAS
SPARTANBURG, SC 29301

(864) 574-1985

HOFTIEZER, MARTHA DOB: 07-14-1947

RX 4461009
12/04/97
QTY 30

HOFTIEZER, MARTHA
877 PINEHILL DR
PAIN, SC 29301

10-1035

tx 4461009 RWW/RWW 12/04/97
HOFTIEZER, MARTHA
7 PINEHILL DR, PAIN, SC 29301

(864) 578-9514 12/04/97
PHENOBARB 100MG TAB LIL
RX: 4461009 QTY: 30 TX: 1803017
TAKE ONE TABLET BY MOUTH AT
BEDTIME

HOFTIEZER
MARTHA

PHONE # (864) 578-8514
DOB: 07-14-1947
Date Filed: 12/04/97

***** PHONE *****
***** DOCTOR *****

PHENOBARB 100MG TAB LIL
QTY 30 MFG LILLY
WESTMORELAND, THOMAS
No Refills - Dr. Must Authorize
rx 06/27/97

PRICE: 3.94 REFILLS: 0 RWW/RWW
WESTMORELAND, THOMAS
391 EAST HENRY ST DAY: 0
SPARTANBURG SC 29301
AW7534654 (864) 573-9595
NDC: 00002-1033-02 LILLY 446

Doctor Fax Line 864-585-3752

PT. REQUESTS REFILLS PLEASE

X4
R

DATE 1-28-97	TIME	CALLER Marta Hoff		PH # 578-4901
PL P/F	AGE	TEMP.	REC'D BY: 7	MD W
MESSAGE Fam bird 100 mg 7-77			DISPOSITION	
Pencaps			✓ all 4 to [signature]	
Votoren 75				
ALLERGY			HANDLED BY	
DRUG STORE Rite Aid Springfield				

2/3/97
1cc B12 me

2-20-97
Hem. re✓ (surg. was cancelled) - (the diagnosis
H 579-4541 better - cont. -
re✓ another 4-6 weeks
N/A [signature]

3-17-97 B₁₂ 1cc

Date: 5/22/97 4th
Wt: 155 St
T 98.6 P _____ B _____ IP 100/80
4th great infection

Arrive - Monday 4th ST
Eust Top back
Mindy left work early
pud - clean
Aug 307 #6
B. D

5/22
And

DATE 1-10-97	TIME 9:38	CALLER /		PH.# 518-9514
PT. Martha Hoffmeyer	AGE /	TEMP. /	REC'D BY: Chk	MD W
MESSAGE Dora C. Hoffmeyer to Lora Hoffmeyer Please call w/ instructions about the kids to Lora Hoffmeyer by P. H. Hoffmeyer, P. Hoffmeyer, L. Hoffmeyer			DISPOSITION	
ALLERGY				
DRUG STORE Rite Aid, Springfield			HANDLED BY /	

very good crown. Low R12 -
 Start w/ 1st. #120
 7-12-97
 I will.
 Come by for B. 1st week, & 1 mo.
 1st week only - no.
 Re. 14th 6 wks. (20)

DATE 1-13-97	TIME Am	CALLER Martha Hoffmeyer		PH.#
PT.	AGE	TEMP.	REC'D BY: W	MD W
MESSAGE RFDV Phone A Barb. # 30 19th 20-20			DISPOSITION	
ALLERGY				
DRUG STORE REVA 242-0000			HANDLED BY	

1-13-97 B/2 1cc

1-20-97 B, 21cc de HAD in

Martina Hotfizer

5/20/97

Martina comes in with sore throat and drainage. Started on Monday. She has been on Amoxicillin since then and Exgest and has really hasn't improved much. Not much sinus congestion until today. No cough.

Exam: Just a very minimal amount of congestion in the nose. Throat is really clear with a little bit of drainage. IM's are clear. Lungs are clear.

Rx: Purulent URI. We will change to Augmentin 500 bid. Continue Exgest, push fluids. Gargle with salt water. Work excuse for 5/22-5/24. Follow up prn. SAC:na

DATE 5/19/97	TIME	CALLER Martina Hotfizer	PH.# 578-9514
PT.	AGE	TEMP.	REC'D BY: LH
MESSAGE S. Throat PAND - ? cul		DISPOSITION amox 500 #30 Exgest HA #16 J. Bid	
ALLERGY - NKA		HANDLED BY	
DRUG STORE Eck & L. 578-4400		(16)	

DATE 6-20-97	TIME	CALLER Martina Hotfizer	PH.# 578-9514
PT.	AGE 180mg	TEMP.	REC'D BY: 11
MESSAGE Pleasantville Pleasantville Pleasantville Pleasantville		DISPOSITION #30 #30 #60 #60	
ALLERGY		HANDLED BY	

DRS. TAYLOR, WESTMORELAND, HICKLIN & COLEY
391 E. Henry Street, P O Box 3258
Spartanburg, South Carolina 29304

Attn: Sandy Robinson

TO: Mr. Payer FAX # 370-0337

FROM: Dr. Westmoreland

DATE: 1-8-97

TRANSMITTING: 2 ~~14~~ pages including cover

The information contained in this facsimile message is privileged and confidential information and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

COMMENTS:

If you experience difficulty or do not receive all pages of this transmission please call 560-6891 or 573-9595.

Sample ID

Sample Name

Sample Name: Martha Hof Tuzer

Sample No.

DOB: 1/1/1941 AGE: 68 SEX: F

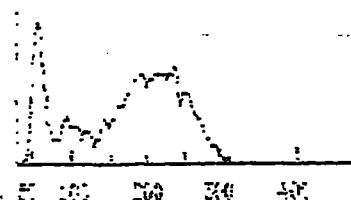
Off: OK
On: OK

Handwritten: Typed
Dr. Payton w/c Pac
BB
7-1-1997

Peak #	Time	Area	Height	Peak #	Time	Area	Height	Peak #	Time	Area	Height
1	1.1	10000	1000	11	1.2	10000	1000	21	1.3	10000	1000
2	1.2	10000	1000	12	1.3	10000	1000	22	1.4	10000	1000
3	1.3	10000	1000	13	1.4	10000	1000	23	1.5	10000	1000
4	1.4	10000	1000	14	1.5	10000	1000	24	1.6	10000	1000
5	1.5	10000	1000	15	1.6	10000	1000	25	1.7	10000	1000
6	1.6	10000	1000	16	1.7	10000	1000	26	1.8	10000	1000
7	1.7	10000	1000	17	1.8	10000	1000	27	1.9	10000	1000
8	1.8	10000	1000	18	1.9	10000	1000	28	2.0	10000	1000
9	1.9	10000	1000	19	2.0	10000	1000	29	2.1	10000	1000
10	2.0	10000	1000	20	2.1	10000	1000	30	2.2	10000	1000

Sample ID: 11111

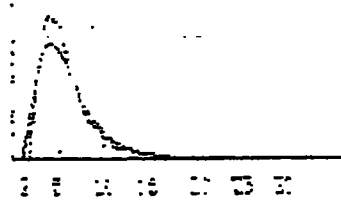
Analysis Date: 11-11-1997



11-11-1997



11-11-1997



11-11-1997

70: Lab work -
related to life claim
PB-24-

SB SmithKline Beecham
Clinical Laboratories

LABORATORY REPORT

Remarks
COPY TO DR PAYLOR-FAX 370-0337 - faxed 11/9/97

TEST	RESULT	REFERENCE RANGE	STATUS
FINAL			
TESTS*			
STATUS:	FINAL		AT
SPECIMENS SUBMITTED:	1L		
QUESTION/PROBLEM:			
EDTA WHOLE BLOOD			

AN EXTRA TUBE WAS RECEIVED WITHOUT A TEST REQUESTED. WE WILL HOLD THIS SPECIMEN IN OUR COLD STORAGE IN THE EVENT ADDITIONAL TESTING IS REQUESTED. PLEASE CONTACT CLIENT REPRESENTATIVE 1-800-877-8805 IF WE CAN BE OF FURTHER ASSISTANCE.			

IRON, TOTAL, IBC, & % SATURATION			
IRON, TOTAL	427	MCG/DL 25-170	AT
IRON BINDING CAPACITY		MCG/DL 200-450	
% SATURATION		% (CALC) 12-57	
FERRITIN			
		NG/ML 12-156	AT
VITAMIN B12/FOLIC ACID PANEL			
POLIC ACID	10.7	NG/ML	AT
REFERENCE RANGE			
NORMAL:	>1.9		
INDETERMINATE:	1.7-1.9		
DEFICIENT:	<1.7		
VITAMIN B12			
REFERENCE RANGE			
NORMAL:	>200		
INDETERMINATE:	160-200		
DEFICIENT:	<160		

'AT' refers to site: SMITHKLINE BEECHAM CLINICAL LABORATORIES
1777 MONTREAL CIRCLE
TUCKER GA 30084
770-934-9200
W. M. MILLER, MD

>> END OF REPORT

THE FRESH MARKET
2435 E NORTH ST EXT
GREENVILLE, SC 29615

HOFTIEZER, MARTIE B

07/14/47

SAME

HOFTIEZER, MARTIE B

THE FRESH MARKET

PENN WESTERN BENEFIT

SIGNATURE ON FILE

01/06/97

SIGNATURE ON FILE

01/06/97

ILLNESS (PRE-EXISTING) OR
INJURY (ACQUIRED OR
PREGNANCY-RELATED)

18. IF PATIENT HAS HAD SAME OR SIMILAR
GIVE FIRST DATE LAST

17. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE

MARK HICKLIN MD

111179

18. RESERVED FOR LOCAL USE

19. DISCHARGE OR NATURE OF ILLNESS OR INJURY (RELATE ITEMS 1, 2, 3 OR 4 TO ITEM 19)

790.6

DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF SERVICE		DATE OF 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20. FEDERAL TAX ID NUMBER

HICKLIN MD, MARK

TAYLOR, WESTMORELAND
PO BOX 3258

SPARTANBURG, SC 29304

SPARTANBURG REGIONAL MED. CTR.
P.O. BOX 2168

SPARTANBURG, SC 29304-2168

248-96-0162 57-6000934-017

DATE 9-17-96		TIME	CALLER Martha Hofficzew		PH. # (204) 292-2568
PT.		AGE	TEMP.	RECTD BY:	MD W
MESSAGE @ would like to get Dr. W opinion on a finger that has popped to her -has torn rotator cuff -needs gls call				DISPOSITION @ -rotator cuff torn, needs surgery to repair	
ALLERGY				HANDLED BY	
DRUG STORE					

DRUG STORE

12-30-94

D. Occumville

talk about bra

rotator cuff

Parker
Adm. & Orthopedic
Occumville

150

Indo

Marty Hoffman

She is going to have rotator cuff repair and brief pre-op visit. Agree totally. Need to have it repaired. I believe Dr. Paylor of Piedmont Orthopaedic Assoc. in Greenville is going to do it. We can send him a letter in this regard. See the letter regarding Marty Hoftiezer.

TW: na

May need to re-schedule ~~the~~ surg. due to low blood counts.

True copy of labr to Mr. Paylor 864 370-03

* Its unit: W/c

Fresh Market

802 Greenville, Suite 306

DATE 5-23-96	TIME	CALLER	PH. # 578-9514
PT. Martha Haftiezer	AGE	TEMP.	REC'D BY: MD EW
MESSAGE No period since she started Phen-pro -		DISPOSITION Keep ~~phen~~ going -	
Had started spotting - then started bleeding more -		Nothing should happen over 4 weeks and stop.	
ALLERGY Is at the end of pills -	HANDLED BY JL		
DRUG STORE Rite Aid Springfield			

Phen-pro. RFX3

DATE 6-21-96	TIME 10:14	CALLER Martha Haftiezer	PH. # 578-9514
PT. Martha Haftiezer	AGE	TEMP.	REC'D BY: MD Maxine West
MESSAGE On Estroval - May bleeding needs some more		DISPOSITION Cont. prempers as directed, come in for Spectradial in 2 wks	
ALLERGY	HANDLED BY		
DRUG STORE			

6-24-96 1cc Spectradial X

DATE 8/22/96	TIME	CALLER Martha Haftiezer	PH. # 578-9514
PT.	AGE	TEMP.	REC'D BY: MD W
MESSAGE needs pills Phenobarbital Prempers 71.9 Therin		DISPOSITION all 4	
DRUG STORE Rite Aid Springfield	HANDLED BY		

DATE 11-17-95	TIME 11:54	CALLER		PH # 578-9514
PT. Martha Hoftiezer	AGE	TEMP.	REC'D BY: Cah	MD W
MESSAGE Author to the...			DISPOSITION 11/17/95	
ALLERGY			HANDLED BY Cah	
DRUG STORE				

DATE 11-17-95	TIME 11:50	CALLER		PH # 578-9514
PT. Martha Hoftiezer	AGE	TEMP.	REC'D BY:	MD W
MESSAGE On Douglas down Richard author's strain in Cerv. muscle. Had Charlie Horn in 2 minutes when his down beds like muscles in loop as pulling & shake - takes Phenobarb & w/ingui. 100mg for HA after having strokes. Could be be causing the muscle problem.			DISPOSITION possibly: SC for adol. OK to pull. Sapped. Start Phenobarb 100mg #3. 1/2 - 2 po tid!	
HANDLED BY Sanifill Rincid 578-1406				

Antg: 4-25-96 NO period since Christmas
 142 refill meds
 120/78 100mg
 19/42 2/11

Martha Hoftiezer

4/25/96

Re: Martha has not had a period since Christmas. She is 49 y.o. and has been off birth control pills and that was really used just for menorrhagia. I really think at this point that she is menopausal. Has a lot of vaginal dryness problems. We will start her on Prempro 1 daily enough for 1 week. Progress report over the next month. Refilled her Phenobarb 100 mgs. h.s. Also, Voltaren 75 mgs. 1 daily to b.i.d. recheck at that time in about a month - 6 weeks.

TWW:hw

DATE 10/3/95	TIME 4 PM	CALLER Martie Hoftiezer		PH #
PT.	AGE	TEMP.	RECT BY:	MD W.
MESSAGE Ortho Nov. 1995			DISPOSITION	
ALLERGY			HANDLED BY	
DRUG STORE				

Date: 10-3-95 Reason for visit: Right Shoulder pain

Wt _____ Ht _____

P _____ R _____ BP _____

134/90

Martie Hoftiezer

10/3/95

Right shoulder pain. She has the right shoulder tendonitis that was done by moving meat in a meat freezer in a sweeping type motion. Doubt very seriously if there is any problems as far as rotator cuff tear. She was placed on, I believe, Relafen 500 (possibly could have been Iodine) bid and plenty of moist heat and lets see how things go over the next couple of weeks. Mild range of motion exercises, try to avoid heavy lifting or straining and recheck otherwise prn. TWW:na

DATE 10/24/95	TIME PM	CALLER MARtha Hoftiezer		PH # 578-9514
PT.	AGE	TEMP.	RECT BY:	MD W.
MESSAGE ① Day pro needs Rx. for this - didn't get to PHAR ② When to see again?			DISPOSITION ① Day pro 600 #10 ② Bid pr 2 prs ③ mid TAW.	
ALLERGY			HANDLED BY	
DRUG STORE R. Aid Spring Fill				

DATE 10/11/94	TIME PM	CALLER Martha Hoftiezer	PH.#
PT.	AGE	TEMP.	RECTD BY: MD L
MESSAGE RFT		DISPOSITION	
Ortho Nov. 777		X3	
ALLERGY		H	
DRUG STORE R Aid Springfield		HANDLED BY	

DATE 2-9-95	TIME	CALLER RA Springfield	PH.#
PT. Martha Hoftiezer	AGE	TEMP.	RECTD BY: MD W
MESSAGE Ortho Nov. 777 needs RFT		DISPOSITION	
ALLERGY		H	
DRUG STORE		HANDLED BY	

Date: 3-14-95 Reason for visit: Chicken stuck in
esophagus / Cant Drink
W+
EP 122/92

Martie Hoftiezer

3/14/95

S: Eating chicken last night and got a big piece of chicken hung low down in her esophagus. Has been trying to throw up and cannot. It is caught way down low.

P: Referred to Drs. Hull, Greene, Woods, McLeod, Cochran for evaluation. She needs to have an EGD to have this either pushed through or retrieved. Recheck here p.r.n.

TWW:hw

Martie Hoftiezer

Date: 10-13-93

Reason

Visit:

Chronic pain while flying

Wt

Ht

P

P

R

EP

12/84

Martha Hoftiezer

10/13/93

S: Martie complains of pain when she descends with commercial flying. She has a trip coming up to New York and she wishes something for pain when she flies.

O: PE essentially negative presently. However, we talked about self politzer maneuver as gum chewing and yawning frequently during the descent. We talked about pre-medication with Sudafed prior to the flight. She is also given about 10 Talison tabs for pain to use about an hour prior to descending. She is to recheck otherwise p.r.n.

TWW:hw

DATE 11/8/93	TIME Am	CALLER Martha Hoftiezer		PH #	
PT.	AGE	TEMP.	RECD BY:	MD	
MESSAGE O-Phs Nov 1997			DISPOSITION		
? That she needs to be seen			in 1-2 weeks		
ALLERGY			H-9-93		
DRUG STORE R.A. Springfield			HANDLED BY J. J. J.		

2-9-94 Lynn Lee Smith

CYTOLGY REPORT
SPARTANBURG PATHOLOGY CONSULTANTS 319 N. PINE ST. Spartanburg, S.C. (803) 583 2850

Patient: HOFTIEZER, MARTHA
Doctor: WESTMORELAND, THOMAS W.
Age/Sex: 46MF DOB: 07/14/47 SSN:
Address:

Path #: _____
Date: 09 FEB 94
OFFICE #: _____
PHONE #: 578-9514

HISTORY: LMP 3 WEEKS AGO, GRAVIDA 4

SPECIMEN: CERVICAL

Satisfactory for evaluation, but limited by absence of an
endocervical component.

DIAGNOSIS: WITHIN NORMAL LIMITS.

Date received: 09 FEB 94
Date completed: 11 FEB 94 [Scrn:PO 1 Read:0]


W. B. Lowry, M.D., Pathologist

Patient: <u>Martha Hoffiezer</u>		Date: <u>8:15 2/9/74</u>		Test By: <u>PM</u>		URINALYSIS		Chart No.					
VOID	☒ Turbid	☐ Color	PH	Sp. Gr.	Gluc.	Acid.	Alb.	Blood	Micro	Leuk.	BIL.	Urobil.	<u>Dr Westm...</u> <u>epithel, occ RBC</u>
CC	☐ Clear	☒	5	1.010	0	0	0	5+	0	0	0	0	
CATH	☐ Hazy	☐											

AUTHORIZATION TO OBTAIN INFORMATION

Permission to Obtain Information: I hereby authorize any physician, medical practitioner, hospital, clinic, other medical or medically related facility, the Medical Information Bureau, Inc., insurance company, employer, consumer reporting agency, or any other person or organization to give the COMPANY or its legal representative any and all information requested regarding illness, injury, medical history, diagnosis, treatment and prognosis with respect to the physical or mental condition and treatment including drug and alcohol abuse treatment of me, spouse or my children and any other non-medical information which the COMPANY believes to be necessary to determine the health status of me, my spouse or my children for the coverage requested.

Use and Disclosure: The information obtained under this AUTHORIZATION will be used for evaluation purposes. All or part of the information obtained may be disclosed to any reinsuring company, any company affiliated with the COMPANY and any person or organization performing business or legal functions for the COMPANY. I understand the COMPANY may disclose any of the information obtained to other persons or organizations if required by law or if I further authorize such disclosure.

Copy of Authorization: I know that I may request a copy of this AUTHORIZATION. I agree that a photocopy of this AUTHORIZATION will be as valid as the original. I acknowledge receipt of Notice to Applicants for coverage.

This AUTHORIZATION shall remain valid for three years from the date shown below. However, I understand that under Federal Regulation, I may revoke this AUTHORIZATION as it applies to drug and alcohol abuse treatment information at any time. However, I also understand my revocation will not affect any information that has been released in accordance with this AUTHORIZATION.

MUST BE SIGNED

Employee's Signature

Date

Spouse's Signature

Date

FOR COMPANY USE ONLY

Approved By:

Effective Date

mailed
11-9-93

DATE 5-11-93	TIME PM	CALLER DADDIE HOFFMEIER	PH.# 578-9514
PT.	AGE	TEMP.	REC'D BY: LU
MESSAGE Having a lot of drink then bleed on / B.C.P's What to do - call Rite Aid Northtown		DISPOSITION 2 day - A do on 777 & PR ordered Start p present ph	
ALLERGY		HANDLED BY (signature)	
DRUG STORE			

DATE 5-20-93	TIME	CALLER Matti Hoffmeyer	PH.#
PT.	AGE	TEMP.	REC'D BY: P
MESSAGE other room - 777		DISPOSITION	
ALLERGY		HANDLED BY	
DRUG STORE Rite Aid 578-4401			

DATE 8/13/93	TIME AM	CALLER Matti Hoffmeyer	PH.# W-ME- 599-3745
PT.	AGE	TEMP.	REC'D BY: LU
MESSAGE OR to another 777 # 820599		DISPOSITION X2	
ALLERGY		HANDLED BY (signature)	
DRUG STORE R. Aid - Springfield			

8/11/93

When do return do see you??
H - 578-9514 LEAVE MESSAGE

10/20/92

Dr Westmoreland or Dr Hill

Would you please renew my prescriptions for Micheline's pharmaceutical plan?

Azaliun - 150 tab - renew twice

B. F. Lurinal w Codeine - 150 tab - renew twice

Also, may I have a prescription for a small amount of Plurinal w Codeine to tide over till mail service delivers same - 10-15 capsules. I have just been taking a few with me to be taken when needed and completely forgot to obtain renewals that were "due" in Aug or early Sept.

Thank you for your time.

Sincerely,
Michele Miller

PS I will be in town Wed & Thurs & can either pick up above (555-6039) any ques; for have enclosed SASE.

CYTOLOGY REPORT

SPARTANBURG PATHOLOGY CONSULTANTS 219 N. PDE ST. Spartanburg, S.C. (803) 583 3850

Patient: HOFTIEZER, MARTHA
Doctor: WESTMORELAND, THOMAS W.
Age/Sex: F DOB: SSN:
Address:

Path #:
Date: 31 MAR 93
OFFICE #: PHONE #: 578-9514

HISTORY: LMP 1 WEEK AGO, GRAVIDA 6

SPECIMEN: ROUTINE PAP, CERVICAL

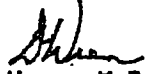
Satisfactory, but limited by lack of patient information (AGE).

DIAGNOSIS: WITHIN NORMAL LIMITS

OTHER: Heavy exudate



Info received: 31 MAR 93
Info completed: 02 APR 93 EBCrn:PD 1 Read:11


J. David Wren, M.D., Ph.D., Pathologist

Green

WJ-292-2868

DATE 6-24-92	TIME am	CALLER		PH. # 578-9514	
PT. Martha Hoffiezer	AGE	TEMP.	REC'D BY [Signature]	MD W	
MESSAGE Valium Darvocet			DISPOSITION [Signature] 42		
ALLERGY			HANDLED BY		
DRUG STORE Northside RPT Sp. T. #5					

2-20-92

Living Rabbits

3. Cough - 1 sec. breath - wheezing

2. Wet BL 1/2 irritated upper airway & cough

BP 90/100 occ wheeze on ht.; to relax

Amoxil 500 tid

- SSX -

A - Asthmatic bronchitis

P - Amoxil 500 tid x 7 days

Simethicone 8X T-2 4sp 74-6 H pm

Proventil inhaler (Bottle)

Script - Valium 5 tid for pain 2° back pain/migraine

Proventil #5

Adult DT update.

(Gie)

DATE 3/5/92	TIME 7 AM	CALLER Martha Hoffman	PH. # 292-2868
PT. H-518-9514	AGE	TEMP.	REC'D BY: Kb.
MESSAGE "Chopped" IN VAG AREA - WORE pants too tight - also has period pain - making it worse - Please Rx -		DISPOSITION Myology clean + sick Use gid	
ALLERGY Cocaine MYCEN -		HANDLED BY	
DRUG STORE R.A. & Spring Field			

3-12-92 wheezing

5. Urinary tract flare-up (see 2/20/92 note)

0-BP 102/60

get better -

no PHE or Thera where
(epidemic x 2 weeks)

D - in NAD - marked wheeze bilat.

A - Asthmatic bronchitis

P - Pred. 40, 20, 20, 20, 20, 10, 10

Recept. MDT

2 ATB

2. ✓ + note

Dr. Taylor, Will, Westmoreland & Co.
P.O. Box 2258
Spartanburg, S.C. 29304

Hoftiezer, Martha

12/4/90 Right wrist

Negative

Dr.D. Mark Hicklin

DATE 6-15	TIME	CALLER		PH. # 578-9514
PT. Martha Hoftiezer	AGE	TEMP.	TESTED BY OT	MD W
MESSAGE Poison oak - ankles + spreading			DISPOSITION Striped 10mg 6 day clonazepam Sig: as directed	
Taking 200 Phenobarbital presently for seizures				
ALLERGY				
DRUG STORE N. Side 12/11 Springfield			HANDLED BY	

Martha Hoftiezer

12/4/90

Wrist injury.

S: Fell on ehr outstretched hand 11/23/90. Apparently hyperflexed it. It has remained sore.

O: Eye exam just reveals mild tenderness on the ulnar side of the wrist primarily. No specific snuff box tenderness. No gross deformity and neurovascular status intact. X-ray shows no apparent boney injury.

A: Sprain, right wrist.

- P: 1. Continue wrist splint and local heat.
2. Anaprox DS p.r.n. for pain.
2. Recheck p. r.n. DMH:HW

H15-91:

5- cyp on back

Excision of what was tho't to be sebaceous cyst. (L) mid back. Meas. w/ 1 1/2 cm diameter. Lesion not typical of S.C. p. excision. Sent for path. Lesion removed in toto.

Repairs - 7 Subcut. simple 4-0 dixon to close dead space

3 #4-0 ethilon Subcuticular suts to close skin - lots of pressure

1 #4-0 simple SUT. for skin edge.

De V C SUTS out 7 w/ 1/2.

1/24/91 - Sutures out 5 diff. ; steri strips applied
St. wound infection - Sampled ACE 500 Eib x 5 days
Path report OK.

PATHOLOGY NO. S _____ DATE 1/15/91

NAME HOFTIKZER, MARTHA HOSP. NO.

AGE 43 SEX F RACE

PHYSICIAN DR. WESTMORELAND
CLINICAL DATA

NATURE OF SPECIMEN

Lesion from back.

SPARTANBURG PATHOLOGY CONSULTANTS, P.A.
319 N. PINE ST.
SPARTANBURG, S.C. 29303

PATHOLOGY REPORT
DOCTORS

PATTON, CHEEK, DAVIS,
WEBB, LOWRY, BOONE,
WREN AND NELSON

(Signature)

GROSS:

A portion of ovoid tissue which has previously been incised 0.9 x 0.4 x 0.4 cm filled cheesy material. Bisected and totally submitted.

WBL:lh 1/16/91

MICROSCOPIC:

Sections show a pilar cyst which is calcified.

No evidence of malignancy is seen.

DIAGNOSIS:

PILAR CYST.

WBL:lh
1/16/91

309

(Signature)
W. BROWNLEE LOWRY M.D.
PATHOLOGIST

MICHAEL F. PATTON, M.D.	W. BROWNLEE LOWRY, M.D.
WILLIAM S. CHEEK, M.D.	PAUL D. BOONE, M.D.
WM. McA. DAVIS, M.D.	DAVID WREN, M.D., Ph.D.
CHARLES M. WEBB, M.D.	JOHN W. NELSON, M.D.

SPARTANBURG PATHOLOGY CONSULTANTS

PATHOLOGY REPORT

Marty Hoftiezer

1/19/87

Cervical strain.

S: See note from 1/8/87. Cervical strain causing pain down the right trapezius and right side of neck. She has persisted with this with pain in the right biceps bursa. There is no swelling and some discomfort going down the right arm to the fingers. Very tender over the biceps bursa and I injected this with 80 mgs. DepoMedrol and 1 cc of Zylocaine with reasonable results. She has come off the Parafon Forte and we gave her some Feldene samples 1 daily. She can continue to use her Vicaden and plenty of moist heat. Recheck in 1 week. She can use her collar over the next week.

TWW

2987

Marty Hoftiezer

2/9/87

Neck strain.

S: Radicular pain in the right arm. Patient still says that she can't move her right arm now due to the pain she has in her neck. See the note of 1/19/87. The DepoMedrol we gave her did give her some relief for 2 or 3 days but now the pain has returned. Reflexes are normal.

O: BP 98/70. Pulse is 74 and regular. I gave her Talison for pain. She can continue with the Feldene and get back in her cervical collar. Appointment to see Dr. Keller, McCorkle, and Flandry for evaluation for possible cervical disc.

TWW:hgt

DATE 9-1-87	TIME	CALLER Marta Hoftiezer	PH. # 578-9514
PT. G	AGE	TEMP.	REC'D BY J
MESSAGE Pain in back toes - hands - legs		DISPOSITION steroided on 12/20/86 Colman's Lotions	
ALLERGY		HANDLED BY	
DRUG STORE R.H. Spzfld			

SPARTANBURG NEUROSURGICAL ASSOCIATES, P.A.

1071 BOLING SPRINGS ROAD
SPARTANBURG, SOUTH CAROLINA 29308

TELEPHONE 588-7285

DARWIN W. KELLER, M.D., F.A.C.S.
CAVERT K. MCCORKLE, M.D., F.A.
ROBERT E. FLANDRY, JR., M.D.

NEUROLOGICAL SURGERY
BY REFERRAL

February 10, 1987

Dr. Thomas Westmoreland
391 E. Henry Street
Spartanburg, SC 29302

RE: MARTHA S. HOFTIEZER

Dear Tom:

Thank you for allowing me to evaluate Martha Hoftiezer today. As you know, she is the 39 year old white female who has had a problem with neck and right arm pain for the past month. She was found to have signs and symptoms compatible with a right C-7 radiculopathy and she will be admitted to Spartanburg Regional Medical Center on Sunday, February 15th for initial conservative management.

A copy of the history and physical examination will be forwarded to you for your information.

Again, thank you for allowing me to evaluate this patient and participate in her care.

With warmest regards,

Very truly yours,

Robert E. Flandry, Jr., M.D.

Robert E. Flandry, Jr., M.D.

REF:kib

MEDICAL RECORD
SPARTANBURG GENERAL HOSPITAL
SPARTANBURG, S. C.

HOFTIEZER, MARTHA

NO.:

HISTORY & PHYSICAL

DATE OF ADMISSION: 2-15-86

ADMISSION DIAGNOSIS:

1. Right C7 radiculopathy

cc. Dr. Westmoreland

HISTORY OF PRESENT ILLNESS: The patient is a 39 year old white female referred by Dr. Westmoreland for evaluation of neck and right arm pain. She states that last April while she was moving some office supplies she developed pain in the right shoulder blade which radiated into the right arm. She states that her family doctor, Dr. Westmoreland, gave her a shot of Cortisone in the region of her discomfort and this afforded her complete relief. However, after the first of this year she noted the insidious onset of the recurrence of her pain radiating from the root of the neck into the subscapular area and down the shoulder and arm into the index and middle fingers of the right hand. She also had paresthesias in that distribution. At this time the Cortisone injection did not relieve her pain and the addition of Feldene was ineffective. She states that she is very uncomfortable, in fact, is unable to do her usual work as an artist and has severe pain even at night. The patient is otherwise in good health. She takes no medicines on a chronic basis and has no allergies.

Her surgical procedures have included a D&C and an appendectomy as well as a tonsillectomy.

She does not smoke cigarettes and rarely drinks alcoholic beverages.

The patient has a history of low back pain in the past and occasionally she sees a chiropractor, however, her family history is negative for spinal disease. It is positive for diabetes, however.

PHYSICAL EXAMINATION:

GENERAL: The patient is a well-developed and well-nourished, 39 year old, white female who is alert, cooperative, oriented and appropriate with normal vital signs.

HEENT: Pupils equal, reactive to light and accommodation. EOM intact. Pharynx is clear.

MEDICAL RECORD
SPARTANBURG GENERAL HOSPITAL
SPARTANBURG, S. C.

HOFTIEZER, MARTHA

NO.:

NECK: There is pain on flexion to approximately 30 degrees. Right rotation causes discomfort in the back and along the scapula region. Left rotation does not cause as much discomfort. Extension causes some pain at the root of the neck but no radiation of pain down the arm. She is tender to the right of the midline C5-C7 and has mild muscle spasm. She has a decreased right triceps jerk, weakness of the right triceps muscle, weakness of the pectoralis major on the right and finger extensor weakness bilaterally. She also has C7 hypesthesia.

CHEST: Symmetrical expansion with clear lungs.

HEART: Regular rhythm without murmur or gallop.

ABDOMEN: Benign.

EXTREMITIES: Lower extremities show no evidence of edema or clubbing. No cyanosis.

IMPRESSION:

1. C7 radiculopathy

PLAN: The patient is to be admitted for initial conservative therapy. If she does not improve within 2-3 days a myelography will be performed and surgery if indicated.

Robert Flandry, M. D.

2-10-87

2-11-87

B. hh

DATE 4/25/86	TIME P.M.	CALLER Martie Hoftiezer		PH. #	
PT.	AGE	TEMP.	REC'D BY: LGE	MD H	
MESSAGE w/auts "back brace" vs help holding back her shoulders N.F.R.s. NOTE SO INJ. will pt. will stop by			DISPOSITION H/d for Dr. Keller Need for back brace		
ALLERGY			HANDLED BY G		
DRUG STORE					

5/2/86 Martie Hoftiezer

S: Back today still having pain in the neck and the upper back. She says that her index and 2nd finger on the right hand is numb. There is point tenderness in the suprascapular area. The area of point tenderness very small. This was injected with DepoMedrol 80 and a cc. of Xylocaine with good results.

P: The patient is to cont. with her muscle relaxers. She is to get off her Motrin because it gave her nausea, vomiting and diarrhea. Apptm. is made with Dr. Keller, McCorkle & Flandry for evaluation in 1 week for a possible nerve impingement. X-rays were neg. last time. A copy of this is sent with the patient. She is to return otherwise prn.
TWW/hc

7/8/87 Martie Hoftiezer

Cervical Strain

S: Chronic cervical problems anyway but she driving the other day and looked around suddenly to her left and caused pain in the ~~A~~ trapezius and ~~A~~ side of the neck. Tender to touch, mildly.

O: Lungs & heart neg. No actual trigger points. The pt. doing well otherwise. Is on muscle relaxers at home. Needed a refill for ~~Vi~~ Roden. Its a prescription she has had for several mos.
BP 100/70 P-72 Lungs & heart neg.

A: Cervical Strain

P: Cont. with tx., moist heat. Return prn TWW/hc

**X-RAY CLINIC
RADIOLOGISTS**

157 CATAWBA STREET

SPARTANBURG, SOUTH CAROLINA 29303

TELEPHONE: 573-8100

Frederick G. Phillips, M.D.
John A. Patterson, M.D.
Larry K. Totten, M.D.

Harold W. Sanford, M.D.
J. L. Duncan, Jr., M.D.
John G. Thornburg, M.D.
Robert J. Caswell, II, M.D.

4-24-86

Dr. Thomas Westmoreland

RE: Martha Hoftiezer
NO:

CERVICAL SPINE:

AP, lateral and oblique views of the cervical spine reveals no evidence of recent or old fracture. The cervical vertebra appear normal. No arthritic changes are present. The intervertebral disc spaces are maintained. The retropharyngeal soft tissues are normal. The odontoid view is normal.

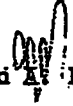
IMPRESSION: Normal cervical spine.

THORACIC SPINE:

AP and lateral views of the thoracic spine reveals scoliosis. The degree of scoliosis is about 5 degrees. It is convexed to the right.

CONCLUSION: Scoliosis of the thoracic spine.
JAP:ms

Thank you for your referral,


John A. Patterson, M.D.

Martha Hoftiezer

4/24/86 Martha Hoftiezer

S: Marty has the neck and right shoulder and right arm pain. Its been going on for several weeks. Hurts in the middle portion of the neck down at the lower portion of her cervical vertebra and down into the right arm. She has pain in the right shoulder and on palpation there is pain over the right biceps bursa. She says there is some numbness and tingling in her hand. There is decreased grip strength in her right hand as well. The patient is right handed. She has been going to a chiropractor. The patient has tenderness of the dorsal spines, the lower most cervical vertebra and upper thoracic. The patient has tenderness over the belly of the right trapezius muscle and over the right biceps bursa. Reflexes are all normal. Good grip strength, good ROM.

A: Possible Nerve Root Compression In The Neck Vs. Chronic Strain.

P: Going to put her in a cervical collar. Going to place her on Parafon Forte and Motrin 600, plenty of moist heat. X-rays cervical and upper thoracic vertebra. I would like to recheck her in a week to 10 days or prn. TWW/hc

Monte 11-1-85

10/21/85 Martie Hoftiezer

Allergic Contact Dermatitis

S: After decreasing doses of Deltasone was called in she says she still has her poison oak. No incriminating exposures at work.

O: Wt. 149 BP 120/80 Lesions typical of allergic contact dermatitis scattered diffusely over the body.

A: As Above.

P: Trimex Cream topically and Depo 40 IM. WHH/hc

DATE 10-30-85	TIME am	CALLER Martie Hoftiezer	PH.# (W) 583-7604
PT.	AGE	TEMP.	REC'D BY: TH
MESSAGE Nothing helping poison oak. Still spreading on lateral Anus & itching very badly. What should do?		DISPOSITION Cool baths skin moisturizer	
ALLERGY NKA	HANDLED BY Call back to H. H.		
DRUG STORE RA Springfield			

DATE 1-3-86	TIME AM	CALLER MARTIE HOFFIEZER	PH.# W-583-7604
PT.	AGE	TEMP.	REC'D BY: LG.
MESSAGE Poison Ivy "in blood stream" burning wood in stove - Broken out - All over - Itching! ? shot to give		DISPOSITION Depo Medrol 40 mg IM	
ALLERGY NKA	HANDLED BY		
DRUG STORE R. Aid - Springfield			

INSURANCE COPY—ATTACH THIS STATEMENT TO YOUR INSURANCE CLAIM FORM
Complete the personal information requested on the form. This statement contains all
the information the insurance carrier requires of the doctor. It is not necessary for
this office to fill out the insurance company claim form.

NAME _____

DIAGNOSIS: _____ DATE OF SERVICE _____

ATTENDING PHYSICIAN'S STATEMENT
AMA Current Procedural Terminology, 4th Edition

PATIENT: _____

NEXT APPT. _____
DAY . MONTH DATE TIME

IMPORTANT INSURANCE INFORMATION
Insurance claims handling procedures are explained on
back of pink copy. Please read back of pink copy carefully.
ly. Keep this record to use for income tax and insurance
claim filing.

INSURANCE CARRIERS: This form has been adopted to keep
paper work cost down. If additional information is required
it will be furnished for an additional fee.

IES / 57-0712600

DRS. TAYLOR, HILL & WESTMORELAND
391-E. HENRY STREET - P. O. DRAWER 3258
SPARTANBURG, SOUTH CAROLINA 29304
TELEPHONE: 573-9595

☐ E. E. Taylor, M.D. S.S. / 250-34-5497 UC / 37
☐ W. H. Hill, M.D. S.S. / 406-64-3909 UC / 08
☐ T. W. Westmoreland, M.D. S.S. / 250-34-9037 UC / 84

1. OFFICE CASE	NEW	ESTAB.	FE	4. HOSPITAL CARE	FE
Brief OV		90040		Emergency Room	905__
Office Visit	90010	90050		Admission Work Up	90220
Complete Physical	90080			Daily Care	90260
Physical				Newborn Care	90285
GYN				Critical Care	
Workman Comp.					
First Offw. Up					
Orthopedic Care					
2. PROCEDURES				5. OFFICE LABORATORY	
I & D				CBC	85081
Laceration				Sed Rate	85650
Office Surgery				GTT _____ hr.	82952
Sut. Tray		99070		Glucose	82947
EKG		93008		Hematocrit (PCV)	85014
Walker Monitor		93274		Urinalysis (Complete)	81000
X-Ray				Culture & Sensitivity	
Proctosigmoidoscopy				Mono	86006
Rigid		45300		Other	
Flexible		45330			
Spirometry		94011		6. REFERENCE LABORATORY	48009
Arthrocentesis		20600		TS T4 T7	82756
Orthopedic				TSH	84443
Tendon/Bursa/Jt. Inj				Chemistry Profile	80019
				Electrolytes	90003
				Potassium	84132
				Other	
3. INJECTIONS				Handling Fee	99000
Tetanus Toxoid		90703			
Allergy		95125		7. NURSING HOME CARE	
Flu		90724		Admission H & P	90320
MAR		90707		Monthly Visit	90315
DPT		90701		Subsequent Care	90340
B-12					
PPD/Time	86580/	86585		8. OTHER	
Oral Polio		90712		Supplies	99070
Pneumovax		90732			
Other					
				TOTAL CHARGES	

DATE 7-9-85	TIME A.M.	CALLER MAMIE HOFFMEYER		PH. # H-578-9514	
PT.	AGE	TEMP.	RECTD BY: L.B.	MD H.	
MESSAGE			DISPOSITION		
Still looks bad -			Cont. med		
Joint Hips & painful					
Still RASH			Call 72 hrs		
- Please call - Fever					
ALLERGY					
DRUG STORE			HANDLED BY H.H.		

DATE 7-19-85	TIME P.M.	CALLER MAMIE HOFFMEYER		PH. # H-578-9514	
PT.	AGE	TEMP.	RECTD BY: L.B.	MD H.	
MESSAGE			DISPOSITION		
PAIN in neck & shoulder			Floresol 10		
SI SWOLLEN -			#20		
has had this before -			H.H.		
NEEDS muscle relaxer or Flaxid			H.H.		
ALLERGY NKA			H.H.		
DRUG STORE FORD'S			HANDLED BY		

DATE 10-11-85	TIME	CALLER Switchboard		PH. #	
PT. Mr. & Mrs. Hoffmeyer	AGE	TEMP.	RECTD BY:	MD	
MESSAGE Please give them the same Rx you gave Sandra for Parkinsonism			DISPOSITION Settled 10		
ALLERGY			H.H.		
DRUG STORE RAC@SF			HANDLED BY		

Complete the personal information requested on the form. This statement contains all the information the insurance carrier requests of the doctor. It is not necessary for this office to fill out the insurance company claim form.

DIAGNOSIS:

1. OFFICE CARE	NEW	ESTAB.	FEE
Brief CV		90040	
Office Visit	90010	90030	
Complete Physical	90080		
GYN Physical			
Workman Comp.			
First Offr. Up			
Orthopedic Care			
2. PROCEDURES			
F & D			
Laceration			
Office Surgery			
Sut. Tray			
EKG	99070		
Holter Monitor	93000		
X-Ray	93274		
Proctosigmoidoscopy			
Rigid		45300	
Flexible		48330	
Spirometry		94071	
Arthrocentesis		20600	
Orthopedic			
Tendon/Bursa/Jt. Inj			
3. INJECTIONS			
Tetanus Toxoid	90703		
Allergy	95125		
Flu	90724		
MMR	90707		
DPT	90701		
B-12			
PPD/Tine	86580/	86585	
Oral Polio		90712	
Pneumovax		90732	
Other			

4. HOSPITAL CARE	FEE
Emergency Room	905
Admission Work Up	90220
Daily Care	90260
Newborn Care	90285
Critical Care	
5. OFFICE LABORATORY	
CBC	85031
S&G Rate	85680
GTT	82952
Glucose	82947
Hematoctrit (PCV)	85014
Urinalysis (Complete)	81000
Culture & Sensitivity	
Mono	86006
Other	
6. REFERENCE LABORATORY	
T3 T4 T7	48009
TSH	82756
Chemistry Profile	84443
Electrolytes	80019
Potassium	90008
Other	84132
Handling Fee	99000
7. NURSING HOME CARE	
Admission H & P	90330
Monthly Visit	90315
Subsequent Care	90340
8. OTHER	
Supplies	99070
TOTAL CHARGES	2007

DATE OF SERVICE

ATTENDING PHYSICIAN'S STATEMENT
AMA Current Procedural Terminology, 4th Edition

PATIENT:

NEXT
APPT.

DAY MONTH DATE TIME

IMPORTANT INSURANCE INFORMATION
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INSURANCE CARRIERS: This form has been adopted to its paper work cost down. If additional information is required it will be furnished for an additional fee.

IRS # 57-0712603

DRS. TAYLOR, HILL, WESTMORELAND & BYE
391-E. HENRY STREET - P. O. DRAWER 3258
SPARTANBURG, SOUTH CAROLINA 29304
TELEPHONE: 573-9595

☐ R. R. Taylor, M.D. S.S. # 250-34-5497 LIC # 37
☐ W. H. Hill, M.D. S.S. # 406-84-3909 LIC # 88
☐ T. W. Westmoreland, M.D. S.S. # 250-84-9037 LIC # 84E
☐ E. G. Byrd S.S. # 405-76-3192 LIC # 881

ADDRESS321

DATE 7-12-85	TIME A.M.	CALLER Mandi Hoffmeyer		PH. # 583-7604	
PT.	AGE	TEMP.	RECTD BY: L.B.	MD H.	
MESSAGE			DISPOSITION		
feels better					
is working					
Needs to know if she had					
RMS Fever for work purposes					
ALLERGY Please call her back					
DRUG STORE			HANDLED BY		

Ch 186

8/24/84 Martie Hoftiezer

Infected Bee Sting

- S: Was stung yesterday by yellow jacket in the area between the fingers of the right hand. Has been stung before but hasn't swollen last this before.
- O: Wt. 149 BP 100/62 P-88 There is an area of tender erythema about the MTP joint of the right 4th finger with erythema and tenderness extending down the finger and up on the hand a little bit. Regional nodes epitrochlear and axillary are neg.
- A: Mild Cellulitis.
- P: Keflex 500 bid H/hc

lay

llt

Date	10/18/84	Time		Who Called	Martie Hoftiezer	Phone	
About Whom		Age		Temp.		Physician	JH -
Address						Urgent	Call Back
MESSAGE: Desvoat x 100 needs for migraines				DISPOSITION: Desvoat - w - 100 #20 ORF 7/4th p - migraine			
Inds -							
Medication			Rec'd by:		Chart	☐	Chart #
Allergy					Handled by:	llt	

7/9/85 Martie Hoftiezer

Infectious Exanthem

- S: Over the last few days has developed some aches and a diffuse rash.
- O: There is a red, macular rash confluent in certain areas involving all extremities, soles, palms and trunk. HEENT: Heart, lungs & abd. all normal. White count is not totally viral.
- A: Infectious Exanthem. Cover For RMSF.
- P: Sumycin 500 qid To call in 24 hrs. WHH/hc

llt

PENN WESTERN BENEFITS, INC.
P. O. Box 7834
Greensboro, N.C. 27417-0834

DATE:

TO: F. C. Westmoreland MD
391 E. Hanes Street
Spartanburg SC 29304

Employee: Martha Hoffinger

Plan Number: 7-10

Patient: Shae

Plan Name: The Fresh Market

Dear Dr. Westmoreland

We have received a claim on the above patient for a condition described as eczema and dermatitis on hands.

1) Did you make the initial diagnosis? _____
If yes, when? _____
(Date)

anytime prior to
5-1-95

2) On what dates did you treat this patient between _____ and _____ for this condition or any directly related condition?

3) If you prescribed any drugs or medicines during this period, please indicate the name of the drug and the frequency recommended.

4) Was this patient referred to you by another physician? _____
If yes, please provide us with his name and address.

After answering the above questions, would you please sign this letter in the space provided below and return it in the enclosed envelope. Authorization to release information is attached.

(Date)

(Name)

324

SIGNED

L. A. Danner

DATE

6-19-96

7.23.96
G. M. Bell

026/PWB

DIRECT SUBMIT

MAY 3 1996

GROUP MEDICAL CLAIM FORM (Use One Form Per Patient)

ATTACH ALL BILLS AND
MAIL DIRECTLY TO:

Penn Western Benefits, Inc.
P. O. Box 7834
Greensboro, N.C. 27417-0834

EMPLOYER'S STATEMENT

Employer

Plan Number

ABOUT YOU

Your Name And Address:

MARTHA S. HOFTEZER

Social Security Number

Date Of Birth

7/14/47

Marital Status

- ☐ Single ☐ Divorced
☒ Married ☐ Widowed
☐ Legally Separated

Home Phone #: 864-578-9514

ABOUT YOUR SPOUSE

Name: RICHARD A. HOFTEZER

Date Of Birth 12/7/35

ABOUT THE PATIENT

Who Is The Patient?

☒ Myself

☐ Child (Name)

Is Child Full-Time Student?

☐ Yes

Date Of Birth

☐ No

Is Child Employed?

☐ Yes

☐ No

☐ Spouse

Name Of School Or Employer:

ABOUT THIS CLAIM

ACCIDENT:

1. Did Accident Happen At Work? ☐ Yes ☐ No

2. Date Of Accident: 1/1

3. Describe Accident:

4. If An Auto Accident, Who Was At Fault?

ILLNESS:

(Use Back Of Form If Necessary)

1. Is This Illness Related To Your Job? ☐ Yes ☒ No

2. What Is The Illness Being Treated? GYN

3. When Did Illness Begin? DEC/95

4. List Name of Physician(s) That Diagnosed Illness Or Were Consulted And Dates Of All Treatment:

ABOUT OTHER INSURANCE

Is The Patient Covered By Any Other Health Plan? Yes ☐ No ☒

☐ Medicare

☐ Other Group Health Insurance, HMO Or PPO

☐ School Insurance

If Yes, Indicate Below:

☐ Federal, State Or Other Government Plan Or Union Welfare Plan

☐ Auto Insurance (If Claim Due To Auto Accident)

If You Checked Any Of The Above Insurance Plans, Please Complete The Following:

1. Name And Address Of Other Insurance Company:

2. Name And Address Of Other Insurance Company:

Policy #:

Policy #:

Who Is Insured Person?

Name Of Employer, Group Or School Providing This Insurance:

Who Is Insured Person?

Name Of Employer, Group Or School Providing This Insurance:

325

CERTIFICATION AND AUTHORIZATION (to be signed by the patient and employee)

The statements above are true and correct to the best of my belief. I authorize any hospital, physician or other insurance company to furnish Penn Western Benefits, Inc. or its representative any information requested. Also, I authorize Penn Western Benefits, Inc. to release to or obtain from any organization any information which may be necessary to determine benefits payable under this plan. A photocopy of this authorization shall be considered as valid as the original.

Date: 4-28-96 Patient Signature (If 18 or Older)

Employee Signature:

04377

Vol. II