RECEIVED
Feb 26 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2023-000479

Michelle Frazier, Individually and as Personal Representative of Estate of Barbara Frazier,.....Appellant,

v.

Orangeburg Post-Acute, LLC dba Edisto Post-Acute fka Riverside Rehabilitation and Health Care Center LLC, Providence Group, Inc., Providence Administrative Consulting Services, Inc., Halcyon Rehab, LLC, HMS Purchasing, LLC, Apricity Resources, LLC, OHI Asset (SC) Orangeburg, LLC.....Defendants,

Of which Halcyon Rehab, LLC is the.....Respondent.

FINAL RESPONDENT'S BRIEF

R. Hawthorne Barrett
Turner Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 227-4219
tbarrett@turnerpadget.com

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

(A) CASES

(B) STATUTES

(C) RULES

STATEMENT OF THE ISSUES ON APPEAL

I. Should this Court affirm the dismissal of the Complaint, where the Appellant Frazier has failed to appeal the Order granting the Motion to Dismiss?

II. Did the circuit court properly dismiss the Complaint as to the Respondent Halcyon, where the Appellant admittedly failed to comply with the expert affidavit requirements of S.C. Code Ann. §§ 15-36-100 and 15-79-125?

II. If the circuit court erroneously dismissed the Complaint based on S.C. Code Ann. §§ 15-36-100 and 15-79-125, should this Court nevertheless affirm the dismissal where the statute of limitations bars the Appellant's claims and serves as an additional sustaining ground?

STATEMENT OF THE CASE

This case arises from allegations of professional malpractice at a nursing home facility. Barbara Frazier ("Decedent") was a resident of the nursing home from April 2015 until being discharged to a hospital on July 25, 2018. Decedent died on or about July 28, 2018, from sepsis due to pressure ulcers. The Complaint alleges that negligent and substandard care at the nursing home proximately caused her death.

Appellant Michelle Frazier ("Frazier") filed a Notice of Intent on or about July 27, 2021.[1] That Notice of Intent ("the First NOI") named only Orangeburg Post Acute, LLC d/b/a Edisto Post Acute f/k/a Riverside Rehabilitation, and Healthcare Center LLC as the defendants. [R. p. 18.] The First NOI did not name the Respondent Halcyon Rehab, LLC

[1] Frazier commenced the action in her individual capacity, as well as in her capacity as the Personal Representative of the Estate.

("Halcyon"), as a party, and it did not have a supporting expert affidavit, as required by S.C. Code Ann. § 15-36-100. [R. pp. 18-57.]

Although Frazier lacked the requisite expert affidavit and did not complete the mandatory pre-suit mediation process, she filed a Summons and Complaint in December 2021. [R. pp. 6-8, 63-101.] The Summons and Complaint named only the same defendants included in the First NOI. [R. pp. 63-101.] The Summons and Complaint did not name Halcyon as a defendant and did not purport to assert any claims against Halcyon. [R. pp. 63-101.]

The defendants in the case commenced by the December 2021 Summons and Complaint filed motions to dismiss. In response, Frazier filed a motion to amend the Complaint. However, the circuit court wound up dismissing the December 2021 Complaint due to Frazier's failure to complete the required pre-suit mediation process. [R. p. 7.] Halcyon was not a party to that original action when the circuit court entered its dismissal order.

On March 17, 2022, Frazier filed another Notice of Intent ("the Second NOI"). [R. pp. 117-149.] The Second NOI alleged the same set of facts as the First NOI, but named several additional defendants, including Halcyon. [R. pp. 117-149.] The Second NOI did not identify any specific allegations of negligence against Halcyon. Furthermore, although the Second NOI did have an expert affidavit, the nurse who provided that affidavit did not allege or identify any negligent act or omission by Halcyon. [R. pp. 146-149.]

Again without completing the pre-suit mediation requirements, or presenting an affidavit as to allegations of negligence against Halcyon, Frazier filed a new Summons and Complaint in August 2022. [R. pp. 156-178.] In response, Halcyon filed a Motion to

Dismiss based on Frazier's failure to comply with the expert affidavit requirement as to Halcyon, as well as the statute of limitations. [R. pp. 151-154.] The circuit court conducted a hearing on September 22, 2022, and then filed an Order granting Halcyon's motion on January 25, 2023. [R. pp. 6-8.] The court granted the motion based on Frazier's failure to comply with the expert affidavit statutes. Presumably because that ruling made any further analysis unnecessary, the court did not address the ground based on the statute of limitations.

Frazier filed a motion to alter or amend pursuant to Rule 59(e), SCRCP, which the circuit court denied in a Form 4 Order filed on February 16, 2023. [R. pp. 10-12.] Frazier served a Notice of Appeal on March 16, 2023, which this Court received on March 21, 2023. [R. pp. 184-185.] The Notice of Appeal included a copy of the Order that denied Frazier's Rule 59(e) motion, but it did not reference, attach or include a copy of the circuit court's original order.

STATEMENT OF THE FACTS

Halcyon respectfully submits that a factual statement is unnecessary in this appeal, as the basis for the circuit court's decision was entirely procedural. The circuit court's Order did not mention, discuss or rely upon any of the factual allegations contained in the Complaint, as all such allegations were irrelevant to the court's decision. In addition, the issue that Frazier raises on appeal is legal in nature and does not depend on any underlying facts. Therefore, no detailed factual statement is required for this Court's review.[2]

[2] To the extent necessary, Halcyon notes its objection to the Statement of Facts contained in the Appellant's Brief, which appears to reference materials beyond the Complaint and the accompanying affidavit.

STANDARD OF REVIEW

When reviewing the grant of a motion to dismiss, the appellate court applies the same standard that was applied in the circuit court. *O'Laughlin v. Windham*, 330 S.C. 379, 382, 498 S.E.2d 689, 691 (Ct. App. 1998). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed 'to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001).

ARGUMENT

I. The Court should affirm because Frazier has failed to appeal the circuit court's Order granting Halcyon's Motion to Dismiss.

As a threshold matter, this Court should dismiss the appeal because Frazier has never filed a copy of the circuit court's original Order, as required by Rule 203(d)(B)(ii). The Notice of Appeal included a copy of the circuit court's Order that denied Frazier's Rule 59(e) motion, but it did not include a copy of the Order that granted Halcyon's Motion to Dismiss. Therefore, the Notice of Appeal did not comply with the Appellate Court Rules for purposes of the dismissal order.

The Notice of Appeal itself makes no reference to the dismissal order, which the circuit court filed on January 25, 2023. Instead, the Notice of Appeal states only: "Appellant Michelle Frazier appeals the order of the Honorable Maite Murphy denying Plaintiff's Motion to reconsider dated February 16, 2023. Appellant received written notice of the entry of the Form 4 Order as of February 16, 2023." [R. pp. 184-185.] That language makes it plain that the only order being appealed is the denial of the Rule 59(e) motion. Nothing in the Notice of Appeal constitutes a proper or timely appeal of the original dismissal order.

Frazier's failure to appeal the circuit court's dismissal order is significant because "an unappealed ruling is the law of the case and requires affirmance." *Transportation Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010). *See also Judy v. Martin*, 381 S.C. 455, 459, 674 S.E.2d 151, 153 (2009) ("[A]n unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal.") The circuit court concluded in its January 25, 2023 Order that Halcyon was entitled to a dismissal of the Complaint due to Frazier's failure to meet the statutory requirements for commencing this type of action. That decision is now the law of the case, and this Court should not consider any challenges to it.

Any attempt by Frazier to rely on this Court's decision in *Weatherford v. Price*, 340 S.C. 572, 532 S.E.2d 310 (Ct. App. 2000), would be misplaced because that case is distinguishable. In *Weatherford*, the text of the Notice of Appeal referenced only a second order denying a motion to reconsider, but copies of both that order and the original order were attached. The respondent argued the appellant had failed to challenge the original order because the body of the Notice of Appeal did not refer to that order. This Court rejected that argument, concluding that the absence of any such reference was an excusable clerical error when a copy of the other order was also attached to the Notice of Appeal. 340 S.C. at 577-78, 532 S.E.2d at 313.

The facts of the present case are different than those in *Weatherford*. Here, the Notice of Appeal made no reference to the order granting the motion to dismiss, and it also did not include a copy of that order. Instead, the Notice of Appeal referred solely and specifically to the order denying the motion to reconsider, and only a copy of that order was attached. Unlike in *Weatherford*, there is nothing in the body of the Notice of Appeal,

or in its attachments, to indicate that Frazier was challenging both orders. The only reasonable way to interpret the Notice of Appeal is that it applies to the second order, but not to the first. Therefore, more than a clerical error is involved, and Frazier failed to appeal the dismissal order.

The circuit court's decision to dismiss the Complaint as to Halcyon is now the law of this case. For that reason, this Court should either dismiss the appeal in its entirety, or affirm the result below based on Frazier's failure to appeal the dismissal order.

II. The circuit court properly dismissed the Complaint because Frazier did not comply with the statutory pre-suit requirements as to Halcyon.

In order to commence a civil action against Halcyon, Frazier had to satisfy certain statutory requirements regarding an expert affidavit. Under S.C. Code Ann. § 15-79-125(A), "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness ...." Section 15-36-100 requires that "the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim ...." S.C. Code Ann. § 15-36-100(B). The filing of an expert affidavit that is defective in some way constitutes grounds for dismissal of the Complaint. S.C. Code Ann. § 15-36-100(E).

In the present case, Frazier did file an expert affidavit with the Second NOI and with the Complaint. As the circuit court correctly noted, however, that affidavit did not specify any "negligent act or omission" by Frazier. Rather, the affidavit focused solely on other defendants named in the Second NOI and the Complaint. For that reason, the expert

affidavit was defective as to Halcyon, and the circuit court properly dismissed the Complaint as to Halcyon.[3]

There is no need for the Court to engage in a close reading of the expert affidavit – or in any reading of it at all – because Frazier has not raised any arguments on appeal that the affidavit was non-defective as to Halcyon. The Appellant's Brief contains no discussion of the expert affidavit's contents. Nor does it include any assertions that the affidavit complied with the statutory requirements with regard to Halcyon. The Appellant's Brief is entirely silent on that point, which means that even if Frazier intended to appeal that issue, she has waived any such arguments for purposes of this appeal. *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) ("An issue raised on appeal not argued in the brief is deemed abandoned and will not be considered by the appellate court.").

Frazier effectively concedes that the expert affidavit was defective as to claims against Halcyon, or, at least, she does not dispute the circuit court's ruling to that effect. Instead, Frazier argues that she was not required to comply with the expert affidavit requirement because the claims against Halcyon do not involve professional negligence or malpractice. In making that argument, however, Frazier misapprehends the scope of the cases on which she relies.

Frazier argues the claims against Halcyon were for "direct corporate liability" and not for any vicarious responsibility for employees of the nursing home facility. Even if that

---

[3] The governing statute contains a right to cure provision, which gives a plaintiff thirty days after service of a dismissal motion to remedy the alleged defect in the expert affidavit. The record does not give any indication that Frazier attempted to take advantage of that provision.

is true, it does not lead to the result Frazier suggests. The basis of Frazier's case is still a claim that her decedent sustained injuries and damages as a result of substandard and negligently performed medical care. That means it is still a medical malpractice case, regardless of the theories used to impose liability on the corporate defendants. The authorities upon which Frazier relies in her brief do not state otherwise.

Frazier cites *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2105), for the proposition that vicarious liability and direct corporate liability claims can coexist within the same case. Halcyon does not dispute that basic principle, nor does it have any need to. *Morrow* does not address the question of whether direct corporate liability claims against a medical care provider can or cannot be considered "medical malpractice" claims. That question was not before the Court, and the opinion contains no discussion of it. Instead, the actual issue before the Court in *Morrow* was the entirely unrelated question of whether a trial bifurcation order was immediately appealable. Thus, *Morrow* has no relevance to the present case.

Dawkins v. Union Hosp. Dist., 408 S.C. 171, 758 S.E.2d 501 (2014), is relevant, but it does not support Frazier's argument on appeal. In *Dawkins*, the Supreme Court determined that a claim against a hospital did not fall within the definition of "malpractice," meaning compliance with the statutory affidavit requirement was not necessary. Although Frazier cites *Dawkins* for that result, she does not acknowledge or examine the basis for the Supreme Court's decision. This is perhaps understandable, as a closer examination of *Dawkins* reveals that it actually supports Halcyon's position, not Frazier's.

Dawkins arose from an incident in which the plaintiff fell on her way to the bathroom while waiting to be treated at the defendant's emergency room. The plaintiff filed

suit without following the statutory requirements for commencing a medical malpractice action. The hospital moved to dismiss the case on that basis. The plaintiff opposed the motion by arguing that she was presenting a premises liability case, not one for medical malpractice. The circuit court disagreed and granted the hospital's motion. The plaintiff appealed, and the Supreme Court ultimately reversed.

In reaching its decision, the Court stressed that a case does not always sound in medical malpractice simply because the underlying incident occurred at a medical facility. Because "no rigid analytical line" separates claims that do and do not involve medical malpractice, the Court stated that "differentiating between the two types of claims depends heavily on the facts of each individual case." 408 S.C. at 176, 758 S.E.2d at 504.

Yet, despite focusing on the fact-specific nature of the inquiry, the Court provided more general guidance for making the determination. As examples of non-malpractice claims arising from medical care facilities, the Court cited: "injuries caused by falling ceiling tiles or improperly maintained hallways or parking lots." 408 S.C. at 177, 758 S.E.2d at 504. The Court further explained:

> In general, if the patient receives allegedly negligent professional medical care, then expert testimony as to that type of care is necessary, and the action sounds in medical malpractice. ... However, if the patient instead receives non-medical, administrative, ministerial or routine care, expert testimony establishing the standard of care is not required, and the action instead sounds in ordinary negligence.

408 S.C. at 177-78, 758 S.E.2d at 504. With that framework in place, the Court concluded that the case before it did not involve a medical malpractice claim because the plaintiff "had not begun receiving medical care at the time of her injury" and there was no allegation

that "Hospital's employees negligently administered medical care." 408 S.C. at 178, 758 at 505.

Dawkins demonstrates that for purposes of determining whether or not a claim sounds in medical malpractice, the key issue is the nature of the incident(s) giving rise to the claim. If those incidents involve allegations of substandard and negligently administered medical care, then the claim sounds in malpractice. If the incidents do not involve medical care, then the claim sounds in ordinary negligence. The analysis in *Dawkins* makes this point abundantly clear.

That reasoning is significant because it reveals the flaw in Frazier's argument on appeal. Frazier suggests that if a claim against a medical care entity is based on "direct corporate liability" rather than vicarious liability, it can never fall within the definition of malpractice. But that position fails to follow *Dawkins*' instruction that the proper focus is on the incident giving rise to the claims, not what the claims themselves are called or how they are presented. In other words, the key question to ask is whether the incident giving rise to the claimed injuries and damages involved negligent or substandard medical care. If the answer to that question is yes, the resulting causes of action sound in malpractice, regardless of how they are styled in the pleadings.

In the present case, the alleged negligence of the defendants certainly involved medical care. The Complaint leaves room for no other interpretation, as numerous paragraphs contain allegations that the defendants either provided inadequate medical care, or failed to provide certain care at all. For example, paragraphs 34, 35, 36, 39 and 47 set forth allegations of negligent nursing care, and paragraph 38 alleges that the nurses failed to obtain a necessary physician consultation. Given those allegations in her own pleading,

Frazier cannot credibly dispute that medical malpractice – i.e. negligent medical care – lies at the heart of her claims.

Frazier argues that the specific allegations against the corporate defendants (e.g. underfunding and understaffing the facility) are different than those against the actual medical care providers. Although that might be true, it does not remove the case as a whole from the realm of medical malpractice. The key question is still what caused the harms that serve as the basis for Frazier's claims.

Assuming *arguendo* that Halcyon played any role in underfunding or understaffing the nursing care facility,[4] that does not end the inquiry. One must still look to the alleged results of those actions as they related to Decedent. Frazier does not allege (and cannot credibly claim) that the alleged decisions to underfund and understaff the facility, in and of themselves, caused any harm to Decedent. What Frazier actually claims is that underfunding and understaffing led to the negligent nursing care that Decedent purportedly received. This central premise unites the claims against all of the defendants. Frazier alleges that various negligent acts of the named defendants caused the negligent medical care, which in turn led to Decedent's death. Viewed through this lens, the case clearly involves allegations of medical malpractice rather than ordinary negligence such as premises liability.[5] Indeed, without the fundamental allegations of malpractice, there would be no basis for any causes of action against anyone.

---

[4] Halcyon denies all such allegations, but understands the Court must take them as true for purposes of this appeal.

[5] The same basic connection would exist in "ordinary negligence" claims involving medical care facilities. Returning to one of the examples cited in *Dawkins* demonstrates this point. If underfunding by a corporate entity led to a lack of proper maintenance, which in turn caused a ceiling tile to come loose and fall, the resulting action would sound in premises liability, no matter whether the claim was against the maintenance workers, the

It is difficult for Frazier to argue that this case does not sound in medical malpractice when her own actions in commencing the case show that it does. Both times Frazier attempted to pursue a case based on Decedent's injuries and death, she began by filing the Notice of Intent that is required for professional malpractice actions. Although she did not file an expert affidavit for that first case, she did file the affidavit with the Second NOI and the Complaint for the second case. Why would Frazier have gone to that time and expense if she thought the action, at its most basic level, was not a medical malpractice case? The obvious answer is that Frazier did believe the case sounded in malpractice – and even intended it to do so.

In fact, the existence of an expert affidavit is another factor that distinguishes this case from *Dawkins*. The opinion in *Dawkins* gives no indication that the plaintiff ever filed a Notice of Intent or an expert affidavit. Instead, it appears that from the outset the plaintiff treated and pursued the action as a premises liability case against the hospital. As discussed above, that is not how Frazier has treated this case. In both versions of the case, Frazier took steps that are only required in malpractice actions. Although that fact alone might not be dispositive, it does show one more way in which the present case and *Dawkins* are distinguishable.

It is also important to note that the expert affidavit in this case is not necessarily defective as a whole. It does contain specifications of negligent care provided by some of the defendants, just not by Halcyon. Thus, the circuit court's ruling does not necessarily prevent Frazier from pursuing her claims against other defendants. It merely dismisses the

---

corporate entity, or both. The details of those causes of action might be different, but it would all be part of the same premises liability case.

Complaint as to Halcyon, which is the result that the applicable statutes contemplate as a consequence of non-compliance. *See* S.C. Code Ann. § 15-36-100(E).

Regardless of what specific allegations Frazier made against Halcyon, the gravamen of this case is the claim that Decedent received negligent and substandard medical care while at the facility and died as a result of it. Accordingly, this case sounds in medical malpractice. The allegations of the Complaint demonstrate that fact, as do Frazier's actions in filing a Notice of Intent and an expert affidavit. The governing statutes obligated Frazier to comply with the affidavit requirement as to Halcyon, and by her own admission (albeit a tacit one), Frazier failed to do that. Therefore, the circuit court properly granted Halcyon's motion to dismiss, and this Court should affirm.

III. The statute of limitations bars any claims against Halcyon.

In addition to Frazier's failure to comply with the affidavit requirement, Halcyon moved to dismiss based on the statute of limitations. The circuit court did not address the statute of limitations ground because the ruling on the affidavit issue made it unnecessary. However, Halcyon clearly raised the statute of limitations as a defense in the circuit court, and that defense serves as an alternative sustaining ground.

"[B]ecause an appellate court may affirm the lower court's decision for any reason appearing in the record, the prevailing party may – but is not required to – raise additional sustaining grounds to support the lower court's decision." *Dreher v. S.C. DHEC*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) (citing Rule 220(c), SCACR). "In raising an additional sustaining ground in an appeal, the party who prevailed in the lower court urges an appellate court to affirm the lower court's ruling for a reason other than one

primarily relied upon by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 417, 420, 526 S.E.2d 716, 722, 723 (2000).

Based on the applicable statutes of limitations, Frazier had three years from Decedent's death to commence a civil action against any defendants. S.C. Code Ann. §§ 15-3-530, 15-3-545. According to the Complaint, Decedent died on July 28, 2018. [R. p. 168.] Thus, Frazier had until July 28, 2021, to commence an action against Halcyon for wrongful death, survival, or any other claims. The undisputed procedural facts demonstrate that Frazier failed to do that.

Frazier did not file the Notice of Intent in the current case until March 17, 2022 – nearly eight months after the statute of limitations expired. Frazier did not file the Summons and Complaint in this case until August 12, 2022, which was more than a year after the expiration of the statutory period. Clearly, then, Frazier did not comply with the statute of limitations, and her purported claims against Halcyon are all time-barred.

Furthermore, if (as Frazier contends) the present case is not subject to the pre-suit rules for malpractice cases, the only dates that matter would be Decedent's death (July 28, 2018) and the filing and service of the Summons and Complaint (August 12, 2022, at the earliest). In that scenario, the claims would also be facially time-barred.

Any reliance by Frazier on the filing dates for the Notice of Intent and Summons and Complaint in the first lawsuit would be misplaced. Frazier filed the First NOI one day before the statute of limitations expired, but that NOI neither listed Halcyon as a defendant, nor made any allegations against Halcyon. The same is true of the Complaint in the first lawsuit. Frazier did not attempt to assert any claims against Halcyon until the Second NOI,

which, as noted above, was filed and served months after the statute of limitations expired. Thus, the first lawsuit has no impact on Halcyon's statute of limitations defense.

In addition, there is no basis for any argument that the filings in the current case should relate back to the filing date of the First NOI. The present case is not the result of any amendments or additions to an existing case. Frazier commenced this case as a completely separate and distinct action from the first lawsuit. Although both cases arise from the same basic facts and allegations, they involve some different parties, they were filed a considerable amount of time apart, and they have different civil action numbers. And, as noted above, Halcyon was never a party to the first lawsuit. Consequently, this is not a "relation back" situation, and that doctrine cannot save Frazier's claims against Halcyon.

In some situations, statute of limitations defenses involve factual disputes about when the claim arose and when the statutory period began to run. That is not the case here. The Complaint specifies Decedent's date of death, and the filing dates for the various pleadings[6] are matters of public record. Comparing those dates is all that is required to determine that Frazier failed to commence this case within the statute of limitations. Therefore, this issue serves as a particularly strong alternative sustaining ground if the Court disagrees with the circuit court on the affidavit issue.

CONCLUSION

Frazier was required to comply with the statutory affidavit requirements in order to pursue an action against Halcyon. She clearly failed to do so. Therefore, to the extent that

---

[6] As previously noted, Halcyon asserts that the only relevant pleadings for purposes of this issue are the Second NOI and/or the second Summons and Complaint.

the dismissal order is even properly before this Court, the circuit court's decision should be affirmed. Alternatively, the Court should affirm based on Frazier's failure to commence an action against Halcyon within the time allowed by the applicable statutes of limitations.

Respectfully submitted,

s/ R. Hawthorne Barrett
R. Hawthorne Barrett (SC Bar #16973)
Turner Padget Graham & Laney, PA
P.O. Box 1473
Columbia, SC 29202
(803) 227-4219
tbarrett@turnerpadget.com

Attorneys for Respondent Halcyon Rehab, LLC

RULE 211(b), SCACR, CERTIFICATION

The undersigned, an attorney in this matter for the Respondent, certifies that this Final Respondent's Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

s/ R. Hawthorne Barrett
R. Hawthorne Barrett (SC Bar #16973)
Turner Padget Graham & Laney, PA
P.O. Box 1473
Columbia, SC 29202
(803) 227-4219
tbarrett@turnerpadget.com

Attorneys for Respondent Halcyon Rehab, LLC