

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Beverly C. Moore-Rowe, )

C/A No. 2013-CP-10-00088

Plaintiff, )

Versus )

Bon Secours-St. Francis Xavier Hospital, )  
Inc., d/b/a Bon Secours St. Francis )  
Xavier Hospital, Bon Secours St. Francis )  
Hospital and Roper St. Francis )  
Healthcare, Bon Secours St. Francis )  
Health System, Inc., d/b/a Bon Secours )  
St. Francis Xavier Hospital, Bon Secours )  
St. Francis Hospital and Roper St. )  
Francis Healthcare, Bon Secours Health )  
System, Inc., d/b/a Bon Secours St. )  
Francis Hospital and Roper St. Francis )  
Healthcare, Roper St. Francis )  
Foundation, d/b/a Roper St. Francis )  
Healthcare, Bon Secours-St. Francis )  
Health System Foundation, Inc., d/b/a )  
Roper St. Francis Healthcare, Roper )  
Hospital, Inc., d/b/a Roper St. Francis )  
Healthcare, Byron N. Bailey, M.D., )  
Christine C. Thompson, M.D., a/k/a )  
Christine Thompson, M.D., Charleston )  
Neurosurgical Associates, LLC, Mt. )  
Pleasant Anesthesia Associates, PA, )  
Charleston Surgery Center Limited )  
Partnership, d/b/a Charleston Surgery )  
Center, Tammy McGraw, CRNA, also )  
known as Tammy McGraw Speicher, )  
CRNA, Nurse Anesthesia of South )  
Carolina, LLC, Jeffery S. Wager, CRNA, )  
Tricoastal Healthcare Billing and )  
Management, Inc., and Steven Heath )  
Cobb, )

Defendants. )

ORDER

**RECEIVED**

AUG 02 2013

**SC Court of Appeals**

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2013 JUL -3 PM 3:02

FILED

This matter came before the Court on Motions to Dismiss filed by all Defendants. A hearing was held on May 31, 2013. The Plaintiff appeared *pro se*. Jeffrey Michael Bogdan, Esquire appeared on behalf of the Defendant Christine C.

*RMog/1*

Thompson, M.D., a/k/a Christine Thompson, M.D.; Fred W. Suggs, III, Esquire appeared on behalf of Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc.; Shawn T. Pinkston, Esquire appeared on behalf of Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Darren K. Sanders, Esquire appeared on behalf of Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC; Andrew S. Halio, Esquire appeared on behalf of Defendant Steven Heath Cobb; Jonathan Dunlap, Esquire appeared on behalf of Nurse Anesthesia of South Carolina, LLC; Christine Kent Toporek, Esquire appeared on behalf of Defendants Bon Secours St. Francis Xavier Hospital d/b/a Bon Secours St. Francis Xavier Hospital, Roper St. Francis Healthcare, Roper St. Francis Foundation d/b/a Roper St. Francis Healthcare, and Roper Hospital Inc. d/b/a Roper St. Francis Healthcare. Memoranda of law were submitted by the parties and incorporated into the record and oral arguments were entertained. After having reviewed the pleadings and having considered the arguments and legal memoranda of the parties, I grant the Defendants' Motions to Dismiss on the grounds that the Plaintiff failed to file an expert affidavit contemporaneously with her Notice of Intent to File Suit as mandated by South Carolina Code Section 15-79-125.

## FACTS

The Plaintiff filed a Notice of Intent to File Suit on January 7, 2013 alleging medical negligence arising out of a January 7, 2010 cervical spine surgery. Plaintiff failed to contemporaneously file an expert affidavit with her Notice of Intent. Plaintiff asserted in her Notice of Intent that S.C. Code § 15-36-100(C)(1) allowed her to supplement her pleading with an expert affidavit.

Each Defendant then filed separate Motions to Dismiss the Plaintiff's Notice of Intent to File Suit based on her failure to contemporaneously file an expert affidavit.

Defendants Jeffery S. Wager, CRNA and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA have pending Motions to Dismiss based on insufficient service of process in this action. As such, these parties did not enter an appearance at this hearing. Their pending Motions to Dismiss have been rendered moot by this Order.

## STANDARD ON DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004) aff'd 373 S.C. 390, 645 S.E.2d 245 (2007). "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." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). An expert affidavit filed pursuant to South Carolina Code Section 15-36-100 is a pleading for the purpose of the circuit court's evaluation of motions and

the merits of the plaintiff's case. Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), cert. pending.

### PROCEDURAL REQUIREMENTS TO BRING A PROFESSIONAL NEGLIGENCE ACTION

This is a medical malpractice action and therefore is governed by the procedural requirement set forth in South Carolina Code Sections 15-79-125 and 15-36-100. These procedural statutes apply independently of one another as "each statute governs a distinct time period during the litigation process, and those time periods are consecutive." Id. at 176, 723 S.E.2d at 246. "Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suit and ends with prelitigation mediation. If the parties are unable to resolve their dispute through mediation, section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit." Id. In the instant case, the Plaintiff failed to comply with the filing requirements of section 15-79-125.

### SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code Section 15-79-125 establishes the prelitigation requirements for medical malpractice actions. Id. Section 15-79-125(A) states, in pertinent part, "[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, subject to the affidavit requirements established in Section 15-36-100 . . . ." S.C. Code Ann. §15-79-125(A). "This provision imposes two requirements on the affidavit, that it be filed at the same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100." Ranucci, 397 S.C. at 176, 723 S.E.2d at 246.

South Carolina Code § 15-36-100 enumerates certain requirements for filing complaints in actions for damages based on professional negligence including subsection B which requires the plaintiff to file an expert affidavit contemporaneously with the complaint. Subsection (C)(1) of §15-36-100 provides an exception to the contemporaneous affidavit requirement when the applicable statute of limitations will expire within 10 days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert affidavit could not be prepared. Subsection 15-36-100(C)(1) allows the plaintiff 45 days to supplement the complaint with an expert affidavit.

In Ranucci, the Court of Appeals clarified that § 15-36-100 establishes procedures for bringing “suits for professional negligence against professionals in twenty-two different areas, including medical doctors.” 397 S.C. at 175, 723 S.E.2d at 246. The Court found that § 15-79-125 establishes pre-litigation requirements for only medical malpractice actions. Id. The Ranucci Court ultimately held that the two statutes operate independently of one another and § 15-36-100(C)(1) does not allow a plaintiff an exception to § 15-79-125’s requirement that an expert affidavit be filed contemporaneously with a notice of intent to file suit. Id. at 178, 723 S.E.2d at 247.

Here, the Court finds that the Plaintiff’s Notice of Intent to File Suit was defective because it was not filed contemporaneously with an expert affidavit. The Court further finds that any exception to the contemporaneous filing espoused in § 15-36-100(C)(1) is not applicable here. The Court further finds that any common knowledge exception does not apply here, because the Plaintiff has sued numerous different health care providers, including a neurosurgeon and an anesthesiologist,

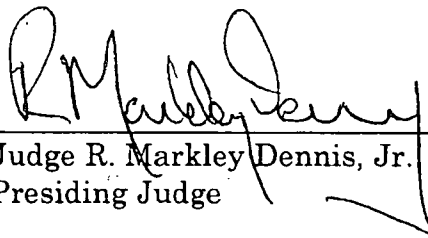
RMDF/5

alleging medical negligence and the determination of the merits exceed the bounds of common knowledge.

NOW, THEREFORE, based on the foregoing it is

ORDERED, that the Defendants' Motions to Dismiss be, and hereby are, granted and this action be dismissed as to all Defendants;

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge R. Markley Dennis, Jr.  
Presiding Judge

June 28, 2013  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Beverly C. Moore-Rowe and Arthur Peter Rowe )

CASE NO.

~~2013-CP-10-00090~~ & 2013-CP-10-00088

Plaintiff(s), )

Versus )

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a )  
Bon Secours St. Francis Xavier Hospital, Bon )  
Secours St. Francis Hospital and Roper St. Francis )  
Healthcare, Bon Secours St. Francis Health System, )  
Inc., d/b/a Bon Secours St. Francis Xavier Hospital, )  
et al. )

Defendant(s). )

check box above indicating submitting party

ORDER RECEIVED

AUG 02 2013

SC Court of Appeals

<b>Pro Se Plaintiff:</b> Beverly C. Moore-Rowe Arthur Peter Rowe 52 Chadwick Drive Charleston, SC 29407	<b>Defendant's attorney:</b> Jeffrey M. Bogdan (SC #76354) Hood Law Firm, LLC 172 Meeting Street, P.O. Box 1508 Charleston SC 29402 Phone: (843) 577-1207; Fax: (843) 722-1630 Email: Jeffrey.Bogdan@hoodlaw.com
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MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: Minutes \_\_\_\_\_ Court Reporter Needed: YES  / NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order -  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for  Plaintiff(s) /  Defendant(s) \_\_\_\_\_ Date submitted \_\_\_\_\_

**SECTION III: Motion Fee**

PAID - AMOUNT: \_\_\_\_\_  
 EXEMPT: (check reason)  Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE: 2060 DATE: 8-28-2013

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ (print name) DATE FILED \_\_\_\_\_

MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED-AMOUNT DUE: \_\_\_\_\_

FILED

Beverly C. Moore-Rowe

2013 JUL -3 PM 3:03

JULIE J. ARMSTRONG  
CLERK OF COURT

BY \_\_\_\_\_

Bon Secours-St. Francis Xavier Hospital, Inc.,  
d/b/a Bon Secours St. Francis Xavier  
Hospital, Bon Secours St. Francis Hospital  
and Roper St. Francis Healthcare, Bon  
Secours St. Francis Health System, Inc.,  
d/b/a Bon Secours St. Francis Xavier  
Hospital, Bon Secours St. Francis Hospital  
and Roper St. Francis Healthcare, Bon  
Secours Health System, Inc., d/b/a Bon  
Secours St. Francis Hospital and Roper St.  
Francis Healthcare, Roper St. Francis  
Foundation, d/b/a Roper St. Francis  
Healthcare, Bon Secours-St. Francis Health  
System Foundation, Inc., d/b/a Roper St.  
Francis Healthcare, Roper Hospital, Inc.,  
d/b/a Roper St. Francis Healthcare, Byron N.  
Bailey, M.D., Christine C. Thompson, M.D.,  
a/k/a Christine Thompson, M.D., Charleston  
Neurosurgical Associates, LLC, Mt. Pleasant  
Anesthesia Associates, PA, Charleston  
Surgery Center Limited Partnership, d/b/a  
Charleston Surgery Center, Tammy McGraw,  
CRNA, also known as Tammy McGraw  
Speicher, CRNA, Nurse Anesthesia of South  
Carolina, LLC, Jeffery S. Wager, CRNA,  
Tricoastal Healthcare Billing and  
Management, Inc., and Steven Heath Cobb

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jeffrey M. Bogdan (SC #76354)

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (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.

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

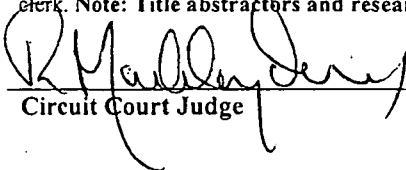
**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2060  
Judge Code

6-28-2013  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or  
placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or  
to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT