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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2021-001129

Anita and James Chabek, Appellants,

v.

AnMed Health and Larry
Davidson, MD, Respondents.

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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

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Anderson Common Pleas

Case Caption: Anita Chabek , plaintiff, et al VS Anmed Health , defendant, et al

Case Number: 2021NI0400011

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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Anderson Common Pleas

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S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	C/A NO.: 2021-NI-04-00011
)	
Anita and James Chabek,)	
)	
Plaintiffs,	)	ORDER GRANTING DEFENDANTS ANMED HEALTH'S AND LARRY DAVIDSON, M.D.'S MOTIONS FOR SUMMARY JUDGMENT
vs.)	
)	
AnMed Health and Larry Davidson, M.D.,)	
)	
Defendants.)	

This matter came before the Court on July 21, 2021 on Defendants AnMed Health’s and Larry Davidson, M.D.’s motions to dismiss or in the alternative for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the ground that there is no genuine issue of material fact as the applicable statute of limitations has run, and the Defendants are entitled to judgment as a matter of law. Present at the hearing were Jay Wright, Esq., Attorney for Plaintiffs; Trey Suggs, Esq., Attorney for Larry Davidson, M.D., and Marian Scalise, Esq., Attorney for AnMed Health. After carefully considering the motions, memoranda including excerpts of medical records, arguments of all counsel as well as the applicable law, the Court GRANTS Defendants’ Motions for Summary Judgment.

This medical malpractice action stems from an alleged “negligent removal of an excessive portion of the L5/S1 facet joint” and failure to “install instrumentation and fusion to properly support the spine following a partial facetectomy” during a “right-sided L5/S1 synovial cyst removal” and alleged failure “to properly inform Ms. Chabek of the available alternative treatments.” Mrs. Chabek underwent resection of a right-sided L5/S1 synovial cyst with intraoperative utilization of lumbosacral spinal fluoroscopy with Dr. Larry Davidson on August 22, 2017. Prior to surgery, on August 10, 2017, Mrs. Chabek presented to Dr. Davidson complaining of pain in her lumbar spine,

right hip, and right leg accompanied by numbness, tingling, and weakness which had been present for two years and pain from a fall down the stairs in the prior year. Dr. Davidson further documented that she had been “dealing with at least several months of intense right-sided lumbar radicular pain involving the right buttock/thigh and leg,” and an MRI of the lumbar spine demonstrated a right-sided L5/S1 synovial cyst. He also noted that conservative measures including pain management, injections, heat, ice, naproxen, hydrocodone, gabapentin, topical rubs, and steroids had failed to provide Mrs. Chabek with any relief, and she had not had any prior spine surgery. Dr. Davidson documented that he thoroughly discussed the technical aspects of the procedure, the potential risks, and realistic limitations and benefits with Mrs. Chabek, and risks specifically documented to have been discussed by Dr. Davidson include infection, wound healing difficulties, hemorrhage, CSF leak, recurrence of symptoms, spinal destabilization, paralysis, nerve injury, worsening of symptoms or neurologic status, and need for subsequent surgery for any of the above complications, and he also discussed that there was no guarantee that the desired results would be obtained with surgery as well as the potential development of medical problems during and following surgery. In his operative note, Dr. Davidson documented that there were no complications during the procedure and in relevant part described the procedure as follows:

Ultimately, a right L5 hemilaminotomy [involves removing part of one of the two laminae on a vertebra to relieve excess pressure] and partial medial facetectomy [involves removing part of the facet joint on the side close to the midline to the backbone] was performed. The underlying synovial cyst was identified and significant compression of the dura is noted. The cyst was dissected off and peeled away from the dura eliminating its mass effect on the neural structures. Of course, this was performed with loupe magnification. Reinspection of the epidural space suggested the neural elements to be very nicely decompressed.

Mrs. Chabek was discharged home on the same day.

Mrs. Chabek’s post-operative complaints started six days later on August 28, 2017 when she called Dr. Davidson’s office stating she was having a lot of pain in her right leg, and she could

not get comfortable. On September 1, 2017, Mrs. Chabek presented for a wound check and continued to complain of pain in her right hip, as well as leg and numbness in the right leg, and reported she was taking one Hydrocodone every five hours. She returned to the office on September 13, 2017 for a second wound check at which time she was prescribed a Medrol dose pack for the continued right hip and leg pain. On September 28, 2017, she reported to her primary care physician Dr. Clifton Straughn that she was “frustrated” it had been five weeks since her back surgery and she was not feeling much better. On October 4, 2017, the patient called AnMed Health Spine and Neurosurgery’s office requesting a refill of hydrocodone. On October 5, 2017, PA Travis Jeffcoat documented that Mrs. Chabek continued to complain of right lower extremity radicular pain with mild improvement since the surgery. On November 16, 2017, Mrs. Chabek returned to AnMed Health Spine and Neurosurgery complaining of back pain and a problem with her gait, and also reported that she had fallen on a wet floor since her last visit. PA Jeffcoat documented that she continued to complain of right lower extremity pain and numbness. On December 12, 2017, Mrs. Chabek called AnMed Health Spine and Neurosurgery in order to obtain another refill on her hydrocodone and again indicated that she had continued pain. On December 21, 2017, she called the office complaining of “sciatic nerve pain.” On January 11, 2018, she called the office complaining of back and left leg pain, and she reported she could not put pressure on her left leg. On January 15, 2018, Mrs. Chabek had an MRI of her lumbar spine, and Radiologist Dr. Thomas Wiggins compared this MRI to one done in August of 2017, reporting in relevant part the following:

Marrow signal: in the left L5 pedicle and facet suggesting a combination of stress reaction and changes secondary to arthritis in L5-S1 facet joint on the left.
L4-L5: Mild disc dehydration consistent with mild degenerative disc disease. Mild facet joint arthritis. There is a small synovial cyst projecting medially from the right facet joint measuring 6 x 3 x 12mm. This results in mild impingement on the right posterior lateral aspect of the thecal sac. This is a new finding when compared to

the previous study.

L5-S1: Compared with the prior study, the patient has undergone a right laminectomy and resection of the inferior L5 facet. Postoperative granulation tissue in the operative site with some enhancing granulation tissue around the right S1 nerve root. Moderate facet joint arthritis on the left.

His overall impression was that the patient had a small synovial cyst projecting medially from the right L4-5 facet joint with mild impingement on the right posterior lateral aspect of the thecal sac, and she had moderate facet joint arthritis on the left at L5-S1, with edema in the left L5 pedicle consistent with a stress reaction. Significantly, stress injuries can be classified based on their time of diagnosis. An early stress injury is called a stress reaction; however, if left untreated, it will develop into a stress fracture.

On January 18, 2018, PA Jeffcoat documented that Mrs. Chabek continued to complain of radicular pain and low back pain, and her primary physician had prescribed a medrol dose pak for the new pain in her left posterior hip. Her gait was still antalgic to the right, and her lumbar spine was tender to palpation. On January 31, 2018, Mrs. Chabek called AnMed Health Spine and Neurosurgery for another refill of her pain medications, and on February 1, 2018, Mrs. Chabek stopped by AnMed Health Spine and Neurosurgery to pick up the prescription. After she left, she called the office and stated she was having the same amount of pain in her right leg and she had to take care of her dad. She reported that the prescription was written for her to take medication “every 6 hours where it was every 4 hours,” and “[s]he asked if [PA Jeffcoat] knew what he was doing since he wrote the script.” Significantly, the documentation indicates that Mrs. Chabek was informed that her medication was reduced because the office did not manage chronic pain, and her surgery was in August of 2017. On February 7, 2018, Mrs. Chabek called AnMed Health Spine and Neurosurgery again stating her pain medication was not strong enough and she continued to have pain in her leg.

On February 28, 2018, Mrs. Chabek presented to Pain Management Specialist Dr. Eric Loudermilk at Piedmont Comprehensive Pain Management. Dr. Loudermilk documented that her MRI showed a right-sided laminectomy with a facet joint resection at the L5 level and some moderate arthritis and edema on the left side at L5-S1 around the facet and pedicle suggestive of a stress reaction. On March 1, 2018, Radiologist Dr. Paul Brill reported that Mrs. Chabek's EMG was "essentially normal," but "[m]ild isolated spontaneous activity [was] seen in the right lumbar paraspinal muscles, adjacent to the patient's scar." He noted that this was a nonspecific finding **and could be related to her surgery**. On March 6, 2018, Mrs. Chabek returned to see PA Jeffcoat and continued to complain of low back pain and right lower extremity radicular symptoms. After reviewing the MRI showing the new cyst at L4-L5, as well as "what appears to be a medial facetectomy of right L5-S1," PA Jeffcoat discussed the possibility of a CT myelogram of the lumbar spine to evaluate the integrity of the right L5-S1 facet joint, and he noted, "If she indeed has missing medial facet she could be dealing with some degree of instability even though this is not identified on flexion and extension films. This also could be contributing to right L5-S1 foraminal collapse resulting in continued lower extremity pain." Mrs. Chabek wanted to hold off on the myelogram for a few weeks, and she wanted to attempt PT prior to any additional imaging. On March 7, 2018, Kristin Jennings from AnMed Health Spine and Neurosurgery documented that she called Mrs. Chabek to set up an appointment with Dr. MacDonald, but when she did not hear back from Mrs. Chabek, she called Mr. Chabek who, significantly, indicated that his wife was not happy with the office and did not want to come back.

On March 12, 2021, Plaintiffs filed a Notice of Intent to File Suit against the Defendants alleging that the Defendants were negligent for, *inter alia*, "removal of an excessive portion of the L5/S1 facet joint" and failure to "install instrumentation and fusion to properly support the spine

following a partial facetectomy” during a “right-sided L5/S1 synovial cyst removal” and alleged failure “to properly inform Ms. Chabek of the available alternative treatments.”

A motion to dismiss is generally held to a strict standard in South Carolina. Nonetheless, a motion to dismiss may be granted by the circuit court when a defendant demonstrates that the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. See Sloan Const. Co. v. Southco Grassing, Inc., 368 S.C. 523, 525, 629 S.E.2d 372, 373 (Ct.App. 2006). In considering a motion to dismiss, the court may take judicial notice of well-known facts and principles of law,¹ and in “[v]iewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” Chewning v. Ford Motor Co., 346 S.C. 28, 32-33, 550 S.E. 2d 584, 586 (Ct.App. 2001). Should a motion to dismiss require consideration of matters outside of the pleadings, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. SCRCP 12(b).

The statute of limitations or statute of repose defense may be raised in a summary judgment motion. See McDonnell v. Consolidated School Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most

¹ See S.C.R.Evid. 201(b)-(d)(recognizing that a judicially noticed fact is one that is not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.); see also Moss v. Aetna Life Ins. Co., 267 S.C. 370, 228 S.E.2d 108 (1976)(court may admit into evidence and consider, without proof of the facts, matters of common and general knowledge); Bowers v. Bowers, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002)(court may take judicial notice of a fact only if sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof—also the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.)

favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 386, 365 S.E.2d 24 (1988). Although the burden is on the party seeking summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986).

Once the moving party carries its initial burden, the “opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a genuine issue for trial.” Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (internal citation omitted). A party cannot rest on the mere allegations in her complaint. Nor can a party “escape summary judgment on the mere hope that something may develop later at trial, or by remaining silent and later claiming additional facts supporting the cause of action.” Hammond v. Scott, 268 S.C. 137, 143, 232 S.E.2d 336, 339 (1977).

“The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial.” Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct.App.2001); Baughman, 306 S.C. at 116, 410 S.E.2d at 545-546 (internal citation and quotation omitted). Furthermore, “[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.” Baughman, 306 S.C. at 116, 410 S.E.2d at 546.

Plaintiffs allege that the Defendants were grossly negligent and failed to comply with the

standard of care by 1) failing to exercise the technical skills expected to be employed by a reasonably prudent neurosurgeon; 2) in failing to provide informed consent; 3) in failing to properly inform supervisors and staff; and 4) in failing to properly supervise its physicians. South Carolina Code Section 15-3-545(A) provides:

[I]n any action ... to recover damages for injury to the person arising out of the medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Title 38 acting within the scope of his profession must be commenced within three years from the date of treatment, omission, or operation giving rise to the cause of action or three years from the date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

S.C. Code Ann. § 15-3-535(A). If the Court runs the statute of limitations from the date of the operation allegedly giving rise to this lawsuit, Plaintiffs' lawsuit is clearly beyond the statute of limitations. Plaintiffs' medical malpractice action relies upon the notion that Dr. Davidson removed too much of the L5/S1 facet joint and failed to install instrumentation to adequately support Mrs. Chabek's spine during a right-sided L5/S1 synovial cyst resection procedure on August 22, 2017. In addition, any other alleged failure to utilize proper technical skill, failure to provide informed consent, failure to properly inform supervisors or staff, and failure to adequately supervise related to Mrs. Chabek's claim would have occurred prior to or at the time of the procedure on August 22, 2017. Viewing the evidence in a light most favorable to Plaintiffs, the act or omission which gave rise to the alleged injury occurred no later than August 22, 2017, when Dr. Davidson performed the operation which Plaintiffs allege caused Mrs. Chabek's injury. Any cause of action arising out of this alleged failure became barred by the statute of limitations three years later on August 22, 2020. Plaintiffs' Notice of Intent to File Suit against Defendants was not filed until March 12, 2021, nearly eight months after the statute expired.

Plaintiffs attempted to toll the statute by filing an Amended Statement of Facts stating that

following the surgery in August 22, 2017, Mrs. Chabek “was told by Dr. Davidson and subsequent AnMed providers that the complications she was experiencing were known risks that can occur with her surgery and were not the result of any inappropriate treatment or medical negligence.” Plaintiffs further allege that because Mrs. Chabek was told this, she had “no reason to suspect that there was a possibility that her complications were due to medical malpractice,” and she “first learned that her continued pain was likely due to a fractured L5 facet joint in August 2018.” The Court finds that this Amended Statement of Facts is solely a self-serving attempt to circumvent Plaintiffs’ claims being barred by the statute of limitations, but Plaintiffs’ claims are similarly barred if the statute of limitations runs from the date of discovery. More than three years elapsed from the date Plaintiffs either knew or should have known that some right had been invaded or that some claim against another party might exist and the date they initiated this lawsuit. “Under the discovery rule, the statute does not run from the date of the negligent act, but from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence.” McClain v. Jarrard, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (Ct. App. 2003) (internal citation omitted). “In the medical malpractice context, the Supreme Court of South Carolina applied the reasonable diligence analysis under the general discovery rule ... [and held that an] injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right of his has been invaded or that some claim against another party might exist.” Id. (internal citation omitted).

As discussed above, Plaintiffs have asserted that Mrs. Chabek had no notice of or reason to believe that her injuries could have been a result of medical malpractice until August of 2018; however, this assertion is wholly unsupported by the medical record. Mrs. Chabek began reporting post-operative complaints a mere six days after Dr. Davidson’s operation on August 28, 2017. As

discussed in detail above, she called and presented to AnMed Health Spine and Neurosurgery's office multiple times per month requesting additional pain medication and/or complaining of continued right hip and leg pain. She specifically reported to her primary care physician that she was frustrated that she was not feeling better five weeks after the operation. Significantly, by January 15, 2018, an MRI showed "edema in the left L5 pedicle consistent with a stress reaction" indicating that Mrs. Chabek may have instability in her spine. On January 31, 2018, Mrs. Chabek called to ask if the PA knew what he was doing because her pain medication prescription had been reduced, and she was informed that AnMed Health Spine and Neurosurgery did not manage chronic pain, and her surgery was in August of 2017. On February 28, 2018, Mrs. Chabek again was given notice of a stress reaction and potential instability in her spine. On March 1, 2018, Dr. Brill noted that mild isolated spontaneous activity seen in the right lumbar paraspinal muscles "could be related to her surgery." Most significantly, on March 6, 2018, PA Jeffcoat discussed a CT myelogram to evaluate the integrity of Mrs. Chabek's right L5 facet joint and potential instability which could be contributing to right L5-S1 foraminal collapse resulting in continued lower extremity pain post-facetectomy performed by Dr. Davidson. The following day, March 7, 2018, Mr. Chabek communicated that his wife was not happy with the office and did not want to come back.

Whether the statute began to run in August 2017, January 2018, February 2018 or in early March 2018 when Mrs. Chabek was told that spontaneous activity on her EMG could be related to her surgery and potential instability from the facetectomy performed by Dr. Davidson could be causing her lower extremity pain, or even when Mr. Chabek communicated that his wife was not happy with the practice and would not be returning, this Court finds that Plaintiffs' claims against the Defendants were barred by the statute of limitations when they filed their Notice of Intent to File Suit on March 12, 2021.

Plaintiffs also contend that Dr. Davidson had a duty to disclose to Ms. Chabek that he was an alcoholic and was “currently dealing with an alcohol substance abuse relapse,” and that failure to do so “constitutes a separate occurrence of negligence.” While South Carolina courts have recognized a cause of action related to informed consent, this Court finds as a matter of law that South Carolina does not recognize a duty on the physician which extends to disclosure of his or her own personal, medical or behavioral issues.

Under the doctrine of informed consent, a physician in South Carolina has a duty to disclose “(1) the diagnosis, (2) the general nature of the contemplated procedure, (3) the material risks involved *in the procedure*, (4) the probability of success associated with the procedure, (5) the prognosis if the procedure is not carried out, and (6) the existence of any alternatives to the procedure.” Hook v. Rothstein, 281 S.C. 541, 547, 316 S.E.2d 690, 694-95 (Ct.App. 1984) (emphasis added). The Plaintiffs’ claims related to lack of informed consent center upon the third element, that of disclosure of “material risks involved in the procedure.” However, this element pertains to risks of the *procedure* itself, not to risks related to the surgeon’s health or behavior. A surgeon’s personal issues, whether behavior or medical, are not required to be disclosed under the doctrine of informed consent. This Court will not permit Plaintiffs to expand the doctrine of informed consent beyond the elements that our appellate courts have already outlined.

While South Carolina courts have not expressly addressed this particular issue, this Court considers it persuasive that several courts have, including neighboring Georgia. Importantly, Georgia recognizes the same six elements of the doctrine of informed consent as enumerated by the Hook court, including the third element related to disclosure of materials risks. *OCGA Section 31-9-6.1*. In Albany Urology Clinic, P.C. v. Cleveland, 272 Ga. 296, 528 S.E.2d 777 (Ga. 2000), the Plaintiff sued her surgeon, alleging that he failed to disclose to her his cocaine addiction. The Supreme Court of

Georgia, considering whether the surgeon was required to disclose his drug use, held that “absent inquiry by a patient or client, there is neither a common law nor a statutory duty on the part of either physicians or other professionals to disclose to their patients or clients unspecified life factors which might be subjectively considered to adversely affect the professional’s performance.” Id. at 778. The Court expanded upon the problems associated with requiring a surgeon to disclose life factors, noting that there were compelling public policy reasons against doing so, including “the impossibility of defining which of a professional’s life factors would be subject to such a disclosure requirement.” Id. at 782. The Court concluded that a “full and adequate remedy for [the Plaintiff’s] injuries in this case is already provided by existing law- the right to sue [the Defendant] for professional negligence.” Id. at 780.

In a similar case, the Superior Court of Pennsylvania considered the question of whether a surgeon was required to disclose that he was not only an alcoholic, but also that he was unlicensed. Kaskie v. Wright, 403 Pa.Super 334, 589 A.2d 213 (Pa. Sup.Ct. 1991). Specifically, the Court noted, “the question then becomes whether the doctrine of informed consent can be expanded to include information other than that which concerns medical treatment by surgical procedure.” Id. at 216. The court’s answer was “no,” concluding that a surgeon was not required to disclose:

We refuse to expand the informed consent doctrine to include matters not specifically germane to surgical or operative treatment. To do so, where the absent information consists of facts personal to the treating physician, extends the doctrine into realms well beyond its original boundaries. Nor are limitations easily definable. Are patients to be informed of every fact which might conceivably affect performance in the surgical suite?

Id. at 341. The Court found that requiring the disclosure of subjective potential factors which could conceivably affect a surgeon’s performance is not practical and is not contemplated by the doctrine of informed consent.

In another Pennsylvania case, the Supreme Court of Pennsylvania considered whether a

surgeon violated the doctrine of informed consent by misrepresenting his experience related to the particular procedure. Duttry v. Patterson, 565 Pa. 130, 771 A.2d 1255 (Pa. 2001). The Court held that “evidence of a physician’s personal characteristics and experience is irrelevant to an informed consent claim.” Id. at 1259. Thus, it concluded that the plaintiff’s claim for failure to provide informed consent could not proceed.

While not quite as on point as the above cases, additional jurisdictions have also considered whether a physician’s use of alcohol creates an independent cause of action. In Ornelas v. Fry, 151 Arz. 324, 727 P.2d 819 (Ct. App. Az. 1986), the Court evaluated whether a physician’s alcohol abuse and DUI could be considered absent evidence that the physician was under the influence of alcohol at the time of the procedure. The court found, “We hold as a matter of law that the fact that [the physician] may have been an alcoholic at the time of the surgery does not create in and of itself a separate issue or claim of negligence. It is only when that alcoholism translates into conduct falling below the applicable standard of care that it has any relevance.” Id. at 823. Thus, the court essentially concluded that there is no separate and distinct cause of action, for informed consent or otherwise, related to a physician’s alcohol abuse.

While Georgia, Pennsylvania, and Arizona case law is not binding on South Carolina, this Court finds it informative and instructive. Simply put, the doctrine of informed consent relates to the risks and potential complications related to that procedure, not to “life factors,” as characterized by the Georgia Court, such as experience, drug abuse, or alcoholism. Expanding the doctrine of informed consent as Plaintiffs request this Court to do would be opening a never-ending Pandora’s box. Would a surgeon have to disclose that he was going through a nasty divorce or that his teenage child was admitted to a psychiatric facility? Would she have to disclose that she was undergoing chemotherapy for stage 4 breast cancer or that she was a diabetic who occasionally experienced low sugar levels?

Certainly, such subjective and difficult to delineate matters are not what our Court contemplated when recognizing the doctrine of informed consent. Instead, the Court laid out six very specific elements of informed consent. The surgeon's life factors are not one of those elements.

This Court finds that Plaintiffs' allegations related to Dr. Davidson's failure to disclose his alcohol abuse seek to expand the doctrine of informed consent beyond reasonable bounds. Dr. Davidson had no such duty of disclosure. As such, the Complaint fails to state facts sufficient to constitute a cause of action for failure to provide informed consent and is dismissed.

Plaintiffs may not advance any otherwise time-barred claims under any allegations that Ms. Chabek's treatment and alleged negligence of the Defendants continued over a time span or reoccurred thereby renewing the time within which to commence this action. The Supreme Court of South Carolina summarized the relevant rule as follows:

The so-called "continuous treatment" rule as generally formulated is that if the treatment by the doctor is a continuing course and the patient's illness, injury or condition is of such a nature as to impose on the doctor a duty of continuing treatment and care, the statute does not commence running until treatment by the doctor for the particular disease or condition involved has terminated—unless during treatment the patient learns or should learn of negligence, in which case the statute runs from the time of discovery, actual or constructive.

Harrison v. Bevilacqua, 354 S.C. 129, 135, 580 S.E.2d 109, 112 (2003) (Internal citations omitted).

The Supreme Court of South Carolina refused to adopt the continuous treatment rule and found that judicial adoption of the rule "would run afoul of the absolute limitations policy the Legislature has clearly set" via South Carolina Code Section 15-3-545. Id. at 138, 580 S.E.2d at 114. The Harrison ruling was reaffirmed by the South Carolina Supreme Court in Marshall v. Dodds, 426 S.C. 453, 461-467, 827 S.E.2d 570, 574-577 (2019). The Supreme Court acknowledged the policy behind the statute of repose as "an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the

legislative body” and held that the purpose behind the statute of repose is that “[w]hen causes of action are extinguished after such time, society generally may continue its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long forgotten act or omission.” Id. at 465, 468, 827 S.E.2d at 576, 578 (internal citation and quotations omitted).

The Supreme Court rejected the continuous treatment rule in both Harrison and Marshall, and despite any allegations of continued treatment of Mrs. Chabek or alleged recurring negligence, Plaintiffs cannot assert any otherwise time-barred claims under this rule.

James Chabek’s claim for loss of household services is also barred by the applicable statute of limitations. Mr. Chabek’s claim for loss of household services is intertwined with the medical malpractice claim and should be subjected to S.C. Code Ann. § 15-3-545. The Court has consistently held that the statute of limitations for medical malpractice claims applies to cases that allege medical malpractice or where liability depends on whether or not medical malpractice occurred in the case or not. See Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993). Mr. Chabek’s loss of household services claim is reliant upon Plaintiffs’ ability to prove medical malpractice; thus, his claim is subjected to the statute of limitations in South Carolina Code Section 15-3-545.

Additionally, even if S.C. Code Ann. § 15-3-545 did not apply to the loss of household services cause of action, then S.C. Code Ann. § 15-3-530 applies. Section 15-3-530 requires a cause of action for loss of household services shall be brought within three (3) years. “[C]ase law has held that the right of action does not accrue until the loss of the services, society and companionship of the spouse has actually occurred, which has been defined as the point when the spouse sustained the injuries.” Preer v. Mims, 323 S.C. 516, 521 S.E.2d 472, 475 (1996) (Internal

citations omitted). In the present case, Plaintiffs have alleged that Defendants' omission causing injury occurred on August 22, 2017. Therefore, Mrs. Chabek began to incur damages on or about August 22, 2017 as she allegedly suffered medical expenses, physical pain, mental suffering, alteration of lifestyle, mental anguish, mental distress, anxiety, and substantial loss and/or degradation of enjoyment of life as a result of Defendants' alleged conduct on that day. Thus, the statute of limitations for Mr. Chabek's loss of household services claim began to run on August 22, 2017, expired on August 22, 2020, and was barred by the statute of limitations when Plaintiffs filed their Notice of Intent to File Suit on March 12, 2021.

For the foregoing reasons, Defendants' Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

/s Electronic signature to follow



Anderson Common Pleas

Case Caption: Anita Chabek , plaintiff, et al VS Anmed Health , defendant, et al

Case Number: 2021NI0400011

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-11-17 14:23:39 page 17 of 17

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiffs,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. _____

**Notice of Intent
to File Suit**

Pursuant to S. C. Code Ann. § 15-79-125, Plaintiffs file this Notice of Intent to File Suit. Attached as Exhibit A is a Complaint which specifies Plaintiffs' short and plain statement of the facts. Attached as Exhibit B is the affirmation that Plaintiffs will supplement this pleading with an affidavit from an expert within forty-five days pursuant to § 15-36-100(C)(1). Attached as Exhibit C are answers to Standard Interrogatories as set forth in Rule 33(b) of the *South Carolina Rules of Civil Procedure*.

Respectfully submitted,

McGowan, Hood & Felder, LLC

s/ Jay F. Wright
Jay F. Wright
South Carolina Bar No. 78738
jaywright@mcgowanhood.com
135 Edinburgh Court, Suite 202
Greenville, SC 29607
(864) 252-4406
(864) 252-4480 (facsimile)

March 12, 2021
Anderson, SC

ATTORNEYS FOR THE PLAINTIFFS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiffs,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. _____

Statement of Facts

Plaintiff, complaining of Defendants herein, would respectfully show unto the Court and allege as follows:

1. Plaintiff Anita Chabek (hereinafter "Mrs. Chabek") is a resident of the County of Anderson, State of South Carolina.

2. Plaintiff James Chabek (hereinafter "Mr. Chabek") is a resident of the County of Anderson, State of South Carolina

3. Defendant, AnMed Health is a corporation organized pursuant to the laws of the State of South Carolina as a private corporation in the County of Anderson, State of South Carolina. At all relevant times herein, AnMed held itself out to the public-at-large and to Plaintiff(s) as operating a physician practice specializing in the field of neurosurgery and its employees were held out to be competent in the ordinary and customary standards of care provided by medical practitioners in the field of neurosurgery.

4. Defendant, Larry Davidson, MD (hereinafter "Dr. Davidson"), was, upon information and belief, a physician specializing in the field of neurosurgery and at all times relevant herein, was a resident of the County of Anderson, State of South Carolina. Also, at all relevant times herein, Dr. Davidson held himself out to the public-at-large and to Plaintiff(s)

as a skilled and competent surgeon in the ordinary and customary standards of medicine provided by practitioners in the field of neurosurgery. Also, at all relevant times herein, Dr. Davidson acted within the scope of his employment as an agent, servant, or employee of AnMed Health.

5. Upon information and belief, Dr. Davidson negligently performed surgery and caused injury to Mrs. Chabek on August 22, 2017.

6. Dr. Davidson is an alcoholic who had an alcohol relapse and started drinking alcohol again in early 2016.

7. Over the next year into 2017, Dr. Davidson – although being a former alcoholic – continued to drink alcohol even though he had a persistent desire to stop. Additionally, the frequency of Dr. Davidson’s drinking increased over time.

8. By October 2017, the frequency of Dr. Davidson’s drinking had progressed to the point to where he was drinking every day that he was not on call.

9. Upon information and belief, Dr. Davidson continued to perform his normal workload of spinal and other forms of neurosurgeries while continuing drink almost daily for the next three months.

10. Rather than choosing to stop performing neurosurgery to address his substance abuse relapse, he chose to continue to perform very delicate neurosurgeries putting his patient at increased risk of surgical complications.

11. Fortunately for the Anderson community, Dr. Davidson was charged with a DUI on December 22, 2017 while on a family vacation in California forcing him to report this situation to AnMed Health and for him to come clean regarding his alcohol substance abuse problem.

12. If not for the DUI, Dr. Davidson would have most likely continued to perform delicate spinal and other neurosurgeries while in the midst of an alcohol substance abuse relapse and drinking most every day.

13. Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

14. If Mrs. Chabek had been informed that Dr. Davidson, an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen not to proceed with the surgery by Dr. Davidson.

15. As a result of the surgery with Dr. Davidson, Mrs. Chabek suffered significant surgical complications.

16. Plaintiffs are informed and believe that Dr. Davidson failed to provide Mrs. Chabek proper medical treatment.

17. The failure to provide proper medical treatment to Mrs. Chabek was the direct and proximate result of and was caused and occasioned by the negligence, carelessness, gross negligence, and reckless conduct on the part of Larry Davidson, MD and/or other employees of AnMed in failing to possess and exercise that degree of care, competence, and skill ordinarily and customarily possessed and exercised by neurosurgeons and employees of an neurosurgery practice under similar circumstances and thereby rendered improper medical treatment to Mrs. Chabek by deviating from and falling below the prevailing and acceptable standards of care in one or more of the specifications as set forth below:

- a. in failing to exercise the technical skills expected to be employed by a reasonably prudent neurosurgeon;

- b. In failing to properly inform patients that Dr. Davidson was dealing with an alcohol substance abuse relapse as part of proper informed consent in providing to patients the information necessary to make an informed decision as to whether to undergo a surgical procedure with Dr. Davidson;
- c. In AnMed's failure to properly supervise its physicians with a known history of alcohol substance abuse to prevent Dr. Davidson from continuing to perform surgeries in light of significant warning signs that he was suffering from an alcohol substance abuse relapse;
- d. In AnMed's failure to properly inform those tasked with supervising Dr. Davidson that he was an alcoholic so that they could recognize significant warning signs of an alcohol substance abuse relapse when they appeared;
- e. In AnMed's failure to properly inform the staff at AnMed Health Spine and Neurosurgery of Dr. Davidson's alcoholism so that they could help monitor Dr. Davidson and report the significant warning signs of an alcohol substance abuse relapse when they appeared; and
- f. in such other action or inaction that may be shown at trial.

The affidavit of a medical professional is attached hereto and is incorporated herein by this reference.

18. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. lost wages;
- d. loss of value of household services; and
- e. substantial loss and/or degradation of enjoyment of life.

19. The acts and omissions of Larry Davidson, MD were reckless, willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive

damages should be awarded to punish Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Ms. Adams which were wrongfully invaded.

20. Furthermore, Dr. Davidson was charged and arrested for driving under the influence (DUI) on 12/22/17.

21. However, Dr. Davidson testified, under oath, during deposition in another case of medical malpractice, that while he had been an alcoholic since 2010, he had not touched a drop of alcohol from 2010 until the day of his DUI.

22. This testimony under oath was a complete and total lie.

23. This testimony under oath was perjury and Dr. Davidson lied under oath in a deceitful and deceptive effort to avoid responsibility for the harm he has caused and to avoid responsibility for significant harms he had caused to his patients due to him performing spine surgeries while dealing with a substance abuse relapse and drinking almost every night.

24. As a result of Dr. Davidson committing perjury and providing false testimony under oath in in a deceitful and deceptive effort to avoid responsibility for the harm he has caused, then punitive damages should be awarded to punish Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Ms. Adams which were wrongfully invaded.

FOR A FIRST CAUSE OF ACTION – MEDICAL NEGLIGENCE

25. The relevant and consistent allegations of paragraphs 1-24 are incorporated herein by this reference.

26. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. alteration of lifestyle;
- d. mental anguish;
- e. mental distress;
- f. anxiety;
- g. loss of value of household services; and
- h. substantial loss and/or degradation of enjoyment of life.

27. Plaintiff, Anita Chabek, is informed and believes that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and punitive damages against Larry Davidson, MD in such fair, just and reasonable amounts as may be determined by a jury.

FOR A SECOND CAUSE OF ACTION – LACK OF INFORMED CONSENT

28. The relevant and consistent allegations of paragraphs 1-27 are incorporated herein by this reference.

29. Prior to commencing with the surgical procedure, Dr. Davidson had a duty to adequately disclose to Mrs. Chabek the proposed diagnostic, therapeutic or surgical procedure to be undertaken, the material risks involved therein and the alternatives available, if any, so that a patient of ordinary understanding confronted with these disclosures, and faced with a choice of undergoing the proposed treatment or selecting an alternative process or preferring refusal to all surgical relief, may, in reaching a decision, intelligently exercise his or her judgment by balancing the probable risks against the probable benefits.

30. Plaintiffs are informed and believe that Dr. Davidson failed to adequately disclose to Mrs. Chabek the material risks involved and the alternatives available. Specifically – Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

31. If Mrs. Chabek had been informed that Dr. Davidson was an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen a different surgeon to perform her surgery.

32. Dr. Davidson’s inadequate discussions of the risks and benefits of the procedure constitutes a separate occurrence of negligence from the negligence performed during the surgery given that: (1) lack of informed consent is a cause of action in and of itself that does not require medical malpractice to be pled, and (2) the discussion regarding the risks / benefits of the surgery were discussed well before the negligent surgery as was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

33. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and against Larry Davidson, MD for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A THIRD CAUSE OF ACTION – NEGLIGENT SUPERVISION

34. The relevant and consistent allegations of paragraphs 1-33 are incorporated herein by this reference.

35. Plaintiffs, upon information and belief, consider it likely that AnMed hospital either knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues prior to her surgery.

36. If AnMed knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have a duty to protect their patients from Dr. Davidson by ensuring that Dr. Davidson only performed surgeries with a proctor, had supervision of some kind, or be precluded from performing surgeries until such time as he was no longer dealing with substance abuse issues.

37. If AnMed knew or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have failed in its duty to protect its patients by failing to properly supervise its employee. This failure and/or lack of caring by AnMed resulted in Dr. Davidson being allowed to perform surgery to Mrs. Chabek while dealing with substance abuse issues consequently caused the preventable permanent injury to Mrs. Chabek due to Dr. Davidson's negligent treatment.

38. AnMed's negligent supervision of Dr. Davidson constitutes a separate occurrence of negligence from the negligence performed during the surgery given that the negligence was performed by different individuals other than Dr. Davidson and was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

39. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A FOURTH CAUSE OF ACTION – GENERAL NEGLIGENCE

40. The relevant and consistent allegations of paragraphs 1-39 are incorporated herein by this reference.

41. AnMed and Dr. Davidson a duty to exercise ordinary and reasonable care to ensure that no unnecessary harm would befall the patient.

42. The statutory definition of medical malpractice found in section 15-79-110(6) does not impact a hospital or medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care. Thus, medical providers are still subject to claims sounding in ordinary negligence.

43. No expert testimony is necessary to aid a jury's determination of fault in a situation where a hospital decides to allow and/or a surgeon decides to continue to perform surgeries in the midst of dealing with substance abuse issues.

44. If the jury were to determine that AnMed knew or should have known of Dr. Davidson's substance abuse, allowed Dr. Davidson to continue to perform surgeries unsupervised, and failed to protect their patients from Dr. Davidson, then the jurors can easily understand that AnMed breached its duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

45. If the jury were to determine that Dr. Davidson was dealing with substance abuse but continued to perform surgeries in the midst of these difficulties instead of seeking immediate help for his problems, then the jurors can easily understand that Dr. Davidson breached his duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

46. As a direct and proximate result of AnMed's and Dr. Davidson's failures to properly perform their duties of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient, Mrs. Chabek has suffered permanent injury, harms, and losses.

47. Furthermore, this failure of the Defendants to properly perform their duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient was willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive damages should be awarded to punish AnMed and Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Ms. Adams which were wrongfully invaded.

48. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health and Larry Davidson, MD, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

WHEREFORE, Plaintiff, Bessie Adams, respectfully demand and pray as follows:

- (a) for a trial by jury pursuant to Rule 38(b) of the SCRCP;
- (b) for judgment under the first cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;
- (c) for judgment under the second cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;

- (d) for judgment under the third cause of action against AnMed Health, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCF;
- (e) for judgment under the fourth cause of action against AnMed Health, and Larry Davidson, MD jointly and/or severally, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCF;
- (f) for the costs of this action; and
- (g) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

McGowan, Hood & Felder, LLC

s/ Jay Wright

Jay F. Wright

South Carolina Bar No. 78738

jaywright@mcgowanhood.com

P. O. Drawer 1778

Anderson, SC 29622-1778

(864) 225-6228

(864) 231-9011 (facsimile)

ATTORNEYS FOR THE PLAINTIFF

March 12, 2021
Anderson, SC

PLAINTIFF DEMANDS A TRIAL BY JURY

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiffs,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. _____

Statement of Facts

Upon information and belief, the statute of limitations for this action could possibly conclude in March 2021. Accordingly, Plaintiff is within ten days of filing with the expected expiration of the limitation period and because of the time constraints, an affidavit of an expert could not be prepared. Pursuant to § 15-36-100(C)(1), Plaintiff will supplement this notice of intent within forty-five days after filing with the affidavit.

Respectfully submitted,

McGowan, Hood & Felder, LLC

s/ Jay F. Wright _____

Jay F. Wright

South Carolina Bar No. 78738

jaywright@mcgowanhood.com

135 Edinburgh Court, Suite 202

Greenville, SC 29607

(864) 252-4406

(864) 252-4480 (facsimile)

ATTORNEYS FOR THE PLAINTIFFS

March 12, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No. _____

Anita and James Chabek,

Plaintiffs,

**Answers to Standard
Interrogatories
(Rule 33(b), SCRCP)**

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

Pursuant to S.C. Code Ann. §15-79-125, Plaintiff(s) hereby submits answers to the Standard Interrogatories set forth in Rule 33(b) of the *South Carolina Rules of Civil Procedure*.

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.

ANSWER:

- a. Anita and James Chabek No statement
103 Wood Duck Road
Anderson, SC
- b. Treating physicians and medical personnel appearing in the medical records

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

ANSWER:

The medical records and bills relating to Anita Chabek.

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.

ANSWER:

The physicians who treated Anita Chabek are listed in answer to Interrogatory 1.

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.

ANSWER:

Answer will be supplemented upon receipt of information.

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

ANSWER:

The damages, exclusive of pain and suffering, include, but are not limited, to past and future medical expenses including physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment; lost wages, impairment of earning capacity and substantial loss of enjoyment of life.

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

ANSWER:

- a. Any treating physicians or healthcare professionals who rendered medical treatment to Anita Chabek.

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.

ANSWER:

- a. Anita Chabek is a Plaintiff in this action. Mrs. Chabek is expected to testify to her condition before and after the surgery in question as well as her personal recollection of the events surrounding the surgery in question.
- b. Any treating physicians or healthcare professionals who rendered treatment to Anita Chabek are expected to testify in conformity to the medical records.
- c. The Defendants are expected to testify in conformity to the medical records.

Respectfully submitted,

McGowan, Hood & Felder, LLC

s/ Jay F. Wright _____

Jay F. Wright

South Carolina Bar No. 78738

jaywright@mcgowanhood.com

135 Edinburgh Court, Suite 202

Greenville, SC 29607

(864) 252-4406

(864) 252-4480 (facsimile)

ATTORNEYS FOR THE PLAINTIFFS

March 12, 2021
Anderson, SC

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiff,

vs.

AnMed Health and Larry Davidson, MD

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No: _____

SUMMONS

ANMED HEALTH

TO: AnMed Health

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscribers at **135 Edinburgh Court, Suite 202 Greenville, SC 29607**, within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders., exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

s/ Jay Wright

Jay F. Wright

South Carolina Bar No. 78738

jaywright@mcgowanhood.com

Post Office Drawer 1778

Anderson, SC 29622-1778

864-225-6228

ATTORNEY FOR THE PLAINTIFF

August 2, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiff,

vs.

AnMed Health and Larry Davidson, MD

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No: _____

SUMMONS

Larry Davidson, MD

TO: Larry Davidson, MD

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscribers at **135 Edinburgh Court, Suite 202 Greenville, SC 29607**, within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders., exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

s/ Jay Wright
Jay F. Wright
South Carolina Bar No. 78738
jaywright@mcgowanhood.com
Post Office Drawer 1778
Anderson, SC 29622-1778
864-225-6228

ATTORNEY FOR THE PLAINTIFF

August 2, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiff,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. _____

**COMPLAINT FOR DAMAGES
AND
JURY TRIAL**

Plaintiff, complaining of Defendants herein, would respectfully show unto the Court and allege as follows:

1. Plaintiff Anita Chabek (hereinafter "Mrs. Chabek") is a resident of the County of Anderson, State of South Carolina.

2. Plaintiff James Chabek (hereinafter "Mr. Chabek") is a resident of the County of Anderson, State of South Carolina

3. Defendant, AnMed Health is a corporation organized pursuant to the laws of the State of South Carolina as a private corporation in the County of Anderson, State of South Carolina. At all relevant times herein, AnMed held itself out to the public-at-large and to Plaintiff(s) as operating a physician practice specializing in the field of neurosurgery and its employees were held out to be competent in the ordinary and customary standards of care provided by medical practitioners in the field of neurosurgery.

4. Defendant, Larry Davidson, MD (hereinafter "Dr. Davidson"), was, upon information and belief, a physician specializing in the field of neurosurgery and at all times relevant herein, was a resident of the County of Anderson, State of South Carolina. Also, at all relevant times herein, Dr. Davidson held himself out to the public-at-large and to Plaintiff(s)

as a skilled and competent surgeon in the ordinary and customary standards of medicine provided by practitioners in the field of neurosurgery. Also, at all relevant times herein, Dr. Davidson acted within the scope of his employment as an agent, servant, or employee of AnMed Health.

5. Upon information and belief, Dr. Davidson negligently performed surgery and caused injury to Mrs. Chabek on August 22, 2017.

6. Dr. Davidson is an alcoholic who had an alcohol relapse and started drinking alcohol again in early 2016.

7. Over the next year into 2017, Dr. Davidson – although being a former alcoholic – continued to drink alcohol even though he had a persistent desire to stop. Additionally, the frequency of Dr. Davidson’s drinking increased over time.

8. By October 2017, the frequency of Dr. Davidson’s drinking had progressed to the point to where he was drinking every day that he was not on call.

9. Upon information and belief, Dr. Davidson continued to perform his normal workload of spinal and other forms of neurosurgeries while continuing drink almost daily for the next three months.

10. Rather than choosing to stop performing neurosurgery to address his substance abuse relapse, he chose to continue to perform very delicate neurosurgeries putting his patient at increased risk of surgical complications.

11. Fortunately for the Anderson community, Dr. Davidson was charged with a DUI on December 22, 2017 while on a family vacation in California forcing him to report this situation to AnMed Health and for him to come clean regarding his alcohol substance abuse problem.

12. If not for the DUI, Dr. Davidson would have most likely continued to perform delicate spinal and other neurosurgeries while in the midst of an alcohol substance abuse relapse and drinking most every day.

13. Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

14. If Mrs. Chabek had been informed that Dr. Davidson, an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen not to proceed with the surgery by Dr. Davidson.

15. As a result of the surgery with Dr. Davidson, Mrs. Chabek suffered significant surgical complications.

16. Plaintiffs are informed and believe that Dr. Davidson failed to provide Mrs. Chabek proper medical treatment.

17. The failure to provide proper medical treatment to Mrs. Chabek was the direct and proximate result of and was caused and occasioned by the negligence, carelessness, gross negligence, and reckless conduct on the part of Larry Davidson, MD and/or other employees of AnMed in failing to possess and exercise that degree of care, competence, and skill ordinarily and customarily possessed and exercised by neurosurgeons and employees of an neurosurgery practice under similar circumstances and thereby rendered improper medical treatment to Mrs. Chabek by deviating from and falling below the prevailing and acceptable standards of care in one or more of the specifications as set forth below:

- a. in failing to exercise the technical skills expected to be employed by a reasonably prudent neurosurgeon;

- b. In failing to properly inform patients that Dr. Davidson was dealing with an alcohol substance abuse relapse as part of proper informed consent in providing to patients the information necessary to make an informed decision as to whether to undergo a surgical procedure with Dr. Davidson;
- c. In AnMed's failure to properly supervise its physicians with a known history of alcohol substance abuse to prevent Dr. Davidson from continuing to perform surgeries in light of significant warning signs that he was suffering from an alcohol substance abuse relapse;
- d. In AnMed's failure to properly inform those tasked with supervising Dr. Davidson that he was an alcoholic so that they could recognize significant warning signs of an alcohol substance abuse relapse when they appeared;
- e. In AnMed's failure to properly inform the staff at AnMed Health Spine and Neurosurgery of Dr. Davidson's alcoholism so that they could help monitor Dr. Davidson and report the significant warning signs of an alcohol substance abuse relapse when they appeared; and
- f. in such other action or inaction that may be shown at trial.

The affidavit of a medical professional is attached hereto and is incorporated herein by this reference.

18. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. lost wages;
- d. loss of value of household services; and
- e. substantial loss and/or degradation of enjoyment of life.

19. The acts and omissions of Larry Davidson, MD were reckless, willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive

damages should be awarded to punish Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Mrs. Chabek which were wrongfully invaded.

20. Furthermore, following Ms. Chabek surgery on August 22, 2017, she was told by Dr. Davidson and subsequent AnMed providers that the complications she was experiencing were known risks that can occur with her surgery and were not the result of any inappropriate treatment or medical negligence.

21. As a result, trusting the representations made to her by AnMed and Dr. Davidson, had no reason to suspect that there was a possibility that her complications were due to medical malpractice.

22. After suffering through continued right lower extremity pain, hip, and back pain for several months, she decided to get a second opinion and went to Advanced Spine and Neurosurgical Associates in Greenwood, SC in July 2018.

23. New imaging was done and Ms. Chabek first learned that her continued pain was likely due to a fracture L5 facet joint in August 2018.

24. It was at this point in August 2018 that Ms. Chabek first had a reason to suspect and/or first discovered that her injuries could have been a result of medical malpractice relating back to the August 22, 2017 procedure and should not have been expected to know by the exercise of reasonable diligence at any time prior to August 2018 that she had a cause of action for medical malpractice.

FOR A FIRST CAUSE OF ACTION – MEDICAL NEGLIGENCE

25. The relevant and consistent allegations of paragraphs 1-24 are incorporated herein by this reference.

26. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. alteration of lifestyle;
- d. mental anguish;
- e. mental distress;
- f. anxiety;
- g. loss of value of household services; and
- h. substantial loss and/or degradation of enjoyment of life.

27. Plaintiff, Anita Chabek, is informed and believes that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and punitive damages against Larry Davidson, MD in such fair, just and reasonable amounts as may be determined by a jury.

FOR A SECOND CAUSE OF ACTION – LACK OF INFORMED CONSENT

28. The relevant and consistent allegations of paragraphs 1-27 are incorporated herein by this reference.

29. Prior to commencing with the surgical procedure, Dr. Davidson had a duty to adequately disclose to Mrs. Chabek the proposed diagnostic, therapeutic or surgical procedure to be undertaken, the material risks involved therein and the alternatives available, if any, so that a patient of ordinary understanding confronted with these disclosures, and faced with a choice of

undergoing the proposed treatment or selecting an alternative process or preferring refusal to all surgical relief, may, in reaching a decision, intelligently exercise his or her judgment by balancing the probable risks against the probable benefits.

30. Plaintiffs are informed and believe that Dr. Davidson failed to adequately disclose to Mrs. Chabek the material risks involved and the alternatives available. Specifically – Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

31. If Mrs. Chabek had been informed that Dr. Davidson was an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen a different surgeon to perform her surgery.

32. Dr. Davidson's inadequate discussions of the risks and benefits of the procedure constitutes a separate occurrence of negligence from the negligence performed during the surgery given that: (1) lack of informed consent is a cause of action in and of itself that does not require medical malpractice to be pled, and (2) the discussion regarding the risks / benefits of the surgery were discussed well before the negligent surgery as was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

33. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and against Larry Davidson, MD for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A THIRD CAUSE OF ACTION – NEGLIGENT SUPERVISION

34. The relevant and consistent allegations of paragraphs 1-33 are incorporated herein by this reference.

35. Plaintiffs, upon information and belief, consider it likely that AnMed hospital either knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues prior to her surgery.

36. If AnMed knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have a duty to protect their patients from Dr. Davidson by ensuring that Dr. Davidson only performed surgeries with a proctor, had supervision of some kind, or be precluded from performing surgeries until such time as he was no longer dealing with substance abuse issues.

37. If AnMed knew or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have failed in its duty to protect its patients by failing to properly supervise its employee. This failure and/or lack of caring by AnMed resulted in Dr. Davidson being allowed to perform surgery to Mrs. Chabek while dealing with substance abuse issues consequently caused the preventable permanent injury to Mrs. Chabek due to Dr. Davidson's negligent treatment.

38. AnMed's negligent supervision of Dr. Davidson constitutes a separate occurrence of negligence from the negligence performed during the surgery given that the negligence was performed by different individuals other than Dr. Davidson and was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

39. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A FOURTH CAUSE OF ACTION – GENERAL NEGLIGENCE

40. The relevant and consistent allegations of paragraphs 1-39 are incorporated herein by this reference.

41. AnMed and Dr. Davidson a duty to exercise ordinary and reasonable care to ensure that no unnecessary harm would befall the patient.

42. The statutory definition of medical malpractice found in section 15-79-110(6) does not impact a hospital or medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care. Thus, medical providers are still subject to claims sounding in ordinary negligence.

43. No expert testimony is necessary to aid a jury's determination of fault in a situation where a hospital decides to allow and/or a surgeon decides to continue to perform surgeries in the midst of dealing with substance abuse issues.

44. If the jury were to determine that AnMed knew or should have known of Dr. Davidson's substance abuse, allowed Dr. Davidson to continue to perform surgeries unsupervised, and failed to protect their patients from Dr. Davidson, then the jurors can easily understand that AnMed breached its duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

45. If the jury were to determine that Dr. Davidson was dealing with substance abuse but continued to perform surgeries in the midst of these difficulties instead of seeking immediate help for his problems, then the jurors can easily understand that Dr. Davidson breached his duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

46. As a direct and proximate result of AnMed's and Dr. Davidson's failures to properly perform their duties of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient, Mrs. Chabek has suffered permanent injury, harms, and losses.

47. Furthermore, this failure of the Defendants to properly perform their duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient was willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive damages should be awarded to punish AnMed and Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Mrs. Chabek which were wrongfully invaded.

48. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health and Larry Davidson, MD, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A FIFTH CAUSE OF ACTION – LOSS OF CONSORTIUM

49. The relevant and consistent allegations of all the preceding paragraphs are incorporated herein by this reference.

50. This claim is instituted for loss of consortium pursuant to *S.C. Code Ann. §15-75-20*.

51. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mr. Chabek has suffered the loss of companionship, aid, society, and services of his wife from August 2017 until the present.

52. Plaintiff, James Chabek, is informed and believes that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health,

jointly and severally, for actual damages and punitive damages against Larry Davidson, MD in such fair, just and reasonable amounts as may be determined by a jury.

NUMBER OF OCCURENCES

53. The relevant and consistent allegations of all the preceding paragraphs are incorporated herein by this reference.

54. Defendant AnMed Health holds itself out and claims to be a charitable organization such that potential damages against it are limited pursuant to §33-56-180 only to actual damages to an amount not exceeding the limitation on liability imposed in the South Carolina Tort Claims Act (“SCTCA”) §15-78-120 et seq.

55. The SCTCA limits liability arising out of a single occurrence to \$300,000 for negligence by a non-dentist or non-physician and to \$1,200,000 for negligence by a licensed dentist or physician.

56. The allegations set forth in this Complaint would constitute three separate occurrences under the SCTCA.

57. These separate and individual occurrences of negligence would be: (1) Defendant Davidson’s negligence during the performance of Mrs. Chabek’s surgical operation on in December 2017 as set forth in Causes of Action #s 1 and 4, (2) Defendant Davidson’s negligence in failing to inform Mrs. Chabek of all of the material risks of the surgical procedure in the pre-operative meetings months before the actual surgery set forth in Causes of Action #s 2 and 4, and (3) Defendant AnMed Health’s negligent supervision of Dr. Davidson – known by AnMed to be a former alcoholic – by either failing to investigate or performing a deficient investigation of Dr. Davidson when he began exhibiting signs of an alcohol substance abuse relapse as set forth in Causes of Action #s 3 and 4.

STATUTORY CAP PER OCCURRENCE

58. The relevant and consistent allegations of all the preceding paragraphs are incorporated herein by this reference.

59. The SCTCA liability against Defendant AnMed Health for Dr. Davidson's negligence during the December 2017 surgical procedure as set forth in Causes of Action #s 1 and 4 would be one million two hundred thousand dollars (\$1,200,000).

60. The SCTCA liability against Defendant AnMed Health for Dr. Davidson's failure to provide Mrs. Chabek with proper informed consent prior to the December 2017 surgical procedure as set forth in Causes of Action #s 2 and 4 would be one million two hundred thousand dollars (\$1,200,000).

61. The SCTCA liability against Defendant AnMed Health for negligent supervision as set forth in Causes of Action #s 3 and 4 would be one million two hundred thousand dollars (\$1,200,000) if such supervision were the responsibility of a licensed physician or dentist.

62. The SCTCA liability against Defendant AnMed Health for negligent supervision as set forth in Causes of Action #s 3 and 4 would be three hundred thousand dollars (\$300,000) if such supervision were the responsibility of someone other than a licensed physician or dentist.

WHEREFORE, Plaintiffs, respectfully demand and pray as follows:

- (a) for a trial by jury pursuant to Rule 38(b) of the SCRCP;
- (b) for judgment under the first cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;
- (c) for judgment under the second cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable

amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;

- (d) for judgment under the third cause of action against AnMed Health, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;
- (e) for judgment under the fourth cause of action against AnMed Health, and Larry Davidson, MD jointly and/or severally, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;
- (f) for judgment under the fifth cause of action against AnMed Health, and Larry Davidson, MD jointly and/or severally, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;
- (g) for the costs of this action; and
- (g) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

McGowan, Hood & Felder, LLC

s/ Jay Wright

Jay F. Wright

South Carolina Bar No. 78738

jaywright@mcgowanhood.com

P. O. Drawer 1778

Anderson, SC 29622-1778

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ATTORNEYS FOR THE PLAINTIFF

PLAINTIFF DEMANDS A TRIAL BY JURY

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In the Court of Common Pleas for the
State of South Carolina, County of Anderson

Case No.: 2021NI0400011

Anita Chabek,
Plaintiff(s),
vs.
AnMed Health,
Defendant(s).

Transcript of Record

RECEIVED
Oct 28 2021
SC Court of Appeals

July 21, 2021

Anderson, South Carolina

BEFORE:

The Honorable L. McIntosh

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APPEARANCES

REPRESENTING THE PLAINTIFF:

Jay Wright, Esquire
McGowan Hood & Felder, LLC
135 Edinburgh Court, Suite 202
Greenville, SC 29607
864-252-4406

REPRESENTING THE DEFENDANT(S):

Fred W. Suggs, III, Esquire
Roe Cassidy Coates & Price, PA
Post Office Box 10529
Greenville, SC 29603
(864) 349-2616

and

Marian Williams Scalise, Esquire
Richardson Plowden & Robinson, PA
PO Box 3646
Myrtle Beach, SC 29578

1 PROCEEDINGS

2 THE COURT: Motion to Dismiss for Dr. Hand
3 from the hospital.

4 MS. SCALISE: Yes, sir. So, the first one, I
5 believe, on Your Honor's roster is Adams, Betsy
6 Adams versus AnMed. It is a Dr. Davidson case.
7 2021CP04-716 is a Motion to Strike an offer of
8 judgment. And I have that motion in our memoranda,
9 Your Honor.

10 THE COURT: This is a Motion to Strike offer
11 of judgment?

12 MS. SCALISE: Yes, sir.

13 THE COURT: Let me ask you this, I went to
14 Rule 68 when I saw this motion on my desk. And I
15 don't see any time limitations in the rule. So,
16 why should I strike it?

17 MS. SCALISE: You are right, Your Honor.
18 There's no time limitation in that, but I think,
19 Your Honor, this particular offer of judgment was
20 filed 12 days after he filed his Summons and
21 Complaint.

22 THE COURT: Again, there is no time
23 limitation. I mean, you are asking me to insert an
24 item into the rule that is not there, and I don't
25 think that I can do that. I guess that I could in

1 my discretion, but I don't know why -- what is
2 wrong with the offer of judgment at this time?

3 MS. SCALISE: Well, Your Honor, first of all,
4 the offer of judgment is for more than the
5 statutory cap, it is 1.3 against Dr. Davidson. And
6 it is three hundred thousand against AnMed. But,
7 Your Honor, if I may, I want to tell you a little
8 bit about some of the background. I know that Your
9 Honor has heard a lot of the facts in other cases,
10 but so far, you know, there is zero evidence that
11 Dr. Davidson was actually impaired during any
12 surgery at all.

13 In the Riggins case we have taken depositions
14 -- we have taken depositions of Ms. Riggins and her
15 two adult children that talked to Dr. Davidson
16 before he operated. They agreed that there was
17 nothing about him that lead them to believe that he
18 was impaired. He didn't slur his words, he didn't
19 act improperly.

20 So, again, they have also taken depositions of
21 numerous operating room personnel from that surgery.
22 None of them thought that there was anything wrong
23 with him, as far as being impaired. Granted, you
24 are aware of the fact that he has some behavioral
25 issues, cussing and, you know, banging on the

1 computer and told some of the staff to unplug the
2 phone. But, again, through the course of discovery
3 what has come out is, from the very beginning, since
4 he's been there he's acted that way.

5 So, and we know for a fact that he was not
6 under the influence of alcohol then. He was
7 actually going through the recovery specialist
8 program and he was tested regularly for alcohol and
9 always tested negative.

10 So, again, there's just no evidence that
11 alcohol is what caused any of that. And I think
12 that it is a red herring that is, unfortunately is
13 becoming a sort of sexy part of the case. But
14 really what we are dealing with is complications of
15 surgery. And for Ms. Adams, for us to have not
16 taken any depositions, not engaged in any discovery,
17 plaintiff's attorney has not even provided us with
18 the medical bills. It's even hard to say, how would
19 you even value that case. And certainly not some
20 amount that is above the statutory cap.

21 So, we just feel like the timing of that is
22 inappropriate. I agree with Your Honor that the
23 statute as well as Rule 68 don't give a specific
24 time frame, but I think it's clear that the
25 legislative intent is that it should be something

1 before the close of discovery.

2 Because, again, they do have a cut-off of
3 twenty days before trial that you can file an offer
4 of judgment. So, I think if you are looking at it
5 as a whole, the inference is you should engage in
6 some type of discovery beforehand. I know that we
7 filed a memorandum that kind of set out our
8 arguments on that, but we would just ask that you
9 strike that offer of judgment. He's certainly free
10 to file that later once we finish discovery, but
11 that would be our request. Thank you, Your Honor.

12 THE COURT: I am going to deny your motion. I
13 don't think that I have the authority, there's not
14 a law that tells me that I can do that. Does a
15 Form 4 suit everybody on that?

16 MS. SCALISE: Yes, sir.

17 THE COURT: Okay. What is your next motion?

18 MS. SCALISE: The next is a Motion to Dismiss,
19 or Motion for Summary Judgment. That is on the
20 Chabek case. This is a Notice of Intent that is
21 2021NI400011. And the gist of this one, Your
22 Honor, is from a chronological perspective, Ms.
23 Chabek's surgery was actually the very first one of
24 all of these surgeries. So, I know that you are
25 familiar with the Riggins. This is before the

1 Riggins.

2 So, this surgery took place on August the 22nd
3 of 2017. She didn't file, actually, the NOI until,
4 yeah, March 12th of 2021. So, Your Honor, that is
5 well outside the three-year statute of limitation.
6 Even under the discovery rule, clearly the courts
7 have looked at when you knew or should have known,
8 that is when the statute runs.

9 In our memorandum we set forth all of the
10 different office visits that she had, and not only
11 with our staff but also with other doctors where she
12 had complaints. She was told what problems she had.
13 But more importantly, there is a date of March the
14 7th of 2018 where her husband even said, We no
15 longer want to come to anybody at AnMed Spine and
16 Neurosurgery, we want to go elsewhere. So, clearly
17 by that date she knew or should have known that
18 there was some issue going on that she was unhappy
19 with Dr. Davidson as well as AnMed.

20 And the fact that she then filed on March the
21 12th of 2021 is clearly outside of that three-year
22 statute. And we believe that the statute of
23 limitations does apply to this action.

24 MR. SUGGS: May I add just briefly, Your
25 Honor? Judge, I was looking at it as well. As

1 this Court knows, it is not a subjective standard.
2 So it's not when Ms. Chabek claims that she knew,
3 or realized something was going on. Because if
4 that were the case, then in every case involving a
5 potential statute of limitations issue everyone at
6 the plaintiffs table would say, Well, I didn't
7 know. It is an objective standard.

8 The case of Young versus South Carolina
9 Department of Corrections 333 S.C. 714 states as
10 follows, "Whether the particular plaintiff actually
11 knew he had a claim is not the test. Rather, Courts
12 must decide whether the circumstances of the case
13 would put a person of common knowledge and
14 experience on notice that some right of his had been
15 invaded or that some claim against another party
16 might exist.

17 The case of Owenby versus Kiesau, also 2014
18 case -- or excuse me 2004 South Carolina Court of
19 Appeals case factually is very, very similar. And
20 we believe, Judge, that when you look at the
21 objective medical records here, certainly by early
22 March when Dr. Brill, who was not an AnMed
23 Neurosurgery and Spine doctor, said that spontaneous
24 activity in her right lumbar paraspinal muscles
25 could be related to her surgery, should be related.

1 That she was put on notice. And the statute of
2 limitations ran. And because she failed to file her
3 action until March 12th, she is outside of the
4 three-year statute of limitations, and it is a
5 decision for the Court to make.

6 THE COURT: And these are before me on a
7 Motion to Dismiss, but you are asking that I
8 convert it to a Motion for Summary Judgment?

9 MR. SUGGS: Alternative, it is an alternative
10 motion, Judge. It is a Motion to Dismiss slash
11 alternatively Summary Judgment.

12 THE COURT: And candidly, for you, I haven't
13 received a brief. It's probably something that
14 didn't come by -- did you file a brief?

15 MS. SCALISE: It is a joint brief.

16 THE COURT: All right, Mr. Wright. I'll be
17 glad to hear from you.

18 MR. WRIGHT: Yes, sir, Your Honor. All right.
19 So, as far as the actual surgery itself, we are in
20 agreement as to the law and the applicability, it
21 is an objective standard. And it is -- we are not
22 alleging -- it was outside of three years from the
23 date of the surgery. So, obviously we are
24 contending that the date of discovery was later
25 than three years before we filed it.

1 THE COURT: What about this statement of Dr.
2 Brill where he says, this is possibly due to
3 surgery.

4 MR. WRIGHT: Okay. Well, let me --

5 THE COURT: What was that date again, March
6 the 1st?

7 MS. SCALISE: Yes.

8 MR. SUGGS: Yes, March the 1st, Your Honor.
9 And then there is also March the 6th visit with
10 Travis Jeffcoat where he says the CT myelogram is
11 needed to evaluate the integrity of her spine.

12 THE COURT: That was March 1st, 2018?

13 MR. SUGGS: Yes, sir.

14 THE COURT: Okay. Yes, sir.

15 *(Whereupon, Plaintiff's Exhibit No(s). 1 marked*
16 *for identification.)*

17 MR. WRIGHT: Okay. Let me mark as Exhibit 1
18 to our -- this is the AnMed record in this case,
19 Page 31.

20 Your Honor, we also talked brief -- I don't
21 think it has been approved yet, but I will give you
22 a copy when we finish. Yes, sir.

23 THE COURT: Please do. What am I looking at,
24 Mr. Wright?

25 MR. WRIGHT: The highlighted portion will tell

1 you. This is the preoperative note of the
2 discussion that Dr. Davidson had with Ms. Chabek
3 before her surgery. And he specifically informed
4 Ms. Chabek that there could be spinal
5 destabilization, nerve injury, worsening of
6 symptoms, et cetera. All of that would be -- what
7 they would say would be known complications of the
8 surgery that could occur absence any negligence.
9 Okay.

10 And so, this is what she was told before the
11 surgery. So, obviously when she did begin to have
12 worsening of her symptoms, she was continually told,
13 This is just a known risk of the procedure, it is
14 not due to any kind of inappropriate treatment as
15 you were told --

16 THE COURT: Going back to my question earlier.
17 What about the time that Dr. Brill said, Look, this
18 could be due to your surgery, and that was on March
19 the 1st, 2018.

20 MR. WRIGHT: Well, first of all, that was a
21 note. That was a medical note. There is no
22 evidence at all that Dr. Brill actually conveyed
23 that information to the patient. Okay. This was
24 his -- this was a -- he did a nerve con -- I think
25 it was a nerve conduction study, and this was just

1 his medical note. So, that is number one.

2 But even despite that, number two would be that
3 Ms. Chabek was continually told, over and over
4 again, that, yes, you are having a worsening of your
5 symptoms, but this is something that can happen
6 absent any negligence, that Dr. Davidson did
7 everything that he should have done, and you are
8 just an unlucky -- one of those unlucky that has one
9 of these known complications.

10 THE COURT: Well, would you agree with me that
11 if Dr. Brill did, in fact, told her that this was
12 due to your surgery, that that would trigger the
13 running of the statute of limitations on those
14 provisions?

15 MR. WRIGHT: No, sir, I don't, because that is
16 exactly what Dr. Davidson told her too, that --
17 unless he told her, it could be a result of the
18 surgeon inappropriately treating you during your
19 surgery, just telling you it was a result of the
20 surgery is exactly in line with what Dr. Davidson
21 told her to expect anyway, or that that could be a
22 potential possibility.

23 THE COURT: When do you contend that the
24 statute began to run?

25 MR. WRIGHT: All right. It goes to what Ms.

1 Scalise was saying as well, at some point, yes,
2 they kept getting told over and over again,
3 essentially, there is not anything that we can do
4 for you. You are one of those few that receive
5 absolutely appropriate treatment, but for whatever
6 reason you just have this complication. It is not
7 due to anybody's fault, you are just one of those
8 unlucky few.

9 And she kept going back to him. And she kept,
10 she had no negligence or no -- she didn't miss a
11 doctor's appointment. She kept going back, and
12 back, and back, and saying, Help me, you know, is
13 there anything that we can do.

14 Finally she said, All right, these people, you
15 know, as good as they are trying to do, are not
16 giving me any solutions. So, they said, Let's go
17 get a second opinion. And so they did that I think
18 in April, they decided to do that. It took them a
19 while to get an appointment with a neurosurgeon.
20 They went down to Greenwood.

21 *(Whereupon, Plaintiff's Exhibit No(s). 2 marked*
22 *for identification.)*

23 MR. WRIGHT: At Greenwood is where she was
24 first informed that she had -- here is a copy.
25 This will be Exhibit 2. Where she was first

1 informed that she had a right fractured L5 facet
2 joint, and that an element of instability at this
3 level could correlate with her right leg pain. So,
4 that is number one.

5 *(Whereupon, Plaintiff's Exhibit No(s). 3 marked*
6 *for identification.)*

7 MR. WRIGHT: And then this will be Exhibit 3.
8 This is a copy of the affidavit of our expert
9 witness, Your Honor. It is Dr. Davey, he is an
10 orthopedic surgeon. He was up in the upstate, now
11 he is down in Florida.

12 THE COURT: Florida?

13 MR. WRIGHT: Florida, yes, sir.

14 THE COURT: Hang on. Let me look at his
15 affidavit.

16 MR. WRIGHT: And specifically the first bullet
17 point. And specifically, Your Honor, it is the
18 failing to install instrumentation.

19 THE COURT: Hang on.

20 (Pause.)

21 THE COURT: Okay, sir?

22 MR. WRIGHT: Yes, sir. And so this was
23 actually the first time that she learned -- had
24 ever heard the opinion that Dr. Davidson
25 essentially removed a portion of her facet joint

1 from her back.

2 THE COURT: But that is not the issue though.

3 MR. WRIGHT: I know.

4 THE COURT: Hang on. Hang on. It's not
5 whether you can fully develop the theory of your
6 case, but whether or not you should know that you
7 need to start developing the theory of the case
8 from what point.

9 MR. WRIGHT: Yes, sir, but this was the first
10 time that the client ever heard any mention or any
11 allegation, suggestion, that there was insufficient
12 instrumentation. Actually he installed no
13 instrumentation. So, basically this was the first
14 time that the client had heard that there was a
15 potential that insufficient instrumentation had
16 been put in.

17 But, so as far as the objective standard, why
18 should she, as a patient, when she was told before
19 the operation began that, Even if I give you
20 appropriate treatment, you could have worsening of
21 symptoms, you could have destabilization of your
22 spine, you could have nerve injury. Why should that
23 patient, when those symptoms develop, why should she
24 not be able to trust what her doctor told her in the
25 beginning to say, Oh. And there are continued

1 assertions to her that this was not due to any kind
2 of negligence. She was specifically told that these
3 kind of things can happen, and told over and over
4 again that these were the result of no negligence
5 whatsoever. So, until she went down and got a
6 second opinion from the doctor in Greenwood was the
7 first time, and that was in August of 2018, well
8 before when we filed in March. You know, three
9 years, so we filed well before the three-year
10 statute would have run if the discovery kicked in in
11 August of 2018.

12 THE COURT: Let me ask you something, Ms.
13 Scalise.

14 MS. SCALISE: Yes, sir.

15 THE COURT: You are saying when they decided
16 to go to another doctor, that put them on notice.
17 But that is not unusual when people go out and say,
18 I need a second opinion. Not that I feel that he
19 did something wrong, but I'm not getting
20 improvement. That is not uncommon at all. But I
21 want to focus more on that March 1st thing with Dr.
22 Brill. You know, that seems to be important.

23 Did he ever attribute, to make a brassy point,
24 she was told of these potential side effects and
25 given their informed consent in this case, and she

1 continued to follow-up, nobody said anything to
2 her -- she was getting worse -- that is something
3 that could happen because of surgery.

4 Is there anything in Brill's note where he says
5 it is a deviation of standard of care? Which I
6 doubt there is.

7 MS. SCALISE: No, Your Honor, but neither is
8 the document that he showed you from the later
9 neurosurgery folks. They didn't say that there was
10 a breach of the standard of care. But we do have a
11 March 7th, 2018 note where the patient says -- or
12 it says, The wife was not happy with the office and
13 did not want to come back. So, clearly, she's
14 unhappy for whatever reason.

15 Like Your Honor pointed out, she doesn't have
16 to know the full reason, doesn't have to know the
17 full impact or the whole theory of liability, she
18 just has to know, there is something about this I
19 don't like, something that I am not happy with. And
20 I think that that does trigger the discovery rule.
21 At least as of March the 7th, 2018.

22 MR. SUGGS: Judge, may I briefly?

23 THE COURT: Yes, sir.

24 MR. SUGGS: Something that he just said, that
25 Mr. Wright said, that got me thinking about this

1 known complication. Well, isn't that a known --
2 Judge, the vast majority of the surgical cases I
3 have, 90 plus percent, are lawsuits about a known
4 complication. Even though the consent says, You
5 can injure your bowel, I guarantee you, if you go
6 take -- perform a hernia repair and you injure
7 someone's bowel, they are going to sue you anyway.

8 So, this idea that, Well, they told her these
9 are known complications, so they have reassured her
10 there are known complications. That doesn't toll
11 the statute of limitations or trigger the statute of
12 limitations, or else there wouldn't be a statute of
13 limitations in a case in which a patient experienced
14 a known complication. I just don't think that
15 argument is persuasive.

16 THE COURT: All right, guys. Let me read your
17 memoranda. And did I get yours?

18 MR. WRIGHT: No, sir, but I do have another
19 point to go over briefly as well.

20 THE COURT: Okay.

21 MR. WRIGHT: First off, as to that, I would
22 say, in addition to what Trey is saying, I think
23 the plaintiff will testify that defendants do not
24 clean hands in bringing this because they
25 affirmatively -- it wasn't like, you know, she had

1 post-operative complications and just should have
2 known. They repeatedly told her that they gave
3 appropriate treatment, appropriate treatment, and
4 she trusted them.

5 The only other point, Your Honor, and it is
6 point number two in my brief that I will hand to you
7 is, even if the Court were to rule to dismiss or
8 summary judgment for the actual medical malpractice
9 action related to the surgery, there are two other
10 causes of action, lack of informed consent, and
11 negligent supervision by AnMed Hospital.

12 THE COURT: Sorry, what is the last one?

13 MR. WRIGHT: Negligent supervision against
14 AnMed Hospital. Both of those relate only to the
15 fact that Dr. Davidson was performing operations
16 while in the midst of an alcohol substance abuse
17 relapse. And that is specific information that
18 would trigger those causes of action.

19 Ms. Chabek was not aware of anything related to
20 Dr. Davidson's alcohol abuse until, basically, last
21 year. So, she would be well within the three-year
22 statute of limitations for those two cause of
23 actions. Even if the Court were to rule that the
24 first cause of action for the medical malpractice
25 for the surgery itself should be granted, which we

1 don't think that it should.

2 THE COURT: I do not disagree with him on
3 that.

4 MS. SCALISE: On that, I think, again, it gets
5 back to the point of, Ms. Chabek's surgery was the
6 very first surgery, so I don't know how there can
7 be even any case or claim that the hospital
8 negligently supervised Dr. Davidson because that is
9 --

10 THE COURT: Well, maybe to that other issue,
11 but we are talking about statute of limitations.

12 MS. SCALISE: Yes, sir.

13 THE COURT: And I agree with Mr. Wright on
14 that. There's no way for her to have known all of
15 this information until later on -- much, much more
16 recently, last year --

17 MR. WRIGHT: October of 2020.

18 MS. SCALISE: Again, which gets back to the
19 Facebook post, and, you know, after she saw the
20 Facebook post, that is what then prompted her to
21 bring that.

22 THE COURT: Okay.

23 MR. SUGGS: Judge, can you have an informed
24 consent claim if you don't have the -- wouldn't the
25 underlying medical negligence claim --

1 THE COURT: Informed consent, I thought that
2 was part of the med mal case.

3 MR. SUGGS: Yes, I did too. So, wouldn't the
4 statute of limitations run from the same time?

5 THE COURT: Well, I think that if I were to
6 grant summary judgment, it would be the negligent
7 --

8 MR. WRIGHT: Your Honor, informed consent
9 doesn't allow any medical malpractice in the actual
10 surgery. You can have a claim for lack of informed
11 consent even if the surgery goes fine and
12 everything is good. And that is black letter law.
13 I can give you a brief on that if you would like.

14 THE COURT: Yes, send me one.

15 MR. WRIGHT: Okay.

16 THE COURT: And give me your brief now too.

17 MR. WRIGHT: Yes, sir.

18 MR. SUGGS: Judge, I realize that we are
19 taking up more time than we should.

20 THE COURT: You don't ever realize that.

21 MR. SUGGS: Someone has got to listen, Judge.
22 My wife doesn't want to hear me. My kids don't
23 want to hear me. My staff doesn't want to hear me.
24 Someone has got to listen to me, Judge.

25 Judge, on the -- going back to the Motion to

1 Compel. And understanding that I'm relying upon the
2 brief, I'm not going to run back through everything.
3 I do just want to make a couple of quick points,
4 Judge, as it relates to limitations on production.

5 So, in Thomas, we have got -- the Court looks
6 at the testimony and says, Golly, Davidson, it looks
7 like you were not forthright in your testimony, here
8 plaintiff, here are the records which are
9 contradicted. Excuse me, they contradict your
10 testimony. And then, in Riggins, we have got a
11 comparison, I presume, of the testimony and in the
12 records, and you granted production of all of them.

13 And my -- and in this case, shouldn't it -- in
14 all of these cases, shouldn't the production be
15 limited to, for one, only those matters --

16 THE COURT: Let me go back. I'm interrupting
17 you, but let me say this. Before I didn't have the
18 opportunity to have read Dr. Davidson's deposition.

19 MR. SUGGS: Right.

20 THE COURT: And before I was looking solely at
21 the treatment records, what a negligent facility
22 is.

23 MR. SUGGS: Right.

24 THE COURT: And then the argument was made, I
25 think by you, that he's admitted all of this stuff.

1 When I read his deposition, I disagreed with that,
2 I thought that he was vague on it. While he
3 admitted a little bit here and there, it was not
4 consistent and was not consistent with his
5 treatment records and statements in the treatment
6 records at all.

7 So, I thought that it all should come out
8 because a review will clarify one or the other. His
9 testimony, and you are probably about tired of
10 seeing it. So, what is the difference in these
11 cases now?

12 MR. SUGGS: Well, one, it should be on a
13 case -- I would think that the comparison, for
14 instance, in Marchbanks, is his testimony in
15 Marchbanks as to the records. Not comparison to
16 the Riggins' testimony. I respectfully disagree
17 that his testimony --

18 THE COURT: I know you do. I know you do.

19 MR. SUGGS: That is why I briefed it for ten
20 pages. But I don't think they are inconsistent.
21 But I respect, obviously, your opinion otherwise.
22 But I lost my train a little bit.

23 Oh, the second part of it though, Judge, is
24 assuming arguendo that they are relevant. For
25 instance, in Riggins, the date of surgery I think

1 was August 22nd. Wouldn't the records related to
2 events and condition only be relevant up until the
3 day -- so, the therapy records that reflect
4 treatment and events leading up to the date of
5 surgery could arguably be relevant.

6 But how can his treatment and events and frame
7 of mind, alcohol abuse, et cetera, after the date of
8 the care in question --

9 THE COURT: The records contain history,
10 statements from him about the onset of his problems
11 that are inconsistent with his deposition
12 testimony. I will agree with you that his
13 condition at the time that he was being treated is
14 not relevant to the petition at the time of these
15 surgeries that the malpractice came about. That
16 would be correct.

17 However, when he's making statements to doctors
18 for purposes of treatment that are inconsistent with
19 his sworn deposition testimony, or vague at best, or
20 ambiguous at best, I think clarifying those issues
21 back in time is relevant to this.

22 MR. SUGGS: I understand. I'm not stating my
23 point clear.

24 THE COURT: Okay.

25 MR. SUGGS: Okay. What I am saying is, Dr.

1 Davidson giving testimony -- or, excuse me, giving
2 -- talking to his therapist in January or March,
3 whenever it was. He's talking about events from
4 the past, right. I understand your ruling that, if
5 he's talking about events in August, at the time of
6 the surgery, yes, that makes sense. If he's
7 talking about the months and years that proceed
8 that date of surgery, August 22nd, I understand the
9 Court's ruling. But if he's talking about events
10 in October, two months after surgery, in December,
11 four months after surgery, in January after he's
12 done doing surgery.

13 THE COURT: The fact that I said that they are
14 discoverable doesn't mean that they are admissible.
15 Okay? Those are two totally different standards
16 that are to be met at some point in this case, or
17 these cases. But right now, my thought was,
18 clarify all of the issues, I will review the
19 records. I have done that. I'm not going to
20 change my mind about that, first of all.

21 Now, I can see that there might be a
22 distinction where, in one of these other cases he's
23 more forthcoming and less ambiguous and more clear
24 about the onset and the continuation of his drinking
25 problems, from preceding these procedures. And he's

1 already admitted, and you don't necessarily get it
2 again, because he's already clarified it in his
3 statement.

4 MR. SUGGS: Right.

5 THE COURT: But, at the same time, he has
6 already got it. I assume you have those records
7 now?

8 MR. WRIGHT: Yes, sir. I believe your order
9 is for Thursday at 5:00 p.m.

10 MR. SUGGS: And, Judge, I'm just being
11 transparent. I know, I just heard what you said.
12 I have already drafted the motion to reconsider.
13 It is going to be hitting you tomorrow. I know
14 what you are going to do with it, and then I am
15 going to have to do whatever I have got to do. But
16 I just --

17 THE COURT: Let me tell you something, you
18 have to protect yourself. And we are not here on
19 the same team, and sometimes we see things with
20 different lenses.

21 MR. SUGGS: Judge, why aren't you on my team?

22 THE COURT: I have been on your team plenty of
23 times.

24 MS. SCALISE: Your Honor, I do -- if I may be
25 heard on that gag order issue? I think, from my

1 perspective, the concern would be if that's out and
2 about, we have already had different, even
3 witnesses, who have said that they have seen that
4 on the website. My concern would be a juror, if
5 any of these cases ultimately goes to a jury what
6 happens is we may have to go to another county that
7 maybe wouldn't be --

8 THE COURT: Let me tell you something, you
9 know the rules on the change of venue, you don't do
10 that until jury selection. So, you know, that is a
11 risk, but I doubt very seriously that it is going
12 to run to that level. But, all said and done, if
13 y'all want me to consider a gag order, you have to
14 file one. Thank you, and take care.

15 (Hearing concluded.)
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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF OCONEE:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 18th day of October, 2021.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 10th Circuit
(850) 893-6662
mmanley@sccourts.org

08/10/2017 - Office Visit in AnMed Health Spine and Neurosurgery

Clinical Notes

Progress Notes

Larry Steve Davidson, MD at 8/10/2017 9:00 AM

Author: Larry Steve Davidson, MD
Filed: 8/10/2017 9:59 AM
Status: Signed

Service: —
Encounter Date: 8/10/2017
Editor: Larry Steve Davidson, MD (Physician)

Author Type: Physician
Creation Time: 8/10/2017 8:58 AM

AnMed Health
Anderson, SC

PATIENT ID:

Anita Gail Chabek is a 51 y.o. female.
2/25/1966

8/10/2017

Diagnosis	Plan
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- Synovial cyst of lumbar spine**

Assessment/Plan

Mrs. Chabek is a 51-year-old lady who has been dealing with at least several months of intense right-sided lumbar radicular pain involving the right buttock/thigh and leg. MRI of the lumbar spine demonstrates a right-sided L5/S1 synovial cyst. She has failed ongoing conservative efforts including pain management injections.

At this point, she is interested in pursuing surgical intervention which I believe would be appropriate. Today, I discussed with her and her husband the prospect of right-sided L5/S1 synovial cyst resection. I thoroughly discussed the technical aspects of this procedure with the patient. Also, the potential risks, realistic limitations and benefits of the procedure were thoroughly discussed with the patient. I discussed the risk of infection, wound healing difficulties, hemorrhage, CSF leak, recurrence of symptoms, spinal destabilization, paralysis, nerve injury, worsening of symptoms or neurologic status and need for subsequent surgery for any of the above complications. I also discussed the fact that there is certainly no guarantee that the desired results would be obtained with surgery. Furthermore I also discussed the potential development of medical problems during and following surgery. The patient had a good understanding of the above and all questions were addressed.

Plan: We are planning to proceed on with right-sided L5/S1 synovial cyst resection.

Subjective Anita presented to the office today for complaints of pain to lumbar spine, right hip and right leg. Accompanied by numbness, tingling and weakness. Symptoms ongoing two years and worsening gradually, s/p a fall down some stairs last year. Reports the following conservative measures have been tried: pain mgmt with injections, heat, ice, naproxen, hydrocodone, gabapentin, topical rubs, steroids. these conservative measures have failed to provide adequate relief. No history of spine surgery to date. Patient reports recent films were performed at Anderson radiology

HPI

The following have been reviewed and updated as appropriate in this visit:

Review of Systems
Constitutional: Negative for fever.

Chabek, Anita G ([REDACTED] HAR # N/A) DOB: [REDACTED]

Encounter Date: 08/02/2018

Progress Notes

Progress Notes by Gregory Stuart McLoughlin, MD at 8/2/2018 1:40 PM

Author: Gregory Stuart McLoughlin, Service: — Author Type: Physician
MD
Filed: 8/2/2018 2:48 PM Encounter Date: 8/2/2018 Status: Signed
Editor: Gregory Stuart McLoughlin, MD (Physician)

ADVANCED SPINE AND NEUROSURGICAL ASSOCIATES

115 Academy Avenue
Greenwood, Sc 29646

MRN: [REDACTED]

Encounter Date: 8/2/2018

Patient Information
Anita G Chabek
103 Wood Duck Rd
Anderson SC 29621
52 y.o.
[REDACTED]

Subjective

She returns to clinic for follow-up. Her imaging does demonstrate and confirm the right fractured L5 facet joint. An element of instability at this level is late and this could correlate with her right leg pain.

Objective

No change from baseline.

Vitals

Vitals:

08/02/18 1405
BP: 143/82
Pulse: (I) 95

Assessment/Diagnosis

1. Lumbar radiculopathy, chronic

Plan/Discussion

We discussed the treatment options. I do think that a surgical stabilization procedure in the form of a spinal fusion would be of benefit to her. I discussed with her the details of this procedure along the risks and she is going to consider her options at home as well. I also offered her a second opinion.

.sl

AFFIAVIT of SANFORD H. DAVNE, M.D.

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, AND SAYS AS FOLLOWS:

1. I am an orthopaedic surgeon and board certified by the American Board of Orthopedic Surgery. I am a practicing physician and attending physician in the Department of Orthopedic Surgery at the Cooper University Hospital. My education, training and experience are set forth in the attached CV (Exhibit A).

2. It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care that should have been rendered to Anita Chabek in this case and I am familiar with the standard of care of what a reasonably prudent neurosurgeon would do or not do in synovial cyst removal procedures.

3. I have reviewed the medical records of Anita Chabek, which consisted in part of records from AnMed Health and Anderson Radiology. The records I have reviewed are the type documents, which I would consider in rendering an expert medical opinion in this case.

4. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of AnMed Health and Larry Davidson, M.D. committed negligent acts or omissions in their care and treatment of Anita Chabek. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:

- In failing to exercise the technical skills expected to be employed by a reasonable prudent surgeon during a right-sided L5/S1 synovial cyst removal by negligently removal of an excessive portion of the right L5-S1 facet joint and by failing to install instrumentation and perform fusion to properly support the spine following a partial medial facetectomy.
- In failing to properly inform Ms. Chabek of the available alternative treatments.

5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. caused or contributed to the injuries, damage, and pain and suffering of Anita Chabek.

6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. at this time are the medical records of Anita Chabek.

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving supplemental medical records, depositions, or additional information.


SANFORD H. DAVNE, M.D.

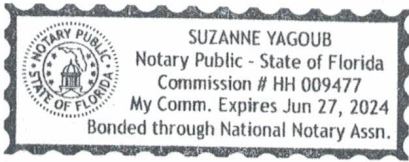
Sworn to and signed before me

this 20th day of April 2021

Suzanne Yagoub

Notary Public in and for State of Florida

My Commission Expires: June 27th 2024



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiffs,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021NI0400011

**Amended
Statement of Facts**

Plaintiff, complaining of Defendants herein, would respectfully show unto the Court and allege as follows:

1. Plaintiff Anita Chabek (hereinafter "Mrs. Chabek") is a resident of the County of Anderson, State of South Carolina.

2. Plaintiff James Chabek (hereinafter "Mr. Chabek") is a resident of the County of Anderson, State of South Carolina

3. Defendant, AnMed Health is a corporation organized pursuant to the laws of the State of South Carolina as a private corporation in the County of Anderson, State of South Carolina. At all relevant times herein, AnMed held itself out to the public-at-large and to Plaintiff(s) as operating a physician practice specializing in the field of neurosurgery and its employees were held out to be competent in the ordinary and customary standards of care provided by medical practitioners in the field of neurosurgery.

4. Defendant, Larry Davidson, MD (hereinafter "Dr. Davidson"), was, upon information and belief, a physician specializing in the field of neurosurgery and at all times relevant herein, was a resident of the County of Anderson, State of South Carolina. Also, at all relevant times herein, Dr. Davidson held himself out to the public-at-large and to Plaintiff(s)

as a skilled and competent surgeon in the ordinary and customary standards of medicine provided by practitioners in the field of neurosurgery. Also, at all relevant times herein, Dr. Davidson acted within the scope of his employment as an agent, servant, or employee of AnMed Health.

5. Upon information and belief, Dr. Davidson negligently performed surgery and caused injury to Mrs. Chabek on August 22, 2017.

6. Dr. Davidson is an alcoholic who had an alcohol relapse and started drinking alcohol again in early 2016.

7. Over the next year into 2017, Dr. Davidson – although being a former alcoholic – continued to drink alcohol even though he had a persistent desire to stop. Additionally, the frequency of Dr. Davidson’s drinking increased over time.

8. By October 2017, the frequency of Dr. Davidson’s drinking had progressed to the point to where he was drinking every day that he was not on call.

9. Upon information and belief, Dr. Davidson continued to perform his normal workload of spinal and other forms of neurosurgeries while continuing drink almost daily for the next three months.

10. Rather than choosing to stop performing neurosurgery to address his substance abuse relapse, he chose to continue to perform very delicate neurosurgeries putting his patient at increased risk of surgical complications.

11. Fortunately for the Anderson community, Dr. Davidson was charged with a DUI on December 22, 2017 while on a family vacation in California forcing him to report this situation to AnMed Health and for him to come clean regarding his alcohol substance abuse problem.

12. If not for the DUI, Dr. Davidson would have most likely continued to perform delicate spinal and other neurosurgeries while in the midst of an alcohol substance abuse relapse and drinking most every day.

13. Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

14. If Mrs. Chabek had been informed that Dr. Davidson, an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen not to proceed with the surgery by Dr. Davidson.

15. As a result of the surgery with Dr. Davidson, Mrs. Chabek suffered significant surgical complications.

16. Plaintiffs are informed and believe that Dr. Davidson failed to provide Mrs. Chabek proper medical treatment.

17. The failure to provide proper medical treatment to Mrs. Chabek was the direct and proximate result of and was caused and occasioned by the negligence, carelessness, gross negligence, and reckless conduct on the part of Larry Davidson, MD and/or other employees of AnMed in failing to possess and exercise that degree of care, competence, and skill ordinarily and customarily possessed and exercised by neurosurgeons and employees of an neurosurgery practice under similar circumstances and thereby rendered improper medical treatment to Mrs. Chabek by deviating from and falling below the prevailing and acceptable standards of care in one or more of the specifications as set forth below:

- a. in failing to exercise the technical skills expected to be employed by a reasonably prudent neurosurgeon;

- b. In failing to properly inform patients that Dr. Davidson was dealing with an alcohol substance abuse relapse as part of proper informed consent in providing to patients the information necessary to make an informed decision as to whether to undergo a surgical procedure with Dr. Davidson;
- c. In AnMed's failure to properly supervise its physicians with a known history of alcohol substance abuse to prevent Dr. Davidson from continuing to perform surgeries in light of significant warning signs that he was suffering from an alcohol substance abuse relapse;
- d. In AnMed's failure to properly inform those tasked with supervising Dr. Davidson that he was an alcoholic so that they could recognize significant warning signs of an alcohol substance abuse relapse when they appeared;
- e. In AnMed's failure to properly inform the staff at AnMed Health Spine and Neurosurgery of Dr. Davidson's alcoholism so that they could help monitor Dr. Davidson and report the significant warning signs of an alcohol substance abuse relapse when they appeared; and
- f. in such other action or inaction that may be shown at trial.

The affidavit of a medical professional is attached hereto and is incorporated herein by this reference.

18. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. lost wages;
- d. loss of value of household services; and
- e. substantial loss and/or degradation of enjoyment of life.

19. The acts and omissions of Larry Davidson, MD were reckless, willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive

damages should be awarded to punish Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Ms. Adams which were wrongfully invaded.

20. Furthermore, following Ms. Chabek surgery in August 22, 2017, she was told by Dr. Davidson and subsequent AnMed providers that the complications she was experiencing were known risks that can occur with her surgery and were not the result of any inappropriate treatment or medical negligence.

21. As a result, trusting the representations made to her by AnMed and Dr. Davidson, had no reason to suspect that there was a possibility that her complications were due to medical malpractice.

22. After suffering through continued right lower extremity pain, hip, and back pain for several months, she decided to get a second opinion and went to Advanced Spine and Neurosurgical Associates in Greenwood, SC in July 2018.

23. New imaging was done and Ms. Chabek first learned that her continued pain was likely due to a fracture L5 facet joint in August 2018.

24. It was at this point in August 2018 that Ms. Chabek first had a reason to suspect and/or first discovered that her injuries could have been a result of medical malpractice relating back to the August 22, 2017 procedure and should not have been expected to know by the exercise of reasonable diligence at any time prior to August 2018 that she had a cause of action for medical malpractice.

FOR A FIRST CAUSE OF ACTION – MEDICAL NEGLIGENCE

25. The relevant and consistent allegations of paragraphs 1-24 are incorporated herein by this reference.

26. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. alteration of lifestyle;
- d. mental anguish;
- e. mental distress;
- f. anxiety;
- g. loss of value of household services; and
- h. substantial loss and/or degradation of enjoyment of life.

27. Plaintiff, Anita Chabek, is informed and believes that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and punitive damages against Larry Davidson, MD in such fair, just and reasonable amounts as may be determined by a jury.

FOR A SECOND CAUSE OF ACTION – LACK OF INFORMED CONSENT

28. The relevant and consistent allegations of paragraphs 1-27 are incorporated herein by this reference.

29. Prior to commencing with the surgical procedure, Dr. Davidson had a duty to adequately disclose to Mrs. Chabek the proposed diagnostic, therapeutic or surgical procedure to be undertaken, the material risks involved therein and the alternatives available, if any, so that a patient of ordinary understanding confronted with these disclosures, and faced with a choice of

undergoing the proposed treatment or selecting an alternative process or preferring refusal to all surgical relief, may, in reaching a decision, intelligently exercise his or her judgment by balancing the probable risks against the probable benefits.

30. Plaintiffs are informed and believe that Dr. Davidson failed to adequately disclose to Mrs. Chabek the material risks involved and the alternatives available. Specifically – Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

31. If Mrs. Chabek had been informed that Dr. Davidson was an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen a different surgeon to perform her surgery.

32. Dr. Davidson's inadequate discussions of the risks and benefits of the procedure constitutes a separate occurrence of negligence from the negligence performed during the surgery given that: (1) lack of informed consent is a cause of action in and of itself that does not require medical malpractice to be pled, and (2) the discussion regarding the risks / benefits of the surgery were discussed well before the negligent surgery as was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

33. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and against Larry Davidson, MD for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A THIRD CAUSE OF ACTION – NEGLIGENT SUPERVISION

34. The relevant and consistent allegations of paragraphs 1-33 are incorporated herein by this reference.

35. Plaintiffs, upon information and belief, consider it likely that AnMed hospital either knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues prior to her surgery.

36. If AnMed knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have a duty to protect their patients from Dr. Davidson by ensuring that Dr. Davidson only performed surgeries with a proctor, had supervision of some kind, or be precluded from performing surgeries until such time as he was no longer dealing with substance abuse issues.

37. If AnMed knew or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have failed in its duty to protect its patients by failing to properly supervise its employee. This failure and/or lack of caring by AnMed resulted in Dr. Davidson being allowed to perform surgery to Mrs. Chabek while dealing with substance abuse issues consequently caused the preventable permanent injury to Mrs. Chabek due to Dr. Davidson's negligent treatment.

38. AnMed's negligent supervision of Dr. Davidson constitutes a separate occurrence of negligence from the negligence performed during the surgery given that the negligence was performed by different individuals other than Dr. Davidson and was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

39. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A FOURTH CAUSE OF ACTION – GENERAL NEGLIGENCE

40. The relevant and consistent allegations of paragraphs 1-39 are incorporated herein by this reference.

41. AnMed and Dr. Davidson a duty to exercise ordinary and reasonable care to ensure that no unnecessary harm would befall the patient.

42. The statutory definition of medical malpractice found in section 15-79-110(6) does not impact a hospital or medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care. Thus, medical providers are still subject to claims sounding in ordinary negligence.

43. No expert testimony is necessary to aid a jury's determination of fault in a situation where a hospital decides to allow and/or a surgeon decides to continue to perform surgeries in the midst of dealing with substance abuse issues.

44. If the jury were to determine that AnMed knew or should have known of Dr. Davidson's substance abuse, allowed Dr. Davidson to continue to perform surgeries unsupervised, and failed to protect their patients from Dr. Davidson, then the jurors can easily understand that AnMed breached its duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

45. If the jury were to determine that Dr. Davidson was dealing with substance abuse but continued to perform surgeries in the midst of these difficulties instead of seeking immediate help for his problems, then the jurors can easily understand that Dr. Davidson breached his duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

46. As a direct and proximate result of AnMed's and Dr. Davidson's failures to properly perform their duties of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient, Mrs. Chabek has suffered permanent injury, harms, and losses.

47. Furthermore, this failure of the Defendants to properly perform their duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient was willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive damages should be awarded to punish AnMed and Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Ms. Adams which were wrongfully invaded.

48. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health and Larry Davidson, MD, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

WHEREFORE, Plaintiff, Bessie Adams, respectfully demand and pray as follows:

- (a) for a trial by jury pursuant to Rule 38(b) of the SCRCP;
- (b) for judgment under the first cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;
- (c) for judgment under the second cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;

- (d) for judgment under the third cause of action against AnMed Health, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCF;
- (e) for judgment under the fourth cause of action against AnMed Health, and Larry Davidson, MD jointly and/or severally, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCF;
- (f) for the costs of this action; and
- (g) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

McGowan, Hood & Felder, LLC

s/ Jay Wright

Jay F. Wright

South Carolina Bar No. 78738

jaywright@mcgowanhood.com

P. O. Drawer 1778

Anderson, SC 29622-1778

(864) 225-6228

(864) 231-9011 (facsimile)

ATTORNEYS FOR THE PLAINTIFF

June 8, 2021
Anderson, SC

PLAINTIFF DEMANDS A TRIAL BY JURY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	C/A NO.: 2021-NI-04-00011
)	
Anita and James Chabek,)	
)	
Plaintiffs,)	
	)	DEFENDANT ANMED HEALTH'S
vs.	)	MOTION TO DISMISS
)	
AnMed Health and Larry Davison, M.D.,)	
)	
Defendants.)	

TO: JAY F. WRIGHT, ESQUIRE, AS ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that Defendant AnMed Health, by and through its undersigned attorneys, will move before the Presiding Judge of the Anderson County Court of Common Pleas, ten days hence or as soon thereafter as counsel may be heard, for an Order dismissing this action against AnMed Health on the grounds that the action against AnMed Health is barred by the applicable three-year statute of limitations.

This Motion shall be based upon the applicable statutory, regulatory and case law, upon any affidavits filed with the Court, upon any pleadings of record, upon all depositions, upon all discovery and upon such further information and argument as may be received by the Court.

Respectfully submitted,

s/Marian Williams Scalise
Marian Williams Scalise, Esquire (SC Bar No. 6744)
Lydia L. Magee, Esquire (SC Bar No. 16584)
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Attorneys for Defendant AnMed Health

May 11, 2021
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	C/A NO.: 2021-NI-04-00011
)	
Anita and James Chabek,)	
)	
Plaintiffs,	)	DEFENDANT LARRY DAVIDSON, MD'S
	)	MOTION TO DISMISS
vs.)	
)	
AnMed Health and Larry Davison, M.D.,)	
)	
Defendants.)	

TO: JAY F. WRIGHT, ESQUIRE, AS ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the Defendant, Larry Davidson, MD, by and through his undersigned attorney, will move before the Presiding Judge of the Anderson County Court of Common Pleas, ten days hence or as soon thereafter as counsel may be heard, for an Order dismissing this action against Larry Davidson, MD on the ground that the action against Larry Davidson, MD is barred by the applicable three-year statute of limitations.

This Motion shall be based upon the applicable statutory, regulatory, and case law, upon any affidavits filed with the Court, upon any pleadings of record, upon any depositions, upon any discovery, and upon such further information and argument as may be received by the Court.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Fred W. "Trey" Suggs III
Fred W. "Trey" Suggs III, SC Bar No. 70222
P. O. Box 10529
Greenville, SC 29603
Phone: 864-349-2600
Fax: 864-349-0303
Attorney for Defendant Larry Davidson, MD

Greenville, South Carolina
May 13, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	C/A NO.: 2021-NI-04-00011
)	
Anita and James Chabek,)	
)	
Plaintiffs,)	
)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANTS ANMED HEALTH’S AND
AnMed Health and Larry Davison, M.D.,	)	LARRY DAVIDSON, M.D.’S MOTION TO
	)	DISMISS AND IN THE ALTERNATIVE,
Defendants.	)	MOTION FOR SUMMARY JUDGMENT

TO: JAY F. WRIGHT, ESQUIRE, AS ATTORNEY FOR PLAINTIFFS

Defendants AnMed Health and Larry Davidson, M.D., by and through their undersigned attorneys, move for dismissal or grant of summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the ground that there is no genuine issue of material fact, and the Defendants are entitled to judgment as a matter of law.

BACKGROUND

This medical malpractice action stems from an alleged “negligent removal of an excessive portion of the L5/S1 facet joint” and failure to “install instrumentation and fusion to properly support the spine following a partial facetectomy” during a “right-sided L5/S1 synovial cyst removal” and alleged failure “to properly inform Ms. Chabek of the available alternative treatments.” [Exhibit A: Expert Aff. of Sanford H. Davne, M.D. ¶ 4]. Mrs. Chabek underwent resection of a right-sided L5/S1 synovial cyst with intraoperative utilization of lumbosacral spinal fluoroscopy with Dr. Larry Davidson on August 22, 2017. See [Exhibit B: Pls.’ Am. Statement of Facts ¶ 5]. Prior to surgery, on August 10, 2017, Mrs. Chabek presented to Dr. Davidson complaining of pain in her lumbar spine, right hip, and right leg accompanied by numbness, tingling, and weakness which had been present for two years and pain from a fall down the stairs in the prior year. [Exhibit C: ANMED

285]. Dr. Davidson further documented that she had been “dealing with at least several months of intense right-sided lumbar radicular pain involving the right buttock/thigh and leg,” and a MRI of the lumbar spine demonstrated a right-sided L5/S1 synovial cyst. See id. He also noted that conservative measures including pain management, injections, heat, ice, naproxen, hydrocodone, gabapentin, topical rubs, and steroids had failed to provide Mrs. Chabek with any relief, and she had not had any prior spine surgery. See id. Dr. Davidson documented that he thoroughly discussed the technical aspects of the procedure, the potential risks, and realistic limitations and benefits with Mrs. Chabek, and risks specifically documented to have been discussed by Dr. Davidson include infection, wound healing difficulties, hemorrhage, CSF leak, recurrence of symptoms, spinal destabilization, paralysis, nerve injury, worsening of symptoms or neurologic status, and need for subsequent surgery for any of the above complications, and he also discussed that there was no guarantee that the desired results would be obtained with surgery as well as the potential development of medical problems during and following surgery. See id. In his operative note, Dr. Davidson documented that there were no complications during the procedure and in relevant part described the procedure as follows:

Ultimately, a right L5 hemilaminotomy [involves removing part of one of the two laminae on a vertebra to relieve excess pressure] and partial medial facetectomy [involves removing part of the facet joint on the side close to the midline to the backbone] was performed. The underlying synovial cyst was identified and significant compression of the dura is noted. The cyst was dissected off and peeled away from the dura eliminating its mass effect on the neural structures. Of course, this was performed with loupe magnification. Reinspection of the epidural space suggested the neural elements to be very nicely decompressed.

See id. at 276-77.

Mrs. Chabek was discharged home on the same day. See id. at 319.

Mrs. Chabek’s post-operative complaints started six days later on August 28, 2017 when she called Dr. Davidson’s office stating she was having a lot of pain in her right leg, and she could not get comfortable. See id. at 270. On September 1, 2017, Mrs. Chabek presented for a wound

check and continued to complain of pain in her right hip and leg and numbness in the right leg and reported she was taking one Hydrocodone every five hours. See id. at 263. She returned to the office on September 13, 2017 for a second wound check at which time she was prescribed a Medrol dose pack for the continued right hip and leg pain. See id. at 258. On September 28, 2017, she reported to her primary care physician Dr. Clifton Straughn that she was “frustrated” it had been five weeks since her back surgery, and she was not feeling much better. See id. at 246. On October 4, 2017, the patient called AnMed Health Spine and Neurosurgery’s office requesting a refill of hydrocodone. See id. at 240. On October 5, 2017, PA Travis Jeffcoat documented that Mrs. Chabek continued to complain of right lower extremity radicular pain with mild improvement since the surgery. See id. at 227. On November 16, 2017, Mrs. Chabek returned to AnMed Health Spine and Neurosurgery complaining of back pain and a problem with her gait and reporting that she had fallen on a wet floor since her last visit. See id. at 201. PA Jeffcoat documented that she continued to complain of right lower extremity pain and numbness. See id. On December 12, 2017, Mrs. Chabek called AnMed Health Spine and Neurosurgery in order to obtain another refill on her hydrocodone and again indicated that she had continued pain. See id. at 169. On December 21, 2017, she called the office complaining of “sciatic nerve pain.” See id. at 160. On January 11, 2018, she called the office complaining of back and left leg pain, and she reported she could not put pressure on her left leg. See id. at 151. On January 15, 2018, Mrs. Chabek had an MRI of her lumbar spine, and Radiologist Dr. Thomas Wiggins compared this MRI to one done in August of 2017 and reported in relevant part the following:

Marrow signal: in the left L5 pedicle and facet suggesting a combination of stress reaction and changes secondary to arthritis in L5-S1 facet joint on the left.
L4-L5: Mild disc dehydration consistent with mild degenerative disc disease. Mild facet joint arthritis. There is a small synovial cyst projecting medially from the right facet joint measuring 6 x 3 x 12mm. This results in mild impingement on the right posterior lateral aspect of the thecal sac. This is a new finding when compared to

the previous study.

L5-S1: Compared with the prior study, the patient has undergone a right laminectomy and resection of the inferior L5 facet. Postoperative granulation tissue in the operative site with some enhancing granulation tissue around the right S1 nerve root. Moderate facet joint arthritis on the left.

Id. at 182-83. His overall impression was that the patient had a small synovial cyst projecting medially from the right L4-5 facet joint with mild impingement on the right posterior lateral aspect of the thecal sac, and she had moderate facet joint arthritis on the left at L5-S1, with edema in the left L5 pedicle consistent with a stress reaction. See id. Significantly, stress injuries can be classified based on their time of diagnosis. An early stress injury is called a stress reaction; however, if left untreated, it will develop into a stress fracture.

On January 18, 2018, PA Jeffcoat documented that Mrs. Chabek continued to complain of radicular pain, low back pain, and her primary physician had prescribed a medrol dose pak for the new pain in her left posterior hip. Id. at 136. Her gait was still antalgic to the right, and her lumbar spine was tender to palpation. See id. On January 31, 2018, Mrs. Chabek called AnMed Health Spine and Neurosurgery for another refill of her pain medications, and on February 1, 2018, Mrs. Chabek stopped by AnMed Health Spine and Neurosurgery to pick up the prescription, and after she left, she called the office and stated she was having the same amount of pain in her right leg, and she had to take care of her dad. See id. at 126, 131. She reported that the script was written for her to take medication “every 6 hours where it was every 4 hours,” and “[s]he asked if [PA Jeffcoat] knew what he was doing since he wrote the script.” See id. at 126. Significantly, the documentation indicates that Mrs. Chabek was informed that her medication was reduced because the office did not manage chronic pain, and her surgery was in August of 2017. See id. On February 7, 2018, Mrs. Chabek called AnMed Health Spine and Neurosurgery again stating her pain medication was not strong enough, and she continued to have pain in her leg. See id. at 111.

On February 28, 2018, Mrs. Chabek presented to Pain Management Specialist Dr. Eric Loudermilk at Piedmont Comprehensive Pain Management who documented that her MRI showed a right-sided laminectomy with a facet joint resection at the L5 level and some moderate arthritis and edema on the left side at L5-S1 around the facet and pedicle suggestive of a stress reaction. See id. at 145. On March 1, 2018, Radiologist Dr. Paul Brill reported that Mrs. Chabek's EMG was "essentially normal," but "[m]ild isolated spontaneous activity [was] seen in the right lumbar paraspinal muscles, adjacent to the patient's scar." See id. at 85. He noted that this was a nonspecific finding and could be related to her surgery. See id. On March 6, 2018, Mrs. Chabek returned to see PA Jeffcoat and continued to complain of low back pain and right lower extremity radicular symptoms. See id. at 70. After reviewing the MRI showing the new cyst at L4-L5 as well as "what appears to be a medial facetectomy of right L5-S1," PA Jeffcoat discussed the possibility of a CT myelogram of the lumbar spine to evaluate the integrity of the right L5-S1 facet joint, and he noted, "If she indeed has missing medial facet she could be dealing with some degree of instability even though this is not identified on flexion and extension films. This also could be contributing to right L5-S1 foraminal collapse resulting in continued lower extremity pain." See id. Mrs. Chabek wanted to hold off on the myelogram for a few weeks, and she wanted to attempt PT prior to any additional imaging. See id. On March 7, 2018, Kristin Jennings, from AnMed Health Spine and Neurosurgery, documented that she called Mrs. Chabek to set up an appointment with Dr. MacDonald, but when she did not hear back from Mrs. Chabek, she called Mr. Chabek who significantly indicated that his wife was not happy with the office and did not want to come back. See id. at 55.

On March 12, 2021, Plaintiffs filed a Notice of Intent to File Suit against the Defendants alleging that the Defendants were negligent for, *inter alia*, "removal of an excessive portion of the

L5/S1 facet joint” and failure to “install instrumentation and fusion to properly support the spine following a partial facetectomy” during a “right-sided L5/S1 synovial cyst removal” and alleged failure “to properly inform Ms. Chabek of the available alternative treatments.” [Exhibit A: Expert Aff. of Sanford H. Davne, M.D. ¶ 4].

STANDARD OF REVIEW

The statute of limitations or statute of repose defense may be raised in a summary judgment motion. See McDonnell v. Consolidated School Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 386, 365 S.E.2d 24 (1988). Although the burden is on the party seeking summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986).

Once the moving party carries its initial burden, the “opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a genuine issue for trial.” Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (internal citation omitted). A party cannot rest on the mere allegations in her complaint. Nor can a party “escape summary judgment on the mere hope that something may develop later at trial, or by remaining silent and later

claiming additional facts supporting the cause of action.” Hammond v. Scott, 268 S.C. 137, 143, 232 S.E.2d 336, 339 (1977).

“The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial.” Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct.App.2001); Baughman, 306 S.C. at 116, 410 S.E.2d at 545-546 (internal citation and quotation omitted). Furthermore, “[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.” Baughman, 306 S.C. at 116, 410 S.E.2d at 546.

ANALYSIS

A. Plaintiffs’ Medical Malpractice Claim Was Not Brought Within the Applicable Statute of Limitations

Plaintiffs allege that the Defendants were grossly negligent and failed to comply with the standard of care by 1) failing to exercise the technical skills expected to be employed by a reasonably prudent neurosurgeon; 2) in failing to provide informed consent; 3) in failing to properly inform supervisors and staff; and 4) in failing to properly supervise its physicians. See [Exhibit B: Pls.’ Am. Statement of Facts ¶ 17.] South Carolina Code Section 15-3-545(A) provides:

[I]n any action ... to recover damages for injury to the person arising out of the medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Title 38 acting within the scope of his profession must be commenced within three years from the date of treatment, omission, or operation giving rise to the cause of action or three years from the date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

S.C. Code Ann. § 15-3-535(A). Though an “occurrence” runs the six-year statute of repose prescribed in South Carolina Code Section 15-3-545(A), the South Carolina Supreme Court has held that the

“six-year period ‘constitutes an outer limit beyond which a medical malpractice claim is barred, regardless of whether it has or should have been discovered.’” Shadwell v. Craigie, 361 S.C. 492, 605 S.E.2d 567 (2004); Marshall v. Dodds, 426 S.C. 453, 461, 827 S.E.2d 570, 574 (2019). If the Court runs the statute of limitations from the date of the operation allegedly giving rise to this cause of action, Plaintiffs’ action is clearly beyond the statute of limitations. Plaintiffs’ medical malpractice action relies upon the notion that Dr. Davidson removed too much of the L5/S1 facet joint and failed to install instrumentation to adequately support Mrs. Chabek’s spine during a right-sided L5/S1 synovial cyst resection procedure on August 22, 2017. [Exhibit A: Expert Aff. of Sanford H. Davne, M.D. ¶ 4]. In addition, any other alleged failure to utilize proper technical skill, failure to provide informed consent, failure to properly inform supervisors or staff, and failure to adequately supervise related to Mrs. Chabek’s claim would have occurred prior to or at the time of the procedure on August 22, 2017. Viewing the evidence in a light most favorable to Plaintiffs, the act or omission which gave rise to the alleged injury occurred no later than August 22, 2017, when Dr. Davidson performed the operation which Plaintiffs allege caused Mrs. Chabek’s injury. Any cause of action arising out of this alleged failure became barred by the statute of limitations three years later on August 22, 2020. Plaintiffs’ Notice of Intent to File Suit against Defendants was not filed until March 12, 2021, nearly eight months after the statute expired.

Plaintiffs attempted to toll the statute by filing an Amended Statement of Facts stating that following the surgery in August 22, 2017, Mrs. Chabek “was told by Dr. Davidson and subsequent AnMed providers that the complications she was experiencing were known risks that can occur with her surgery and were not the result of any inappropriate treatment or medical negligence.” [Exhibit B: Pls.’ Am. Statement of Facts ¶ 20]. Plaintiffs further allege that because Mrs. Chabek was told this, she had “no reason to suspect that there was a possibility that her complications were due to

medical malpractice,” and she “first learned that her continued pain was likely due to a fractured L5 facet joint in August 2018.” [Exhibit B: Pls.’ Am. Statement of Facts ¶¶ 22-24]. Defendants assert that this is solely a self-serving attempt to circumvent Plaintiffs’ claims being barred by the statute of limitations and that Plaintiffs’ claims are similarly barred if the statute of limitations runs from the date of discovery. Defendants submit that more than three years elapsed from the date Plaintiffs either knew or should have known that some right had been invaded or that some claim against another party might exist and the date they initiated this lawsuit. “Under the discovery rule, the statute does not run from the date of the negligent act, but from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence.” McClain v. Jarrard, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (Ct. App. 2003) (internal citation omitted). “In the medical malpractice context, the Supreme Court of South Carolina applied the reasonable diligence analysis under the general discovery rule ... [and held that an] injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right of his has been invaded or that some claim against another party might exist.” Id. (internal citation omitted).

As discussed above, Plaintiffs have asserted that Mrs. Chabek had no notice of or reason to believe that her injuries could have been a result of medical malpractice until August of 2018; however, this assertion is wholly unsupported by the medical record. Mrs. Chabek began reporting post-operative complaints a mere six days after Dr. Davidson’s operation on August 28, 2017. [Exhibit C: ANMED 270]. As discussed in detail above, she called and presented to AnMed Health Spine and Neurosurgery’s office multiple times per month requesting additional pain medication and/or complaining of continued right hip and leg pain. She specifically reported to her primary care physician that she was frustrated that she was not feeling better five weeks after the operation. See id.

at 246. Significantly, by January 15, 2018, a MRI showed “edema in the left L5 pedicle consistent with a stress reaction” indicating that Mrs. Chabek may have an issue with instability in her spine. See id. at 182-83. On January 31, 2018, Mrs. Chabek called to ask if the PA knew what he was doing because her pain medication prescription had been reduced, and she was informed that AnMed Health Spine and Neurosurgery did not manage chronic pain, and her surgery was in August of 2017. See id. at 126. On February 28, 2018, Mrs. Chabek again was given notice of a stress reaction and potential instability in her spine. See id. at 145. On March 1, 2018, Dr. Brill noted that mild isolated spontaneous activity seen in the right lumbar paraspinal muscles “could be related to her surgery.” See id. at 85. Most significantly, on March 6, 2018, PA Jeffcoat discussed a CT myelogram to evaluate the integrity of Mrs. Chabek’s right L5 facet joint and potential instability which could be contributing to right L5-S1 foraminal collapse resulting in continued lower extremity pain post-facetectomy performed by Dr. Davidson. See id. at 70. The following day, March 7, 2018, Mr. Chabek communicated that his wife was not happy with the office and did not want to come back. See id. at 55.

Whether the statute began to run in August 2017, January 2018, February 2018 or in early March 2018 when Mrs. Chabek was told that spontaneous activity on her EMG could be related to her surgery and potential instability from the facetectomy performed by Dr. Davidson could be causing her lower extremity pain, or even when Mr. Chabek communicated that his wife was not happy with the practice and would not be returning, Plaintiffs’ cause of action for negligence against the Defendants was barred by the statute of limitations when they filed their Notice of Intent to File Suit on March 12, 2021.

B. South Carolina Has Refused to Adopt the “Continuous Treatment” Doctrine

Plaintiffs may not advance any otherwise time-barred claims under any allegations that Ms. Chabek’s treatment and alleged negligence of the Defendants continued over a time span or reoccurred thereby renewing the time within which to commence this action. The Supreme Court of South Carolina summarized the relevant rule as follows:

The so-called “continuous treatment” rule as generally formulated is that if the treatment by the doctor is a continuing course and the patient's illness, injury or condition is of such a nature as to impose on the doctor a duty of continuing treatment and care, the statute does not commence running until treatment by the doctor for the particular disease or condition involved has terminated—unless during treatment the patient learns or should learn of negligence, in which case the statute runs from the time of discovery, actual or constructive.

Harrison v. Bevilacqua, 354 S.C. 129, 135, 580 S.E.2d 109, 112 (2003) (Internal citations omitted).

The Supreme Court of South Carolina refused to adopt the continuous treatment rule and found that judicial adoption of the rule “would run afoul of the absolute limitations policy the Legislature has clearly set” via South Carolina Code Section 15-3-545. Id. at 138, 580 S.E.2d at 114. The Harrison ruling was reaffirmed by the South Carolina Supreme Court in Marshall v. Dodds, 426 S.C. 453, 461-467, 827 S.E.2d 570, 574-577 (2019). The Supreme Court acknowledged the policy behind the statute of repose as “an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body” and held that the purpose behind the statute of repose is that “[w]hen causes of action are extinguished after such time, society generally may continue its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long forgotten act or omission.” Id. at 465, 468, 827 S.E.2d at 576, 578 (internal citation and quotations omitted).

The Supreme Court rejected the continuous treatment rule in both Harrison and Marshall, and despite any allegations of continued treatment of Mrs. Chabek or alleged recurring negligence, the Plaintiffs cannot assert any otherwise time-barred claims under this rule.

C. Plaintiffs' Loss of Household Services Claim Was Not Brought Within the Applicable Statute of Limitations

James Chabek's claim for loss of household services is also barred by the applicable statute of limitations. Mr. Chabek's claim for loss of household services is intertwined with the medical malpractice claim and should be subjected to S.C. Code Ann. § 15-3-545. The Court has consistently held that the statute of limitations for medical malpractice claims applies to cases that allege medical malpractice or where liability depends on whether or not medical malpractice occurred in the case or not. See Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993). Mr. Chabek's loss of household services claim is reliant upon Plaintiffs' ability to prove medical malpractice; thus, his claim should be subjected to the statute of limitations in South Carolina Code Section 15-3-545.

However, if the Court finds that S.C. Code Ann. § 15-3-545 does not apply to the loss of household services cause of action, then S.C. Code Ann. § 15-3-530 would apply. Section 15-3-530 requires a cause of action for loss of household services shall be brought within three (3) years. "[C]ase law has held that the right of action does not accrue until the loss of the services, society and companionship of the spouse has actually occurred, which has been defined as the point when the spouse sustained the injuries." Preer v. Mims, 323 S.C. 516, 521 S.E.2d 472, 475 (1996) (Internal citations omitted). In the present case, Plaintiffs have alleged that Defendants' omission causing injury occurred on August 22, 2017. [Exhibit B: Pls.' Am. Statement of Facts ¶ 5]. Therefore, Mrs. Chabek began to incur damages on or about August 22, 2017 as she allegedly suffered medical expenses, physical pain, mental suffering, alteration of lifestyle, mental anguish,

mental distress, anxiety, and substantial loss and/or degradation of enjoyment of life as a result of Defendants' alleged conduct on that day. Thus, the statute of limitations for Mr. Chabek's loss of household services claim began to run on August 22, 2017, expired on August 22, 2020, and was barred by the statute of limitations when Plaintiffs filed their Notice of Intent to File Suit on March 12, 2021.

CONCLUSION

For the foregoing reason(s), Defendants respectfully request that Defendants' Motions to Dismiss or in the Alternative for Summary Judgment be granted.

Respectfully submitted,

s/Marian Williams Scalise
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Attorneys for Defendant Larry Davidson, M.D.

July 8, 2021

AFFIAVIT of SANFORD H. DAVNE, M.D.

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, AND SAYS AS FOLLOWS:

1. I am an orthopaedic surgeon and board certified by the American Board of Orthopedic Surgery. I am a practicing physician and attending physician in the Department of Orthopedic Surgery at the Cooper University Hospital. My education, training and experience are set forth in the attached CV (Exhibit A).

2. It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care that should have been rendered to Anita Chabek in this case and I am familiar with the standard of care of what a reasonably prudent neurosurgeon would do or not do in synovial cyst removal procedures.

3. I have reviewed the medical records of Anita Chabek, which consisted in part of records from AnMed Health and Anderson Radiology. The records I have reviewed are the type documents, which I would consider in rendering an expert medical opinion in this case.

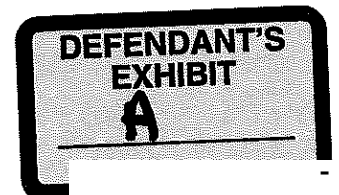
4. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of AnMed Health and Larry Davidson, M.D. committed negligent acts or omissions in their care and treatment of Anita Chabek. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:

- In failing to exercise the technical skills expected to be employed by a reasonable prudent surgeon during a right-sided L5/S1 synovial cyst removal by negligently removal of an excessive portion of the right L5-S1 facet joint and by failing to install instrumentation and perform fusion to properly support the spine following a partial medial facetectomy.
- In failing to properly inform Ms. Chabek of the available alternative treatments.

5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. caused or contributed to the injuries, damage, and pain and suffering of Anita Chabek.

6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. at this time are the medical records of Anita Chabek.

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving supplemental medical records, depositions, or additional information.




SANFORD H. DAVNE, M.D.

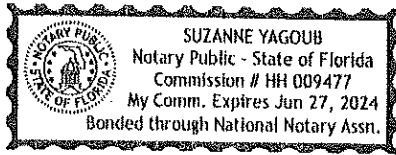
Sworn to and signed before me

this 20th day of April 2021

Suzanne Yagoub

Notary Public in and for State of Florida

My Commission Expires: June 27th 2024



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiffs,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021NI0400011

**Amended
Statement of Facts**

Plaintiff, complaining of Defendants herein, would respectfully show unto the Court and allege as follows:

1. Plaintiff Anita Chabek (hereinafter "Mrs. Chabek") is a resident of the County of Anderson, State of South Carolina.
2. Plaintiff James Chabek (hereinafter "Mr. Chabek") is a resident of the County of Anderson, State of South Carolina
3. Defendant, AnMed Health is a corporation organized pursuant to the laws of the State of South Carolina as a private corporation in the County of Anderson, State of South Carolina. At all relevant times herein, AnMed held itself out to the public-at-large and to Plaintiff(s) as operating a physician practice specializing in the field of neurosurgery and its employees were held out to be competent in the ordinary and customary standards of care provided by medical practitioners in the field of neurosurgery.
4. Defendant, Larry Davidson, MD (hereinafter "Dr. Davidson"), was, upon information and belief, a physician specializing in the field of neurosurgery and at all times relevant herein, was a resident of the County of Anderson, State of South Carolina. Also, at all relevant times herein, Dr. Davidson held himself out to the public-at-large and to Plaintiff(s)

as a skilled and competent surgeon in the ordinary and customary standards of medicine provided by practitioners in the field of neurosurgery. Also, at all relevant times herein, Dr. Davidson acted within the scope of his employment as an agent, servant, or employee of AnMed Health.

5. Upon information and belief, Dr. Davidson negligently performed surgery and caused injury to Mrs. Chabek on August 22, 2017.

6. Dr. Davidson is an alcoholic who had an alcohol relapse and started drinking alcohol again in early 2016.

7. Over the next year into 2017, Dr. Davidson – although being a former alcoholic – continued to drink alcohol even though he had a persistent desire to stop. Additionally, the frequency of Dr. Davidson’s drinking increased over time.

8. By October 2017, the frequency of Dr. Davidson’s drinking had progressed to the point to where he was drinking every day that he was not on call.

9. Upon information and belief, Dr. Davidson continued to perform his normal workload of spinal and other forms of neurosurgeries while continuing drink almost daily for the next three months.

10. Rather than choosing to stop performing neurosurgery to address his substance abuse relapse, he chose to continue to perform very delicate neurosurgeries putting his patient at increased risk of surgical complications.

11. Fortunately for the Anderson community, Dr. Davidson was charged with a DUI on December 22, 2017 while on a family vacation in California forcing him to report this situation to AnMed Health and for him to come clean regarding his alcohol substance abuse problem.

12. If not for the DUI, Dr. Davidson would have most likely continued to perform delicate spinal and other neurosurgeries while in the midst of an alcohol substance abuse relapse and drinking most every day.

13. Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

14. If Mrs. Chabek had been informed that Dr. Davidson, an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen not to proceed with the surgery by Dr. Davidson.

15. As a result of the surgery with Dr. Davidson, Mrs. Chabek suffered significant surgical complications.

16. Plaintiffs are informed and believe that Dr. Davidson failed to provide Mrs. Chabek proper medical treatment.

17. The failure to provide proper medical treatment to Mrs. Chabek was the direct and proximate result of and was caused and occasioned by the negligence, carelessness, gross negligence, and reckless conduct on the part of Larry Davidson, MD and/or other employees of AnMed in failing to possess and exercise that degree of care, competence, and skill ordinarily and customarily possessed and exercised by neurosurgeons and employees of an neurosurgery practice under similar circumstances and thereby rendered improper medical treatment to Mrs. Chabek by deviating from and falling below the prevailing and acceptable standards of care in one or more of the specifications as set forth below:

- a. in failing to exercise the technical skills expected to be employed by a reasonably prudent neurosurgeon;

- b. In failing to properly inform patients that Dr. Davidson was dealing with an alcohol substance abuse relapse as part of proper informed consent in providing to patients the information necessary to make an informed decision as to whether to undergo a surgical procedure with Dr. Davidson;
- c. In AnMed's failure to properly supervise its physicians with a known history of alcohol substance abuse to prevent Dr. Davidson from continuing to perform surgeries in light of significant warnings signs that he was suffering from an alcohol substance abuse relapse;
- d. In AnMed's failure to properly inform those tasked with supervising Dr. Davidson that he was an alcoholic so that they could recognize significant warning signs of an alcohol substance abuse relapse when they appeared;
- e. In AnMed's failure to properly inform the staff at AnMed Health Spine and Neurosurgery of Dr. Davidson's alcoholism so that they could help monitor Dr. Davidson and report the significant warning signs of an alcohol substance abuse relapse when they appeared; and
- f. in such other action or inaction that may be shown at trial.

The affidavit of a medical professional is attached hereto and is incorporated herein by this reference.

18. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. lost wages;
- d. loss of value of household services; and
- e. substantial loss and/or degradation of enjoyment of life.

19. The acts and omissions of Larry Davidson, MD were reckless, willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive

damages should be awarded to punish Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Ms. Adams which were wrongfully invaded.

20. Furthermore, following Ms. Chabek surgery in August 22, 2017, she was told by Dr. Davidson and subsequent AnMed providers that the complications she was experiencing were known risks that can occur with her surgery and were not the result of any inappropriate treatment or medical negligence.

21. As a result, trusting the representations made to her by AnMed and Dr. Davidson, had no reason to suspect that there was a possibility that her complications were due to medical malpractice.

22. After suffering through continued right lower extremity pain, hip, and back pain for several months, she decided to get a second opinion and went to Advanced Spine and Neurosurgical Associates in Greenwood, SC in July 2018.

23. New imaging was done and Ms. Chabek first learned that her continued pain was likely due to a fracture L5 facet joint in August 2018.

24. It was at this point in August 2018 that Ms. Chabek first had a reason to suspect and/or first discovered that her injuries could have been a result of medical malpractice relating back to the August 22, 2017 procedure and should not have been expected to know by the exercise of reasonable diligence at any time prior to August 2018 that she had a cause of action for medical malpractice.

FOR A FIRST CAUSE OF ACTION – MEDICAL NEGLIGENCE

25. The relevant and consistent allegations of paragraphs 1-24 are incorporated herein by this reference.

26. As a direct and proximate result of the acts and/or omissions as herein alleged of Larry Davidson, MD and/or other employees of AnMed, Mrs. Chabek suffered the following damages in the past and will suffer these damages in the future:

- a. past medical expenses and future medical expenses that are reasonably certain to occur;
- b. past physical pain and mental suffering and future physical pain and mental suffering that are reasonably certain to occur;
- c. alteration of lifestyle;
- d. mental anguish;
- e. mental distress;
- f. anxiety;
- g. loss of value of household services; and
- h. substantial loss and/or degradation of enjoyment of life.

27. Plaintiff, Anita Chabek, is informed and believes that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and punitive damages against Larry Davidson, MD in such fair, just and reasonable amounts as may be determined by a jury.

FOR A SECOND CAUSE OF ACTION – LACK OF INFORMED CONSENT

28. The relevant and consistent allegations of paragraphs 1-27 are incorporated herein by this reference.

29. Prior to commencing with the surgical procedure, Dr. Davidson had a duty to adequately disclose to Mrs. Chabek the proposed diagnostic, therapeutic or surgical procedure to be undertaken, the material risks involved therein and the alternatives available, if any, so that a patient of ordinary understanding confronted with these disclosures, and faced with a choice of

undergoing the proposed treatment or selecting an alternative process or preferring refusal to all surgical relief, may, in reaching a decision, intelligently exercise his or her judgment by balancing the probable risks against the probable benefits.

30. Plaintiffs are informed and believe that Dr. Davidson failed to adequately disclose to Mrs. Chabek the material risks involved and the alternatives available. Specifically – Dr. Davidson never informed Mrs. Chabek that he was actively dealing with a substance abuse relapse so that she would have appropriate information to consent to her surgical procedure and/or have sufficient information to decide whether Dr. Davidson would be the best surgeon to perform her operation.

31. If Mrs. Chabek had been informed that Dr. Davidson was an alcoholic and was currently dealing with an alcohol substance abuse relapse, she would have chosen a different surgeon to perform her surgery.

32. Dr. Davidson’s inadequate discussions of the risks and benefits of the procedure constitutes a separate occurrence of negligence from the negligence performed during the surgery given that: (1) lack of informed consent is a cause of action in and of itself that does not require medical malpractice to be pled, and (2) the discussion regarding the risks / benefits of the surgery were discussed well before the negligent surgery as was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

33. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against Larry Davidson, MD and AnMed Health, jointly and severally, for actual damages and against Larry Davidson, MD for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A THIRD CAUSE OF ACTION – NEGLIGENT SUPERVISION

34. The relevant and consistent allegations of paragraphs 1-33 are incorporated herein by this reference.

35. Plaintiffs, upon information and belief, consider it likely that AnMed hospital either knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues prior to her surgery.

36. If AnMed knew and/or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have a duty to protect their patients from Dr. Davidson by ensuring that Dr. Davidson only performed surgeries with a proctor, had supervision of some kind, or be precluded from performing surgeries until such time as he was no longer dealing with substance abuse issues.

37. If AnMed knew or had reason to suspect that Dr. Davidson was dealing with substance abuse issues, AnMed would have failed in its duty to protect its patients by failing to properly supervise its employee. This failure and/or lack of caring by AnMed resulted in Dr. Davidson being allowed to perform surgery to Mrs. Chabek while dealing with substance abuse issues consequently caused the preventable permanent injury to Mrs. Chabek due to Dr. Davidson's negligent treatment.

38. AnMed's negligent supervision of Dr. Davidson constitutes a separate occurrence of negligence from the negligence performed during the surgery given that the negligence was performed by different individuals other than Dr. Davidson and was not part of an unfolding sequence of events which proximately flowed from a single act of negligence.

39. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

FOR A FOURTH CAUSE OF ACTION – GENERAL NEGLIGENCE

40. The relevant and consistent allegations of paragraphs 1-39 are incorporated herein by this reference.

41. AnMed and Dr. Davidson a duty to exercise ordinary and reasonable care to ensure that no unnecessary harm would befall the patient.

42. The statutory definition of medical malpractice found in section 15-79-110(6) does not impact a hospital or medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care. Thus, medical providers are still subject to claims sounding in ordinary negligence.

43. No expert testimony is necessary to aid a jury's determination of fault in a situation where a hospital decides to allow and/or a surgeon decides to continue to perform surgeries in the midst of dealing with substance abuse issues.

44. If the jury were to determine that AnMed knew or should have known of Dr. Davidson's substance abuse, allowed Dr. Davidson to continue to perform surgeries unsupervised, and failed to protect their patients from Dr. Davidson, then the jurors can easily understand that AnMed breached its duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

45. If the jury were to determine that Dr. Davidson was dealing with substance abuse but continued to perform surgeries in the midst of these difficulties instead of seeking immediate help for his problems, then the jurors can easily understand that Dr. Davidson breached his duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient without the need for expert testimony.

46. As a direct and proximate result of AnMed's and Dr. Davidson's failures to properly perform their duties of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient, Mrs. Chabek has suffered permanent injury, harms, and losses.

47. Furthermore, this failure of the Defendants to properly perform their duty of ordinary and reasonable care to ensure that no unnecessary harm would befall the patient was willful, wanton, grossly negligent and in conscious disregard of the rights of Mrs. Chabek. Accordingly, punitive damages should be awarded to punish AnMed and Larry Davidson, MD; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Ms. Adams which were wrongfully invaded.

48. Plaintiffs are informed and believe that, based upon the allegations set forth herein, judgment should be rendered against AnMed Health and Larry Davidson, MD, for actual damages and for punitive damages, in such fair, just and reasonable amounts as may be determined by a jury.

WHEREFORE, Plaintiff, Bessie Adams, respectfully demand and pray as follows:

- (a) for a trial by jury pursuant to Rule 38(b) of the SCRCP;
- (b) for judgment under the first cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;
- (c) for judgment under the second cause of action against Larry Davidson, MD and AnMed Health, jointly and/or severally, for actual damages and against Larry Davidson, MD for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP;

- (d) for judgment under the third cause of action against AnMed Health, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCPP;
- (e) for judgment under the fourth cause of action against AnMed Health, and Larry Davidson, MD jointly and/or severally, for actual damages and for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCPP;
- (f) for the costs of this action; and
- (g) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

McGowan, Hood & Felder, LLC

s/ Jay Wright

Jay F. Wright

South Carolina Bar No. 78738

jaywright@mcgowanhood.com

P. O. Drawer 1778

Anderson, SC 29622-1778

(864) 225-6228

(864) 231-9011 (facsimile)

ATTORNEYS FOR THE PLAINTIFF

June 8, 2021
Anderson, SC

PLAINTIFF DEMANDS A TRIAL BY JURY

08/22/2017 - Admission (Discharged) in AnMed Health Physician Surgery Center (continued)

H&P Notes

Interval H&P Note by Larry Steve Davidson, MD at 8/22/2017 8:44 AM

Author: Larry Steve Davidson, MD	Service: Neurosurgery	Author Type: Physician
Filed: 8/22/2017 8:44 AM	Date of Service: 8/22/2017 8:44 AM	Creation Time: 8/22/2017 8:44 AM
Status: Signed	Editor: Larry Steve Davidson, MD (Physician)	

No change in status. Proceed as planned.

Electronically signed by Larry Steve Davidson, MD at 8/22/2017 8:44 AM

Source Note

Author: Larry Steve Davidson, MD	Service: ---	Author Type: Physician
Filed: 8/10/2017 9:59 AM	Date of Service: 8/10/2017 9:00 AM	Creation Time: 8/22/2017 8:44 AM
Status: Signed	Editor: Larry Steve Davidson, MD (Physician)	

**AnMed Health
Anderson, SC**

PATIENT ID:

Anita Gail Chabek is a y.o. female.

8/10/2017

Diagnosis

Plan

- Synovial cyst of lumbar spine**

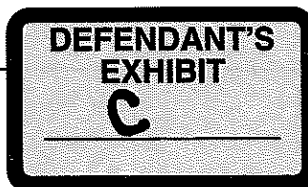
Assessment/Plan

Mrs. Chabek is a -year-old lady who has been dealing with at least several months of intense right-sided lumbar radicular pain involving the right buttock/thigh and leg. MRI of the lumbar spine demonstrates a right-sided L5/S1 synovial cyst. She has failed ongoing conservative efforts including pain management injections.

At this point, she is interested in pursuing surgical intervention which I believe would be appropriate. Today, I discussed with her and her husband the prospect of right-sided L5/S1 synovial cyst resection. I thoroughly discussed the technical aspects of this procedure with the patient. Also, the potential risks, realistic limitations and benefits of the procedure were thoroughly discussed with the patient. I discussed the risk of infection, wound healing difficulties, hemorrhage, CSF leak, recurrence of symptoms, spinal destabilization, paralysis, nerve injury, worsening of symptoms or neurologic status and need for subsequent surgery for any of the above complications. I also discussed the fact that there is certainly no guarantee that the desired results would be obtained with surgery. Furthermore I also discussed the potential development of medical problems during and following surgery. The patient had a good understanding of the above and all questions were addressed.

Plan: We are planning to proceed on with right-sided L5/S1 synovial cyst resection.

Subjective Anita presented to the office today for complaints of pain to lumbar spine, right hip and right leg. Accompanied by numbness, tingling and weakness. Symptoms ongoing two years and worsening gradually, s/p a fall down some stairs last year. Reports the following conservative measures have been tried: pain mgmt with injections, heat, ice, naproxen, hydrocodone, gabapentin, topical rubs, steroids. these conservative measures have failed to provide adequate relief. No history of spine surgery to date. Patient reports recent films were performed at Anderson radiology



08/22/2017 - Admission (Discharged) in AnMed Health Physician Surgery Center (continued)**Op Note****Op Note by Larry Steve Davidson, MD at 8/22/2017 12:00 AM**Author: Larry Steve Davidson, MD
Filed: 9/1/2017 2:19 PM
Status: SignedService: Neurosurgery
Date of Service: 8/22/2017 12:00 AM
Editor: Larry Steve Davidson, MD (Physician)Author Type: Physician
Creation Time: 9/1/2017 1:45 PM

PREOPERATIVE DIAGNOSIS:
Right-sided L5/S1 synovial cyst.

POSTOPERATIVE DIAGNOSIS:
Same as above.

PROCEDURE PERFORMED:
1. Resection of right-sided L5/S1 synovial cyst.
2. Intraoperative utilization interpretation of
lumbosacral spinal fluoroscopy.

SURGEON:
Larry S Davidson, MD

There was no assistant.

ESTIMATED BLOOD LOSS:
Less than 50 cc.

DRAINS:
None.

COMPLICATIONS:
None.

FINDINGS:
As anticipated, synovial cyst affecting the right sided
L5-S1.

INDICATIONS:
The patient is a 51-year-old lady dealing with significant
right-sided lumbar radicular symptoms that have been
refractory to conservative efforts. She has failed
appropriate measures and it is felt now appropriate to
resect the synovial cyst.

PROCEDURE:
The patient is brought to the operative room, anesthetized
and intubated. SCDs are in place. Prophylactic IV
antibiotics were administered. She is rolled to the prone
position on top of chest rolls. All pressure points
adequately padded. The lower back is addressed with

08/22/2017 - Admission (Discharged) in AnMed Health Physician Surgery Center (continued)**Op Note (continued)**

alcohol for degreasing and then prepped. The prep was allowed to dry and a sterile field created in usual fashion. Scout imaging of his obtained with the C-arm so as to optimize the positioning of our skin incision. The standard incision was then made over the L5-S1 level. Underlying subcutaneous tissue was divided with a Bovie. Eventually the right-sided subperiosteal dissection was performed in typical fashion. Our position of the spine was verified with lateral fluoroscopy. Ultimately, a right L5 hemilaminotomy and partial medial facetectomy was performed. The underlying synovial cyst was identified and significant compression of the dura is noted. The cyst was dissected off and peeled away from the dura eliminating its mass effect on the neural structures. Of course, this was performed with loupe magnification. Reinspection of the epidural space suggested the neural elements to be very nicely decompressed. Hemostasis easily achieved with monopolar and bipolar cautery and the wound nicely irrigated with the IrriSept solutions #1 and #2.

Standard closure was performed with interrupted 0-Vicryl suture for the fascial layer, as well as interrupted 2-0 Vicryl suture for the subcutaneous layer, and finally interrupted 3-0 Vicryl suture for the subdermal layer. Skin staples were placed followed by the application of the typical Dermabond tape/glue product.

The patient tolerated the procedure very nicely and all counts were correct. She was taken to PACU in very nice condition.

Electronically signed by Larry Steve Davidson, MD at 9/1/2017 2:19 PM

Implants

No active implants to display in this view.

General Information

Date: 8/22/2017	Time: 0800	Status: Posted
Location: AH COC PHYSICIAN SURGERY CENTER	Room: PSC 03	Service: Neurosurgery
Patient class: Hospital Outpatient Surgery	Case classification: Elective	

08/22/2017 - Admission (Discharged) in AnMed Health Physician Surgery Center (continued)

Other Orders (continued)

8/22/2017 11:03 AM

Discontinued by: Automatic Discharge Provider 08/22/17 1437 [Patient Discharge]

Updates

Discharge date and time: 8/22/2017

Discharge disposition: Home or Self Care

IV

Insert peripheral IV (Discontinued)

Electronically signed by: Kayla L McClain, RN on 08/16/17 1636	Status: Discontinued
Ordering user: Kayla L McClain, RN 08/16/17 1636	Ordering provider: Chris D Fennell, MD
Authorized by: Chris D Fennell, MD	Ordering mode: Per protocol: cosign required
Cosigning events	
Electronically cosigned by Chris D Fennell, MD 08/22/17 0927 for Ordering	Class: Hospital Performed
Frequency: STAT Once 08/22/17 0709 - 1 occurrence	Instance released by: Denise R Ellison, RN (auto-released)
Quantity: 1	8/22/2017 7:09 AM

Discontinued by: Automatic Discharge Provider 08/22/17 1437 [Patient Discharge]
Order comments: 18 ga for AM Admits 20 ga for Outpatients 22 ga for scheduled Bier Block place IV in the operative hand below the wrist May use lidocaine 1% 3 ml sin wheal and/or EMLA cream for IV starts Patients age 6 - 12 and all pedlatic MRI patlents less than age 12: Apply EMLA cream to hand

Saline lock IV (Discontinued)

Electronically signed by: Kayla L McClain, RN on 08/16/17 1636	Status: Discontinued
Ordering user: Kayla L McClain, RN 08/16/17 1636	Ordering provider: Chris D Fennell, MD
Authorized by: Chris D Fennell, MD	Ordering mode: Per protocol: cosign required
Cosigning events	
Electronically cosigned by Chris D Fennell, MD 08/22/17 0927 for Ordering	Class: Hospital Performed
Frequency: Routine Once 08/22/17 0709 - 1 occurrence	Instance released by: Denise R Ellison, RN (auto-released)
Quantity: 1	8/22/2017 7:09 AM

Discontinued by: Automatic Discharge Provider 08/22/17 1437 [Patient Discharge]

IV site care (Discontinued)

Electronically signed by: Kayla L McClain, RN on 08/16/17 1636	Status: Discontinued
Ordering user: Kayla L McClain, RN 08/16/17 1636	Ordering provider: Chris D Fennell, MD
Authorized by: Chris D Fennell, MD	Ordering mode: Per protocol: cosign required
Cosigning events	
Electronically cosigned by Chris D Fennell, MD 08/22/17 0927 for Ordering	Class: Hospital Performed
Frequency: Routine Continuous 08/22/17 0709 - Until Specified	Instance released by: Denise R Ellison, RN (auto-released)
Quantity: 1	8/22/2017 7:09 AM

Discontinued by: Automatic Discharge Provider 08/22/17 1437 [Patient Discharge]

Medications

lactated ringers - OR infusion (Completed)

Electronically signed by: Kayla L McClain, RN on 08/16/17 1636	Status: Completed
Ordering user: Kayla L McClain, RN 08/16/17 1636	Ordering provider: Chris D Fennell, MD
Authorized by: Chris D Fennell, MD	Ordering mode: Per protocol: cosign required
Cosigning events	
Electronically cosigned by Chris D Fennell, MD 08/22/17 0928 for Ordering	Class: Normal
Frequency: Routine Once 08/22/17 0715 - 1 occurrence	
Released by: Denise R Ellison, RN 08/22/17 0709	
Acknowledged: Denise R Ellison, RN 08/22/17 0709 for Placing Order	
Package: 0338-0117-04	

famotidine (generic for PEPCID) tablet 20 mg (Completed)

Electronically signed by: Kayla L McClain, RN on 08/16/17 1636	Status: Completed
---	--------------------------

08/28/2017 - Telephone in AnMed Health Spine and Neurosurgery (continued)

08/28/2017 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Sharon A Holland at 8/28/2017 9:12 AM

Author: Sharon A Holland
Filed: 8/28/2017 9:14 AM
Status: Signed

Service: —
Encounter Date: 8/28/2017
Editor: Sharon A Holland (Clerk)

Author Type: Clerk
Creation Time: 8/28/2017 9:13 AM

Patient called stating she is having a lot of Rt. Leg pain. Patient states she can't get comfortable. Patient said tape also came off incision. Please call patient.

Electronically signed by Sharon A Holland at 8/28/2017 9:14 AM

Clinical Notes

Progress Notes

Deborah J Black, RN at 9/1/2017 8:30 AM

Author: Deborah J Black, RN
Filed: 9/1/2017 10:01 AM
Status: Signed

Service: —
Encounter Date: 9/1/2017
Editor: Deborah J Black, RN (Registered Nurse)

Author Type: Registered Nurse
Creation Time: 9/1/2017 8:54 AM

Patient presented to the office today for incision assessment. Status post RIGHT L5-S1 SYNOVIAL CYST RESECTION surgery. Incision is without signs or symptoms of infection. There is no edema. bandage applied. Staples were removed without difficulties and patient tolerated procedure well. Complaints of pain, that continues to right hip and leg. She says she has some numbness to the right leg as well. She is taking hydrocodone 1 tablet every 5 hours. She says she called and we had told her to take some Advil, this has helped some. She denies any bowel, bladder complications or fever. Post operative instructions given orally and in writing. Voiced understanding received. Patient is to return as scheduled in follow up.

Electronically signed by Deborah J Black, RN at 9/1/2017 10:01 AM

09/13/2017 - Clinical Support in AnMed Health Spine and Neurosurgery

Clinical Notes

Progress Notes

Deborah J Black, RN at 9/13/2017 2:30 PM

Author: Deborah J Black, RN
Filed: 9/13/2017 2:56 PM
Status: Signed

Service: —
Encounter Date: 9/13/2017
Editor: Deborah J Black, RN (Registered Nurse)

Author Type: Registered Nurse
Creation Time: 9/13/2017 2:32 PM

Patient presented to the office today for wound check. They are status post surgery. Patient reports one staple was left during removal previously, this was removed today by Alison Campbell. MA Requesting medrol dose pack for right hip and leg pain that continues. Per dr maconald script created. She is to return as scheduled in follow up.

Electronically signed by Deborah J Black, RN at 9/13/2017 2:56 PM

09/28/2017 - Office Visit In AnMed Health Clifton W. Straughn, MD (continued)

09/28/2017 - Office Visit In AnMed Health Clifton W. Straughn, MD (continued)

Clinical Notes

Progress Notes

Clifton W Straughn, MD at 9/28/2017 11:00 AM

Author: Clifton W Straughn, MD
Filed: 9/28/2017 12:38 PM
Status: Signed

Service: ---
Encounter Date: 9/28/2017
Editor: Clifton W Straughn, MD (Physician)

Author Type: Physician
Creation Time: 9/28/2017 11:59 AM

AnMed Health
Anderson, SC

VISIT PROGRESS NOTE

PATIENT ID:

Anita Gail Chabek is a y.o. female.

HISTORY OF PRESENT ILLNESS:

HAD BACK SURGERY ABOUT 5 WEEKS AGO AND IS FRUSTRATED BECAUSE SHE'S NOT MUCH BETTER. ALSO HER DOG SCRATCHED HER ON RIGHT FOOT AND DORSUM OF FOOT IS SORE AND MILDLY ERYTHEMATOUS FROM THE SCRATCH. FEELS FRUSTRATED AND DEPRESSED ALSO CHANGE THE PROZAC HAD NO SUICIDAL IDEATIONS

Review of Systems

HENT: Negative.
Respiratory: Negative.
Cardiovascular: Negative.
Gastrointestinal: Negative.
Musculoskeletal: Positive for back pain.
Skin:

Per history of present illness

No Known Allergies

Past Medical History:

Diagnosis Date

- Abnormal MRI
- Allergic rhinitis
- Anxiety
- Asthma
- Back arthralgia
- Body aches
- Chronic pain
lower back
- Cough
- Depression
- Dysmenorrhea
- Elevated blood pressure reading
(Not Hypertension)
- FSH (facioscapulohumeral muscular dystrophy) (CMS/HCC)
- Greater trochanteric bursitis
Right
- Headache

10/04/2017 - Telephone in AnMed Health Spine and Neurosurgery (continued)

10/04/2017 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Sharon A Holland at 10/4/2017 9:00 AM

Author: Sharon A Holland
Filed: 10/4/2017 9:01 AM
Status: Signed

Service: —
Encounter Date: 10/4/2017
Editor: Sharon A Holland (Clerk)

Author Type: Clerk
Creation Time: 10/4/2017 9:01 AM

Refill pain medication

Electronically signed by Sharon A Holland at 10/4/2017 9:01 AM

10/05/2017 - Office Visit in AnMed Health Spine and Neurosurgery (continued)**10/05/2017 - Office Visit in AnMed Health Spine and Neurosurgery (continued)****Clinical Notes****Progress Notes****William Travis Jeffcoat, PA at 10/5/2017 3:30 PM**Author: William Travis Jeffcoat, PA
Filed: 10/5/2017 4:41 PM
Status: Signed

Service: —

Encounter Date: 10/5/2017

Editor: William Travis Jeffcoat, PA (Physician Assistant)

Author Type: Physician Assistant

Creation Time: 10/5/2017 3:39 PM

AnMed Health
Anderson, SC**PATIENT ID:**

Anita Gail Chabek is a y.o. female.

10/5/2017

Diagnosis	Plan
1. Synovial cyst of lumbar spine	
2. Low back pain with left-sided sciatica, unspecified back pain laterality, unspecified chronicity	HYDROcodone-acetaminophen (generic for NORCO-10) 10-325mg per tablet

Assessment/Plan

Mrs. Chabek is a 51-year-old female who is now around 4 weeks out from right sided L5-S1 discectomy. She states she continues with right lower extremity radicular pain. She has noticed mild improvement from the procedure. On exam today her incision is healed nicely without sign of infection, upper and lower extremity strength and sensation are intact other than mild weakness with right plantarflexion, gait is antalgic to the right, no obvious long tract findings are noted. Today we have discussed that she is still fairly early on in the surgical process. She has started exercises at the YMCA in the pool and this seems to be somewhat improving her symptoms. We have encouraged her to continue this. We will also start her on with her recovery to see if this will improve any of the lower extremity pain she is describing.

Again we will plan for Lyrica 75 mg, continuation of her hydrocodone as well as continuing her exercises at the YMCA. We'll plan to see her back in around 4-6 weeks for further evaluation.

Subjective Anita is following up s/p resection of synovial cyst.

HPI

The following have been reviewed and updated as appropriate in this visit:

Review of Systems

Constitutional: Negative for fever.

HEENT: Negative for hearing loss and tinnitus.

Eyes: Negative for photophobia.

Respiratory: Negative for shortness of breath and wheezing.

Cardiovascular: Negative for chest pain.

Gastrointestinal: Positive for nausea. Negative for abdominal pain and vomiting.

Endocrine: Negative for polyuria.

11/16/2017 - Office Visit in AnMed Health Spine and Neurosurgery (continued)

11/16/2017 - Office Visit in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Progress Notes

William Travis Jeffcoat, PA at 11/16/2017 10:45 AM

Author: William Travis Jeffcoat, PA
Filed: 11/16/2017 11:36 AM
Status: Signed

Service: —
Encounter Date: 11/16/2017
Editor: William Travis Jeffcoat, PA (Physician Assistant)

Author Type: Physician Assistant
Creation Time: 11/16/2017 11:05 AM

AnMed Health
Anderson, SC

PATIENT ID:

Anita Gail Chabek is a y.o. female.

11/16/2017

Diagnosis	Plan
1. Synovial cyst of lumbar spine	
2. Low back pain with left-sided sciatica, unspecified back pain laterality, unspecified chronicity	HYDROcodone-acetaminophen (generic for NORCO-10) 10-325mg per tablet

Assessment/Plan

Anita is a -year-old female presenting back for around 2 half months follow-up of right sided L5-S1 synovial cyst resection. She states she continues with right lower extremity pain as well as numbness although it may be slightly improved from her previous visit. She has continued with pool therapy as well as activity modification. On exam today she has a well-healed incision, upper and lower extremity strength and sensation are intact other than mild weakness of right plantarflexion, no obvious long tract findings, DTR 2/4 and symmetric other than 1/4 right Achilles, gait is slightly antalgic to the right. Today we've discussed it could take some time for this radicular pain to improve. She has recently been switched over to Cymbalta for anxiety/depression which could improve her radicular complaints as well. We have discussed the technical little time to get into her system. We at this point have discussed physical therapy although she does not have insurance so we will plan for home exercises. We will try this for the next 4-6 weeks. If she is not showing significant improvement we may need to consider repeat MRI at a later time.

Again we'll continue pain medication as well as home exercises, we'll see her back in around 6-8 weeks.

Subjective Anita presented to the office today for follow up. She does relay an incident of a fall since we saw her last. She slipped in a wet floor at home. She does still complain of leg pain.
HPI

The following have been reviewed and updated as appropriate in this visit:

Review of Systems

Constitutional: Negative for fever.
HENT: Negative for hearing loss and tinnitus.
Eyes: Negative for photophobia.
Respiratory: Positive for shortness of breath and wheezing.
Cardiovascular: Negative for chest pain.
Gastrointestinal: Negative for nausea and vomiting.

12/12/2017 - Telephone in AnMed Health Spine and Neurosurgery (continued)

12/12/2017 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Sharon A Holland at 12/12/2017 1:21 PM

Author: Sharon A Holland
Filed: 12/12/2017 1:22 PM
Status: Signed

Service: —
Encounter Date: 12/12/2017
Editor: Sharon A Holland (Clerk)

Author Type: Clerk
Creation Time: 12/12/2017 1:21 PM

Patient request refill for pain medication

Electronically signed by Sharon A Holland at 12/12/2017 1:22 PM

12/21/2017 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes (continued)

Deborah J Black, RN at 12/21/2017 10:52 AM

Author: Deborah J Black, RN
Filed: 12/21/2017 4:29 PM
Status: Signed

Service: ---
Encounter Date: 12/21/2017
Editor: Deborah J Black, RN (Registered Nurse)

Author Type: Registered Nurse
Creation Time: 12/21/2017 4:28 PM

Patient calling again with the sciatic nerve pain . Did you want to go ahead and order the MRI?

Electronically signed by Deborah J Black, RN at 12/21/2017 4:29 PM

01/11/2018 - Telephone in AnMed Health Spine and Neurosurgery (continued)

01/11/2018 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Mary A Campbell at 1/11/2018 10:15 AM

Author: Mary A Campbell	Service: —	Author Type: Medical Assistant
Filed: 1/11/2018 10:18 AM	Encounter Date: 1/11/2018	Creation Time: 1/11/2018 10:15 AM
Status: Signed	Editor: Mary A Campbell (Medical Assistant)	

Patient called stating she is having left leg pain and cannot put pressure on the leg. She is having back pain also. Dr Straughn sent her for Xray that was negative. Please call patient. Also patient is scheduled for MRI to be done next week.

Electronically signed by Mary A Campbell at 1/11/2018 10:18 AM

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12/07/2017 - Office Visit in AnMed Health Clifton W. Straughn, MD (continued)

Imaging (continued)

MQ Fax Server 1/18/2018 9:39:20 AM PAGE 2/003 Fax Server



ANDERSON RADIOLOGY

Anderson Radiology
2110 North Highway 83 Anderson, SC 29621
P (864) 225-6288; F (864) 231-6738

PATIENT: Chabek, Anita
DOB: [REDACTED]
MRN: [REDACTED]
PHYSICIAN: Clifton Straughn, MD
EXAM DATE: 01/15/2018

EXAM: MR-Lumbar Spine with and without contrast

REASON FOR VISIT: left sciatica, spinal cyst

MRI lumbar spine without and with contrast:

INDICATION: Right lower back pain and right hip pain. Right-sided sciatica surgery August 2017.

TECHNIQUE: Sagittal and axial T1 and T2-weighted sequences were performed. Additional sagittal STIR images were performed. Additional sagittal and axial T1-weighted sequences were performed after intravenous injection 7 mL Gadavist.

COMPARISON: MRI lumbar spine 8/1/2017

FINDINGS:

- * Vertebral bodies: No compression fracture. No abnormal enhancement.
- * Alignment: Normal.
- * Marrow signal: There is marrow edema in the left L5 pedicle and facet suggesting a combination of stress reaction and changes secondary to arthritis in the L5-S1 facet joint on the left.
- * Conus medullaris: Normal. Terminates at L1-L2 with no evidence of tethering. No abnormal enhancement.
- * Lower thoracic segments: No significant abnormality.
- * L1-2: Minimal anterior spurring consistent with mild degenerative disc disease.
- * L2-3: Minimal anterior spurring consistent with mild degenerative disc disease. Mild facet joint arthritis.
- * L3-4: Minimal anterior spurring consistent with mild degenerative disc disease. Mild facet joint arthritis.
- * L4-5: Mild disc dehydration consistent with mild degenerative disc disease. Mild facet joint arthritis. There is a small synovial cyst projecting medially from the right facet joint measuring 6 x 3 x 12 mm. This results in mild impingement on the right posterior lateral aspect of the thecal sac. This is a new finding when compared to the previous study.
- * L5-S1: Compared with the prior study, the patient is undergone a right laminectomy and resection of the inferior L5 facet. Postoperative granulation tissue in the operative site with some enhancing granulation tissue around the right S1 nerve root. Moderate facet joint arthritis on the left.

IMPRESSION:

1. Small synovial cyst projecting medially from the right L4-5 facet joint^[*]

12/07/2017 - Office Visit In AnMed Health Clifton W. Straughn, MD (continued)

Imaging (continued)

MQ Fax Server 1/16/2018 9:39:20 AM PAGE 3/009 Fax Server

PATIENT: Chabek, Anita

DOB:

EXAM: MR-Lumbar Spine with and without contrast

EXAM DATE: 01/15/2018

- with mild impingement on the right posterior lateral aspect of the thecal sac. This is a new finding.
- 2. Patient is undergone a right laminectomy with resection of the inferior L5 facet at L5-S1.
- 3. Moderate facet joint arthritis on the left at L5-S1 with edema in the left L5 pedicle consistent with a stress reaction.

Electronically Signed by Thomas Wiggins

Thank you for this referral.
 Read by: Thomas Wiggins, MD
 DD: 01/16/2018 09:10 AM
 ACCESSION: 08-2749383F

Electronically reviewed and signed by Thomas Wiggins, MD 01/16/2018 09:25 AM
 CC:
 Davidson MD, Larry S

[1]

Radiology Reports - Scan on 1/16/2018 4:44 PM: XRAYs L-SPINE AR (below)

01/18/2018 - Office Visit in AnMed Health Spine and Neurosurgery (continued)

01/18/2018 - Office Visit in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Progress Notes

William Travis Jeffcoat, PA at 1/18/2018 1:00 PM

Author: William Travis Jeffcoat, PA
Filed: 1/18/2018 4:50 PM
Status: Signed

Service: ---
Encounter Date: 1/18/2018
Editor: William Travis Jeffcoat, PA (Physician Assistant)

Author Type: Physician Assistant
Creation Time: 1/18/2018 1:20 PM

AnMed Health
Anderson, SC

PATIENT ID:

Anita Gall Chabek is a y.o. female.

1/18/2018

<p>Diagnosis</p> <p>1. Synovial cyst of lumbar spine</p>	<p>Plan</p> <p>X-ray lumbar spine flexion and extension only 4+ views</p>
--	---

Assessment/Plan

Anita is a 51-year-old female presenting back for follow-up of right sided L5-S1 synovial cyst resection. She states her preoperative radicular complaints continue as well as low back pain. She has had more recent onset of left posterior hip discomfort without known cause. She has been seen by her family physician and started on a Medrol Dosepak as well as continued pain medications. She has undergone recent x-rays which show no obvious instability as well as postoperative MRI. This MRI after review shows a new small right L4-5 synovial cyst without significant neural compromise, right L4-5 shows expected postoperative changes but no obvious recurrent disc herniation is noted. On exam her incisions healed nicely without sign of infection, upper and lower extremity strength and sensation are intact, gait is antalgic to the right, no obvious long tract findings. Today we've discussed she does have a small synovial cyst but would not recommend excision of this time. Also there does not appear to be a recurrent disc herniation on her MRI. We have discussed flexion and extension x-rays to see if she has any obvious instability of the lumbar spine. She does have a history of major depressive disorder which could be contributing to her chronic pain as well.

Again we will plan for flexion and extension films of the lumbar spine, we will call her with these results. If these are negative we will plan for referral to pain management for consideration of epidural injections. We'll see her back in 6-8 weeks.

No Follow-up on file.

Subjective Anita is following up with c/o back pain and bilateral leg pain, more so the right leg. Patient had MRI done at Anderson Radiology.

HPI

The following have been reviewed and updated as appropriate in this visit:

Review of Systems
Constitutional: Negative for fever.
HENT: Negative for hearing loss and tinnitus.

01/31/2018 - Telephone In AnMed Health Spine and Neurosurgery (continued)

01/31/2018 - Telephone In AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Mary A Campbell at 1/31/2018 11:13 AM

Author: Mary A Campbell
Filed: 1/31/2018 11:14 AM
Status: Signed

Service: —
Encounter Date: 1/31/2018
Editor: Mary A Campbell (Medical Assistant)

Author Type: Medical Assistant
Creation Time: 1/31/2018 11:13 AM

Patient asking for refill on pain medication. She states she was suppose to have Xray done and she has not done this yet due to financial reasons. But she will try to go next week to have this done.

Electronically signed by Mary A Campbell at 1/31/2018 11:14 AM

Flowsheets

No documentation.

PPD Results

No documentation.

Referral

No documentation.

02/01/2018 - Telephone in AnMed Health Spine and Neurosurgery (continued)

02/01/2018 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Mary A Campbell at 2/1/2018 4:06 PM

Author: Mary A Campbell	Service: —	Author Type: Medical Assistant
Filed: 2/1/2018 4:08 PM	Encounter Date: 2/1/2018	Creation Time: 2/1/2018 4:06 PM
Status: Signed	Editor: Mary A Campbell (Medical Assistant)	

Patient called, she came to office and picked up prescription. She called after she got the script. She states she is having same amount of pain in right leg, and she is having to take care of her dad. She states script is to take every 6 hours where it was every 4 hours. She asked if Travis knew what he was doing since he wrote the script? Patient asked that you call her.

Electronically signed by Mary A Campbell at 2/1/2018 4:08 PM

02/07/2018 - Telephone in AnMed Health Spine and Neurosurgery (continued)

02/07/2018 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Mary A Campbell at 2/7/2018 11:06 AM

Author: Mary A Campbell	Service: ---	Author Type: Medical Assistant
Filed: 2/7/2018 11:08 AM	Encounter Date: 2/7/2018	Creation Time: 2/7/2018 11:06 AM
Status: Signed	Editor: Mary A Campbell (Medical Assistant)	

Patient called asking for Xray result. She states the 5 mg is not helping. She asked does she need to go to pain management? She does not know what to do at this point with the pain in her leg.

Electronically signed by Mary A Campbell at 2/7/2018 11:08 AM

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Documents

Information - Physician Office

Scan on 3/5/2018 11:47 AM: pain mgmt

Scan (below)



18-03-05 08:43

Pied Comp Pain Mgmt 8643280328 >>

P 1/1

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: CHABEK, ANITA
PHYSICIAN: Eric Loudemilk, M.D.
SSN:

DOS: 02/28/18
DOD: 02/28/18
DOT: 03/01/18

Mrs. Chabek is a pleasant year-old female with pain in her lower back and right leg as well as her left ankle who returns today for followup and reevaluation. It has been eight months since her last visit. She apparently had a cyst projecting from the L4-L5 facet joint and underwent surgery by Dr. Larry Davidson in August of 2017 and says that her sciatica improved, but has now returned. She has an EMG and nerve conduction studies scheduled for tomorrow to evaluate the persistent pain in her right leg. She had an MRI of her lumbar spine which was done January 15, 2018 at Anderson Radiology. This shows a right-sided laminectomy with a facet joint resection at the L5 level. There was some moderate arthritis and edema on the left side at L5-S1 around the facet and pedicle suggestive of a stress reaction. There was small synovial cyst projecting medially at the right L4-L5 facet joint causing some impingement on the right side of the thecal sac. This was apparently a new finding compared to the previous MRI. Dr. Davidson had been prescribing hydrocodone for pain and I plan to refill a prescription for hydrocodone today.

Assessment:

1. Recurrent pain in the lower back and right leg possibly secondary to a small synovial cyst at the right L4-L5 facet joint with mild impingement upon the thecal sac at that level.
2. Persistent left ankle pain.
3. Chronic depression.

Plan:

1. I refilled Norco 5/325 mg q.6 h. as needed #120 for four weeks. I recommended continuing meloxicam 15 mg per day for inflammation.
2. She will undergo an EMG and nerve conduction test tomorrow to evaluate the persistent pain in her right leg. Given the results of the lumbar MRI, it appears that the cyst has returned and may need to be resected again. We will await the results of her nerve conduction studies.
3. I will see her back in four weeks for followup in my office. She is taking Celebrex instead of meloxicam and I recommended continuing Celebrex 200 mg per day.

Eric Loudemilk

Eric Loudemilk, M.D.
EL/DTI MA D122531
Dictated - Not Read

cc: Clifton W. Straughn, M.D., Fax#: (864) 261-4097
Larry S. Davidson, M.D., AnMed Health Neurosurgery 226-0680

MAR 05 2018

ELECTRONICALLY FILED - 2021 Jul 08 5:12 PM - ANDERSON - COMMON PLEAS - CASE#2021NI0400011

03/06/2018 - Office Visit in AnMed Health Spine and Neurosurgery (continued)

03/06/2018 - Office Visit in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Progress Notes

William Travis Jeffcoat, PA at 3/6/2018 1:00 PM

Author: William Travis Jeffcoat, PA
Filed: 3/6/2018 1:31 PM
Status: Signed

Service: —
Encounter Date: 3/6/2018
Editor: William Travis Jeffcoat, PA (Physician Assistant)

Author Type: Physician Assistant
Creation Time: 3/6/2018 12:56 PM

**AnMed Health
Anderson, SC**

PATIENT ID:

Anita Gail Chabek is a [REDACTED] y.o. female.

3/6/2018

Diagnosis	Plan
1. Synovial cyst of lumbar spine	Ambulatory referral to Physical Therapy

Assessment/Plan

Anita is a 52-year-old female presenting back for follow-up of right sided L5-S1 synovial cyst resection. She continues with low back pain as well as right lower extremity radicular complaints. She has recently undergone EMG/nerve conduction study which shows no active peripheral neuropathy or radiculopathy. She has also undergone postoperative MRI of the lumbar spine which does show a small right sided L4-5 synovial cyst as well as what appears to be a medial facetectomy of right L5-S1. She has also undergone flexion and extension films of the lumbar spine which show no gross instability. She has been seen by pain management and has continued on pain medications, no injections up to this point. On exam today she has a well-healed incision, upper and lower extremity strength and sensation are intact, gait is antalgic to the right, positive straight leg raise on the right, no obvious long tract findings. Today we've discussed the findings of probable medial facetectomy on the right at L5-S1 as well as small right sided L4-5 synovial cyst. It is unlikely this synovial cyst is symptomatic. We have discussed the possibility of CT myelography of the lumbar spine to closer evaluate the integrity of the right L5-S1 facet joint. If she indeed has missing medial facet she could be dealing with some degree of instability even though this is not identified on flexion and extension films. This also could be contributing to right L5-S1 foraminal collapse resulting in continued lower extremity pain. Again this is all been discussed with she and her husband today. She would like to consider the myelogram but hold off for the next few weeks. She would like to attempt physical therapy prior to any further imaging.

For now we will consider referral to physical therapy for core low back strengthening. If she has not improved in the next 2-3 weeks we will consider referral for CT myelography of the lumbar spine for closer evaluation of back pain and right lower extremity pain.

No Follow-up on file.

Subjective Anita is following up with c/o back and right leg pain. Patient had EMG testing for today's visit.

HPI

The following have been reviewed and updated as appropriate in this visit:

Review of Systems

03/07/2019 - Telephone in AnMed Health Spine and Neurosurgery (continued)

03/07/2019 - Telephone in AnMed Health Spine and Neurosurgery (continued)

Clinical Notes

Telephone Encounter

Kristen E Jennings at 3/7/2019 11:16 AM

Author: Kristen E Jennings Service: — Author Type: —
Filed: 3/7/2019 12:49 PM Encounter Date: 3/7/2019 Creation Time: 3/7/2019 11:16 AM
Status: Signed Editor: Kristen E Jennings

Called Mrs Chabek on 3/5/2019 and left a message for her to set up an appointment to see Dr MacDonald. Today I called Mr. Chabek as I did not hear back from Mrs Chabek and he stated she was not happy with our office and didn't want to come back. I apologized that she felt that way and explained that Dr MacDonald looked over her chart and stated he would love to see her. He stated he would speak with Mrs Chabek again and if she wanted to be seen he'd call me back.

Electronically signed by Kristen E Jennings at 3/7/2019 12:49 PM

Flowsheets

Vital Signs IP

Row Name	03/07/19:10:17
OTHER	
AH AMB PDMP	000
STIMULANTS	-DI at 03/07/19 1116
AH AMB PDMP	210
SEDATIVES	-DI at 03/07/19 1116
AH AMB PDMP	541
NARCOTICS	-DI at 03/07/19 1116
AH AMB PMP	
NXCMPND	STIM_000^SED_21 0^NX_541 NARxCHECK scores -DI at 03/07/19 1116

User Key

(r) = Recorded By, (t) = Taken By, (c) = Cosigned By

Initials	Name	Effective Dates	Provider Type	Discipline
DI	Interface, Doc Flowsheet In	—	—	—

PPD Results

No documentation.

Referral

No documentation.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiffs,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. _____

***PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS / MOTION FOR
SUMMARY JUDGMENT***

TO: Defendants and their attorneys.

Plaintiffs respectfully submit this memorandum of law in opposition to Defendants Motion to Diss. Defendant's motion should be denied because (1) Plaintiffs filed the Notice of Intent to File Suit within 3 years of her discovery that medical negligence may be the cause of her injuries, (2) Plaintiffs employed reasonable diligence in investigating the cause of her post-operative injuries and never had reason to suspect medical negligence as the cause prior to August 2018 and (3) even if the Court were to rule that the statute of limitation had passed as to the negligence of the surgery itself, the remaining claims against Defendant Davidson for failing to provide appropriate informed consent and against Defendant AnMed for negligent supervision should proceed because Plaintiffs did not discover the facts providing the basis for these claims until late 2020.

BACKGROUND

Plaintiffs would refer to Defendants Memorandum in Support for the pertinent history up to March 7, 2018. However, Defendants have omitted that Plaintiffs sought a second opinion from another neurosurgery group because they were not satisfied with the answers they were getting from Defendants. As such, Plaintiff was able to obtain an appointment with Advanced Spine and

Neurosurgical Associates in Greenwood, SC in July 2018. It was here that additional diagnostic studies were performed and that Mrs. Chabek was first informed, on August 2, 2018 that her post-operative leg and back pain could be due to a fracture of L5 facet joint.

Additionally, Plaintiffs would point out that pre-operatively, Mrs. Chabek met with Dr. Davidson on August 10, 2017 to discuss the potential risks and benefits of the surgical procedure. It is noted that Dr. Davidson specifically informed Ms. Chabek that the surgery could result in “recurrence of symptoms, spinal destabilization ... worsening of symptoms ... and the need for subsequent surgery.” Once Mrs. Chabek began experiencing post-operative complications, it will be her testimony that she was informed by Defendants that these complications were “known complications” and were not due to any potential negligence on the part of Dr. Davidson.

LEGAL STANDARD

Plaintiffs would emphasize Defendant’s Memorandum in Opposition setting forth that the Court must view all evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. (See Def Memo in Oppo. pg. 6).

ARGUMENT

1. Plaintiffs timely filed the Notice of Intent to File Suit within 3 years of her discovery of the potential negligence and properly employed reasonable diligence.

Plaintiffs allege in their pleadings that they had no reasonable cause to suspect that Ms. Chabek’s post-operative complications were due to medical negligence. As noted above, prior to surgery, Ms. Chabek was informed that she could experience continued leg and back pain as well as was informed she could actually suffer a worsening of her symptoms. Additionally, when the worsening of her pre-operative symptoms did manifest, it will be Ms. Chabek’s testimony that she was specifically told that these were known complications and that they occurred despite Dr. Davidson treating her appropriately. Ms. Chabek continued treatment with Defendants for six

months and never got a satisfactory answer as to potential solutions to her problems causing her to seek a second opinion. Within days of finally getting set up with a neurosurgery group, Ms. Chabek was first informed that the cause of her worsening symptoms was likely due to a fracture in her right L5 facet joint and to the removal of left L5 inferior taking facet.

Additionally, it is undisputed that Mrs. Chabek constantly sought medical treatment and answers for why she was suffering post-operatively. However, she was constantly informed by Defendants that the difficulties Mrs. Chabek was experiencing were known complications and were occurring despite appropriate medical treatment. In fact, Mrs. Chabek went beyond this to independently set up getting a second opinion to inquire about potential treatments for her continued pain. It was only then that Mrs. Chabek was first informed that her difficulties could have been related to inappropriate treatment. Thus, it is undisputed that Ms. Chabek acted appropriately in continuing to seek medical care and to follow the advice of her medical providers.

Viewing the evidence and all reasonable inferences in favor of the Plaintiffs, it is clear that the date of discovery of Defendant Davidson's potential negligence during the 8/22/17 surgery was not until July / August of 2018 meaning that the Notice of Intent filing in March 2021 did fall within the three years statute of limitations from the date of discovery and within the six years statute of repose. It is also clear that Plaintiffs employed reasonable diligence in seeking explanations for why Mrs. Chabek was suffering post-operative complications. As such, Plaintiffs respectfully requests the Court deny Defendants Motions to Dismiss and for Summary Judgment as to the Cause of Action against Defendant Davidson for medical negligence relating to the 8/22/17 surgery.

- 2. Even if the Court were to rule that the statute of limitation had passed as to the cause of action for medical negligence, the remaining claims against Defendants would remain.**

Plaintiffs have alleged two causes of actions against Defendant Davidson – medical negligence & failure to provide informed consent – and one cause of action against Defendant AnMed – negligent supervision. Defendants argue that all the causes of action should be lumped together with the same date of discovery. However, this is in error. The statute of limitations for cause of action for medical negligence would begin to run on the date that Plaintiffs either discovered or reasonable should have discovered that Dr. Davidson may have committed medical negligence during the surgery.

In contrast, the other causes of action relate to Dr. Davidson’s relapse into alcohol use – specifically, in Davidson’s failure to inform Mrs. Chabek of his relapse into alcoholism prior to the surgery as part of informed consent and in AnMed negligence in allowing a neurosurgeon in the midst of an alcohol abuse relapse to perform neurosurgeries at the hospital. Both of these causes of action are based on Plaintiffs’ discovery of Dr. Davidson’s former alcoholism and relapse into alcohol substance abuse that they did not discover until late 2020.

As such, even if the Court were to rule that the statute of limitation had passed as to the cause of action for medical malpractice in the performance of the surgery, the remaining claims against Defendant Davidson for failing to provide appropriate informed consent and against Defendant AnMed for negligent supervision should proceed because Plaintiffs did not discover the facts providing the basis for these claims until late 2020.

CONCLUSION

For the reasons set forth above, Plaintiffs pray that the Court would find that (1) Plaintiffs filed the Notice of Intent to File Suit within 3 years of her discovery that medical negligence may be the cause of her injuries, (2) Plaintiffs employed reasonable diligence in investigating the cause of her post-operative injuries and never had reason to suspect medical negligence as the cause prior

to August 2018 and (3) even if the Court were to rule that the statute of limitation had passed as to the cause of action for medical malpractice, the remaining claims against Defendant Davidson for failing to provide appropriate informed consent and against Defendant AnMed for negligent supervision should proceed because Plaintiffs did not discover the facts providing the basis for these claims until late 2020.

Respectfully submitted,

Jay Wright

Jay F. Wright
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135 Edinburgh Court, Suite 202
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jaywright@mcgowanhood.com

Attorney for Plaintiff

July 20, 2021
Anderson, SC

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anita and James Chabek,

Plaintiffs,

vs.

AnMed Health and Larry Davidson, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021-NI-04-00011

**PLAINTIFFS' MOTION TO
RECONSIDER**

TO: Defendants and their attorneys.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, through their undersigned attorneys, pursuant to the provisions of *Rule 59(e) SCRPC*, hereby move this Honorable Court to alter or amend its judgment as it relates to the Court's upcoming order granting Defendants' Motion for Summary Judgment.

Based upon the records and filings, including the Plaintiffs' memorandum in opposition to the Defendants' motion to dismiss / motion for summary judgment, the Plaintiffs respectfully contend that the Court erred as a matter of law in granting the Defendants' motion for summary judgment. Respectfully, the Plaintiffs submit that issues relevant to Defendants' motion for summary judgment have been misunderstood, not considered, or not ruled upon, and Plaintiffs respectfully moves this court to reconsider its upcoming Order granting Defendants' motion for summary judgment.

PROCEDURAL HISTORY

Plaintiffs filed a Notice of Intent to File Suit on March 12, 2021. Defendants filed for motions to dismiss or, in the alternative, for summary judgment on May 11 and May 13, 2021. Plaintiff filed an amended statement of facts on June 8, 2021. A hearing was conducted on July

21, 2021 before the Honorable Lawton R. McIntosh and the matter was taken under advisement. Judge McIntosh entered a Form 4 order on September 9, 2021 stating that “Defendants’ Motions for Summary Judgment were granted based on the statute of limitations” and for Defendants to prepare a formal order. The Defendants submitted the proposed formal order on September 17, 2021. The formal order has not yet been filed. Plaintiffs file are filing this motion before the filing of the formal order in the hopes that this issue can be taken up for consideration at the upcoming hearing on the motion to dismiss the Complaint in this case set to be heard July 30, 2021.

LEGAL STANDARD

“[A] party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” Elam v. S.C. Dep’t Transp., 361 S.C. 9, 21-22, 602 S.E.2d 772, 779 (2004). A Rule 59(e) motion provides a vehicle through which a party may (1) request that the circuit court reconsider matters properly encompassed in a decision on the merits or “alter or amend” its judgment, or (2) attempt to obtain a ruling on issues or arguments previously raised to the court. Id. A party may file a Rule 59(e) motion when it believes the court “misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Id. at 24, 602 S.E.2d at 780.

A scintilla of evidence is all that is required by the non-moving party to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., Inc., 673 S.E.2d 801 (S.C. 2008). Summary judgment is not appropriate where there is a genuine issue of material fact, and in determining whether a triable issue of fact exists, the evidence and all factual inferences drawn must be viewed in a light most favorable to the nonmoving party. HK New Plan Exch. Prop. Owner I, LLC v. Coker, 649 S.E.2d 181, 183 (S.C. Ct. App. 2007). Even if evidentiary facts are not disputed, summary judgment should be denied where the conclusions or inferences to be drawn

from the undisputed facts conflict. Baugus v. Wessinger, 401 S.E.2d 169, 171 (S.C. 1991). Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of law. Tupper v. Dorchester County, 487 S.E.2d 187, 191 (S.C. 1997). Summary judgment is a drastic remedy that should be cautiously invoked in order not to improperly deprive a litigant of a trial of the disputed factual issues. Murray v. Holnam, Inc., 542 S.E.2d 743, 747 (S.C. Ct. App. 2001).

ARGUMENT

A. Summary judgment pursuant to the Statute of Limitations is not proper because the date on which discovery is made is a question of fact for a jury when there is conflicting evidence

S.C. Code Ann. §15-3-545 sets forth the statute of limitations pertaining to medical malpractice actions as three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered. As Plaintiffs are relying on the discovery rule in pleading their causes of action, the central question then becomes – the three year statute of limitations begins on the discovery of what?

The statute of limitations begins to run when a *cause of action* reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (S.C. 1996). “The statute begins to run from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the *wrongful conduct*. *Id.* (citing Johnston v. Bowen, 313 S.C. 61, 437 S.E.2d 45 (1993) stating that date of discovery begins when person of common knowledge and experience would be put on notice that some right of his had been invaded or that some claim against another party might exist).

To establish a cause of action for medical malpractice, a plaintiff has to prove that a medical professional deviated from generally accepted standards, practices, and procedures and that such negligence proximately caused injury to the plaintiff. Brouwer v. Sisters of Charity Providence Hospitals, 409 S.C. 514, 521, 763 S.E.2d 200, 203 (S.C. 2014). Therefore, the plaintiff must either be aware or ought to have been reasonably aware that a deviation from the standard of care may have occurred in order for the three year statute of limitations to begin to run. Otherwise, the plaintiff would have no reason to suspect that they would have a cause of action, that their rights had been violated, or that wrongful conduct had occurred.

Additionally, when there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide. Arant v. Kressler, 372 S.C. 225, 229, 489 S.E.2d 206, 208 (S.C. 1997).

Mrs. Chabek has pled that following her August 2017 surgery that the complications she was experiencing were known risks of her procedure and were not the result of any inappropriate treatment or medical negligence. As such, she continued under the care of these doctors – trusting their statements to her – until July 2018 when she got a second opinion from a different neurosurgeon. New imaging was done and Mrs. Chabek first learned that her continued pain was likely due to a fracture of the L5 facet joint in August 2018. It was at this time that Mrs. Chabek first had reason to suspect that her injuries might be due to wrongful conduct by Dr. Davidson during her prior.

As such, conflicting testimony exists regarding when Mrs. Chabek reasonably should have learned that she might have a claim against Defendants for wrongful conduct related to her surgery and Plaintiffs have met the burden of providing at least a scintilla of evidence that a genuine issue of material fact exists. At the very least, a ruling on the motion for summary judgment should be

withheld until further inquiry into the facts of the case – such as the deposition of Mr. and Mrs. Chabek – can clarify the application of law and the timing of the date of discovery.

Additionally, Mrs. Chabek's claims for negligent supervision and lack of informed consent are based on information pertaining to Defendant Davidson's substance abuse relapse which Mrs. Chabek did not learn of until November 2020. There has been no assertion that Mrs. Chabek was aware of this information prior to November 2020. Therefore, Plaintiffs have met the burden of providing at least a scintilla of evidence that a genuine issue of material fact exists as to the causes of action for lack of informed consent and negligent supervision.

B. Plaintiffs' causes of action are not barred by any statute of limitations

i. The statute of limitations for Plaintiff's cause of action for medical malpractice did not begin to run until May 2018

Mrs. Chabek first reasonably learned that she may have a cause of action for negligence pertaining to the August 2017 surgery in August 2018 when she first learned that she had a fracture of her L5 facet joint and that additional surgery would likely be needed. Therefore, the statute of limitations would not run on Plaintiffs' first cause of action for negligent performance of the August 2017 surgery until August 2021 and does not bar this cause of action because the Notice of Intent was filed in March 2021.

ii. The statute of limitations for Plaintiffs' second-fourth causes of action did not begin to run until November 2020.

Plaintiffs' second, third, and fourth causes of action (lack of informed consent, negligent supervision, and general negligence) all pertain to Davidson performing neurosurgeries while in the midst of an alcohol substance abuse relapse. Similar to the above, these causes of action would not begin to run until Plaintiff knew or reasonably ought to have known that they may have a cause

of action, that their rights had been violated, or that wrongful conduct had occurred due to Defendants' breach of a duty.

To establish a cause of action for lack of informed consent, a plaintiff has to prove that a medical professional failed to inform the patient of the material risks involved in the procedure. Hook v. Rothstein, 281 S.C. 541, 547, 316 S.E.2d 690, 694-95 (Ct. App. 1984). The material risk Plaintiff alleges that she was not informed of was that Davidson was planning to perform her surgery while in the midst of an alcohol substance abuse relapse. Plaintiff did not learn of this information until November 2020 and, therefore, had no reason to suspect that she had a cause of action for lack of informed consent until that time.

Similarly, Plaintiff's cause of action for negligent supervision that AnMed either knew and/or should have had reason to suspect that Davidson was dealing with substance abuse issues prior to her surgery also arises from the knowledge that Davidson performed her surgery while in the midst of an alcohol substance abuse relapse. Plaintiff did not learn of this information until November 2020 and, therefore, had no reason to suspect that she had a claim for negligent supervision until that time.

Finally, Plaintiffs' allegations that AnMed should not have allowed a surgeon with suspected substance abuse issues to perform surgical operations and/or that Davidson should not have performed surgical operations while in the midst of a substance abuse relapse also stem from the information learned of November 2020 of Davidson's alcoholism relapse. As such, Plaintiff had no reason to suspect she had a cause of action for general negligence until that time.

CONCLUSION

Plaintiffs respectfully requests the Court alter or amend its yet to be filed order granting Defendants' motion for summary judgment.

Respectfully submitted,
s/ Jay Wright

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135 Edinburgh Court, Suite 202
Greenville, SC 29607
(864) 252-4406
jaywright@mcgowanhood.com

Attorney for Plaintiff

September 27, 2021
Anderson, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	C/A NO.: 2021-CP-04-01458
)	
Anita and James Chabek,)	
)	
Plaintiffs,	)	DEFENDANT LARRY DAVIDSON, MD'S
	)	MOTION TO DISMISS
vs.)	
)	
AnMed Health and Larry Davison, M.D.,)	
)	
Defendants.)	

TO: JAY F. WRIGHT, ESQUIRE, AS ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the Defendant, Larry Davidson, MD, by and through his undersigned attorney, will move before the Presiding Judge of the Anderson County Court of Common Pleas, ten days hence or as soon thereafter as counsel may be heard, for an Order dismissing this action against Larry Davidson, MD on the ground that the action against Larry Davidson, MD is barred by the applicable three-year statute of limitations and that the Complaint is premature in so much as there is a pending motion to dismiss the Notice of Intent to File Suit which has not yet been ruled upon.

This Motion shall be based upon the applicable statutory, regulatory, and case law, upon any affidavits filed with the Court, upon any pleadings of record, upon any depositions, upon any discovery, and upon such further information and argument as may be received by the Court.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Fred W. "Trey" Suggs III
Fred W. "Trey" Suggs III, SC Bar No. 70222
P. O. Box 10529
Greenville, SC 29603
Phone: 864-349-2600
Fax: 864-349-0303
Attorney for Defendant Larry Davidson, MD

Greenville, South Carolina
August 27, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	C/A NO.: 2021-CP-04-01458
)	
Anita and James Chabek,)	
)	
Plaintiffs,)	
	)	DEFENDANT ANMED HEALTH'S
vs.	)	MOTION TO DISMISS
)	
AnMed Health and Larry Davison, M.D.,)	
)	
Defendants.)	

TO: JAY F. WRIGHT, ESQUIRE, AS ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that Defendant AnMed Health, by and through its undersigned attorneys, will move before the Presiding Judge of the Anderson County Court of Common Pleas, on September 30, 2021, for an Order dismissing this action against AnMed Health on the ground that the action against AnMed Health is barred by the applicable three-year statute of limitations and that the Complaint is premature in so much as there is a pending motion to dismiss the Notice of Intent to File Suit which has not yet been ruled upon.

This Motion shall be based upon the applicable statutory, regulatory and case law, upon any affidavits filed with the Court, upon any pleadings of record, upon any depositions, upon any discovery and upon such further information and argument as may be received by the Court.

Respectfully submitted,

s/Marian Williams Scalise
Marian Williams Scalise, Esquire (SC Bar No. 6744)
Lydia L. Magee, Esquire (SC Bar No. 16584)
C. Hunter Holland, Esquire (SC Bar No. 104162)
Richardson, Plowden & Robinson, P.A.
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hholland@richardsonplowden.com

Attorneys for Defendant AnMed Health

August 31, 2021
Myrtle Beach, South Carolina

AFFIAVIT of JOHN CHARLES HYDE, Ph.D., F.A.C.H.E, M.S.H.A.

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, AND SAYS AS FOLLOWS:

1. I am a practicing healthcare consultant board certified by the American College of Healthcare Executives, at the Fellowship level (FACHE). I am currently involved in the following healthcare consulting activities: 1) providing both applied and operational assessments and strategic planning advice; 2) assisting in litigation matters on both the defense and plaintiff sides in various areas of healthcare administration; and, 3) actively contributing to research and publication within the healthcare field. I am also an Adjunct Professor, School of Public Health, Department of Health Policy and Management, George Washington University. My background, training and experience are set forth in my *curriculum vitae* attached hereto.

2. I am familiar with the standard of care of what a reasonably prudent Hospital Administrator would do or not do in dealing with a surgeon with substance abuse issues. It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected actions that should have been taken to protect patients from a surgeon dealing with substance abuse issues.

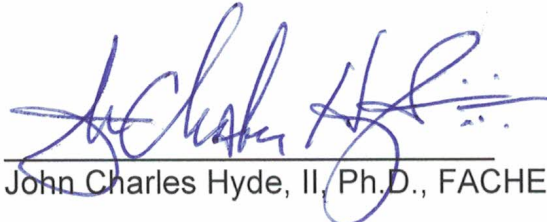
3. I have reviewed the Pleadings, deposition of Larry Davidson, MD., and various discovery documents.

4. Based upon a review of the records of referenced above, it is my opinion that AnMed Health was negligent in their monitoring/supervision of Dr. Davidson in allowing a surgeon dealing with substance abuse issues to continue to perform surgeries without supervision if AnMed Health had only the slightest suspicion that the surgeon could be dealing with substance abuse issues.

5. Evidence I have reviewed that support that AnMed should have suspected Dr. Davidson was dealing with substance abuse issues is as follows: (1) Dr. Davidson is an alcoholic, reportedly in sustained remission, at the time of Mrs. Thomas' surgery on 11/22/17, (2) Dr. Davidson has been accused of at least three cases of medical malpractice in the August – December 2017 timeframe including the current litigation, each with horrific injuries, (3) during this timeframe some kind of issue was going on between AnMed and Dr. Davidson requiring Dr. Davison to meet with hospital administration for “behavioral issues” as early as 8/30/17, (4) Dr. Davidson, reportedly, completely missed the pedicle bone during Mrs. Thomas's surgery, instead placing a screw into her nerve root, (5) Dr. Davidson, reportedly, cut the carotid artery during Mrs. Riggins' surgery and also injured her right recurrent laryngeal nerve, right phrenic nerve, and brachioplexus, (6) Dr. Davidson was arrested for DUI on 12/22/17, (7) that the resolution of the DUI was that he pled down to reckless driving for which he was found guilty and convicted, (8) that Dr. Davidson's substance abuse was significant enough to require admission into a three month inpatient rehab program, and (9) that at the conclusion of his rehab program, according to his employee file, AnMed took the drastic action of involuntarily terminating Dr. Davidson and noting that he would never be eligible again for rehire at AnMed.

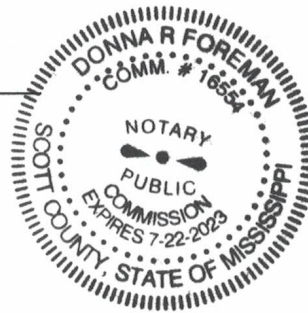
6. Further, it is my opinion that the most likely cause of allowing a surgeon with a suspicion of substance abuse issues to continue to perform surgeries would be that AnMed was motivated by financial concerns of losing revenue instead of the hospital being properly concerned for patient safety.

7. This affidavit is given in compliance with *South Carolina Code of Laws §§15-36-100 and 15-79-125* which do not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving supplemental medical records, depositions, or additional information.


John Charles Hyde, II, Ph.D., FACHE

Sworn to and signed before me
this 16th day of August, 2020

Donna R. Foreman
Notary Public for State of Mississippi
My Commission Expires: 7-22-2023



AFFIAVIT of SANFORD H. DAVNE, M.D.

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, AND SAYS AS FOLLOWS:

1. I am an orthopedic surgeon and board certified by the American Board of Orthopedic Surgery. I am a practicing physician and attending physician in the Department of Orthopedic Surgery at the Cooper University Hospital. My education, training and experience are set forth in the attached CV (Exhibit A).

2. It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care that should have been rendered to various patients of Dr. Davidson and I am familiar with the standard of care of what a reasonably prudent neurosurgeon would do or not do in spinal procedures.

3. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of AnMed Health and Larry Davidson, M.D. committed negligent acts or omissions in their care and treatment of various patients. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:

- In failing to properly inform patients that Dr. Davidson was dealing with an alcohol substance abuse relapse as part of proper informed consent in providing to the patients the information necessary for the patient to make an informed decision as to whether to undergo a surgical procedure with Dr. Davidson.

5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. caused or contributed to the injuries, damage, and pain and suffering of various patients.

6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. at this time is the general information that Dr. Davidson was performing delicate spinal surgeries while likely dealing with an alcohol substance abuse relapse and chose not to properly share this information with his patients.

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving supplemental medical records, depositions, or additional information.



SANFORD H. DAVNE, M.D.

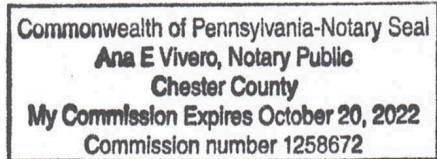
Sworn to and signed before me

this 17th day of Oct 2020



Notary Public in and for State of PA

My Commission Expires: Oct 20, 2022



AFFIAVIT of SANFORD H. DAVNE, M.D.**PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, AND SAYS AS FOLLOWS:**

1. I am an orthopaedic surgeon and board certified by the American Board of Orthopedic Surgery. I am a practicing physician and attending physician in the Department of Orthopedic Surgery at the Cooper University Hospital. My education, training and experience are set forth in the attached CV (Exhibit A).

2. It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care that should have been rendered to Anita Chabek in this case and I am familiar with the standard of care of what a reasonably prudent neurosurgeon would do or not do in synovial cyst removal procedures.

3. I have reviewed the medical records of Anita Chabek, which consisted in part of records from AnMed Health and Anderson Radiology. The records I have reviewed are the type documents, which I would consider in rendering an expert medical opinion in this case.

4. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of AnMed Health and Larry Davidson, M.D. committed negligent acts or omissions in their care and treatment of Anita Chabek. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:

- In failing to exercise the technical skills expected to be employed by a reasonable prudent surgeon during a right-sided L5/S1 synovial cyst removal by negligently removal of an excessive portion of the right L5-S1 facet joint and by failing to install instrumentation and perform fusion to properly support the spine following a partial medial facetectomy.
- In failing to properly inform Ms. Chabek of the available alternative treatments.

5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. caused or contributed to the injuries, damage, and pain and suffering of Anita Chabek.

6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of AnMed Health and Larry Davidson, M.D. at this time are the medical records of Anita Chabek.

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving supplemental medical records, depositions, or additional information.


SANFORD H. DAVNE, M.D.

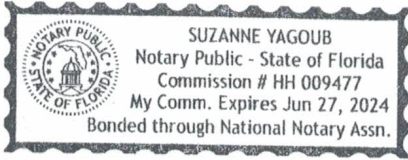
Sworn to and signed before me

this 20th day of April 2021

Suzanne Yagoub

Notary Public in and for State of Florida

My Commission Expires: June 27th 2024



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	C. A. No.: 2021-NI-04-00011
)	
Anita and James Chabek,)	
)	
Plaintiff(s),)	
)	
-vs-	)	PROOF OF ADR OR EXEMPTION
)	
AnMed Health and Larry Davidson, MD,)	
)	
Defendants.)	
_____)	

PURSUANT TO the Court’s Standing Order for Alternative Dispute Resolution dated July 14, 1999,

A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Plaintiff(s)/Attorney for Plaintiff(s)

Defendant(s)/Attorney for Defendant(s)

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

B. 1. Alternative Dispute Resolution (ADR) was conducted in the form of: **Mediation via Telephone Conference.**

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator): **L. Lee Plumblee**

3. The ADR was conducted on **July 27, 2021.**

4. As a result of ADR, this case should be considered (please check one):

() Fully Settled (please check one):

() By Consent Judgment, to be filed by _____, or
(Name of Designee)

() By Voluntary Dismissal to be filed by _____.
(Name of Designee)

() Partially settled.

(X) At an impasse.

() In need of further ADR. (I ___ am/___not willing to continue as neutral.

5. Plaintiff X was ___ was not present
Defendant X was ___ was not present

6. Other participants were:

Attorney for Defendant: Marian Scalise, Esq.

Attorney for Plaintiff: Jay Wright, Esq.

Representatives for insurance carrier _____

Guardian ad Litem _____

Experts _____

Others _____

7. Choice of the neutral was by:

X Stipulation

___ Court Order

8. The total number of hours spent in ADR was: **1:00 HOUR**

9. Further comments of the neutral:



Neutral's Signature

L. Lee Plumblee

Phone: (864) 235-2600 Fax: (864) 235-4600

Date: **July 28, 2021**

From: Marian Scalise <MScalise@RichardsonPlowden.com>
Date: Friday, September 17, 2021 at 11:04 AM
To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>, Jay Wright <jaywright@mcgowanhood.com>, Trey Suggs <tsuggs@roecassidy.com>, Beth McNeill <bmcneill@richardsonplowden.com>, Meredith Sissel <msissel@roecassidy.com>
Cc: McIntosh, Lawton Law Clerk (Grace Kerley) <lmcintoshlc@sccourts.org>
Subject: RE: 2021NI0400011 Anita Chabek et, al v. AnMed Health

Pursuant to the Form 4 Order granting the Defendants' Motion for Summary Judgment and requesting the defense to prepare a proposed Order, please see attached. We are efilng this for Judge McIntosh's queue.

Thanks,

Marian Scalise

From: McIntosh, Lawton Secretary (Tammy Jennings) [mailto:lmcintoshsc@sccourts.org]
Sent: Tuesday, September 14, 2021 2:26 PM
To: Marian Scalise <MScalise@RichardsonPlowden.com>; Jay Wright <jaywright@mcgowanhood.com>
Cc: McIntosh, Lawton Law Clerk (Grace Kerley) <lmcintoshlc@sccourts.org>
Subject: 2021NI0400011 Anita Chabek et, al v. AnMed Health

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Afternoon,

I have notes stating the above mentioned case is currently UA with Judge McIntosh. Our law clerk who sat in on this hearing is no longer with us, so all that I have is her notes. Per her notes, there could be a Summary Judgment pending on this case, however, I do not see it. From what I can figure out, the only thing pending on this case is 2 motions to dismiss.

I want to make sure I am correct and that is the only issue we have UA at this time.

Thank you,

Tammy Jennings

**Administrative Assistant to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
(864)260-4059
lmcintoshsc@sccourts.org**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Oct 04 2021

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-NI-04-00011

Anita and James Chabek Appellants,

v.

AnMed Health and Larry Respondents.
Davidson, MD

NOTICE OF APPEAL

Appellants Anita and James Chabek, appeal from an order of the Honorable R. Lawton McIntosh granting Respondents AnMed Health and Larry Davidson, MD’s Motion for Summary Judgment and order denying Appellants’ Motion to Reconsider. Appellants received notice of the form 4 order granting summary judgment on September 15, 2021 with instructions for Defense counsel to prepare a formal order. The proposed formal order was submitted via email on September 17, 2021. To date, the formal order has not been approved. Appellants filed a Rule 59(e) motion to reconsider on September 27, 2021. Appellants received written notice of entry of the form 4 order denying Plaintiff’s Motion to Reconsider on September 27, 2021. Pursuant to Rule 203(d)(1)(B), SCACR, a copy of the orders Appellant challenges on appeal are attached to this Notice.

- Signature Page to Follow -

Respectfully submitted,

s/ Jay Wright

Jay F. Wright (SC Bar # 78738)
Jordan C. Calloway (SC Bar # 78728)
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135 Edinburgh Court Suite 202
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Facsimile: (864) 252-4480
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Attorneys for Appellant

Other attorneys of record:

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tsuggs@roecassidy.com

Attorneys for Respondent Larry Davidson,
MD

October 4, 2021
Greenville, SC

CERTIFICATE OF SERVICE

I, the undersigned, an employee of McGowan Hood & Felder, LLC, for Appellants, Anita and James Chabek, do hereby certify that I have this date served the foregoing Notice of Appeal dated October 4, 2021 by personally serving the same pursuant to Section (d)(1) of the Supreme Court’s Order dated August 25, 2021, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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Richardson, Plowden & Robinson, P.A.
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Facsimile: (843) 582-0263
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MD

s/ Jay Wright
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Facsimile: (864) 252-4480
jaywright@mcgowanhood.com
**Attorneys for Appellants
Anita and James Chabek**

Dated: October 4, 2021

RECEIVED

Apr 26 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2021-001129

Anita and James Chabek, Appellants,

v.

AnMed Health and Larry
Davidson, MD, Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, Appellants' counsel hereby certifies that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

Respectfully submitted,

/s/ Jordan C. Calloway

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Rock Hill, SC
April 26, 2022

Attorneys for Appellants