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