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S.C. SUPREME COURT

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February 13, 2025

Patricia A. Howard, Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, S.C. 29201

Re: Dr. Scott F. Duncan, M.D., Petitioner v. OrthoSC, LLC, a South Carolina limited liability company, and Dr. Gene M. Massey, M.D., Respondents  
Appellate Case No. 2024-000808

Dear Ms. Howard:

Our firm represents Petitioner Dr. Scott F. Duncan, M.D., in the above-referenced matter. Yesterday, we received the Court's Order advising that Petitioner's petition for a writ of certiorari has been granted. The petition was filed on May 17, 2024.

The underlying proceedings in the circuit court involve Petitioner's appeal of the circuit court's orders declining to enforce two arbitration subpoenas which the arbitrator had issued to Respondents OrthoSC, LLC and Dr. Gene M. Massey, M.D. in an arbitration proceeding conducted by the American Health Law Association (AHLA). Petitioner applied to the circuit court pursuant to the South Carolina Uniform Arbitration Act (SCUAA), S.C. CODE ANN. § 15-48-80, seeking to enforce compliance with the subpoenas.

After the filings involving Petitioner's petition for a writ of certiorari were completed in this Court, the arbitrator in the AHLA proceeding scheduled a final arbitration hearing to take place despite the pending appeal relating to enforcement of the arbitrator's subpoenas. The arbitrator would not delay a final arbitration hearing until after this appeal was decided. The parties eventually resolved the claims in the arbitration before the final hearing was held and the arbitrator dismissed the arbitration proceeding on October 16, 2024. Although the arbitration proceeding has been ended, Petitioner's claims against Respondents in the circuit court are still pending and have not yet been resolved.

Shortly after receiving yesterday's Order granting the petition for a writ of certiorari, Respondents' counsel notified me that her view is this appeal should be dismissed as moot. Our position is this appeal should still be considered based on the exception to the mootness doctrine when the issues raised to the Court are capable of repetition but evading review. *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996); *Baddourah v. McMaster*, 433 S.C. 89, 95-96, 856 S.E.2d 561, 564-65 (2021); see also *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 180, 519 S.E.2d 567, 571 (1999) ("We choose to decide this appeal even though this particular case is moot. The same situation could arise again and it is unlikely an

appellate court would resolve such a case before an election was held.”); *South Carolina Dep't of Mental Health v. State*, 301 S.C. 75, 390 S.E.2d 185 (1990) (although specific case is moot, appeal allowed because it raises a question that is capable of repetition, but which usually becomes moot before it can be reviewed); *Evans v. South Carolina Dep't of Social Servs.*, 303 S.C. 108, 399 S.E.2d 156 (1990) (although development renders case moot, controversy presents a recurring dilemma which the Court will address to clarify the law).

As discussed in Petitioner’s petition, we submit this appeal raises novel and important issues under state law. Given the nature of arbitration proceedings, which typically proceed on an expedited schedule, matters like the instant case usually are concluded before an appellate court has an opportunity to review and rule on the issues.

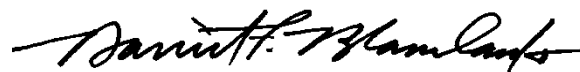
We wanted to bring the above to the Court’s attention. Of course, if the Court wishes for the parties to address the mootness issue in their respective briefs or if the Court wants the parties to file memoranda specifically addressing that issue before the briefing process begins, we trust the Court will provide us with guidance in that regard.

We thank you for your assistance in this matter.

With best regards, I am

Sincerely,

ROSEN HAGOOD, LLC



*Reviewed and Approved for Electronic Transmission*

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