

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

John G. Falcon,  
Plaintiff,

vs.

ScribeAmerica, LLC, Spartanburg Regional  
Health Services District, Inc., and Thomas M.  
Boyd, both personally, and in his official  
capacity as an employee of Spartanburg  
Regional Health Services District, Inc.,  
Defendants.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2024-CP-42-05047

**ORDER**

**RECEIVED**  
**Aug 07 2025**  
**SC Court of Appeals**

This matter came before the Court on April 10, 2025 for a hearing on the Motion to Stay and Compel Alternative Dispute Resolution filed by Defendants Spartanburg Regional Health Services District, Inc. and Thomas M. Boyd. As requested by the Court, prior to the hearing, the moving Defendants and the Plaintiff, who opposed the motion, submitted memoranda of law supporting their respective positions. Joshua T. Thompson of Boulter Thompson & Barnes, LLC appeared at the hearing on behalf of the two moving defendants. Stephen H. Brown of Stephen H. Brown, LLC appeared on behalf of Plaintiff. Charles A. Kinney of Cozen O'Connor appeared at the hearing on behalf of Defendant ScribeAmerica, LLC, to monitor the proceedings, but did not participate in the arguments presented. The parties were each ably represented at the hearing by their respective legal counsel. After review of the legal memoranda submitted and careful consideration of the oral arguments of counsel presented at the hearing, this Court determines that Defendants' motion must be stayed, held in abeyance, pending discovery to be conducted by the parties.

## **PROCEDURAL HISTORY**

This is a recently filed action. Defendants Spartanburg Regional Health Services District, Inc. (“SRHS”) and Thomas M. Boyd, both personally, and in his official capacity as an employee of Spartanburg Regional Health Services District, Inc., first appeared by jointly filing an Answer on March 12, 2025. That pleading was promptly followed by their filing of a joint motion to Stay and Compel Alternative Dispute Resolution on March 13, 2025. Those two defendants assert that the alternative dispute resolution (“ADR”) provision contained in Plaintiff’s written Physician Employment Agreement of April 1, 2020 (the “PEA”) with Defendant SRHS requires that this Court stay the proceedings against them, including discovery, and submit the dispute to resolution through ADR, both mediation and, if necessary, arbitration, consistent with the terms of the PEA. It is undisputed that the PEA between Plaintiff and SRHS contains an ADR provision. However, Defendant Thomas M. Boyd, personally, is not a signatory to the PEA in question, and has no contractual basis for entitlement to ADR. Furthermore, Plaintiff alleges that his claim of civil conspiracy, his only claim raised in this action against the two moving defendants, is based on outrageous tortious acts of those defendants, not covered or anticipated by the PEA between Plaintiff and SRHS. The respective positions of the parties require this Court to review and consider the allegations of the parties’ pleadings as it applies the governing law to this case because at this early stage of the litigation there is a very limited factual basis upon which a ruling could be based.

### **FINDINGS OF THIS COURT**<sup>1</sup>

In their motion, Defendants argue that “because Plaintiff admits that SRHS is a governmental entity and Dr. Boyd was employed by SRHS, Section 15-78-70(c) of the South Carolina Tort Claims Act dictates that Dr. Boyd be dismissed and that SRHS be substituted as the party defendant in his place.” They then explain that “SRHS refrains from raising such dispositive grounds for dismissal until its preliminary motion to compel alternative dispute resolution is ruled upon.” At this time, Thomas M. Boyd, individually, is a defendant named in this action. One cannot get to Section 15-78-70(c) of the South Carolina Tort Claims Act without first going through S.C. Code Ann. §15-78-70(b). That code section specifically establishes that nothing in the South Carolina Tort Claims Act can be construed as giving a governmental employee immunity from suit and liability when that “employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” Plaintiff’s Complaint contains only one cause of action against Defendant Boyd. It is a claim for civil conspiracy. Plaintiff has expressly alleged that Defendant Boyd intentionally, willfully and unlawfully sought to breach the physician/patient privilege to which Plaintiff and his patients were entitled by law. In particular, Plaintiff has alleged that “Such wrongful actions of Defendant Boyd were outside of the scope of his official duties for SRHSD and constituted actual malice and intent to harm the Plaintiff.” (See Plaintiff’s Complaint at Paragraphs 13 and 31).

Because the alleged wrongful acts of Defendant Boyd giving rise to this legal action fall outside of the protections given to governmental employees pursuant to S.C. Code Ann. §15-78-70(c), and instead fall squarely within the express provisions of S.C. Code Ann. §15-78-70(b),

---

<sup>1</sup> All findings of fact and conclusions of law indicated in this order are made for the purpose of ruling on this motion only.

Defendant SRHS cannot and must not be substituted for Defendant Boyd, personally, in this case at this time. Since it is beyond dispute that Defendant Boyd, personally, is not a signatory to the PEA with Plaintiff containing a mandatory ADR provision, Defendant Boyd has no statutory basis at this time to prevail on his claim that Plaintiff is contractually obligated to resolve any legal dispute with him outside of this Court. As alleged in Plaintiff's Complaint, this Court finds that it has jurisdiction over the parties, specifically including Defendant Boyd.

Independent of his assertion of statutory protection that this Court rejects, Defendant Boyd, along with SRHS, cites this Court to the South Carolina Supreme Court decision in S.C. Pub. Serv. Authority v. Great Western Coal, et. al. 312 S.C. 559, 437 S.E.2d 22 (1993) for the proposition that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or signatory parties in their individual capacity because this would nullify the rule requiring arbitration." Id. at 563, 437 S.E.2d at 24-25. This Court finds Defendants' argument on this point unpersuasive. The case now before this Court is distinguishable from Great Western Coal.

The South Carolina Supreme Court decision in Great Western Coal reversed a lower court order denying the applicability of an arbitration clause found in a contract after discovery in the case had been conducted and concluded. The initial motion of the defendant to compel arbitration in Great Western Coal was stayed and held in abeyance pending discovery. It was only after discovery was concluded that Judge Howell ruled that the arbitration clause at issue in Great Western Coal was unenforceable. Significantly, on appeal, the Supreme Court while reversing the ruling of Judge Howell, expressly stated "Here, we find only the actions for which Santee seeks damages based upon the coal contracts are arbitrable and not the remaining causes of action.

Therefore, we reverse the order denying arbitration and remand this case for the trial court to determine which causes of action are arbitrable under this criterion.” Id. at 563, 437 S.E.2d at 25.

The allegations of Plaintiff’s Complaint are what this Court must look to at this stage of the litigation because few of the relevant facts have been developed. Plaintiff has expressly alleged all of the essential elements of a cause of action for civil conspiracy against Defendant Boyd, which if proven at trial, would justify a judgment against Defendant Boyd personally. For reasons set forth below, the fact that Defendant Boyd is employed by an entity that had a written contract with Plaintiff that contained an ADR provision is not controlling on the question of the applicability of that ADR provision on Plaintiff’s claims against Boyd, personally, at this stage of this dispute.

Unlike Defendant Boyd in his personal capacity, SRHS is indisputably a signatory to a written contract with Plaintiff that contains an ADR provision. To grant the motion to compel ADR now before this Court, a determination must be made that a significant relationship exists between the parties’ dispute and the underlying contract, thereby triggering the ADR provision in the PEA between Plaintiff and SRHS. This Court is unable to conclude at this time that the ADR provision contained in the PEA is implicated by the dispute between the parties based on the allegations set forth in Plaintiff’s Complaint. Plaintiff has alleged serious and outrageous actions on the part of the Defendants, including SRHS, conspiring together to breach physician/patient confidentiality, for the unlawful purpose of interfering with Plaintiff’s exercise of his independent medical judgment, as part of the Defendants’ unlawful effort to engage in the corporate practice of medicine. (Complaint at Paragraph 34). Plaintiff has specifically alleged that Defendants, including SRHS, unlawfully and willfully reported Plaintiff’s physician/patient communications, protected by law, to persons who were not acting as part of the patient’s medical treatment team

and had no legal authorization or medical justification to be given such confidential medical information. (Complaint at Paragraph 33). These are very serious allegations. None of them have been proven yet, and perhaps never will be. Nevertheless, this Court refuses to find at this time that such outrageous and tortious actions as alleged in the Complaint were contemplated by Plaintiff at the time he executed his PEA with SRHS. Accordingly, this Court declines to find at this time that the ADR provisions of the April 1, 2020 PEA between Plaintiff and SRHS are triggered by the claims alleged in the Complaint.

While this Court is unable to determine, at this time, and therefore unwilling to rule that the ADR provision of the PEA between Plaintiff and SRHS must be enforced, this Court is also unwilling, at this time, to deny the motion of SRHS to compel ADR. Having carefully considered the matter, and guided by the procedures employed by the various South Carolina courts in Great Western Coal, this Court has determined that justice will be served by staying and holding in abeyance the motion now pending before this Court until sufficient time has been provided for the parties to conduct and complete the discovery required to create a factual record to which this Court can wisely apply the governing law. Accordingly, the motion to stay and compel alternative dispute resolution filed by Defendants Spartanburg Regional Health Services District, Inc. and Thomas M. Boyd is hereby stayed, and held in abeyance, pending discovery being conducted and completed by the parties pursuant to the applicable South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.

---

The Honorable Dale E. Van Slambrook  
South Carolina Circuit Court Judge

June 4, 2025



Spartanburg Common Pleas

**Case Caption:** John G. Falcon VS Scribeamerica , defendant, et al

**Case Number:** 2024CP4205047

**Type:** Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge  
#2781