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**Nov 05 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Horry County  
Court of General Sessions

Honorable Alexander S. Macauley, Circuit Court Trial Judge  
Honorable Benjamin H. Culbertson, Circuit Court Judge on Remand

Opinion No. 2025-UP-293 (S.C. Ct. App. filed August 13, 2025)  
Appellate Case No. 2025-002076

\_\_\_\_\_  
The State,.....Respondent,

vs.

John A. Webb,.....Petitioner.

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**PETITIONER’S REPLY TO RESPONDENT’S RETURN TO PETITION FOR WRIT OF  
CERTIORARI**

\_\_\_\_\_  
Lacey Thompson  
Thompson and Hiller Defense Firm  
604 16<sup>th</sup> Ave. North  
Myrtle Beach, S.C. 29577  
Phone: 843-444-6122  
[ltompson@grandstrandlaw.com](mailto:ltompson@grandstrandlaw.com)  
SC Bar No. 101285  
Attorney for Petitioner John Alexander Webb

Other Counsel of Record:

Alan Wilson  
Attorney General

J. Benjamin Aplin  
Assistant Attorney General

Jimmy Richardson, II  
Solicitor, Fifteenth Judicial Circuit

## INDEX

Table of Authorities .....	ii
Reply Argument .....	1
Appellate Review of Direct Verdict Motions and Motions for a New Trial are not Matters of First Impression in South Carolina .....	1
Dr. Webb was Convicted of Violating the Terms of his Contract. That’s not a Separate Ground for Appeal .....	1
This Appeal is not About a Due Process Notice Violation .....	2
Due Process is a Substantial Constitutional Issue .....	3
The Only Time that DHEC Regulations Have Been Identified and Quoted is on Appeal .....	3
The State Continues to Cite Inadmissible and Irrelevant Testimony as a Basis for Conviction .....	4
The Court of Appeals Disregarded the Trial Judge’s Findings of Fact .....	7
Conclusion .....	9

## TABLE OF AUTHORITIES

### Cases

<u>State v. Dent</u> , Opinion No. 28289, Appellate Case No. 2024-000355 (S.C. 2025) .....	2
<u>State v. Webb</u> , 2025-UP-293, Appellate Case 2023-001578 (S.C. App. 2025) .....	3

### Court Documents

<u>Return to Petition for a Writ of Certiorari</u> .....	1, 3, 4, 5, 8
<u>Petition for Certiorari</u> .....	1, 2, 3
Trial Transcript .....	4, 5, 6
<u>Order Granting Motion in Arrest of Verdict</u> .....	7, 8, 9

### Statutes

S.C. Code Section 44-53-390.....	1, 4, 6, 8, 9
S.C. Code Section 44-53-340 .....	1, 4, 6, 8, 9

## ARGUMENT IN REPLY

### **Appellate review of directed verdict motions and motions for a new trial are not matters of first impression in South Carolina.**

In the State's Return to Petition for a Writ of Certiorari, the State says, "Neither appellate review of directed verdict motions nor appellate review of motions for a new trial are matters of first impression in South Carolina." Id. at 4.

To be clear, Dr. Webb has not claimed that appellate review of directed verdict motions or appellate review of motions for a new trial are matters of first impression in South Carolina. Rather, the question of whether and how the State must reference the requirements for record-keeping contained in Article Three, DHEC regulations, or federal law when seeking a conviction for a doctor's alleged failure to keep proper records pursuant to S.C. Code §§ 44-53-390 and 340 is a matter of first impression in South Carolina. See, Petition for Certiorari, p.6.

### **Dr. Webb was convicted of violating the terms of his contract. That's not a separate ground for appeal.**

The State says that Dr. Webb is now arguing, "for the first time, that there was a material variance between the indictments and proof because he was indicted for violating the recordkeeping requirements of S.C. Code sections 44-53-390 & -340 but was convicted for violating the terms of his residency contract." As Dr. Webb stated in his Petition for Certiorari, he is not arguing that the fact that he was convicted of violating the terms of his contract is a separate ground for appeal. Id. at 10. It does, however, explain how and why he was convicted for violating record-keeping

requirements when the jurors were never informed of the record-keeping requirements he was alleged to have violated.

State v. Dent, Opinion No. 28289, Appellate Case No. 2024-000355 (S.C. 2025), is relevant and in conflict with the S.C. Court of Appeals' decision in this case. Because it is a 2025 decision, it could not have been cited or argued at the trial of this case.

**This appeal is not about a Due Process notice violation.**

Dr. Webb has never argued that there was a Due Process notice violation in this case, and that is not an issue on appeal. The question is not whether Dr. Webb was informed of the law. The question is whether the jurors were informed of the specific record-keeping requirements contained in DHEC regulations or federal law that Dr. Webb was alleged to have violated.

The State says, "Further, healthcare providers are in no worse position than any other people in regard to being subject to our criminal laws because the statutes and regulations themselves, for which everyone has notice, sufficiently warn them, as persons of ordinary intelligence, of the conduct the statutes and regulations makes criminal." Id.

In his Petition for Certiorari, Dr. Webb did note that this is a matter of particular importance to healthcare providers in our state because they could be subject to criminal conviction for failing to keep proper records, even when jurors have not been informed of what the record-keeping requirements are, and "healthcare providers are now subject to conviction for violating the record-keeping requirements contained in Article Three, DHEC regulations, or federal law when jurors are only informed of the

requirements contained in a doctor's employment contract or licensing requirements that should not be subject to criminal prosecution." Id. at 6.

**Due Process is a substantial constitutional issue.**

The State says that there are "no substantial constitutional issues directly involved" in this case. Return to Petition for a Writ of Certiorari at 4-5.

Due Process is implicated, however, when a physician is indicted for violating the record-keeping requirements of S.C. Code Sections 44-53-390 and 340, which are expressly limited to only those requirements found in Article Three, DHEC regulations, or federal law, but the only evidence presented to jurors at trial relating to record-keeping requirements consists of the terms of the physician's residency contract, requirements issued by licensing authorities, requirements imposed by the Bureau of Drug Control, and a reference to the record-keeping requirements for pharmacists – all unindicted conduct.

**The only time that DHEC regulations have been identified and quoted is on appeal.**

The Court of Appeals helpfully identified a DHEC regulation that would constitute a record-keeping requirement for physicians under § 44-53-340 of the South Carolina Code. State v. Webb, 2025-UP-293, Appellate Case 2023-001578, n.1 pp.3-4 (S.C. App. 2025).

Furthermore, in the State's Return to Petition for a Writ of Certiorari, the State acknowledges that "DHEC has promulgated extensive regulations concerning narcotics and controlled substances in South Carolina." Id. at 8. The State then dedicates

approximately three pages of its brief to describing and citing the DHEC regulations that are relevant to defining the record-keeping requirements of S.C. Code Sections 44-53-390 and 340, none of which were provided to the jurors at Dr. Webb's trial. Return to Petition for a Writ of Certiorari at 8-10.

Neither the regulation identified by the Court of Appeals, the extensive regulations identified by the State in its brief, nor any record-keeping requirements contained in Article Three or federal law were provided to the jurors at trial.

Despite the trial judge's instructions to the State to "just publish the regulation," Trial Tr., 64/14-15, and that "it's not violative of the language unless it's required to be kept or filed under this article or a record required to be kept by this article," Trial Tr. 68/7-9, the State declined at trial to publish or even reference the regulations that the State now offers on appeal.

### **The State continues to cite irrelevant testimony as a basis for conviction.**

It appears that the State's trial strategy was to persuade the jurors to convict Dr. Webb based on irrelevant facts that could not be the basis for a criminal conviction, presenting testimony that included:

- The Bureau of Drug Control requires physicians to maintain records for two years, and it is against the law for a physician to lose their documentation even if it is beyond their control, Trial Tr. 166/5-17,
- Licensing requirements of the LLR and Board of Medical Examiners, Trial Tr. 113/19 through 115/16,

- Dr. Webb’s contract with the residency program required him to keep records, Trial Tr. 116/16-21,
- Dr. Webb breached his employment contract by “moonlighting,” Trial Tr. 116/22 through 117/12,
- The contents of Dr. Webb’s contract with the residency program and his application to the residency program, Trial Tr. 121/15 through 122/11,
- The contents of Dr. Webb’s Graduate Medical Education Training Agreement and its prohibition of “moonlighting,” Trial Tr. 124/7 through 125/7,
- The residency program’s prohibition on prescribing to family members, “a policy that may or may not be in the contract,” Trial Tr. 125/11 through 126/7, 130/3-11, and
- Pharmacists have record-keeping requirements, and the State’s pharmacist witness “would hope the doctor also keeps it.” Trial Tr. 154/11-22.

Furthermore, it appears that the State has continued this strategy on appeal, arguing that the improper testimony is a basis to affirm the conviction, including:

- Witness Sheridan Spoon’s testimony about Dr. Webb’s licensing application, Return to Petition for a Writ of Certiorari at 11,
- Spoon’s testimony regarding the rules and restrictions contained in Dr. Webb’s contract with the residency program, Id.,
- Spoon’s testimony that the Medical Board requires physicians to keep records and that “[r]ecord keeping is paramount,” Id. at 14, citing R.p.147-p.153,

- Witness Dr. Collier’s testimony about Dr. Webb’s application for a medical license and the recordkeeping requirements contained within Dr. Webb’s “Graduate Medical Education Training Agreement,” Id.,
- Dr. Collier’s testimony regarding “the record-keeping requirements within the residency agreement executed by Webb, including a clause that says physicians are required to maintain medical records for all their patients, Id. at 14, citing R.p.158-p.161,
- Dr. Webb violated a requirement “either in the agreement or a separate policy” that “residents are advised they are not permitted to prescribe to family members,” Id., and
- Witness Billy Davis’ testimony (Davis was a hospital employee) that “residents are only allowed to write [prescriptions] to patients that are seen in the clinic or those that are in the hospital under supervision,” Id. at 11-12, and that Dr. Webb violated this requirement of his contract, Id. at 12.

These are not permissible bases for a conviction under § 44-53-340, because these are not record-keeping requirements from Article Three of Title 44, DHEC regulations, or federal law.

Dr. Webb was not indicted for violating the terms of his residency contract, for violating the requirements of the licensing board, for writing prescriptions to patients who were not seen at a particular hospital, or for “moonlighting.” He was indicted for violating the record-keeping requirements of South Carolina Code Sections 44-53-390 and 340, which are defined as including only those record-keeping requirements found in Article Three, DHEC regulations, or federal law.

## **The Court of Appeals disregarded the trial judge's findings of fact.**

The State in its arguments, the judge on remand who denied the Motion for New Trial, and the Court of Appeals, in its unpublished opinion, have disregarded the Findings of Fact made by the trial judge who observed the pretrial proceedings, the witnesses, and the evidence in this case, which included a specific finding that there was no evidence produced at trial from which the jurors could have found Dr. Webb guilty:

There was no direct testimony or other evidence that the Defendant did not maintain any record required to be produced and maintained, but, to the contrary, there was his statement to the effect that he had, and, moreover, his explanation as to why he could not produce, when demanded by the State's investigator, the records that he had produce and maintained, as related in State's Exhibit 1, was a reasonable hypothesis to the exclusion of the State's hypothesis that the Defendant did unlawfully, "knowingly or intentionally... furnish false or fraudulent material information in, or omit any information from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article."

Order, p. 7.

In the trial court's Findings of Facts, the court found that:

- "No evidence of Federal law regarding keeping records was offered by the State or received by the Court;"

- “No direct reference to any specific law contained within Title 44, Chapter 53, Article 3, regarding record keeping was offered by the State or received by the Court;”
- “No direct reference to any specific DHEC rule, commonly known as regulations, regarding record keeping was offered by the State or received by the Court;” and
- “No request to charge on the law by the State, other than Sections 44-53-390(a)(4) and 44-53-340, was offered to the Court and no other statutory or regulatory law was charged to the jury.”

Order, p. 6.

In the State’s Return to Petition for a Writ of Certiorari, the State notes that, in Dr. Webb’s brief to the Court of Appeals, he argued that “it would have been impossible for the jurors to determine that [he] violated the record keeping requirements” in the statutes “when the State at no point instructed the jurors as to what record keeping requirements were mandated by the relevant laws and regulations.” Id. at 5.

This was not simply Dr. Webb’s argument, however. It was a finding made by the trial court judge who was present and observed the trial:

The jury in this case would necessarily have had to find the Defendant guilty, without the benefit of the law regarding what records must be generated and maintained under Federal law and any additional rules the Department issues, pursuant to Title 44, Chapter 53, Article 3... Section 44-53-340, and 44-53-

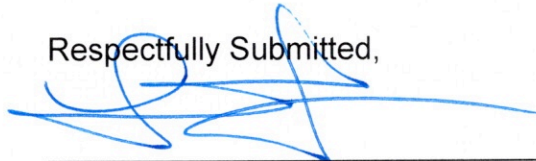
390(a)(4), S.C. Code Ann. (1976), with which the Defendant was charged with violating in each of the indictments.

Order, pp. 6-7.

### CONCLUSION

Dr. Webb is asking this Court to grant the Writ of Certiorari, to reverse his convictions, to remand this case with instructions to direct a verdict of not guilty or grant Dr. Webb's Motion for a New Trial, and to provide guidance for prosecutors, defense attorneys, and judges in future prosecutions as to whether and how the State must reference the requirements for record-keeping contained in Article Three, DHEC regulations, or federal law when seeking a conviction for a physician's alleged failure to keep proper records pursuant to South Carolina Code §§ 44-53-390 and 340.

Respectfully Submitted,



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Lacey Thompson  
Thompson Defense Firm  
Attorney for the Defendant  
604 16<sup>th</sup> Ave. North  
Myrtle Beach, S.C. 29577  
Phone: 843-444-6122  
lthompson@grandstrandlaw.com

Attorney for Appellant John Alexander Webb

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**PROOF OF SERVICE**  
\_\_\_\_\_

I certify that I have served the Petitioner's Reply to Respondent's Return for Writ of Certiorari dated November 5, 2025, on the following electronically by email:

South Carolina Supreme Court  
[suptcfilings@sccourts.org](mailto:suptcfilings@sccourts.org)

South Carolina Court of Appeals  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

J. Benjamin Aplin, Esq.  
[baplin@scag.gov](mailto:baplin@scag.gov)

Alan McCrory Wilson, Esq.  
[agwilson@scag.gov](mailto:agwilson@scag.gov)

Jimmy A. Richardson, Esq.  
[richj@horrycountysc.gov](mailto:richj@horrycountysc.gov)



\_\_\_\_\_  
Mindi Ellison  
Paralegal  
Thompson and Hiller Defense Firm