

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jan 12 2026

APPEAL FROM GREENVILLE COUNTY
In The Court of Common Pleas

S.C. SUPREME COURT

Jessica A. Salvini, Circuit Court Judge

Case No.: 2024-CP-23-06685

Robert Vance, by his duly appointed
Guardian Ad Litem, Michael Vance. Respondent,

v.

Greenville Community Healthcare, LLC
d/b/a Patewood Post-Acute; Palmetto
Community Healthcare, LLC; Providence
Group, Inc.; Providence Administrative
Consulting Services, Inc., PACS Group,
Inc.; PACS Holdings, LLC; Patewood
Realty, LLC; and White Oak Healthcare
REIT II, LLC Petitioners.

PETITION FOR EXTRAORDINARY WRIT OR WRIT OF CERTIORARI

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INTRODUCTION

Petitioners respectfully submit to the Court what they recognize as the “hen’s tooth” of discovery orders.¹ Petitioners request the Court’s review of the trial court’s order compelling the production of nonparty patient records, patients of whom have no dog in the underlying dispute. The underlying dispute is a medical malpractice action alleging injury to a single patient, Robert Vance, at Patewood Post Acute. Despite that, the trial court’s order requires Petitioners to produce every nonparty patient incident report they are in possession of relating to falls, wounds, or weight loss at the facility. The trial court’s order only requires the nonparties’ names be redacted. This is an exceptional circumstance involving a significant public interest that is no different than the exceptional circumstances recognized in *Hollman* for which the Court granted a petition for writ of certiorari for.

These documents are not discoverable in the underlying medical malpractice action. In *Hollman*, the nonparty patient records, as here, do not tend to prove or disprove the breach of any duty allegedly owed to Mr. Vance. But despite the fact that the nonparty patient records matter not to Mr. Vance or his medical malpractice action, their production and release do matter to Petitioners and most importantly, to the nonparties for whom those records belong and relate to.

The unnecessary release of nonparty patient records without the patients’ consent is an exceptional circumstance warranting the Court’s intervention. This Court has previously expressed

¹ See *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Env’t Control*, 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010) (“Our willingness to review a discovery order by way of a writ of certiorari will be as rare as the proverbial ‘hen’s tooth.’”). Petitioners further acknowledge that the Court has recently expressed concern over certain appeals of interlocutory orders, particularly in the context of asbestos cases. In an abundance of caution, Petitioners have asserted three (3) separate bases supporting the issue of “extraordinary circumstance” in order to distinguish this Petition, from those in the asbestos realm, and analogize them to extraordinary circumstances which this Court has previously accepted.

a significant public interest exists in protecting the privacy rights of nonparty patients and the unnecessary release of their medical records is in derogation to those rights. Because the records are not necessary or relevant to proving any element for any cause of action alleged by Respondent, they should have been protected from discovery. However, the records were not protected and ordered to be produced.

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by ordering Petitioners to produce non-party patient records?
 - a. Whether the trial court erred by not making specific findings as to the non-party patient records' necessity or relevancy to Respondent's claims?
 - b. Whether the trial court ordering the production of nonparty patient records was abuse of discretion that exceeds that permitted by the Rules of Civil Procedure?
 - c. Whether the trial court's order to produce nonparty patient records failed to apply necessary limits required by the rules of civil procedure, applicable regulations, and case law?
 - d. Whether the trial court erred by requiring production of documents protected by the Federal Quality Assurance Privilege?

STATEMENT OF THE CASE

On or around December 4, 2024, Respondent served a summons, complaint, and accompanying on nine (9) defendants whom he alleged were liable for substandard care and treatment at Patewood Post Acute ("Patewood"). (App. 2 – 8). Patewood is a licensed skilled nursing facility in Greenville, South Carolina. (App. 2).

I. Background

Robert Vance was a long-term resident and patient at Patewood. (App. 2 - 19). Mr. Vance is sixty-three years old and is currently being treated by another skilled-nursing facility in the upstate. (App. 22 - 23). He was born with a rare form of epilepsy known as Lennox Gastaut

Syndrome, which is a severe, drug-resistant form of epilepsy. (App. 22). He was originally not expected to survive long after birth. (App. 22). Currently, Mr. Vance is substantially non-verbal, and has been unable to walk since before his admission to Patewood. (App. 22). He needs total and complete assistance with the activities of daily living. (App. 22). He has required a caregiver for most of his life as a result of this condition. (App. 22). Mr. Vance has been in and out of provided multiple skilled nursing facilities his entire life and currently resides at a skilled nursing facility. (App. 22 – 23).

Mr. Vance was a recurring resident and patient of Patewood for approximately five years. (App. 22). Prior to 2021, Patewood was operated and managed by other entities not involved in this case. The primary residency period at issue in this case is from October 7, 2021, through May 12, 2023. (App. 24, 55).

In the underlying medical malpractice action, Respondent alleges all nine (9) Petitioners are liable for the facts arising from Mr. Vance's residency only at Patewood. (App. 13 – 19). Accordingly, Respondent's Complaint alleges the following five (5) causes of action against the Petitioners: (1) Professional Negligence; (2) Ordinary Negligence; (3) Negligence Per Se; (4) Negligent Misrepresentation; and (5) Corporate Negligence. (App. 13 - 19). Respondent's Complaint primarily complains of physical injuries giving rise to those causes of action were pressure wounds, injuries from falls, urinary tract infections, weight loss and sepsis. (App. 12). Petitioners deny liability for the physical injuries as many were chronic in nature and unavoidable based on Robert Vance's unfortunate condition of Lennox Gastaut Syndrome.

II. Discovery

Petitioners seek the Court's review of the trial court's order compelling the production of nonparty patient records. Respondent served each of the nine (9) Petitioners with his first set of

interrogatories and requests for production of documents on or around December 4, 2025. (App. 135). After receiving a thirty-day (30) extension, each of the nine (9) petitioners responded to Respondent's First Interrogatories and Requests for Production on February 5, 2025. (App. 24).

Over the course of nearly a year, Petitioners attempted to satisfy the discovery requests of Respondent in good faith but when an inch was given the Respondent took a mile. (App. 392 – 442). During that time, Respondent repeatedly identified deficiencies in Petitioners' discovery responses, on the basis of missing documents that were most often irrelevant and unnecessary to the underlying medical malpractice action. Petitioners have collectively produced 15,787 pages of documents, of which only 6,547 pages of documents were care related records and 9,240 pages of operational records. (App. 96 – 97).

In this medical malpractice action involving one resident, Petitioners have produced 9,240 pages of operational records including: (1) Change of Ownership Application to DHEC, (2) DHEC Licenses. (3) Consolidated Medical Staffing Contract, (4) Consolidated Medical Staffing Invoices, (4) Shiftkey Contract, (5) Shiftkey Invoices (6) Daily Census Report, (7) Retention Policy, (8) Statements from staff about Plaintiff seeking to return to Facility, (9) Nursing Services Policies & Procedures Manual, (10) Job Descriptions, (11) EHR Policy, (12) Charting Policy, (13) PSG Medical Director Contract, (14) Payroll Based Journal, (15) Detailed Time Report, (16) Facility Map, (17) Facility Assessment Template, (18) CASPER Reports, (19) MDS 3.0 Activity Report – Patewood 11.22.22 – 5.12.23, (20) MDS 3.0 Admissions Reentry – Discharges Report, (21) MDS 3.0 Facility-Level Quality Measure (QM) Report, (22) MDS 3.0 Resident-Level Quality Measure (QM) Report, (23) Billing Records, (24) 2022 Insurance Declaration, (25) 2023 Insurance Declaration, (26) Audit Trail from Jan. 1, 2021 to Dec. 31, 2021, (27) Audit Trail from Jan. 1, 2022 to Dec. 31, 2022, (28) Audit Trail from Jan. 1, 2023 to May 12, 2023, (29) Master Lease,

(30)Articles of Organization, (31) Quarterly Budget Reports and (32) an Administrative Service Agreement. (App. 25 - 28).

These records outline the staffing, budget, operational, compliance, billing and other records arguably relevant to the operations of the facility. The audit trail is the underlying electronic data generated by Robert Vance's medical chart.

Discovery has been ongoing for nearly a year, and Respondent's thirst for additional documents has not been quenched. However, the anchor of this Petition lies in Request for Production No. 20, which states as follows:

20. All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of [Petitioner's] facilities, for two years preceding [Respondent's] residency and the time period of [Respondent's] residency.²

Petitioners objected to that Request for Production as follows:

RESPONSE: [Petitioner] objects to this Request on the grounds that the information sought is overly broad, unduly burdensome, not reasonably limited to the issues in this case and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, this request calls for the disclosure [sic] of information protected by HIPAA.

SUPPLEMENTAL RESPONSE: [Petitioner] stands by its prior objection as overly broad and unduly burdensome. It also seeks irrelevant and HIPAA protected information.

SECOND SUPPLEMENTAL RESPONSE: [Petitioner] stands by its prior objection.³

Respondent included Request for Production No. 20 in at least two deficiency letters which, respectively, state the following in part:

² (App. 391 - 423).

³ (App. 429 - 449).

No. 20 – This Request seeks incident reports for the facility for two years prior to my client’s admission. The [Petitioners] objected to producing this information. This information is relevant to notice, and the identifying information of other residents can be redacted. Furthermore, we are amenable to a confidentiality order which would alleviate any of these concerns. Finally, we are willing to limit this Request to issues involving dehydration, infection, and skin breakdown.⁴

I note that the supplemental production continues to omit production of a number of relevant documents which should be in one of the [Petitioner’s] possession or control. These documents include the following: . . . Number 20 – Incident reports for the facility for two years prior to my client’s admission, limited to dehydration, infection, and skin breakdown, redacting the names of any other residents.⁵

Respondent filed a Motion to Compel Discovery Responses from Petitioners on August 15, 2025. As to Request for Production No. 20, Respondent’s Motion to Compel alleged the following deficiency:

Request No. 20: This request seeks the incident reports for the facility for two years prior to Robert Vance’s admission and during his admission for the limited issues of dehydration, infection, and skin breakdown, all of which were injuries which [Respondent] suffered at [Petitioner’s] facility.

The motion was fully briefed by both Petitioners and Respondent, and the motion was heard before the trial court on October 28, 2025. (App. 443 - 446). In support of Petitioners Opposition, they also provided an affidavit from counsel supporting the efforts, which attested that more than ninety-three (93) hours had been spent in responding to Respondent’s discovery and the thousands of documents produced in Petitioners’ good faith attempt to satisfy Respondents’ overbroad and burdensome requests. (App. 96 - 97). Conversely, Respondent’s Memorandum in Support of his Motion to Compel did not contain a single piece of evidence from Petitioners’

⁴ (App. 282 - 293).

⁵ (App. 282 - 293).

15,787 page document production. (App. 150 - 383). The trial judge partially granted the Motion to Compel on October 31, 2025, and ordered Petitioners produce documents for each of the requests for production identified by the Respondent and even compelled production of documents pursuant to an interrogatory. (App. 443 - 446).

On November 10, 2025, Petitioners filed a Motion for Reconsideration of the Court's October 31, 2025 Order. (App. 448 - 481). Petitioners' Motion for Reconsideration was fully briefed and ruled upon without a hearing. (App. 483 - 485). On December 22, 2025, the trial court denied Petitioners' Motion for Reconsideration of the Court's October 31, 2025 Order (collectively "trial court's order"). (App. 483 - 485). This Petition seeks the Court's review of the trial court's order specifically as to it relates to Request Number 20. The relevant portion of the trial court's order for that request states as follows:

As to Request to Produce #20, [Petitioners] shall produce all incident reports relating to falls, wounds, or weight-loss within twenty (20) days of this Order. The incident reports shall have the names of the patients redacted.⁶

The Court must issue an extraordinary writ to determine the lower court's order requiring the production of other patients' records was improper.

STANDARD OF REVIEW

"[T]his Court on writ of certiorari will confine its review to the correction of errors of law only, and will not review the findings of fact of an inferior Court or body except when such findings are wholly unsupported by the evidence." *S.C. Bd. of Examiners in Optometry v. Cohen*, 256 S.C. 13, 18, 180 S.E.2d 650, 652 (1971). "A writ of certiorari may be issued to review a discovery order where exceptional circumstances exist." *Oncology & Hematology Assocs.*, at 387,

⁶ (App. 443 - 446).

692 S.E.2d at 924 (citing *Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (citing *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989))).

LAW AND ANALYSIS

I. Exceptional Circumstances Exist

This Court has the “power to issue writs or orders of . . . certiorari” to “correct errors of law, particularly where a trial court exceeded its authority.” *State v. Price*, 441 S.C. 423, 433, 895 S.E.2d 633, 638-39 (2023) (citing Const. Article V, § 5 and S.C. Code § 14-3-310)). “Although [this Court] will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be issued when exceptional circumstances exist.” *In re Breast Implant Prod. Liab. Litig.*, 331 S.C. 540, 543, 503 S.E.2d 445, 447 (1998); *see also Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991) (“Only when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction”).⁷

This Court has previously held that a discovery order compelling the production of nonparty patient information present exceptional circumstances warranting a writ of certiorari because both (1) “allowing the production will moot any claim petitioners could raise on appeal” and (2) “the privacy rights of patients is an issue of significant public interest.” *Hollman*, at 577, 683 S.E.2d at 498. The Court has also issued a writ of certiorari to rule on the exceptional circumstance of addressing the “proverbial ‘hen’s’ tooth” discovery order exemplifying “abusive” and “scorched earth” practices which undermine the integrity of the judiciary. *See Oncology &*

⁷ *Price*, at 433, n.5, 895 S.E.2d at 639, n.5 (“Nevertheless, the “writ of certiorari ... will be granted or denied, in the discretion of the court, according to the circumstances of each particular case, as justice may require” and the existence of “exceptional circumstance” is not “an additional standard,” as “the Court is not required to issue, and in doing so is in [its] discretion”).

Hematology Assocs., at 387-88, 692 S.E.2d at 924 (remedying “abusive” discovery rulings that exceed basic “limits, which we see trial courts generally unwilling to recognize and enforce”). Additionally, to the extent a trial court order is interlocutory, it still “may be reviewed if it contains appealable issues which are properly before the court.” *Ferguson v. Charleston Lincoln/Mercury, Inc.*, 344 S.C. 502, 510, 544 S.E.2d 285, 290 (Ct. App. 2001), *aff’d as modified*, 349 S.C. 558, 564 S.E.2d 94 (2002).

In *Hollman*, this Court recognized exceptional circumstances warranting certiorari for a trial court discovery order in a medical malpractice action, which allowed the respondents to contact nonparty patients. *See* 384 S.C. at 577, 683 S.E.2d at 498. In that case, the trial court had originally granted the respondents’ motion to compel requiring that petitioners produce “unredacted copies of the medical records of the nonparty patients.” *Id.* at 576, 683 S.E.2d at 497-98. At the same time, the trial court granted a protective order “to prohibit the use of confidential information obtained through the medical records and to prohibit any person from contacting the nonparty patients or their medical providers.” *Id.* However, the trial court granted a subsequently filed motion to modify the protective order, which allowed the plaintiffs to “contact and interview nonparty patients of petitioners whose identity and medical records were disclosed pursuant to the [prior discovery orders].” *Id.*

This Court granted the petition for a writ of certiorari in the exceptional circumstance of a trial court’s order allowing the respondents from interviewing nonparty patients. *Id.* at 577, 683 S.E.2d at 498. It held that the order to produce nonparty patient records was an exceptional circumstance because “privacy rights of patients is a matter of significant public interest.” *Id.* “[N]onparty patients have a valid and legitimate expectation that their medical information will remain confidential.” *Id.* at 578, 683 S.E.2d at 499. The Court also found another exceptional

circumstance for that discovery order in that case. *Id.* at 577, 683 S.E.2d at 498. The Court reasoned that allowing the interviews of the nonparty patients would “moot any claim petitioners could raise on appeal that the discovery was erroneously allowed” served as an additional exceptional circumstance warranting certiorari. *Id.*

A. This Petition Involves Three (3) Exceptional Circumstances Warranting the Court’s Issuance of a Writ of Certiorari

In the present case, Petitioners offer the Court a “hen’s tooth” for which the Court may be so inclined to pluck a feather and dip it in ink. The trial court order in this case compels the Petitioners to produce multiple years of incident, occurrence, and accident reports for all residents of Patewood who are nonparties to the underlying medical malpractice action. Similar to the nonparties implicated in *Hollman*, the nonparty residents implicated in the present trial court order have a right to privacy and an expectation that their medical records be kept confidential absent the Respondent proving and the trial court finding that the documents are relevant and necessary to bring the action to trial. Specifically, the Petitioners respectfully submit that the following three (3) exceptional circumstances exist in this petition:

The *first* exceptional circumstance is the trial court’s order compelling nonparty medical records to be produced, with only patient names redacted because the production of those documents derogates the nonparties’ right to privacy and expectation that their medical records remain confidential. Aside from the nonparties’ name, no other identifying information was ordered to be redacted in the trial court’s order. The trial court’s order in this case neglected to make any specific rulings as to how the Respondent’s request was relevant or necessary to their claim. Moreover, the Respondent’s request for incident, occupational, and accident reports are not relevant or necessary because they do not tend to prove or disprove any claim asserted by Respondent in the underlying medical malpractice action.

The *second* exceptional circumstance is Petitioners' compliance with the trial court's order to produce nonparty medical records will, unlike other discovery orders, moot any future right for Petitioners to appeal on the basis that discovery was erroneously allowed. Similar to the information in *Hollman*, the nonparty medical records at issue in this matter will make no difference in the outcome of the underlying medical malpractice action. Those documents are not relevant and they are not necessary to prove any element of any claim alleged by Respondent, as discussed in more detail below. *See McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("Appellate courts recognize—or at least they should recognize—an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter").

Accordingly, the issues raised in this petition will never ripen for appeal after any final judgment because the review of any issue pertaining to the production of these irrelevant and unnecessary records have no practical effect on the outcome of any of the Respondent's claims. Absent this Court's discretion in granting a writ of certiorari, the issues presented by Petitioners will be moot and lack a basis for any future appeal the medical records' production pursuant to the trial court's order. However, the issues involve nonparty patient records, and their nondisclosure matters to Petitioners, the nonparties themselves, and the public.

The *third* exceptional circumstance is that Respondent's "discovery requests of [Petitioners] are abusive and beyond the pale." *See Oncology & Hematology Assocs.*, at 388, 692 S.E.2d at 924. The trial court was "generally unwilling to recognize and enforce" limitations to those requests. *See Id.* at 387, 692 S.E.2d at 924. "[Respondent's] discovery requests are not remotely relevant to a resolution of the issue[s]" involved in this medical malpractice instituted by one (1) single resident of one (1) Petitioner's facility, Patewood. *See id.* at 389, 692 S.E.2d at 925. A medical malpractice action brought by a single resident "does not entitle [Respondent] to the

information it seeks from [Petitioner Patewood]” which include multiple years of other patient records who are in no way involved in the underlying action. Respondent “abused the discovery process with its scorched-earth approach.” *See id.*

Therefore, this Court should grant this Petition for Writ of Certiorari because exceptional circumstances exist in this matter as follows: (1) disclosure of the nonparty medical records subject to the trial court’s order undermine the privacy rights of the patients identified in those records; (2) Petitioners’ compliance with discovery will moot any right to appeal they may have on the basis that the discovery was erroneously allowed; and (3) the discovery practices in the record alone for this matter illustrate an “abusive” and “scorched-earth” approach relegating the merits of the underlying claim to secondary status.

II. The Trial Court Erred by Ordering the Production of All Non-Party Medical Records Pursuant to Respondent’s Discovery Requests

“When the discovery process threatens to become abusive or to create a particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery.” *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E.2d 852, 854 (1994). Rule 26, SCRC, provides “[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court .. may make any order which justice requires to protect a party or person.” *See also Palmetto Alliance v. South Carolina Pub. Serv. Comm’n*, 282 S.C. 430, 434, 319 S.E.2d 695, 698 (1984) (scope and conduct within sound discretion of trial judge).

The trial court’s determination of whether information is discoverable when a party opposes such discovery on the basis that it subjects them or someone else to a particularized harm involves a three-party inquiry: (1) the party opposing discovery must show that disclosure of the information subjects them or another party to a particularized harm; (2) then the “burden shifts to the party seeking discovery to show that the information is relevant and necessary to bring the

matter to trial”; and (3) until and unless “both parties meet their burden [prove those elements], the court must weigh the potential harm of disclosure against the need for the information in reaching a decision.” *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 474–75, 674 S.E.2d 154, 162 (2009).

Because this Court’s decision in *Hollman* is controlling, the facts of this petition required the trial court to only the analysis of two elements and not the third because, as set forth below, nonparty medical records are “not relevant and necessary to bring [a medical malpractice] matter to trial.” *Id.*; *see also Hollman*, at 571, 579, 683 S.E.2d at 499.

A. As an Initial Matter, the Trial Court’s Order Should be Vacated for the Sole Reason that it Neglected to Make any Specific Findings as to How the Lack of Discovery would Impair Respondent’s Alleged Claims

This Court has previously vacated a discovery order when “the circuit court did not make a specific finding as to exactly how the lack of information . . . would impair respondents’ presentation of the merits of that cause of action or that there were no reasonable alternatives available to discover the information.” *Id.* at 581, 683 S.E.2d at 500 (“[t]he trial court must determine whether there are reasonable alternatives available to discover the information”); *see also Laffitte*, at 476, 674 S.E.2d at 163 (“the trial court must evaluate whether there are reasonable alternatives available to the party seeking the discovery of the information”).

Petitioners initially submit that the trial court’s order is insufficient as a matter of law because it neglected to include any findings about how the nonparty patient records were necessary or relevant to Respondents’ presentation of the merits of his cause of action. Additionally, the trial court failed to consider Respondents’ Memorandum in Support of their Motion to compel lacked evidentiary support from the 15,787 pages of documents produced by Petitioners. The trial court made no specific ruling as to the existence of any reasonable alternatives which may have existed

and negated any purported need for the production and disclosure of nonparty medical records. Because no findings were made by the trial court in ruling on the Respondent's motion as to these issues, the trial court's order should be vacated as to its order compelling production in Request 20.

B. Compelling Discovery of Non-Party Patient Records causes a Particularized Harm because the Patients have an Expectation their Medical Records Remain Confidential, which Petitioners are Obligated to Ensure

The Petitioners, nonparty patients, and the public will suffer a particularized harm should discovery be had on Request 20 because their right to privacy for patient records will have been infringed for the sole purpose of a scorched-earth campaign. This Court has held that the privacy rights of patients is a significant public interest, and “[b]oth the State and Federal government have recognized the importance of the privacy rights of patients.” *Hollman*, at 578, 683 S.E.2d at 499. “[N]onparty patients have a valid and legitimate expectation that their medical information will remain confidential.” *Id.* That expectation “*outweighs respondents' intent to use this personal information to buttress their claims by showing a propensity by petitioners for malpractice.*” *Id.* (emphasis added). “As to the requirement of particularized harm, no protective device can limit the invasion of the nonparty patients' privacy once contact with them is permitted.” *Hollman*, at 578, 683 S.E.2d at 499-500.

Petitioners present a valid particularized harm as to the discovery request and subsequent trial court order requiring the production of incident reports, accident reports, and occurrence reports. Incident reports, accident reports, and occurrence reports are medical records, undisputedly containing Protected Health Information of other patients, and patients have a right to privacy as to their medical records.

Respondents' Request for Production No. 20 sought "[a]ll incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of [Petitioner's] facilities, for two years preceding [Respondent's] residency and the time period of [Respondent's] residency." The trial court's order as to Respondent's Request No. 20 requires Petitioners to produce "all incident reports relating to falls, wounds, or weight-loss" with only the names of the patients redacted." In other words, the trial court's order requires Petitioners to individually, assess, redact, and produce every incident report they are in possession of for patients not named or any way the subject of the underlying medical malpractice action for, multiple years and produce the ones relating to "falls, wounds, and weight-loss." These reports include incident reports created by Patewood to document nonparties' health conditions for further and future treatment; incident reports created by Patewood to document nonparties' health conditions as part of the Petitioners' own internal quality assurance and policy compliance purposes; and incident reports created by Patewood to document, *inter alia*, nonparties' health conditions to comply with federal and state regulatory agencies, such as the South Carolina Department of Public Health ("SCDPH"), formerly known as South Carolina Department of Health and Environmental Control ("SCDHEC").

To the extent Respondent disagrees the incident reports are medical records, the Respondent has already nevertheless agreed that these reports are patient medical records containing protected health information. (App. 490 – 491) ("The Director of Nursing testified . . . that the facility routinely created these reports and reviewed them on an ongoing basis as part of their quality control/*clinical issues* . . . It is well established in the law that a court order is complaint with HIPAA for other record production") (emphasis added). Protected Health Information ["PHI"] is "individually identifiable health information transmitted [or] . . .

maintained in electronic media [or] . . . transmitted or maintained in any other form or medium.”

45 C.F.R. § 160.103.

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider . . . (2) relates to the past, present, or future physical or mental condition of an individual [or] the provision of health care to an individual . . . and (3) that identifies the individual or [w]ith the respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Id. Redacting only the names of patients from a document does dispositively undesignated a document’s status as PHI. *See id.* (medical record is PHI if, inter alia, “there is a reasonable basis to believe the information can be used to identify the individual.”); *see also* 45 C.F.R. § 164.514 (information required to be redacted for de-identification of PHI). Therefore, the incident reports are medical records and the nonparties identified have a right to privacy in them, which they will be deprived of should the trial court order be enforced.

C. This Court has Previously Held that Non-Party Patient Medical Records are not Remotely Relevant or Necessary to any Plaintiff

Once the party opposing discovery “shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is ‘relevant and necessary’ to the case. *Hollman*, at 578, 683 S.E.2d at 498. In order to satisfy the “*relevant*” requirement, the “information must be specifically relevant to the issues involved in the litigation, not merely relevant to the subject matter of the litigation.” *Hollman*, at 578, 683 S.E.2d at 499. In order to satisfy the “*necessary*” requirement, the information “cannot merely assert unfairness but must demonstrate with specificity exactly how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *Laffitte*, at 476, 674 S.E.2d at 163. “[U]ltimately, the trial court

must require the discovery of a trade secret only when ‘the issues cannot be fairly adjudicated unless the information is available.’” *Id.* at 479, 674 S.E.2d at 165.

The party seeking information “cannot merely assert unfairness but must demonstrate with specificity exactly how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *Id.* at 476, 674 S.E.2d at 163 (citing, in part, *Bridgestone/Firestone, Inc. v. Superior Court*, 7 Cal.App.4th 1384, 9 Cal.Rptr.2d 709, 713 (1992) (holding that a party seeking discovery must make a “particularized showing” that “the information sought is essential to a fair resolution of the lawsuit”)).

1. Non-Party Patient Information is Not Relevant or Necessary to (1) Professional Negligence; (2) Ordinary Negligence; (3) Negligence Per Se; or (4) Negligent Misrepresentation

The Court in *Hollman* held that nonparty patient information is not relevant or necessary to a medical malpractice action alleging professional negligence. Accordingly, there is no possibility that a medical record concerning a nonparty patient can be relevant or necessary to prove any of the causes of action alleged by the Respondent, which include professional negligence, ordinary negligence, negligence per se, or negligent misrepresentation.

Professional negligence or “malpractice requires a showing of the standard of care, a breach of the standard of care, proximate cause, and damages.” *Hollman*, at 579, 683 S.E.2d at 499. “The standard of care which must be observed by a physician is that of an average, competent practitioner acting in the same or similar circumstances.” *Id.*

To establish a cause of action in ordinary negligence, “a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty.” *Bloom*

v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). “Negligence per se is a doctrine, used in tandem with a negligence claim, to establish two of the elements of negligence—duty and breach.” *Denson v. Nat’l Cas. Co.*, 439 S.C. 142, 157, 886 S.E.2d 228, 236 (2023). To establish a cause of action for negligent misrepresentation, a plaintiff must prove “(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.” *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000).

In *Hollman*, this Court held that evidence relating to the treatment of nonparty patients is irrelevant to a medical malpractice plaintiff’s negligence claim. *Hollman*, at 579, 683 S.E.2d at 499. Specifically, the Court reasoned that the treatment of nonparty patients “cannot be used to show that the petitioners breached the standard of care with a particular patient.” *Id.* The Court further reasoned that any alleged breach of the standard of care “with any patients other than the respondents is irrelevant to whether the petitioners were negligent in their treatment of respondents.” *Id.* Therefore, the Court held that the circuit court committed an abuse of discretion in determining the interviews with nonparty patients were necessary and relevant; the “treatment of other patients is not necessary to establish any element of respondents’ causes of action and no information obtained in the interviews could establish whether the petitioners breached the standard of care when treating respondents.” *Id.* at 581, 683 S.E.2d at 500.

Here, the medical records of nonparty patients are not relevant or necessary to establish any of the Respondent’s causes of action. Each of the causes of action alleged by Respondent

necessarily requires the Respondent to show in a particular sub-variation (1) that the Petitioners owed a duty of care to the Respondent and (2) that the Petitioners' alleged breach of their duty to the Respondent proximately caused the Respondent damages. Each cause of action alleged by the Respondent stems from an alleged duty of care owed by the Petitioners to the Respondent. Any records involving parties, other than the Respondent, are not necessary or relevant to establish a duty of care owed to the Respondent or a breach of the duty of care to the Respondent. Any conduct involving other patients is irrelevant in establishing whether the Petitioners were negligent in their treatment with Respondent. Further, production of these records at trial will result in countless trials within trials where Petitioners are forced to explain these other patients' medical conditions and circumstances to defend against the incident reports. Therefore, the Court should vacate the trial court order as to Request No. 20 in this medical malpractice action because other patients records are irrelevant and not necessary to prove (1) professional negligence; (2) ordinary negligence; (3) negligence per se; or (4) negligent misrepresentation.

2. South Carolina does not Recognize a Corporate Negligence Cause of Action and Even if it did, Non-Party Patient Information is Not Relevant or Necessary to Satisfy the Elements of Corporate Negligence

In an opinion by Justice Hill, the South Carolina Court of Appeals declined to adopt the theory of corporate negligence and stated “[e]ven if we were inclined to agree with the hospital corporate negligence doctrine, such a declaration of public policy is the function of the legislature or perhaps our supreme court.” *McCord v. Laurens Cnty. Health Care Sys.*, 429 S.C. 286, 298, 838 S.E.2d 220, 226 (Ct. App. 2020). The court in *McCord*, considered other cases where the courts declined to adopt the corporate negligence theory and concluded the theory is not recognized in South Carolina. *Id.* at 297, 838 S.E.2d at 226 (citing *Strickland v. Madden*, 323 S.C. 63, 71–72, 448 S.E.2d 581, 586 (Ct. App. 1994); *Foster v. Greenville Cnty. Med. Soc.*, 295 S.C. 190, 367

S.E.2d 468 (Ct. App. 1988); *Horowitz v. Plantation Gen. Hosp. Ltd. P'ship*, 959 So. 2d 176, 186–87 (Fla. 2007); *Johnson v. Misericordia Cmty. Hosp.*, 99 Wis.2d 708, 301 N.W.2d 156, 164–65 (1981) (collecting cases and discussing corporate negligence doctrine)).

These other patient records do not support the elements of “corporate negligence” as alleged by Plaintiff and there is not a single case in South Carolina that outlines what the elements of “corporate negligence” are. As a result, the records do not speak to the alleged tort of “corporate negligence,” to the extent that this tort is recognized in South Carolina. However, any and all variations of a negligence cause of action flow from an alleged duty of care owed by one party to another.

III. The Trial Court’s Order Compelling Production of Request No. 20 Should be Vacated Because it is Overbroad, Abusive, and Not Remotely Relevant to Any Issue in this Case

This Court once appropriately addressed the extraordinary circumstance when state court “discovery practice[s] ha[d] become a ‘cottage industry’ and the merits of a claim [were] being relegated to secondary status.” *See Oncology & Hematology Assocs.*, at 380, 388, 692 S.E.2d at 924. At the outset, Petitioners respectfully submit that state court “discovery practice” has since grown to a horizontally-integrated manufacturing enterprise. As here, the enterprise’s thirst for information cannot be quenched and proving the merits of a claim are even further secondary than before. However, discovery orders are generally and most often sheltered from any considerable oversight by way of their interlocutory status. That is, unless, as here, an exceptional circumstance exists.

Petitioners acknowledge that the scope of discovery is broad. “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . .” Rule 26(b)(1), SCRPC. “It not ground for objection that the information sought will

be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

“Yet, there are limits.” *Oncology & Hematology Assocs.*, at 387, 692 S.E.2d at 924. This Court has recognized instances when “trial courts were generally unwilling to recognize and enforce” limits on discovery. *Id.* Such is the case here, and Respondent’s discovery requests are “abusive and beyond the pale.” *Id.*

While “the scope of discovery is within the trial court’s discretion . . . the trial court must make an effort to impose reasonable limits on discovery.” *Id.* at 388, 692 S.E.2d at 924 (quoting *In re CSX Corp.*, 124 S.W.3d 149 (Tex. 2003)). “The trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure.” *Id.* When “a party abuses discovery, the proper remedy is to vacate the requests and require the party to start over.” *Id.* at 389, 692 S.E.2d at 925. Doing otherwise “would reward improper conduct.” *Id.* A party “abuse[s] the discovery process with [a] scorched-earth approach.” *Id.*

In *Oncology & Hematology*, this Court granted a petition for a writ of certiorari and vacated a trial court’s discovery order specifically when the order compelled discovery responses that were “not remotely relevant” to the “central issue” in the case before it. *See id.* at 387-88, 692 S.E.2d at 924-25. The Court declined “to rewrite and narrowly tailor [the] oppressive discovery requests [because] . . . that would reward improper conduct.” *Id.* at 389, 692 S.E.2d at 925.

In the present matter, the Court should vacate the trial court’s order because the trial court permitted the production of nonparty patient records in a civil action for which they were neither necessary or relevant to. Specifically, the trial court order requires Petitioners to produce the facility’s incident reports for nonparty residents who received treatment there. The trial court order

specifically requires production of those records involving wounds, falls, and weight with only the nonparties' name to be redacted; no other identifiable information was ordered to be redacted.

Additionally, the trial court's order shows that no reasonable effort was made to impose necessary and required limits on discovery because the order neglected to limit the records compelled in time. The order itself does not limit the production of these records as to any period of time. The original request of Respondent sought the records of nonparty residents of the facility for the time Respondent was a resident at Patewood and the two years preceding his residency. In other words, the trial court's order, with the most objectively reasonable interpretation, requires Petitioners to assess multiple years' worth of irrelevant, unnecessary records for applicability; redact only the names of those records determined to be responsive; and produce them to Petitioner.

Moreover, trial court's order neglected to weigh the interests of the nonparties who are the subject of the medical records ordered to be produced. The trial court's order derogated the nonparties' right to privacy and expectation that their patient information be confidential without weighing such interests against the needs of the case and the Respondent. This Court has previously stated the nonparties' expectation of privacy "outweighs [the] respondents' intent to use [their] personal information to buttress [his] claims by showing a propensity by petitioners for malpractice." *See Hollman*, at 578, 683 S.E.2d at 499. That propensity is nevertheless irrelevant and unnecessary to proving a claim of medical malpractice, and the nonparty records subjected to the trial court's order have no tendency to prove or disprove any claim alleged in this medical malpractice action. Petitioners submit that the trial court's order exceeded its discretion under the South Carolina Rules of Civil Procedure because the records ordered to be produced do not have

any tendency to prove any issue arising from a cause of action sounding in negligence and are overburdensome and rise to the level of abuse.

IV. Incident Reports, other than those Reported to Regulatory Agencies, are Privileged and are Protected from Disclosure

The trial court's order should likewise be vacated because the trial court neglected to consider or rule on Petitioners assertion that certain internal reports are privileged pursuant to the Federal Quality Assurance Privilege. In 1987, the United States Congress enacted the Federal Nursing Home Reform Act (FNHRA), of which the Federal Quality Assurance Privilege ("FQAP") is a subsection. *See* 42 U.S.C.1 § 1396r *et seq.*; 42 U.S.C. § 1395i-3 *et seq.*; 42 C.F.R. 483, *et seq.* "Broadly, FQAP requires 'skilled nursing facilit[ies]' and 'nursing facilit[ies]' to establish a quality assessment and assurance committee in an attempt to ensure nursing homes are vigilant about the quality of care their residents are receiving." *Richmond Health Facilities-Madison, LP v. Clouse*, 473 S.W.3d 79, 84 (Ky. 2015). The FQAP protects from disclosure the records of that committee. It states, "[a] State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph." 42 U.S.C. § 1395i-3(b)(1)(B).

To be protected by the QAPI privilege, documents or reports created for increasing the quality of the Facility's care and must focus on quality assurance and performance improvement. Documents simply used during QAPI meetings, such as documents already contained in the medical record or emails discussing patient care, generally are not privileged. These non-DPS incident reports are generated to increase the quality of the Facility's care.

In 2020, the Supreme Court of Kentucky dealt with party seeking discovery of similar information to what Respondent is seeking here in *Henderson Cnty. Health Care Corp. v. Wilson*, 612 S.W.3d 811, 815 (Ky. 2020). The Kentucky Supreme Court reversed the lower courts, finding

the facility had “established a Quality Assurance Performance Improvement (QAPI) committee” in accordance with the Federal Nursing Home Reform Act, 42 U.S.C.1 § 1396r and 42 C.F.R. § 483. *Id.* at 815. The Court further found that the QAPI Committee contracted with the nurse consultant company “to evaluate the facility’s quality of care and provide guidance where care can be improved.” *Id.* The Kentucky Supreme Court emphasized the important work of Quality Assurance Committees stating that they “are key internal mechanisms that allow nursing homes opportunities to deal with quality concerns in a confidential manner and can help them sustain a culture of quality improvement.” *Id.* at 817-818 (quoting *In re Subpoena Duces Tecum to Jane Doe, Esq.*, 99 N.Y.2d 434, 757 N.Y.S.2d 507, 787 N.E.2d 618, 621 (2003)).

Here, as claimed by Respondent, “the facility routinely created these reports and reviewed them on an ongoing basis as part of their quality control...” Plt. Opp. To Mot. Reconsi. p. 5. These non-SC DPS generated incident reports are generated and created as part of the Facility’s quality assurance and improvement efforts. The reason for the adoption of the Federal Quality Assurance Privilege is to encourage healthcare providers to encourage open and honest evaluation of quality of care by protecting the information from being used against the facility in litigation. The purpose of the adoption of the privilege was to ensure that this type of information was not disclosed and used against the facilities in litigation. If this information is allowed to be used in litigation, then it creates a chilling effect on the providers engaging in honest evaluations. As a public policy concern, it is important the Federal Quality Assurance Privilege is respected and applied appropriately.

CONCLUSION

For the reasons set forth above and in the attached supporting documents, the Court should grant this Petition, order such further briefing as it deems necessary, and proceed to determine the merits of the issues raised herein.

This _th day of January, 2026.

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