RECEIVED
Jan 22 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

---

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

---

Civil Action 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.

---

**RETURN TO PETITION FOR EXTRAORDINARY WRIT OR WRIT OF CERTIORARI**

---

Matthew W. Christian
Christian & Christian Law
1007 E. Washington Street
Greenville, SC 29691
(864) 232-7363

Jordan C. Calloway (SC Bar No. 78728)
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
Attorneys for Respondent

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Case Law

South Carolina

Other Jurisdictions

**Statutes and Regulations**

**Court Rules**



**Secondary Sources**

## COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the extraordinary relief of interlocutory review of a discovery order should be denied when the order concerns evidence directly relevant to a nursing home corporate negligence claim and where a redaction requirement and confidentiality order address concerns over nonparty patients' privacy rights.

2. Whether Petitioners may pursue an interlocutory appeal of their unsuccessful Rule 12(b)(6), SCRCP motion to dismiss Mr. Vance's corporate negligence cause of action or a dubious privilege argument that was raised for the first time in a supplemental motion to support Petitioners' Rule 59(e), SCRCP motion.

## STATEMENT OF THE CASE

This case is about a chronically ill and disabled man further injured when a skilled nursing facility failed to provide the most basic care. Michael Vance, Guardian ad Litem to his brother Robert, filed suit on November 14, 2024, against the facility Petitioner Greenville Community Healthcare, LLC d/b/a Patewood Post-Acute ("Patewood Post-Acute") as well as the group of related entities responsible for funding, planning, and executing its operations. (App. 2-9 ¶¶ 2-11). Robert Vance suffers from a number of medical conditions including a form of epilepsy known as Lennox-Gastaut Syndrome, leading to quadriparesis (muscle weakness in all four limbs), intellectual disability, seizures, and other serious impairments. (App. 9 ¶ 13). Petitioners admitted Robert to Patewood Post-Acute on October 7, 2021, following a hospitalization and with full knowledge that his condition placed him at risk for serious complications (e.g. skin breakdowns, infections, and falls) if improperly supervised. (App. 9 ¶¶ 12, 14).

Yet, Robert's condition deteriorated rapidly while in Petitioners' care. Patewood Post-Acute staff members were not properly feeding him, giving him access to fluids, repositioning him in his bed, or monitoring his condition for signs of infection. (App. 9 ¶ 16). Robert lost nearly forty pounds while a Patewood Post-Acute resident and suffered a variety of painful and disturbing complications. (App. 10 ¶ 20). He developed a series of pressure ulcers (i.e. bedsores), at least one

of which had eroded not just his skin but also the muscle, tendons, and bone beneath it. (App. 10 ¶¶ 19, 22). Robert also contracted several infections (urinary tract and C. Difficile) that Petitioners never properly identified or treated. (App. 11 ¶ 25). In fact, the C. Difficile infection was so poorly treated that Robert developed septic shock that required an extended hospitalization. (App. 11 ¶ 26).

The Complaint Michael Vance filed on his brother's behalf alleged a number of negligence-based claims common in nursing home neglect cases. (App. 13-18 ¶¶ 30-45). However, the Complaint also went a step further in its final cause of action for "corporate negligence." (App. 18-19 ¶¶ 46-50). This was not an instance of a doctor mixing up medications or a nurse neglecting to carry out a physician's order. Robert Vance was largely left without the most basic types of care because there was rarely anyone around at Patewood Post-Acute who was qualified to assist him. (App. 18 ¶ 47). As the Complaint alleges, the type and manner of Robert's injuries speak to an ugly truth about some nursing homes. Some are structured, managed, and operated to maximize their effective owners' profits to the direct detriment of patient care. (App. 18-19 ¶¶ 48-49).

It all starts with how the nursing home's ownership is structured. Rather than centralizing ownership in a single legal entity, a labyrinth of various related legal entities is created, ostensibly to perform various functions at or in relation to the facility. So, for example, a company like Petitioner Palmetto Community Healthcare, LLC is created to enter a "management agreement" to oversee Patewood Post-Acute's operations. (App. 3-5 ¶¶ 3-5). Similarly, an entity like Petitioner Patewood Realty, LLC is formed to purchase the land on which Patewood Post-Acute sits and to lease it back to the facility's direct owner. (App. 7-9 ¶¶ 9-11). From there, a number of different money moving maneuvers are devised to pull money flowing into the facility out to these other entities for the benefit of the individuals behind them. (App. 11 ¶ 28). This often comes in the form

of excessive management fees charged to the facility by an entity like Palmetto Community Healthcare, LLC or exorbitant rent charged to the facility by an entity like Patewood Realty, LLC. (App. 18-19 ¶ 49).

If the individuals behind this web of legal entities are the financial winners here, the losers are Patewood Post-Acute patients like Robert Vance. Every dollar extracted from the facility is one less available for resident care. An underfunded nursing home's quality of care declines rapidly because there is no longer enough money to pay an adequate number of properly trained personnel to work there. (App. 11 ¶ 28). An underfunded nursing home is almost inevitably an understaffed home, either in the sense that there are just too few employees in the building or that lower paid nursing assistants and LPNs are asked to take on higher-level nursing tasks they are not qualified or trained to perform. Either way, basic care tasks—like turning and repositioning an immobile patient or ensuring a nonverbal patient gets his meal tray—start to get missed.

Since this type of nursing home mismanagement is not an isolated occurrence, many courts have come to recognize a legal cause of action by injured patients directly against the home and related entities for violation of the duty to adequately fund and staff their facilities. The "corporate negligence" claim Michael/Robert Vance allege here is based on the "direct corporate liability" this Court recognized in a nursing home case more than ten years ago.[1] The Complaint alleges Petitioners' systematic underfunding and understaffing Patewood Post-Acute proximately caused Robert's pressure ulcers, falls, nutrition issues, and improperly treated infections. (App. 18-19 ¶¶ 47-50).

[1] Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015).

To investigate a "corporate negligence" claim that is inherently concerned with nursing home operations, Mr. Vance's attorney served discovery requests seeking information on the various Petitioners affecting Patewood Post-Acute's operations. Among them is the one request for production animating the Petition for Extraordinary Writ or Writ of Certiorari. Request for Production No. 20 reads as follows:

> All incident, occurrence, and/or accident reports, whether internal or reported to an outside oversight agency, which were completed for any of Defendant's facilities, for two years preceding Plaintiff's residency and the time period of Plaintiff's residency.

(App. 38). Petitioners responded on February 5, 2025, objecting to the request as overly burdensome, unduly burdensome, irrelevant, and requesting information protected from disclosure by the Health Insurance Portability and Accountability Act ("HIPAA"). (App. 171). Petitioners reiterated their objections in two supplemental responses (App. 300, 434) even though Mr. Vance's attorney made several attempts to address Petitioners' concerns.

In two different deficiency letters, Mr. Vance's attorney explained the incident reports were relevant to the issue of notice. (App. 99, 103). The letters also agreed to accept copies of the incident reports with all "identifying information of other residents" redacted. (App. 99). Mr. Vance further agreed to a substantive limitation. Instead of all incident reports, the request was narrowed to only those reports involving "dehydration, infection, and skin breakdown," the precise issues evident in Robert Vance's negligent care. (App. 99). Finally, Mr. Vance's attorney agreed to enter a confidentiality order to allay any remaining concerns over the privacy rights of nonparty patients referenced in the requested incident reports. A "Consent Confidentiality Agreement and Order" was entered by the circuit court on May 30, 2025, which placed limitations on the disclosure of confidential information (¶ 5(b)) and required its destruction or return at the end of the litigation (¶ 9(b)).

Since Petitioners continued to oppose production, Mr. Vance filed a motion to compel on August 15, 2025. The circuit court granted the motion on October 31, 2025, writing in its order that Petitioners "shall produce all incident reports relating to falls, wounds, or weight-loss within twenty days of this Order. The incident reports shall have the names of the patients redacted." (App. 445). In a second order (dated December 22, 2025), the circuit court denied Petitioners' motion to reconsider. (App. 483-85). Petitioners then filed the current petition with this Court on January 12, 2026, asking the Court to take the nearly unprecedented step of performing an interlocutory review of a routine discovery order. For the reasons discussed below, the Petition's arguments misconstrue precedent, misrepresent Mr. Vance's claims, and make multiple arguments that are procedurally barred. For procedural, prudential, and substantive reasons, the Petition should be denied.

## ARGUMENT

### 1. Petitioners' disagreement with the circuit court's discovery order does not present the "exceptional circumstances" to warrant review.

Petitioners argue they are entitled to extraordinary relief because they disagree with the outcome of the circuit court's order and claim a post-judgment appeal would be ineffective. However, these assertions are not enough to support certiorari on an emergent or regular basis. A cert petition must do more than just note the petitioner's disagreement with a lower court outcome. Petitioners must show that the circuit court's alleged errors rise to a level that warrant this court's intervention. Rule 245(a), SCACR (requiring a petitioner to show the reasons that an emergency or special reason supports exercising the Court's original jurisdiction); In re Breast Implant Prod Liab. Litig., 331 S.C. 540, 543, 503 S.E.2d 445, 447 (1998) (requiring "exceptional circumstances" to support exceptional writ).[2] Failing to identify the required extraordinary circumstances is especially important here because Petitioners ask the Court to take the rare step of reversing a discovery order.

The Court generally declines review of discovery orders. Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control, 387 S.C. 380, 387, 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.'"). There are important reasons for that rule. For one, resolving discovery disputes is a heavily fact-specific task requiring a circuit court to consider both the broad parameters of parties' claims as well as the narrow, idiosyncratic, and often complex facts bearing on the discoverability of the information in question. Discovery practice also requires circuit courts

[2] When a writ of certiorari is sought in the traditional way, the Court evaluates the petition for novel legal questions as well as conflicts between the challenged order and state/federal supreme court precedent. Rule 242(b)(1), (3), (5), SCACR.

to use prudential considerations, weighing the available means by which the parties may achieve their fact-finding objectives. See Oncology & Hematology Associates, 387 S.C. at 388, 692 S.E.2d at 924 ("We have no desire to micromanage discovery orders"). When, as frequently is true, a discovery order turns on the circuit court's factual findings, those findings are largely immune from appellate review even on an extraordinary writ. Hollman v. Woolfson, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (citing S.C. Bd. of Exam'rs in Optometry v. Cohen, 256 S.C. 13, 180 S.E.2d 650 (1971)). Even when a discovery order does not turn on factual conclusions, this Court recognizes the need for affording circuit courts the discretion necessary to resolve the case-specific discovery disputes before them. Hollman, 384 S.C. at 577, 683 S.E.2d at 498 (citing Dunn v. Dunn, 298 S.C. 499, 381 S.E.2d 734 (1989)).

The Court also considers a more practical concern. Every successful attempt to invoke the Court's original jurisdiction will inspire many others. See Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991) (noting "dramatic rise" in petitions for extraordinary relief and emphasizing "the limitations we have placed on our original jurisdiction"). This risk is perhaps more severe with discovery orders than with any other component of civil litigation. Discovery disputes are a near daily part of circuit court dockets. There is no shortage of plaintiffs and defendants who feel aggrieved by orders granting or denying document requests. For logistical and judicial efficiency purposes, it is important that an extraordinary writ remain accessible only to the most emergent discovery disputes and the most extreme discovery rulings.

The discovery order Petitioners challenge is unlike any this Court has previously deemed worthy of interlocutory review. Petitioners lift their three proposed "extraordinary circumstances" straight out of Hollman and Oncology & Hematology Associates (Pet. at 11), but this case bears none of the key characteristics making those discovery orders so harsh or making this Court's

intervention so necessary. Hollman struck down an order that took the extreme step of authorizing attorneys to conduct personal interviews of nonparties about their medical treatment. Here, the circuit court ordered only the production of a limited set of nursing home incident reports with patient names removed. Mr. Vance's attorneys did not receive and do not seek leave to conduct personal interviews. The Court was compelled to intervene in Oncology & Hematology Associates because two companies' territorial squabbling had coopted the discovery process into a fight for competitive advantage rather than the collection of evidence for trial. In a fight over a single medical clinic in one South Carolina city, the Oncology & Hematology Associates respondent sought all of its opponent's operational records from six different counties—and even boldly hinted that an avalanche of irrelevant discovery is what the opponent deserved for deigning to enter another company's territory. Here, Mr. Vance received permission to obtain incident reports for the one facility (Patewood Post-Acute) where Robert was injured so he can build a case showing how Petitioners' financial and personnel decisions directly degrade patient care. The circuit court compelling production of those reports is not only well within the circuit court's discretion, it is nowhere near the type of "exceptional circumstances" meriting Supreme Court intervention in a discovery dispute.

**a. The circuit court's order presents none of Hollman's privacy concerns and complies with HIPAA regulations.**

Petitioners repeatedly invoke Hollman to argue that, since the circuit court's order implicates nonparty patients, the order both presents an "exceptional circumstance" warranting review and poses a "particularized harm" that weighs against the incident reports' disclosure. (Pet. at 14-16). However, Petitioners fail to recognize the very different privacy concern at issue in Hollman and fail to acknowledge the HIPAA-compliant protections in place to prevent the very privacy invasions Petitioners fear.

While Petitioners argue Hollman is "controlling" precedent (Pet. at 13), the truth is that the Hollman discovery order permitted an invasion of privacy markedly different in type and degree than anything Petitioners could plausibly allege is at issue here. The challenged discovery orders in Hollman played out in phases. The plaintiff first sought and received an order compelling production of unredacted copies of medical records for several of the defendant clinic's former patients. Hollman, 384 S.C. at 576, 683 S.E.2d at 497. The plaintiff then came back for more, filing an additional motion seeking the right to take personal identifying information from those medical records, use it to track down each patient, and then to conduct personal interviews presumably to quiz the patients about their medical care. Id. at 576-77, 683 S.E.2d at 497-98. It was the circuit court's authorization of *interviews* that raised red flags for the Court, serving as the decisive factor on both the threshold question of whether the petition merited review and whether the discovery should have been allowed.

In fact, all of the Court's discussion about the need to intervene and for reversing the circuit court centered on the order's allowance of nonparty patient interviews. This is evident from the opinion's first sentence, stating the legal issue that got the case before the Court. The Court was called to address whether there was a legal error in "the circuit court allowing [the plaintiffs] *to contact* nonparty patients of petitioners." Id. at 576, 683 S.E.2d at 497 (emphasis added). Hollman goes on to explain the "exceptional circumstance" compelling the Court to take the unusual step of intervening in a discovery dispute was that "[*a]llowing the interviews* will moot any claim petitioners could raise on appeal that the discovery was erroneously allowed." Id. at 577, 683 S.E.2d at 498 (emphasis added). Once Hollman moved to the merits, it again directly tied its ruling to the challenged order's authorization of nonparty patient interviews. The petitioners there met their initial burden to challenge the discovery order because "particularized harm to the nonparty

patients . . . will arise *if the interviews are permitted*." Id. at 578, 683 S.E.2d at 499 (emphasis added).

Accordingly, Petitioners err in proposing Hollman as "controlling" authority here. Mr. Vance is not seeking in any way to speak with the nonparty patients whose care was involved in the requested incident reports. He has no interest in disturbing them or their families by attempting to compel them to relive an incident or injury. Mr. Vance is not even seeking their names. His attorney specifically agreed to receive the requested reports with the patient name redacted. (App. 103, 284, 445). Hollman was an "extraordinary circumstance" because it involved a circuit court judge ordering the release of names and the creation of a court-sanctioned campaign to interview people who were not active participants in the litigation. Nothing remotely like that is at issue here.

Even so, Petitioners argue, the records at issue here still implicate privacy concerns under state and federal law. (Pet. at 15-16). Mr. Vance contests Petitioners' claim that incident reports created to submit to state regulators or to appease an insurer are in any way equal to the patient "medical records" at which privacy regulations are aimed. Nevertheless, patient privacy concerns have already been adequately addressed in this case. Petitioners cite regulations from HIPAA" and argue the incident reports contain "protected health information." (Pet. at 15-16) (citing 45 C.F.R. § 160.103). But, even if protected health information remained in the incident reports, HIPAA does not prevent their disclosure. HIPAA regulations permit Petitioners to disclose protected health information "in the course of any judicial or administrative proceeding" if there is "an order of a court" to do so. 45 C.F.R. § 164.512(e)(i).

The same regulation allows disclosure in response to a "discovery request" so long as Petitioners have Mr. Vance's assurance of reasonable efforts made to "secure a qualified protective order" regarding the requested information. 45 C.F.R. § 164.512(e)(ii)(B). All of those

requirements are met here. The circuit court order requires redaction of all patient names in the requested incident reports (App. 445), Mr. Vance's attorney expressly agreed to redaction of all personal identifiers (App. 284), and the circuit court already entered a consent confidentiality order restricting access to confidential information and requiring its return at the end of the litigation. (Consent Confidentiality Agreement and Order, entered May 30, 2025, attached as **EXHIBIT 1**).

Similarly, there is nothing in state law to prevent disclosure of the incident reports under the circumstances presented in this case. Even in those states that recognize a statutory physician-patient privilege[3], the "vast majority" of courts to consider the matter have concluded nonparty patient records do not implicate the privilege and cannot be withheld based on privacy concerns so long as there are adequate safeguards in place to protect the nonparty patient's identity. Bennett v. Fieser, 152 F.R.D. 641, 642-43 (D. Kan. 1994); see also Terre Haute Reg'l Hosp. v. Trueblood, 600 N.E.2d 1358, 1360 (Ind. 1992) ("The rule that the physician-patient privilege is not violated by the review of non-party medical records where adequate safeguards exist is followed in several jurisdictions"); Baptist Mem'l Hosp. Union Cnty. v. Johnson, 754 So.2d 1165, 1170 (Miss. 2000). Adequate safeguards include redacting the patient's name and making clear the requesting party may not contact the nonparty patients. Bennett, 152 F.R.D. at 643; Cochran v. St. Paul Fire & Marine Ins. Co., 909 F. Supp. 641, 645 (W.D. Ark. 1995) (rejecting hospital's argument that incident reports are covered by state statutory privilege because privilege concerns are eliminated when plaintiff only seeks "redacted copies which omit the patient's name"). As Utah's Supreme Court concluded, once the personal identifiers are removed, any medical jargon left is not enough to implicate the privilege. Staley v. Jolles, 230 P.3d 1007, 1011 (Utah 2010) ("Without an

[3] South Carolina law has no such privilege. McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) (citing Peagler v. Atl. Coast Line R.R. Co., 232 S.C. 274, 101 S.E.2d 821 (1958)).

identified individual connected to a diagnosis, the diagnosis contains nothing more than medical terminology."). Those adequate safeguards are in place here. The circuit court's challenged order unambiguously requires redaction of the nonparty patients' names (App. 445) and the confidentiality order plainly bars parties from contacting individuals identified in confidential documents.

In short, this case is very different than Hollman, and that ruling does not control here. The circuit court has not ordered, Mr. Vance has not sought, and an existing confidentiality order expressly prohibits efforts to contact nonparty patients involved in the requested incident reports. As such, this case has none of the attributes that led Hollman to cite privacy concerns as an "exceptional circumstance" justifying interlocutory review of a discovery order. Moreover, when the limited scope of the requested information is combined with the redaction requirement in the circuit court's order, Petitioners could not meet their initial burden on the merits to show a "particularized harm" even if the Court had an "exceptional circumstance" on which to grant certiorari.

**b. Mr. Vance's narrowly tailored document request seeks relevant information for his negligence claims.**

Beyond their misguided privacy concerns, Petitioners rely on the same argument espoused by nearly every non-prevailing party in a discovery dispute—the contested request seeks irrelevant information. (Pet. at 16-23). This common argument warrants Supreme Court review only in response to the most extreme of discovery requests (Oncology & Hematology Associates), and Mr. Vance's narrowly tailored document request is not that. Petitioners also err in trying to wedge Mr. Vance's request into Hollman's holding because the requested incident reports are highly relevant and probative to Mr. Vance's claim that Robert Vance's injuries flowed directly from Petitioners' negligent financial and personnel decisions.

Initially, Petitioners fail in the essential task of explaining why the parties' disagreement over the scope of relevant discovery is a matter worthy of Supreme Court review. If a party wants this Court to involve itself in such a dispute, the contested discovery request must be off-the-wall irrelevant or indicative of some sinister motive or else the Court will be flooded with petitions from unhappy discovery litigants. Moreover, on the merits of these types of disputes, a relevancy objection is rarely sufficient to preclude discovery because the scope of discovery (Rule 26(b)(1), SCRCP) is intentionally broad. Samples v. Mitchell, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (quoting J. Flanagan, *South Carolina Civil Procedure* 216 (2d ed 1996) ("an objection on relevance grounds is likely to limit only the most excessive discovery request."). Rule 26 distinguishes discoverability from admissibility and Petitioners' concerns are more appropriate to a challenge to admission once this case proceeds to trial. In re Eleanor McCarthy Lenahan Trust, 428 S.C. 598, 604, 836 S.E.2d 793, 796 (Ct. App. 2019) (distinguishing broad scope of "discoverable" evidence from later evaluations of whether the evidence is "admissible").

Petitioners must point to something truly extraordinary about Mr. Vance's document request to merit Supreme Court review, and despite their arguments to the contrary, this case is nothing like Oncology & Hematology Associates. The Petition is fond of citing this case's language ("cottage industry", "scorched earth") but cannot show the acrimonious circumstances motivating the Court's ruling in Oncology & Hematology Associates or that the discovery requests in question here are equal in type or scope to the ones criticized there. Oncology & Hematology Associates involved two healthcare providers battling over right to provide radiation treatment services to cancer patients in Greer. 387 S.C. at 381-82, 692 S.E.2d at 921. After one got a coveted "certificate of need" ("CON") from SCDHEC, the other filed an administrative action challenging the process by which the CON was awarded. Id. During discovery, the aggrieved provider

"inundate[ed]" its opponent with discovery requests untailored to the challenged CON seeking "virtually all information concerning every facet of [opposing party's] operation." Id. at 383, 692 S.E.2d at 922.

Oncology & Hematology Associates's three defining characteristics are all absent here. First, the Court noted there was a viable argument that animus or competitive advantage—not factfinding—was the purpose of the challenged requests. Id. at 386, 692 S.E.2d at 923. That was the essence of the court's "cottage industry" remark. The requesting party overtly viewed its discovery request as an effort to injure its opponent. Counsel admitted during a hearing that his client's opponent was "ask[ing] for" an acrimonious discovery battle when it chose to invade what was the client's claimed territory. Id. In contrast, Mr. Vance is not Petitioners' competitor, and his goal is not to take for himself Petitioners' ability to provide nursing home services in Greenville County. None of the palpable, unvarnished animus that pervaded in Oncology & Hematology Associates is remotely indicated here. Mr. Vance's counsel made efforts to resolve this discovery dispute without court intervention, sending multiple deficiency letters (App. 98-106) and attempting to find common ground. Mr. Vance's goal is to penetrate the complex web of companies with a stake in Patewood Post-Acute to learn about how it is funded and staffed, both of which are essential elements of his corporate negligence claim discussed in more detail below. Moreover, Mr. Vance's counsel has not assumed a hard-nosed, contentious stance in discovery. Cognizant of Petitioners' concerns for the nonparty patients' privacy, Mr. Vance's attorney proposed redaction and agreed to a confidentiality order. (App. 99).

Second, Oncology & Hematology Associates noted that the requesting party inundated its opponent with requests for seven counties' worth of information even though the legal action concerned only a CON for a facility in one city. 387 S.C. at 384, 692 S.E.2d at 922. Mr. Vance's

request for production No. 20 is well tailored to the matter at issue—i.e. whether underfunding and understaffing at Patewood Post-Acute contributes to patients sustaining injuries from falls, skin breakdowns, infections, and nutritional deficiencies. The request for production is limited to the Patewood Post-Acute facility, not any other nursing home or acute care hospital with which the various petitioners may be associated.

Third, while Oncology & Hematology Associates declined to offer a specific definition of overly broad/irrelevant requests, it did point to a Texas Supreme Court case that offers helpful specifics. 387 S.C. at 388, 692 S.E.2d at 924-25 (citing In re CSX Corp., 124 S.W.3d 149 (Tex. 2003)). In re CSX held interrogatories "lack reasonable limitations as to time and subject matter" when, in an employment toxic tort case, a party sought information from companies that never employed the plaintiff and that extended for 25 years beyond the plaintiff's employment. 124 S.W.3d at 151. Here, there are reasonable time and subject matter limitations in request for production No. 20. First, Mr. Vance is only asking Petitioners to reach back two years to identify relevant incident reports. (App. 144). Second, after Petitioners raised their initial objections, Mr. Vance even further limited his request to limit the subject matter of the requested incident reports to only the type of harms Robert Vance suffered—i.e. falls, skin breakdowns, infections, and nutritional deficiencies. (App. 99). Petitioners' haphazard attempt to equate this case with Oncology & Hematology Associates fails at every turn.

Petitioners' other main line of argument is to suggest documents like the requested incident reports were declared irrelevant as a matter of law in Hollman. (Pet. at 18-19). However, Petitioners both overstate Hollman's holding and misrepresent Mr. Vance's claims. Hollman held only that information regarding other patients' treatment may not be used in support of the propensity inference—i.e. since the defendant providers were negligent with one patient, it is more

likely they are negligent with another. 384 S.C. at 578, 683 S.E.2d at 499 (finding nonparty patient medical records inadmissible to "show[] a propensity by petitioners for malpractice"). In that sense, Hollman said nothing new. Its holding was merely a restatement of Rule 404(b), SCRE, which excludes "other wrongs" evidence when offered "to show action in conformity therewith." But, that same rule allows this evidence to prove things like a party's motive or intent as well as the "absence of mistake."

As Mr. Vance's attorney explained in response to Petitioners' initial objections, the redacted Patewood Post-Acute incident reports are sought not to have jurors leap to the conclusion that Petitioners' nurses are serially incompetent, but to show Petitioners were on notice that their systematic refusal to provide Patewood Post-Acute the proper financial resources and to assign the facility the proper amount of trained staff members would lead to easily preventable injuries from falls, skin breakdowns, infections, and nutritional deficiencies. (App. 99) ("This information is relevant to notice . . ."). This is precisely the type of legitimate probative value Rule 404(b) recognizes for "other wrongs" evidence and it has been recognized repeatedly in other courts. Peacock v. HECP III Eastman, Inc., 497 S.E.2d 253, 254-56 (Ga. App. 1998) (reversing defense verdict in nursing home negligence case based on failure to order disclosure of all incident reports at the home over 26-month period when decedent resided there because reports were relevant to show facility "had notice its employees were not properly supervising residents"); Apple Investment Props. v. Watts, 469 S.E.2d 356, 358 (Ga. App. 1996) (nursing home incident reports relevant to show defendant had notice its employees were not properly supervising residents and "rebut a claim by [defendant] that it was unaware of such problems").

Past incident evidence involving nonparty patients is also relevant to claims for enhanced liability or to support a claim for exemplary damages. Watts, 469 S.E.2d at 358 ("similar instances

of conduct would tend to support a claim that [defendant] was, as alleged, 'consciously indifferent' to the needs of its residents so as to justify punitive damages"); Staley, 230 P.3d at 1014. Notice is important to Mr. Vance's claim for punitive damages (App. 19) which are available under South Carolina law only when the defendant is proved to have engaged in conduct that is "reckless" or worse by showing "the duration of the conduct, the defendant's awareness" and "***the existence of similar past conduct***." S.C. Code Ann. § 15-32-520(D), (E)(4)-(5) (emphasis added).

Petitioners' undue burden arguments fail under even the mildest scrutiny. For one, they rely on false distinctions. Petitioners bemoan that the majority of records produced in this case have been "operational" rather than "care related." (Pet. at 4). However, as discussed below, Patewood Post-Acute's "operations" are directly relevant to Mr. Vance's corporate negligence claim. See Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) (citing Montgomery Health Care Facility, Inc. v. Ballard, 565 So.2d 221, 225-26 (Ala. 1990) (considering "day-to-day *operations* of home" to determine parent company's potential liability) (emphasis added). That is because, for underfunding and understaffing-based cases like this one, there is no firm line between a nursing home's operations and the quality of care a resident receives. In other words, when the problem is that no nurse is around to turn/reposition Robert Vance and he develops pressure sores on his genitals, Petitioners' staffing census and budget reports are just as relevant as the daily nursing notes. Plus, there is a thick irony in Petitioners suggesting Mr. Vance has overcomplicated the case by going beyond Patewood Post-Acute to name six other defendants. The legal machinations of nursing home operators to misdirect potential plaintiffs and to evade liability by creating a web of management companies and real

estate entities is precisely the reason why casting a wide net is necessary to capture all the culpable parties.[4]

Lastly, the Petition's error is not just in overreading Hollman's holding, it is in misrepresenting Mr. Vance's claims. Petitioners attempt to equate this case to Hollman by describing it as a typical medical malpractice suit. However, this claim goes beyond a typical malpractice claim to include alleged liability for Petitioners' corporate negligence. (App. 18-19). For that claim, evidence like the requested incident reports is not just relevant, it is some of the most important evidence available. A corporate negligence claim goes beyond the typical analysis of the standard of care governing how a RN or LPN interacts with residents on the nursing home floor. Instead, it looks more directly at the parties who control how the nursing home functions (e.g. Petitioners Providence Group, Inc., Providence Administrative Consulting Services, Inc., and PACS Group, Inc.) and asks whether the financial, operational, and personnel decision makers are providing the home such scant resources so as to unreasonably risk the health and safety of its residents. As this Court explained ten years ago:

> [D]irect corporate liability attaches due to a breach of a duty which runs directly between a parent company and a patient, arising from negligence in action such as leaving a hospital underfunded, understaffed or undertrained so as to provide substandard care.

[4] See e.g. In re Fundamental Long Term Care, Inc., 873 F.3d 1325, 1328 (11th Cir. 2017) (describing one nursing home chain operator's tactics as equal to a "bust out" scheme perpetrated in part by "transferr[ing] the useful assets of the nursing-home business into a newly formed operating entity" in an effort to avoid judgments obtained by families of residents who died in their facilities); Wilson v. Americare Sys., Inc., 397 S.W.3d 552 (Tenn. 2013) (reinstating verdict against nursing home management company for death of resident and assigning 50% fault to company, 20% to director of nursing, and 30% to nurse); Estate of Canavan v. Nat'l Healthcare Corp., 889 So.2d 825, 826-27 (Fla. App. 2d Dist. 2004) (reversing directed verdict to managing member of nursing home's related entity because reasonable jury could find member guilty of "elevation of profit over patient care").

Morrow, 412 S.C. at 538, 773 S.E.2d at 146 (citing Martin C. McWilliams, Jr. & Hamilton E. Russell, III, *Hospital Liability for Torts of Independent Contract Physicians*, 47 S.C. L. Rev. 431 (1996)).

Morrow officially recognized in South Carolina what has long been understood about nursing homes. They are too often "underfinanced, understaffed, and overcrowded." Associated Health Sys., Inc. v. Jones, 366 S.E.2d 147, 150 (Ga. App. 1988). A nursing home where there are just too few nurses or where low-paid nursing aides are being expected to perform tasks better suited to RNs poses a danger to residents and represents a breach of duty from the controlling companies to their residents. Wilson v. Americare Sys., Inc., 397 S.W.3d 552, 561 (Tenn. 2013) ("It is a matter of reason and common sense within the jury's fact-finding province to infer that, in an employment setting, if there is too much work required of too few employees, either the work will not get done or the quality of the work will be diminished"). The injuries Robert Vance suffered are exactly the type that arise in underfunded and understaffed nursing homes. Robert was not hurt because a doctor made a bad call on treatment or because a nurse was having a bad day. Instead, his were injuries of systemic neglect compounded by corporate greed. (App. 18 ¶¶ 48-49). He developed bed sores because no one was around to reposition him every two hours, he became dehydrated because no one tracked his fluid intake, and he was hospitalized with septic shock because no qualified medical provider was present to intervene more quickly. (App. 13-15).

Multiple state supreme courts have recognized proof of past incidents is strong evidence to support an underfunding and understaffing claim. In Arkansas, the supreme court affirmed the admission of a nursing home survey showing a spate of incidents where patients were not repositioned, provided incontinence care, or fed regularly. Advocat, Inc. v. Sauer, 111 S.W.3d 346, 363 (Ark. 2003). The survey was relevant even though it addressed nonparty patients based on a

simple proposition: "Whether the patients at [defendant facility] suffered from inadequate nurse staffing pertaining to personal hygiene, feeding, and treatment would certainly have a bearing on whether the allegations made by the [plaintiff] about the lack of quality care afforded to [plaintiff's decedent] were more or less probable." Id. at 364. Similarly, in West Virginia, the supreme court found evidence sufficient to show a nursing home was "chronically understaffed to the point that it was not able to provide even a life sustaining amount of water" to resident during the 19 days that she resided at the facility. Manor Care, Inc. v. Douglas, 763 S.E.2d 73, 90-91 (W. Va. 2014).[5] The plaintiff was permitted to prove the resident's death was a product of understaffing by citing "numerous complaints from residents" other than the decedent about the home's staffing crisis. Id. at 105; see also Rose Care, Inc. v. Ross, 209 S.W.3d 393, 406 (Ark. App. 2005) (affirming admission of evidence from survey showing nonparty patient at risk for pressure ulcers was observed by surveyors not turned and repositioned for several hours); Alcon v. S. Pueblo Med. Investors, LTD, No. 16CA1898, 2018 WL 11714573, at * 12 (Colo. App. Jan. 18, 2018) ("Simply put, the surveys tend to show that defendants knew of problems with resident care—meeting the relevancy standard"). Notably, Petitioners do not point to a single case rejecting a discovery request for past incident reports in an underfunding/understaffing claim.

In sum, Petitioners' argument that the requested incident reports are irrelevant does not support the position in any way. This oft-argued position is not an "exceptional circumstance" because neither this case nor the disputed discovery request bear any likeness to the situation considered in Oncology & Hematology Associates. Should the Court reach the merits, Hollman does not deem nonparty patient information categorically irrelevant in a medical malpractice

[5] Superseded by statute on other grounds as stated in State ex rel. W. Va. Univ. Hosps., Inc. v. Scott, 866 S.E.2d 350 (W. Va. 2021).

claim. Even if Hollman had made such a ruling, the incident reports are relevant here on the issues of notice, enhanced liability, exemplary damages, and the distinct claim for corporate negligence.

**2. Petitioners' remaining arguments are procedurally improper and substantively invalid.**

Petitioners ask the Court to disregard Mr. Vance's corporate negligence claim, arguing the claim does not exist in South Carolina law. (Pet. at 19-20). Petitioners then cite a proposed federal statutory privilege that protects the incident reports from disclosure. (Pet. at 23-24). These arguments should be procedurally barred and, failing there, rejected on the merits.

What Petitioners fail to tell the Court is that they tried this argument before in this case and it was rejected—twice. Petitioners filed a Rule 12(b)(6), SCRCP motion to dismiss Mr. Vance's corporate negligence claim on December 30, 2024. The circuit court denied that motion in a written order on April 1, 2025. Petitioners moved to reconsider that ruling on April 11, 2025, and that motion was denied on May 19, 2025.[6] An order denying a Rule 12(b)(6) motion is not immediately appealable. Moyd v. Johnson, 289 S.C. 482, 347 S.E.2d 97 (1986). The Petition makes no argument and cites no authority for appealing the circuit court's orders on the corporate negligence claim. Petitioners also fail to explain why, assuming they believed the orders to be immediately appealable, they waited more than six months before challenging them. See Rule 203, SCACR (requiring a notice of appeal be filed within thirty days after receipt of written notice of entry of the order).

There is also no merit to Petitioners' argument. They omit Morrow entirely, instead relying on McCord v. Laurens Cnty. Health Care System, 429 S.C. 286, 838 S.E.2d 220 (Ct. App. 2020).

[6] Since Petitioners chose not to include any of these filings in the Appendix, each is attached to this Return. See Rule 240(c)(3), SCACR. Petitioners' Mot. to Dismiss, attached as **EXHIBIT 2**, Order Denying Mot. to Dismiss, attached as **EXHIBIT 3**, Petitioners' Mot. to Reconsider, attached as **EXHIBIT 4**, and Order Denying Mot. to Reconsider, attached as **EXHIBIT 5**.

However, McCord was a very different case, considering only to hold a hospital liable for the damages caused by a surgeon operating in the hospital without full malpractice insurance. The plaintiff argued the hospital owed a common law legal duty to only allow physicians to operate in their facility when the physician's liability insurance coverage was sufficiently robust to cover every procedure performed. Id. at 295, 838 S.E.2d at 224. The McCord plaintiffs argued the duty arose from the hospital-patient relationship, but the Court of Appeals found no such duty in South Carolina law. Id. at 295, 838 S.E.2d at 225. Other jurisdictions have recognized this as a legal duty under the framework of a "corporate negligence doctrine for hospitals." Id. at 296-97, 838 S.E.2d at 225-26 (citing Johnson v. Misericordia Cmty. Hosp., 301 N.W.2d 156, 164-65 (Wis. 1981)). But, the scope of that potential legal duty is limited. McCord noted a previous Court of Appeals opinion refusing to judicially adopt this "hospital corporate negligence" doctrine for 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. 1984)). There, the proposed hospital duty was defined as a "duty to patients to carefully select and review the competency of physicians using their facilities." Strickland, 323 S.C. at 72, 448 S.E.2d at 586.

There is no reasonable basis to consider McCord more pertinent precedent on Mr. Vance's claim than Morrow. In fact, Morrow remains good law and has been cited with approval in cases against nursing homes even after McCord. Davis v. Agape Nursing Rehab. Ctr., Inc., Op. No. 2022-UP-094 (Ct. App. Mar. 9, 2022) (citing Morrow and noting evidence related to corporate parent's sale of nursing home was probative evidence because it related to whether corporation "prioritized financial decisions over patient care"). McCord does not undermine or even mention Morrow because it is considering a completely different proposed legal duty. Therefore,

Mr. Vance's corporate negligence claim is valid, and Petitioners procedurally improper argument could also be rejected on the merits.

Petitioners' invocation of a proposed federal privilege suffers from the same flaws. This argument was not timely raised to preserve the issue for appellate review. Petitioners did not assert any "federal quality assurance privilege" in their responses to Request for Production No. 20. (App. 171) or in either of their supplemental responses (App. 300, 316). Petitioners also failed to raise this proposed privilege in their memorandum opposing Mr. Vance's motion to compel. (App. 38-39). The privilege Petitioners assert now was not even part of their motion to reconsider the order compelling production of the incident reports. (App. 448-58). It appears the first time Petitioners mentioned this alleged privilege was in a December 1, 2025, document captioned as a "Supplemental Memorandum in Support of its Motion to Reconsider," which Petitioners chose not to include in the appendix. That document is insufficient to preserve the issue for appellate review. C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268, 270 (1993) (citing Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not").

Even if the privilege argument were properly preserved, it is not supported by the law or record. Petitioners rely on the "Federal Quality Assurance Privilege" that prevents a state from requiring disclosure of "the records of" a skilled nursing facility's "quality assessment and assurance committee." 42 U.S.C. § 1395i-3(b)(1)(B). The phrase "records of" a quality assessment and assurance committee is a fairly limited category. Jewish Home of Eastern Pa. v. Centers for Medicare & Medicaid Servs., 693 F.3d 359, 362 (3d Cir. 2012) (finding statutory text "limits the scope of protection from discovery to the records generated by the Quality Assurance Committee"); Azore, LLC v. Bassett, 341 P.3d 466, 471 (Ariz. App. 2014) (rejecting application

of privilege to documents that "would have existed regardless of the quality assurance committee").

The committee's "records" includes its meeting minutes, internal papers, and conclusions but not "materials generated or created outside the committee and submitted to the committee for its review." Id. (citing State ex rel. Boone Ret. Ctr. v. Hamilton, 946 S.W.2d 740, 743 (Mo. 1997)). Documents whose "essential purpose" is anything other than quality assurance are also outside the privilege's scope. In re Subpoena Duces Tecum to Jane Doe, Esq., 787 N.E.2d 618, 621 (N.Y. 2003). A document's essential purpose is likely not quality assurance if its creation is a requirement of state or federal regulation. Id. It is for this reason that multiple courts have found incident reports do not fall within the federal quality assurance privilege. Jewish Home of Eastern Pa., 693 F.3d at 362 (refusing to apply privilege because 'the documents in question were contemporaneous, routinely-generated incident reports . . ."); In re Subpoena Duces Tecum to Jane Doe, 787 N.E.2d at 622 (finding incident reports required by state regulation not privileged because regulatory requirements "are imposed on nursing homes generally and have no express relationship to quality assurance procedures.").

Moreover, Petitioners offer no evidence in support of their argument. As the party asserting the privilege, it is Petitioners' burden to come forward with proof to meet its requirements. Wilson v. Preston, 378 S.C. 348, 359, 662 S.E.2d 580 (2008); Richmond Health Facilities-Madison, LP v. Clouse, 473 S.W.3d 79, 85 (Ky. 2015) (applying same principle to Federal Quality Assurance Privilege). The Petition and Appendix contain nothing about Patewood Post-Acute's quality assurance committee, nothing about the way in which the requested incident reports came into being or what was the driving force for their creation and use. It is simply not enough to say the facility has a quality assurance committee and therefore incident reports are privileged from

discovery. Petitioners were required to do more to show the privilege applies here, and they have not met that burden.

## CONCLUSION

Based on the arguments above, Mr. Vance respectfully requests the Court deny the Petition for Extraordinary Writ or Writ of Certiorari. The order compelling production of two-years' worth of Patewood Post-Acute's incident reports is neither a matter proper for this Court's interlocutory review nor an abuse of the circuit court's discretion. Since the circuit court's order is nothing like the intimately intrusive order for interviews in Hollman or the animus-based abusive discovery requests in Oncology & Hematology Associates, there are no "exceptional circumstances" to grant the petition. On the merits, Mr. Vance's request for the incident reports was narrowly tailored in time/content and any privacy concerns for nonparty patients are adequately addressed in the circuit court order's redaction requirement and in the confidentiality order's provisions on use, disclosure, and destruction.

Respectfully submitted,

/s/ Jordan C. Calloway
Matthew W. Christian
Christian & Christian Law
1007 E. Washington Street
Greenville, SC 29691
(864) 232-7363
mchristian@cclawfirm.com

Jordan C. Calloway (SC Bar ID. 78728)
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
jcalloway@mcgowanhood.com

Attorneys for Respondent

January 22, 2026
Rock Hill, SC