STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00065
	)	
SANDRA HOLLAND, as Personal Representative of the Estate of Christopher Lee Holland, deceased, and SALEENA RAMM, as Parent and Natural Guardian of R.D.H., a Minor Child of Decedent Christopher Lee Holland,	)	
Plaintiffs,	)	**PROPOSED ORDER**
v.	)	
DAVID A. BROSMAN, MD; PAIN MANAGEMENT ASC, LLC; MPS SOLUTIONS, INC.; ANESTHESIA ASSOCIATES OF HILTON HEAD PAIN MANAGEMENT, LLC,	)	
Defendants.	)	

This matter is before the Court on the Defendants' Motion for Summary Judgment or, in the Alternative, Motion in Limine on Choice of Law Issues, filed July 17, 2026. The Court heard argument on July 30, 2026, and thereafter received supplemental memoranda from both sides. The parties agree that the question of which state's substantive law governs this action is a question of law for the Court and that it must be answered before the trial scheduled to begin on August 31, 2026. Having considered the motion, the memoranda and supplemental memoranda, the exhibits, the pleadings, the applicable law, and the arguments of counsel, the Court concludes that the substantive law of South Carolina governs this action, and therefore grants the Defendant's Motion in Limine and the Defendants' Motion for Summary Judgment is denied.[1]

[1]The Defendants first sought summary judgment on the choice of law issue in March 2022. The Honorable Jennifer B. McCoy denied that motion "at this time" and did so under the mere scintilla of evidence standard that the Supreme Court has since abandoned. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463,

Because the Defendants seek summary judgment or, alternatively, a ruling in limine, the Court makes no findings of fact. The facts recited below are either uncontested or are stated, as they must be, in the light most favorable to the Plaintiffs as the nonmoving parties. *See Wright v. PRG Real Estate Mgmt.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) ("On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party."). They are set out solely to frame the legal question presented.

On October 13, 2016, James Russell Sanders was driving westbound on SR 26 in Effingham County, Georgia, when he crossed into the eastbound lane and struck a vehicle driven by Christopher Lee Holland. Mr. Holland died within an hour of the collision. The Plaintiffs and their decedent were domiciled in Georgia at the time of the accident, and the decedent's estate is administered in Georgia. Those facts are undisputed. It is equally undisputed that every act of the professional conduct at issue occurred in South Carolina. The Defendants treated Sanders for pain management exclusively in South Carolina from April 2014 forward and did not treat him in Georgia. Dr. David Brosman is licensed to practice medicine only in South Carolina, and the entity Defendants are South Carolina entities.

Viewed most favorably to the Plaintiffs, the record could permit a jury to find the following. At the time of the collision the Defendants had prescribed Sanders a combination of Oxycodone, Fentanyl, Xanax, Dilantin, Soma, and Gabapentin, in addition to other drugs. The Plaintiffs' evidence, including the deposition testimony of Dr. Brosman and the affidavit of their expert, could support findings that the Defendants prescribed medications to a patient they knew

892 S.E.2d 297, 301 (2023) ("We now clarify that the 'mere scintilla' standard does not apply under Rule 56(c)."). The Plaintiffs contend that Rule 43(l), SCRCP, bars the renewed motion because it rests upon the same set of facts. Because the parties agree that the choice of law question is one of law that must be resolved before trial in any event, and because the Defendants have alternatively presented the question by motion in limine, the Court reaches the merits without deciding whether Rule 43(l) would bar a renewed motion for summary judgment standing alone.

to be a drug abuser who repeatedly failed drug screens, that Dr. Brosman never told Sanders not to drive if impaired and did not advise him of new risks associated with the medications he prescribed. The Defendants respond that a Patient Responsibility Agreement signed by Sanders adequately warned him. Whether an adequate warning was given presents a genuine issue of material fact that could not be resolved on this motion in any event, and the Court expresses no view upon it.

It is important at the outset to identify what kind of case this is. The Plaintiffs are not patients of the Defendants, and they do not sue upon any relationship of physician and patient. "In South Carolina, a malpractice claim can only be maintained by the patient. If a physician deviated from the accepted standards of professional care in treating a patient, he breached a duty of care to the patient and not to the third party." *Bishop v. South Carolina Department of Mental health*, 331 S.C. 79, 502 S.E.2d 78, 84 (1998). However, in *Hardee v. Bio-Medical Applications of South Carolina, Inc.*, 370 S.C. 511, 636 S.E.2d 629 (2006), the Supreme Court carved out a narrow exception to that general rule. In *Hardee*, the Supreme Court held that a medical provider who provides treatment which it knows may have detrimental effects on a patient's capacities and abilities owes a duty to prevent harm to patients and to reasonably foreseeable third parties, including the motoring public, by warning the patient of the attendant risks and effects before administering the treatment. *Hardee v. Bio–Medical Applications of S.C., Inc.*, 370 S.C. 511, 516, 636 S.E.2d 629, 631-32 (2006). The claims before the Court are therefore common law negligence claims of the kind recognized in *Hardee*, a failure to warn sounding in gross negligence, and not a classic medical malpractice claim maintained by a patient against her own physician.

That distinction matters to the choice of law analysis in two respects. First, the existence and scope of a duty in negligence is a question of law, and duty is "an expression of the sum total

of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection." *Hardee*, 370 S.C. at 516 n.2, 636 S.E.2d at 631 n.2. Whether the Defendants owed a duty to persons endangered by their practices is thus itself a declaration of public policy, and the operative question becomes whose policy speaks to the professional conduct of a South Carolina licensee treating a patient in South Carolina. Second, and for context, South Carolina courts have consistently located torts arising from medical treatment at the place of treatment. In *Coggeshall* the Supreme Court concurred with "the substantial number of cases finding that the tortious injury occurs in the forum where the medical treatment was given and not where the patient resides." *Coggeshall v. Reprod. Endocrine Assocs.*, 376 S.C. 12, 20, 655 S.E.2d 476, 480 (2007). The Court of Appeals has likewise observed that many jurisdictions "have rejected the view that the tortious rendition of medical services out of the forum state is a portable tort which can be deemed to have been committed where the consequences foreseeably were felt." *Hume v. Durwood Med. Clinic, Inc.*, 282 S.C. 236, 241, 318 S.E.2d 119, 122 (Ct. App. 1984). Because those decisions arose in the jurisdictional setting, and because the claims here are not malpractice claims brought by a patient, the Court gives them modest weight and does not rest its ruling solely upon them. They nonetheless reflect this State's settled understanding that professional conduct is measured where it occurs, an understanding that informs the public policy analysis that follows.

The choice of law rule in South Carolina for tort actions is *lex loci delicti*, under which the substantive law governing a tort action is determined by the law of the state in which the injury occurred. *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001); *Dawkins v. State*, 306 S.C. 391, 393, 412 S.E.2d 407, 408 (1991). The rule, however, has never been absolute. Under the public policy exception, "the Court will not apply foreign law if it violates the public policy of South Carolina." *Boone*, 345 S.C. at 14, 546 S.E.2d at 193. The exception traces to *Rauton*, in

which the Supreme Court explained that a court may refuse to enforce a right of action accruing under the law of another state where it is against good morals or natural justice "or that for some other such reason the enforcement of it would be prejudicial to the general interests of our own citizens." *Rauton v. Pullman Co.*, 183 S.C. 495, 508, 191 S.E. 416, 422 (1937). The law of the forum is controlling whenever the law of the place of the wrong is contrary to the public policy of the forum state. *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 596 (D.S.C. 1981).

The Defendants correctly emphasize that the exception is narrow and seldom applied, that the mere fact "that the law of two states may differ does not necessarily imply that the law of one state violates the public policy of the other," and that the inquiry focuses upon the foreign law rather than upon whether South Carolina law is preferable in substance. *Dawkins*, 306 S.C. at 393, 412 S.E.2d at 408. The Court accepts that framing in full. The question presented is whether the application of Georgia law to this case, meaning the enforcement of Georgia's rule that privity between physician and patient is an absolute prerequisite to a professional negligence action, would violate the public policy of South Carolina or otherwise prejudice the general interests of her citizens. For the reasons that follow, the Court concludes that it would.

South Carolina's public policy on this subject is not left to inference. Public policy may be evinced by "what is expressed in state law, such as the constitution and statutes, and decisions of the courts", and its considerations require courts to determine whether the enforcement of foreign law "would be contrary to the public interest or manifestly injurious to the public welfare." *Williams v. Gov't Emps. Ins. Co*, 409 S.C. 586, 599, 762 S.E.2d 705, 712 (2014). The practice of medicine in this State is a licensed privilege, not a right. "A person may not practice medicine in this State unless the person . . . has been authorized to do so" by the State Board of Medical Examiners. S.C. Code Ann. § 40-47-30(A). The General Assembly has declared that professional

licensing exists for "the exclusive purpose of protecting the public interest" where unregulated practice "can harm or endanger the health, safety, or welfare of the public," and it has expressly directed that regulation account for "whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner." S.C. Code Ann. §§ 40-1-10(B)(1), 40-1-10(D)(10).

Protection of the public at large, and of third parties in particular, is thus written into the very foundation of medical licensure in this State. A licensee commits sanctionable misconduct by engaging in "unprofessional conduct that is likely either to deceive, defraud, or harm the public." S.C. Code Ann. § 40-47-110(B)(9). The General Assembly has adopted a single civil standard of care for every South Carolina health care provider, measured by what "the reasonably prudent health care provider . . . would do in the same or similar circumstances." S.C. Code Ann. § 15-79-110(6). And when the General Assembly addressed physicians treating patients at a distance, it demanded that licensees "adhere to the same standard of care as in-person medical care." S.C. Code Ann. § 40-47-37(A). Nothing in any of these enactments makes a licensee's duties contingent upon the residency of the patient or upon where the downstream consequences of negligent treatment are ultimately felt. The duties attach to the licensee's conduct in South Carolina.

Nor has this State been silent on the precise conduct at issue. In *Hardee* the Supreme Court declared, as a matter of South Carolina tort policy, that a provider administering treatment it knows may impair a patient owes a duty running to those persons in the general field of danger, that is, the motoring public, which the provider should reasonably foresee. *Hardee*, 370 S.C. at 516, 636 S.E.2d at 631-32. The General Assembly has since spoken with equal clarity about narcotic prescribing, imposing statutory limits on opioid prescriptions by South Carolina practitioners as part of legislation declaring this State's commitment to combatting the opioid epidemic occurring

within this State. Act No. 201, 2018 S.C. Acts; S.C. Code Ann. § 44-53-360(j). A South Carolina physician's duties when prescribing narcotics are the subject of express, current, and emphatic South Carolina public policy.

Against that backdrop, the difficulty with the Defendants' position becomes apparent. On the Defendants' theory, the legal obligations and standard of care of a Hilton Head pain management physician are fixed not by the South Carolina statutes and decisions under which he is licensed and regulated, but by whichever state's line his patient later happens to cross. The same office visit, the same prescriptions, and the same failure to warn would expose the physician to the duty recognized in *Hardee* if his impaired patient collides with another motorist in Jasper County, to no duty at all if the collision occurs minutes later across the Savannah River, and perhaps to a different or more stringent duty if the patient were to crash in some other state. A physician has no way of knowing, at the moment of prescribing, where his patient will drive.

Yet a duty in negligence either exists or does not exist at the moment the professional acts. A choice of law rule under which the duty attaches or evaporates retroactively, according to the fortuity of a patient's subsequent travel, imposes upon South Carolina licensees a shifting blanket of duties and standards of care governed by random circumstances. It gives licensees no fixed standard to which they may conform their conduct, and it effectively substitutes Georgia's regulatory judgments and common law for the duties South Carolina has imposed upon its own licensees as a condition of practicing here. The Court can conceive of few results more "prejudicial to the general interests of our own citizens" within the meaning of *Rauton*. South Carolina physicians are entitled to know what the law of this State requires of them, and the public is entitled to the uniform enforcement of the duties this State has seen fit to impose upon a profession licensed

by this State. It is against natural justice for a South Carolina physician's professional duties to begin and end at an imaginary line at the State's border.[2]

Georgia's contrary rule does not alter this conclusion, because Georgia's rule is an expression of Georgia's policy for the physicians Georgia regulates. Georgia's courts have declined to expand "a doctor's duty to his patient to generally include members of the public at large" precisely because doing so "would be contrary to Georgia public policy." *Gilhuly v. Dockery*, 273 Ga. App. 418, 420, 615 S.E.2d 237, 239 (Ga. Ct. App. 2005). It does not escape the Court that if enforcing South Carolina's duty to warn against Georgia physicians would be "contrary to Georgia public policy", then enforcing Georgia's prohibition of the duty with regard to a South Carolina physician would equally be contrary to South Carolina public policy. The decision whether to impose upon a physician a duty to consider and warn of risks of harm to others is a decision of public policy, and Georgia has made that decision for the physicians it licenses, for the treatment it regulates, and in the offices its authority reaches. Georgia has claimed no interest in dictating the professional duties of physicians it does not license for treatment rendered

[2]Although South Carolina adheres to *lex loci delicti* and the Court applies that rule as modified by the public policy exception, the Court notes that the same result would obtain under the modern approach of the Restatement (Second) of Conflict of Laws (1971), which most states now follow. Under § 145, the law of the state with the most significant relationship to the occurrence and the parties governs, weighing the place where the conduct causing the injury occurred, the domicile and place of business of the parties, and the place where the relationship of the parties is centered, all in light of the principles stated in § 6, including the relevant policies of the forum and of other interested states. Here, every act of the professional conduct at issue occurred in South Carolina. The Defendants are domiciled and do business in South Carolina, and the treatment relationship from which the alleged duties arise was centered in South Carolina. Where the place of injury is fortuitous because it depends upon where an impaired patient happened to be driving, the place of injury bears little relation to the occurrence and the place of the conduct receives particular weight. *See* Restatement (Second) of Conflict of Laws § 145 cmt. e (1971) ("Situations do arise, however, where the place of injury will not play an important role in the selection of the state of the applicable law. This will be so, for example, when the place of injury can be said to be fortuitous . . . ."); *id.* § 146 (general rule favoring the place of injury yields where another state has a more significant relationship to the occurrence and the parties). South Carolina, the only state that licenses and regulates the Defendants and whose declared policies define their professional duties, has the most significant relationship to the occurrence and the parties, and South Carolina law would apply under that test as well.

in offices it cannot regulate. South Carolina, by contrast, has claimed exactly that interest in its licensing statutes, in its opioid legislation, and in *Hardee*. Declining to enforce Georgia's privity rule against South Carolina medical treatment therefore withholds nothing that Georgia's own policy demands.

Boone confirms that the public policy exception applies in precisely this situation. Georgia's interspousal immunity rule, although unjust, was not intrinsically immoral, and for decades South Carolina courts applied it under *lex loci delicti* even though this State has long abolished the doctrine. *Pardue v. Pardue*, 167 S.C. 129, 135-36, 166 S.E. 101, 103 (1932); *Oshiek v. Oshiek*, 244 S.C. 249, 252, 136 S.E.2d 303 (1964). In *Boone* the Supreme Court nonetheless refused to apply the Georgia rule, because its application would have defeated a right and remedy this State had affirmatively recognized as a matter of its own public policy. *Boone*, 345 S.C. at 14-15, 546 S.E.2d at 194. *Boone* likewise disposes of the Defendants' argument that Georgia's privity requirement cannot offend South Carolina public policy because South Carolina followed the same general rule before *Hardee* was decided in 2006. South Carolina abolished interspousal immunity in 1932, tolerated the application of foreign immunity law for decades thereafter, and then held in 2001 that such application violates this State's public policy. The *Boone* Court did not ask whether the foreign rule had been against good morals at some earlier time. It asked whether the application of the foreign rule would violate the public policy of South Carolina as that policy stands today. This Court must ask the same question, whether application of the foreign rule would be prejudicial to South Carolina interests as stated by the General Assembly, and the answer is supplied by *Hardee*, by the Medical Practice Act, and by the opioid legislation of 2018.

The authorities upon which the Defendants principally rely are all distinguishable on the same ground. In each of them the operative conduct occurred in the foreign state whose law was

applied, and in none of them did the foreign law purport to define the professional duties of a defendant licensed and regulated by this State for services rendered in this State. In *Dawkins* the plaintiff witnessed a murder committed in Georgia, and the Court applied Georgia's impact rule, a rule of general tort law concerning compensable emotional injury that implicated no South Carolina scheme regulating the professional conduct of a South Carolina licensee. *Dawkins*, 306 S.C. at 392-93, 412 S.E.2d at 408. In *Nash* the Court of Appeals applied North Carolina's statute of repose to claims arising from the collapse of a footbridge in Charlotte, reasoning that South Carolina has no strong public policy regarding the length of a statute of repose. *Nash v. Tindall Corp.*, 375 S.C. 36, 42, 650 S.E.2d 81, 84 (Ct. App. 2007). In *Rogers* the Court of Appeals applied North Carolina law to legal work performed in North Carolina by a North Carolina practitioner on a North Carolina workers' compensation claim. *Rogers v. Lee*, 414 S.C. 225, 227, 777 S.E.2d 402, 403 (Ct. App. 2015). Here, by contrast, the alleged wrong, prescribing narcotics without adequate warnings, took place entirely in South Carolina, by a South Carolina licensee and South Carolina entities. The distinction is not a technicality. It marks the difference between honoring another state's regulation of conduct within its own borders, which *lex loci delicti* ordinarily requires, and surrendering this State's regulation of professional conduct within this State's borders, which no South Carolina decision requires.

The Defendants' remaining arguments are noted but do not persuade. They contend that no injured party is a South Carolina citizen and that the Plaintiffs seek greater substantive rights than Georgia would afford them, such that denying those rights cannot offend South Carolina public policy. The argument misinterprets what the public policy exception protects. The exception protects the policy of this State, not the residency of the plaintiff who invokes it. *Rauton* speaks of prejudice to "the general interests of our own citizens," and those interests are squarely implicated

here. They include the interest of every South Carolina licensee in a single ascertainable body of professional duties, and the interest of the public in the uniform enforcement of the duties this State imposes upon those who accept the privilege of practicing medicine here. The licensing statutes protect "the public" and expressly direct regulation to account for detrimental effects upon third parties relying on the practitioner's expertise, without regard to the residency of those third parties. *Hardee* likewise defined the protected class functionally, as those persons within the general field of danger the provider should reasonably have foreseen, and not geographically. The Plaintiffs do not ask this Court to export South Carolina law to conduct occurring elsewhere. They ask the Court to apply South Carolina law to South Carolina medical treatment. Nor is this the forum shopping condemned in *Nash*, where South Carolina residents sought to avoid the law of the state in which the operative conduct occurred. The Plaintiffs sued in the only state with regulatory authority over the Defendants' practice of medicine, in the county where the Defendants practice. There was no other forum in which the professional conduct at issue could be measured against the law of the sovereign that authorized it.

Because the substantive law of South Carolina governs, the defenses the Defendants assert under Georgia law, including Georgia's privity requirement and its two-year statute of limitations, are unavailable, and summary judgment premised upon them must be denied. The Plaintiffs' negligence claims proceed under South Carolina law upon the duty recognized in *Hardee*, and the record discloses genuine issues of material fact concerning whether Sanders was warned and whether any warning given was sufficient. Questions concerning the admissibility of particular items of evidence may be raised at trial in the ordinary course.

For the foregoing reasons, the Court finds that the alleged negligent professional conduct at issue in this action occurred entirely in South Carolina. The Court further finds, consistent with

Coggeshall and *Hume* and as context supporting its ruling, that a tort arising from medical treatment is located where the medical treatment is given rather than where its consequences are ultimately felt, and that South Carolina has a strong, clearly expressed, and current interest in regulating the professional duties of the physicians it licenses. The application of Georgia law in these circumstances would subject South Carolina licensees to a shifting blanket of duties and standards of care dependent upon fortuitous circumstance, would substitute Georgia's regulatory judgments for those of this State, and would violate the public policy of South Carolina. Under the public policy exception to *lex loci delicti*, the substantive law of South Carolina should govern this action.

IT IS THEREFORE ORDERED that the Defendants' Motion for Summary Judgment is denied and the Motion in Limine on Choice of Law Issues is granted and substantive South Carolina law governs this action.

AND IT IS SO ORDERED.

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The Honorable Carmen T. Mullen
Fourteenth Judicial Circuit

Beaufort, South Carolina
August ____, 2026

Beaufort Common Pleas

Case Caption:	Gary Holland , plaintiff, et al VS David A Brosman , defendant, et al
Case Number:	2020CP0700065
Type:	Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142