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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2020-CP-07-00065

Sandra Holland, as Administrator 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, ... Respondents,

v.

David A. Brosman, MD, Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC, ... Appellants.

RESPONDENTS' MOTION TO DISMISS APPEAL AND FOR EXPEDITED CONSIDERATION

Pursuant to Rule 240, SCACR, Respondents respectfully move this Court for an order dismissing this appeal for lack of subject matter jurisdiction. This appeal was taken from an order denying Appellants' motion for summary judgment, and our appellate courts have held for decades that such orders are never appealable. Because this case is scheduled for a date certain trial beginning on August 31, 2026, and because the notice of appeal was served six days before that trial for the transparent purpose of obstructing it, Respondents further request that the Court consider this motion on an expedited basis and direct that the remittitur be sent immediately pursuant to Rule 221(b), SCACR. For the following reasons, this appeal must be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises from a wrongful death and survival action. On October 13, 2016, James Russell Sanders, while under the influence of multiple mind-altering opioids and other narcotics prescribed to him by Appellants, crossed the center line of SR 26 and struck a vehicle driven by Christopher Lee Holland head on. Mr. Holland died within an hour of the collision, leaving behind a minor child. Appellants treated Sanders for pain management exclusively in South Carolina, Appellant Brosman is licensed to practice medicine only in South Carolina, and the entity Appellants are South Carolina entities.

Respondents assert negligence claims against Appellants for failing to warn Sanders of the dangers of driving while taking the medications and for negligently creating the risk that killed Mr. Holland, claims recognized by the Supreme Court of South Carolina. *See Hardee v. Bio-Medical Applications of S.C., Inc.*, 370 S.C. 511, 516, 636 S.E.2d 629, 631-32 (2006) (recognizing a medical provider's duty to warn a patient of treatment risks for the protection of reasonably foreseeable third parties in the motoring public); *Edwards v. Lexington Cnty. Sheriff's Dep't*, 386 S.C. 285, 293-94, 688 S.E.2d 125, 129-30 (2010) (recognizing a duty where the defendant negligently or intentionally creates the risk of harm).

Appellants have now attempted to escape a jury three times on the same theories. In February 2020, Appellants moved to dismiss on the ground that they owed no duty to Respondents, and the circuit court denied the motion applying South Carolina law. (Ex. 1, Feb. 26, 2020 Mot. to Dismiss and June 2, 2020 Order). On March 15, 2022, Appellants moved for summary judgment arguing that Georgia substantive law applied under the doctrine of *lex loci delicti* and barred Respondents' claims. (Ex. 2, March 15, 2022 Mot. for Summ. J.). The Honorable Jennifer B. McCoy denied that motion by order filed May 9, 2022. (Ex. 3, May 9, 2022 Form 4 Order). Appellants did not appeal, did not seek a writ, and did not seek any other form of appellate review. Instead, they litigated this case for more than four additional years, through the completion of discovery and multiple depositions, while the case proceeded toward a date certain trial beginning August 31, 2026.

On July 17, 2026, six weeks before trial, Appellants filed a renewed motion for summary judgment or, in the alternative, motion *in limine*, raising the identical *lex loci delicti* argument decided by Judge McCoy in 2022. (Ex. 4, July 17, 2026 Mot. for Summ. J.). As Respondents demonstrated below, the renewed motion rested on the same set of facts as the original motion, and portions of the two motions are the same word for word. (Ex. 5, July 28, 2026 Mem. in Opp. to Mot. for Summ. J. at 7). In urging the circuit court to decide the issue notwithstanding Judge McCoy's prior denial, Appellants told the court that "the parties need to know what law applies to this case before the trial begins" and that a denial of summary judgment "decides nothing about the merits of the case." (Ex. 6, July 29, 2026 Mem. in Supp. of Mot. for Summ.

J. at 2-3). The circuit court heard the motion on July 30, 2026, received supplemental memoranda from both sides, and on August 24, 2026 entered an order denying the motion in its entirety and holding that the substantive law of South Carolina governs this action (the "order"). (Ex. 7, Aug. 24, 2026 Order).

On August 25, 2026, the day after the order was entered and six days before the trial of this action is scheduled to begin, Appellants served their notice of appeal.

ARGUMENT

I. An order denying a motion for summary judgment is never appealable, and this Court dismissed an identical appeal in *Barone.*

This Court's appellate jurisdiction to correct errors of law is defined by the General Assembly. *Sandel v. State*, 128 S.C. 178, 180, 122 S.E. 571 (1922). The General Assembly has prescribed that jurisdiction in S.C. Code Ann. § 14-3-330, which permits the immediate appeal of an intermediate order only in narrow circumstances. The order fits none of them.

The order denied Appellants' motion for summary judgment. It is difficult to imagine an order whose unappealability is more firmly settled. "[I]t is well-settled that an order denying summary judgment is never reviewable on appeal." *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010). The Supreme Court of South Carolina has held that "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003). That is because "[a] denial of a motion for summary judgment decides nothing about the merits of the case . . . ." *Ballenger* *v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994). The losing party simply proceeds to trial with every claim and defense intact.

Nor does the order's resolution of the choice of law question alter its interlocutory character. The Supreme Court has explained the point in language that could have been written for this appeal:

> If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.

Mid-State Distribs., Inc. v. Century Imps., Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (citations omitted). The order determined the applicable law, South Carolina law, while leaving every question of fact open for the jury. Under *Mid-State Distributors*, it is the very definition of an unappealable interlocutory order.

This Court has previously dismissed an appeal indistinguishable from this one. In *Barone v. Jaguar Land Rover North America, LLC*, the circuit court entered an order declining to apply Georgia law under the doctrine of *lex loci delicti*, relying in part on the public policy exception, and denying the defendants' motions for summary judgment. (Ex. 8, *Barone* Circuit Court Order, Nov. 9, 2022). The defendants appealed. This Court dismissed the appeal the following day, holding that "[b]ecause the order on appeal is not immediately appealable, this appeal is dismissed," and directing that the remittitur be sent as provided by Rule 221(b), SCACR. (Ex. 9, *Barone* Order, Appellate Case No. 2022-001584 (S.C. Ct. App. Nov. 10, 2022)). The order under appeal here is identical in all material respects to the order in *Barone*, a denial of summary judgment coupled with a refusal to apply Georgia law under l*ex loci delicti*, and it should meet the same fate.

The alternative *in limine* component of Appellants' motion fares no better. A ruling *in limine* is a preliminary ruling subject to revision at trial, and it is not final. *See State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (explaining that a ruling in limine is not final and the losing party must renew its position at trial to preserve the issue). Whether styled as a denial of summary judgment or a denial of *in limine* relief, the order decided a pretrial motion and left the case standing for trial. Nothing about it is appealable now.

II. The order fits within no category of S.C. Code Ann. § 14-3-330, and any argument to the contrary is erroneous.

Because Appellants cannot escape *Olson*, *Bank of New York*, and *Barone*, Respondents anticipate that Appellants will attempt to recharacterize the order as something other than what it is. Every such attempt fails under the plain text of section 14-3-330 and more than a century of precedent construing it.

First, Appellants may argue that the order is an intermediate order "involving the merits" under section 14-3-330(1) because it adjudicated the governing law. The argument would stretch the scope of section 14-3-330(1) beyond any reasonable limit. Every denial of a dispositive motion adjudicates the law governing the motion, and *Olson* nonetheless holds that such denials are not appealable even after final judgment. *See Olson*, 354 S.C. at 168, 580 S.E.2d at 444 (declining to review the denial of summary judgment even in the context of an otherwise properly perfected appeal). And *Mid-State Distributors* squarely holds that an order which "determines the applicable law while leaving open questions of fact" is interlocutory and not immediately appealable. *Mid-State Distribs.*, 310 S.C. at 335, 426 S.E.2d at 780. Appellants cannot transform a denial of summary judgment into an appealable order by pointing to the reasoning it contains.

Second, Appellants may argue that the order affects a substantial right under section 14-3-330(2). Even if that were so, it would establish nothing, because the statute requires more. Section 14-3-330(2) permits the appeal of an order affecting a substantial right only when the order also "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." S.C. Code Ann. § 14-3-330(2). The second requirement, that the order must prevent a judgment, is not superfluous. It is mandatory, and it has been enforced since the earliest days of the statute. *See Allen v. Partlow*, 3 S.C. 417, 418-19 (1872) (holding an order was not appealable where, at most, it affected the plaintiff's security but did not preclude him from proceeding to judgment); *Garlington v. Copeland*, 25 S.C. 41, 43 (1886) (holding an order must not only affect a substantial right but must also in effect determine the action and prevent a judgment from which an appeal could be taken); *Agnew v. Adams*, 24 S.C. 86, 88 (1885) (holding the refusal of a motion for nonsuit was not appealable under the second subdivision because it did not determine the action, prevent a judgment, or discontinue the action).

The order determines nothing and prevents nothing. Appellants have not arrived at the end of the road. As the Supreme Court explained in *Mid-State Distributors*, a party who is denied dismissal has "forfeited nothing" and "must simply continue to trial." *Mid-State Distribs.*, 310 S.C. at 335, 426 S.E.2d at 780. Nor does the rule of *Olson* leave Appellants without a path to appellate review of the choice of law question. *Olson* forecloses review of the denial of summary judgment as such, because once a case is appealed the trial record supersedes the summary judgment record. It does not extinguish review of the legal questions a party properly renews at trial.

Appellants remain free to renew their choice of law position at trial by moving for a directed verdict and for judgment notwithstanding the verdict on the ground that Georgia law governs and bars Respondents' claims, and by objecting to any jury charge given under South Carolina law. Rule 50, SCRCP. The rulings on those motions and objections will be fully reviewable on appeal from any adverse final judgment, and the choice of law question is a pure question of law. Appellants retain every opportunity for meaningful appellate review. They simply must earn it by trying the case first.

Third, Appellants may argue that the order "strikes" their Georgia law defenses within the meaning of section 14-3-330(2)(c). The Supreme Court has already rejected the premise. The denial of summary judgment "does not have the effect of striking any defense since that defense may be raised again later in the proceedings." *Ballenger*, 313 S.C. at 477, 443 S.E.2d at 380. The order struck no pleading and no part of any pleading. Appellants' answer stands exactly as they filed it, and they are free to raise any statute of limitations or lack of duty defenses at trial, just not under Georgia law. Their choice of law argument was heard, considered, and rejected as a matter of law, and is reviewable after final judgment.

Fourth, the rationale of cases such as *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), is inapplicable here. There, the Supreme Court permitted the immediate appeal of an order disqualifying a party's chosen counsel because it would be impossible for an appellate court to determine after final judgment whether prejudice resulted from the absence of the preferred attorney, making the order one of the rare rulings that could never be effectively reviewed later. Nothing of the kind is present here. A choice of law ruling is a question of law that an appellate court can review after final judgment as easily as it could review it today. There is nothing that will be lost, obscured, or rendered impossible to evaluate by proceeding to trial. Appellants themselves told the circuit court, in urging it to entertain their third dispositive motion, that under *Ballenger* the denial of summary judgment decides nothing and establishes no law of the case. Appellants cannot tell the circuit court that the denial of summary judgment decides nothing in order to obtain a third hearing and then tell this Court that the same variety of order is so conclusive that it demands immediate appellate intervention.

III. If Appellants were correct that the order is immediately appealable, they waived any right to interlocutory review by failing to appeal the identical order entered in 2022.

The procedural history of this case supplies an independent basis for dismissal. Judge McCoy denied Appellants' identical motion for summary judgment, presenting the identical *lex loci delicti* argument, by order filed May 9, 2022. Appellants concede that their renewed motion rested on the same facts, and the two motions are in parts the same word for word. If Appellants were correct that an order of this character is immediately appealable, then the May 9, 2022 order was immediately appealable the day it was entered, and Rule 203(b)(1), SCACR, required Appellants to serve a notice of appeal within thirty days. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (explaining that the service of a timely notice of appeal is a jurisdictional requirement). Appellants served nothing.

Appellants are trapped by the only theory of appealability available to them. Any argument for immediate review of the order must rest on the claim that review after final judgment would be inadequate, because that is the only conceivable path around section 14-3-330(2)'s second requirement. But where our courts have recognized that an interlocutory order may be immediately reviewed under section 14-3-330(2), they have also held that the failure to appeal it immediately waives the issue. *See Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) (holding an order affecting the mode of trial must be appealed immediately under section 14-3-330(2) and the failure to do so waives the right to review). Appellants sat on an identical ruling for more than four years while a date certain trial approached. Their conduct is irreconcilable with any claim that appellate review of this issue cannot wait.

Nor can Appellants restart a lapsed appellate clock by refiling the same motion and appealing the second denial. Our courts do not permit litigants to manufacture appellate deadlines through successive motions raising matters already decided. *See*

Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 3-4, 518 S.E.2d 56, 58 (Ct. App. 1999) (holding a successive motion raising matters already ruled upon did not toll the time for serving the notice of appeal); *Quality Trailer Prods., Inc. v. CSL Equip. Co.*, 349 S.C. 216, 220, 562 S.E.2d 615, 617-18 (2002) (approving *Coward Hund* and holding a successive motion is appropriate only if it challenges something altered as a result of the initial ruling). If the rule were otherwise, any litigant could conjure interlocutory appellate jurisdiction, and derail any trial, simply by refiling a previously denied motion on the eve of trial and appealing the inevitable second denial. That is precisely what Appellants have attempted here.

Appellants are therefore impaled on both horns of their own dilemma. If the order is not immediately appealable, this appeal must be dismissed under *Olson* and *Bank of New York*. If orders of this character were immediately appealable, this appeal comes more than four years too late, and it must be dismissed under Rule 203(b)(1), SCACR. Under either analysis, this Court lacks jurisdiction.

IV. This appeal was filed to obstruct a date certain trial, and the Court should dismiss it on an expedited basis and issue the remittitur immediately.

The timeline should tell the Court everything it needs to know about the purpose of this appeal. Appellants have litigated their choice of law and lack of duty theories numerous times over six years without once seeking appellate review. They told the circuit court in July that "the parties need to know what law applies to this case before the trial begins." The circuit court answered that question on August 24, 2026. Appellants served their notice of appeal the next day, six days before a trial date that has been certain since January of this year. Appellants do not seek review. They seek delay, and they seek to obtain it through the pendency of a jurisdictionally defective appeal when the continuance that they desire could no longer be obtained by motion.[1]

For the same reason, Respondents respectfully request that the Court act on this motion without awaiting the return period provided by Rule 240(e), SCACR. The ten days allowed for a return would by itself carry this matter past the scheduled trial date and would hand Appellants the very delay they seek. The jurisdictional defect is apparent on the face of the notice of appeal and the order attached to it, no return could cure it, and this Court needed no return to dismiss the identical appeal in *Barone* the day after it arrived.

The remedy for this tactic is the one this Court employed in *Barone*, where an identical appeal was dismissed the day after it was received. Respondents respectfully request that the Court take up this motion on an expedited basis, dismiss this appeal, and direct that the remittitur be sent immediately pursuant to Rule 221(b), SCACR, so that the trial of this action may proceed as scheduled on August 31, 2026. The decedent's family has been waiting nearly ten years for a jury to hear

[1]Nor should the service of the notice of appeal be permitted to accomplish by automatic stay what Appellants could not accomplish by motion. Rule 241(a), SCACR, stays only the "matters decided in the order" on appeal, and "[t]he lower court . . . retains jurisdiction over matters not affected by the appeal . . . ." The order decided only that Appellants' motion was denied and that South Carolina law governs this action. Respondents reserve the right to seek any appropriate relief in the circuit court and in this Court concerning the effect of the notice of appeal on the trial, but the cleanest cure is the prompt dismissal of this jurisdictionally defective appeal with an immediate remittitur.

how their father and son died. They should not be made to wait longer because Appellants noticed an appeal that our appellate courts foreclosed decades ago.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss this appeal for lack of subject matter jurisdiction, direct that the remittitur be sent immediately pursuant to Rule 221(b), SCACR, and grant such other and further relief as the Court deems just and proper.

PARKER LAW GROUP, LLP

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ATTORNEYS FOR RESPONDENTS

August 25, 2026
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**Civil Action No. 2020-CP-07-0065**

EXHIBIT
1

Gary Holland, as Administrator 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,

v.

David A. Brosman, MD; Pain Management ASC, LLC; MPS Solutions, Inc.; Anesthesia Associates of Hilton Head Pain Management, LLC; Burke's Main Street Pharmacy; John Does 1 to 99; and Pharmacies 1 to 99,

Defendants.

NOTICE OF MOTION AND
MOTION TO DISMISS, OR ALTERNATIVELY,
MOTION TO MAKE MORE DEFINITE AND CERTAIN,
AND MOTION TO STRIKE

TO: LEE D. COPE AND RONNIE L. CROSBY, COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain Management, LLC (hereafter referred to as "Defendants") will move before the Presiding Judge of the Fourteenth Judicial Circuit at the Beaufort County Judicial Center, Beaufort, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCP, dismissing the Plaintiffs' Complaint with prejudice. Alternatively, the Defendants move for an Order pursuant to Rule 12(e) and Rule 12(f), SCRCP, making Paragraphs 49(j) and 49(k) set forth in the Plaintiffs' Complaint more definite and certain or otherwise striking those subparagraphs from the Plaintiffs' Complaint.

The Defendants' motion is based upon the following grounds:

1. There was no physician-patient relationship between the Defendants and the decedent Christopher Lee Holland and/or Saleena Ramm, and as a result, the Plaintiffs lack standing to prosecute and recover in this action.

2. Under South Carolina law, the Defendants did not owe the legal duties of care as alleged in Paragraphs 48 and 49 of the Plaintiffs' Complaint to the decedent Christopher Lee Holland and/or Saleena Ramm arising from the medical care and treatment provided to James Russell Sanders.

3. Paragraphs 49(j) and 49(k) should be made more definite and certain or otherwise be stricken from the Plaintiffs' Complaint on the grounds that those subparagraphs as presently drafted fail to apprise the Defendants of specific allegations of negligence upon which a defense must be prepared and presented. Paragraph 49(j) is nothing more than a statement of the reasonable man standard and is intended as a "catch-all" provision. Moreover, Paragraph 49(k) alleges only that the Defendants are negligent "in such other particulars as the evidence may establish," which provides no notice of any allegations of negligence being asserted. It is a violation of basic notions of due process for the Plaintiffs to fail to place the defending parties on fair notice of all claims of negligence that they intend to or may assert at trial so as to allow full discovery on those claims to be pursued and to prevent any surprises at trial.

The Defendants' motion is based upon the pleadings filed in this case; a supporting memorandum as will be filed; the rules of court; and such other matters as may be presented to the Court at or before the time of the hearing.

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Counsel for Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain Management, LLC

February 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00065
GARY HOLLAND, as Administrator of the Estate of Christopher Lee Holland, deceased,	)	
Plaintiffs,	)	
v.	)	**ORDER DENYING DEFENDANTS' MOTION TO DISMISS OR, ALTERNATIVELY, MOTION TO MAKE MORE DEFINITE AND CERTAIN AND TO STRIKE**
DAVID A. BROSMAN, MD; PAIN MANAGEMENT ASC, LLC; MPS SOLUTIONS, INC.; ANESTHESIA ASSOCIATES OF HILTON HEAD PAIN MANAGEMENT, LLC; JOHN DOES 1 to 99; and PHARMACIES 1 to 99;	)	
Defendants.	)	

This matter came before the Court on Defendants David A. Brosman, MD; Pain Management ASC, LLC; MPS Solutions, Inc.; and Anesthesia Associates of Hilton Head Pain Management, LLC's (collectively "Defendants") motion to dismiss or, alternatively, motion to make more definite and certain, and motion to strike.[1] The Court heard the motion on May 22, 2020, via video, to which the parties consented. Present for Plaintiff, Gary Holland, as Administrator of the Estate of Christopher Lee Holland, deceased, were Kathleen C. Barnes, Lee D. Cope, and Ronnie L. Crosby. Present for Defendants were Andrew F. Lindemann and Hutson S. Davis, Sr. After reviewing the parties' submissions and hearing argument from counsel, the Court denies Defendants' motion in its entirety.

[1] Prior to and at the hearing, Plaintiff agreed to dismiss Saleena Ramm, as Parent and Natural Guardian of R.D.H., a Minor Child of Decedent Christopher Lee Holland, as a plaintiff.

STANDARD

When ruling on a Rule 12(b)(6), SCRCP, motion, "[t]he question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112-13, 659 S.E.2d 158, 161 (2008). "If the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case, then dismissal under Rule 12(b)(6) is improper." *Id* (internal quotation marks omitted).

A motion for a more definite statement is a matter generally left to the court's discretion. *Hodgson v. Va. Baptist Hosp.*, 482 F.2d 821, 824 (4th Cir. 1973). "[A] motion to strike is addressed to the sound discretion of the trial court." *Totaro v. Turner*, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1979).

ANALYSIS

I. MOTION TO DISMISS

After considering the Motion, Memorandums, oral argument of counsel, and case law of the issues presented, ruling on an area where the law is unsettled on a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, is premature at this time. The Court needs to look at discovery or hear evidence before taking the action of dismissing allegations in the Plaintiff's Complaint. Although the case law has a narrow exception for third party causes of action against a physician, the circumstances of this case could lend itself to particulars of negligence involving allegations of the improper prescribing of prescriptive medicine that lead to the untimely death of the decedent. Because of the unusual factual allegations in the Complaint, this Court respectfully denies Defendants' Motion to Dismiss in the light most favorable to the Plaintiff.

II. MOTION TO MAKE MORE DEFINITE AND CERTAIN

Defendants move under Rule 12(e), SCRCP, for a more definite statement as to two subparagraphs in Plaintiff's Complaint that allege Defendants acted negligently "[i]n failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and [] [i]n such other particulars as the evidence may establish." (Mot. p. 2; Cmplt. ¶ 49.j.-k.). Defendants argue these allegations are "catch-all" provisions that do not provide notice of the "allegations of negligence being asserted." (Mot. p. 2).

Rule 12(e), SCRCP, provides for a more definite statement "[i]f a pleading . . . is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." The focus is on whether a defendant can reasonably be required to frame a responsive pleading by admitting, denying, or asserting he is without knowledge or information sufficient to form a belief as to the truth of the allegation. Rule 8(b), SCRCP. Defendants in this case answered the subparagraphs at issue by denying them (Ans. p. 4 ¶ 20) and, therefore, framed a responsive pleading to them. The Complaint taken as a whole clearly alleges sufficient information so that a defendant can reasonably be required to frame a responsive pleading. To the extent Defendants want more information about the basis of these allegations, they may seek that in discovery rather than through Rule 12(e). *See Doe v. Bayer Corp.*, 367 F. Supp. 2d 904, 917 (M.D.N.C. 2005) ("[C]ourts will generally deny a motion for a more definite statement where the information sought may be obtained in discovery. Where a party has enough information to frame an adequate answer, a court should deny the Rule 12(e) motion and avoid delay in maturing the case."). The motion to make more definite and certain is respectfully denied.

III. MOTION TO STRIKE

Defendants also moved under Rule 12(f), SCRCP, to strike the same two subparagraphs discussed above.[2] Rule 12(f), SCRCP, provides "the court may order stricken from any pleading [1] any insufficient defense or [2] any redundant, immaterial, impertinent, or scandalous matter." The subparagraphs at issue are not an "insufficient defense" because they are allegations in a Complaint and not a defense. Defendants do not assert that the subparagraphs are "redundant, immaterial, impertinent, or scandalous." (Mot. p. 2). There is no basis to strike the subparagraphs under Rule 12(f), SCRCP, and the Court respectfully denies the motion to strike.

CONCLUSION

For these reasons, the Court respectfully denies Defendants' motion in its entirety.

AND IT IS SO ORDERED.

Dated: ______________________________
Walterboro, South Carolina

____
Perry M. Buckner
Circuit Court Judge

[2] Defendants also moved to strike all negligence allegations except for the allegation of breach of the duty to warn the patient. For the reasons stated in section I. above, that is denied.

Beaufort Common Pleas

Case Caption: Gary Holland , plaintiff, et al VS David A Brosman , defendant, et al

Case Number: 2020CP0700065

Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

STATE OF SOUTH CAROLINA	**)**	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**)**	

Gary Holland, as Administrator of the	)	
Estate of Christopher Lee Holland,	)	Civil Action No. 2020-CP-07-0065
deceased, and Saleena Ramm, as Parent	)	
and Natural Guardian of R.D.H., a Minor	)	
Child of Decedent Christopher Lee Holland,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**NOTICE OF MOTION AND**
	)	**MOTION FOR SUMMARY JUDGMENT**
David A. Brosman, MD; Pain Management	)	
ASC, LLC; MPS Solutions, Inc.;	)	
Anesthesia Associates of Hilton Head Pain	)	
Management, LLC; John Does 1 to 99; and	)	
Pharmacies 1 to 99,	)	
	)	
Defendants.	)	
	)	

TO: LEE D. COPE AND RONNIE L. CROSBY, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain Management, LLC (hereinafter collectively referred to as "Defendants") will move before the Presiding Judge of the Fourteenth Judicial Circuit at the Beaufort County Judicial Center, Beaufort, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 56, SCRCP, granting summary judgment to the Defendants and dismissing the Plaintiff's Complaint with prejudice.

These Defendants' motion is based upon the following grounds:

The choice of law rule under South Carolina law is *lex loci delicti* for tort actions. “It is well established in South Carolina that in tort cases the law of the place where the injury was occasioned or inflicted, governs in respect of the right of action, and the law of the forum in respect to matters pertaining to the remedy only." *Dawkins v. State of South Carolina*, 306 S.C. 391, 412 S.E.2d 407, 408 (1991). In *Dawkins*, a prisoner escaped from a South Carolina prison and committed a brutal murder in Georgia. The plaintiff witnessed the murder and brought a tort action in South Carolina courts against the State of South Carolina and the South Carolina Department of Corrections. The South Carolina Supreme Court applied the rule of *lex loci delecti* and ruled that the substantive law of Georgia applied to the case. *See also, Bannister v. Hertz Corp*., 316 S.C. 513, 450 S.E.2d 629 (1994) (South Carolina Court of Appeals applied North Carolina law to motor vehicle accident occurring in North Carolina).

In the case at bar, the substantive law of Georgia applies. The motor vehicle accident that resulted in the death of Christopher Holland occurred in Effingham County, Georgia. Additionally, the decedent was domiciled in the State of Georgia at the time of the accident. The decedent's estate is administered in the State of Georgia. The Personal Representative and the only statutory beneficiary, who are also named as Plaintiffs, were domiciled in the State of Georgia at the time of the accident. The decedent's injuries and death as well as any injuries to the statutory beneficiary occurred in the State of Georgia. Moreover, the patient, James Sanders, is a resident of the State of Georgia, and his tort liability for the accident is governed by Georgia law. In fact, there is a pending action against him in Georgia state court. *See*, *Holland v. Sanders*, Case Number STSV2018000065 (pending in the State Court of Bryan County). Therefore, under the rule of *lex loci delecti*, the substantive law of Georgia applies to this case.

The Plaintiff's medical malpractice claim against the Defendants is barred as a matter of law. Georgia law requires a physician-patient relationship as a prerequisite to bringing a medical malpractice cause of action. There was no physician-patient relationship between these

Defendants and the decedent Christopher Holland and/or the Plaintiff Saleena Ramm, and as a result, the Plaintiffs' medical malpractice claim is barred as a matter of law under Georgia law.

In the case of *Shortnacy v. North Atlanta Internal Medicine*, 252 Ga. App. 321, 556 S.E.2d 209 (2001), the Georgia Court of Appeals held that third parties who were injured by a patient who drove after taking Demerol and Phenergan could not maintain a medical malpractice cause of action against the treating doctor because no physician-patient relationship existed between the injured persons and the doctor.

The case of *Gilhuly v. Dockery*, 273 Ga. App. 418, 615 S.E.2d 237 (2005), is also dispositive. The plaintiffs brought a medical malpractice for their injured children. The children were injured in a motor vehicle accident caused by their mother who was driving. Prior to the accident, the mother had been prescribed Demerol and Phenergan at the hospital and was discharged without being warned not to drive. The Georgia Court of Appeals reversed a denial of summary judgment finding that there was no physician-patient relationship between the sons and the doctor who was sued. The Court explained that "Georgia law is clear that physician-patient privity is an absolute requirement for the maintenance of a professional malpractice action." 615 S.E.2d at 238. There are two narrow exceptions to the general rule, but neither applied. The Court concluded that "Dr. Gilhuly had no duty to the sons here, as they were not his patients." 615 S.E.2d at 239.

In addition, Georgia law provides for a two-year statute of limitations for medical malpractice actions. *See*, O.C.G.A. § 9-3-71(a). The Plaintiffs' Notice of Intent to Sue was filed in this case on October 11, 2019. The date of the accident was October 13, 2016. The case is barred by the two-year statute of limitations.

These Defendants' motion is based upon the pleadings filed in this case; a memorandum of law to be filed; First Set of Requests for Admissions to Plaintiffs (with Exhibits A-C); Plaintiffs'

Answers to the Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC's First Set of Requests for Admissions; the rules of court; and such other matters as may be properly presented to the Court at or before the time of the hearing.

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March 15, 2022

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0700065

EXHIBIT 3

ELECTRONICALLY FILED - 2022 May 09 4:41 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700065

Gary Holland et al
PLAINTIFF(S)

David A Brosman et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant David A Brosman's Motion for Summary Judgment was filed on March 15, 2022 and was heard by this Court on April 29, 2022. Summary Judgment is properly granted when viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, when there are no genuine issues of material fact, and when the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "[T]he nonmoving party … is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Huffman v. Sunshine Recycling, LLC, 426 S.C. 262, 270-71, 826 S.E.2d 609, 614 (2019).This Court finds that the Plaintiff Gary Holland submitted at least a scintilla of evidence sufficient to DENY Defendant David Brosman's Motion for Summary Judgment at this time.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/09/2022 .

Saleena Ramm Parent And Natural Guardian
Minor Rdh
Estate Of Christopher Lee Holland
John Does 1 To 99
Gary Holland Administrator
John Does 1 To 99
Pharmacies 1 To 99

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Beaufort Common Pleas

Case Caption: Gary Holland , plaintiff, et al VS David A Brosman , defendant, et al

Case Number: 2020CP0700065

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	)	

Gary Holland, as Administrator of the Estate of Christopher Lee Holland, deceased,	)	Civil Action No. 2020-CP-07-0065
Plaintiff,	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, MOTION IN LIMINE ON CHOICE OF LAW ISSUES**
David A. Brosman, MD; Pain Management ASC, LLC; MPS Solutions, Inc.; Anesthesia Associates of Hilton Head Pain Management, LLC; John Does 1 to 99; and Pharmacies 1 to 99,	)	
Defendants.	)	

TO: LEE D. COPE AND RONNIE L. CROSBY, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain Management, LLC (hereinafter collectively referred to as "Defendants") will move before the Presiding Judge of the Fourteenth Judicial Circuit at the Beaufort County Judicial Center, Beaufort, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 56, SCRCP, granting summary judgment to the Defendants and dismissing the Plaintiff's Complaint with prejudice. In the alternative, the Defendants request that the Court issue a ruling in limine determining the choice of law issues and limiting admissible evidence to what is relevant solely on the duty to warn claim, i.e., the duty to warn the actual patient and not the public at large, should the Court determine that such a claim has been properly pled.

ELECTRONICALLY FILED - 2026 Jul 17 4:06 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700065

Choice of Law

The choice of law rule under South Carolina law is *lex loci delicti* for tort actions. "It is well established in South Carolina that in tort cases the law of the place where the injury was occasioned or inflicted, governs in respect of the right of action, and the law of the forum in respect to matters pertaining to the remedy only." *Dawkins v. State of South Carolina*, 306 S.C. 391, 412 S.E.2d 407, 408 (1991). Foreign law will not be applied only where "it is against good morals or natural justice." *Id*. In *Dawkins*, a prisoner escaped from a South Carolina prison and committed a brutal murder in Georgia. The plaintiff witnessed the murder and brought a tort action in South Carolina courts against the State of South Carolina and the South Carolina Department of Corrections. The South Carolina Supreme Court applied the rule of *lex loci delecti* and ruled that the substantive law of Georgia applied to the case. *See also, Bannister v. Hertz Corp*., 316 S.C. 513, 450 S.E.2d 629 (1994) (South Carolina Court of Appeals applied North Carolina law to motor vehicle accident occurring in North Carolina).

In case at bar, the substantive law of Georgia should apply. The motor vehicle accident that resulted in the death of Christopher Holland occurred in Effingham County, Georgia. Additionally, the decedent was a resident of Georgia. The decedent's estate is administered in the State of Georgia. The Personal Representative and the only statutory beneficiary, who are named as Plaintiffs, were domiciled in the State of Georgia at the time of the accident. The decedent's injuries and death as well as any injuries to the statutory beneficiary occurred in the State of Georgia. Moreover, the patient, James Sanders, is a resident of the State of Georgia, and his tort liability for the accident is governed by Georgia law In fact, there was an action brought against Sanders in Georgia state court. Therefore, under the rule of *lex loci delecti*, the substantive law of Georgia should apply to this case.

To date, the Plaintiffs have argued that this case falls within the very narrow exception to the *lex loci delicti* rule. The so-called "public policy" exception applies so that "foreign law may not be given effect in this State if 'it is against good morals or natural justice ...', such as 'often made in a certain class of cases, such, for example, as prohibited marriages, wagers, lotteries, racing, contracts for gaming or the sale of liquors, and others.'" *Dawkins*, 412 S.E.2d at 408, *citing Rauton v. Pullman Co.*, 183 S.C. 495, 191 S.E. 416, 422 (1937).

This exception for "good morals and natural justice" is not widely applied. As the Supreme Court has explained, "[t]he 'good morals or natural justice' of our State are not violated when foreign law is applied to preclude a tort action for money damages, whether against an individual or the State, even if recovery may be had upon application of South Carolina law." *Dawkins*, 412 S.E.2d at 408. Moreover, "the 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." *Id*.

For example, the exception for "good morals and natural justice" has been applied where the substantive law of Georgia still recognized the doctrine of interspousal immunity, which the South Carolina Supreme Court declined to apply because it was "contrary to natural justice" to discriminate based on marital status. *See*, *Boone v. Boone*, 345 S.C. 8, 546 S.E.2d 191, 194 (2001). The Supreme Court declined to rule that "because of their marital status, Wife is precluded from maintaining this action against Husband" although "[h]ad the parties to this action not been married to each other, Wife could have maintained a personal injury action against Husband." *Id*.

Yet, as mentioned, in *Dawkins*, *supra*, a prisoner escaped from a South Carolina prison and committed a murder in Georgia. The plaintiff witnessed the murder and brought a tort action in South Carolina courts against the State of South Carolina and the South Carolina Department of Corrections. The South Carolina Supreme Court applied the rule of *lex loci delecti* and ruled that the substantive law of Georgia applied to the case despite the fact that Georgia law recognized an "impact rule" in emotional distress cases which was different than South Carolina law.

Subsequently, in *Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81 (Ct. App. 2007), the South Carolina Court of Appeals held that the trial court properly applied North Carolina substantive law in a case involving the collapse of a footbridge at the Lowe's Motor Speedway in Charlotte. The Court applied the North Carolina statute of repose which was two years shorter than the South Carolina statute of repose. The Court recognized that "[p]ublic policy is not violated by the two year difference in South Carolina and North Carolina's statute of repose." 650 S.E.2d at 84.

Similarly, in *Rogers v. Lee*, 414 S.C. 225, 777 S.E.2d 402 (Ct. App. 2015), the South Carolina Court of Appeals applied the substantive law of North Carolina to a legal malpractice action related to the handling of a workers' compensation claim in North Carolina. North Carolina law includes a statute of repose for legal malpractice claims, while South Carolina law does not. As the Court of Appeals ruled, "[w]e cannot say the public policy of this state would be violated by application of North Carolina’s statute of repose in this matter, as the good morals or natural justice of our State would not be violated. Thus, we find no public policy exception to the *lex loci delicti* rule would be appropriate in this case." 777 S.E.2d at 407-408.

The case at bar is not one where the injured party, i.e., the decedent or the statutory beneficiary, is even a South Carolina resident or had significant contacts to South Carolina. Neither the Plaintiffs nor their decedent were treated by South Carolina-based physicians. There was already litigation filed over the fatal motor vehicle accident, and that was brought in Georgia to be governed by Georgia law. In effect, the Plaintiffs are requesting a South Carolina court to apply South Carolina law and to grant them greater substantive rights that they do not enjoy in their own state of Georgia. It is *not* a violation of South Carolina public policy to deny the Plaintiffs greater substantive rights they do not enjoy in their own state. Quite simply, the Plaintiffs could not bring this action in Georgia. There is no valid reason that South Carolina should provide a cause of action and remedy that the Plaintiffs otherwise do not have. In fact, the South Carolina Court of Appeals recognized in the *Nash* case that "Plaintiffs' attempt to bring this case in South Carolina constitutes forum shopping, *an act which violates public policy*. *Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81, 84 (Ct. App. 2007). (Emphasis added). This case constitutes a classic example of such forum shopping.

<u>Defenses Under Georgia Law</u>

If the substantive law of Georgia is applied, there is no dispute that the Plaintiff's medical malpractice claim against the Defendants is barred as a matter of law. Georgia law requires a physician-patient relationship as a prerequisite to bringing a medical malpractice cause of action. There was no physician-patient relationship between the Defendants and the decedent Christopher Holland and/or the Plaintiff Saleena Ramm, and as a result, the Plaintiffs' medical malpractice claim would be barred as a matter of law under Georgia law.

In the case of *Shortnacy v. North Atlanta Internal Medicine*, 252 Ga. App. 321, 556 S.E.2d 209 (2001), the Georgia Court of Appeals held that third parties who were injured by a patient who drove after taking Demerol and Phenergan could not maintain a medical malpractice cause of action against the treating doctor because no physician-patient relationship existed between the injured persons and the doctor.

The case of *Gilhuly v. Dockery*, 273 Ga. App. 418, 615 S.E.2d 237 (2005), is also dispositive. The plaintiffs brought a medical malpractice for their injured children. The children were injured in a motor vehicle accident caused by their mother who was driving. Prior to the accident, the mother had been prescribed Demerol and Phenergan at the hospital and was discharged without being warned not to drive. The Georgia Court of Appeals reversed a denial of summary judgment finding that there was no physician-patient relationship between the sons and the doctor who was sued. The Court explained that "Georgia law is clear that physician-patient privity is an absolute requirement for the maintenance of a professional malpractice action." 615 S.E.2d at 238. There are two narrow exceptions to the general rule, but neither applied. The Court concluded that "Dr. Gilhuly had no duty to the sons here, as they were not his patients." 615 S.E.2d at 239.

In addition, Georgia law provides for a two-year statute of limitations for medical malpractice actions. *See*, O.C.G.A. § 9-3-71(a). The Plaintiffs' Notice of Intent to Sue was filed in this case on October 11, 2019. The date of the accident was October 13, 2016. The case is barred by the two-year statute of limitations under Georgia law.

In short, if the substantive law of Georgia is applied to this case, the Plaintiffs are barred from any recovery.

Defenses Under South Carolina Law

Alternatively, even if the substantive law of South Carolina were applied to this case, the applicable claim should be limited at most to a duty to warn claim. However, the Plaintiffs have not alleged a claim in Paragraph 49 of their Complaint for the breach of a duty to warn James Sanders, and for that reason, the Complaint should be dismissed. The Plaintiffs are prohibited under South Carolina law from pursuing the negligence theories that have been actually pled in Paragraph 49 of the Plaintiffs' Complaint.

"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 a third party." *Bishop v. South Carolina Department of Mental Health*, 331 S.C. 79, 502 S.E.2d 78, 84 (1998). 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*, a motorist sued a dialysis center for negligence related to treatment of a patient arguing that the dialysis center knew that the dialysis treatment may have a detrimental effect on the patient's ability to operate a vehicle, and the dialysis center did not warn the patient of such. The Supreme Court held that where a dialysis clinic knew that a patient could experience ill effects related to insulin shock, and that the patient was suffering from low blood sugar following his dialysis treatment, the dialysis clinic owed a duty to persons in the "general field of danger" -- which the Court interpreted to be the "motoring public" -- to warn the patient of the risks of operating a motor vehicle. 636 S.E.2d at 631. The Supreme Court explained that "this is a very narrow holding that carves out an exception to the general rule that medical providers do not owe a duty to third party non-patients. Importantly, this duty owed to third parties is identical to the duty owed to the patient, i.e., a medical provider must warn a patient of the attendant risks and effects of any treatment." 636 S.E.2d at 631.

The Supreme Court has been careful not to expand this "very narrow holding" in *Hardee*. In *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011), the Supreme Court interpreted *Hardee* narrowly. In that case, a defendant physician misdiagnosed a girl as being sexually abused, and based on this misdiagnosis, the plaintiff, a non-patient, was then accused of sexual abuse. The Supreme Court held that the physician did not owe a duty of care to the third party accused of sexual abuse.

In *Delaney v. United States*, 260 F.Supp.3d 505 (D.S.C. 2017), the federal district court declined to find that physicians at the Beaufort Naval Hospital owed a third-party pedestrian a duty as a matter of law where a suicidal and homicidal patient left the Naval Hospital against medical advice, stole a fire truck, and struck and killed a pedestrian. The court described *Oblachinski* as "offer[ing] guidance on just how cautious the South Carolina courts have been to extend the legal duty owed by a provider to a non-patient third party." 260 F.Supp. 3d at 513.

The *Delaney* case was also litigated in state court against a different defendant. In an unpublished decision, the South Carolina Court of Appeals held that "public policy does not support a duty greater than the duty to warn." *Delaney v. CasePro, Inc.*, 2018 WL 2435721, *2 (S.C. Ct. App. 2018). The Court further explained that "our supreme court acknowledged the holding in *Hardee* presented a very narrow exception to South Carolina's general rule that the medical providers do not owe a duty to third party nonpatients." *Id.*

Therefore, based on the holding in *Hardee*, the only duty of care owed by a physician to a non-patient third party is a duty to warn the patient of "the attendant risks and effects of any treatment." *Hardee*, 636 S.E.2d at 632. There is no duty of care owed *directly* to the non-patient third party or even generally to the motoring public. In fact, in his concurrence in the case of *Sharpe v. South Carolina Dept. of Mental Health*, 292 S.C. 11, 354 S.E.2d 778 (Ct. App. 1987), Judge Randall Bell addressed the impossibilities and impracticalities of imposing a duty to warn the public at large directly. He explained that "[a]s a practical matter, there is no effective way to give the public a meaningful warning that a released patient is potentially unstable." 354 S.E.2d at 783. He recognized that "[t]he creation of a duty to warn is unlikely either to alert the public or to prevent tragedies such as Bobby Sharpe's death." *Id*. Consequently, there is no practical way for the motoring public to be warned. The accident in the present case happened out of state. Certainly, it is not feasible or practical for a warning to be made to the nation at large, and such a warning would also raise important privacy concerns under state and federal law about the disclosure of a patient's private medical information.

In short, the only duty of care that the Plaintiff may pursue in this case based on *Hardee* and the narrow exception to the general rule as recognized under South Carolina law would be limited to a physician's duty to warn the *actual patient* of "the attendant risks and effects of any treatment." *Hardee*, 636 S.E.2d at 632. The particulars of negligence as pled in Paragraph 49 should be dismissed, including any allegations that Dr. Brosman committed malpractice with respect to the medications he actually prescribed to James Sanders.

As for the duty to warn claim, to the extent the Court finds such a claim was properly pled, the evidence shows that James Sanders signed a Patient Responsibility Agreement for Control Substance Prescription (Bates-numbered Brosman-000431) which warned him "that driving a motor vehicle may not be allowed while taking controlled substance medications and that it is my responsibility to comply with the laws of the state while taking the prescribed medications." Dr. Brosman testified that he did not tell Sanders that he could not drive, but he did advise the patient that he had to follow the laws of his state and that driving may not be permitted. Dr. Brosman explained that he did not know what Georgia law allowed or disallowed and he would not advise the patient on legal matters since he was not a lawyer. *See*, Brosman Depo., pp. 111-118. Based on that testimony and what is stated in the Patient Responsibility Agreement, the duty to warn Sanders was satisfied, and the Defendants are entitled to summary judgment.

If South Carolina law is applied and the Court concludes that a duty to warn claim has been properly pled, the Plaintiffs should be limited to proceeding on that duty to warn claim alone, and the Court is requested to issue a ruling in limine so holding and limiting admissible evidence to what is relevant solely on the duty to warn claim, i.e., the duty to warn the actual patient and not the public at large.

The Defendants' motion is based upon the pleadings filed in this case; any additional memorandum of law as be filed; the Deposition of David A. Brosman, M.D., (pp. 111-118 and

Exhibit Bates-numbered Brosman-000431) (marked confidential)(to be filed); First Set of Requests for Admissions to Plaintiffs (with Exhibits A-C); Plaintiffs' Answers to the Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC's First Set of Requests for Admissions; the rules of court; and such other matters as may be properly presented to the Court at or before the time of the hearing.

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Counsel for Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain Management, LLC

July 17, 2026

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	CASE NO. 2020-CP-07-00065
GARY HOLLAND, as Administrator 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, v. DAVID A. BROSMAN, MD; PAIN MANAGEMENT ASC, LLC; MPS SOLUTIONS, INC.; ANESTHESIA ASSOCIATES OF HILTON HEAD PAIN MANAGEMENT, LLC, Defendants.	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff Gary Holland, as Administrator of the Estate of Christopher Lee Holland, deceased, and Saleena Raam, as Parent and Natural Guardian of R.D.H. a minor child, ("Plaintiffs") submit this memorandum in opposition to Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC's (collectively "Defendants") motion for summary judgment.

Defendants argue that the substantive law of Georgia applies to and is dispositive of this case. Defendants further argue that Plaintiffs' action be limited to a duty to warn claim which was satisfied by Defendants. Plaintiffs oppose the motion. Based on the reasons stated below, attached exhibits, pleadings, applicable law, and argument at the hearing on this motion, the Court should deny the motion in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are stated in a light most favorable to Plaintiffs. This is an action arising out of a deadly motor vehicle accident. On October 13, 2016, James Russell Sanders was driving westbound on SR 26 in Effingham County, Georgia. (Cmplt. ¶¶ 4-7, 16, 34). The decedent, Christopher Lee Holland, was driving eastbound on SR 26 when Sanders drove into his lane and hit Mr. Holland in a head-on collision. (Cmplt. ¶¶ 16, 36-37). Sanders was under the influence of multiple mind-altering opioids and other narcotics prescribed to him by Defendants at the time. (Cmplt. ¶ 35). Mr. Holland died almost an hour after the accident, leaving behind a minor child. (Cmplt. ¶¶ 34, 41-42, 1).

Defendants Dr. David Brosman, Pain Management ASC, and MPS Solutions treated Sanders for pain management in South Carolina from April 2014 until at least 2018. (**Ex. 2**, Defs.' Am. Resp. to Req. for Admission pp. 1-2). Defendants did not treat Sanders in Georgia. *Id.* at 4. Defendant Dr. David Brosman is licensed to practice medicine in South Carolina and not in Georgia. *Id.* at 5. Defendants Pain Management ASC, LLC and MPS Solutions, Inc. are South Carolina entities. (Def. Answer p. 2)

Plaintiffs allege a long history of Defendants prescribing Sanders large amounts of opioid and other pain medications. Sanders was already taking Dilantin, Xanax, OxyContin, and Oxycodone when Defendants began to treat him. (**Ex. 3**, Brosman Dep. 79:4-6). Defendants initially gave Sanders additional prescriptions for Fentanyl patches, Clonidine, and Oxycodone. (**Ex. 3**, Brosman Dep. at 106, 124-25). After Sanders failed an attempt at narcotic withdrawal from April to July 2014, Defendants continued to prescribe him large amounts of various prescriptions. (**Ex. 3**, Brosman Dep. at 122-25). From February 2015 through the October 13, 2016 collision, Defendants prescribed Sanders Dilantin, Xanax, Fentanyl, and Oxycodone. (**Ex. 2**, Defs.' Am. Resp. to Req. for Admission pp. 2-3). At various times, he also received prescriptions for Flexeril (a muscle relaxer), Clonidine, Celebrex, Methadone (an opioid), Soma (a muscle relaxer), and Gabapentin (an opioid). (**Ex. 3**, Brosman Dep. at 106, 125, 141, 145, 158).

At the time of the collision, Defendants prescribed Sanders a combination of Oxycodone, Fentanyl (both opioids), Xanax, Dilantin, Soma, and Gabapentin. (Cmplt. ¶ 30). Plaintiffs allege that Defendants simultaneously prescribed Sanders these drugs without medical necessity, did not warn him of the risks of driving while taking these drugs, and did not take any measures to protect the public from his foreseeable dangerous driving. (Cmplt. ¶¶ 32-33). Dr. Brosman testified that he did not tell Sanders he could not drive, nor did he advise him of new risks associated with the medications he prescribed. (**Ex. 3**, Brosman Dep. 114:21-23; 117:5-8).

On October 11, 2019, Plaintiffs filed a Notice of Intent to File Suit in South Carolina. (NOI, Oct. 11, 2019). On January 13, 2020, Plaintiffs filed a complaint for wrongful death and survival against the Defendants. Plaintiffs assert a negligence cause of action for Defendants' failures to explain to Sanders the dangers of driving while taking the medications, to protect the motoring public from Sanders's driving while taking the medications, and, among other things, prescribing a combination of mind-altering medications without medical necessity to a known drug abuser. (Cmplt. ¶ 49.a.-k.). Plaintiffs' expert submitted an affidavit stating his opinion that Defendants deviated from the standard of care in numerous ways, including prescribing mind-altering medications without explaining to Sanders the dangers of driving while taking them, prescribing strong opioids without medical necessity, failing to assess Sanders's need for a combination of medications that affect his cognition and ability to safely drive, overlooking Sanders's history of drug addiction and abuse, and failing to protect the motoring public from the dangers of Sanders's driving while under the influence of the drugs. (**Ex. 4**, Aff. of Stieg pp. 2-3).

In February 2020, Defendants filed a motion to dismiss on the grounds that Plaintiffs could not bring a medical malpractice action against them because Plaintiffs did not have a physician-patient relationship with them and they did not owe duties of care to Plaintiffs as a non-patient.

(Def. Memo. in Supp. of Mot. to Dismiss, May 20, 2020). Judge Buckner denied the motion applying South Carolina law. (Order, June 2, 2020).

On March 15, 2022, Defendants filed a motion for summary judgment arguing that Plaintiffs' claims were barred under the doctrine of *lex loci delicti*. Defendants asserted that Georgia law applied to Plaintiffs' claims. Judge McCoy denied the motion on May 9, 2022. (Order, May 9, 2022).

Defendants have again raised the *lex loci delicti* argument in support of their second motion for summary judgment. They argue Georgia substantive law should apply to this action because the motor vehicle accident occurred in Georgia. Defendants further argue, for the second time, that Plaintiffs' claims are barred under Georgia law because no physician-patient relationship existed between Mr. Holland and Defendants.

Finally, Defendants assert that even if South Carolina law applies to this action (which Judge McCoy has already ruled that it does), Plaintiffs' claims should be limited to a duty to warn claim. Defendants argue the only duty of care owed by a physician to a non-patient third party is a duty to warn the patient of the attendant risks and effects of any treatment.

Plaintiffs submit this memorandum in opposition to Defendants' motion for summary judgment and asks the Court to deny the motion in its entirety.

STANDARD

"On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party." *Wright v. PRG Real Estate Mgmt.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. At&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (internal quotation marks omitted). "[S]ince it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues." *Cunningham v. Helping Hands*, 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003). "If triable issues exist, those issues must go to the jury." *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 346, 565 S.E.2d 309, 312 (Ct. App. 2002).

ARGUMENT

I. South Carolina Law Applies in this Case

Defendants filed a motion for summary judgment in this case in March of 2022, arguing that the substantive law of Georgia applied. (Def. Mot. For Summ. J., March 15, 2022). Under Georgia law, a patient-physician relationship must exist to bring a claim for medical malpractice. *Gilhuly v. Dockery*, 273 Ga. App. 418, 420, 615 S.E.2d 237, 239 (2005). In response to Defendants' original motion for summary judgment, Plaintiffs argued that South Carolina law applied, despite *lex loci delicti,* because application of Georgia substantive law would violate the public policy of South Carolina.

Judge McCoy denied Defendants' motion for summary judgment in May of 2022. (Order, May 9, 2022). Defendants relied on the same exact set of facts in their initial motion as they do in the motion at issue here. Rule 43(l) prohibits a party from raising a subsequent motion, upon the same set of facts, to any other judge in the action where a different judge has already considered and ruled on the motion. Rule 43(l), SCRCP. Defendants' motion for summary judgment on the choice of law issue should be denied under Rule 43(l) alone.

However, Defendants' choice of law argument fails regardless of Rule 43(l) because application of Georgia law would violate the public policy of South Carolina. Under South Carolina law, a physician 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 reasonably foreseeable third parties by warning the patient of the attendant risks and effects before administering the treatment. *Hardee v. Bio-Med. Applications of S.C., Inc.*, 370 S.C. 511, 516, 636 S.E.2d 629, 631-32 (2006). 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). It would be against good morals and natural justice to bar Plaintiffs' claims under Georgia law when they arise out of medical malpractice that occurred (and may continue to occur) in the state of South Carolina.

a. <u>Defendants' subsequent motion for summary judgment is based on the same facts and evidence as their original motion for summary judgment, which was denied by Judge McCoy in 2022</u>

If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. Rule 43(l), SCRCP. The fact that a different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion **once new evidence is gathered**. *Smith v. Breedlove*, 377 S.C. 415, 421, 661 S.E.2d 67, 70 (2008). The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment **based on matters not involved in the decision on the first motion.** *Crosswell Enters. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992).

The ground for Defendants' first motion for summary judgment was that Georgia law applied to this case under the *lex loci delicti* doctrine. (Defs.' Mot. for Summ. J., March 15, 2022).

Defendants provided the following factual background in support of their argument: "[i]n the case at bar, the substantive law of Georgia applies. The motor vehicle accident that resulted in the death of Christopher Holland occurred in Effingham County, Georgia. Additionally, the decedent was domiciled in the State of Georgia. The Personal Representative and the only statutory beneficiary, who are also named as Plaintiffs, were domiciled in the State of Georgia at the time of the accident. The decedent's injuries and death as well as any injuries to the statutory beneficiary occurred in the State of Georgia. Moreover, the patient, James Sanders, is a resident of the State of Georgia, and his tort liability for the accident is governed by Georgia law. In fact, there is a pending action against him in Georgia state court … Therefore, under the rule of *lex loci delecti*, the substantive law of Georgia applies to this case." *Id*. at 2.

The ground for Defendants' choice of law argument in their second motion for summary judgment is the same as that raised in their original motion for summary judgment. In some parts, the motions are the same word-for-word. Most importantly, Defendants do not rely on any new facts or evidence to argue that the substantive law of Georgia applies in this case. They provide the following factual background in support of their motion: "[i]n case at bar, the substantive law of Georgia should apply. The motor vehicle accident that resulted in the death of Christopher Holland occurred in Effingham County, Georgia. Additionally, the decedent was a resident of Georgia. The decedent's estate is administered in the State of Georgia. The Personal Representative and the only statutory beneficiary, who are named as Plaintiffs, were domiciled in the State of Georgia at the time of the accident. The decedent's injuries and death as well as any injuries to the statutory beneficiary occurred in the State of Georgia. Moreover, the patient, James Sanders, is a resident of the State of Georgia, and his tort liability for the accident is governed by Georgia law. In fact, there was an action brought against Sanders in Georgia state court.

Therefore, under the rule of *lex loci delecti*, the substantive law of Georgia should apply to this case."

Judge McCoy decided Defendants' original motion for summary judgment on the exact same facts that Defendants now rely upon in their later motion. Rule 43(l) states that where a motion is denied by a judge, in whole or in part, no subsequent motion may be made to any other judge in that action where the motion is based upon the same set of facts. The court should deny Defendants' motion for summary judgment on the choice of law issue.

b. <u>The substantive law of South Carolina applies to this action</u>

The substantive law of South Carolina applies to this action because the substantive law of Georgia violates the public policy of South Carolina.

"Under traditional South Carolina choice of law principles, the substantive law governing a tort action is determined by the lex loci delicti, 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). However, "under the 'public policy exception,' the Court will not apply foreign law if it violates the public policy of South Carolina." *Id.* at 14, 546 S.E.2d at 193.

In *Boone*, the Supreme Court applied the public policy exception. Mrs. Boone was injured in a car accident in Georgia in a car driven by her husband. *Id.* at 10, 546 S.E.2d at 192. The Boones lived in South Carolina. *Id.* Under Georgia law, the doctrine of interspousal immunity would have barred Mrs. Boone's action against her husband. *Id.* at 12-13, 546 S.E.2d at 193. However, South Carolina abolished interspousal immunity decades earlier and, applying its law, Mrs. Boone could bring an action against her husband. *Id.* The Supreme Court found it "contrary to natural justice" to prohibit a wife from bringing an action against her husband because of their marital status. *Id*. at 14, 546 S.E.2d at 194. It held Georgia law "violates the public policy of South Carolina" and refused to apply it. *Id.*

The District Court of South Carolina applied the public policy exception in *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589 (D.S.C. 1981). Mizell's mother took a prescription drug while pregnant with Mizell. *Id.* at 591. Years later Mizell was diagnosed with cancer, and she alleged the prescription her mother took caused the cancer. *Id.* Her mother took the drug in California, and Mizell was diagnosed with cancer in California. *Id.* Mizell filed a product liability action against drug manufacturers in South Carolina because she lived there at the time of the filing. *Id.* at 591, 594. California law permitted a product liability action where a plaintiff could not identify the responsible manufacturer under a "market share liability" theory. *Id.* at 596. The District Court found this was "a radical departure" from South Carolina product liability law because it "destroys the nexus between production of a defective item and the plaintiff's injury" and allows liability to be "placed on defendants bearing no responsibility for the defective product." *Id.* "It is a well settled exception to the traditional conflicts-of-law rule of lex loci delicti that the law of the forum and not the law of the place of the wrong is controlling whenever the law of the place of the wrong is contrary to the public policy of the forum state." *Id.* at 596 (citing *Rauton v. Pullman Co.*, 183 S.C. 495, 191 S.E. 416 (1937)).[1] Under the public policy exception, the District Court applied South Carolina—not California—law because applying California law would "violate the public policy of" South Carolina. *Id.* at 596-97.

The same result is warranted in this case because the public policy of South Carolina is that (1) a medical malpractice injury occurs where the medical treatment is given, and (2) a South Carolina physician owes the same duty to the motoring public as to the patient to warn of risks of

[1] *See Rauton*, 183 S.C. at 508, 191 S.E. at 422 ("To justify a Court in refusing to enforce a right of action which accrued under the law of another state, because against the policy of our laws, it must appear that 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." (internal quotation marks omitted)).

treatment. The Court should apply the public policy exception based on either of these policies and deny Defendants' motion.

1. Medical malpractice injury occurs where the medical treatment is given.

In *Coggeshall v. Reproductive Endocrine Assocs.*, 376 S.C. 12, 655 S.E.2d 476 (2007), a North Carolina medical practice and doctor provided treatment in North Carolina to the plaintiff South Carolina resident who suffered harm in South Carolina. The Supreme Court analyzed the meaning of "causing tortious injury" under the specific jurisdiction statute, S.C. Code Ann. § 36-2-803(A)(4). *Id.* at 20, 655 S.E.2d at 480. The Court "concur[red] 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." *Id.* It held "the tortious injury did not occur in South Carolina but in North Carolina where the medical treatment was rendered." *Id.*

In another medical malpractice action, South Carolina stated its public policy as follows:

> South Carolina's interest in providing her citizens with a convenient forum for the vindication of torts imposed at the hands of nonresidents must be balanced by its countervailing interest of insuring that its residents receive adequate medical services to meet their needs wherever they may be required to go to receive it.

Hume v. Durwood Med. Clinic, Inc., 282 S.C. 236, 242-43, 318 S.E.2d 119, 123 (Ct. App. 1984). The Court recognized 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." *Id.* at 241, 318 S.E.2d at 122.

This public policy applies in a medical malpractice action choice of law analysis. A South Carolina physician is subject to South Carolina laws in a medical malpractice action for treatment provided in South Carolina regardless of the forum where the injury is felt. Here, Defendants' practice is located in Hilton Head, South Carolina. (**Ex. 3**, Brosman Dep. 4:12-17). Dr. Brosman is licensed to practice medicine in the state of South Carolina. (**Ex. 3**, Brosman Dep. at 14:13-18).

He is not licensed to practice in any other state. *Id.* Defendants prescribed Sanders "huge doses of narcotics" in the state of South Carolina, the likes of which Plaintiffs allege caused Mr. Holland's death. (**Ex. 3**, Brosman Dep. 142:17; Cmplt. ¶ 49 a-k).

The public policy of South Carolina is that the law of the forum of treatment—not the forum of physical injury—applies in a medical malpractice action. Therefore, Georgia law violates the public policy of South Carolina and is inapplicable to this action.

2. A South Carolina physician owes the same duty to the motoring public as to the patient to warn of risks of treatment

In South Carolina, the public policy is 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 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); *id.* at 516 n.2, 636 S.E.2d at 631 n.2. (noting that 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" (emphasis added) (internal quotation marks omitted)). The *Hardee* Court held "South Carolina tort law ought to recognize [] a duty" owed by a medical provider "to those persons in the general field of danger (that is, the motoring public)" that the provider ought to have foreseen when providing treatment. *Id.* at 516, 636 S.E.2d at 631.

In Georgia, the public policy is that a doctor's duty to his patient does not include members of the traveling public. *See Gilhuly v. Dockery*, 273 Ga. App. 418, 419-20, 615 S.E.2d 237, 239 (2005) ("To expand a doctor's duty to his patient to generally include members of the public at large in a case such as this one would be contrary to Georgia public policy . . . .").

It is against natural justice for a South Carolina physician to owe a duty to the motoring public only so long as they drive within South Carolina borders. South Carolina borders North Carolina, Georgia, and Florida. It is against the public policy of this state for a doctor's duty to end at the state border.

The public policy of South Carolina is that a South Carolina physician owes the same duty to the motoring public as to the patient to warn of risks of treatment. Therefore, Georgia law violates the public policy of South Carolina and is inapplicable to this action.

II. Defendants failed to warn Sanders of the risks associated with his pain management treatment and prescriptions

Under South Carolina law, the physician-patient relationship is not a requisite in every legal action against a medical provider. *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 92, 502 S.E.2d 78, 84 (1998). "A reasonably foreseeable third party, who is harmed by a physician's malpractice in treating a patient, may initiate an action against a physician for malpractice under limited circumstances." *Id.* at 92, 502 S.E.2d at 84.

The Supreme Court explained "the limited circumstances in which a third party can maintain suit against a medical provider." *Hardee v. Bio-Med. Applications of S.C., Inc.*, 370 S.C. 511, 515, 636 S.E.2d 629, 631 (2006). "[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 by warning the patient of the attendant risks and effects before administering the treatment." *Id.* at 516, 636 S.E.2d at 631-32. "[T]his duty owed to third parties is identical to the duty owed to the patient, i.e., a medical provider must warn a patient of the attendant risks and effects of any treatment." *Id.* at 516, 636 S.E.2d at 632. The duty "mirror[s] the duty owed to the patient", and the third-party plaintiff's case "hinge[s] on the conduct by the patient which injured the third-party plaintiff." *Oblachinski v. Reynolds*, 391

S.C. 557, 562, 706 S.E.2d 844, 846 (2011). "Where a medical provider had administered to a patient medication that impairs or could impair the patient's ability to safely operate an automobile, the medical provider has a duty to third parties to warn the patient of that danger." 70 C.J.S. *Physicians and Surgeons* § 133.

The facts of this case, viewed in a light most favorable to Plaintiffs, fall squarely within the circumstances in which a third party can maintain an action against a medical provider.

This case is factually similar to *Hardee*, in which the Hardees suffered serious injuries when a patient of a dialysis center lost control of his car and hit their car after leaving a dialysis treatment. 370 S.C. 511, 513, 636 S.E.2d 629, 630. The Hardees argued that the defendant medical provider did not warn the patient "of the risks of operating a motor vehicle" and thereby "breached a duty a medical provider owes to those persons in the general field of danger (that is, the motoring public) which should reasonably have been foreseen by [the defendant] when it administered the treatment." *Id.* at 516, 636 S.E.2d at 631. The Supreme Court held "[w]e believe South Carolina tort law ought to recognize such a duty" and found "the trial court erred in determining that a medical provider never owes a duty to a third party non-patient as a result of actions or omissions the provider takes in regard to a patient's treatment." *Id.* at 516-17, 636 S.E.2d at 631-32. In this case, Plaintiffs allege, in part, that the Defendants prescribed mind-altering medicine to Sanders "without explaining the dangers of consuming the medications and driving a motor vehicle to" him and failed "to take any measures to protect the general motoring public, including [Mr.] Holland, from the dangers of Sanders operating a motor vehicle while under the influence of the drugs prescribed by Defendants." (Cmplt. ¶ 49 a-k). This falls squarely within the scenario and duty recognized in *Hardee*.

The duty Plaintiffs allege Defendants owe to them is identical to the duty owed to the patient, Sanders. It is the duty to warn the patient of the dangers associated with his medical treatment, to prescribe only medically necessary drugs, to not prescribe these medications to a drug addict or abuser, to continuously assess the need for prescribing a combination of mind-altering drugs, and to take precautionary measures when prescribing these drugs to someone who Defendants know will operate a motor vehicle while taking them. *Hardee*, 370 S.C. at 516, 636 S.E.2d at 632; **Ex. 4,** Aff. of Stieg pp. 2-3.

Dr. Brosman testified he did not advise Sanders of the risks associated with medication he prescribed. (**Ex. 3**, Brosman Dep. 117:5-8). He also testified that he never warned, or even told, Sanders not to drive if impaired by his pain medication. (**Ex. 3**, Brosman Dep. 114:21-23). However, Dr. Broman admitted in his 30(b)(6) deposition that a patient who is abusing medication and is adversely impaired by that medication could cause harm to other traffic on the highway. (**Ex. 5**, Brosman 30(b)(6) Dep. at 25-26). Defendants' expert witness, Dr. Kevin Walker, testified that "[p]hysicians cannot follow their patients 24 hours a day, seven days a week to make sure he or she is taking their medication exactly as they are recommended. **Physicians are expected to give the information to the patient**, but there is an expectation and responsibility of the patient to follow those instructions as closely as they are given." (**Ex. 1**, Walker Dep. at 15-16).

Defendants claim that the Patient Responsibility Agreement for Control Substance Prescription signed by Sanders was a sufficient warning of the risks associated with operating a motor vehicle while taking controlled substances. However, Dr. Brosman testified Sanders violated the patient responsibility agreement (**Ex. 3**, Brosman Dep. 129:17-24), yet he continued to prescribe Sanders medication. Brosman further testified that, even after Sanders violated the patient responsibility agreement, he did not give any additional warnings of the inherent risk in operating a motor vehicle while on pain medication. (**Ex. 3**, Brosman Dep. 118:15-16). A genuine issue of material fact exists as to whether or not Dr. Brosman warned Sanders of the risks associated with his medication, and if so, whether that warning was sufficient.

A physician-patient relationship is not a requisite in this action against Defendants, *Bishop*, 331 S.C. at 92, 502 S.E.2d at 84, and Defendants owed Plaintiffs a duty to warn Sanders of the dangers to himself and others posed by his prescription use in conjunction with other drugs. Material facts exist to show Dr. Brosman failed to warn Sanders of the risks associated with driving while on his medication. Therefore, the Court should deny the Defendants' motion for summary judgment.

III. Defendants owe a duty to protect the motoring public from Sanders because they negligently or intentionally created the risk

In addition to the duty argued above, Defendants owed a duty to protect the motoring public, including Mr. Holland, from Sanders because Defendants negligently or intentionally created the risk of Sanders driving while under the influence of mind-altering drugs.

"There is no general duty to control the conduct of another or to warn a third person or potential victim of danger." *Edwards v. Lexington Cnty. Sheriff's Dep't*, 386 S.C. 285, 291, 688 S.E.2d 125, 128 (2010) (citing *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002)). "***However***, there are five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant." *Edwards*, 386 S.C. at 291, 688 S.E.2d at 128 (emphasis added). The facts of this case, viewed in a light most favorable to Plaintiffs, support finding a duty under the fourth exception—Defendants negligently or intentionally created the risk of Sanders driving under the influence of mind-altering drugs.

In *Edwards*, the Supreme Court imposed a duty of care on a county and sheriff's department because those entities created a risk of injury to the plaintiff. The plaintiff, a domestic violence victim, brought suit after her ex-boyfriend attacked her in a magistrate's court bond revocation hearing where the defendants failed to provide any security. 386 S.C. at 288-89, 688 S.E.2d at 127-28. The Supreme Court agreed that the defendants owed the plaintiff a duty because they created the risk of harm due to, among other things, their knowledge of the ex-boyfriend's violent tendencies towards the plaintiff and their strong encouragement to plaintiff to attend the hearing despite her fear. *Id.* at 293-94, 688 S.E.2d at 130. The Court held the defendants "created a situation that they knew or should have known posed a substantial risk of injury to" the plaintiff. *Id.* at 294, 688 S.E.2d at 130.

The same logic applies to this case. Defendants negligently or intentionally created a situation that they knew or should have known posed a substantial risk of injury to motorists on the road with Sanders. Defendants knew or should have known that Sanders was a drug addict who posed a risk to the motoring public while taking the numerous drugs, including strong amounts of opioids, yet Defendants continuously prescribed to him without medical necessity. (Cmplt. ¶¶. 31-33, 48-49; **Ex. 4**, Aff. of Stieg ¶¶ 6-8).

As the United States District Court for the District of South Carolina noted in finding a duty of care existed under the fourth exception, foreseeability of injuries caused by a defendant's allegedly negligent conduct is relevant. *Lewis v. Norfolk/Southern R.R., Inc.*, 2009 U.S. Dist. LEXIS 138753 (D.S.C. Nov. 4, 2009). In *Lewis*, the plaintiff worked as part of the crew that cleaned up a chlorine chemical spill after a train derailment in Graniteville, South Carolina. *Id.* at

*1-2. He brought suit against the railway after he suffered injury to his lungs from chlorine exposure during the cleanup work. *Id.* at *2. Relying on the fourth exception, the District Court held “Defendant created the risk by its negligent actions . . . . A release of dangerous chemicals foreseeably can compel the need for persons to undertake a cleanup of the chemicals.” *Id.* at *6.

The same result is warranted in this case. Dr. Brosman testified that Sanders was being given “huge doses of narcotics” by Defendants. (**Ex. 3**, Brosman Dep. 142:17-19). He further testified that Sanders continually failed routine drug screens administered by Defendants, which called in to question his trustworthiness as a patient. (**Ex. 3**, Brosman Dep. 173:18-24). Dr. Brosman, testifying on behalf of Pain Management ASC, stated that despite multiple failed drug screens, Pain Management did not take any affirmative steps to supervise or monitor Sanders’s operation of a motor vehicle while utilizing prescriptions that were provided to him. (**Ex. 5**, Brosman 30(b)(6) Dep. 37:4-9).

Defendants negligently created the risk of Sanders causing a motor vehicle accident by its actions in continuing to prescribe him large amounts of mind-altering medications, including continuing to prescribe drugs in the absence of medical necessity, despite knowledge of his drug abuse and addiction, and without warning him of the risk of driving while taking them. Prescribing Sanders the drugs foreseeably can cause him to have a motor vehicle accident that injures, or in this case kills, a third person.

For these reasons, the Court should find Defendants owed a duty based on their conduct in negligently or intentionally creating the risk of Sanders causing a motor vehicle accident while under the influence of the drugs Defendants prescribed to him.

CONCLUSION

For any of the independent reasons discussed above, Plaintiffs ask the Court to deny the motion in its entirety.

Dated: July 28, 2026

PARKER LAW GROUP

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ATTORNEYS FOR PLAINTIFF

EXHIBIT 6

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	)	

Gary Holland, as Administrator of the Estate of Christopher Lee Holland, deceased,	)	Civil Action No. 2020-CP-07-0065
Plaintiff,	)	
v.	)	**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, MOTION IN LIMINE ON CHOICE OF LAW ISSUES**
David A. Brosman, MD; Pain Management ASC, LLC; MPS Solutions, Inc.; Anesthesia Associates of Hilton Head Pain Management, LLC; John Does 1 to 99; and Pharmacies 1 to 99,	)	
Defendants.	)	

The Defendants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain Management, LLC (hereinafter collectively referred to as "Defendants") have filed a Motion for Summary Judgment alleging that the substantive law of the State of Georgia applies to this litigation. In the alternative, the Defendants request that the Court issue a ruling in limine determining the choice of law issues and limiting admissible evidence to what is relevant solely on the duty to warn claim, i.e., the duty to warn the actual patient and not the public at large, should the Court determine that such a claim has been properly pled.

On July 28, 2026, the Plaintiffs filed a memorandum in opposition to the Defendants' Motion for Summary Judgment. The Plaintiffs, however, make no mention of the Motion in Limine on the choice of law issues which is also a component of the current motion. To be clear, this case is scheduled for trial beginning on August 31, 2026, and the parties need to know what law applies to this case before the trial begins. It makes no difference whether the Court decides that critical issue of law by way of a summary judgment ruling or an in limine ruling, both of which are proper, the choice of law issue needs to be decided. It impacts the presentation of the evidence, the applicable defenses, and even whether the case will proceed to trial at all.

The Defendants have attempted to obtain a ruling on the choice of law previously. In addressing an earlier Motion for Summary Judgment, Circuit Court Judge Jennifer McCoy issued a form order filed May 9, 2022, in which she merely denied the motion "at this time" because the Plaintiff had "submitted at least a scintilla of evidence" sufficient to deny the motion. Importantly, Judge McCoy denied summary judgment "at this time," thereby implicitly allowing for a renewed motion to be made as the litigation progressed. Notably, she did not make any definitive rule on whether South Carolina law or Georgia law applies. In addition, she did not necessarily treat the choice of law question as an issue of law for the court to decide. Finally, she applied the "mere scintilla of evidence" standard which is no longer valid law having been overturned by the Supreme Court in *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). Given those circumstances, it is entirely reasonable and appropriate for a renewed motion for summary judgment to be heard.

Nonetheless, in their opposition memorandum, the Plaintiffs are critical that the Defendants have moved for summary judgment a second time. As indicated, there is nothing improper with that; yet, the Plaintiffs offer no alternative mechanism for a pre-trial determination of the choice of law issue. Clearly, the choice of law must be decided by the Court in advance of trial; it is a question of law and not a question for the jury. *See*, *Linden v. CNH America LLC*, 753 F.Supp.2d 870, 872-873 (S.D. Iowa 2010) ("[t]he issue of the appropriate choice of law is a question of law for the court"); *Toll v. Tannenbaum*, 982 F.Supp.2d 541, 551-552 (E.D. Penn. 2013) (presenting "choice-of-law factual issues to a jury would be impractical and confusing").

As to the propriety of a second motion for summary judgment, South Carolina law is well settled that "[a] denial of a motion for summary judgment decides nothing about the merits of the case." *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994). "The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings." *Id*. The Supreme Court further explained in *Ballenger* that "the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings." *Ballenger*, 443 S.E.2d at 380. (Emphasis in original). *See also*, *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350, 355 (Ct. App. 2000) ("[t]his result does not preclude a later determination that summary judgment or a directed verdict may be appropriate, as it does not establish the law of the case or have the effect of striking any applicable defense"). Therefore, because the denial of summary judgment by Judge McCoy did not establish the law of the case and did not decide the merits of the issues presented, the choice of law issue and the defenses asserted by the Defendants remain to be decided in a subsequent motion for summary judgment or a motion in limine.

While is it true that "one circuit court judge may not overrule another," *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81, 88 (2008), that rule has no application where the earlier ruling is a *denial* of a summary judgment motion which by law does not and cannot decide the merits or establish the law of the case. As the Supreme Court has held, "that a different trial judge previously denied the motion [for summary judgment] did not preclude [defendant] from renewing its motion once new evidence came to light." *Dorrell v. South Carolina Department of*

Transportation, 361 S.C. 312, 605 S.E.2d 12, 18 (2004). The Court of Appeals has similarly explained that "a judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment. If the law were otherwise, a party could never obtain relief from an erroneous order denying summary judgment since orders denying summary judgment are never appealable, not even after final judgment." *Weil v. Weil*, 299 S.C. 84, 382 S.E.2d 471, 473 (Ct. App. 1989). *See also*, *Croswell Enterprises, Inc. v. Arnold,* 309 S.C. 276, 422 S.E.2d 157, 159 (Ct. App. 1992) ("[i]f the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial").

The Plaintiffs also cite Rule 43(l), SCRCP, which provides: "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action." Rule 43(l), SCRCP. However, the Supreme Court has explained that "[t]he fact that a different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion once new evidence is gathered." *Smith v. Breedlove*, 377 S.C. 415, 661 S.E.2d 67, 70 (2008). The first motion was decided by Judge McCoy in May 2022, but since then there has been additional discovery completed, including the depositions of the Defendant Brosman taken in September 2022 and November 2023. In fact, the parties have filed with their motions and memoranda certain deposition excerpts, all of which post-date May 2022. Thus, it is entirely appropriate for the Court to hear a second summary judgment motion to determine the choice of law issue and its impact on the claims and defenses prior to the upcoming trial.

Nonetheless, as mentioned, the Defendants have alternatively sought a ruling on the choice of law issue by way of their Motion in Limine, which is also an appropriate mechanism for adjudicating a choice of law issue. There are dozens of cases where courts have adjudicated a choice of law issue ahead of trial by way of a motion in limine. *See e.g.*, *Hopp v. MJC America, Ltd.*, 2025 WL 306575 (W.D. Wisc. 2025) ("If the parties dispute the choice-of-law question for trial, they will have to present that issue in a motion in limine"); *Long v. Fairbank Farms Reconstruction Corp.*, 2011 WL 5118853 (D. Maine) ("[t]o the extent [the motion] asks this Court to make a final determination regarding choice of law in advance of trial, the Court will treat this portion of the motion as a motion in limine regarding choice of law"); *Jenkins v. Whittaker Corp.*, 545 F.Supp. 1117 (D. Hawaii 1982) (court decided choice of law issue by way of motion in limine). The Plaintiffs have not disputed whether a motion in limine may be utilized to obtain an adjudication of the choice of law issue prior to the start of trial.

Of course, the irony is that the facts that are pertinent to the choice of law issue are not in dispute. For example, the Plaintiffs do not contest that the motor vehicle accident that resulted in the death of Christopher Holland occurred in Effingham County, Georgia. Additionally, there is agreement that the decedent was domiciled in the State of Georgia at the time of the accident. The decedent's estate is administered in the State of Georgia. The Personal Representative and the only statutory beneficiary, who are also named as Plaintiffs, were domiciled in the State of Georgia at the time of the accident. The decedent's injuries and death as well as any injuries to the statutory beneficiary occurred in the State of Georgia. Moreover, the patient, James Sanders, is a resident of the State of Georgia, and his tort liability for the accident is governed by Georgia law. The Plaintiffs, in fact, brought a lawsuit against him in Georgia state court. *See*, *Holland v. Sanders*, Case Number STSV2018000065 (brought in the State Court of Bryan County).

As for the merits of the choice of law issue and in weighing any policy considerations, it is critical to recognize that this is not a case where the injured party is even a South Carolina resident or has significant contacts to South Carolina. Neither the Plaintiffs nor their decedent were treated by South Carolina-based physicians. There was litigation already pursued over the fatal motor vehicle accident, and that was brought in Georgia to be governed by Georgia law. In effect, the Plaintiffs are asking this Court to apply South Carolina law and to grant them greater substantive rights that they do not enjoy in their own state of Georgia. Without question, it is *not* a violation of South Carolina public policy to deny the Plaintiffs greater substantive rights they do not enjoy in their own state. Quite simply, the Plaintiffs could not bring this action in Georgia. There is no reason that South Carolina should provide a cause of action and remedy that the Plaintiffs otherwise do not have. Indeed, it is quite telling that our Court of Appeals recognized in the *Nash* case that "Plaintiffs' attempt to bring this case in South Carolina constitutes forum shopping, *an act which violates public policy*. *Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81, 84 (Ct. App. 2007). (Emphasis added). This case is a classic example of such forum shopping. If this Court declines to apply the substantive law of Georgia and allows this action to proceed, that would actually be a violation of the public policy of this State, as the *Nash* Court so aptly observed.

Finally, it worth noting that the Plaintiffs do not dispute that their lawsuit is foreclosed by Georgia law. Similarly, the Plaintiffs' medical malpractice claim, even if viable, was brought beyond the Georgia statute of limitations. That also is undisputed by the Plaintiffs.

Based on the foregoing, and the discussion and authorities contained in the motion itself, the Defendants respectfully renew their request that the Court apply the substantive law of Georgia and dismiss this case with prejudice.

Respectfully submitted,

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July 29, 2026

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, v. DAVID A. BROSMAN, MD; PAIN MANAGEMENT ASC, LLC; MPS SOLUTIONS, INC.; ANESTHESIA ASSOCIATES OF HILTON HEAD PAIN MANAGEMENT, LLC, Defendants.	**PROPOSED ORDER**

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

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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.

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

STATE OF SOUTH CAROLINA COUNTY OF JASPER	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2020-CP-27-00017
BEN A. BARONE, Plaintiff, v. JAGUAR LAND ROVER NORTH AMERICA, LLC, PEACOCK AUTOMOTIVE, LLC d/b/a JAGUAR LAND ROVER HILTON HEAD, and COASTAL STATES AUTOMOTIVE GROUP, LLC d/b/a LAND ROVER HILTON HEAD, Defendants.	**ORDER**

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Nov 09 2022
SC Court of Appeals

These matters came before the Court on November 1, 2022, regarding a Notice of Intent to Rely on Foreign Law and two Motions for Summary Judgment filed by Defendants Jaguar Land Rover North America, LLC, Peacock Automotive, LLC d/b/a Jaguar Land Rover Hilton Head, and Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head. Present at the hearing and arguing on behalf of Defendants was Carmelo B. Sammataro. Appearing and arguing on behalf of Plaintiff were Austin H. Crosby and John E. Parker, Jr. After reviewing the record, the pleadings, and hearing the arguments of counsel, the Court declines to apply Georgia law to this action and denies both of Defendant(s)' Motions for Summary Judgment.

Defendant Jaguar Land Rover North America, LLC ("JLRNA") has noticed the Court that it intends to rely on Georgia law under the doctrine of lex loci delicti. First, the Court will decline to permit JLRNA to rely on Georgia law because the underlying sales agreements concerning the subject vehicle contain provisions indicating that the Jaguar Land Rover Hilton Head Defendants intended for South Carolina law to apply to controversies arising from the sale of the subject vehicle, and Plaintiff's product liability claims are predicated on the sale of the vehicle, which he alleges was defective at the time of sale. As an independent, alternative basis for the Court's decision, the Court finds Plaintiff's arguments regarding the public policy exception to lex loci delicti compelling and believes that applying Georgia products liability law to this case would violate the public policy of South Carolina.

The fact that the General Assembly, in codifying section 402A of the Restatement (Second) of Torts, chose to explicitly adopt the Restatement's comments section as the legislative intent behind South Carolina's strict liability statute, strongly indicates a mandated public policy within this State of allocating the cost of injuries caused by defective products sold within this State to all sellers, without requiring the injured parties to prove a negligence-based standard of fault. *See* S.C. Code Ann. §§ 15-73-10 and -30. Georgia law only permits strict liability claims against the manufacturer of a defective product, and not the importer, distributors, or retailers. OCGA §§ 51-1-11(b)(1), 51-1-11.1.

Because Georgia law in this instance would put Plaintiff in the exact position that section 15-73-10 was intended to protect him from, the Court declines to permit Defendants to rely on Georgia law under the factual circumstances of this action. The fact that the General Assembly has incorporated the extensive public policy considerations described by section 402A into South Carolina's strict liability statute as its legislative intent distinguishes the present facts from prior precedents declining to find a public policy exception to lex loci delicti in tort actions. *See Dawkins v. State*, 306 S.C. 391, 412 S.E.2d 407 (1991); *Rogers v. Lee*, 414 S.C. 225, 777 S.E.2d 402 (Ct. App. 2015); *Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81 (Ct. App. 2007). Instead, the present facts closely resemble those before the Supreme Court of South Carolina in *Boone v. Boone*, 345 S.C. 8, 546 S.E.2d 193 (2001), in which the court found that the public policy exception would apply where the public policy considerations involved were clear and overriding, despite the fact that negligence action in *Boone* was "a tort action for money damages." *Contra Dawkins*, 306 S.C. at 393, 412 S.E.2d at 408.

JLRNA has also moved the Court for summary judgment on the grounds that (1) Plaintiff has not established the existence of a design defect or offered competent expert testimony in support of his negligent failure to warn claim and (2) JLRNA did not design or manufacture the subject vehicle. The facts of this case indicate that JLRNA was the importer of the subject vehicle. Since the Court declines to permit JLRNA to rely on Georgia law, the fact that JLRNA was the importer, and not the manufacturer, is no longer of any significance to Plaintiff's strict liability and warranty claims. Further, the Court finds that JLRNA's arguments concerning design defect, feasible alternative designs, and/or failure to warn claims are issues best left for cross-examination and go to the weight of Plaintiff's expert's testimony, not its competence or admissibility. Plaintiff's experts, through their testimony, have given sufficient evidence to survive JLRNA's Motion for Summary Judgment.

Lastly, all Defendants have moved for summary judgment on the basis that South Carolina's Door Closing Statute, S.C. Code Ann. § 15-5-150, would preclude Plaintiff's claims because he is a Georgia citizen and resident, Defendants are incorporated under the laws of foreign states, and Plaintiff's physical injury manifested itself in Georgia, not South Carolina. The Court finds that the facts presented by this action, a products liability case alleging a latent defect, do not preclude Plaintiff from bringing his claims before a South Carolina court. The policy considerations behind the Door Closing Statute are not offended by Plaintiff's action, as it is clearly connected to South Carolina and Defendants' in-state activities in marketing and selling the subject vehicle within South Carolina. The Court specifically relies on *Murphy v. Owens-Corning*

Fiberglas Corp., 356 S.C. 592, 590 S.E.2d 479 (2003), and its rationale that "[t]he fact that the legal wrong did not result in injury and/or damages until the plaintiff had left the State does not foreclose a suit under the Door Closing Statute." *Id.* at 598-99, 590 S.E.2d at 482. Based on the foregoing authorities and findings, the Court denies Defendants' Motions for Summary Judgment and declines to permit Defendants to rely on Georgia law.

THEREFORE, it is ORDERED that the Defendants' Motions for Summary Judgment are DENIED, and Defendants are not permitted to rely on Georgia law.

IT IS SO ORDERED.

____
The Honorable Bentley Price
Chief Administrative Judge
Fourteenth Circuit

__________________, 2022
Charleston, South Carolina

Jasper Common Pleas

Case Caption:	Ben A Barone VS Jaguar Land Rover North America, Llc , defendant, et al
Case Number:	2020CP2700017
Type:	Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

EXHIBIT
9

The South Carolina Court of Appeals

Ben A. Barone, Respondent,

v.

Jaguar Land Rover North America, LLC, Peacock Automotive, LLC d/b/a Jaguar Land Rover Hilton Head, and Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head, Appellants.

Appellate Case No. 2022-001584

ORDER

This appeal arises out of an order of the circuit court denying the appellants' motions for summary judgment. Because the order on appeal is not immediately appealable, this appeal is dismissed. *See Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010) (holding it is well-settled an order denying summary judgment is never reviewable on appeal); S.C. Code Ann. §14-3-330 (2017). The remittitur will be sent as provided by Rule 221(b), SCACR.

______________________________, C.J.
FOR THE COURT

Columbia, South Carolina

cc:
Joseph Kenneth Carter, Jr., Esquire
Carmelo Barone Sammataro, Esquire
Abigail Caroline Bray, Esquire
H. Lanier Brown, II, Esquire
Austin Howell Crosby, Esquire
John Elliott Parker, Jr., Esquire

FILED
Nov 10 2022

Mary Bass Lohr, Esquire
Edward Merritt Farmer, Jr., Esquire
The Honorable Bentley Price

RECEIVED
Aug 25 2026
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2020-CP-07-00065

Sandra Holland, as Administrator 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, ... Respondents,

v.

David A. Brosman, MD, Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC, ... Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Respondent's Motion to Dismiss Appeal and for Expedited Consideration has been served upon the following counsel of record by emailing a copy of the same this August 25, 2026

Hutson S. Davis, Jr.
S. Harrison Williams
Johnson & Davis, PA
10 Pinckney Colony Road, Ste. 200
Bluffton, SC 29909

AND

Andrew F. Lindemann

Lindemann, Davis & Hughes, PA
Post Office Box 6923
Columbia, SC 29260

ATTORNEYS FOR APPELLANTS

Respectfully submitted

PARKER LAW GROUP, LLP

BY: _Claudia Cartier_

August 25, 2026
Hampton, South Carolina.

August 25, 2026

VIA ELECTRONIC FILING
Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, South Carolina 29211

RE*:** ***Holland v. Brosman, et al.
Beaufort County Court of Common Pleas, Case No. 2020-CP-07-00065
Appellate Case No. not yet assigned
TRIAL SCHEDULED TO BEGIN AUGUST 31, 2026

Dear Ms. Kitchings:

Enclosed for filing please find Respondents' motion to dismiss in the above-referenced matter, together with the exhibits thereto. Appellants served their notice of appeal this morning. No appellate case number has yet been assigned, and I have therefore identified the matter above by the Beaufort County civil action number.

I write separately only to bring the Court's attention to the timing of this filing. The case from which the appeal was taken is scheduled for a date certain jury trial beginning Monday, August 31, 2026, six days from today. The order appealed from was entered on August 24, 2026, and it denied Appellants' motion for summary judgment and held that South Carolina substantive law governs the action. A copy of that order accompanies the notice of appeal.

Respondents respectfully submit that the appeal is jurisdictionally defective on its face. This Court dismissed a materially identical appeal in *Barone v. Jaguar Land Rover North America, LLC*, Appellate Case No. 2022-001584, where the circuit court had likewise denied summary judgment and declined to apply Georgia law under the doctrine of *lex loci delicti*. The order of dismissal in *Barone* is enclosed as an exhibit to the motion.

Because the ten-day return period provided by Rule 240(e), SCACR, would by itself carry this matter past the trial date, the motion asks the Court to act without awaiting a return or to shorten the return period. Respondents recognize that the Court alone determines how its matters are calendared and do not presume to suggest otherwise. Respondents ask only that the motion and the enclosed order in *Barone* be brought to the attention of the Court and its staff at the earliest practicable time so that the Court may consider whether the appeal warrants disposition in advance of the trial date, and, if the appeal is dismissed, whether the remittitur should be sent immediately pursuant to Rule 221(b), SCACR.

I am available at the number below should the Court or its staff require anything further from counsel. Copies of this letter and of the enclosed motion have been served on all counsel of record and on the Honorable Carmen T. Mullen.

With kinds regards, I am

Sincerely,

John E. Parker Jr.

JAY/cc
Enclosures

cc: Hutson S. Davis, Jr., Esquire
Andrew F. Lindemann, Esquire
The Honorable Carmen T. Mullen

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