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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2012-213231

APPEAL FROM KERSHAW COUNTY
Civil Action No. 2011-CP-28-1170
Alison Renee Lee, Circuit Court Judge

Patricia Brouwer Appellant

vs.

Sisters of Charity Providence Hospitals d/b/a Providence Hospital and
Providence Hospital Northeast; South Carolina ENT, Allergy and Sleep Medicine,
P.A.; Robert Puchalski, M.D.; Francine K. Moring, M.D.; Jane Does (1-5); and
John Does (1-5) Defendants

Of Whom Defendants South Carolina ENT, Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D.; and Francine K. Moring, M.D. are Respondents

RECORD ON APPEAL

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Attorneys for the Respondents

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Patricia Brouwer

Plaintiff

v.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and Providence
Northeast; South Carolina ENT, Allergy and
Sleep Medicine, P.A.; Robert Puchalski, MD
Francine K. Moring, MD; Jane Does (1-5)
And John Does (1-5),

Defendants

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2011-CP-28-1169 (NOI)

Docket No. 2011-CP-28-1170 (MM)

ORDER

2012 MAY 31 PM 2:36
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter is before the Court pursuant to a Motion to Dismiss by Defendants South Carolina ENT, Allergy & Sleep Medicine, P.A., Robert Puchalski, M.D., and Francine K. Moring, M.D. (hereinafter "Defendants"). Present at the hearing of this matter on March 6, 2012, were Kristin M. Simons for the Plaintiff, William O. Sweeny and Benson Driggers for Defendants Moring, Puchalski, and South Carolina ENT, and Matthew G. Gerald for Defendant Providence Hospital.

Defendants' Motion is to dismiss for an alleged failure to file a Notice of Intent to File Suit in a Medical Malpractice Case. Defendants argued that Plaintiff's Summons and Complaint (Docket No. 2011-CP-28-1170) should be dismissed because Plaintiff failed to comply with the requirements prescribed by the South Carolina Code of Laws for all causes of action alleging medical malpractice arising after July 1, 2005.

Plaintiff filed a notice of intent to file suit on December 29, 2011 and also filed a Summons and Complaint on the same day. An amended notice was filed on January 4, 2012 as well as an Amended Summons and Complaint. Thereafter, Defendants filed this motion to dismiss the Summons and Complaint. The Defendants were properly served with the Amended Notice of Intent, pursuant to the affidavits of service also in the Court's file, dated and time stamped by the Clerk of Court's Office as follows: Defendant Puchalski was served with the Summons and Complaint and Amended Notice of Intent both individually, and as registered agent for Defendant South Carolina ENT, Allergy and Sleep Medicine, P.A. on January 4, 2012;

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Gayle McDaniel
Clerk of Court Kershaw County
Record on Appeal Page 2

the Certificates of Service for Defendants Puchalski and South Carolina ENT, Allergy and Sleep Medicine, P.A. were filed on January 13, 2012; Defendant Moring was served with the Summons and Complaint and Amended Notice of Intent on January 5, 2012, and the Certificate of Service was filed January 13, 2012.

Specifically, Defendants assert that S. C. Code Ann. §§ 15-79-125 *et seq.* requires parties pursuing a medical malpractice cause of action to file a Notice of Intent to File Suit with an affidavit of an expert witness. After filing this Notice, the law further mandates that the parties conduct pre-suit mediation and only if the matter does not resolve can Plaintiff then file and serve the Summons and Complaint. Defendants argue that Plaintiffs failed to follow the requirements of the statutory scheme and therefore the action should be dismissed. Defendants' argument is two-fold: first, Plaintiff filed both the Notice of Intent and the Summons and Complaint at the same time which does not follow the statutory scheme; second, Defendants argue that Plaintiff failed to file the appropriate affidavit with the Notice of Intent which is required by the statute.

As to the first claim, Plaintiff filed both the notice of intent to file suit pursuant to S.C. Code Ann. § 15-79-125 and the Summons and Complaint pursuant to S.C. Code Ann. § 15-36-100. The statutory scheme for medical malpractice cases requires pre-litigation mediation. The notice of intent to file a malpractice suit provides the parties the opportunity to explore the basis for the claim by engaging in limited prelitigation discovery and mandatory prelitigation mediation. If mediation fails then the lawsuit is commenced by the filing of the summons and complaint. The statute provides the timetable for the filing of the lawsuit after the unsuccessful mediation. The Complaint was prematurely filed and Plaintiff previously agreed to voluntarily dismiss the Complaint without prejudice as to the moving Defendants. The time period in which Plaintiff may properly file a Complaint in this matter has not expired pursuant to Section 15-79-125 and Defendants are not prejudiced in any way in dismissing the Summons and Complaint without prejudice.

Defendants also claim that no expert affidavit was filed with the summons and complaint as required by Section 15-79-125. Plaintiff argues that the alleged negligence falls within the ambit of common knowledge and that no special learning is needed to evaluate this case. Prior to surgery, Plaintiff notified all of her medical providers that she has an allergic reaction to latex. The allergy was noted on her medical charts. During the surgery she was exposed to latex and

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suffered an allergic reaction that created complications. She claims that no affidavit is required when the "specification of negligence [involves] subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." S.C. Code Ann. § 15-36-100(C)(2).

Our courts have long recognized an exception to the general rule that expert testimony is required in a malpractice case, "in situations where the common knowledge or experience of laymen is extensive enough to recognize or infer negligence from the facts." *Green v. Lilliewood*, 272 S.C. 186, 192, 249 S.E.2d 910, 913 (1978) (Citations omitted). The South Carolina Supreme Court has time and again upheld the "common knowledge" exception in *Cox v. Lund*, 286 S.C. 410, 334 S.E.2d 116 (1985) and in *King v. Williams*, 276 S.C. 478, 279 S.E.2d 618 (1981), holding that "[e]xpert testimony is not required, however, in situations where the common knowledge or experience of laymen is extensive enough for them to be able to recognize or infer negligence on the part of the doctor and also to determine the presence of the required causal link between the doctor's actions and the patient's medical problems." In a more recent decision, the South Carolina Court of Appeals upheld found that the "common knowledge exception" applied to drill that malfunctioned, severely burning the patient in an oral surgery. *Thomas v. Dootson*, 377 S.C. 293, 659 S.E. 2d 253 (Ct. App. 2008). Both the *Green* and *Cox* facts involve surgical procedures.

This "common knowledge" exception is codified in Section 15-36-100(C)(2). Section 15-36-100(B) requires that "in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina...the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." Subsection (C)(2) an expert affidavit is not required "to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant."

Therefore, it is **ORDERED** that Defendants Motion to dismiss the Notice of Intent to File Suit (Docket No. 2011-CP-28-1169) for the failure to file an affidavit is **DENIED**;

IT IS FURTHER ORDERED, that Defendants' Motion to Dismiss the Summons and Complaint (Docket No. 2011-CP-28-1170) is **GRANTED** as to Defendants South Carolina

ENT, Allergy and Sleep Medicine P.A., Robert Puchalski, M.D., and Francine K. Moring, M.D.
The Summons and Complaint is **DISMISSED WITHOUT PREJUDICE**.

Defendants' Supplemental Motion to Dismiss filed on April 24, 2012 is moot and no hearing or order is required.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Fifth Judicial Circuit

Columbia, South Carolina
May 29, 2012

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IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 2011-CP-28-1170

ORDER

v.

JOSEPH McDONALD
CLERK OF COURT
BERSHAM COUNTY, S.C.

2012 JUL -6 AM11:49

FILED FOR RECORD

Defendant.

Plaintiff contends that she is exempt from filing an expert witness affidavit with the Notice required by Section 15-79-125 on grounds that Section 15-36-100(C)(2) does not require an affidavit where the negligent act "lies within the ambit of common knowledge and experience." However, the requirements set out in Section 15-79-125 are subject only to the provisions of Section 15-36-100 that govern the preparation and content of the affidavit. *Ranucci v. Crain*, 397 S.C. 168, 723 S.E.2d 242 (Ct.App. 2012).

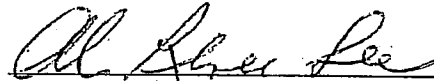
Gaye McDonald
Clerk of Court Kershaw County

The language of Section 15-36-100 tying the filing of affidavits under the professional negligence statute to a complaint or other initial pleading will prevent the remaining provisions, including the common knowledge exception, from applying to affidavits required by Section 15-79-125.

ORDER

The common knowledge exception found in Section 15-36-100 does not apply to the requisite prelitigation procedures set out in Section 15-79-125 and cannot be used to obviate the requirement that there be an expert affidavit filed with the Notice of Intent. Therefore, it is **ORDERED** that Defendants' Motion to Alter or Amend this Court's May 29, 2012 Order is **GRANTED** and Defendants' Motion to Dismiss the Notice of Intent to File Suit is **GRANTED** for failure to file an affidavit.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
July 3, 2012

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Patricia Brouwer,

Plaintiff,

v.

Sisters of Charity Providence Hospitals;
South Carolina ENT, Allergy and Sleep
Medicine, Robert Puchalski, M.D.;
Francine K. Moring, M.D.; Jane Does
and John Does,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

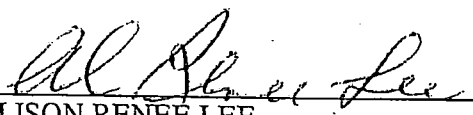
Docket No.: 2011-CP-28-1170

ORDER

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2012 SEP 14 AM 11:14
JOYCE MC DONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

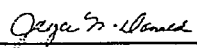
After careful consideration of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Plaintiff Patricia Brouwer's Motion pursuant to Rule 59(e) SCRCPP to Alter or Amend Judgment of this Court's Order filed July 3, 2012. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
September 12, 2012

ATTEST True, Correct & Certified
Copy of Original on File in this
Court


Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

) IN THE COURT OF COMMON PLEAS
)
) THE FIFTH JUDICIAL CIRCUIT

Patricia Brouwer

) Civil Action No.: 2011-CP-28-1170
)
)

Plaintiff,)

v.)

Sisters of Charity Providence
Hospitals; South Carolina ENT,
Allergy & Sleep Medicine, Robert
Puchalski, M.D.; Francine K. Moring,
M.D.; Jane Does and John Does

Defendant.)

MOTION TO DISMISS

TO: DARYL G. HAWKINS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO
THE PLAINTIFF ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by their undersigned attorneys will move before the Presiding Judge of the Kershaw County Court of Common Pleas at the Kershaw County Courthouse at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing the Plaintiff's Complaint pursuant to the South Carolina Rules of Civil Procedure 12(b)(6). Under the applicable statutory law which governs this case, the Plaintiff has failed to meet the necessary requirements for sustaining a medical malpractice action.

The Plaintiff's Complaint fails to comply with the South Carolina Code §15-79-125 *et seq.*, part of what is commonly known as the 2005 Tort Reform Act. Under this legislation, for all causes of action alleging professional negligence arising after July 1, 2005, the Plaintiff must file a Notice of Intent to File Suit simultaneously with an affidavit of an expert witness prior to filing the Summons and Complaint (emphasis added). After the filing of the Notice, the law

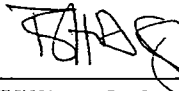
mandates that the parties conduct a mediation and only if the matter does not resolve can the Plaintiff then file and serve the Summons and Complaint. This statute is clear and does not provide any exceptions. This case undoubtedly involves allegations of medical malpractice and must be analyzed under the medical malpractice framework and the Legislature clearly intended the Plaintiff in a medical malpractice lawsuit to comply with all three statutory requirements.

The Plaintiff has acted in contravention to this statute and has not followed any of these requirements; there has been no Notice of Intent, no Expert Affidavit, and no Mediation. This being the case, the Defendants hereby moves the Court to issue an Order dismissing this suit.

This motion may be further supported by pleadings, discovery, affidavits, deposition testimony, and a memorandum of law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



William O. Sweeney, III
Benson H. Driggers
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

January 31, 2012

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A.,
attorneys for the Defendants do hereby certify that I have served a copy of the foregoing Motion
in connection with the above-referenced case by mailing a copy of the same by United States

Mail, postage prepaid, to the following address:

Daryl G. Hawkins, Esquire
Law Office of Daryl G. Hawkins, LLC
1331 Elmwood Avenue, Suite 305 (29201)
Post Office Box 11906
Columbia, SC 29211



Melissa H. Abbott

Columbia, South Carolina

January 31, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Case No. 2011-CP-28-1169 (NOI)
Case No. 2011-CP-28-1170 (MM)

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Northeast; South Carolina
ENT, Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D.; Francine K.
Moring, M.D.; Jane Does (1-5) and
John Does (1-5),

Defendants.

**MEMORANDUM IN OPPOSITION OF
DEFENDANTS MOTION TO DISMISS**

FILED FOR RECORD
2012 MAR 6 PM 3:05
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter comes before the Court upon Defendants South Carolina ENT, Allergy and Sleep Medicine, P.A, Robert Puchalski, M.D., and Francine K. Moring, M.D. Motion to Dismiss, filed January 31, 2012. Defendants' Motion is based on an alleged failure of the Plaintiff to file a Notice of Intent to File Suit in a Medical Malpractice Case. As further discussed below, Plaintiff submits that the Defendant has misstated the facts supporting their motion, though Plaintiff agrees that the Complaint was filed prematurely as to the moving Defendants.

Plaintiff filed a Notice of Intent to File Suit a Medical Malpractice Case, followed by a corresponding Summons and Complaint in this matter on December 29, 2011. Prior to serving the actions, a scrivener's error was discovered with respect to the name of one of the Defendants, and accordingly, an Amended Notice of Intent and Amended Summons and Amended Complaint were filed on January 4, 2012. The Amended

Notice of Intent and Amended Summons and Complaint were served on each Defendant simultaneously, as reflected in the original certificates of service, which have been filed with the court. Defendant Moring was served on January 5, 2012 at 6:35 p.m., and Defendant Puchalski was served both individually, and as registered agent for Defendant South Carolina ENT, Allergy and Sleep Medicine, P.A. on January 4, 2012, at 5:00 p.m. Copies of the Amended Notice of Intent and relevant certificates of service are attached hereto and incorporated herein.

In response to Defendant's Motion to Dismiss, on or about February 29, 2012, Plaintiff forwarded to Counsel for Defendants a copy of the Amended Notice of Intent as well as the relevant certificates of service. In a good faith effort to resolve the motion without the necessity of a hearing, Plaintiff offered to hold the Amended Complaint in abeyance pending mediation of the Notice of Intent action, or in the alternative, to dismiss the Complaint as to the moving defendants without prejudice. Counsel for Plaintiff prepared and submitted a proposed consent order to that end. The letter, without previously referenced attachments, is attached hereto and incorporated herein.

Having received no response from the moving Defendants, and having received their Memorandum in Support of Defendants' Motion to Dismiss and proposed order, it appears that the moving Defendants continue to maintain that there is no Notice of Intent, and refuse to accept a voluntary dismissal of the Complaint without prejudice.

Plaintiff respectfully requests that this Court issue an Order dismissing the Complaint as to the moving Defendants only, without prejudice, pursuant to Rule 41 of the South Carolina Civil Rules of Procedure.

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: Kristin M. Simons
Daryl G. Hawkins
SC Bar No. 2844

Kristin M. Simons
SC Bar No. 74004

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Columbia, SC 29201-2150
Email: dgh@dghlaw.net
Email: kmsimons@dghlaw.net
(803) 733-3531 Ofc
(803) 744-1949 Fax

March 6, 2012

Attorneys for Plaintiff

**EXHIBIT LIST FOR PLAINTIFF'S MEMORANDUM
IN OPPOSITION OF DEFENDANTS' MOTION TO DISMISS**

Exhibit 1 – Amended Notice of Intent

**Exhibit 2 – Amended Plaintiff's Responses to Rule 33(b)
of the South Carolina Rules of Civil Procedure**

**Exhibit 3 – Affidavit of Personal Service of Amended Civil Action Coversheet,
Amended Summons and Amended Complaint upon Francine K. Moring, M.D.**

**Exhibit 4 - Affidavit of Personal Service of Amended Civil Action Coversheet,
Amended Notice of Intent to File Suit in a Medical Malpractice Case with Exhibits A
(Med Recs) and B (Amended Plaintiff's Responses to Rule 33(b) of the South Carolina
Rules of Civil Procedure upon Francine K. Moring, M.D.**

**Exhibit 5 - Affidavit of Personal Service of Amended Civil Action Coversheet,
Amended Notice of Intent to File Suit in a Medical Malpractice Case with Exhibits A
(Med Recs) and B (Amended Plaintiff's Responses to Rule 33(b) of the South Carolina
Rules of Civil Procedure upon Robert Puchalski, M.D.**

**Exhibit 6 - Affidavit of Personal Service of Amended Civil Action Coversheet,
Amended Summons and Amended Complaint upon Robert Puchalski, M.D.**

**Exhibit 7 - Affidavit of Personal Service of Amended Civil Action Coversheet,
Amended Notice of Intent to File Suit in a Medical Malpractice Case with Exhibits A
(Med Recs) and B (Amended Plaintiff's Responses to Rule 33(b) of the South Carolina
Rules of Civil Procedure upon Robert Puchalski, M.D. as Registered Agent for
South Carolina ENT, Allergy and Sleep Medicine, P.A.**

**Exhibit 8 - Affidavit of Personal Service of Amended Civil Action Coversheet,
Amended Summons and Amended Complaint upon Robert Puchalski, M.D., as
Registered Agent for South Carolina ENT, Allergy and Sleep Medicine, P.A.**

**Exhibit 9 – Plaintiff's letter to Defendants South Carolina ENT, Allergy and Sleep
Medicine, P.A.; Robert Puchalski, M.D.; Francine K. Moring, M.D. with proposed
resolution of Motion to Dismiss**

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Patricia Brouwer,

Plaintiff(s)

vs.

Sisters of Charity Providence Hospitals d/b/a Providence
Hospital and Providence Northeast, South Carolina ENT,
Allergy and Sleep Medicine, P.A.; Robert Puchalski, M.D.;
Francine K. Moring, M.D.; Jane Does (1-5) and John Does
(1-5).

Defendant(s)

IN THE COURT OF COMMON PLEAS

AMENDED
CIVIL ACTION COVERSHEET

2011-CP - 28 - 1169

Daryl G. Hawkins, Esquire
Krisin J. McArthur, Attorney
Law Office of Daryl G. Hawkins, LLC
PO Box 11906

Columbia, South Carolina 29211-1906

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

SC Bar #: 2844 (DGH) and 74004 (KJM)

Telephone #: 803-733-3531

Fax #: 803-744-1949

E-mail: dgh@dghlaw.net

kjmcArthur@dghlaw.net

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Latent Case #
☒ Amended
☒ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment
☐ Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Kristin M. McArthur

Date: 01/04/2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Oconee (Family Court Only), Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-28-1169

Patricia Brouwer

Plaintiff,

vs.

Sisters of Charity Providence
Hospitals d/b/a Providence Hospital
and Providence Hospital Northeast,
South Carolina ENT, Allergy and Sleep
Medicine, P.A., Robert Puchalski, M.D.,
Francine K. Moring, M.D., Jane Does
(1-5), and John Does (1-5);

Defendants.

AMENDED NOTICE OF INTENT TO FILE
SUIT IN A MEDICAL MALPRACTICE CASE
(S.C. Code § 15-79-125, et seq.)

FILED FOR RECORD
2012 JAN -4 AM 11:45
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

The Plaintiff hereby submits this Notice of Intent to File Suit pursuant to § 15-79-125 of the 1976 SC Code of Laws as amended.

1. Plaintiff is a resident and citizen of Kershaw County, State of South Carolina.
2. Upon information and belief, Defendant Sisters of Charity Providence Hospitals, d/b/a Providence Hospital and Hospital Northeast operates as a health care system providing health care services in the State of South Carolina.
3. Upon information and belief, South Carolina ENT, Allergy & Sleep Medicine, P.A., formerly Kershaw Ear, Nose & Throat & Facial Plastic Surgery, and/or South Carolina Ear Nose Throat & Facial Plastic Surgery, Inc., (hereinafter "South Carolina ENT") was founded by, and employs Defendant Puchalski, and is an entity organized and existing under the laws of the State of South

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Joyce McDonald
Clerk of Court Kershaw County

Carolina, providing medical services and having its principal place of business in Kershaw County, State of South Carolina.

4. Upon information and belief, Robert Puchalski, M.D. is a resident and citizen of Kershaw County, State of South Carolina, and is a physician licensed to practice medicine in the State of South Carolina, specializing in otolaryngology.
5. Upon information and belief, Francine K. Moring, M.D. is a resident and citizen of the State of South Carolina, and is a physician licensed to practice anesthesiology in the State of South Carolina.
6. Upon information and belief, Defendants Jane Doe (1-5) and John Doe (1-5) are staff, employees, and/or agents of Defendant Providence Hospital which may properly be found to have been grossly negligent in their care and or treatment of the Plaintiff as further described herein.
7. At all times relevant to the matters set forth herein, the Defendants acted by and through their actual and apparent agents, servants and employees for whose actions and inactions the Defendants are liable.
8. In addition to the medical treatment Defendants provided directly to Plaintiff, the Defendants' actual and apparent agents, servants and employees also directed, managed, supervised and controlled additional medical treatment rendered to the Plaintiff by physicians, residents, nurses, technicians and other hospital staff who worked in and about Providence Hospital. Defendants are liable for the actions and inactions of these additional medical treatment providers.

9. Venue is proper in this Court because both the Plaintiff and Defendant Puchalski reside in Kershaw County, State of South Carolina. Defendant South Carolina ENT's principal place of business is in Kershaw County, State of South Carolina.

10. Upon information and belief, a contemporaneous filing of an expert affidavit is not required to support the pleaded specifications of negligence in this matter as the subject matter of this action, exposing Plaintiff to latex, for which she had given notice to Defendants that she was allergic to, lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the Defendants. Allergic reactions are well within the common knowledge of lay persons. In an abundance of caution, Plaintiff asserts that because of Plaintiff's good faith belief that an expert affidavit is not required, Plaintiff should be allowed a reasonable amount of time to provide the same, should the Court determine otherwise.

11. On or about January 9, 2009, Plaintiff was admitted to Providence Hospital and/or Providence Hospital Northeast, by Dr. Puchalski for a uvulopalatopharyngoplasty (hereinafter UPPP), a procedure used to treat sleep apnea, generally through removal of soft tissues on the back of the throat.

12. That Dr. Moring was the anesthesiologist for the procedure.

13. Upon information and belief, Defendants Jane Doe (1-5) and John Doe (1-5) were responsible for, among other things, eliciting information from the

Plaintiff, including her latex allergy, for properly documenting the latex allergy, and for notifying all appropriate parties of the latex allergy.

14. That at all times relevant herein, Defendants knew, or would have known through the exercise of reasonable diligence, that Plaintiff suffers from an allergy to latex.

15. Attached hereto, and incorporated herein as Exhibit A, are medical records of the Plaintiff indicating her latex allergy, prior to the procedure at issue.

16. Upon information and belief, Defendants failed to meet the standard of care, and were negligent and/or grossly negligent in the treatment of the Plaintiff in performing the UPPP using medical supplies and/or equipment that contained latex, causing Plaintiff to suffer an allergic reaction.

17. Defendants had a duty to meet the standard of care in safely performing the UPPP and breached the standard of care by exposing Plaintiff to latex, and further breached the standard of care, including, but not limited to, one or more of the following particulars:

- a. In failing to take appropriate precautions to prevent Plaintiff's exposure to latex;
- b. In failing to properly document Plaintiff's latex allergy;
- c. In utilizing latex in treating the Plaintiff; and
- d. In failing to properly notify all nurses, technicians, and other medical staff of Plaintiff's latex allergy, which had been disclosed to Defendants both in writing and orally.

18. As a direct and proximate result of Defendants' negligent and/or grossly negligent failure to adhere to the standard of care, Plaintiff was caused to suffer injury, including but not limited to suffering an allergic reaction, undergoing treatment in the intensive care unit as a result of the allergic reaction, and other treatment that otherwise would not have been indicated, pain and suffering, mental and emotional anguish and distress, loss of enjoyment of life, and both past and future medical treatment and expenses.
19. Plaintiff asserts an additional ground for liability in that one or more of the Defendant's failed to obtain informed consent from the Plaintiff for the utilization of latex in any aspect of the procedure, including the anesthesia aspect. Exhibit A includes the hospital's form for "Consent to Operate, Anesthetic and Other Medical Services." The use of latex was specifically excepted in paragraph 3 of the form when executed by Plaintiff.
20. Even though Plaintiff specifically excepted Latex from use, Latex was in fact used and caused an allergic reaction and subsequent injuries to Plaintiff as described herein for which Defendants are responsible.
21. Standard Interrogatory responses are attached hereto and as Exhibit B and incorporated herein.
22. Please take notice that pursuant to the South Carolina Court-Annexed ADR Rule (Rule 4) you are advised that this dispute is subject to pre-suit mediation within 120 days and that the names of the primary and secondary mediators¹ are:

¹ Notwithstanding the Clerk of Court's appointment, the Rules of Statutory Authority applicable to this matter allow for the parties by agreement to select a different mediator at any time.

a. Primary Mediator: Walter Todd

b. Secondary Mediator: Other

as appointed by the Clerk of Court for Kershaw County of the 4th day of
January, 2012.

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: Kristin J. McArthur
Daryl G. Hawkins
SC Bar No. 2844

Kristin J. McArthur
SC Bar No. 74004

1331 Elmwood Avenue, Suite 305 (29201)
Post Office Box 11906
Columbia, South Carolina 29211
803.733.3531 Tel
803.744.1949 Fax

January 4, 2012

Attorneys for the Plaintiffs

EXHIBIT A



SISTERS OF CHARITY
PROVIDENCE HOSPITALS

Critical Health Systems PRE-ANESTHESIA EVALUATION

BROWER, PATRICIA A
A# E00112894134 U#Z000092940
01/29/09 F 43 02/22/65
Puchalski, Robert

DATE: 1-29-09 Proposed Operation: Submucous Lingual Excision, Tonsillectomy
AGE: 43 NR: 14 HT: 5'8" WT: 175 BMI: 35 O2 Sat: 92
Allergies: Latex - rash Morphine - "heart stopped"

NO YES PERTINENT HISTORY AND PHYSICAL FINDINGS

- ☒ ☐ CARDIOVASCULAR (MI, Angina, CHF, Valvular, High BP, Arrhythmia) Cardiologist: Y / N Exercise Tolerance? _____
- ☐ ☒ PULMONARY DISEASE (Asthma, COPD, Cigarettes) OSA CPAP: Y / N Stopped (sleep disturbance / headache)
- ☐ ☒ CNS, NEUROMUSCULAR (CVA, Seizures, Mental Status) migraines / sleep disorder
- ☒ ☐ RENAL DISEASE (Kidney Failure) _____
- ☒ ☐ HEPATIC DISEASE (Hepatitis, Cirrhosis) _____
- ☒ ☐ GASTROINTESTINAL (Hernia, Peptic Ulcer Disease, GERD) _____
- ☐ ☒ ENDOCRINE: DM II Thyroid check 1/20/09 H₂AK-5.8
- ☒ ☐ GYNECOLOGICAL (LMP, Pregnant) 1/20/09
- ☒ ☐ HEMATOLOGICAL (Anemia, Sickle Cell Disease or Trait, Bleeding Disorder) _____
- ☒ ☐ ORAL CAVITY (Loose Teeth, Dentures, Difficult Airway) R/L
- ☒ ☐ PREVIOUS PROBLEMS WITH ANESTHESIA (Malignant Hyperthermia) no
- ☒ ☐ CURRENT MEDICATIONS (* indicates taken day of surgery) Keppra, Topamax, Advair, Levetiracetam, Claritin, Lincosin, Protonix
- ☒ ☐ PAIN SCALE ASSESSMENT (Circle Level: 1 2 3 4 5 6 7 8 9 10) 1
- ☐ ☐ OTHER _____

☐ ☐ RISKS, BENEFITS, AND ALTERNATIVES DISCUSSED WITH PATIENT; AND/OR FAMILY.

PERTINENT LAB: 143/92

13 Hgb / Hct

ASA PHYSICAL STATUS: CLASS: 1 2 3 4 5 E

PATIENT CONSENT TO PLAN OF GA

BUN EKG: 1/29/09

B.S. CXR

CHIEF OF STAFF: 2/1/09 N.D.



**SISTERS OF CHARITY
PROVIDENCE HOSPITALS**

BROUWER, PATRICIA A
A# E00112894134 LWZ000092940
01/29/89 F 43 02/22/65
Puchalski, Robert

Start Here	Date: <u>2-22-00</u>	Time: AM PM	Profiled By: ..	Filled By:	Checked By:
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Consent To Operation, Anesthetic And Other Medical Services

- I authorize the performance upon Patricia Brouwer
(Name of Patient)
of the following operation Submucous Lingual Excision, Modified
Uvulopalatopharyngoplasty, possibly with pillar implants, Tonsillectomy
(state nature and extent of operation)
to be performed under the direction of Dr(s) Puchalski
and/or such assistants as may be selected by him/her to perform such operation.
- I recognize that during the course of the operation, unforeseen conditions may necessitate additional or different procedures or services than those set forth above and I further authorize and request that the above-named physician and/or his/her associates, partners, assistants or designees perform such procedures as are, in his/her professional judgment, necessary and desirable.
- I have been informed of the options, risks, and alternatives to said anesthesia and/or blood transfusions. I consent to the administration of such anesthesia and/or blood transfusions as may be considered necessary or advisable by the person responsible for such service, with the exception of: Laex, Morphine
(State exception or write "none")
- Complications: Nerve damage, incomplete treatment of Sleep Apnea, Possible tracheostomy
I consent to the disposal by hospital authorities of any tissue or members which may be removed during the course of the operation.
- The nature, purpose and possible consequences of the operation, possible alternative methods of treatment, the risks involved and the possibility of complications have been fully explained to me by my attending physician and/or surgeon. No guarantees or assurances have been made or given by anyone as to the results that may be obtained.
- I understand any resuscitative orders currently recognized will be temporarily suspended during the operative phase unless otherwise discussed with your physician/anesthesiologist.
- I, THE UNDERSIGNED, HAVE HAD THIS FORM EXPLAINED TO ME AND FULLY UNDERSTAND THE CONTENTS OF THIS AUTHORIZATION.

Witness C. mag

Signed X Patricia Brouwer
(Patient or authorized person)

(Relationship)

I have discussed with the patient and/or patient's representative the risks, benefits, potential complications, and alternative options associated with the planned procedure, possible use of blood, and sedation/anesthetic if appropriate, answered the patient's questions and obtained his/hers permission to proceed.

Physician's Signature/Date

EXHIBIT B

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Case No. 2011-CP- 28-1169

Patricia Brouwer

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Hospital Northeast, South
Carolina ENT, Allergy and Sleep
Medicine, P.A., Robert Puchalski, M.D.,
Francine K. Moring, M.D., Jane Does
(1-5), and John Does (1-5);

Defendants.

**AMENDED
PLAINTIFFS' RESPONSES TO RULE 33(b)
OF THE SOUTH CAROLINA
RULES OF CIVIL PROCEDURE**

Pursuant to the South Carolina Rules of Civil Procedure, Plaintiffs, by and through the undersigned counsel, based on currently available information, hereby submits answers to interrogatories as required by the relevant authority.

1. Identify all persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: a) Patricia Brouwer
111 Strawberry Field Land
Elgin, South Carolina, 29045

No written or recorded statements have been taken.
Ms. Brouwer is the Plaintiff in this action, and has knowledge of the facts and circumstances of this case, including her disclosure of her latex allergy, the medical care and treatment she received as well as the damages she suffered.

EXHIBIT B

- b) Dr. Robert Puchalski
Post Office Box 520
Lugoff, South Carolina 29078

Plaintiff is in possession of medical records.

Witness is a Defendant in this action and has knowledge as to Plaintiff's latex allergy, the facts and circumstances surrounding the facts and allegations of the Notice of Intent as indicated by the medical records.

- c) Christopher David Perry, M.D.
1655 Bernardin Avenue
Suite 305
Columbia, South Carolina 29204

Plaintiff is in possession of medical records.

Witness is a treating physician and has knowledge in accordance with relevant medical records.

- d) Chad B. Gunnlaugsson, M.D.
114 Gateway Corporate Boulevard
Suite 120
Columbia, South Carolina, 29203

Plaintiff is in possession of medical records.

Witness is a treating physician and has knowledge in accordance with relevant medical records.

- e) Monica Ansani, M.D.
2435 Forest Drive
Box 87
Columbia, South Carolina 29204

Plaintiff is in possession of medical records.

Witness is a treating physician and has knowledge in accordance with relevant medical records.

- f) Francine K. Moring, M.D.
34 Mallet Hill Court
Columbia, South Carolina 29223

Plaintiff is in possession of medical records.

Witness is a treating physician and has knowledge in accordance with relevant medical records.

EXHIBIT B

- g) Jamie G. Duke, RN
Columbia, South Carolina 29229

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- h) James P. Edens, APRN
West Columbia, South Carolina, 29169

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- i) Earnest L. Fayson, RN
1837 Barbara Drive
Apartment 10F
Columbia, South Carolina 29223

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- j) John O. Gonzales, APRN
2 Wessex Boulevard
Irmo, South Carolina, 29063

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- k) Deborah D. Leamon, RN
19 Misty Morning Drive
Columbia, South Carolina, 29229

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- l) Susan S. Mattox, RN
11157 Wilson Boulevard
Blythewood, South Carolina, 29016

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

EXHIBIT B

- m) Christine M. Mayo, RN
267 Brookside Drive
Columbia, South Carolina, 29229

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with
relevant medical records.

- n) Sherra M. Pravel

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with
relevant medical records.

- o) Deborah L. White

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with
relevant medical records.

- p) Karen L. Wyatt
O'Fallon, Missouri, 63368

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with
relevant medical records.

Plaintiff also reserves the right to call any witnesses named by any of the
Defendants.

2. Set forth a list of photographs, plats, sketches or other prepared
documents in possession of the Plaintiff that relate to the claim or the defense in the
case.

ANSWER: Plaintiff is in possession of medical records and bills from Providence
Hospital and South Carolina ENT, Allergy and Sleep Medicine, P.A.

3. Set forth the names and addresses of all physicians who have treated the
Plaintiff and all hospitals to which the party has been committed in connection with said
injuries and also set forth a statement of all medical costs involved.

EXHIBIT B

ANSWER: Please see answer to Interrogatory Number One, above.

Providence Hospital Northeast

\$23,359.33

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of coverage provided in each policy.

ANSWER: Not applicable.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Plaintiff.

ANSWER: See Answer to Interrogatory Number Three, above. Plaintiffs' damages include medical expenses, pain and suffering, mental and emotional anguish and distress, and loss of enjoyment of life.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case

ANSWER: Plaintiffs have not retained any expert witnesses at this time. However, Plaintiffs reserve the right to retain expert witnesses at a later date, and will supplement this Answer as necessary. Additionally, Plaintiffs reserve the right to call the witnesses listed in the Answer to Interrogatory Number One, who may qualify as expert witnesses, as expert witnesses in their respective fields of expertise, though none of them have been consulted regarding serving in that fashion and no documents have been submitted to any of them for review in that regard.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory Number One, above.

EXHIBIT B

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: Kristin M. Arthur
Daryl G. Hawkins
SC Bar No. 2844

Kristin J. McArthur
SC Bar No. 74004

1331 Elmwood Avenue, Suite 305 (29201)
Post Office Box 11906
Columbia, South Carolina 29211
803.733.3531 Tel
803.744.1949 Fax

January 4, 2012

Attorneys for the Plaintiffs

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Case No. 2011-CP-28-1170

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals d/b/a
Providence Hospital and Providence
Northeast; South Carolina ENT, Allergy and
Sleep Medicine, P.A.; Robert Puchalski,
M.D.; Francine K. Moring, M.D.; Jane Does
(1-5) and John Does (1-5),

Defendants.

AFFIDAVIT OF PERSONAL SERVICE

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE WICKHAM
CLERK OF COURT
KERSHAW COUNTY, S.C.

PERSONALLY APPEARED before me the undersigned, who first being duly sworn,
deposes and says:

That he has served upon Francine K. Moring, M.D., the following with respect to the
above-captioned action:

1. Amended Civil Action Cover Sheet; and
2. Amended Summons; and
3. Amended Complaint with Exhibit A (Med Recs).

by personally handing service to:

Name: Francine K. Moring, M.D.

Address: 34 Mallet Hill Court
Columbia, SC 29223

and leaving copies with him/her on January 5, 2012 at 6:35 p.m.

Debbie Brothers
Debbie Brothers

SWORN TO AND SUBSCRIBED BEFORE ME

this 6th day of January, 2012

Joseph D. Anderson
Notary Public for South Carolina

My Commission Expires: 7 Dec 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Case No. 2011-CP-28-1169

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence
Hospitals d/b/a Providence Hospital
and Providence Northeast; South
Carolina ENT, Allergy and Sleep
Medicine, P.A.; Robert Puchalski,
M.D.; Francine K. Moring, M.D.; Jane
Does (1-5) and John Does (1-5),

Defendants.

AFFIDAVIT OF PERSONAL SERVICE

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

PERSONALLY APPEARED before me the undersigned, who first being duly sworn, deposes and says:

That (s)he has served upon Francine K. Moring, M.D., the following with respect to the above-captioned action:

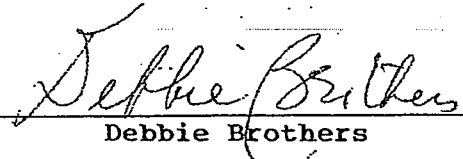
1. Amended Civil Action Cover Sheet; and
2. Amended Notice of Intent to File Suit in a Medical Malpractice Case with Exhibits A (Med Recs) and B (Amended Plaintiffs' Responses to Rule 33(b) of the South Carolina Rules of Civil Procedure)

by personally handing service to:

Name: **Francine K. Moring, M.D.**

Address: 34 Mallet Hill Court
Columbia, SC 29223

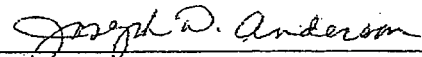
and leaving copies with him/her on January 5, 2012 at 6:35 p.m.



Debbie Brothers

SWORN TO AND SUBSCRIBED BEFORE ME

this 6th day of January, 2012



Notary Public for South Carolina

My Commission Expires: 7 Dec 2019

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1169

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE
HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT,
ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.;
FRANCINE K. MORING, M.D.; JANE DOES (1-5) AND JOHN DOES (1-5)

For:

LAW OFFICE OF DARYL G. HAWKINS, LLC

P. O Box 11906

Columbia, SC 29211

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on ROBERT PUCHALSKI, MD, 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the AMENDED CIVIL ACTION COVER SHEET; AND AMENDED NOTICE OF INTENT TO FILE SUIT IN A MEDICAL MALPRACTICE CASE WITH EXHIBITS A (MED RECS) AND B (PLAINTIFF'S RESPONSES TO RULE 33 (B) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE)

to: ROBERT PUCHALSKI, MD at the address of: 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK., Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kimberly Jean Griggs
NOTARY PUBLIC

My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344

Our Job Serial Number: SEE-2012000001

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1170

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

**SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE
HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT,
ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.;
FRANCINE K. MORING, M.D.; JANE DOES (1-5) AND JOHN DOES (1-5)**

For:

**LAW OFFICE OF DARYL G. HAWKINS, LLC
P. O. Box 11906
Columbia, SC 29211**

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on **ROBERT PUCHALSKI, M.D., 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.**

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **AMENDED CIVIL ACTION COVERSHEET; AMENDED SUMMONS; AND AMENDED COMPLAINT WITH EXHIBIT A (MED RECS)** to: **ROBERT PUCHALSKI, M.D.** at the address of: **1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK., Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kimberly Jean Griggs
NOTARY PUBLIC

My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

**Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344**

Our Job Serial Number: SEE-2012000003

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1169

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE
HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT,
ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.;
FRANCINE K. MORING, M.D.; JANE DOES (1-5) AND JOHN DOES (1-5)

For:

LAW OFFICE OF DARYL G. HAWKINS, LLC
P. O Box 11906
Columbia, SC 29211

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE MEDSALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A. ROBERT PUCHALSKI, M.D./ REGISTERED AGENT, 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

served a REGISTERED AGENT by delivering a true copy of the AMENDED CIVIL ACTION COVER SHEET; AND AMENDED NOTICE OF INTENT TO FILE SUIT IN A MEDICAL MALPRACTICE CASE WITH EXHIBITS A (MED RECS) AND B (PLAINTIFF'S RESPONSES TO RULE 33 (B) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE) ROBERT PUCHALSKI, MD AS REGISTERED AGENT FOR S.C. ENT, ALLERGY & SLEEP MEDICINE, P.A. as Registered Agent at the address of: 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078 on behalf of SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A., and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK., Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kemberly Jean Griggs
NOTARY PUBLIC

My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344

Our Job Serial Number: SEE-2012000002

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1170

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE
HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT,
ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.;
FRANCINE K. MORING, M.D.; JANÉ DOES (1-5) AND JOHN DOES (1-5)

For:

LAW OFFICE OF DARYL G. HAWKINS, LLC
P. O. Box 11906
Columbia, SC 29211

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE HODGKINS
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A. ROBERT PUCHALSKI, M.D./ REGISTERED AGENT, 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

served a REGISTERED AGENT by delivering a true copy of the AMENDED CIVIL ACTION COVERSHEET; AMENDED SUMMONS; AND AMENDED COMPLAINT WITH EXHIBIT A (MED RECS) ROBERT PUCHALSKI, MD AS REGISTERED AGENT FOR S.C. ENT, ALLERGY & SLEEP MEDICINE, P.A. as Registered Agent at the address of: 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078 on behalf of SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A., and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK, Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kimberly Jean Griggs
NOTARY PUBLIC

My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344

Our Job Serial Number: SEE-2012000004

DARYL G. HAWKINS
CHARLES E. USRY
KRISTIN M. SIMONS

LAW OFFICE OF
DARYL G. HAWKINS, LLC
1331 Elmwood Avenue • Suite 305 (29201)
Post Office Box 11906
Columbia, South Carolina 29211

TELEPHONE
(803) 733-3531

FACSIMILE
(803) 744-1949

February 29, 2012

William O. Sweeny III, Esquire
Benson H. Driggers, Esquire
Sweeny Wingate & Barrow, PA
PO Box 12129
Columbia, SC 29211-2129

RE: *Patricia Brouwer v. Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and Providence Northeast;
South Carolina ENT, Allergy and Sleep Medicine, P.A.; Robert
Puchalski, M.D.; Francine K. Moring, M.D.; Jane Does (1-5) and
John Does (1-5)*
Kershaw County NOI Case No. 2011-CP-28-1169
Kershaw County Suit Case No. 2011-CP-28-1170
DGH File No. 11-025

Dear Messrs. Sweeny and Driggers:

I write regarding your Motion to Dismiss the Complaint in the above reference case, in which you raise a failure to file a Notice of Intent. I have attached for your review the Amended Notice of Intent, filed January 4, 2012, as well as the relevant Certificates of Service, one for each of the defendants you represent. The Amended Notice of Intent and Complaint were served simultaneously, and the original certificates of service filed with the court. Please advise as to whether you maintain your position with respect to the absence of a Notice of Intent.

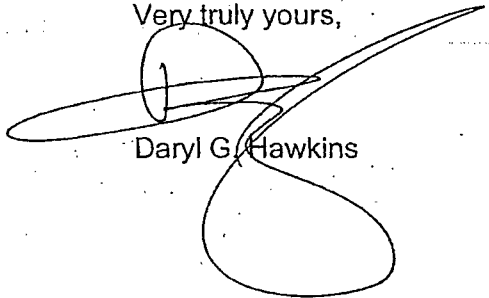
We agree that the Complaint should not have been filed until after mediation of the Notice of Intent suit, and would propose a Consent Agreement to hold the Complaint in abeyance pending mediation. As I'm sure you are aware, we have also exchanged discovery pursuant to the Complaint. Please advise of your position with respect to the discovery, so that we are on the same page going forward.

We are agreeable either to a Dismissal Without Prejudice of your clients, or holding the suite in abeyance pending outcome of the mediation of the Amended Notice of Intent. I look forward to hearing from you.

Page 2 of 2
February 27, 2012

With kind regards, I remain

Very truly yours,



Daryl G. Hawkins

DGH:kjm

Enclosures

cc: Weldon Johnson, Esq.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Case No. 2011-CP-28-1169 (NOI)

Case No. 2011-CP-28-1170 (MM)

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Northeast; South Carolina
ENT, Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D.; Francine K.
Moring, M.D.; Jane Does (1-5) and
John Does (1-5),

Defendants.

**CONSENT ORDER DISMISSING CASE
WITHOUT PREJUDICE ONLY AS TO
DEFENDANTS SOUTH CAROLINA ENT,
ALLERGY AND SLEEP MEDICINE P.A.;
ROBERT PUCHALSKI, M.D.; AND
FRANCINE K. MORING, M.D.**

This matter comes before the Court Pursuant to Defendants South Carolina ENT, Allergy and Sleep Medicine P.A., Robert Puchalski, M.D. Motion to Dismiss Plaintiff's Complaint. Pursuant to South Carolina Rule of Civil Procedure 41, Plaintiff and Defendants hereby stipulate that this matter be dismissed without prejudice only as to Defendants South Carolina ENT, Allergy and Sleep Medicine P.A., Robert Puchalski, M.D.

see following page for signatures

WE SO CONSENT:

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: _____

Daryl G. Hawkins
SC Bar No. 2844

Kristin M. Simons
SC Bar No. 74004

Post Office Box 11906
Columbia, South Carolina 29211
803-733-3531 Tel
803-744-1949 Fax

Email: dgh@dghlaw.net
Email: kjmcarthur@dghlaw.net

Attorneys for the Plaintiff

Date: _____, 2012.

WE SO CONSENT:

BARNS, ALFORD, STORK & JOHNSON, LLP

By: _____

Weldon R. Johnson

Post Office Box 8448
Columbia, South Carolina 29202

803.799.1111 Tel
803.254.1335 Fax

*Attorneys for Defendant Sisters of Charity
Providence Hospitals, d/b/a Providence
Hospital and Providence Northeast*

Date: _____, 2012.

WE SO CONSENT:

SWEENEY, WINGATE & BARROW, P.A.

By: _____

William O. Sweeney III, Esquire
Benson H. Driggers, Esquire

Post Office Box 12129
Columbia, South Carolina 29211-2129

803-256-2233 Tel
803- 256-9177 Fax

*Attorneys for the Defendants South Carolina
ENT, Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D.; Francine K. Moring,
M.D*

Date: _____, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-28-1169 (NOI)

Case No. 2011-CP-28-1170 (MM)

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Northeast; South Carolina
ENT, Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D.; Francine K.
Moring, M.D.; Jane Does (1-5) and
John Does (1-5),

Defendants.

CERTIFICATE OF SERVICE

FILED
CLERK OF COURT
KERSHAW COUNTY, S.C.
2012 MAR -6 PM 3:04
JL CO FOR RECORD

I, the undersigned employee of the Law Office of Daryl G. Hawkins, LLC, do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

Memorandum in Opposition to Defendants' Motion to Dismiss

Parties of Record

Weldon R. Johnson, Esquire
Barnes, Alford, Stork & Johnson, LLP

Via Email and Hand Delivery at Kershaw
County Courthouse

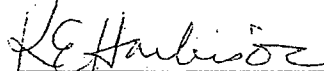
*Attorneys for Sisters of Charity
Providence Hospitals d/b/a/ Providence
Hospital and Providence Hospital NE*

William O. Sweeny III, Esquire
Benson H. Driggers, Esquire
Sweeny Wingate & Barrow, PA

Via Email and Hand Delivery at Kershaw
County Courthouse

*Attorneys for South Carolina ENT,
Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D.; Francine K.
Moring, M.D.*

LAW OFFICE OF DARYL G. HAWKINS, LLC



Kimberly E. Harbison, Legal Assistant

Date: March 6, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW) THE FIFTH JUDICIAL CIRCUIT
)

Patricia Brouwer) Civil Action No.: 2011-CP-28-1169
)
)

Plaintiff,)
)

v.)
)

Sisters of Charity Providence) DEFENDANTS' MOTION TO ALTER
Hospitals; South Carolina ENT,) OR AMEND THE ORDER DENYING
Allergy & Sleep Medicine, Robert) MOTION TO DISMISS NOTICE OF
Puchalski, M.D.; Francine K.) INTENT
Moring, M.D; Jane Does and John)
Does)

Defendant.)

TO: DARYL G. HAWKINS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
AND TO THE PLAINTIFF ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendants in the above-captioned case, South Carolina ENT, Allergy & Sleep Medicine, P.A., Robert Puchalski, M.D., and Francine K. Moring, M.D. (hereinafter "Defendants"), will move before the Court, and do hereby so move, for an Order from the Court altering or amending its Order filed on May 31, 2012 denying Defendants' Motion to Dismiss. Defendants' Counsel received written notice of the entry of the Order on June 4, 2012. This Motion is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and is based on the facts and law set forth below.

ARGUMENT

I. THE COMMON KNOWLEDGE EXCEPTION TO THE EXPERT REQUIREMENT UPON WHICH THE COURT BASES IT DENIAL DOES NOT APPLY TO MEDICAL MALPRACTICE ACTIONS IN THE PRE-SUIT STAGE.

This case involves the interplay of South Carolina Code §15-79-125 *et seq.*, and § 15-36-100 *et seq.* Specifically, §15-79-125 (commonly known as the 2005 Tort Reform Act) deals only with Medical Malpractice actions and provides clear requirements that must be met prior to filing a Summons and Complaint. Conversely, §15-36-100 governs professional negligence lawsuits once they get to the Summons and Complaint stage. In codifying the Tort Reform Act, our legislature clearly intended for Medical Malpractice actions to be analyzed and treated by their own unique paradigm, separate and apart from all other forms of civil causes of action. As has been pointed out, §15-79-125 mandates 3 distinct requirements, all of which must be met prior to filing Summons and Complaint alleging Medical Malpractice: a Notice of Intent to File Suit with an affidavit of an expert witness must be filed and the parties must then conduct a pre suit mediation. In no other type of civil action is this required and the legislature clearly intended that a Plaintiff was to comply with all three of the requirements.

It is undisputed that the case at bar is a Medical Malpractice action and must be analyzed under the Medical Malpractice framework. At issue here is the Plaintiff's assertion that an expert affidavit is not required in this case. In the Court's Order, it points to the longstanding common knowledge exception, codified in SC Code §15-36-100(C)(2), to deny Defendants' Motion to Dismiss the Notice of Intent. However, as set forth above, §15-36-100 is not part of the Tort Reform Act and instead deals with the commencement of suits alleging professional negligence. Moreover, our Courts have

recently had a chance to hear and issue an opinion on this very issue of how these two different code sections, each with language concerning the expert affidavit requirement, are to be read together. Specifically and directly in line with the case at bar, the Court of Appeals in Ranucci v. Crain held:

This appeal turns upon the proper application of two statutes that treat related situations and reference one another. Here, section 15-36-100 establishes the procedure for commencing suits for professional negligence against professionals in twenty-two different areas, including medical doctors. § 15-36-100(B), (G). By contrast, section 15-79-125 deals specifically with prelitigation requirements for medical malpractice actions. § 15-79-125(A). Medical malpractice is a type of professional negligence and, therefore, falls within the domain of both statutes. See Doe v. Am. Red Cross Blood Servs., S.C. Region, 297 S.C. 430, 435, 377 S.E.2d 323, 326 (1989) (recognizing physicians and other medical professionals are subject to professional negligence actions). Despite the apparent confusion generated by their internal cross-references, these statutes do not conflict. Each statute governs a distinct time period during the litigation process, and those time periods are consecutive. Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suit and ends with prelitigation mediation. If the parties are unable to resolve their dispute through mediation, section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit.

Ranucci, No. 4935, January 25, 2012, SC Court of Appeals.

Using that analysis, the Court made the ultimate determination that, "We find section 15-79-125(A) invokes only the provisions of section 15-36-100 governing the preparation and content of the affidavit." Id. The Court added, "The plain language of section 15-36-100, which ties the filing of affidavits under that statute to a complaint or other initial pleading, prevents the remaining provisions from applying to affidavits filed pursuant to section 15-79-125. Provisions concerning affidavits filed pursuant to

subsection B or the contemporaneous filing provision of subsection B do not apply to affidavits filed under the authority of section 15-79-125." Id.

Therefore, as has recently been made clear by our Courts, the common knowledge exception found in §15-36-100 does not apply to the requisite prelitigation procedures mandated in §15-79-125 and cannot be used to obviate the requirement that there be an expert affidavit filed with the Notice of Intent. It is undisputed that such was not done in this case and the statutory remedy for failing to do so is the dismissal of the Notice of Intent. "The legislature clearly intended the two statutes to operate independently of one another and in distinct time frames, with the specific exception that they share the criteria for preparing affidavits of expert witnesses." Id.

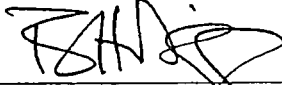
We reiterate that while the Ranucci decision is directly on point with what is presently before the Court and is dispositive of this issue, it simply falls in line with the unambiguous pre-suit requirements mandated by the Tort Reform Act which have been in place since 2005.

CONCLUSION

Based on the foregoing argument, Defendants hereby respectfully request that the Court grant the Motion to Alter/Amend and enter an Order granting Defendants' Motion to Dismiss the Notice of Intent. The expert affidavit requirement "is a threshold requirement a medical malpractice claimant must satisfy" and the exceptions found in §15-36-100 to not apply to this Notice of Intent. Id.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



William O. Sweeney, III
Benson H. Driggers
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

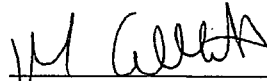
ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

June 12, 2012

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow,
P.A., attorneys for the Defendants do hereby certify that I have served a copy of the
foregoing Motion in connection with the above-referenced case by mailing a copy of the
same by United States Mail, postage prepaid, to the following address:

Daryl G. Hawkins, Esquire
Law Office of Daryl G. Hawkins, LLC
1331 Elmwood Avenue, Suite 305 (29201)
Post Office Box 11906
Columbia, SC 29211



Melissa H. Abbott

Columbia, South Carolina

June 12, 2012

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Hospital Northeast; South
Carolina ENT, Allergy and Sleep
Medicine, P.A.; Robert Puchalski, M.D.;
Francine K. Moring, M.D.; Jane Does
(1-5); and John Does (1-5),

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-28-1170

**PLAINTIFF'S MOTION TO ALTER OR
AMEND THE JULY 3, 2012 ORDER OF THE
COURT**

FILED FOR RECORD
2012 JUL 23 AM 11:27
JOYCE H. DONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This Court issued an Order on May 29, 2012 denying Defendant's Motion to Dismiss Notice of Intent to File Suit and pursuant to a Rule 59 Motion filed by two defendants the Court reversed itself.

This dispute centers on the proper interpretation of Sections 15-79-125(A) and 15-36-100. These two sections establish a two step process in medical negligence/medical malpractice cases. Step one requires the filing of a Notice of Intent to File Suit, and if that fails to resolve the dispute, then step two is the filing of a Complaint.

Plaintiff now moves the Court pursuant to Rule 59 to reconsider this new ruling for the following reasons.

Section 15-79-125(A) clearly and unequivocally states that the contemporaneous filing of a Notice of Intent to File Suit and an affidavit of an expert are "...subject to the affidavit requirements established in Section 15-36-100...".

There is no limiting language in this section as to what parts of § 15-36-100 apply to the use, or non-use, of an expert affidavit and, therefore, it would be error for the Court to find that an expert medical affidavit must have been filed at the same time as the Notice of Intent to File Suit in all cases.

§15-36-100(C)(2) plainly states that:

The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

A. Interpretation of Sections 15-36-100 and 15-79-125

i. Rules of Statutory Construction

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislature's intent. Coastal Conservation v. Dept. of Health, 380 S.C. 349, 365 (Ct.App. 2008).

In South Carolina, the court's foremost duty is to determine the intent of the General Assembly. Coastal, 380 S.C. at 365.

All rules of statutory constructions are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. Coastal, 380 S.C. at 365.

The first inquiry in deciphering the legislature's intent should begin by determining whether the statute's meaning is clear on its face. Coastal, 380 S.C. at 366.

The legislative intent should be derived primarily from the plain language of the statute. Coastal, 380 S.C. at 365. See also, Peake v. S.C. Dept. of Motor Vehicles, 375

S.C. 589, 597-598, ("With any question regarding statutory construction and application, the court must always look to legislative intent as determined from the plain language of the statute.")

The statute's text is the best evidence of legislative intent or will. Peake, 375 S.C. at 598.

Clear and unambiguous statutes require no statutory construction and should be applied by the court according to their literal meaning. Coastal, 380 S.C. at 366.

The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Coastal, 380 S.C. at 366,367.

Under the "plain meaning rule," it is not the court's place to change the meaning of a clear and unambiguous statute. Coastal, 380 S.C. at 367.

"The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose. Coastal, 380 S.C. at 367.

When reasonably possible, statutes in apparent conflict should be interpreted to allow both to stand. Coastal, 380 S.C. at 368.

Courts will reject statutory interpretations that lead to absurd results clearly unintended by the legislature or that defeat the plain legislative intent. Peake, 375 S.C. at 599. See also, Grier v. Amisub, Opinion No. 27118 (S.C. Supreme Court filed May 2, 2012) and Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011).

While the Court of Appeals suggests in its opinion that it was following these rules of interpretation, the result is "absurd" that one set of rules would apply to actual complaints and some more stringent rule to Notices.

ii. Applying the Rules to the Statute

The process of initiation of a Medical Malpractice Action is spelled out in two different statutes which refer to one another in their language. Both of these statutes were passed within one single act of the legislature, being Act No. 32 of 2005.

S.C. Code Ann. § 15-79-125(A) reads: **(emphasis added)**

*"Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, **the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100**, in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure."*

The language in Section 15-79-125(A) is clear and unambiguous, yielding only one possible interpretation. Under the phrasing of the statute, the plaintiff must file a Notice of Intent to File Suit and serve it upon the defendant. Further, this statute directs that the plaintiff must refer to Section 15-36-100 in order to comply with the expert affidavit requirements. There is no language whatsoever in Section 15-79-125(A) which limits what portions of Section 15-36-100 related to affidavits would apply.

It would create an absurd result if the Court were to interpret that the legislature intended to require Plaintiffs to file affidavits for NOI cases, but the same case would not require an affidavit for the suit filed if the mediation fails.

In this matter, the Plaintiff disclosed her allergy to Latex and yet the Defendants then exposed her to Latex and the medical records attached to the pleadings establish this fact. It would be of no benefit to any party to have an "expert" put in an affidavit that when the medical providers were placed on notice of an allergy, they should not then expose the patient to the allergy they are on notice of.

This issue is not presented in the Ranucci case cited by the Court and accordingly Ranucci is not applicable.

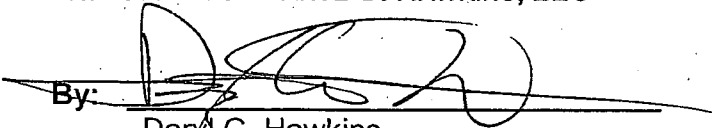
Plaintiff also argues that the issue of an affidavit became moot when the parties mediated the case, regardless of any reservation of the Defendants to the contrary.

Our Supreme Court held in Grier v. Amisub, Opinion No. 27118 (S.C. Supreme Court filed May 2, 2012) that statutes should not be interpreted so as to reach an absurd result. Requiring an affidavit for a NOI but not in the case in chief would be an absurd result.

Conclusion

For the foregoing reasons the Court should reinstate its first Order denying the Motion.

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: 

Daryl G. Hawkins
SC Bar No. 2844

1331 Elmwood Avenue, Suite 305
Columbia, SC 29201-2150
Email: dgh@dghlaw.net
(803) 733-3531 Ofc
(803) 744-1949 Fax

July 20, 2012

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-28-1170

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Hospital Northeast; South
Carolina ENT, Allergy and Sleep
Medicine, P.A.; Robert Puchalski, M.D.;
Francine K. Moring, M.D.; Jane Does
(1-5); and John Does (1-5),

Defendants.

CERTIFICATE OF SERVICE

FILED FOR RECORD
2012 JUL 23 AM 11:27
JAMES HODGKINS
CLERK OF COURT
KERSHAW COUNTY, S.C.

I, the undersigned employee of the Law Office of Daryl G. Hawkins, LLC, do hereby certify that I have caused Plaintiff's Motion to Alter or Amend the July 3, 2012 Order to be mailed to The Honorable Alison R. Lee at PO Box 192, Columbia, SC 29202-0192, and to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

Parties of Record

Weldon R. Johnson, Esquire
Barnes, Alford, Stork & Johnson, LLP
PO Box 8448
Columbia, SC 29202-8448

Email: weldon@basjlaw.com

*Attorneys for Sisters of Charity
Providence Hospitals d/b/a/ Providence
Hospital and Providence Hospital NE*

Benson H. Driggers, Esquire
Sweeny Wingate & Barrow, PA
PO Box 12129
Columbia, SC 29211-2129

Email: bhd@swblaw.com

Attorneys for Francine K. Moring, M.D.

William H. Davidson II, Esquire
Davidson & Lindemann, PA
PO Box 8568
Columbia, SC 29202-8568

Email: wdavidson@dml-law.com

*Attorneys for South Carolina ENT,
Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D*

LAW OFFICE OF DARYL G. HAWKINS, LLC

KE Harbison

Kimberly E. Harbison, Legal Administrator

Date: July 20, 2012

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-28-1169

Patricia Brouwer

Plaintiff,

vs.

Sisters of Charity Providence
Hospitals d/b/a Providence Hospital
and Providence Hospital Northeast,
South Carolina ENT, Allergy and Sleep
Medicine, P.A., Robert Puchalski, M.D.,
Francine K. Moring, M.D., Jane Does
(1-5), and John Does (1-5);

Defendants.

**AMENDED NOTICE OF INTENT TO FILE
SUIT IN A MEDICAL MALPRACTICE CASE
(S.C. Code § 15-79-125, et seq.)**

FILED FOR RECORD
2012 JAN -4 AM 11:45
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

The Plaintiff hereby submits this Notice of Intent to File Suit pursuant to § 15-79-125 of the 1976 SC Code of Laws as amended.

1. Plaintiff is a resident and citizen of Kershaw County, State of South Carolina.
2. Upon information and belief, Defendant Sisters of Charity Providence Hospitals, d/b/a Providence Hospital and Hospital Northeast operates as a health care system providing health care services in the State of South Carolina.
3. Upon information and belief, South Carolina ENT, Allergy & Sleep Medicine, P.A., formerly Kershaw Ear, Nose & Throat & Facial Plastic Surgery, and/or South Carolina Ear Nose Throat & Facial Plastic Surgery, Inc., (hereinafter "South Carolina ENT") was founded by, and employs Defendant Puchalski, and is an entity organized and existing under the laws of the State of South

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Carolina, providing medical services and having its principal place of business in Kershaw County, State of South Carolina.

4. Upon information and belief, Robert Puchalski, M.D. is a resident and citizen of Kershaw County, State of South Carolina, and is a physician licensed to practice medicine in the State of South Carolina, specializing in otolaryngology.
5. Upon information and belief, Francine K. Moring, M.D. is a resident and citizen of the State of South Carolina, and is a physician licensed to practice anesthesiology in the State of South Carolina.
6. Upon information and belief, Defendants Jane Doe (1-5) and John Doe (1-5) are staff, employees, and/or agents of Defendant Providence Hospital which may properly be found to have been grossly negligent in their care and or treatment of the Plaintiff as further described herein.
7. At all times relevant to the matters set forth herein, the Defendants acted by and through their actual and apparent agents, servants and employees for whose actions and inactions the Defendants are liable.
8. In addition to the medical treatment Defendants provided directly to Plaintiff, the Defendants' actual and apparent agents, servants and employees also directed, managed, supervised and controlled additional medical treatment rendered to the Plaintiff by physicians, residents, nurses, technicians and other hospital staff who worked in and about Providence Hospital. Defendants are liable for the actions and inactions of these additional medical treatment providers.

9. Venue is proper in this Court because both the Plaintiff and Defendant Puchalski reside in Kershaw County, State of South Carolina, Defendant South Carolina ENT's principal place of business is in Kershaw County, State of South Carolina.

10. Upon information and belief, a contemporaneous filing of an expert affidavit is not required to support the pleaded specifications of negligence in this matter as the subject matter of this action, exposing Plaintiff to latex, for which she had given notice to Defendants that she was allergic to, lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the Defendants. Allergic reactions are well within the common knowledge of lay persons. In an abundance of caution, Plaintiff asserts that because of Plaintiff's good faith belief that an expert affidavit is not required, Plaintiff should be allowed a reasonable amount of time to provide the same, should the Court determine otherwise.

11. On or about January 9, 2009, Plaintiff was admitted to Providence Hospital and/or Providence Hospital Northeast, by Dr. Puchalski for a uvulopalatopharyngoplasty (hereinafter UPPP), a procedure used to treat sleep apnea, generally through removal of soft tissues on the back of the throat.

12. That Dr. Moring was the anesthesiologist for the procedure.

13. Upon information and belief, Defendants Jane Doe (1-5) and John Doe (1-5) were responsible for, among other things, eliciting information from the

Plaintiff, including her latex allergy, for properly documenting the latex allergy, and for notifying all appropriate parties of the latex allergy.

14. That at all times relevant herein, Defendants knew, or would have known through the exercise of reasonable diligence, that Plaintiff suffers from an allergy to latex.

15. Attached hereto, and incorporated herein as Exhibit A, are medical records of the Plaintiff indicating her latex allergy, prior to the procedure at issue.

16. Upon information and belief, Defendants failed to meet the standard of care, and were negligent and/or grossly negligent in the treatment of the Plaintiff in performing the UPPP using medical supplies and/or equipment that contained latex, causing Plaintiff to suffer an allergic reaction.

17. Defendants had a duty to meet the standard of care in safely performing the UPPP and breached the standard of care by exposing Plaintiff to latex, and further breached the standard of care, including, but not limited to, one or more of the following particulars:

- a. In failing to take appropriate precautions to prevent Plaintiff's exposure to latex;
- b. In failing to properly document Plaintiff's latex allergy;
- c. In utilizing latex in treating the Plaintiff; and
- d. In failing to properly notify all nurses, technicians, and other medical staff of Plaintiff's latex allergy, which had been disclosed to Defendants both in writing and orally.

18. As a direct and proximate result of Defendants' negligent and/or grossly negligent failure to adhere to the standard of care, Plaintiff was caused to suffer injury, including but not limited to suffering an allergic reaction, undergoing treatment in the intensive care unit as a result of the allergic reaction, and other treatment that otherwise would not have been indicated, pain and suffering, mental and emotional anguish and distress, loss of enjoyment of life, and both past and future medical treatment and expenses.

19. Plaintiff asserts an additional ground for liability in that one or more of the Defendant's failed to obtain informed consent from the Plaintiff for the utilization of latex in any aspect of the procedure, including the anesthesia aspect. Exhibit A includes the hospital's form for "Consent to Operate, Anesthetic and Other Medical Services." The use of latex was specifically excepted in paragraph 3 of the form when executed by Plaintiff.

20. Even though Plaintiff specifically excepted Latex from use, Latex was in fact used and caused an allergic reaction and subsequent injuries to Plaintiff as described herein for which Defendants are responsible.

21. Standard Interrogatory responses are attached hereto and as Exhibit B and incorporated herein.

22. Please take notice that pursuant to the South Carolina Court-Annexed ADR Rule (Rule 4) you are advised that this dispute is subject to pre-suit mediation within 120 days and that the names of the primary and secondary mediators¹ are:

¹ Notwithstanding the Clerk of Court's appointment, the Rules of Statutory Authority applicable to this matter allow for the parties by agreement to select a different mediator at any time.

a. Primary Mediator: Walter Todd

b. Secondary Mediator: Other

as appointed by the Clerk of Court for Kershaw County of the 4th day of
January, 2012.

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: Kristin J. McArthur
Daryl G. Hawkins
SC Bar No. 2844

Kristin J. McArthur
SC Bar No. 74004

1331 Elmwood Avenue, Suite 305 (29201)
Post Office Box 11906
Columbia, South Carolina 29211
803.733.3531 Tel
803.744.1949 Fax

January 4, 2012

Attorneys for the Plaintiffs

EXHIBIT A



SISTERS OF CHARITY
PROVIDENCE HOSPITALS

Critical Health Systems PRE-ANESTHESIA EVALUATION

BROUWER, PATRICIA A
A# E00112894134 U#Z000092940
01/29/09 F 43 02/22/65
Puchalski, Robert

DATE: 1-29-09 Proposed Operation: Submucous Lingual Excision, Tonsillectomy
AGE: 43 SEX: M HT: 5'3" WT: 175 BMI: 35 O2 Sat: 99

Allergies: Latex - rash Morphine - "heart stopped"

NO YES PERTINENT HISTORY AND PHYSICAL FINDINGS

☒ ☐ CARDIOVASCULAR (MI, Angina, CHF, Valvular, High BP, Arrhythmia) Cardiologist: Y / N Exercise Tolerance?

☐ ☒ PULMONARY DISEASE (Asthma, COPD, Cigarettes, OSA) CPAP: Y / N
Stopped (sleep disturbance / healer)

☐ ☒ CNS, NEUROMUSCULAR (CVA, Seizures, Mental Status) migraines / sleep disorder

☒ ☐ RENAL DISEASE (Kidney Failure)

☒ ☐ HEPATIC DISEASE (Hepatitis, Cirrhosis)

☒ ☐ GASTROINTESTINAL (Hiatal Hernia, Peptic Ulcer Disease, GERD)

☐ ☒ ENDOCRINE (DM, IUDM, Thyroid) check 1 month H₂AK-5.8

☒ ☐ GYNECOLOGICAL (LMP, Pregnant) sphincter

☒ ☐ HEMATOLOGICAL (Anemia, Sickle Cell Disease or Trait, Bleeding Disorder)

☒ ☐ ORAL CAVITY (Loose Teeth, Dentures, Difficult Airway) R2L

Throat OK neck - fine

☒ ☐ PREVIOUS PROBLEMS WITH ANESTHESIA (Malignant Hyperthermia)

☒ ☐ CURRENT MEDICATIONS (* indicates taken day of surgery) Koppar, Topamax, Advantat, Cough, Claritin, Lincosin, Prozac

☒ ☐ PAIN SCALE ASSESSMENT (Circle Level: 1 2 3 4 5 6 7 8 9 10)

☐ ☐ OTHER

☐ ☐ RISKS, BENEFITS, AND ALTERNATIVES DISCUSSED WITH PATIENT, AND/OR FAMILY.

PERTINENT LAB:

143 Hgb 40 Hct

14.2

BUN EKG: 4/5/6

0.89

B S CXR

ASA PHYSICAL STATUS: CLASS: 1 2 3 4 5 E

PATIENT CONSENT TO PLAN OF

GA

2m

ALD

Original 6/27/09 Revised 1/2/09



**SISTERS OF CHARITY
PROVIDENCE HOSPITALS**

Accredited under standards of any state incorporated herein in its state of origin following date of adoption.
This order does not apply when physician's name follows state of origin and date of adoption.

1. I hereby certify that the patient is the same person as the one who signed the consent form.

BROUWER, PATRICIA A
A# E00112894134 U#2000092940
01/29/09 F 43 02/22/65
Puchalski, Robert

Start Here	Date: 1-29-09	Time: AM PM	Profiled By: ..	Filled By:	Checked By:
------------	---------------	-------------	-----------------	------------	-------------

Consent To Operation, Anesthetic And Other Medical Services

- I authorize the performance upon Patricia Brouwer
(Name of Patient)
of the following operation Submucous Lingual Excision, Modified
Uvulopalatopharyngoplasty, possibly with pillar implants, Tonsillectomy
(state nature and extent of operation)
to be performed under the direction of Dr(s) Puchalski
and/or such assistants as may be selected by him/her to perform such operation.
- I recognize that during the course of the operation, unforeseen conditions may necessitate additional or different procedures or services than those set forth above and I further authorize and request that the above-named physician and/or his/her associates, partners, assistants or designees perform such procedures as are, in his/her professional judgment, necessary and desirable.
- I have been informed of the options, risks, and alternatives to said anesthesia and/or blood transfusions. I consent to the administration of such anesthesia and/or blood transfusions as may be considered necessary or advisable by the person responsible for such service, with the exception of: Laxer, Morphine
(State exception or write "none")
- Complications: Nerve damage, incomplete treatment of Sleep Apnea, Possible trachea
I consent to the disposal by hospital authorities of any tissue or members which may be removed during the course of the operation.
- The nature, purpose and possible consequences of the operation, possible alternative methods of treatment, the risks involved and the possibility of complications have been fully explained to me by my attending physician and/or surgeon. No guarantees or assurances have been made or given by anyone as to the results that may be obtained.
- I understand any resuscitative orders currently recognized will be temporarily suspended during the operative phase unless otherwise discussed with your physician/anesthesiologist.
- I, THE UNDERSIGNED, HAVE HAD THIS FORM EXPLAINED TO ME AND FULLY UNDERSTAND THE CONTENTS OF THIS AUTHORIZATION.

Witness C. mag

Signed X Patricia Brouwer
(Patient or authorized person)

(Relationship)

I have discussed with the patient and/or patient's representative the risks, benefits, potential complications, and alternative options associated with the planned procedure, possible use of blood, and sedation/anesthesia if appropriate, answered the patient's questions and obtained his/hers permission to proceed.

Physician's Signature/Date

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP- 28-1169

Patricia Brouwer

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Hospital Northeast, South
Carolina ENT, Allergy and Sleep
Medicine, P.A., Robert Puchalski, M.D.,
Francine K. Moring, M.D., Jane Does
(1-5), and John Does (1-5);

Defendants.

**AMENDED
PLAINTIFFS' RESPONSES TO RULE 33(b)
OF THE SOUTH CAROLINA
RULES OF CIVIL PROCEDURE**

Pursuant to the South Carolina Rules of Civil Procedure, Plaintiffs, by and through the undersigned counsel, based on currently available information, hereby submits answers to interrogatories as required by the relevant authority.

1. Identify all persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: a) Patricia Brouwer
111 Strawberry Field Land
Elgin, South Carolina, 29045

No written or recorded statements have been taken.

Ms. Brouwer is the Plaintiff in this action, and has knowledge of the facts and circumstances of this case, including her disclosure of her latex allergy, the medical care and treatment she received as well as the damages she suffered.

EXHIBIT B

- b) Dr. Robert Puchalski
Post Office Box 520
Lugoff, South Carolina 29078

Plaintiff is in possession of medical records.
Witness is a Defendant in this action and has knowledge as to Plaintiff's latex allergy, the facts and circumstances surrounding the facts and allegations of the Notice of Intent as indicated by the medical records.

- c) Christopher David Perry, M.D.
1655 Bernardin Avenue
Suite 305
Columbia, South Carolina 29204

Plaintiff is in possession of medical records.
Witness is a treating physician and has knowledge in accordance with relevant medical records.

- d) Chad B. Gunnlaugsson, M.D.
114 Gateway Corporate Boulevard
Suite 120
Columbia, South Carolina, 29203

Plaintiff is in possession of medical records.
Witness is a treating physician and has knowledge in accordance with relevant medical records.

- e) Monica Ansani, M.D.
2435 Forest Drive
Box 87
Columbia, South Carolina 29204

Plaintiff is in possession of medical records.
Witness is a treating physician and has knowledge in accordance with relevant medical records.

- f) Francine K. Moring, M.D.
34 Mallet Hill Court
Columbia, South Carolina 29223

Plaintiff is in possession of medical records.
Witness is a treating physician and has knowledge in accordance with relevant medical records.

EXHIBIT B

- g) Jamie G. Duke, RN
Columbia, South Carolina 29229

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- h) James P. Edens, APRN
West Columbia, South Carolina, 29169

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- i) Earnest L. Fayson, RN
1837 Barbara Drive
Apartment 10F
Columbia, South Carolina 29223

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- j) John O. Gonzales, APRN
2 Wessex Boulevard
Irmo, South Carolina, 29063

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- k) Deborah D. Leamon, RN
19 Misty Morning Drive
Columbia, South Carolina, 29229

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- l) Susan S. Mattox, RN
11157 Wilson Boulevard
Blythewood, South Carolina, 29016

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

EXHIBIT B

- m) Christine M. Mayo, RN
267 Brooksdale Drive
Columbia, South Carolina, 29229

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- n) Sherra M. Pravel

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- o) Deborah L. White

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

- p) Karen L. Wyatt
O'Fallon, Missouri, 63368

Plaintiff is in possession of medical records.
Witness is a treating nurse and has knowledge in accordance with relevant medical records.

Plaintiff also reserves the right to call any witnesses named by any of the Defendants.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff that relate to the claim or the defense in the case.

ANSWER: Plaintiff is in possession of medical records and bills from Providence Hospital and South Carolina ENT, Allergy and Sleep Medicine, P.A.

3. Set forth the names and addresses of all physicians who have treated the Plaintiff and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

EXHIBIT B

ANSWER: Please see answer to Interrogatory Number One, above.

Providence Hospital Northeast

\$23,359.33

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of coverage provided in each policy.

ANSWER: Not applicable.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Plaintiff.

ANSWER: See Answer to Interrogatory Number Three, above. Plaintiffs' damages include medical expenses, pain and suffering, mental and emotional anguish and distress, and loss of enjoyment of life.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case

ANSWER: Plaintiffs have not retained any expert witnesses at this time. However, Plaintiffs reserve the right to retain expert witnesses at a later date, and will supplement this Answer as necessary. Additionally, Plaintiffs reserve the right to call the witnesses listed in the Answer to Interrogatory Number One, who may qualify as expert witnesses, as expert witnesses in their respective fields of expertise, though none of them have been consulted regarding serving in that fashion and no documents have been submitted to any of them for review in that regard.

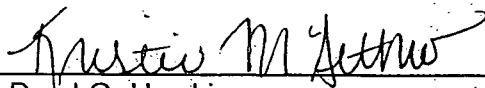
7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory Number One, above.

EXHIBIT B

LAW OFFICE OF DARYL G. HAWKINS, LLC

By:



Daryl G. Hawkins
SC Bar No. 2844

Kristin J. McArthur
SC Bar No. 74004

1331 Elmwood Avenue, Suite 305 (29201)
Post Office Box 11906
Columbia, South Carolina 29211
803.733.3531 Tel
803.744.1949 Fax

January 4, 2012

Attorneys for the Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-28-1169

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence
Hospitals d/b/a Providence Hospital
and Providence Northeast; South
Carolina ENT, Allergy and Sleep
Medicine, P.A.; Robert Puchalski,
M.D.; Francine K. Moring, M.D.; Jane
Does (1-5) and John Does (1-5),

Defendants.

AFFIDAVIT OF PERSONAL SERVICE

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE HODGSHAW
CLERK OF COURT
KERSHAW COUNTY, S.C.

PERSONALLY APPEARED before me the undersigned, who first being duly sworn, deposes and says:

That (s)he has served upon **Francine K. Moring, M.D.**, the following with respect to the above-captioned action:

1. Amended Civil Action Cover Sheet; and
2. Amended Notice of Intent to File Suit in a Medical Malpractice Case with Exhibits A (Med Recs) and B (Amended Plaintiffs' Responses to Rule 33(b) of the South Carolina Rules of Civil Procedure)

by personally handing service to:

Name: **Francine K. Moring, M.D.**

Address: 34 Mallet Hill Court
Columbia, SC 29223

and leaving copies with him/her on January 5, 2012 at 6:35 p.m.

Debbie Brothers
Debbie Brothers

SWORN TO AND SUBSCRIBED BEFORE ME

this 6th day of January, 2012

Joseph D. Anderson
Notary Public for South Carolina

My Commission Expires: 7 Dec 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Case No. 2011-CP-28-1170

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals d/b/a
Providence Hospital and Providence
Northeast; South Carolina ENT, Allergy and
Sleep Medicine, P.A.; Robert Puchalski,
M.D.; Francine K. Moring, M.D.; Jane Does
(1-5) and John Does (1-5),

Defendants.

AFFIDAVIT OF PERSONAL SERVICE

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

PERSONALLY APPEARED before me the undersigned, who first being duly sworn,
deposes and says:

That he has served upon Francine K. Moring, M.D., the following with respect to the
above-captioned action:

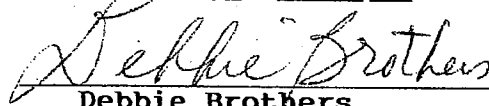
1. Amended Civil Action Cover Sheet; and
2. Amended Summons; and
3. Amended Complaint with Exhibit A (Med Recs).

by personally handing service to:

Name: **Francine K. Moring, M.D.**

Address: 34 Mallet Hill Court
Columbia, SC 29223

and leaving copies with him/her on January 5, 2012 at 6:35 p.m.


Debbie Brothers

SWORN TO AND SUBSCRIBED BEFORE ME

this 6th day of January, 2012


Notary Public for South Carolina

My Commission Expires: 7 Dec 2019

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1169

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

**SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE
HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT,
ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.;
FRANCINE K. MORING, M.D.; JANE DOES (1-5) AND JOHN DOES (1-5)**

For:

LAW OFFICE OF DARYL G. HAWKINS, LLC
P. O Box 11906
Columbia, SC 29211

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on **ROBERT PUCHALSKI, MD, 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.**

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the AMENDED CIVIL ACTION COVER SHEET; AND AMENDED NOTICE OF INTENT TO FILE SUIT IN A MEDICAL MALPRACTICE CASE WITH EXHIBITS A (MED RECS) AND B (PLAINTIFF'S RESPONSES TO RULE 33 (B) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE)

to: **ROBERT PUCHALSKI, MD** at the address of: **1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK., Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kimberly Jean Griggs
NOTARY PUBLIC

My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344

Our Job Serial Number: SEE-2012000001

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1170

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

**SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE
HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT,
ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.;
FRANCINE K. MORING, M.D.; JANE DOES (1-5) AND JOHN DOES (1-5)**

For:

**LAW OFFICE OF DARYL G. HAWKINS, LLC
P. O Box 11906
Columbia, SC 29211**

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on **ROBERT PUCHALSKI, M.D., 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.**

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **AMENDED CIVIL ACTION COVERSHEET; AMENDED SUMMONS; AND AMENDED COMPLAINT WITH EXHIBIT A (MED RECS)** to: **ROBERT PUCHALSKI, M.D.** at the address of: **1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK, Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kimberly Jean Griggs
NOTARY PUBLIC

My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

**Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344**

Our Job Serial Number: SEE-2012000003

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1169

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT, ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.; FRANCINE K. MORING, M.D.; JANE DOES (1-5) AND JOHN DOES (1-5)

For:

LAW OFFICE OF DARYL G. HAWKINS, LLC
P. O Box 11906
Columbia, SC 29211

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on **SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A. ROBERT PUCHALSKI, M.D./ REGISTERED AGENT, 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.**

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

served a **REGISTERED AGENT** by delivering a true copy of the **AMENDED CIVIL ACTION COVER SHEET; AND AMENDED NOTICE OF INTENT TO FILE SUIT IN A MEDICAL MALPRACTICE CASE WITH EXHIBITS A (MED RECS) AND B (PLAINTIFF'S RESPONSES TO RULE 33 (B) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE) ROBERT PUCHALSKI, MD AS REGISTERED AGENT FOR S.C. ENT, ALLERGY & SLEEP MEDICINE, P.A.** as Registered Agent at the address of: **1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078** on behalf of **SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A.**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK., Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kimberly Jean Griggs
NOTARY PUBLIC

My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344

Our Job Serial Number: SEE-2012000002

AFFIDAVIT OF SERVICE

State of South Carolina

County of Kershaw

Court Of Common Pleas Court

Case Number: 2011-CP-28-1170

Plaintiff:

PATRICIA BROUWER

vs.

Defendant:

SISTERS OF CHARITY PROVIDENCE HOSPITALS D/B/A PROVIDENCE HOSPITAL AND PROVIDENCE NORTHEAST; SOUTH CAROLINA ENT, ALLERGY AND SLEEP MEDICINE, P.A.; ROBERT PUCHALSKI, M.D.; FRANCINE K. MORING, M.D.; JANE DOES (1-5) AND JOHN DOES (1-5)

For:

LAW OFFICE OF DARYL G. HAWKINS, LLC
P. O Box 11906
Columbia, SC 29211

FILED FOR RECORD
2012 JAN 13 PM 12:09
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Received by Seekers Process Service, LLC on the 4th day of January, 2012 at 5:00 pm to be served on **SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A. ROBERT PUCHALSKI, M.D./ REGISTERED AGENT, 1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078.**

I, Lee Griggs, being duly sworn, depose and say that on the 6th day of January, 2012 at 2:35 pm, I:

served a **REGISTERED AGENT** by delivering a true copy of the **AMENDED CIVIL ACTION COVERSHEET; AMENDED SUMMONS; AND AMENDED COMPLAINT WITH EXHIBIT A (MED RECS) ROBERT PUCHALSKI, MD AS REGISTERED AGENT FOR S.C. ENT, ALLERGY & SLEEP MEDICINE, P.A.** as **Registered Agent** at the address of: **1165 HIGHWAY 1 SOUTH, LUGOFF, SC 29078** on behalf of **SOUTH CAROLINA ENT, ALLERGY & SLEEP MEDICINE, P.A.**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 45, Sex: M, Race/Skin Color: CAUC, Height: 5'4", Weight: 175, Hair: BLK, Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 9th day of January, 2012 by the affiant who is personally known to me.

Kimberly Jean Griggs
NOTARY PUBLIC
My commission expires August 29, 2018

Lee Griggs
Lee Griggs
Process Server

Seekers Process Service, LLC
P.O. Box 2309
Camden, SC 29020
(803) 427-5344

Our Job Serial Number: SEE-2012000004

WALTER B. TODD, JR., PC

COUNSELORS AND ATTORNEYS AT LAW

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wbt@thw-law.com

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TELEPHONE (803) 779-4383

FAX (803) 799-7604

NYSSA GOMES
nyssa@thw-law.com

May 1, 2012

Daryl G. Hawkins, Esquire
Kristin M. Simons, Esquire
Law Office of Daryl G. Hawkins, LLC
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Columbia, South Carolina 29211

Weldon R. Johnson, Esquire
Barnes, Alford, Stork & Johnson, LLP
Post Office Box 8448
Columbia, South Carolina 29202

William O. Sweeny, III, Esquire
Benson H. Driggers, Esquire
Sweeny, Wingate & Barrow, PA
Post Office Box 12129
Columbia, South Carolina 29211

RE: Patricia Brouwer v. Sisters of Charity Providence Hospitals d/b/a
Providence Hospital and Providence Northeast; South Carolina ENT,
Allergy and Sleep Medicine, P.A.; Robert Puchalski, M.D.; Francine K.
Moring, M.D.; Jane Does (1-5) and John Does (1-5)
Kershaw County NOI Case No. 2011-CP-28-1169
Kershaw County Suit Case No. 2011-CP-28-1170

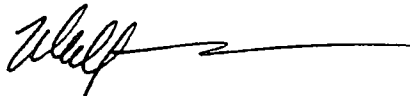
Gentlemen and Kristin:

I am sorry we were not able to settle this case in mediation. Kershaw County is not a mandated ADR county; and thus, no report can be filed there. Given this, and the requirements of Section 15-79-125 of the Code, you may treat this correspondence as my determination that an impasse exists at present in this matter.

Enclosed for each of you is my Statement for services rendered.

I hope you will think of me again when you are in need of a mediator or arbitrator.

Sincerely,



Walter B. Todd, Jr.

COPIES OF THIS LETTER SENT TO:
5000 OLIVE BOX 13450
COLUMBIA, MISSISSIPPI 39201
BY
WALTER B. TODD, JR.

WBT,Jr.:fsc
Enclosures

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP- 28-1170

Patricia Brouwer,
Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Hospital Northeast; South
Carolina ENT, Allergy and Sleep
Medicine, P.A.; Robert Puchalski, M.D.;
Francine K. Moring, M.D.; Jane Does
(1-5); and John Does (1-5),

Defendants.

**SECOND AMENDED
COMPLAINT
(Jury Trial Demanded)**

FILED FOR RECORD
2012 JUN 19 AM 9:04
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Pursuant to Rule 15(a), SCRCP, and with the consent of the Defendant Sisters of Charity Providence Hospitals d/b/a Providence Hospital and Providence Hospital Northeast the Plaintiff amends her prior pleading and complaining of Defendants alleges:

JURISDICTION

1. Plaintiff is a resident and citizen of Kershaw County, State of South Carolina.
2. Upon information and belief, Defendant Sisters of Charity Providence Hospitals, d/b/a Providence Hospital and Providence Hospital Northeast (Hereinafter Providence) operates as a health care system providing health care services in the State of South Carolina.
3. Upon information and belief, South Carolina ENT, Allergy and Sleep Medicine, P.A. (hereinafter "South Carolina ENT") was founded by, and employs Defendant Puchalski, and is an entity organized and existing under

the laws of the State of South Carolina, providing medical services and having its principal place of business in Kershaw County, State of South Carolina. Prior to filing and service of this Second Amended Complaint, Plaintiff filed a Notice of Intent naming this Defendant and the parties attempted a mediation but it was unsuccessful.

4. Upon information and belief, Robert Puchalski, M.D. is a resident and citizen of Kershaw County, State of South Carolina, and is a physician licensed to practice medicine in the State of South Carolina, specializing in otolaryngology. Prior to filing and service of this Second Amended Complaint, Plaintiff filed a Notice of Intent naming this Defendant and the parties attempted a mediation but it was unsuccessful.
5. Upon information and belief, Francine K. Moring, M.D. is a resident and citizen of the State of South Carolina, and is a physician licensed to practice anesthesiology in the State of South Carolina. Prior to filing and service of this Second Amended Complaint, Plaintiff filed a Notice of Intent naming this Defendant and the parties attempted a mediation but it was unsuccessful.
6. Upon information and belief, Defendants Jane Doe (1-5) and John Doe (1-5) are staff, employees, and/or agents of Defendant Providence Hospital who may properly be found to have been grossly negligent in their care and or treatment of the Plaintiff as further described herein.
7. At all times relevant to the matters set forth herein, the Defendants acted by and through their actual and apparent agents, servants and employees for whose actions and inactions the Defendants are liable.

8. In addition to the medical treatment Defendants provided directly to Plaintiff, the Defendants' actual and apparent agents, servants and employees also directed, managed, supervised and controlled additional medical treatment rendered to the Plaintiff by physicians, residents, nurses, technicians and other hospital staff who worked in and about Providence Hospital. Defendants are liable for the actions and inactions of these additional medical treatment providers.
9. Venue is proper in this Court because both the Plaintiff and Defendant Puchalski reside in Kershaw County, State of South Carolina, Defendant South Carolina ENT's principal place of business is in Kershaw County, State of South Carolina.
10. Upon information and belief, a contemporaneous filing of an expert affidavit is not required to support the pleaded specifications of negligence in this matter as the subject matter of this action, exposing Plaintiff to latex, for which she had given notice to Defendants that she was allergic to, lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the Defendants. Allergic reactions and their dangers are well within the common knowledge and understanding of lay persons. In an abundance of caution, Plaintiff asserts that because of Plaintiff's good faith belief that an expert affidavit is not required, Plaintiff should be allowed a reasonable amount of time to provide the same, should the Court determine otherwise.

FACTS

11. The foregoing jurisdictional and factual allegations are incorporated herein as if set forth verbatim.

12. On or about January 9, 2009, Plaintiff was admitted to Providence Hospital and/or Providence Hospital Northeast, by Dr. Puchalski for a uvulopalatopharyngoplasty (hereinafter UPPP), a procedure used to treat sleep apnea, generally through removal of soft tissues on the back of the throat.

13. That Dr. Moring was the anesthesiologist for the procedure.

14. Upon information and belief, Defendants Jane Doe (1-5) and John Doe (1-5) were responsible for, among other things, eliciting information from the Plaintiff, including her latex allergy, for properly documenting the latex allergy, and for notifying all appropriate parties of the latex allergy.

15. That at all times relevant herein, Defendants knew, or would have known through the exercise of reasonable diligence, that Plaintiff suffers from an allergy to latex.

16. Attached hereto, and incorporated herein as Exhibit A, are medical records of the Plaintiff indicating her latex allergy, prior to the procedure at issue.

For a First Cause of Action (Negligence/Medical Malpractice)

17. The foregoing jurisdictional and factual allegations are incorporated herein as if set forth verbatim.

18. Upon information and belief, Defendants failed to meet the standard of care, and were negligent and/or grossly negligent in the treatment of the Plaintiff in

performing the UPPP using medical supplies and/or equipment that contained latex, causing Plaintiff to suffer an allergic reaction.

19. Defendants had a duty to meet the standard of care in safely performing the UPPP and breached the standard of care by exposing Plaintiff to latex, and further breached the standard of care, including, but not limited to, one or more of the following particulars:

- a. In failing to take appropriate precautions to prevent Plaintiff's exposure to latex;
- b. In failing to properly document Plaintiff's latex allergy;
- c. In utilizing latex in treating the Plaintiff; and
- d. In failing to properly notify all nurses, technicians, physicians and other medical personnel and staff of Plaintiff's latex allergy, which had been disclosed to Defendants both in writing and orally.

20. As a direct and proximate result of Defendants' negligent and/or grossly negligent failure to adhere to the standard of care, Plaintiff was caused to suffer injury, including but not limited to suffering an allergic reaction, undergoing treatment in the intensive care unit as a result of the allergic reaction, and other treatment that otherwise would not have been indicated, pain and suffering, mental and emotional anguish and distress, loss of enjoyment of life, and both past and future medical treatment and expenses.

21. Plaintiff is informed and believes that as a direct and proximate result of Defendant's negligence, Plaintiff is entitled to recover actual and consequential damages, to include pre-judgment interest on all sums capable

of being identified in a reasonably certain amount due upon a reasonably certain date, such as the date upon which a medical statement was rendered to the Plaintiff, by a provider, for the costs of this action, all in an amount as determined by a jury and proven at trial or otherwise.

22. Plaintiff is informed and believes that, with the exception of Defendant Providence, which currently has alleged statutory protection from punitive damages awards, as a result of Defendants' conduct being willful, wanton and/or with a reckless disregard for the rights of Plaintiff, Plaintiff is entitled to a recovery of punitive as well as actual damages.

For a Second Cause of Action
(Failure to Obtain Informed Consent)

23. The foregoing jurisdictional and factual allegations are incorporated herein as if set forth verbatim.
24. Plaintiff asserts an additional ground for liability in that one or more of the Defendant's failed to obtain informed consent from the Plaintiff for the utilization of latex in any aspect of the procedure, including the anesthesia aspect. Exhibit A includes the hospital's form for "Consent to Operate, Anesthetic and Other Medical Services." The use of latex was specifically excepted in paragraph 3 of the form when executed by Plaintiff.
25. Even though Plaintiff specifically excepted Latex from use, Latex was in fact used and caused an allergic reaction and subsequent injuries to Plaintiff as described herein for which Defendants are responsible.
26. As a direct and proximate result of Defendants' failure to obtain informed consent for the use of latex, and to otherwise adhere to the standard of care,

Plaintiff was caused to suffer injury, including but not limited to suffering an allergic reaction, undergoing treatment in the intensive care unit as a result of the allergic reaction, and other treatment that otherwise would not have been indicated, pain and suffering, mental and emotional anguish and distress, loss of enjoyment of life, and both past and future medical treatment and expenses.

27. Plaintiff is informed and believes that as a direct and proximate result of Defendant's failure to obtain informed consent for the use of latex, Plaintiff is entitled to recover actual and consequential damages, to include pre-judgment interest on all sums capable of being identified in a reasonably certain amount due upon a reasonably certain date, such as the date upon which a medical statement was rendered to the Plaintiff, by a provider, for the costs of this action, all in an amount as determined by a jury and proven at trial or otherwise.

28. Plaintiff is informed and believes that as a result of Defendant's conduct being willful, wanton and/or with a reckless disregard for the rights of Plaintiff, Plaintiff is entitled to a recovery of punitive as well as actual damages.

WHEREFORE, Plaintiff prays for judgment against Defendants for actual damages in such an amount as shall fairly, justly and adequately compensate Plaintiff for Plaintiff's losses, for pre-judgment interest and for such punitive damages as may lawfully be awarded and as the Court may deem just and proper, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

[Signature Page to Follow]

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: 
Daryl G. Hawkins
SC Bar No. 2844

1331 Elmwood Avenue, Suite 305 (29201)
Post Office Box 11906
Columbia, South Carolina 29211
803.733.3531 Tel
803.744.1949 Fax

June 18, 2012

Attorneys for the Plaintiffs

EXHIBIT A



SISTERS OF CHARITY
PROVIDENCE HOSPITALS

Critical Health Systems PRE-ANESTHESIA EVALUATION

BROWER, PATRICIA A
A# E00112894134 U#Z000092940
01/29/09 F 43 02/22/65
Puchalski, Robert

DATE: 1-29-09 Proposed Operation: Submucous Lingual Excision, Tonsillectomy
AGE: 43 NPO: N/A P: 89 BP: 134/86 HR: 53 WT: 195 HGT: 35 O2 Sat: 99
Allergies: Latex - rash Morphine - "heart stopped"

NO YES PERTINENT HISTORY AND PHYSICAL FINDINGS

- ☒ ☐ CARDIOVASCULAR (MI, Angina, CHF, Valvular, High BP, Arrhythmia) Cardiologist: Y / N Exercise Tolerance? Stopped (stop destination / local)
- ☐ ☒ PULMONARY DISEASE (Asthma, COPD, Cigarettes) OSA CPAP: Y / N Stopped (stop destination / local)
- ☐ ☒ CNS, NEUROMUSCULAR (CVA, Seizures, Mental Status) migraines / sleep disorder
- ☒ ☐ RENAL DISEASE (Kidney Failure)
- ☒ ☐ LIVER DISEASE (Hepatitis, Cirrhosis)
- ☒ ☐ GASTROINTESTINAL (Hernia, Peptic Ulcer Disease, GERD)
- ☐ ☒ ENDOCRINE DM II Thyroid check 1/25/09 H₂ATC-5.8
- ☒ ☐ GYNECOLOGICAL (LMP, Pregnant) spayed
- ☒ ☐ HEMATOLOGICAL (Anemia, Sickle Cell Disease or Trait, Bleeding Disorder)
- ☒ ☐ ORAL CAVITY (Loose Teeth, Dentures, Difficult Airway) R7L
THROAT neck - fine
- ☒ ☐ PREVIOUS PROBLEMS WITH ANESTHESIA (Malignant Hyperthermia)
- ☒ ☐ CURRENT MEDICATIONS (* indicates taken day of surgery) keppra, Topamax, Avandia, Lasix, Cipro, Lunesta, Proton
- ☒ ☐ PAIN SCALE ASSESSMENT (Circle Level) 1 2 3 4 5 6 7 8 9 10
- ☐ ☐ OTHER

☐ ☐ RISKS, BENEFITS, AND ALTERNATIVES DISCUSSED WITH PATIENT, AND/OR FAMILY.

PERTINENT LAB: 143 4.2

17 Hgb 40 Hct

ASA PHYSICAL STATUS: CLASS: 1 2 3 4 5 E

PATIENT CONSENT TO PLAN OF GIA

BUN EKG/ABG

BS CXR

2m

MD



A# E00112894134 BROWER, PATRICIA A
01/29/09 F 43 U#Z000092940
Puchalski, Robert 02/22/65

Amounts were used schedule of any data reproduced below is in terms of type following one of weight.

Start Here	Date: 5-29-09	Time: AM PM	Profiled By: ..	Filled By: .	Checked By:
------------	---------------	-------------	-----------------	--------------	-------------

Consent To Operation, Anesthetic And Other Medical Services

1. I authorize the performance upon Patricia Brewer
(Name of Patient)
of the following operation Submucous Lingual Excision, Modified
Uvulopalatopharyngoplasty, possibly with pillar implants, Tonsillectomy
(state, nature and extent of operation)
to be performed under the direction of Dr(s). Ruchalski
and/or such assistants as may be selected by him/her to perform such operation.
2. I recognize that during the course of the operation, unforeseen conditions may necessitate additional or different procedures or services than those set forth above and I further authorize and request that the above-named physician and/or his/her associates, partners, assistants or designees perform such procedures as are, in his/her professional judgment, necessary and desirable.
3. I have been informed of the options, risks, and alternatives to said anesthesia and/or blood transfusions. I consent to the administration of such anesthesia and/or blood transfusions as may be considered necessary or advisable by the person responsible for such service, with the exception of: Laxer, Morphine
(State exception or write "none")
4. I consent to the disposal by hospital authorities of any tissue or members, which may be removed during the course of the operation. Cautions: Nerve damage, incomplete treatment of Sleep Apnea, Possible trachea
5. The nature, purpose and possible consequences of the operation, possible alternative methods of treatment, the risks involved and the possibility of complications have been fully explained to me by my attending physician and/or surgeon. No guarantees or assurances have been made or given by anyone as to the results that may be obtained.
6. I understand any resuscitative orders currently recognized will be temporarily suspended during the operative phase unless otherwise discussed with your physician/anesthesiologist.
7. I, THE UNDERSIGNED, HAVE HAD THIS FORM EXPLAINED TO ME AND FULLY UNDERSTAND THE CONTENTS OF THIS AUTHORIZATION.

Witness C. M. [Signature]

Signed X Patricia A. Brown
(Patient or authorized person)

(Relationship)

I have discussed with the patient and/or patient's representative the risks, benefits, potential complications, and alternative options associated with the planned procedure, possible use of blood, and sedation/analgesic if appropriate, answered the patient's questions and obtained his/hers permission to proceed.

Physician's Signature/Date

Page# 4

08/22/95
14A
F

03/29/09
14A
01/26/09 1421 BELLERW BRILL, REGINA M

GENERAL SURGERY ROOM 01

GENERAL - GEN SURGERY

P SUBMUCOUS LINGUIAL EXCISION (BILLS),
S TONSILLECTOMY

GELVJ3 CC PUCRC
GELVJ2 CC PUCRC

OBSTRUCTIVE SLEEP APNEA

Radiation History Chest and Frontal
Diagnosis of Neck:

01/20/05 1130 HATPOK, SUSAN S
Arrived From: HOME
Mode of Arrival: STRETCHER
Accompanied By: SPOUSE
Patient's Chief Complaint: SLEEP APNEA
Medication/Other Allergies: LATEX, SORE THROAT
Food Allergies:
Latex Allergy: Y Contrast Allergy: N
ST. ID Band On: Y Allergy Band On: Y
(Two forms of identification have been identified before placing ID band on the patient/
--- Admission Vital Signs ---
Temperature: 99.5 Pulse: 90 Respiration: 16 Blood Pressure: 114/63 RPO2 (U): 95
SpO2: 130 (Arterial notified if > 200) NPO status: AFTER 1400
Head Circ. (in): Obtain Measurement for patients less than 24 mos of age
Weight - Lb: 107 Os 2 Kg: 53.351 Weight Source: DSD SCALE
Height - Feet: 5 Inches 7 Cm: 170.18 BMI: 18.743 BMI: 18.74
Pt/Family Adverse Reactions to Anesthesia: N
Expirals:
Any Religious, Traditional, Cultural or Ethnic needs that need to part of your care:
Based on any religious/cultural or ethnic concerns, do you NO SPECIAL NEEDS/REQUESTS
have objections to receiving blood/blood products? N
Previous Blood Transfusions: N Previous Blood Reactions: N Autologous Blood Banked: N
Blood Refusal (NO BLOOD) Band On: N Blood Bank Band On: N
Level of Responsiveness: A/Cx3 Speech: RESPOND
Organ Donor: Y Living Will: N
If Living Will or HIPAA not Available, What are PT. Wishes: NONE

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-28-1170 (MM)

Patricia Brouwer,

Plaintiff,

vs.

Sisters of Charity Providence Hospitals
d/b/a Providence Hospital and
Providence Hospital Northeast; South
Carolina ENT, Allergy and Sleep
Medicine, P.A.; Robert Puchalski, M.D.;
Francine K. Moring, M.D.; Jane Does
(1-5); and John Does (1-5),

Defendants.

CERTIFICATE OF SERVICE

FILED FOR RECORD
2012 JUN 19 AM 9:04
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

I, the undersigned employee of the Law Office of Daryl G. Hawkins, LLC, do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

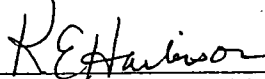
Second Amended Summons; and
Second Amended Complaint

Parties of Record

Weldon R. Johnson, Esquire
Barnes, Alford, Stork & Johnson, LLP
PO Box 8448
Columbia, SC 29202-8448

*Attorneys for Sisters of Charity
Providence Hospitals d/b/a/ Providence
Hospital and Providence Hospital NE*

LAW OFFICE OF DARYL G. HAWKINS, LLC



Kimberly E. Harbison

Date: June 18, 2012

1 STATE OF SOUTH CAROLINA
2 COUNTY OF KERSHAW

IN THE CIVIL COURT

3
4 PATRICIA BROUWER,
5 Plaintiff,

-vs-

6 SISTERS OF CHARITY
7 PROVIDENCE HOSPITALS,
8 ET AL,

9 Defendants.

TRANSCRIPT OF RECORD

11-CP-28-1170

10
11 March 6, 2012
12 Camden, South Carolina

13
14 B E F O R E:

15 HONORABLE ALLISON R. LEE, Judge.

16
17 A P P E A R A N C E S:

18 KRISTIN M. SIMONS, Esquire
19 Attorney for the Plaintiff

20 BRIAN EDWARD SOPP, Esquire
21 Attorney for the Defendant Providence

22 WILLIAM O. SWEENEY III, Esquire
23 BENSON H. DRIGGERS, Esquire
24 Attorneys for the Defendants

25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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Certificate	25

INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 March 6, 2012.)

3 THE COURT: This is 2011-CP-28-1170, Patricia
4 Brouwer versus Sisters of Charity Providence Hospital,
5 et al. The plaintiff is represented by Kristin -- what
6 is the last name?

7 MS. SIMONS: Simons, S-I-M-O-N-S.

8 THE COURT: For the defendant is Benson
9 Driggers and?

10 MR. SOPP: I'm Brian Sopp. I'm here for
11 Providence, and Benson Driggers and Mr. Sweeny are here
12 for the other defendants.

13 THE COURT: Mr. Sweeny represents South
14 Carolina E.N.T. Allergy and Sleep Medicine, Robert
15 Puchalski, and Francine Moring, doctors?

16 MR. SWEENY: That's correct, Your Honor. We
17 represent all the medical defendants with the exception
18 of the hospital.

19 THE COURT: And Mr. Driggers represents?

20 MR. SWEENY: Mr. Driggers is with me. This is
21 Brian Sopp. He is with the hospital.

22 THE COURT: I got all those on the record
23 while you all were coming in so we can move along. I am
24 not interested in staying here any longer than I have
25 to. I'm sure you are not either.

1 MR. SWEENEY: I don't blame you. You have been
2 through a lot. We have seen that.

3 THE COURT: Had I known it was going to be all
4 day, I would have done y'all first thing. I thought we
5 were moving right along. Little did I know.

6 We are here on motions to dismiss, and I have
7 not had a chance to fully read the memoranda that were
8 sent. There was a memorandum sent by Ms. Simons. There
9 was a memorandum sent by Mr. Sweeney. That's all I
10 received -- no, there is another memorandum in
11 opposition that was filed by -- no, that was just a
12 motion filed. I have that.

13 MS. SIMONS: Your Honor, I did file one just
14 prior to the hearing. It's got some exhibits attached
15 that I thought might be helpful to the cases.

16 THE COURT: Is that the one that was filed
17 today at 3:00 o'clock?

18 MS. SIMONS: That's it.

19 THE COURT: All right.

20 MR. SWEENEY: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. SWEENEY: I also have a case I would like
23 to hand up to Your Honor. It's hot off the press. It's
24 a brand new case that was only decided late January.

25 THE COURT: In January. Yes, I have heard

1 about that one earlier today, Ranucci. Yes, I have
2 heard all about the filing of the affidavit in
3 conjunction with the notice of intent.

4 That was an issue I had earlier today; so I
5 have heard that. I know that that's part of your claim
6 for your motion to dismiss. I will be happy to hear
7 from you.

8 MR. SWEENEY: Thank you, Your Honor. May it
9 please the Court. I think Your Honor will find that
10 this is a major issue; so I doubt that you will be
11 ruling from the bench anyway.

12 THE COURT: No, I won't be. I can tell you
13 that.

14 MR. SWEENEY: You wouldn't have a chance.

15 THE COURT: As I told the other side on the
16 last case, I would have to read the case again and look
17 at the briefs. I haven't had a chance to look at that;
18 so I wouldn't rule on the bench. Don't worry.

19 MR. SWEENEY: I am going to be very brief
20 because I think there are only about two issues that the
21 Court needs to know. These, I believe, are totally,
22 totally uncontroverted; and they are dispositive of the
23 case.

24 We have made a motion on behalf of all of the
25 medical providers, with the exception of the hospital,

1 to dismiss this action on the grounds that the action
2 was not brought in accordance with the Tort Reform Act.

3 It is uncontroverted, we believe, that this is
4 a medical malpractice action. The cause of action in
5 the case in the complaint itself says medical
6 malpractice.

7 Throughout the language of the case, it talks
8 about the doctors not meeting the standard of care. It
9 talks about the doctors not getting the proper consents.
10 It talks about all kinds of things that doctors and
11 medical providers are supposed to do. So that's the
12 first issue is this is a medical malpractice case.

13 The second issue is also uncontroverted, and
14 that second issue is this. Never has there been served
15 at any time any kind of affidavit by any medical expert
16 of any kind to the effect that certain violations have
17 occurred, that the standard of care was breached in a
18 certain way.

19 In fact, there is no affidavits at all. That
20 is uncontroverted as well. So those two issues are the
21 basis that we have for the dismissal of this action.
22 There are other issues out there that really just kind
23 of get in the way of all this, but those two issues are
24 the dominant issues in this case.

25 The recent case that we just handed up to Your

1 Honor is almost on point. It talks about how a medical
2 malpractice case must be initiated. If you think back
3 to the legislative history and the reason for this kind
4 of legislation and this kind of process of doing things,
5 it's obvious that there was an intent here to have
6 medical malpractice cases handled a certain way.

7 That's what the Federal Tort Claims -- I beg
8 your pardon -- the State Tort Claims Act is all about.
9 It is designed to require that certain procedures be
10 followed in the initiation of this kind of action.
11 That's why it says: Shall, must, shall, must --
12 throughout the whole thing. There is no option.

13 In fact, I believe truly, although this is not
14 an issue here, I believe truly that this is something
15 that a Court could decide sua sponte. In fact, they
16 might even be required to decide sua sponte if the Court
17 were aware of this issue because there is no
18 jurisdiction here. There is no subject matter
19 jurisdiction. It is not properly before the Court.

20 The only salient issue out there is this.
21 There is an evidentiary rule that says you don't need to
22 use expert testimony if the issue involved is not one
23 that involves the need for an expert.

24 I can argue long and hard that this medical
25 malpractice case involving this fairly complex operation

1 and all that was done is probably going to require
2 somebody to say what the standard of care is. It's
3 probably going to have to require somebody to say what
4 is necessary to be done, to get consents, to do all
5 these kind of things.

6 But even if you take that out, even if you
7 say, Okay, that is something this Court can decide now,
8 even if we admit, for instance, that there is no -- that
9 at the time of trial, there may be no need for an expert
10 witness by the other side, they are still barred from
11 this case.

12 Because the case law says there succinctly
13 and clearly that the evidentiary rule is to be read
14 separate from the tort rule. The tort application is to
15 take place with the initiation of the case. This is how
16 the case must be initiated and that the evidentiary rule
17 is only something that can be decided later on in the
18 case.

19 In other words, the example they use in this
20 case itself is that you can bring your action, but to
21 bring your action you have to have these affidavits.
22 You can decide at the time of the trial you don't need
23 those affidavits, but to initiate the action you must,
24 shall -- all the rest.

25 THE COURT: Is that what Ranucci says or is

1 that just other statutory or other case law?

2 MR. SWEENEY: No, that is what that case says.
3 It's a pretty good panel. That's is Judge Cureton,
4 Judge Konduros, and Judge Few. That's fairly strong.
5 That's my own bias -- I'm sorry -- but that's a pretty
6 strong panel.

7 THE COURT: I note that Few was concurring.

8 MR. SWEENEY: He was concurring but he was even
9 stronger. He talked about how there is no option at all
10 and how he would have dismissed the case outright. So
11 with the language there, it is absolutely positive.

12 If you stop to think about it, that is the
13 whole way this whole -- if we were to rule a different
14 way, think of the monkey wrench we would throw into the
15 process here.

16 Then we would have every case that we come to
17 would be an issue of: Do we abide by the Tort Claims
18 Act or do we, because of some evidentiary possibility,
19 do something different?

20 This thing was designed to fulfill a purpose,
21 to meet a need, both for claimants and for defendants.
22 Basically I think that justifies this Court's decision,
23 the Court of Cureton, Konduros, and Few. Thank you,
24 Your Honor.

25 THE COURT: Yes, ma'am.

1 MS. SIMONS: Thank you, Your Honor. Just by
2 way of a brief background, this action involves the
3 plaintiff went in for a procedure that is called a
4 U.P.P.P. That stands for uvulopalatopharyngoplasty.
5 It's a procedure for sleep apnea that goes in the throat
6 and the face of the tongue and removes some of the
7 tissue to try and aid breathing.

8 Now, she had an allergy to latex, and that was
9 well known to all of her treating physicians. It was
10 well documented in her records. She even had a big red
11 bracelet on that said, Latex allergy.

12 In spite of all those measures, she was
13 exposed to latex during the procedure and suffered a bad
14 reaction and ended up being in the intensive care unit
15 on a ventilator.

16 We do concede that as to the physician
17 defendants, that this is a medical malpractice action
18 and subject to the notice of intent requirements, at
19 least as to the moving defendants.

20 Providence has taken the position that as a
21 charitable institution the notice of intent statute does
22 not apply to them. That's the reason we filed the
23 complaint to begin with.

24 It was really an attempt to try and get all
25 the defendants together in one action to have meaningful

1 exchange in an attempt to resolve it, not to try and
2 circumvent the requirements of the notice of intent
3 statute.

4 Now, I would raise that we have named some
5 John Doe and Jane Doe defendants who may be people,
6 other than doctors or nurses, that may be subject to the
7 affidavit requirements; for instance, administrative
8 staff and things of that nature.

9 We won't know that until we get into the
10 discovery and are able to see what are the policies and
11 procedures, what other individuals might have some
12 responsibility under this set of circumstances.

13 That being said, we did file the notice of
14 complaint, summons and complaint. There was an issue
15 with one of the defendants not being named correctly,
16 and we amended that. The amended notice of intent and
17 the amended summons and complaint are what was served on
18 the defendants.

19 I would raise that this case was filed prior
20 to the decision in the Ranucci case, which I am familiar
21 with. I think there is kind of two different issues
22 here. We concede that as to the moving defendants, the
23 complaint was filed prematurely. I think that is really
24 the issue before the Court here.

25 The second issue is the sufficiency of the

1 notice of intent and did it meet those requirements?
2 But that's a separate pleading filed in a separate case,
3 and I would submit to the Court that that is not on the
4 table here for discussion. That's not an issue that
5 should be addressed through this mechanism here today,
6 but I am glad to continue and argue that point further.

7 THE COURT: I'm sorry. I'm not understanding.

8 MS. SIMONS: What they have raised really is
9 an issue with the timeliness of the filing of the
10 complaint. Their memorandum goes through and says there
11 has been no notice of intent, which I'm not sure where
12 their argument came from. There clearly is, as
13 evidenced by the records of the Court.

14 There has been no expert affidavit, which we
15 concede; that there is not an expert affidavit; and that
16 there has been no mediation; and that all those things
17 first have to occur before you can file a complaint.

18 We say that is true. This complaint was filed
19 prematurely as to the moving defendants. That's what
20 this motion is. This motion can be and should be
21 resolved without a determination of: Is the notice of
22 intent sufficient or not?

23 Regardless of whether it is sufficient, we
24 submit that the appropriate action as a result of this
25 motion should be a dismissal without prejudice as to the

1 moving defendants only.

2 THE COURT: In other words, the statute sets
3 up a mechanism where you first file the notice of
4 intent. Then there is a period of pre-suit mediation.
5 Then within a certain period of time under the statute,
6 the actual civil action gets filed in which liability is
7 asserted, and there is an affidavit in conjunction with
8 the filing of the complaint.

9 MS. SIMONS: That's correct, Your Honor.

10 THE COURT: And so what you are saying is that
11 you agree that there has been no notice of intent
12 pursuant to the statutory procedures. So basically you
13 skipped over that part and went right to the filing of
14 the lawsuit, but there is no affidavit.

15 MS. SIMONS: The notice of intent was filed.
16 It was filed without an expert affidavit. At the time
17 it was filed, like I said, it was prior to the Ranucci
18 decision.

19 We pled that the fact that you have a patient
20 that is allergic to latex and that she has been exposed
21 to that latex and that she suffers consequences, we felt
22 that that fell within the exception in 15-36-100(C)(2)
23 where an expert affidavit is not required.

24 I can read it straight from the statute. It's
25 not required to support pleaded specifications of

1 negligence involving subject matter that lies within the
2 ambit of common knowledge and experience so that no
3 special learning is needed to evaluate the conduct of
4 the defendant.

5 My position would be that that exception that
6 the legislature created when an expert affidavit is not
7 required, this is exactly the set of circumstances that
8 the legislature contemplated when they created that
9 exception.

10 We shouldn't have to bring a doctor in front
11 of jury to say when you have got a patient that is
12 allergic to latex, they should not be exposed to latex.
13 It's a simple, straightforward issue that anybody,
14 regardless of their training and background, is able to
15 understand.

16 THE COURT: I'm sorry. You said there was a
17 notice of intent filed?

18 MS. SIMONS: There was a notice of intent
19 filed, Your Honor. It does get a little bit
20 complicated. I apologize for that. We filed a notice
21 of intent and summons and complaint simultaneously on
22 February 29th -- or December 29, 2011. Prior to serving
23 the notice --

24 THE COURT: I'm sorry to keep interrupting
25 you. All that is what is encompassed in the original

1 documents that were filed here?

2 MS. SIMONS: Correct.

3 THE COURT: So it's not a separate action?

4 MS. SIMONS: The notice of intent is assigned
5 a separate case number.

6 THE COURT: Right.

7 MS. SIMONS: So that's a separate action
8 completely. So there is the notice of intent case with
9 its case number and the complaint case with its case
10 number.

11 THE COURT: So the notice of intent is which
12 one?

13 MS. SIMONS: The notice of intent -- beg your
14 indulgence for a minute.

15 THE COURT: Is it 11-69 perhaps?

16 MS. SIMONS: Yes, 11-69 is the amended notice
17 of intent. The complaint is --

18 THE COURT: -- 1170.

19 MS. SIMONS: Right. There are two separate
20 cases, and this motion was filed in the complaint case.

21 THE COURT: Yes.

22 MS. SIMONS: And not in the notice of intent
23 case.

24 THE COURT: And having kind of read some of
25 the documents, what about the argument I'm sure that the

1 defense will make that while it's common knowledge that
2 people have latex allergies, but isn't there a question
3 as to who is responsible for making sure that everyone
4 is aware -- whether it's the doctor, the hospital, the
5 surgeon, someone else on the nursing staff -- whose
6 responsibility is it to make sure that such an allergy
7 is noted and that everybody is aware of it, besides the
8 bracelet?

9 MS. SIMONS: I would raise that that is
10 something that we would hope that the policies and
11 procedures of the hospital would help us establish and
12 set forth. We know who all had knowledge of this.
13 Everybody that looked at her records or looked at her
14 had knowledge of it.

15 We would assert that everybody who had
16 knowledge of it had a duty to make sure that she wasn't
17 being exposed to something that wasn't going to cause
18 her harm.

19 THE COURT: Go ahead.

20 MS. SIMONS: With respect to the Ranucci
21 decision, I would first raise that, again, we don't
22 think that that's a -- whether or not the notice of
23 intent is sufficient is an issue that should be taken up
24 in this motion to dismiss the complaint when there are
25 two separate actions.

1 In the alternative I would argue that the
2 Ranucci case is not currently in a posture where it's
3 binding precedent. At least this morning when I looked
4 up the case again on West Law, it still has a notice on
5 it that this opinion has not been released for
6 publication in permanent law reports. Until release it
7 is subject to revision or withdrawal.

8 In the alternate I would say that in its
9 current posture, to rely on this case to dismiss this
10 action is certainly a severe consequence and would be
11 premature.

12 THE COURT: Is there an application for cert
13 pending?

14 MS. SIMONS: I do not know. There was not one
15 noted. Your Honor, I really don't know how long it
16 typically takes once a decision is issued for it to be
17 submitted for publication. I don't know if there is
18 anything that can be read into it or not.

19 I would allege that it's not ripe for relying
20 upon yet. Your Honor, I do have some additional
21 arguments as to the merits of the case if Your Honor
22 would consider those.

23 THE COURT: Well, I'm here on a procedural
24 issue. So unless there is something that relates to it,
25 I think you have attached some -- yes, there are

1 affidavits of service attached to your memorandum.
2 There is interrogatories, answers, consent forms,
3 consent operation forms are attached. Those all go to
4 the merits?

5 MS. SIMONS: They do, Your Honor.

6 THE COURT: Is it something I need to consider
7 in connection with what has been raised by the defense?

8 MS. SIMONS: Well, like I said, I do have some
9 arguments as to the merits of the Ranucci case if that
10 is going to be a factor.

11 THE COURT: Anything about Ranucci, I will be
12 happy to hear about.

13 MS. SIMONS: I think it creates kind of a
14 weird situation where you can have -- basically what it
15 says is that the notice of intent statute that sets
16 forth the procedure for filing the notice of intent and
17 what all you have to go through before a medical
18 malpractice action; the notice of intent refers back to
19 the statute on complaints and when you have to have an
20 expert affidavit to file a complaint.

21 That section, as we discussed, has a couple of
22 exceptions where an expert affidavit is not required.
23 Basically what the Ranucci case holds is that some of
24 those exceptions that the legislature created for expert
25 affidavits for complaints do not also apply to the

1 notice of intent statute.

2 You could be left in an odd situation where
3 you are required to file a notice of intent with an
4 expert affidavit when, after you complete that process,
5 you can file a complaint. To me that just seems like an
6 inconsistent holding and an odd situation.

7 I would further raise, as Mr. Sweeny raised in
8 the consenting opinion, that the case should have been
9 or could have been dismissed on different terms,
10 procedural terms, that were clear and unambiguous.

11 It was actually filed a day after the Statute
12 of Limitations expired. So what we really have is the
13 Court coming up with what I think is a creative
14 interpretation of what these statutes are, when really
15 the case should have been disposed of under clear and
16 unambiguous terms.

17 Furthermore, the legislature doesn't refer to
18 just part of that statute. It refers to the whole
19 thing. I believe if the legislature intended only part
20 of that statute to apply, they could have very easily
21 and would have just referenced the specific sections
22 that would apply. For all those reasons I think any
23 reliance upon the Ranucci case would be misplaced.

24 THE COURT: Mr. Sweeny?

25 MR. SWEENEY: Thank you, Your Honor. First of

1 all, let me point out that in our brief, we cite Melton
2 versus Medtronic, Inc. which is a predecessor to the
3 Ranucci case that we handed up to Your Honor.

4 That case pretty well recites what we have
5 said here in terms of the necessity for having an
6 affidavit by a medical professional to the extent that
7 some act of negligence is taking place, that the statute
8 has been violated in a certain way, and the standard of
9 care has been violated.

10 So there is plenty of case law out there that
11 is actually on point. The reason we are handing this
12 case up to Your Honor now, the Ranucci case as we were,
13 is not because there was nothing ever there before. It
14 just really takes everything that we put in our brief
15 and puts it to work.

16 Our brief, we believe, cites what the law is.
17 Just, if I could, to just read one segment of the
18 opinion that was decided where they were balancing the
19 statute that requires you to submit an affidavit and the
20 statute that says that you don't have to use an expert
21 if the situation is one in which an expert's testimony
22 would not be beneficial to the jury.

23 They said these statutes don't conflict. Each
24 statute governs a distinct period of time. One involves
25 the initiation of the action to begin with. The other

1 involves the admission of evidence during the course of
2 the trial.

3 So there really is no option here. As you can
4 see, if there were to be an option, if we could
5 "lawyerize" this statute in such a way that everyone who
6 doesn't have an expert or at least doesn't have an
7 expert at the time they have to file suit in order to
8 avoid the Statute of Limitations, if we permit that kind
9 of activity to take place, then what happens?

10 The other thing I might point out is that it's
11 one thing to take a position that you don't need an
12 expert at the beginning of the case when the statute
13 says you do, but the reality of that kind of statement
14 that we don't need an expert is sort of like you said:
15 Well then, which witness is responsible for which event
16 at which time?

17 They are not -- and what is the standard
18 practice between doctors? And how does that interact
19 with whatever written materials there may be available?
20 And who interprets those written materials for a jury to
21 allow them -- since they are not medical people -- to
22 comprehend who does what when?

23 There are all kinds of issues that engage the
24 issue of responsibility that only an expert could
25 testify to. And how about the issue of damages? How do

1 we know what the side effects of using this kind of
2 procedure were? How do we know whether these side
3 effects were the result of the procedure or the result
4 of something else that may have taken place? I mean,
5 it's incomprehensible to me that a case like that
6 wouldn't require an expert.

7 Now, the only other thing is that they are
8 trying to looking for a quick out here on 69 and 70, the
9 issue of the two cases. They filed those -- apparently
10 they served those simultaneously.

11 What happened is our client sent us the
12 complaints. So initially we didn't think there had been
13 filed a notice of intent. We have subsequently -- I am
14 willing, for purposes of this argument, to waive that
15 issue and say, Okay, maybe they did.

16 We didn't get them. The people who got served
17 kept the part they thought was important that says, We
18 are suing you. And what's more, this is what this is
19 all about.

20 So that's what that was about. But we clearly
21 in our motion, we clearly call for a dismissal of all of
22 this based on the fact that it's not properly before the
23 Court.

24 Now, you asked me about Judge Few, and Judge
25 Few's comment was interesting because it's very brief.

1 At the beginning he says, I concur with the majority's
2 interpretation of the statutes at issue in this appeal.
3 However, I believe our interpretation requires the
4 conclusion that the Statute of Limitations has expired
5 on any civil action.

6 In other words, they did not do this -- they
7 didn't get their affidavit in within the Statute of
8 Limitations; therefore, the issues raised in the appeal
9 are moot, and I would dismiss the appeal.

10 So he takes an even stronger process. He
11 says, We don't have to go through this whole thing
12 because it's clear they violated the statute. By
13 violating the statute, it's clear they are now in
14 default. So that's all we have to know. They are in
15 default. It's over.

16 As a practical matter, that is the situation
17 here. The hospital is not in default -- I beg your
18 pardon -- the hospital is not going to be able to claim
19 that they weren't served within the Statute of
20 Limitations as far as I know.

21 My defendants would be because they have not
22 been served with proper documentation. So really they
23 are asking the Court to kind of waste its time and just
24 concentrate on 70 when it clearly applies to 69 and 70.

25 THE COURT: Well, I have a good bit of

1 material to read. I believe there was some additional
2 information that was filed today that I haven't seen. I
3 will take it under advisement and respond accordingly.
4 I may very well be asking the appropriate party to
5 prepare an order when I get to that point. I will be
6 sure to let you all know. Thank you.

7 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Kershaw County, South Carolina on the 7th day of March, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 31, 2012

L Coconut Pantsari

Court Reporter

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2012-213231

APPEAL FROM KERSHAW COUNTY
Civil Action No. 2011-CP-28-1170
Alison Renee Lee, Circuit Court Judge

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MAR 18 2013

SC Court of Appeals

Patricia Brouwer Appellant

vs.

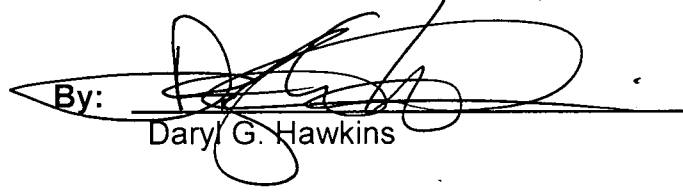
Sisters of Charity Providence Hospitals d/b/a Providence Hospital and
Providence Hospital Northeast; South Carolina ENT, Allergy and Sleep Medicine,
P.A.; Robert Puchalski, M.D.; Francine K. Moring, M.D.; Jane Does (1-5); and
John Does (1-5) Defendants

Of Whom Defendants South Carolina ENT, Allergy and Sleep Medicine, P.A.;
Robert Puchalski, M.D.; and Francine K. Moring, M.D. are Respondents

CERTIFICATION OF COUNSEL FOR APPELLANT
REGARDING RECORD ON APPEAL

Counsel for Appellant hereby certifies that the Record on Appeal contains
all material proposed to be included by all of the parties and not any other
material.

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March 11, 2013

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2012-213231

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MAR 18 2013

APPEAL FROM KERSHAW COUNTY
Civil Action No. 2011-CP-28-1170
Alison Renee Lee, Circuit Court Judge

SC Court of Appeals

Patricia Brouwer Appellant

vs.

Sisters of Charity Providence Hospitals d/b/a Providence Hospital and Providence Hospital Northeast; South Carolina ENT, Allergy and Sleep Medicine, P.A.; Robert Puchalski, M.D.; Francine K. Moring, M.D.; Jane Does (1-5); and John Does (1-5) Defendants

Of Whom Defendants South Carolina ENT, Allergy and Sleep Medicine, P.A.; Robert Puchalski, M.D.; and Francine K. Moring, M.D. are Respondents

PROOF OF SERVICE

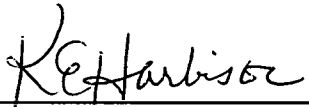
I certify that I have served the Record on Appeal, Certification of Counsel, Final Initial Brief of Appellant and Final Reply Brief of Appellant on South Carolina ENT, Allergy and Sleep Medicine, P.A.; Robert Puchalski, M.D. and Francine K. Moring, M.D., by depositing a copy of it in the United States Mail, postage prepaid, addressed to their attorney of record, William H. Davidson II, Esquire and Andrew F. Lindemann, Esquire, Davidson & Lindemann, PA, PO Box 8568, Columbia, SC 29202 on March 18, 2013.

I certify that I have served the Record on Appeal, Certification of Counsel, Final Initial Brief of Appellant and Final Reply Brief of Appellant on Francine K. Moring, M.D. by depositing a copy of it in the United States Mail, postage prepaid, addressed to her attorney of record, Benson H. Driggers, Esquire, Sweeny Wingate & Barrow, PA, PO Box 12129, Columbia, SC 29211 on March 18, 2013.

I certify that I have provided a courtesy copy of the Record on Appeal, Certification of Counsel, Final Initial Brief of Appellant and Final Reply Brief of Appellant upon Defendant Sisters of Charity Providence Hospitals d/b/a Providence Hospital and Providence Hospital Northeast who is not a Respondent in the appeal by depositing a copy of it in the United States Mail, postage

prepaid, addressed to its attorney of record, Weldon R. Johnson, Esquire,
Barnes, Alford, Stork & Johnson, LLP, PO Box 8448, Columbia, SC 29202-8448
on March 18, 2013.

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: 

Kimberly E. Harbison
Legal Administrator

March 18, 2013