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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**S.C. SUPREME COURT**

APPEAL FROM YORK COUNTY  
John C. Hayes, III, Circuit Court Judge

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Opinion No. 2013-UP-461 (S.C. Ct. App. filed December 11, 2013)

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Ann P. Adams, as Personal Representative of the  
Estate of Jacob E. Adams, Deceased, Petitioner,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant, Employee of South Carolina Emergency Physicians, LLC, and as Agent, Servant, or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System; Jason Price, Radiologic Technologist, Individually and as Agent, Servant, Or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; and James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant or Employee of Rock Hill Radiology Associates, P.A. and as Agent, Servant or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System, and Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians, LLC, Defendants,

Of whom Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant, Employee of South Carolina Emergency Physicians, LLC, and as Agent, Servant, or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System; Jason Price, Radiologic Technologist, Individually and as Agent, Servant, Or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System are Respondents.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

- I. **WHETHER THE COURT OF APPEALS CORRECTLY AFFIRMED THAT SOUTH CAROLINA CODE SECTION 15-79-125 REQUIRES THAT AN EXPERT AFFIDAVIT MUST BE FILED CONTEMPORANEOUSLY WITH A NOTICE OF INTENT TO FILE SUIT IN MEDICAL MALPRACTICE CASES AND THEREFORE THE ACTION WAS PROPERLY DISMISSED PURSUANT TO RULE 12(b)(6), SCRPC.**
  
- II. **WHETHER PETITIONER HAS FAILED TO SHOW “SPECIAL AND IMPORTANT REASONS” FOR WHICH A WRIT OF CERTIORARI SHOULD BE GRANTED IN THIS MATTER.**

## STATEMENT OF THE CASE

On October 20, 2011, Ann P. Adams, as the Personal Representative of the Estate of Jacob E. Adams (hereinafter, “Mrs. Adams”), filed a notice of intent to file suit, draft complaint, and answers to standard interrogatories in the present medical malpractice action against Amsiub of South Carolina, Inc. d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System (hereinafter, “Amisub”); Staci-Versen-Rampey, NP (hereinafter, “Versen-Rampey”) individually and as Agent, Servant, [or] Employee of South Carolina Emergency Physicians, LLC and as Agent, Servant, or Employee of Amisub; and Jason Price, Radiologic Technologist (hereinafter, “Price”) as Agent, Servant, or Employee of Amisub. (Appendix pp. 28-42)<sup>1</sup>. Mrs. Adams failed to file any expert affidavit contemporaneously with the October 20, 2011 notice of intent to file suit.

On December 1, 2011, Petitioner filed an amended notice of intent to file suit along with the expert affidavits of Apostolos J. Tsiouris, MD; Sangjin Oh, MD; and Sharon Aboulafia Oken, RN, MSN, CCRN, CNA, BC. (Appendix pp. 43-90). On that day, Petitioner

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<sup>1</sup> As the Appendix filed by the Petitioner appears to be page numbered differently than the Record on Appeal filed with the Court of Appeals, Amisub has cited to page numbers in the Appendix.

also filed a summons and amended complaint. (Appendix 48-56). As part of the amendments to December 1, 2011 filings, Petitioner added as defendants, (1) James E. Reinhardt, Jr., M.D. (hereinafter, "Reinhardt"), Individually and as Agent, Servant, or Employee of Rock Hill Radiology Associates, PA and as Agent, Servant, or Employee of Amisub and (2) Rock Hill Radiology Associates, PA South Carolina Emergency Physicians, LLC (hereinafter, "Rock Hill Radiology"). (Appendix pp. 48-56).

In response, on February 14, 2012, Defendants Versen-Rampey and South Carolina Emergency Physicians, LLC filed a motion to dismiss the matter for failure to file an expert affidavit and the applicable statute of limitations. (Appendix pp. 101-103). On February 20, 2012, Defendants Reinhardt and Rock Hill Radiology filed a motion to dismiss the amended notice of intent and the amended summons and complaint. (Appendix pp. 104-108), and on March 2, 2012, Defendants Amisub and Price (hereinafter, collectively known as "Amisub") filed motions to dismiss the original notice of intent to file suit, original summons and complaint, amended notice of intent to file suit, and the amended summons and complaint. (Appendix pp. 91-95). The grounds of the motions were that the notice of intent to file suit was not accompanied by a contemporaneously filed affidavit of an expert witness, pursuant to code section 15-79-125(A), and should therefore be dismissed under Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. (Appendix pp. 92, 107).

Following a June 27, 2012 motion hearing, the lower court granted the motions to dismiss. In a July 12, 2012 order, Judge John C. Hayes, III ruled that as to Defendants Amisub, Versen-Rampey, and Price, dismissal was appropriate because "Plaintiff failed to comply with the contemporaneous filing requirement of S.C. Code Ann. §15-79-125." (Appendix pp. 8-12). On July 31, 2012, the lower court issued an order dismissing

Defendants Reinhardt and Rock Hill Radiology. (Appendix pp. 15-24). On September 24, 2012, Petitioner filed a notice of appeal as to those orders.

Oral argument took place in front of the South Carolina Court of Appeals on November 13, 2013. In a December 11, 2013 opinion, the Court of Appeals affirmed the lower court's decision to grant the motions to dismiss.<sup>2</sup> (Appendix pp. 278-279). That court, recognizing that both parties agreed that *Ranucci v. Crain*, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), controlled the interpretation of the interconnection between code sections 15-79-125 and 15-36-100, confirmed "that the affidavit requirements of section 15-36-100 [did not permit Mrs. Adams] to file the affidavit late without violating section 15-79-125." Petitioner filed a petition for rehearing with the Court of Appeals on December 19, 2013 making essentially the same argument and discussing the fact that this Court had granted certiorari in *Ranucci*. (Appendix 280-285). The petition was denied on February 3, 2014. (Appendix 286-287).

**I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISMISSAL OF PETITIONER'S ACTION BECAUSE PETITIONER FAILED TO COMPLY WITH THE CONTEMPORANEOUS FILING REQUIREMENTS FOR MEDICAL MALPRACTICE CASES FOUND IN CODE SECTION 15-79-125.**

**a. Petitioner acknowledges that *Ranucci v. Crain* controls the disposition of this matter.**

In this action, Mrs. Adams filed a timely notice of intent but did not contemporaneously file an affidavit of a medical expert with the notice of intent, both of which are required by code section 15-79-125. The trial court granted Amsiub's motion to dismiss based upon the fact that Petitioner failed to comply with the contemporaneous filing

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<sup>2</sup> Petitioner failed to include the second of three pages of the Court of Appeal's Opinion in the Appendix submitted with her Petition.

requirements of code section 15-79-125 as discussed in *Ranucci v. Crain*, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012). (Appendix pp. 8-12). In that case, the Court of Appeals found that the lower court did not err when it dismissed a plaintiff's notice of intent to file suit in a medical malpractice action for plaintiff's "failure to comply with the contemporaneous filing requirements" of code section 15-79-125. *Id.* at 178-79, 723 S.E.2d at 247-48.

Petitioner admitted in her final brief to the Court of Appeals that in *Rannuci*, the "Court [of Appeals] ruled adversely to [Petitioner's] position on this issue." (Appendix p. 234). The Court of Appeals' holding in *Ranucci* is "the law of this state unless either reversed or overruled" and was correctly applied in this case. *Hamby v. Hamby*, 315 S.C. 518, 520, 445 S.E.2d 656, 657 (1994) (citing 21 C.J.S. *Courts* § 152 at 187 (1990)).

**b. This matter is indisputably a medical malpractice action and therefore pre-suit procedures are governed by code section 15-79-125.**

Mrs. Adams does not dispute that this matter involves claims of medical malpractice against Amisub. "Medical malpractice" is defined as "doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent healthcare provider or health care institution would do in the same or similar circumstances." S.C. Code Ann. § 15-79-110(6). "Healthcare provider" is defined to include doctors and nurses as well as any similar category of licensed health care providers. S.C. Code Ann. § 15-79-110(3). "Health care institution" is defined to include hospitals. S.C. Code Ann. § 15-79-110(2).

South Carolina case law distinguishes ordinary negligence from medical malpractice at the point at which a plaintiff's allegations concern matters of proper diagnosis or treatment involving technical knowledge outside of the knowledge of laymen. *See, e.g., Botelho v.*

*Bycura*, 282 S.C. 578, 583, 320 S.E.2d 59, 63 (Ct. App. 1984) (“The reason for requiring expert testimony [in medical malpractice actions] is that matters of proper diagnosis and treatment ordinarily involve technical knowledge beyond the ken of laymen.”).

It is indisputable that Amisub is a “health care institution;” Mrs. Adams alleged in her complaint that Amisub is in fact a hospital. (Appendix p. 32). There is also no question that Appellant’s allegations concern “health care providers” as Petitioner alleged that it was Amisub’s staff who failed to provide adequate medical care or treatment to Decedent. (Appendix pp. 34-35). As such, for purposes code section 15-79-125, Petitioner’s complaint alleged claims of medical malpractice on the part of Amisub and its staff. Finally, Petitioner conceded in her brief to the Court of Appeals that she filed the instant notice of intent “alleging medical malpractice” against Amisub. (Appendix p. 232). *See* Rule 208(c), SCACR (“Any matters stated or alleged in appellant’s statement [of the case] shall be binding on the appellant.”).

As noted in subsection (a) above, on January 25, 2012, the Court of Appeals decided a case with strikingly similar facts to those of the case at hand. In *Ranucci*, that court was confronted with a scenario where three years after suffering a collapsed lung following a biopsy, the plaintiff filed a notice of intent, complaint, and responses to interrogatories. *Ranucci*, 397 S.C. at 168, 723 S.E.2d at 243. Further, although the plaintiff identified an expert witness, she stated that she was unable to file a contemporaneous expert affidavit before the expiration of the statute of limitation. *Id.* The plaintiff in that case stated that she intended to file the expert affidavit within the forty five (45) days permitted by code section 15-36-100(C)(1). *Id.*

In response, the defendant filed a motion to dismiss based on plaintiff's "failure to file an expert witness' affidavit contemporaneously with her notice." *Id.* Following a hearing, the lower court found that plaintiff's failure to file the expert affidavit contemporaneously with the notice of intent, as required by code section 15-79-125, rendered the notice of intent proper for dismissal. *Ranucci*, 397 S.C. at 171, 723 S.E.2d at 243.

On appeal, the appellant in *Ranucci* argued that the lower court erred by "finding the Affidavit was not timely filed and in reading code sections 15-79-125 and 15-36-100. . . independently of each other." *Id.* at 169, 723 S.E.2d 243. In considering the issue, the Court of Appeals began by recognizing that "the cardinal rule of statutory interpretation is to determine the intent of the legislature." *Ranucci*, 397 S.C. at 171, 723 S.E.2d at 244 (quoting *Bass v. Isochem*, 365 S.C. 454, 469, 617 S.E.2d 369, 377 (Ct. App. 2005)). Further, the Court of Appeals reasoned that such is to be determined "from the plain language of the statute." *Id.* (citing *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct. App. 1996)).

Utilizing these guideposts of statutory interpretation, the Court of Appeals recognized that code section 15-79-125(A) "imposes *prelitigation* filing requirements upon individuals intending to file suit for medical malpractice"<sup>3</sup>, while code section 15-36-100 "establishes requirements for filing *complaints* in actions for damages based upon professional

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<sup>3</sup> Code section 15-79-125 (A) requires that "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." Further, code sections 15-79-125(C) and (E) require the parties in a malpractice action to "participate in a mediation conference" prior to the filing of a summons and complaint by the plaintiff.

negligence.” *Ranucci*, 397 S.C. at 172-73, 723 S.E.2d at 244 (emphasis added). With that in mind, the Court of Appeals reasoned that “despite apparent confusion. . . these statutes do not conflict.” *Id.* at 175-76, 723 S.E.2d at 246. Expounding on this, the Court of Appeals stated:

Each statute governs a distinct 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[;] section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit.

*Id.* at 176, 723 S.E.2d at 246.

As discussed above, code section 15-79-125(A) states that its affidavit requirement is “subject to the affidavit requirements of section 15-36-100.” Thus, as the Court of Appeals found in *Ranucci*, “the narrow question. . . is precisely which requirements of section 15-36-100 constitute the affidavit requirements referenced by section 15-79-125(A).” *Ranucci*, 397 S.C. at 176, 723 S.E.2d at 246. Examining that question, the Court of Appeals recognized that code section 15-36-100 contains both “substantive requirements for the authorship and content of affidavits by expert witnesses” as well as “procedural requirements relating to such affidavits when filed with a complaint.” *Id.* In finding that code section 15-79-125(A) “invokes only the provisions of 15-36-100 governing the preparation and content of the affidavit<sup>4</sup>,” the Court of Appeals discussed that the “plain language of section 15-36-100, which ties the filing of affidavits under that statute to a complaint or other initial pleading,

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<sup>4</sup> Code section 15-36-100(A) lists the requirements for one to qualify as an expert and code section 15-36-100(B) is clear that the affidavit “must specify at least one negligent act or omission claimed to exist and the factual basis for each claim.”

prevents the remaining provisions from applying to affidavits filed pursuant to section 15-79-125.” *Ranucci*, 397 S.C. at 177, 723 S.E.2d at 246.

Additionally, the Court of Appeals reasoned that the General Assembly’s intent “is further reflected in the effects of each statute’s provisions.” *Id.* at 177, 723 S.E.2d at 247. While the affidavit requirement under code section 15-79-125 “enables potential litigants to . . .gather information and pursue a resolution of their medical malpractice disputes without . . .fear of losing his or her right to file suit,” an affidavit filed under code section 15-36-100 “is part of the complaint,” and is “for the purpose of the circuit court’s evaluation of motions and the merits of the plaintiff’s case.” *Ranucci*, 397 S.C. at 178, 723 S.E.2d at 247. (citing Rule 56(c), SCRCP). Since the latter carries more importance, the General Assembly “provided the parties the rights to challenge. . .and cure any defects in it.” *Id.* This stands in juxtaposition to the affidavit required by code section 15-79-125 which does not “carry any additional significance that would necessitate implementing [such] measures.” *Id.*

Thus, the Court of Appeals held that code sections 15-36-100 and 15-79-125 “operate[d] independently of one another, except that section 15-79-125 relies upon the provisions of section 15-36-100 concerning the preparation and content of an affidavit of a medical expert.” *Ranucci*, 397 S.C. at 177, 723 S.E.2d at 247 at n. 2. Applying the rule to the facts of *Ranucci*, the Court of Appeals found that the lower court in that case did not err in dismissing the notice of intent for “failure to comply with the contemporaneous affidavit requirement of section 15-79-125.” *Id.* at 178-79, 723 S.E.2d at 247-48.

Like the plaintiff in *Ranucci*, Petitioner filed a timely notice of intent alleging medical malpractice but failed to file an expert affidavit contemporaneously with the filing of the notice of intent. (Appendix pp. 28-29; *Ranucci*, 397 S.C. at 170, 723 S.E.2d at 243).

Further, like the plaintiff in *Ranucci*, Petitioner filed an expert affidavit at a later date.<sup>5</sup> (Appendix 62-90; *Ranucci*, 397 S.C. at 170, 723 S.E.2d at 243). Thus, the rule application is the same. For the simple reason that Petitioner failed to comply with the statutory requirement of code section 15-79-125(A) that a plaintiff must contemporaneously file an expert affidavit with their notice of intent to file suit, the Court of Appeals correctly affirmed that Petitioner's notice of intent, just as in *Ranucci*, was properly dismissed. (Appendix pp. 278; *Ranucci*, 397 S.C. at 179, 723 S.E.2d at 248).

## **II. THE PETITIONER FAILS TO SHOW "SPECIAL AND IMPORTANT REASONS" FOR WHICH A WRIT OF CERTIORARI SHOULD BE GRANTED IN THIS MATTER.**

Petitioner contends that this matter is appropriate for a writ of certiorari, but she fails to show the existence of any "special and important reasons" as discussed in South Carolina Appellate Court Rule 242(b). That rule is suggestive of circumstances in which the Supreme Court may decide to grant certiorari.<sup>6</sup> Among the reasons listed are:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision

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<sup>5</sup> Not only did Mrs. Adams fail to contemporaneously file an expert affidavit, but she also failed to file any expert affidavit within the applicable limitations period. *See* S.C. Code Ann. § 15-3-545.

<sup>6</sup> Respondent acknowledges that these "considerations" are "neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general." Rule 242, SCACR.

of the Supreme Court.

- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

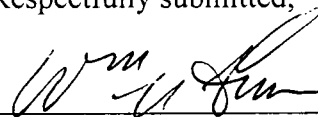
Rule 242(b), SCACR.

In this matter, an analysis of the above standards demonstrates that the petition for a writ of certiorari should be denied. There are no novel questions of law in this case. Rather, the Court of Appeals considered all of Petitioner's arguments and found *Ranucci* to be directly on point. (Appendix p. 279). Also weighing against a writ of certiorari in this case is the fact that there was no dissent in the decision of the Court of Appeals. Additionally, Petitioner neither argues that the opinion of the Court of Appeals conflicts with Supreme Court precedent, nor that there are "substantial constitutional issues" or federal questions involved in the present action. As such, the petition for writ of certiorari must fail.

### CONCLUSION

For the reasons set forth above, the Court of Appeals correctly affirmed the lower court's order granting Amisub's motion to dismiss for plaintiff's failure to comply with the pre-suit requirements of code section 15-79-125, and the matter presents no "special or important reasons" based on which this Court should grant a writ of certiorari. Accordingly, the petition should be denied.

Respectfully submitted,



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March 20, 2014

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
John C. Hayes, III, Circuit Court Judge

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Appellate Case No. 2012-212832

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Ann P. Adams, as Personal Representative of the  
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Associates, PA. and as Agent, Servant or Employee of Amisub of South Carolina, Inc. d/b/a  
Piedmont Medical Center and d/b/a Piedmont Healthcare System, and Rock Hill Radiology  
Associates, P.A. South Carolina Emergency Physicians, LLC, Defendants,

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Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant,  
Employee of South Carolina Emergency Physicians, LLC, and as Agent, Servant, or Employee of  
Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System; Jason Price, Radiologic  
Technologist, Individually and as Agent, Servant, Or Employee of Amisub of South Carolina, Inc.,  
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System are Respondents.

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**PROOF OF SERVICE**

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The undersigned hereby certifies that on this 24<sup>th</sup> day of March 2014, he has served counsel  
for Appellant Ann P. Adams, as Personal Representative of the Estate of Jacob E. Adams and  
counsel for Respondent Stacie L. Versen-Rampey, NP with a copy of Respondent Amisub of South

Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System and Jason Price, Radiologic Technologist's Return to Petitioner's Petition for Writ of Certiorari in this matter by mailing copies of the same by United States Mail, postage prepaid, to the following addresses:

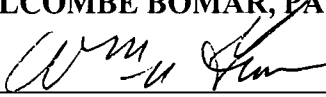
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Spartanburg, SC  
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