

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner  
T. Scott Beck, Commissioner  
Melody L. James, Commissioner

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MAR 26 2014

SC Court of Appeals

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**Appellate Tracking Number : 2012-212972**

W.C.C. File No. 0905086

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Alison Morrett,

Employee, Claimant, Appellant,

v.

Capital City Ambulance of GA, Ltd. and  
Companion Property and Casualty Group,

Employer, Carrier, Respondents.

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**APPELLANT'S REPLY TO RESPONDENTS' RETURN TO APPELLANT'S MOTION  
TO SEAL**

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Pursuant to Rule 240(f) of the South Carolina rules of Appellate Practice, Appellant Alison Morrett (hereinafter "Appellant") submits this reply to Respondents' Return to Appellant's Motion to Seal. The Motion to Seal is warranted given the fact that much of the Record contains or references the Appellant's psychological records which often discuss abuse endured by the Appellant when she was a minor. Such records carry with them an expectation of privacy and an expectation that they remain private and outside of the public domain. For the reasons stated herein, Appellant's motion should be granted.

## **PROCEDURAL BACKGROUND**

This claim was originally an accepted workers' compensation claim involving a physical knee injury. The original knee injury occurred on May 11, 2009. After the Appellant had multiple knee surgeries it became apparent that the physical injury and the multiple surgeries were aggravating the Appellant's preexisting psychological issues. Appellant therefore filed a Form 50 on November 15, 2011 adding psychological as part of her claim.

The psychological issue was tried before the Single Commissioner on February 6, 2012. The Single Commissioner ruled that the psychological condition had been aggravated by the admitted physical injury. The Respondents' then appealed to the Full Commission. The Full Commission reversed the decision of the Single Commission and held that the psychological condition had not been aggravated by the admitted physical injury. It is true that at no time during the pendency of this matter before the South Carolina Workers' Compensation Commission did the Appellant file a Motion To Seal the Record in this matter. The Full Commission decision was appealed by Appellant and is now pending before the South Carolina Court of Appeals.

## **LEGAL STANDARD**

The Appellant is familiar with *Ex parte: Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006) (citing *Davis v. Jennings*, 304 S.C. 502, 506, 405 S.E.2d 601, 603 (1991)). Each factor of *Ex parte: Capital U-Drive-It, Inc* was addressed within the Appellant's Motion to Seal. When the factors are considered the Appellant would argue that the Motion to Seal should be granted.

## **ARGUMENT**

As mentioned above there was no Motion to Seal filed with the South Carolina Workers'

Compensation Commission because such a motion is not necessary in that setting. Medical records filed with the Commission are not made available to the public. Although the hearings may be public and the administrative opinions available, the file and records are not available for public access. Furthermore, there is no online database which allows the public to view materials that have been filed with the South Carolina Workers' Compensation Commission.

Now that this matter is before the South Carolina Court of Appeals, these records are readily available to the public, unlike when the claim was only at the South Carolina Workers' Compensation Commission. Given the advancement of technology and the availability of Court filings via the online database one does not have to leave their home to access the record in this case. That is the basis of the Appellant filing the Motion to Seal at this time. Furthermore, there is no benefit to the Respondents in allowing these records to remain open to the public other than to embarrass and discourage Appellant from pursuing this matter.

Psychological records by their very nature have an expectation of privacy. Specifically, there are psychological records contained in the Record on Appeal at pages 252 to 354 and pages 518 to 1341 as well as the Appendix to Record on Appeal at page 2 and 3. All of these records refer to very personal matters, including abuse the Appellant endured as a minor. In support of this motion the Appellant would show that sealing these documents and those listed in the Motion to Seal will not interfere with either parties' right to a fair trial or hearing nor will sealing the documents listed in the Motion to Seal interfere with witness cooperation. The Appellant would show that the records included and referred to are of the kind that one would expect to be kept confidential and it would be very harmful to the claimant to have these records available to the public for viewing. There are no alternatives to sealing as the records must be included in the Record On Appeal as they go to the heart of the issues surrounding the appeal. This action is not of public or professional significance.

Public health and safety would be best served by assuring those who seek psychological treatment confidentiality.

Furthermore, the Appellant is a private citizen and has no public status and there is no public interest in this proceeding. Keeping the requested documents available for public viewing would not enhance the public's understanding of any important historical event, the public would not already have access to such personal records of the claimant nor will sealing these documents offend the fundamental interests of public access.

Within the Respondents' Return to the Appellant's Motion to Seal they infer that the Appellant used her pre-injury psychological records to advance her claim. That is not accurate. The vast majority of the psychological records within the Record in this matter were placed into evidence by the Respondents. It is true that they were listed within Morrett's Designation of Matters to be Included in the Record on Appeal because they had been introduced by the Respondents at the hearing before the Single Commission and were a part of the record at the Full Commission Hearing. There was no denying that they would have to be considered during the appeal to the South Carolina Court of Appeals. Appellant, Morrett, has not provided her pre-injury records to any retained experts as the Appellant had no retained experts. The opinions relied on by the Appellant were rendered by the Appellant's authorized treating physician who was selected by the Respondents and she also relied on the opinions of her treating counselor.

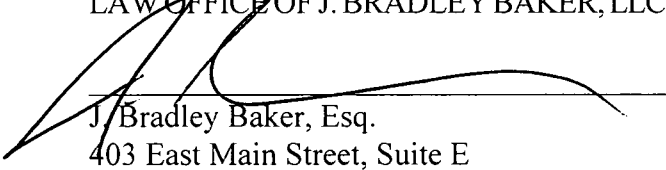
When the factors laid out by the South Carolina Supreme Court in *Ex parte: Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006) (citing *Davis v. Jennings*, 304 S.C. 502, 506, 405 S.E.2d 601, 603 (1991)) are considered the Appellant would argue the Motion to Seal should be granted.

**CONCLUSION**

For the reasons stated herein, the Appellant respectfully submits that she is entitled to an Order granting her Motion to Seal.

Respectfully submitted,

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March 24, 2014  
Lexington, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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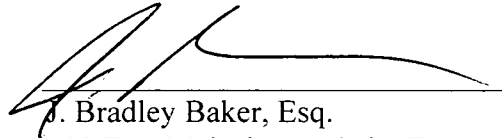
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I certify this 24<sup>th</sup> day of March 2014 that I have served a copy of the Appellant's Reply to Respondents' Return to Appellant's Motion to Seal upon other counsel, by mailing a copy of same, postage prepaid in the United States mail, addressed to the following:

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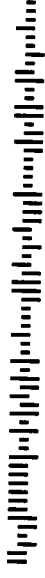


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**SC Court of Appeals**



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