

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

HONORABLE R. MARKLEY DENNIS, JR.
CIRCUIT COURT JUDGE

RECEIVED

JUN 05 2014

C.A. NO. 2013-CP-10-00090
CT. APP. NO.: 2013-001682

SC Court of Appeals

ARTHUR PETER ROWE.....Plaintiff/Appellant

vs.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; ROPER ST. FRANCIS FOUNDATION, D/B/A ROPER ST. FRANCIS HEALTHCARE; BON SECOURS-ST. FRANCIS HEALTH SYSTEM FOUNDATION, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; ROPER HOSPITAL, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; BYRON N. BAILEY, M.D.; CHRISTINE C. THOMPSON, M.D., A/K/A CHRISTINE THOMPSON, M.D.; CHARLESTON NEUROSURGICAL ASSOCIATES, LLC; MT. PLEASANT ANESTHESIA ASSOCIATES, PA; CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, D/B/A CHARLESTON SURGERY CENTER; TAMMY MCGRAW, CRNA, ALSO KNOWN AS TAMMY MCGRAW SPEICHER, CRNA; NURSE ANESTHESIA OF SOUTH CAROLINA, LLC; JEFFERY S. WAGER, CRNA; TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC.; AND STEVEN HEATH COBB,.....Defendants/Respondents

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ARTHUR PETER ROWE.....Plaintiff/Appellant

vs.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; ROPER ST. FRANCIS FOUNDATION, D/B/A ROPER ST. FRANCIS HEALTHCARE; BON SECOURS-ST. FRANCIS HEALTH SYSTEM FOUNDATION, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; ROPER HOSPITAL, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; BYRON N. BAILEY, M.D.; CHRISTINE C. THOMPSON, M.D., A/K/A CHRISTINE THOMPSON, M.D.; CHARLESTON NEUROSURGICAL ASSOCIATES, LLC; MT. PLEASANT ANESTHESIA ASSOCIATES, PA; CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, D/B/A CHARLESTON SURGERY CENTER; TAMMY MCGRAW, CRNA, ALSO KNOWN AS TAMMY MCGRAW SPEICHER, CRNA; NURSE ANESTHESIA OF SOUTH CAROLINA, LLC; JEFFERY S. WAGER, CRNA; TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC.; AND STEVEN HEATH COBB,.....Defendants/Respondents

RECORD ON APPEAL

ARTHUR PETER ROWE, PRO SE
52 Chadwick Drive
Charleston, South Carolina 29407
Phone: (843) 737-0733

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe and Arthur Peter Rowe

CASE NO.

2013-CP-10-00090 & ~~2013-CP-10-00088~~

☐ Plaintiff(s),

Versus

ORDER

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a
Bon Secours St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis Health System,
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,
et al.

☒ Defendant(s).

check box above indicating submitting party

Pro Se Plaintiff:

Beverly C. Moore-Rowe
Arthur Peter Rowe
52 Chadwick Drive
Charleston, SC 29407

Defendant's attorney:

Jeffrey M. Bogdan (SC #76354)
Hood Law Firm, LLC
172 Meeting Street, P.O. Box 1508
Charleston SC 29402
Phone: (843) 577-1207; Fax: (843) 722-1630
Email: Jeffrey.Bogdan@hoodlaw.com

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Minutes

Court Reporter Needed: YES ☐ / NO ☐

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order –

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff(s) / ☒ Defendant(s)

Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: _____

☒ EXEMPT:
(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRPC)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE

CODE: 2060

DATE: 6-28-2013

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED-AMOUNT DUE: _____

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-00090 CP-Charleston

FILED

Arthur Peter Rowe

2013 JUL -3 PM 3:02

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____ Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis Healthcare, Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA, Charleston
Surgery Center Limited Partnership, d/b/a
Charleston Surgery Center, Tammy McGraw,
CRNA, also known as Tammy McGraw
Speicher, CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath Cobb

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jeffrey M. Bogdan (SC #76354)

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

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

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

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

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

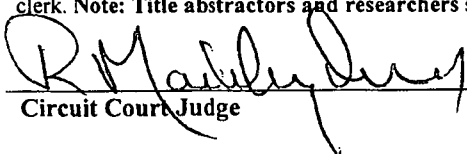
ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2060
Judge Code

6-28-2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

[illegible]

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

- SCRCP Form 4C (03/2013)

8

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically

requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

) IN THE COURT OF COMMON PLEAS

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BY

2013 JUL -3 PM 3:02

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РНОФ/1

Thompson, M.D., a/k/a Christine Thompson, M.D.; Fred W. Suggs, III, Esquire appeared on behalf of Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc.; Shawn T. Pinkston, Esquire appeared on behalf of Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Darren K. Sanders, Esquire appeared on behalf of Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC; Andrew S. Halio, Esquire appeared on behalf of Defendant Steven Heath Cobb; Christine Kent Toporek, Esquire appeared on behalf of Defendants Bon Secours St. Francis Xavier Hospital d/b/a Bon Secours St. Francis Xavier Hospital, Roper St. Francis Healthcare, Roper St. Francis Foundation d/b/a Roper St. Francis Healthcare, and Roper Hospital Inc. d/b/a Roper St. Francis Healthcare. Memoranda of law were submitted by the parties and incorporated into the record and oral arguments were entertained. After having reviewed the pleadings and having considered the arguments and legal memoranda of the parties, I grant the Defendants' Motions to Dismiss on the grounds that (1) the Plaintiff failed to file a Notice of Intent to File Suit and an expert affidavit prior to filing his Complaint as mandated by South Carolina Code Section 15-79-125; and (2) the Plaintiff failed to file an expert affidavit with his Complaint as mandated by South Carolina Code Section 15-36-100.

FACTS

The Plaintiff filed a Complaint on January 7, 2013 alleging one cause of action for loss of consortium based on the alleged medical negligence arising out of a January 7, 2010 cervical spine surgery performed on his wife, Beverly Moore-Rowe.¹ Plaintiff failed to file a Notice of Intent to File Suit prior to filing his Complaint and failed to contemporaneously file an expert affidavit with his Complaint. Numerous Defendants filed Motions to Dismiss based on these procedural failures. Defendants Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA have pending Motions to Dismiss based on insufficient service of process in this action. As such, Defendants Jeffery S. Wager and Tammy McGraw Speichers did not enter an appearance at this hearing. Nurse Anesthesia of South Carolina only entered an appearance in the phase of this hearing dedicated to the action of Beverly C. Moore-Rowe. Their pending Motions to Dismiss have been rendered moot by this Order.

STANDARD ON DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004) aff'd 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.

¹ Plaintiff's wife filed a Notice of Intent to File Suit on the same day the Plaintiff filed his Complaint. C/A No. 2013-CP-10-00088. The Defendants in that case, which are the same Defendants in this case, filed Motions to Dismiss Plaintiff's wife's Notice of Intent. Those Motions were heard and granted at the same time as the Motions to Dismiss in this case.

App. 2007). An expert affidavit filed pursuant to South Carolina Code Section 15-36-100 is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case. Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), cert. pending.

PROCEDURAL REQUIREMENTS TO BRING A PROFESSIONAL NEGLIGENCE ACTION

This is a medical malpractice action and therefore is governed by the procedural requirement set forth in South Carolina Code Sections 15-79-125 and 15-36-100. These procedural statutes apply independently of one another as "each statute governs a distinct time period during the litigation process, and those time periods are consecutive." Id. at 176, 723 S.E.2d at 246. "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." Id. In the instant case, the Plaintiff failed to comply with the filing requirements of section 15-79-125 and section 15-36-100.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code Section 15-79-125 establishes the prelitigation requirements for medical malpractice actions. Id. Section 15-79-125(A) states, in pertinent part, "[p]rior 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" S.C. Code Ann. §15-79-125(A). "This provision imposes two requirements on the affidavit, that it be filed at the

same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100." Ranucci, 397 S.C. at 176, 723 S.E.2d at 246.

Plaintiff's Complaint alleging loss of consortium is a civil action alleging injury as a result of medical malpractice. See Creighton v. Coligny Plaza Limited Partnership, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability for the spouse's injuries, as well as damages to the plaintiff resulting from the spouse's injury."). Because the Plaintiff's spouse's injuries are alleged to be the result of medical negligence, the Plaintiff's Complaint alleges his injury as a result of medical negligence. Accordingly, the Plaintiff was required to comply with the provisions of § 15-79-125(A). By failing to file a Notice of Intent to File Suit and an expert affidavit before filing his Complaint, Plaintiff failed to comply with § 15-79-125(A) and, therefore, the Court find his Complaint is procedurally inappropriate. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-79-125.

SOUTH CAROLINA CODE SECTION 15-36-100 BARS THIS ACTION

The Plaintiff also failed to file an expert affidavit contemporaneously with his Complaint as required by South Carolina Code Section 15-36-100. South Carolina Code Section 15-36-100 establishes the procedures for commencing suits for professional negligence, including medical malpractice. Ranucci, 397 S.C. at 173, 723 S.E.2d at 244. Section 15-36-100 "requires the plaintiff to craft a viable complaint supported by the sworn testimony of a qualified expert witness. Because an affidavit filed pursuant to this section is a 'part of the complaint,' it is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case." Id. at 178, 723 S.E.2d at 247.

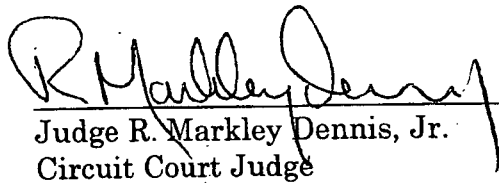
Plaintiff's Complaint is an action for damages based on professional negligence. All of the named Defendants are professional health care providers. Accordingly, Plaintiff was required to comply with §15-36-100 in filing his Complaint. Plaintiff failed to so comply when he filed his Complaint without an expert affidavit. Section 15-36-100(C)(1) does provide an exception allowing a Plaintiff to supplement the complaint with an expert affidavit within 45 days of filing. Plaintiff failed to argue that this exception applied. Further, Plaintiff's Complaint was filed January 7, 2013 and the Plaintiff failed to file an expert affidavit within 45 days. Finally, the Court further finds that any common knowledge exception does not apply here, because the Plaintiff has sued numerous different health care providers, including a neurosurgeon and an anesthesiologist, alleging medical negligence and the determination of the merits exceed the bounds of common knowledge. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-36-100(C)(1).

NOW, THEREFORE, based on the foregoing it is

ORDERED, that the Defendants' Motions to Dismiss be, and hereby are, granted and this action be dismissed as to all Defendants;

AND IT IS SO ORDERED.

June 28, 2013
Charleston, South Carolina


Judge R. Markley Dennis, Jr.
Circuit Court Judge

RMD/6

2. Order Of The Honorable Judge R. Markley Dennis, Jr. Dated June 28, 2013 Granting Motions To Dismiss In Case Number: 2013-CP-10-0088

[Pages 18 through 29, attached]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe and Arthur Peter Rowe

CASE NO.

~~2013-CP-10-00090~~ & 2013-CP-10-00088

☐ Plaintiff(s),

Versus

ORDER

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a
Bon Secours St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis Health System,
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,
et al.

☒ Defendant(s).

check box above indicating submitting party

Pro Se Plaintiff: Beverly C. Moore-Rowe Arthur Peter Rowe 52 Chadwick Drive Charleston, SC 29407		Defendant's attorney: Jeffrey M. Bogdan (SC #76354) Hood Law Firm, LLC 172 Meeting Street, P.O. Box 1508 Charleston SC 29402 Phone: (843) 577-1207; Fax: (843) 722-1630 Email: Jeffrey.Bogdan@hoodlaw.com	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed: Minutes		Court Reporter Needed: YES ☐ / NO ☐	
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order – I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff(s)/ ☒ Defendant(s)		Date submitted	
SECTION III: Motion Fee			
☐ PAID – AMOUNT: _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE: 2060 DATE: 6-28-2013	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		DATE FILED	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED-AMOUNT DUE: _____			

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-00088 CP-Charleston

Beverly C. Moore-Rowe

2013 JUL -3 PM 3:03

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis Healthcare, Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA, Charleston
Surgery Center Limited Partnership, d/b/a
Charleston Surgery Center, Tammy McGraw,
CRNA, also known as Tammy McGraw
Speicher, CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath Cobb

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jeffrey M. Bogdan (SC #76354)

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify
arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

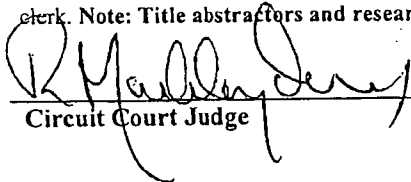
IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment
by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2060
Judge Code

6-28-2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page, possibly from a composition book. The edges of the paper are slightly irregular, suggesting it might be a scan of a physical document. There is no handwriting or other markings on the page.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

- 21

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically

requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

Versus

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis
Xavier Hospital, Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours Health
System, Inc., d/b/a Bon Secours St.
Francis Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis
Health System Foundation, Inc., d/b/a
Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt.
Pleasant Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston Surgery
Center, Tammy McGraw, CRNA, also
known as Tammy McGraw Speicher,
CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath
Cobb,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-10-00088

ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUL -3 PM 3:02

FILED

This matter came before the Court on Motions to Dismiss filed by all Defendants. A hearing was held on May 31, 2013. The Plaintiff appeared *pro se*.

Jeffrey Michael Bogdan, Esquire appeared on behalf of the Defendant Christine C.

Rm09/11

Thompson, M.D., a/k/a Christine Thompson, M.D.; Fred W. Suggs, III, Esquire appeared on behalf of Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc.; Shawn T. Pinkston, Esquire appeared on behalf of Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Darren K. Sanders, Esquire appeared on behalf of Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC; Andrew S. Halio, Esquire appeared on behalf of Defendant Steven Heath Cobb; Jonathan Dunlap, Esquire appeared on behalf of Nurse Anesthesia of South Carolina, LLC; Christine Kent Toporek, Esquire appeared on behalf of Defendants Bon Secours St. Francis Xavier Hospital d/b/a Bon Secours St. Francis Xavier Hospital, Roper St. Francis Healthcare, Roper St. Francis Foundation d/b/a Roper St. Francis Healthcare, and Roper Hospital Inc. d/b/a Roper St. Francis Healthcare. Memoranda of law were submitted by the parties and incorporated into the record and oral arguments were entertained. After having reviewed the pleadings and having considered the arguments and legal memoranda of the parties, I grant the Defendants' Motions to Dismiss on the grounds that the Plaintiff failed to file an expert affidavit contemporaneously with her Notice of Intent to File Suit as mandated by South Carolina Code Section 15-79-125.

FACTS

The Plaintiff filed a Notice of Intent to File Suit on January 7, 2013 alleging medical negligence arising out of a January 7, 2010 cervical spine surgery. Plaintiff failed to contemporaneously file an expert affidavit with her Notice of Intent. Plaintiff asserted in her Notice of Intent that S.C. Code § 15-36-100(C)(1) allowed her to supplement her pleading with an expert affidavit.

Each Defendant then filed separate Motions to Dismiss the Plaintiff's Notice of Intent to File Suit based on her failure to contemporaneously file an expert affidavit.

Defendants Jeffery S. Wager, CRNA and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA have pending Motions to Dismiss based on insufficient service of process in this action. As such, these parties did not enter an appearance at this hearing. Their pending Motions to Dismiss have been rendered moot by this Order.

STANDARD ON DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004) aff'd 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). An expert affidavit filed pursuant to South Carolina Code Section 15-36-100 is a pleading for the purpose of the circuit court's evaluation of motions and

the merits of the plaintiff's case. Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), cert. pending.

PROCEDURAL REQUIREMENTS TO BRING A PROFESSIONAL NEGLIGENCE ACTION

This is a medical malpractice action and therefore is governed by the procedural requirement set forth in South Carolina Code Sections 15-79-125 and 15-36-100. These procedural statutes apply independently of one another as "each statute governs a distinct time period during the litigation process, and those time periods are consecutive." Id. at 176, 723 S.E.2d at 246. "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." Id. In the instant case, the Plaintiff failed to comply with the filing requirements of section 15-79-125.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code Section 15-79-125 establishes the prelitigation requirements for medical malpractice actions. Id. Section 15-79-125(A) states, in pertinent part, "[p]rior 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" S.C. Code Ann. §15-79-125(A). "This provision imposes two requirements on the affidavit, that it be filed at the same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100." Ranucci, 397 S.C. at 176, 723 S.E.2d at 246.

South Carolina Code § 15-36-100 enumerates certain requirements for filing complaints in actions for damages based on professional negligence including subsection B which requires the plaintiff to file an expert affidavit contemporaneously with the complaint. Subsection (C)(1) of §15-36-100 provides an exception to the contemporaneous affidavit requirement when the applicable statute of limitations will expire within 10 days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert affidavit could not be prepared. Subsection 15-36-100(C)(1) allows the plaintiff 45 days to supplement the complaint with an expert affidavit.

In Ranucci, the Court of Appeals clarified that § 15-36-100 establishes procedures for bringing "suits for professional negligence against professionals in twenty-two different areas, including medical doctors." 397 S.C. at 175, 723 S.E.2d at 246. The Court found that § 15-79-125 establishes pre-litigation requirements for only medical malpractice actions. Id. The Ranucci Court ultimately held that the two statutes operate independently of one another and § 15-36-100(C)(1) does not allow a plaintiff an exception to § 15-79-125's requirement that an expert affidavit be filed contemporaneously with a notice of intent to file suit. Id. at 178, 723 S.E.2d at 247.

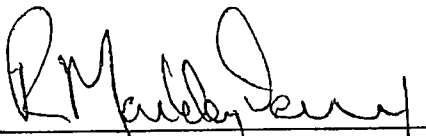
Here, the Court finds that the Plaintiff's Notice of Intent to File Suit was defective because it was not filed contemporaneously with an expert affidavit. The Court further finds that any exception to the contemporaneous filing espoused in § 15-36-100(C)(1) is not applicable here. The Court further finds that any common knowledge exception does not apply here, because the Plaintiff has sued numerous different health care providers, including a neurosurgeon and an anesthesiologist,

alleging medical negligence and the determination of the merits exceed the bounds of common knowledge.

NOW, THEREFORE, based on the foregoing it is

ORDERED, that the Defendants' Motions to Dismiss be, and hereby are, granted and this action be dismissed as to all Defendants;

AND IT IS SO ORDERED.



Judge R. Markley Dennis, Jr.
Presiding Judge

June 28, 2013
Charleston, South Carolina

3. Judgment Of The Honorable Judge R. Markley Dennis, Jr. Dated June 12, 2013 Granting Defendants' Motion To Dismiss In Case Number: 2013-CP-10-00090.

[Pages 31 through 34, attached]

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-0090

Arthur Peter Rowe

Bon Secours St. Francis Xavier Hospital Inc,
et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss (atty James Bernard Hood) was granted. Defendant's Motion to Dismiss (atty Darren Kent Sanders) was granted. Defendant's Motion to Dismiss (atty Fred W. Suggs III) was granted. Defendant's Motion to Dismiss (atty Jack G Gresh) was granted. Defendant's Motion to Dismiss (atty Christine Kent Toporek) was granted. Defendant's Motion to Dismiss (atty Andrew Steven Halio) granted. Formal Orders to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

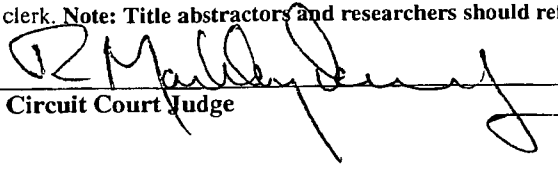
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2060

Judge Code

6/12/13

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-0090

Arthur Peter Rowe

Bon Secours St. Francis Xavier Hospital Inc,
et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss (atty James Bernard Hood) was granted. Defendant's Motion to Dismiss (atty Darren Kent Sanders) was granted. Defendant's Motion to Dismiss (atty Fred W. Suggs III) was granted. Defendant's Motion to Dismiss (atty Jack G Gresh) was granted. Defendant's Motion to Dismiss (atty Christine Kent Toporek) was granted. Defendant's Motion to Dismiss (atty Andrew Steven Halio) granted. Formal Orders to follow.

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INFORMATION FOR THE JUDGMENT INDEX

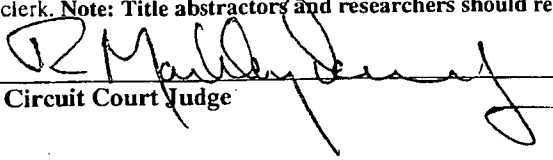
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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2060
Judge Code

6/12/13
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

4. Appellant's Wife's Notice Of Intent To File Suit of Appellant filed in the Court of Common Pleas at Case Number: 2013-CP-10-00088

[Pages 36 through 79, attached]

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Beverly C. Moore-Rowe

Plaintiff(s)

vs.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia Of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing And Management, Inc., and Steven Heath Cobb,

Defendant(s)

(Please Print)

Submitted By: Beverly C. Moore-Rowe

Address: 52 Chadwick Drive; Charleston, S.C. 29407

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 0088

SC Bar #: Pro Se Plaintiff
Telephone #: 843-763-2599
Fax #:
Other: 843-737-0733
E-mail: excommunicated@comcast.net

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.

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 | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-____- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☒ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |

- | | | | |
|--|--|--|---|
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ 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 (850)
☐ 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 (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) |
|---|--|

Submitting Party Signature: Beverly Moore-Rowe Date: 01/07/2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, 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, 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 CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 0088

NOTICE OF INTENT TO FILE SUIT

FILED
2013 JAN -7 PM 2:37
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

Defendants)
_____)

THE PLAINTIFF HEREIN, Beverly C. Moore-Rowe (hereinafter referred to herein as the "**Plaintiff**") hereby submits this Notice of Intent to File Suit pursuant to Section 15-79-125 of the South Carolina Code of Laws of 1976, as amended (hereinafter referred to herein as the "**S.C. Code**").

1. **ADVERSE PARTIES.**

1.1 The Defendant, **Bon Secours-St. Francis Xavier Hospital, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Xavier Hospital, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.2. The Defendant, **Bon Secours St. Francis Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours St. Francis Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.3. The Defendant, **Bon Secours Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a Maryland corporation registered to do business in the State of South Carolina . It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.4. The Defendant, **Roper St. Francis Foundation**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper St. Francis Foundation held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.5. The Defendant, **Bon Secours-St. Francis Health System Foundation, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Health System Foundation, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.6. The Defendant, **Roper Hospital, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper Hospital, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.7. The Defendant, **Byron N. Bailey, M.D.** is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in neurology.

1.8. The Defendant, **Christine Thompson, M.D.**, also known as Christine C. Thompson, M.D., is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in anesthesiology.

1.9. The Defendant, **Tammy McGraw, CRNA**, also known as Tammy McGraw Speicher, CRNA, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.10. The Defendant, **Jeffery S. Wager, CRNA**, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.11. The Defendant, **Charleston Neurosurgical Associates, LLC**, is a South Carolina limited liability company organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.12. The Defendant, **Mt. Pleasant Anesthesia Associates, PA**, is a South Carolina Corporation, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.13. The Defendant, **Charleston Surgery Center Limited Partnership**, doing business as Charleston Surgery Center, is a South Carolina Limited Partnership organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.14. The Defendant, **Nurse Anesthesia Of South Carolina, LLC**, is a South Carolina Limited Liability Company, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.15. The Defendant, **Tricoastal Healthcare Billing And Management, Inc.**, is a South Carolina Corporation organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.16. The Defendant, **Steven Heath Cobb** (hereinafter referred to herein as "**Defendant Student**") is a resident of the State of South Carolina, County of Greenville, at all times relevant herein, was a student nurse anesthetist not then licensed to practice as a nurse anesthetist in the State of South Carolina and not then a Certified Registered Nurse Anesthetist, but was at that time a Student Certified Registered Nurse Anesthetist ("**SCRNA**").

2. A SHORT AND PLAIN STATEMENT OF FACTS SHOWING THAT THE PARTY FILING THE NOTICE OF INTENT IS ENTITLED TO RELIEF.

On January 7, 2010, the Plaintiff, Beverly C. Moore-Rowe, was admitted to Bon Secours-St. Francis Xavier Hospital, Inc. ("**Defendant St. Francis**"), by her physician, Byron N. Bailey, M.D. for anterior cervical spine surgery consisting of anterior cervical discectomy with fusion, as treatment for Plaintiff's neck pain and complaints of bilateral arm numbness and other symptoms.

The Plaintiff met with Tammy McGraw, CRNA ("**Defendant McGraw**"), the Certified Registered Nurse Anesthetist, and at that time Defendant McGraw introduced the Plaintiff to Steven Heath Cobb ("**Defendant Student**"), who was then a Student Certified Registered Nurse Anesthetist. Defendant McGraw requested Plaintiff's permission for Defendant Student to observe Plaintiff's Surgical procedure. The Plaintiff never gave any consent or permission whatsoever, verbally, written or otherwise, for the Defendant Student to administer any medical services, including those normally performed by a Certified Registered Nurse Anesthetist, such as the endotracheal intubation of the Plaintiff as patient. Had the Plaintiff been asked for permission to allow Defendant Student to administer the endotracheal intubation, she would have refused to give such permission.

The Plaintiff specifically stated to Defendant McGraw prior to her surgery that she was a singer with the Symphony Gospel Chorus and Symphony and asked her to please protect the Plaintiff's vocal chords, knowing that she would be receiving general anesthesia endotracheal intubation. Plaintiff also asked Defendant McGraw to make certain Plaintiff received sufficient oxygen.

The Plaintiff had also requested that she have an Anesthesiologist and was relieved to know that Christine Thompson, MD ("**Defendant Thompson**") was the Anesthesiologist for her procedure.

On January 7, 2010, the Defendant Bailey performed the anterior cervical spine surgery (the "**Surgery**") on the Plaintiff in Defendant St. Francis with Defendant Thompson serving as the Plaintiff's Anesthesiologist, and Defendant McGraw serving as Plaintiff's Certified Registered Nurse Anesthetist and Jeffery S. Wager, CRNA ("**Defendant Wager**") also serving as Plaintiff's Certified Registered Nurse Anesthetist.

Without the Plaintiff's prior knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff during her Surgery and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff as patient in her surgery.

The Plaintiff remained in the Defendant Hospital from January 7, 2010 through January 10, 2010, at which time she was referred for rehabilitation services through Defendant Hospital, due to difficulties in swallowing and speech.

After the Surgery, the Plaintiff has suffered from serious and permanent injuries including dizzy spells, blocked right ceratoid, hoarseness in her voice, difficulty with speech, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue changes in her temperament, and other executive physical function problems, which the Plaintiff, under information and belief, is the result of the Surgery, and in particular, the endotracheal intubation.

The Plaintiff began to inquire her physicians and other physicians to determine the cause of her ailments and injuries that began after her Surgery.

As a result of the Surgery, Plaintiff was caused to undergo additional painful and costly medical exams and procedures and has suffered and continues to suffer the serious and permanent injuries and pain and suffering stated above and mental anguish therefrom.

In addition, attached hereto as **Exhibit A**, and incorporated herein by specific reference thereto, is a complete copy of the Complaint that sets forth the factual allegations and legal claims, as well as the identity of the Defendants.

3. **ANSWERS TO STANDARD INTERROGATORIES**

Attached hereto as **Exhibit B** and incorporated herein by specific reference thereto, are answers to the Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure.

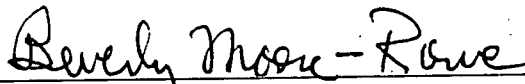
4. **AFFIDAVIT OF EXPERT WITNESS.**

The Affidavit of the Expert Witness required under S.C. Code Section 15-79-125 is not being provided at this time pursuant to S.C. Code Section 15-36-100(C)(1). The Plaintiff is informed and believes that the applicable statute of limitations on one or more claims alleged in the Complaint, which is attached to this Notice Of Intent to File Suit as **Exhibit A**, will expire within ten (10) days of the date of the filing of the Complaint, and that due to time constraints, an affidavit of an expert could not be prepared. The Plaintiff is informed and believes that S.C. Code Section 15-36-100(C)(1) is applicable to enable the Plaintiff to supplement the pleadings with the required affidavit.

5. **STANDARD INTERROGATORIES DIRECTED TO DEFENDANTS**

Attached hereto as **Exhibit C** and incorporated herein by specific reference thereto, are Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure, directed to each Defendant.

Respectfully submitted by:



BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: January 7, 2013

EXHIBIT A

Attached to this Exhibit A is a copy of the Plaintiff's Complaint, which is attached hereto and incorporated herein by specific reference thereto.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-_____

SUMMONS

(Medical Negligence)
(Breach of Contract)
(Violation of Right Of Privacy)
(Jury Trial Requested)

Defendants)
_____)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff at her home at 52 Chadwick Drive, Charleston, South Carolina, 29407 within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E:MAIL: Excommunicated @comcast.net

Charleston, South Carolina
Dated: January 7, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-_____

Beverly C. Moore-Rowe,

Plaintiff,

vs.

COMPLAINT

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

Defendants)
_____)

THE PLAINTIFF HEREIN, Beverly C. Moore-Rowe (hereinafter referred to herein as the "**Plaintiff**") complaining of the Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare; Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the "**Defendants**"), would respectfully show unto this Court, upon information and belief, that:

1. That the Plaintiff is a citizen and resident of the State of South Carolina, County of Charleston.
2. That upon information and belief, the Defendant, Bon Secours-St. Francis Xavier Hospital, Inc., is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours-St. Francis Xavier Hospital, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital and Bon Secours St. Francis Xavier Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.
3. That upon information and belief, the Defendant, Bon Secours St. Francis Health System, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours-St. Francis Health System, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital and Bon Secours St. Francis Xavier Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

4. That upon information and belief, the Defendant, Bon Secours Health System, Inc., is a corporation organized and existing pursuant to the Laws of the State of Maryland but is registered to do business in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours Health System, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

5. That upon information and belief, the Defendant, Roper St. Francis Foundation, is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Roper St. Francis Foundation has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

6. That upon information and belief, the Defendant, Bon Secours-St. Francis Health System Foundation, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and has been doing business, with the other corporate Defendants as Roper St. Francis Healthcare.

7. That upon information and belief, the Defendant, Roper Hospital, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and has been doing business as Roper St. Francis Healthcare.

8. That upon information and belief, the Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., Bon Secours St. Francis Health System, Inc., Bon Secours Health System, Inc., Roper St. Francis Foundation, Bon Secours-St. Francis Health System Foundation, Inc., and Roper Hospital, Inc., (hereinafter collectively referred to herein as the "**Defendant Hospital**"), at all times relevant herein, acted by and through its agents, contractors, and employees for the purpose of carrying on its business as a medical healthcare facility and therefore, it is liable for the negligent acts and omissions of its agents, contractors, and employees under the theories of non-delegable duty and respondeat superior.

9. That upon information and belief, the Defendant, Byron N. Bailey, MD, (hereinafter referred to herein as the "**Defendant Bailey**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in neurology.

10. That upon information and belief, the Defendant, Christine Thompson, MD, also known as Christine C. Thompson, MD, (hereinafter referred to herein as the "**Defendant Thompson**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in anesthesiology.

11. That upon information and belief, the Defendant, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, (hereinafter referred to herein as the "**Defendant McGraw**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

12. That upon information and belief, the Defendant, Jeffery S. Wager, CRNA, (hereinafter referred to herein as the "**Defendant Wager**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

13. That upon information and belief, the Defendant, Charleston Neurosurgical Associates, LLC, hereinafter referred to herein as the "**Defendant Bailey's Group**", is a limited liability company, organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

14. That upon information and belief, the Defendant, Mt. Pleasant Anesthesia Associates, PA, is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

15. That upon information and belief, the Defendant, Charleston Surgery Center Limited Partnership, doing business as Charleston Surgery Center, (hereinafter collectively referred to herein with Defendant, Mt. Pleasant Anesthesia Associates, PA, as the "**Defendant Thompson's Groups**"), is a South Carolina limited partnership formed pursuant to the Laws of the State of South Carolina, with its principal place of business located in the State of South Carolina, County of Charleston, at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and

employees.

16. That upon information and belief, the Defendant, Nurse Anesthesia Of South Carolina, LLC, hereinafter referred to herein as the "**Defendant McGraw's Group**"), is a limited liability company formed pursuant to the Laws of the State of South Carolina, with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

17. That upon information and belief, the Defendant, Tricoastal Healthcare Billing And Management, Inc., hereinafter referred to herein as the "**Defendant Wager's Group**"), is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

18. That upon information and belief, Steven Heath Cobb (hereinafter referred to herein as "**Defendant Student**") is a resident of the State of South Carolina, County of Greenville, at all times relevant herein, was a student nurse anesthetist not then licensed to practice as a nurse anesthetist in the State of South Carolina and not then a Certified Registered Nurse Anesthetist, but was at that time a Student Certified Registered Nurse Anesthetist ("**SCRNA**").

19. That upon information and belief, the Defendant Bailey, at all times relevant herein, was an agent, contractor, or employee of Defendant Bailey's Group acting within the scope of his employment and therefore Defendant Bailey's Group is liable for the acts and omissions of Defendant Bailey.

20. That upon information and belief, the Defendant Thompson, at all times relevant herein, was an agent, contractor, or employee of Defendant Thompson's Groups acting within the scope of her employment and therefore Defendant Thompson's Groups are jointly and severally liable for the acts and omissions of Defendant Thompson.

21. That upon information and belief, the Defendant McGraw, at all times relevant herein, was an agent, contractor, or employee of Defendant McGraw's Group acting within the scope of her employment and therefore Defendant McGraw's Group is liable for the acts and omissions of Defendant McGraw.

22. That upon information and belief, the Defendant Wager, at all times relevant herein, was an agent, contractor, or employee of Defendant Wager's Group acting within the scope of his employment and therefore Defendant

Wager's Group is liable for the acts and omissions of Defendant Wager.

23. That upon information and belief, the health care facility owned by the Defendant Hospital is licensed under the Laws of the State of South Carolina and was required to provide reasonable and prudent care to the Plaintiff.

24. That upon information and belief, the health care facility owned by the Defendant Hospital is accredited through and regulated by the standards of the Joint Commission of Accreditation of Healthcare Organizations (referred to hereinafter as the "**JCAHO**") and was required to provide a standard of care as set forth in JCAHO Rules, Regulations and Policies.

25. That all actions and omissions giving rise to this complaint took place in the State of South Carolina, County of Charleston.

26. That for the reasons set forth above, venue and jurisdiction are properly before this Court.

27. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital were acting within the course and scope of their employment in regard to their care and treatment of Plaintiff.

28. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital, were acting under the direction and supervision of Defendant Bailey; and as to the anesthesiology services provided to the Plaintiff, the employees and agents of the Defendant Hospital, were also acting under the direction and supervision of Defendant Thompson, Defendant McGraw and Defendant Wager.

29. That the Plaintiff is informed and believes that at all times material to this Complaint, the Defendant Student was acting under the direction and supervision of Defendant Bailey, Defendant Thompson, Defendant McGraw and Defendant Wager.

30. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital, were acting on behalf of the Defendant Hospital in making decisions regarding the care of Plaintiff.

31. That at all times that the Plaintiff was a patient of the Defendants, she relied upon the professional expertise of the Defendants in order to safely undergo and appropriately heal and recover in a timely manner from her ordered procedure.

32. That the Defendant Hospital has the right or power to direct and control the manner in which their employees provide medical care and operate the business of delivering health care for a fee through the business using the trade name Roper St. Francis Healthcare. Additionally, the Defendant Hospital has a non-delegable duty to provide physicians adequately trained and able to provide any necessary and reasonable medical care to patients.

33. That the Defendant Bailey, Defendant Thompson, Defendant Bailey's Group, Defendant Thompson's Groups, Defendant McGraw, Defendant Wager, Defendant McGraw's Group and Defendant Wager's Group (hereinafter collectively referred to herein as the "**Defendant Professionals**") have the right or power to direct and control the manner in which their employees provide medical care and operate the business of delivering health care for a fee through the business using their trade names. Additionally, the Defendant Bailey's Group and the Defendant Thompson's Groups have a non-delegable duty to provide physicians adequately trained and able to provide any necessary and reasonable medical care to their patients. Additionally, the Defendant McGraw's Group and the Defendant Wager's Group have a non-delegable duty to provide Certified Registered Nurse Anesthetists adequately trained and able to provide any necessary and reasonable medical care to their patients.

34. That on or about January 7, 2010, the Plaintiff was admitted to the Defendant Hospital by her physician, Defendant Bailey for anterior cervical spine surgery consisting of anterior cervical discectomy with fusion, as treatment for Plaintiff's neck pain and complaints of bilateral arm numbness.

35. That the Plaintiff met with Defendant McGraw prior to her surgery and at such time Defendant McGraw introduced the Defendant Student to the Plaintiff, and solicited the Plaintiff's verbal consent for Defendant Student to accompany Defendant McGraw for the purpose of observing the surgery, informing Plaintiff that Defendant Student would be only an observer.

36. That the Plaintiff specifically stated to Defendant McGraw prior to her surgery that she was a singer with the Symphony Gospel Chorus and Symphony and to please protect the Plaintiff's vocal chords, knowing that she would be receiving general anesthesia endotracheal intubation, and make certain Plaintiff received sufficient oxygen.

37. That Defendant Thompson was the Anesthesiologist for the Plaintiff in her surgery.

38. That Defendant McGraw was a Certified Registered Nurse Anesthetist ("**CRNA**") for the Plaintiff in her surgery.

39. That Defendant Wager was a Certified Registered Nurse Anesthetist ("**CRNA**") for the Plaintiff in her surgery.

40. That the Defendants failed to inform the Plaintiff or solicit and obtain the Plaintiff's prior consent for the Defendant Student to participate as a nurse anesthetist in the Plaintiff's surgery.

41. That the Plaintiff never gave any consent or permission whatsoever, verbally, written or otherwise, for the Defendant Student to administer any medical services, including those normally performed by a Certified Registered Nurse Anesthetist, such as the endotracheal intubation of the Plaintiff as patient.

42. That if requested, the Plaintiff would have not consented to permitting the Defendant Student to be in attendance of her surgery, except solely as an observer.

43. That the Plaintiff is informed and believes that, without the Plaintiff's knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff as the patient in her surgery.

44. That on or about January 7, 2010, the Defendant Bailey performed the anterior cervical spine surgery on the Plaintiff in the Defendant Hospital with Defendant Thompson serving as the Plaintiff's Anesthesiologist, and Defendant McGraw and Defendant Wager serving as the Plaintiff's Certified Registered Nurse Anesthetists (hereinafter referred to herein as the "**Surgery**").

45. That the Plaintiff underwent endotracheal intubation in the course of the anesthesiology services provided to Plaintiff by the Defendants in the Surgery.

46. That the Defendants did undertake the duty to render medical care to the Plaintiff in accordance with the prevailing professional standards of care for hospitals, nurses, doctors and medical personnel in the national community.

47. That the Plaintiff remained in the Defendant Hospital from January 7, 2010 through January 10, 2010, at which time she was referred for rehabilitation services through Defendant Hospital, due to difficulties in swallowing.

48. That after the Surgery, the Plaintiff has suffered from serious and permanent injuries including dizzy spells, blocked right ceratoid, hoarseness in her voice, difficulty with speech, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue changes in her temperament, and other executive physical function problems, which the Plaintiff, under information and belief, is the result of the Surgery, and in particular, the endotracheal intubation.

49. That as a result of the Surgery, Plaintiff was caused to undergo additional painful and costly medical exams and procedures and has suffered and continues to suffer the serious and permanent injuries and pain and suffering stated above and mental anguish therefrom.

**FOR A FIRST CAUSE OF ACTION
(Professional Negligence/Negligence Per Se)**

50. That the Plaintiff reiterates and re-alleges paragraphs one (1) through forty-nine (49) above, as though fully set forth in their entirety herein verbatim, and further alleges:

51. That while the Plaintiff was under the care of the Defendants, the Defendant Professionals and the Defendant Student, departed from the prevailing professional standards of care and treatment of the Plaintiff and were thereby, jointly and severely, negligent, careless, grossly negligent, willful, wanton, reckless, and negligent per se, and acted in violation of the duties owed to the Plaintiff in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. In failing to appropriately treat the Plaintiff's condition;
- b. In failing to properly and adequately monitor Plaintiff during the Surgery and throughout her stay at Defendant Hospital;
- c. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, without the Plaintiff's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, when the Defendant Student was not a licensed Anesthesiologist or a Certified Registered Nurse Anesthetist or licensed Nurse Anesthetist;
- e. In failing to obtain the Plaintiff's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff, including but not limited to the endotracheal incubation procedure;
- f. In inappropriately permitting the administration of the drug, Propofol by persons other than a trained and licensed physician;
- g. In failing to properly and adequately supervise the Defendant Student, medical personnel, staff, employees, and agents of the Defendants with regard to the Plaintiff's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Surgery;
- i. In failing to ensure that the Defendant Bailey and the Defendant Thompson as physicians performed the proper and appropriate medical treatment on the Plaintiff as the Defendants' patient, for which the Defendants are liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;

- j. In failing to provide proper, diligent and timely follow-up care;
- k. In failing to properly treat the Plaintiff as the Defendant's patient;
- l. In failing to provide treatment during the Surgery and after, necessary to prevent material deterioration of the Plaintiff's condition;
- m. In violating the standard, laws and regulations of the United States and the State of South Carolina; and
- n. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure and as the evidence at trial may disclose.

52. That while the Plaintiff was under the care of the Defendants, the Defendant Hospital departed from the prevailing professional standards of care and treatment of the Plaintiff and was thereby, jointly and severely, negligent, careless, grossly negligent, willful, wanton, reckless, and negligent per se, and acted in violation of the duties owed to the Plaintiff in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. In failing to appropriately treat the Plaintiff's condition;
- b. In failing to properly and adequately monitor Plaintiff during the Surgery and throughout her stay at Defendant Hospital;
- c. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, without the Plaintiff's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, when the Defendant Student was not a licensed Anesthesiologist or a Certified Registered Nurse Anesthetist or a licensed Nurse Anesthetist;
- e. In failing to obtain the Plaintiff's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff, including but not limited to the endotracheal incubation procedure;
- f. In inappropriately permitting the administration of the drug, Propofol by persons other than a trained and licensed physician;
- g. In failing to properly and adequately supervise the Defendant Student, medical personnel, staff, employees, and agents of the Defendants with regard to the Plaintiff's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Surgery;
- i. In failing to have in place proper and adequate policies, procedures and protocols for administration of anesthesia procedures by licensed, experienced and qualified medical professionals, or if such policies were in place, in failing to use due care to enforce them;
- j. In failing to ensure that the Defendant Bailey and the Defendant Thompson as physicians in the Defendant Hospital performed the

proper and appropriate medical treatment on the Plaintiff as the Defendants' patient, for which the Defendant Hospital is liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;

- k. In failing to ensure that the Defendant McGraw and the Defendant Wager as the Certified Registered Nurse Anesthetists in the Defendant Hospital performed the proper and appropriate medical treatment on the Plaintiff as the Defendants' patient, for which the Defendant Hospital is liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;
- l. In failing to provide proper, diligent and timely follow-up care;
- m. In failing to properly treat the Plaintiff as the Defendant's patient;
- n. In failing to provide treatment during the Surgery and after, necessary to prevent material deterioration of the Plaintiff's condition;
- o. In violating the standard, laws and regulations of the United States and the State of South Carolina; and
- p. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure and as the evidence at trial may disclose.

53. That in rendering medical services to Plaintiff, the Defendants failed to have sufficient medical knowledge and skill or failed to exercise reasonable diligence in the application of their knowledge and skill to Plaintiff's care and Surgery.

54. That, in addition, to the extent that the Defendants have violated their own policies and procedures, or any State or Federal Laws or Regulations or other standards, these standards were specifically enacted for the protection of a class of persons which includes the Plaintiff, and the Defendant's failure to comply with the same constitutes a prima facie case of negligence per se.

55. That the Plaintiff is informed and believes that the applicable statute of limitations on one or more claims alleged in this Complaint will expire within ten (10) days of the date of the filing of this Complaint, and that due to time constraints, an affidavit of an expert could not be prepared, and that Section 15-36-100(C)(1) of the South Carolina Code of Laws of 1976, as amended (hereinafter referred to herein as the "**S.C. Code**") is applicable to enable the Plaintiff to supplement the pleadings with the required affidavit.

56. That the Plaintiff is informed and believes that Defendants' professional negligence in permitting the Defendant Student, who was neither a licensed Anesthesiologist, nor a licensed Nurse Anesthetist nor a Certified Registered Nurse Anesthetist, to perform the endotracheal intubation on the Plaintiff in the Surgery, without the Plaintiff's prior consent, is sufficiently substantial and egregious as to fall within S.C. Code Section 15-36-100(C)(2) as involving

negligence that lies within the common knowledge and experience so that no special learning is needed to evaluate the conduct of the Defendants.

57. That as a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, negligence per se, wanton acts or omissions, and departure from the professional standards of care by the Defendants and the agents and employees of the Defendants, the Plaintiff has incurred serious and permanent personal injury, including, but not limited to, dizzy spells, hoarseness in her voice, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulties with word retrieval, fatigue, expressive aphasia, and other executive physical function problems, in the past and in the future, severe pain and suffering, loss of enjoyment of life, loss of earning capacity and income, medical expenses, physical therapy, speech therapy, mental anguish, permanent impairment of health and physical harm, emotional distress, expenditure of money for medical expenses, therapies and other ancillary medical and health related services.

58. That as a direct and proximate result of the negligent, careless and reckless acts as set forth above, and the injuries and damages to the Plaintiff as set forth above, the Plaintiff is entitled to compensation for such injuries from the Defendants, jointly and severally, through her life expectancy.

**FOR A SECOND CAUSE OF ACTION
(Breach of Contract)**

59. That the Plaintiff reiterates and re-alleges paragraphs one (1) through fifty-eight (58) above, as though fully set forth in their entirety herein verbatim, and further alleges:

60. That the Plaintiff entered into a contract for care with the Defendants.

61. That pursuant to such agreements, Defendants promised to provide medical treatment, aid, assistance and treatment within the applicable standard of care and to follow all State and Federal Laws relating to the care of surgical patients.

62. That in exchange for such promises, the Plaintiff agreed to pay a fee to the Defendants.

63. That these bargained for exchanges constituted contracts.

64. That the Defendants breached these contracts by failing to properly care for, exercise due care of and follow State and Federal Laws relating to the care of the Plaintiff.

65. That the Plaintiff was deprived of the benefit of the bargain and has suffered damages directly flowing from said breach of the kind and nature to arise and flow from such a breach, and is entitled to recover from the Defendants, jointly and severally, compensatory damages for said breach of contract in an amount to be determined at the trial of this matter.

**FOR A THIRD CAUSE OF ACTION
(Violation of Right of Privacy and Violation of HIPAA)
Against Defendant Corporation Only**

66. That the Plaintiff reiterates and re-alleges paragraphs one (1) through sixty-five (65) above, as though fully set forth in their entirety herein verbatim, and further alleges:

67. That, after the Surgery, the Plaintiff contacted other physicians, medical care providers and institutions seeking relief from the injuries and symptoms she suffered from the Surgery and an explanation as to what was the cause of her injuries.

68. That, on or about October 22, 2012, the Plaintiff consulted with physicians and medical care professionals at the Duke University Health System (hereinafter referred to herein as "**Duke**"), in Durham, North Carolina, seeking relief from the injuries and symptoms she suffered from the Surgery and an explanation as to what was the cause of her injuries.

69. That the Duke consultation was based upon a referral issued by Plaintiff's physician, Dr. Stephen Busby (hereinafter referred to herein as "**Busby**") on Plaintiff's behalf.

70. That, the Plaintiff never provided any authorization after her Surgery to the Defendant Hospital for Defendant Hospital to obtain the Plaintiff's medical records from Plaintiff's consultations with Busby and/or Duke, or any physicians and medical providers contacted by the Plaintiff after she was discharged from Defendant Hospital after her Surgery.

71. That the Plaintiff had contacted the risk management department of the Defendant Hospital in the year 2011 or 2012, to inquire and obtain a copy of the Defendant Hospital's written policies and procedures.

72. That, at some time in the year 2012 and after October 22, 2012, the Plaintiff received a telephone call from a person identifying herself as a nurse and attorney working in risk management for Defendant Hospital (hereinafter referred to herein as "**Hospital Risk Management**").

73. That the Hospital Risk Management proceeded to provide the Plaintiff with an unsolicited legal and medical opinion advising Plaintiff that, based upon Hospital Risk Management's review of Plaintiff's medical records, the Plaintiff had no legal claim.

74. That Plaintiff never mentioned commencing this litigation, and had not provided any notice of the same, but is informed and believes that Hospital Risk Management was attempting to discourage the Plaintiff from making any claim for medical malpractice, and inform the Plaintiff that the Defendant Hospital Risk Management had reviewed the Plaintiff's medical records.

75. That in the conversation, Hospital Risk Management disclosed confidential medical information of the Plaintiff, which the Plaintiff realized could only have been obtained from Plaintiff's medical consultations at Duke.

76. That upon inquiry of the Plaintiff, Hospital Risk admitted to the Plaintiff that Hospital Risk Management had accessed and reviewed the Plaintiff's medical records, including the Plaintiff's medical records from the Plaintiff's medical consultations at Duke, through electronic means and the internet by electronically obtaining the medical records of Busby.

77. That the Plaintiff never provided any authorization to the Defendants, to obtain the Plaintiff's medical records from Busby or Duke, and is informed and believes that Defendant Hospital's unauthorized and unwarranted appropriation of the Plaintiff's confidential medical records with Busby and Duke constitutes the wrongful intrusion into the Plaintiff's private activities as well as the unwarranted appropriation and exploitation of the Plaintiff's personality, and further constitutes a blatant and shocking disregard of the Plaintiff's legal right to privacy as to her medical records with Busby and Duke, which South Carolina Law and Federal Law under the Health Information Portability And Accountability Act ("HIPAA") provide.

78. That as a result of the violations of the Plaintiff's right to privacy under South Carolina law and in blatant and shocking disregard of HIPPA, the Plaintiff has suffered extreme emotional distress and mental suffering and outrage for which the Plaintiff is entitled to recover from the Defendant Hospital, compensatory damages for said injury in an amount to be determined at the trial of this matter.

WHEREFORE, the Plaintiff prays for (1) judgment against the Defendants in the sum of actual damages, in a sum sufficient to compensate the Plaintiff for her actual damages, for punitive damages, special damages, and consequential damages in an amount to be determined by the trier of fact; (2) judgment against the Defendant Hospital in the sum of actual damages, in a sum sufficient to compensate the Plaintiff for her actual damages, for punitive damages, special damages, and consequential damages in an amount to be determined by the trier

of fact for the violation of the Plaintiff's right to privacy, in an amount to be determined by the trier of fact; (3) for the costs of this action; and (4) such other and further relief as the Court may deem just and proper.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: January 7, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-_____**

VERIFICATION

Defendants)
_____)

PERSONALLY appeared before me, Beverly C. Moore-Rowe, who being duly sworn, deposes and says that she is the Plaintiff herein; that she has read the Complaint and the same is true and correct of her own knowledge, save and except those matters stated herein to be on information and belief, and to those matters she believes them to be true.

Beverly Moore-Rowe
BEVERLY C. MOORE-ROWE

Sworn to before me this Seventh (7th)
day of January, 2013

Teresa D. Bernard
Notary Public for South Carolina

(SEAL)

My Commission Expires: July 16, 2014



EXHIBIT B

Attached to this Exhibit B are the Plaintiff's answers to Standard Interrogatories as set forth in South Carolina Rules of Civil Procedure 33(b), which is attached hereto and incorporated herein by specific reference thereto.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA;
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

Defendants

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-_____

PLAINTIFF'S ANSWERS TO STANDARD
INTERROGATORIES

TO: THE Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare (hereinafter all of the previously mentioned corporate Defendants are collectively referred to herein as **"Roper St. Francis Healthcare"** and/or the **"Defendant Hospital"**); Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the **"Defendants"**), the Plaintiff, answering the standard interrogatories of Defendants, states as follows:

1. Give the names and addresses of persons known to the parties or their 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. **Beverly C. Moore-Rowe (Plaintiff)**
52 Chadwick Drive
Charleston, S.C. 29412
- b. **Arthur Peter Rowe (Plaintiff's husband)**
52 Chadwick Drive
Charleston, S.C. 29412
- c. **Marie Martin, friend**
46 Martin's Path
Charleston, S.C. 29414
- d. **Medical professionals and office personnel of Mount Pleasant Manor Care, LLC**
921 Bowman Road
Mount Pleasant, S.C. 29464

- e. **Medical professionals and office personnel of Roper St. Francis Healthcare**
2095 Henry Tecklenburg Drive
Charleston, SC 29414
- f. **Dr. Byron Bailey, M.D. Defendant**
Charleston Neurosurgical Associates, LLC
2145 Henry Tecklenburg Drive
Charleston, S.C. 29414
- g. **Dr. Christine C. Thompson, M.D. Defendant**
Charleston Surgery Center Limited Partnership
2690 Lake Park Drive
North Charleston, S.C. 29406
- h. **Tammy McGraw Speicher, CRNA, Defendant**
Nurse Anesthesia Of South Carolina, LLC
2095 Henry Tecklenburg Drive
Charleston, S.C. 29414
- i. **Jeffery S. Wager, CRNA, Defendant**
Tricoastal Healthcare Billing And Management, Inc.
9263 Medical Plaza Drive; Suite B
Charleston, S.C. 29406
- j. **Steven Heath Cobb, CRNA, Defendant**
701 Grove Road
Greenville, S.C. 29465-4295
- k. **John H. Lucas, IV, MD, Physician**
Charleston Neurology Associates
9313 Medical Plaza Drive; Suite 310
Charleston, S.C. 29406
- l. **L. Randolph Waid, Ph.D, Licensed Psychologist**
The Oaks Business Center
1459 Stuart Englas Boulevard
Suite 204-A
Mount Pleasant, S.C. 29406
- m. **Troy Marlow, M.D., Radiologist**
TriCounty Radiology Associates
1975-H Magwood Road
Charleston, SC 29414

- n. **Dr. Thomas S. Dozier, M.D., Otolaryngology**
Charleston ENT Associates, L.L.C.
1849 Savage Road
Charleston, S.C. 29407
- o. **Lucinda A. Halstead, M.D.**
Speech and Language Pathology
Medical University Of South Carolina
Charleston, S.C. 29403
- p. **Megan Witt, M.D. (Physician)**
University Internal Medicine
Medical University of South Carolina.
Charleston, S.C. 29403
- q. **Donald Fox, M.D. (Physician)**
University Internal Medicine
Medical University of South Carolina.
Charleston, S.C. 29403
- r. **R. Sidney G. Smith, M.D.**
Charleston Endoscopy Center
1962 Charlie Hall Boulevard
Charleston, S.C. 29414
- s. **Dr. Steven C. Busby, M.D.**
16 Windermere Boulevard; Suite B
Charleston, S.C. 29407
- t. **Dr. Natalie Steele Bradford, M.D**
MUSC Department Of Internal Medicine
169 Ashley Avenue; Suite 202
Charleston, S.C. 29402
- u. **Bruce M. Elliott, MD, FACS**
Division of Vascular Surgery
96 Jonathan Lucas Street
Charleston, S.C. 29425
- v. **Kelly Crisp, M.A., CCC-SLP**
Duke University Medical Center
Division of Speech Pathology and Audiology
2301 Erwin Road
Durham, N.C. 27705

- w. Tamara N. Bowman, ANP
Mount Pleasant Manor Care, LLC
921 Bowman Road
Mount Pleasant, S.C. 29464
- x. Thomas B. Cruden, M.D.
Mount Pleasant Manor Care, LLC
921 Bowman Road
Mount Pleasant, S.C. 29464
- y. Such other individuals who may be revealed during the discovery process.

No Statements have been obtained at this time.

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

ANSWER:

MEDICAL RECORDS OF:

- a. Roper St. Francis Healthcare - 12/19/2009, 01/04/2010, 01/07/2010 -01/12/2010, 01/13/2010, 01/31/2010,
- b. Medical University of South Carolina: 06/24/2010
- c. Medical University of South Carolina Radiology: Dr. Rajesh Thampy, 06/29/2010; Dr. Robert Egbert: 01/16/2011, 11/16/2011; Dr. Stetson Bickley: 11/29/2011; Dr. Robert Egbert: 01/20/2012.
- d. Medical University of South Carolina Evelyn Trammell Institute for Voice & Swallowing, Dr. Thomas S. Dozier, M.D., 06/16/2010, 08/02/2010, 08/18/2010, 08/24/2010, 09/21/2011.
- e. Medical University of South Carolina, University Internal Medicine, Dr. Megan Witt, M.D. 10/04/2010, 10/14/2010, 06/20/2011, 08/30/2010, 11/08/2011, 11/18/2011, 11/29/2011, Natalie Steele Bradford, M.D. 05/08/2012.
- f. Medical University of South Carolina, Dr. Lucinda A. Halstead, M.D., Otolaryngology Head and Neck Surgery, 11/08/2011, 11/29/2011, 12/15/2011.

g. Medical University of South Carolina, East Cooper SEI Ophthalmology, Dr. Narendra Patel, M.D. 04/03/2012, 09/04/2012

h. Medical University of South Carolina, Speech and Language Pathology, Kate Humphries, M.S., CF-SLP: 06/30/2011, 11/08/2011, 12/08/2011.

i. Medical University of South Carolina, Bruce M. Elliott, M.D., FACS, Vascular Surgery Division, 05/16/2012

j. Medical University of South Carolina Neurology, 01/20/2012.

k. Charleston Endoscopy Center, R. Sidney G. Smith, M.D. 09/18/2012.

l. TriCounty Radiology Associates, John H. Lucas, IV, M.D., 10/12/2010, 04/21/2011.

m. Wesley Drive Imaging Center, Andrew K. Anderson, M.D., Radiologist, 03/23/2010.

n. Speech Therapy Evaluation, Dixie Barkand, MACCC, SLP, 03/04/2011

o. Windermere Family Medicine and Urgent Care, Dr. Stephen C. Busby, M.D. 06/03/2010, 06/15/2010.

p. Charleston Neurology Associates, LLC, John H. Lucas, IV, M.D. 09/23/2010, 12/14/2010, 05/05/2011.

q. L. Randolph Waid, Ph.D., Licensed Clinical Psychologist, 06/29/2011.

r. Duke University Medical Center, Department of Speech Pathology and Audiology, Kelly Crisp, M.A., CCC-SLP, 10/22/2010.

s. Mount Pleasant Manor, LLC 01/12/2010 through 01/31/2010

3. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party 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.

ANSWER:

a. See Physicians and medical care providers listed in Answer 1, subparagraph d through y, and Answer 2 above. This interrogatory will be answered in more detail at a later time.

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 liability coverage provided in each policy.

ANSWER:

This Interrogatory is not applicable to the Plaintiff.

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

As a result of the Defendants' negligence, carelessness and recklessness, in allowing the Defendant Student to perform the endotracheal intubation, the Plaintiff, Beverly C. Moore-Rowe, suffered permanent damage to her vocal chords in which they remain separated, hoarseness of voice, difficulty speaking, difficulty swallowing, requiring speech therapy and pathology. The Plaintiff has also suffered from dizzy spells, blocked right carotid artery, difficulty with speech, shortness of breath, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue, changes in her temperament, and other executive physical function problems. The Plaintiff is informed and believes that the before mentioned problems are the result of the Defendants' negligence, carelessness and recklessness in the Surgery, and in the endotracheal intubation, in which she suffered nerve damage and oxygen deprivation. As a result, the Plaintiff has undergone multiple medical exams, hospital exams, and medical procedures. The Plaintiff spent time in rehabilitation at Mount Pleasant Manor, LLC from the date of discharge from Roper St. Francis Healthcare on January 12, 2010 through January 31, 2010. The costs associated with those medical exams and procedures are not known at this time. This information will be provided at a later time.

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

ANSWER:

The name and address of the expert witness whom the party proposes to use as a witness at the trial of this case is not available at this time but will be provided at a later date.

7. For each person known to the parties or their counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party 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.

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 liability coverage provided in each policy.

ANSWER:

This Interrogatory is not applicable to the Plaintiff.

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

As a result of the Defendants' negligence, carelessness and recklessness, in allowing the Defendant Student to perform the endotracheal intubation, the Plaintiff, Beverly C. Moore-Rowe, suffered permanent damage to her vocal chords in which they remain separated, hoarseness of voice, difficulty speaking, difficulty swallowing, requiring speech therapy and pathology. The Plaintiff has also suffered from dizzy spells, blocked right carotid artery, difficulty with speech, shortness of breath, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue, changes in her temperament, and other executive physical function problems. The Plaintiff is informed and believes that the before mentioned problems are the result of the Defendants' negligence, carelessness and recklessness in the Surgery, and in the endotracheal intubation, in which she suffered nerve damage and oxygen deprivation. As a result, the Plaintiff has undergone multiple medical exams, hospital exams, and medical procedures. The Plaintiff spent time in rehabilitation at Mount Pleasant Manor, LLC from the date of discharge from Roper St. Francis Healthcare on January 12, 2010 through January 31, 2010. The costs associated with those medical exams and procedures are not known at this time. This information will be provided at a later time.

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

ANSWER:

The name and address of the expert witness whom the party proposes to use as a witness at the trial of this case is not available at this time but will be provided at a later date.

7. For each person known to the parties or their counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party 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.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff

52 Chadwick Drive

Charleston, South Carolina 29407

Telephone: (843) 763-2599; (843) 737-0733

E-mail: Excommunicated @comcast.net

Charleston, South Carolina

Dated: January 7, 2013

EXHIBIT C

Attached to this Exhibit C are Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure, directed to each Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a)
Christine Thompson, M.D.,)
Charleston Neurosurgical)
Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA,)
Charleston Surgery Center Limited)
Partnership, d/b/a Charleston)
Surgery Center, Tammy McGraw,)
CRNA, also known as Tammy)
McGraw Speicher, CRNA, Nurse)
Anesthesia Of South Carolina,)
LLC, Jeffery S. Wager, CRNA,)
Tricoastal Healthcare Billing And)
Management, Inc., and Steven)
Heath Cobb,)

Defendants

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-_____

STANDARD INTERROGATORIES
FROM PLAINTIFF PURSUANT TO
SCRCP 33(b)

TO: THE Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare (hereinafter all of the previously mentioned corporate Defendants are collectively referred to herein as **"Roper St. Francis Healthcare"** and/or the **"Defendant Hospital"**); Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the **"Defendants"**):

THE PLAINTIFF, BEVERLY C. MOORE-ROW (hereinafter referred to herein as the **"Plaintiff"**) propound the following Interrogatories to the Defendants pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure. Please take notice that a copy of your Answers to said Interrogatories must be served upon the Plaintiff within thirty (30) days from the date of service hereof.

1. Give the names and addresses of persons known to the parties or their 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.
2. Set forth a list of all photographs, plats, sketches, or other prepared documents in possession of the party, that relate to the claim or defense in the case.
3. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party 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.
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 liability coverage provided in each policy.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.
6. List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of the case.
7. For each person known to the parties or their counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party 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.
8. **[Defendants only.]** If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: January 7, 2013

5. Appellant's Summons & Complaint filed in the Court of Common
Pleas at Case Number: 2013-CP-10-00090

[Pages 81 through 99, attached]

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Arthur Peter Rowe

Plaintiff(s)

vs.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia Of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing And Management, Inc., and Steven Heath Cobb,

Defendant(s)

(Please Print)

Submitted By: Arthur Peter Rowe

Address: 52 Chadwick Drive; Charleston, S.C. 29407

SC Bar #: Pro Se Plaintiff

Telephone #: 843-763-2599

Fax #:

Other: 843-737-0733

E-mail: excommunicated@comcast.net

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.

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 | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-__-__ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☒ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |

Inmate Petitions

Judgments/Settlements

Administrative Law/Relief

Appeals

- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

- ☐ 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 (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature:

AP Rowe
AP Rowe

Date: 01/07/2013

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

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, 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 CHARLESTON

Arthur Peter Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 0090

SUMMONS

(Loss of Consortium)
(Jury Trial Requested)

FILED
2013 JAN -7 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendants)
_____)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff at her home at 52 Chadwick Drive, Charleston, South Carolina, 29407 within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

APR 2 1913

ARTHUR PETER ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733

Charleston, South Carolina
Dated: January 7, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10- 0090

COMPLAINT

(Loss of Consortium)
(Jury Trial Requested)

FILED
2013 JAN -7 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendants)
)

THE PLAINTIFF HEREIN, Arthur Peter Rowe (hereinafter referred to herein as the "**Plaintiff**") complaining of the Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare; Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the "**Defendants**"), would respectfully show unto this Court, upon information and belief, that:

1. That the Plaintiff is a citizen and resident of the State of South Carolina, County of Charleston.
2. That the Plaintiff has been legally married to Beverly C. Moore-Rowe, as his wife (hereinafter referred to herein as the "**Plaintiff's Wife**"), since prior to January 7, 2010.
3. That upon information and belief, the Defendant, Bon Secours-St. Francis Xavier Hospital, Inc., is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours-St. Francis Xavier Hospital, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital and Bon Secours St. Francis Xavier Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.
4. That upon information and belief, the Defendant, Bon Secours St. Francis Health System, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours-St. Francis Health System, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital and Bon Secours St. Francis Xavier Hospital in Charleston County, South Carolina, and has been doing business with the other

corporate Defendants named herein as Roper St. Francis Healthcare.

5. That upon information and belief, the Defendant, Bon Secours Health System, Inc., is a corporation organized and existing pursuant to the laws of the State of Maryland but is registered to do business in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours Health System, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

6. That upon information and belief, the Defendant, Roper St. Francis Foundation, is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Roper St. Francis Foundation has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

7. That upon information and belief, the Defendant, Bon Secours-St. Francis Health System Foundation, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and has been doing business, with the other corporate Defendants as Roper St. Francis Healthcare.

8. That upon information and belief, the Defendant, Roper Hospital, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and has been doing business as Roper St. Francis Healthcare.

9. That upon information and belief, the Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., Bon Secours St. Francis Health System, Inc., Bon Secours Health System, Inc., Roper St. Francis Foundation, Bon Secours-St. Francis Health System Foundation, Inc., and Roper Hospital, Inc., (hereinafter collectively referred to herein as the "**Defendant Hospital**"), at all times relevant herein, acted by and through its agents, contractors, and employees for the purpose of carrying on its business as a medical healthcare facility and therefore, it is liable for the negligent acts and omissions of its agents, contractors, and employees under the theories of non-delegable duty and respondeat superior.

10. That upon information and belief, the Defendant, Byron N. Bailey, MD, (hereinafter referred to herein as the "**Defendant Bailey**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in neurology.

11. That upon information and belief, the Defendant, Christine Thompson, MD, also known as Christine C. Thompson, MD, (hereinafter referred to herein as the "**Defendant Thompson**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in anesthesiology.

12. That upon information and belief, the Defendant, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, (hereinafter referred to herein as the "**Defendant McGraw**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

13. That upon information and belief, the Defendant, Jeffery S. Wager, CRNA, (hereinafter referred to herein as the "**Defendant Wager**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

14. That upon information and belief, the Defendant, Charleston Neurosurgical Associates, LLC, hereinafter referred to herein as the "**Defendant Bailey's Group**"), is a limited liability company, organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

15. That upon information and belief, the Defendant, Mt. Pleasant Anesthesia Associates, PA, is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

16. That upon information and belief, the Defendant, Charleston Surgery Center Limited Partnership, doing business as Charleston Surgery Center, (hereinafter collectively referred to herein with Defendant, Mt. Pleasant Anesthesia Associates, PA, as the "**Defendant Thompson's Groups**"), is a South Carolina limited partnership formed pursuant to the Laws of the State of South Carolina, with its principal place of business located in the State of South Carolina, County of Charleston, at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and

employees.

17. That upon information and belief, the Defendant, Nurse Anesthesia Of South Carolina, LLC, hereinafter referred to herein as the "**Defendant McGraw's Group**"), is a limited liability company formed pursuant to the Laws of the State of South Carolina, with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

18. That upon information and belief, the Defendant, Tricoastal Healthcare Billing And Management, Inc., hereinafter referred to herein as the "**Defendant Wager's Group**"), is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

19. That upon information and belief, Steven Heath Cobb (hereinafter referred to herein as "**Defendant Student**") is a resident of the State of South Carolina, County of Greenville, at all times relevant herein, was a student nurse anesthetist not then licensed to practice as a nurse anesthetist in the State of South Carolina and not then a Certified Registered Nurse Anesthetist, but was at that time a Student Certified Registered Nurse Anesthetist ("**SCRNA**"):

20. That upon information and belief, the Defendant Bailey, at all times relevant herein, was an agent, contractor, or employee of Defendant Bailey's Group acting within the scope of his employment and therefore Defendant Bailey's Group is liable for the acts and omissions of Defendant Bailey.

21. That upon information and belief, the Defendant Thompson, at all times relevant herein, was an agent, contractor, or employee of Defendant Thompson's Groups acting within the scope of her employment and therefore Defendant Thompson's Groups are jointly and severally liable for the acts and omissions of Defendant Thompson.

22. That upon information and belief, the Defendant McGraw, at all times relevant herein, was an agent, contractor, or employee of Defendant McGraw's Group acting within the scope of her employment and therefore Defendant McGraw's Group is liable for the acts and omissions of Defendant McGraw.

23. That upon information and belief, the Defendant Wager, at all times relevant herein, was an agent, contractor, or employee of Defendant Wager's Group acting within the scope of his employment and therefore Defendant

Wager's Group is liable for the acts and omissions of Defendant Wager.

24. That upon information and belief, the health care facility owned by the Defendant Hospital is licensed under the Laws of the State of South Carolina and was required to provide reasonable and prudent care to the Plaintiff's Wife.

25. That upon information and belief, the health care facility owned by the Defendant Hospital is accredited through and regulated by the standards of the Joint Commission of Accreditation of Healthcare Organizations (referred to hereinafter as the "JCAHO") and was required to provide a standard of care as set forth in JCAHO Rules, Regulations and Policies.

26. That all actions and omissions giving rise to this complaint took place in the State of South Carolina, County of Charleston.

27. That for the reasons set forth above, venue and jurisdiction are properly before this Court.

28. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital were acting within the course and scope of their employment in regard to their care and treatment of Plaintiff's Wife.

29. That the Plaintiff informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital, were acting under the direction and supervision of Defendant Bailey; and as to the anesthesiology services provided to the Plaintiff's Wife, the employees and agents of the Defendant Hospital, were also acting under the direction and supervision of Defendant Thompson, Defendant McGraw and Defendant Wager.

30. That the Plaintiff is informed and believes that at all times material to this Complaint, the Defendant Student was acting under the direction and supervision of Defendant Bailey, Defendant Thompson, Defendant McGraw and Defendant Wager.

31. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital, were acting on behalf of the Defendant Hospital in making decisions regarding the care of Plaintiff's Wife.

32. That at all times that the Plaintiff's Wife was a patient of the Defendants, she relied upon the professional expertise of the Defendants in order to safely undergo and appropriately heal and recover in a timely manner from her ordered procedure.

33. That the Defendant Hospital has the right or power to direct and control the manner in which their employees provide medical care and operate the business of delivering health care for a fee through the business using the trade name Roper St. Francis Healthcare. Additionally, the Defendant Hospital has a non-delegable duty to provide physicians adequately trained and able to provide any necessary and reasonable medical care to patients.

34. That the Defendant Bailey, Defendant Thompson, Defendant Bailey's Group, Defendant Thompson's Groups, Defendant McGraw, Defendant Wager, Defendant McGraw's Group and Defendant Wager's Group (hereinafter collectively referred to herein as the "**Defendant Professionals**") have the right or power to direct and control the manner in which their employees provide medical care and operate the business of delivering health care for a fee through the business using their trade names. Additionally, the Defendant Bailey's Group and the Defendant Thompson's Groups have a non-delegable duty to provide physicians adequately trained and able to provide any necessary and reasonable medical care to their patients. Additionally, the Defendant McGraw's Group and the Defendant Wager's Group have a non-delegable duty to provide Certified Registered Nurse Anesthetists adequately trained and able to provide any necessary and reasonable medical care to their patients.

35. That on or about January 7, 2010, the Plaintiff's Wife was admitted to the Defendant Hospital by her physician, Defendant Bailey for anterior cervical spine surgery consisting of anterior cervical discectomy with fusion, as treatment for Plaintiff's Wife's neck pain and complaints of bilateral arm numbness.

36. That the Plaintiff's Wife met with Defendant McGraw prior to her surgery and at such time Defendant McGraw introduced the Defendant Student to the Plaintiff's Wife, and solicited the Plaintiff's Wife's verbal consent for Defendant Student to accompany Defendant McGraw for the purpose of observing the surgery, informing Plaintiff's Wife that Defendant Student would be only an observer.

37. That Defendant Thompson was the Anesthesiologist for the Plaintiff's Wife in her surgery.

38. That Defendant McGraw was a Certified Registered Nurse Anesthetist ("**CRNA**") for the Plaintiff's Wife in her surgery.

39. That Defendant Wager was a Certified Registered Nurse Anesthetist ("**CRNA**") for the Plaintiff's Wife in her surgery.

40. That the Defendants failed to inform the Plaintiff's Wife or solicit and obtain the Plaintiff's Wife's prior consent for the Defendant Student to participate as a nurse anesthetist in the Plaintiff's Wife's surgery.

41. That the Plaintiff's Wife never gave any consent or permission whatsoever, verbally, written or otherwise, for the Defendant Student to administer any medical services, including those normally performed by a Certified Registered Nurse Anesthetist, such as the endotracheal intubation of the Plaintiff's Wife as patient.

42. That if requested, the Plaintiff's Wife would have not consented to permitting the Defendant Student to be in attendance of her surgery, except solely as an observer.

43. That the Plaintiff is informed and believes that, without the Plaintiff's Wife's knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff's Wife and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff's Wife as the patient in her surgery.

44. That on or about January 7, 2010, the Defendant Bailey performed the anterior cervical spine surgery on the Plaintiff's Wife in the Defendant Hospital with Defendant Thompson serving as the Plaintiff's Wife's Anesthesiologist, and Defendant McGraw and Defendant Wager serving as the Plaintiff's Wife's Certified Registered Nurse Anesthetists (hereinafter referred to herein as the "**Surgery**").

45. That the Plaintiff's Wife underwent endotracheal intubation in the course of the anesthesiology services provided to Plaintiff's Wife by the Defendants in the Surgery.

46. That the Defendants did undertake the duty to render medical care to the Plaintiff's Wife in accordance with the prevailing professional standards of care for hospitals, nurses, doctors and medical personnel in the national community.

47. That the Plaintiff's Wife remained in the Defendant Hospital from January 7, 2010 through January 10, 2010, at which time she was referred for rehabilitation services through Defendant Hospital, due to difficulties in swallowing.

48. That after the Surgery, the Plaintiff's Wife has suffered from serious and permanent injuries including dizzy spells, blocked right ceratoid, hoarseness in her voice, difficulty with speech, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue changes in her temperament, and other executive physical function problems, which the Plaintiff's Wife, under information and belief, is the result of the Surgery, and in particular, the endotracheal intubation.

49. That as a result of the Surgery, Plaintiff's Wife was caused to undergo additional painful and costly medical exams and procedures and has suffered and continues to suffer the serious and permanent injuries and pain and suffering stated above and mental anguish therefrom, and resulting in loss of consortium to the Plaintiff.

50. That the injuries and damages to the Plaintiff as a result of injuries inflicted upon the Plaintiff's Wife while the Plaintiff's Wife was under the care of the Defendants, were proximately due to and caused by the Defendant Professionals and the Defendant Student, and their departure from the prevailing professional standards of care and treatment of the Plaintiff's Wife and thereby, jointly and severely, negligent, careless, grossly negligent, willful, wanton, reckless, and negligent per se, and acted in violation of the duties owed to the Plaintiff's Wife in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. In failing to appropriately treat the Plaintiff's Wife's condition;
- b. In failing to properly and adequately monitor Plaintiff's Wife during the Surgery and throughout her stay at Defendant Hospital;
- c. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff's Wife during the Surgery, without the Plaintiff's Wife's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff's Wife during the Surgery, when the Defendant Student was not a licensed Anesthesiologist or a Certified Registered Nurse Anesthetist or licensed Nurse Anesthetist;
- e. In failing to obtain the Plaintiff's Wife's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff's Wife, including but not limited to the endotracheal incubation procedure;
- f. In inappropriately permitting the administration of the drug, Propofol by persons other than a trained and licensed physician;
- g. In failing to properly and adequately supervise the Defendant Student, medical personnel, staff, employees, and agents of the Defendants with regard to the Plaintiff's Wife's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Wife's Surgery;
- i. In failing to ensure that the Defendant Bailey and the Defendant Thompson as physicians performed the proper and appropriate medical treatment on the Plaintiff's Wife as the Defendants' patient, for which the Defendants are liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;
- j. In failing to provide proper, diligent and timely follow-up care;

- k. In failing to properly treat the Plaintiff's Wife as the Defendant's patient;
- l. In failing to provide treatment during the Surgery and after, necessary to prevent material deterioration of the Plaintiff's Wife's condition;
- m. In violating the standard, laws and regulations of the United States and the State of South Carolina; and
- n. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure and as the evidence at trial may disclose.

51. That the injuries and damages to the Plaintiff as a result of injuries inflicted upon the Plaintiff's Wife while the Plaintiff's Wife was under the care of the Defendants, were proximately due to and caused by the Defendant Hospital's departure from the prevailing professional standards of care and treatment of the Plaintiff's Wife and the Defendant Hospital's, jointly and severely, negligence, carelessness, gross negligence, willfulness, wantonness, recklessness, and negligence per se, and action in violation of the duties owed to the Plaintiff's Wife in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. In failing to appropriately treat the Plaintiff's Wife's condition;
- b. In failing to properly and adequately monitor Plaintiff's Wife during the Surgery and throughout her stay at Defendant Hospital;
- c. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff's Wife during the Surgery, without the Plaintiff's Wife's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff's Wife during the Surgery, when the Defendant Student was not a licensed Anesthesiologist or a Certified Registered Nurse Anesthetist or a licensed Nurse Anesthetist;
- e. In failing to obtain the Plaintiff's Wife's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff's Wife, including but not limited to the endotracheal incubation procedure;
- f. In inappropriately permitting the administration of the drug, Propofol by persons other than a trained and licensed physician;
- g. In failing to properly and adequately supervise the Defendant Student, medical personnel, staff, employees, and agents of the Defendants with regard to the Plaintiff's Wife's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Wife's Surgery;
- i. In failing to have in place proper and adequate policies, procedures and protocols for administration of anesthesia procedures by

- licensed, experienced and qualified medical professionals, or if such policies were in place, in failing to use due care to enforce them;
- j. In failing to ensure that the Defendant Bailey and the Defendant Thompson as physicians in the Defendant Hospital performed the proper and appropriate medical treatment on the Plaintiff's Wife as the Defendants' patient, for which the Defendant Hospital is liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;
 - k. In failing to ensure that the Defendant McGraw and the Defendant Wager as the Certified Registered Nurse Anesthetists in the Defendant Hospital performed the proper and appropriate medical treatment on the Plaintiff's Wife as the Defendants' patient, for which the Defendant Hospital is liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;
 - l. In failing to provide proper, diligent and timely follow-up care;
 - m. In failing to properly treat the Plaintiff's Wife as the Defendant's patient;
 - n. In failing to provide treatment during the Surgery and after, necessary to prevent material deterioration of the Plaintiff's Wife's condition;
 - o. In violating the standard, laws and regulations of the United States and the State of South Carolina; and
 - p. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure, and as the evidence at trial may disclose.

52. That in rendering medical services to Plaintiff's Wife, the Defendants failed to have sufficient medical knowledge and skill or failed to exercise reasonable diligence in the application of their knowledge and skill to Plaintiff's Wife's care and Surgery.

53. That, in addition, to the extent that the Defendants have violated their own policies and procedures, or any State or Federal Laws or Regulations or other standards, these standards were specifically enacted for the protection of a class of persons which includes the Plaintiff's Wife, and the Defendant's failure to comply with the same constitutes a prima facie case of negligence per se.

54. That the Plaintiff is informed and believes that the applicable statute of limitations on one or more claims alleged in this Complaint will expire within ten (10) days of the date of the filing of this Complaint, and that due to time constraints, an affidavit of an expert could not be prepared, and that Section 15-36-100(C)(1) of the South Carolina Code of Laws of 1976, as amended (hereinafter referred to herein as the "**S.C. Code**") is applicable to enable the Plaintiff's Wife to supplement the pleadings with the required affidavit.

55. That the Plaintiff is informed and believes that Defendants' professional negligence in permitting the Defendant Student, who was neither a licensed Anesthesiologist, nor a licensed Nurse Anesthetist nor a Certified Registered Nurse Anesthetist, to perform the endotracheal intubation on the Plaintiff's Wife in the Surgery, without the Plaintiff's Wife's prior consent, is sufficiently substantial and egregious as to fall within S.C. Code Section 15-36-100(C)(2) as involving negligence that lies within the common knowledge and experience so that no special learning is needed to evaluate the conduct of the Defendants.

56. That as a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, negligence per se, wanton acts or omissions, and departure from the professional standards of care by the Defendants and the agents and employees of the Defendants, the Plaintiff's Wife has incurred serious and permanent personal injury, including, but not limited to, dizzy spells, hoarseness in her voice, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulties with word retrieval, fatigue, expressive aphasia, and other executive physical function problems, in the past and in the future, severe pain and suffering, loss of enjoyment of life, loss or earning capacity and income, medical expenses, physical therapy, speech therapy, mental anguish, permanent impairment of health and physical harm, emotional distress, expenditure of money for medical expenses, therapies and other ancillary medical and health related services, and resulting in loss of consortium to the Plaintiff.

57. That as a direct and proximate result of the negligent, careless and reckless acts as set forth above, and the injuries and damages to the Plaintiff's Wife as set forth above, the Plaintiff is entitled to compensation for loss of consortium from the Defendants, jointly and severally.

WHEREFORE, the Plaintiff prays for (1) judgment against the Defendants in the sum of actual damages, in a sum sufficient to compensate the Plaintiff for his actual damages, for punitive damages, special damages, and consequential damages in an amount to be determined by the trier of fact; (2) for the costs of this action; and (3) such other and further relief as the Court may deem just and proper.



ARTHUR PETER ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733

Charleston, South Carolina
Dated: January 7, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Arthur Peter Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 0090

VERIFICATION

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JAN -7 PM 2:41

FILED

Defendants)
_____)

PERSONALLY appeared before me, Arthur Peter Rowe, who being duly sworn, deposes and says that he is the Plaintiff herein; that he has read the Complaint and the same is true and correct of his own knowledge, save and except those matters stated herein to be on information and belief, and to those matters he believes them to be true.

AP Rowe

ARTHUR PETER ROWE

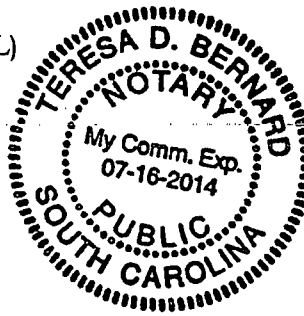
Sworn to before me this Seventh (7th)
day of January, 2013

Teresa D. Bernard

Notary Public for South Carolina

(SEAL)

My Commission Expires July 16, 2014



6. Motion And Petition For Hearing Of Defendants, Nurse Anesthesia Of
South Carolina, LLC, Jeffery S. Wager, C.R.N.A., And Tammy
McGraw, C.R.N.A., Dated May 23, 2013

[Pages 101 through 105 attached]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-00090

ARTHUR PETER ROWE)

Plaintiff,)

vs.)

BON SECOURS-ST. FRANCIS XAVIER)
HOSPITAL, INC., d/b/a BON SECOURS ST.)
FRANCIS XAVIER HOSPITAL, ETAL)

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Arthur Peter Rowe, Pro Se, Bar No. _____
Address:
52 Chadwick Drive, Charleston, SC 29407
Phone: 843-763-2599 Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Jonathan Dunlap, Bar No. 73778
Address:
Batten Lee, 4141 Parklake Avenue, Suite 350,
Raleigh, NC 27612
Phone: 919-439-2221 Fax: 919-780-5382
E-mail: jdunlap@battenlee.com Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Petition for Hearing with Abbreviated Notice

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant

5-23-13
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ **MOTION FEE COLLECTED: \$ _____**
☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ARTHUR PETER ROWE,

Plaintiff,

v.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., d/b/a BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE, BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC., d/b/a BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE, BON SECOURS HEALTH SYSTEM, INC., d/b/a BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE, ROPER ST. FRANCIS FOUNDATION, d/b/a ROPER ST. FRANCIS HEALTHCARE, BON SECOURS-ST. FRANCIS HEALTH SYSTEM FOUNDATION, INC., d/b/a ROPER ST. FRANCIS HEALTHCARE, ROPER HOSPITAL, INC., d/b/a ROPER ST. FRANCIS HEALTHCARE, BYRON N. BAILEY, M.D., CHRISTINE C. THOMPSON, M.D., a/k/a CHRISTINE THOMPSON, M.D., CHARLESTON NEUROSURGICAL ASSOCIATES, LLC, MT. PLEASANT ANESTHESIA ASSOCIATES, PA, CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, d/b/a CHARLESTON SURGERY CENTER, TAMMY MCGRAW, CRNA, also known as TAMMY MCGRAW SPEICHER, CRNA, NURSE ANESTHESIA OF SOUTH CAROLINA, LLC, JEFFERY S. WAGER, CRNA, TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC., and STEVEN HEATH COBB,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-00090

**PETITION FOR HEARING
WITH ABBREVIATED NOTICE**

FILED
2013 MAY 30 AM 11:01
JULIE J. ARMSTRONG
CLERK OF COURT

You will please take notice that the Defendants, Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA ("Defendants"), by and through their undersigned counsel, hereby petition the Court for an Order waiving the ten day notice requirement under Rule 6(d), and allowing the Defendants to be heard on their Motion to Dismiss this matter during the hearing currently scheduled for Friday, May 31, 2013. In support of this Motion, the Defendants show unto the court the following.

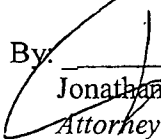
1. The Plaintiff filed this claim on January 7, 2013 against 21 different Defendants.
2. The Plaintiff did not serve the above Defendants with this matter until he attempted to serve a single Defendant, Tammy McGraw, by delivery to the mailroom of a hospital where the Plaintiff worked on May 20, 2013.
3. The matter was not subsequently delivered to Defendant McGraw until May 22, 2013.
4. The matter was brought to the attention of undersigned Counsel today, on May 23, 2013.
5. The Defendants maintain that this matter was not properly or timely served on any of them. Accordingly, the Defendants filed a Motion to Dismiss based on the service defects. The Defendants' counsel filed and served this Motion to Dismiss the same day they were notified of the above issues.
6. This matter is currently scheduled for a hearing on Co-Defendants' Motions to Dismiss on May 31, 2013.
7. This matter involves 21 Defendants represented by seven different Counsel, all of whom will be present at the May 31, 2013 hearing.
8. The Plaintiff will have over one week's notice of this Motion.

9. The Defendants' Motion involves no complicated issues of law, and will focus on the Plaintiff's non-compliance with the basic rules of the South Carolina Rules of Civil Procedure governing service of process.
10. The Defendants' Motion to Dismiss does not affect the rights of any of the Co-Defendants or the merits of this case.
11. Accordingly, the Defendants hereby request an Order pursuant to Rule 6 (d), of the South Carolina Rules of Civil Procedure allowing their Motion to Dismiss to be heard with less than 10 days notice because,
 - a. It is in the interest of judicial economy to hear this motion while representatives of all of the current parties are present. Further, this Motion does not affect the rights of any of the Co-Defendants. As such, it would be a waste of resources to have the Co-Defendants' six Counsel attend an additional hearing on this issue.
 - b. The Plaintiff will not be prejudiced. He will have eight days notice to prepare an issue that involves basic compliance with the South Carolina Rules of Civil Procedure governing service of process. Two additional days notice would not provide the Plaintiff with any material advantage.
 - c. The Defendants have made every effort to timely and expediently give notice of their Motion to Dismiss and their Petition to be heard at the upcoming hearing. Defendant Rowe let her carrier know of this matter the day she received the documentation, and the carrier provided it to Counsel the following day. Counsel is filing this Petition the same day it has received these materials.

Accordingly, the Defendants respectfully request that the Court issue an Order granting the Defendants permission to be heard on their Motion to Dismiss during the May 31, 2013 hearing currently scheduled for a hearing on the Co-Defendants' Motions to Dismiss.

This the 23rd day of May, 2013.

BATTEN LEE PLLC

By: 

Jonathan Dunlap (SC Bar No. 73778)

*Attorney for Defendants Nurse Anesthesia of
South Carolina, LLC, Jeffrey S. Wager, CRNA,
and Tammy McGraw, CRNA, also known as
Tammy McGraw Speicher, CRNA*

4141 Parklake Avenue, Suite 350

Raleigh, North Carolina 27612

Telephone: (919) 439-2221

Facsimile: (919) 780-5382

7. Motion To Dismiss Of Defendants, Nurse Anesthesia Of South
Carolina, LLC, Jeffery S. Wager, C.R.N.A., And Tammy McGraw,
C.R.N.A, Dated May 23, 2013

[Pages 107 through 110 attached]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-00090

ARTHUR PETER ROWE

Plaintiff,)

vs.)

BON SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., d/b/a BON SECOURS ST.
FRANCIS XAVIER HOSPITAL, ETAL

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Arthur Peter Rowe, Pro Se, Bar No. _____

Address:

52 Chadwick Drive, Charleston, SC 29407

Phone: 843-763-2599 Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Jonathan Dunlap, Bar No. 73778

Address:

Batten Lee, 4141 Parklake Avenue, Suite 350,
Raleigh, NC 27612

Phone: 919-439-2221 Fax: 919-780-5382

E-mail: jdunlap@battenlee.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

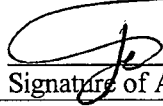
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

5-23-13

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ARTHUR PETER ROWE,

Plaintiff,

v.

BON SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., d/b/a BON SECOURS ST.
FRANCIS XAVIER HOSPITAL, BON
SECOURS ST. FRANCIS HOSPITAL AND
ROPER ST. FRANCIS HEALTHCARE, BON
SECOURS ST. FRANCIS HEALTH SYSTEM,
INC., d/b/a BON SECOURS ST. FRANCIS
XAVIER HOSPITAL, BON SECOURS ST.
FRANCIS HOSPITAL AND ROPER ST.
FRANCIS HEALTHCARE, BON SECOURS
HEALTH SYSTEM, INC., d/b/a BON SECOURS
ST. FRANCIS HOSPITAL AND ROPER ST.
FRANCIS HEALTHCARE, ROPER ST.
FRANCIS FOUNDATION, d/b/a ROPER ST.
FRANCIS HEALTHCARE, BON SECOURS-ST.
FRANCIS HEALTH SYSTEM FOUNDATION,
INC., d/b/a ROPER ST. FRANCIS
HEALTHCARE, ROPER HOSPITAL, INC., d/b/a
ROPER ST. FRANCIS HEALTHCARE, BYRON
N. BAILEY, M.D., CHRISTINE C. THOMPSON,
M.D., a/k/a CHRISTINE THOMPSON, M.D.,
CHARLESTON NEUROSURGICAL
ASSOCIATES, LLC, MT. PLEASANT
ANESTHESIA ASSOCIATES, PA,
CHARLESTON SURGERY CENTER LIMITED
PARTNERSHIP, d/b/a CHARLESTON
SURGERY CENTER, TAMMY MCGRAW,
CRNA, also known as TAMMY MCGRAW
SPEICHER, CRNA, NURSE ANESTHESIA OF
SOUTH CAROLINA, LLC, JEFFERY
S. WAGER, CRNA, TRICOASTAL
HEALTHCARE BILLING AND
MANAGEMENT, INC., and STEVEN HEATH
COBB,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-00090

**NOTICE OF MOTION
AND
MOTION TO DISMISS**

FILED
2013 MAY 28 PM 1:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOTICE OF MOTION AND MOTION TO DISMISS

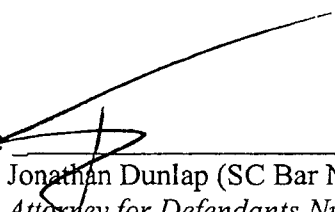
You will please take notice that the Defendants, Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA ("Defendants"), by and through their undersigned counsel, will move the Court to dismiss the above referenced action pursuant to Rule 12(4) for insufficiency of process and Rule 12(5) for insufficiency of service of process of the South Carolina Rules of Civil Procedure.

This Motion is based on the Plaintiff's failure to timely and effectively perfect service of the Summons on them in accordance with Rule 3(a)(2) and Rules 4(d)(1) & d(3). More specifically, the Plaintiff has attempted to serve Defendant Tammy McGraw, CRNA, more than 120 days after the running of the applicable statute of limitations. Plaintiff has failed to serve Defendant Nurse Anesthesia of South Carolina, LLC or Defendant Jeffery S. Wager at all.

Defendants appear in this matter solely for the purposes of contesting jurisdiction due to defects with the Plaintiff's service of process. See, Dunbar v. Vandermore, 295 S.C. 493, 495, 369 S.E.2d 150, 151 (Ct. App. 1988) (holding that a defendant does not waive jurisdictional issues by making an appearance in a matter); Maybin v. Northside Corr. Ctr., 891 F.2d 72, 73 (4th Cir. 1989) (holding, under South Carolina law, a Defendant does not waive service of process related defenses merely because it alerts the Court to jurisdictional defects).

This the 23rd day of May, 2013.

BATTEN LEE PLLC

By: 

Jonathan Dunlap (SC Bar No. 73778)
*Attorney for Defendants Nurse Anesthesia of
South Carolina, LLC, Jeffrey S. Wager, CRNA,
and Tammy McGraw, CRNA, also known as
Tammy McGraw Speicher, CRNA*
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612
Telephone: (919) 439-2221
Facsimile: (919) 780-5382

8. Notice Of Appearance Of Jonathan Dunlap Of Batten Lee, PLLC
Dated May 23, 2013

[Pages 112 through 113 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ARTHUR PETER ROWE,

Plaintiff,

v.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., d/b/a BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE, BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC., d/b/a BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE, BON SECOURS HEALTH SYSTEM, INC., d/b/a BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE, ROPER ST. FRANCIS FOUNDATION, d/b/a ROPER ST. FRANCIS HEALTHCARE, BON SECOURS-ST. FRANCIS HEALTH SYSTEM FOUNDATION, INC., d/b/a ROPER ST. FRANCIS HEALTHCARE, ROPER HOSPITAL, INC., d/b/a ROPER ST. FRANCIS HEALTHCARE, BYRON N. BAILEY, M.D., CHRISTINE C. THOMPSON, M.D., a/k/a CHRISTINE THOMPSON, M.D., CHARLESTON NEUROSURGICAL ASSOCIATES, LLC, MT. PLEASANT ANESTHESIA ASSOCIATES, PA, CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, d/b/a CHARLESTON SURGERY CENTER, TAMMY MCGRAW, CRNA, also known as TAMMY MCGRAW SPEICHER, CRNA, NURSE ANESTHESIA OF SOUTH CAROLINA, LLC, JEFFERY S. WAGER, CRNA, TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC., and STEVEN HEATH COBB,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-00090

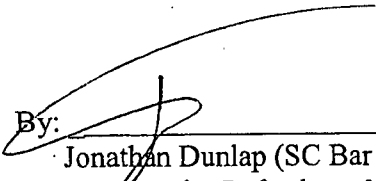
NOTICE OF APPEARANCE

FILED
2013 MAY 28 PM 2:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

The undersigned has been retained to represent Defendants Nurse Anesthesia of South Carolina, LLC, Jeffrey S. Wager, CRNA, and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, in the above-referenced matter and hereby notifies the Court, the parties, and their attorneys that they are appearing on behalf of these Defendants in this action. These Defendants appear before this court **solely to contest jurisdiction over the person, not to address the merits**. Accordingly, through this limited appearance, Defendants do not waive any defenses, objections, jurisdictional arguments, or available statutory or common law defenses. See, Maybin v. Northside Corr. Ctr., 891 F.2d 72 (4th Cir. 1989); Dunbar v. Vandermore, 295 S.C. 493, 369 S.E.2d 150 (Ct. App. 1988).

This the 23rd day of May, 2013.

BATTEN LEE PLLC

By: 

Jonathan Dunlap (SC Bar No. 73778)
*Attorney for Defendants Nurse Anesthesia of
South Carolina, LLC, Jeffrey S. Wager, CRNA,
and Tammy McGraw, CRNA, also known as
Tammy McGraw Speicher, CRNA*
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612
Telephone: (919) 439-2221
Facsimile: (919) 780-5382

9. Motion To Dismiss By Defendant Christine C. Thompson, M.D.,
Dated April 22, 2013

[Pages 115 through 117 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
)

Arthur Peter Rowe,

CASE NO. 2013-CP-10-00090

☐ Plaintiff(s),

MOTION TO DISMISS

Versus

Bon Secours-St. Francis Xavier Hospital, Inc.,
at al.

☒ Defendant(s).

check box above indicating submitting party

Plaintiff's attorney: Arthur Peter Rowe 52 Chadwick Drive Charleston, SC 29407 Ph: (843) 763-2599 / 737-0733 E: excommunicated@comcast.net		Defendant's attorney: James B. Hood (SC #70212) HOOD LAW FIRM, LLC 172 Meeting Street / P.O. Box 1508 Charleston, SC 29402 P: (843) 577-4435 / F: (843) 722-1630 E: Info@hoodlaw.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Motion to Dismiss</u> Estimated Time Needed: <u>20 Minutes</u> Court Reporter Needed: YES ☒ / NO ☐			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order – I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff(s) / ☒ Defendant(s)		Date submitted <u>4/22/15</u>	
SECTION III: Motion Fee			
☒ PAID – AMOUNT: <u>\$25</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE: _____ DATE: _____	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		<u>DATE FILED</u>	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED-AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
)

Arthur Peter Rowe,

Plaintiff,

) C/A No. 2013-CP-10-00090
)
)

Versus

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis
Xavier Hospital; Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours Health
System, Inc., d/b/a Bon Secours St.
Francis Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis
Health System Foundation, Inc., d/b/a
Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt.
Pleasant Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston Surgery
Center, Tammy McGraw, CRNA, also
known as Tammy McGraw Speicher,
CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath
Cobb,

Defendants.

DEFENDANT CHRISTINE C.
THOMPSON, M.D. A/K/A CHRISTINE
THOMPSON, M.D.'S NOTICE OF
MOTION AND MOTION TO DISMISS

FILED
2013 APR 22 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

PLEASE TAKE NOTICE THAT the Defendant, Christine C. Thompson,
M.D., a/k/a Christine Thompson, M.D. (hereinafter "this Defendant"), will move
before this Honorable Court, at a time and place set by the Court, for an Order

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
)

Arthur Peter Rowe,

Plaintiff,

) C/A No. 2013-CP-10-00090
)
)

Versus

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis
Xavier Hospital; Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours Health
System, Inc., d/b/a Bon Secours St.
Francis Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis
Health System Foundation, Inc., d/b/a
Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt.
Pleasant Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston Surgery
Center, Tammy McGraw, CRNA, also
known as Tammy McGraw Speicher,
CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath
Cobb,

Defendants.

DEFENDANT CHRISTINE C.
THOMPSON, M.D. A/K/A CHRISTINE
THOMPSON, M.D.'S NOTICE OF
MOTION AND MOTION TO DISMISS

FILED
2013 APR 22 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

PLEASE TAKE NOTICE THAT the Defendant, Christine C. Thompson,
M.D., a/k/a Christine Thompson, M.D. (hereinafter "this Defendant"), will move
before this Honorable Court, at a time and place set by the Court, for an Order

10. Notice Of Appearance Of Hood Law Firm, LLC Dated April 15,
2013

[Pages 119 through 120 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe,

Plaintiff,

Versus

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis
Xavier Hospital, Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours Health
System, Inc., d/b/a Bon Secours St.
Francis Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis
Health System Foundation, Inc., d/b/a
Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt.
Pleasant Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston Surgery
Center, Tammy McGraw, CRNA, also
known as Tammy McGraw Speicher,
CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath
Cobb,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-10-00090

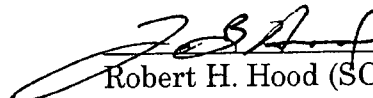
NOTICE OF APPEARANCE

FILED
2013 APR 16 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

PLEASE TAKE NOTICE THAT the undersigned attorneys, hereby appear on behalf of the Defendant, Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D. in the above-captioned case. The undersigned would respectfully request that all future correspondence, notices, and other documents be directed to them in addition to all other counsel of record in this matter.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com


Robert H. Hood (SC #2599)
James B. Hood (SC #70212)
Jeffrey M. Bogdan (SC #76354)

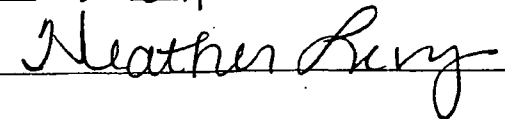
Attorneys for the Defendant
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.

4/15, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 16 day of April, 2013.



11. Affidavit Of Lisa K. Saladin, PH.D. Dated March 28, 2013.

[Page 122 attached]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

2013-CP-10-0090
AFFIDAVIT OF LISA K. SALADIN, PH.D.

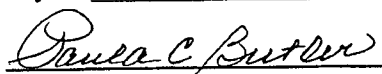
PERSONALLY appeared before me Lisa K. Saladin Ph.D., who first being duly sworn, alleges and says:

1. I have personal knowledge of the matters stated herein.
2. I am Dean of the College of Health Professions (CHP) at the Medical University of South Carolina (MUSC). In my capacity as Dean, I am familiar with Steven Heath Cobb's position as an MUSC nurse anesthetist student in CHP, as well as the relationship between MUSC and Bon Secours St. Francis Health System in which MUSC provided student nurse anesthetists to St. Francis for clinical education and experience.
3. MUSC is a "political subdivision" as defined under Section 15-78-30 (h) of the South Carolina Tort Claims Act.
4. At all pertinent times complained of in the Complaint filed by Beverly Moore-Rowe, Case No. 2013-CP-10-88, and in the Notice of Intent to File Suit filed by Arthur Moore, Case No. 2013-CP-10-90, including January 7, 2010, Steven Heath Cobb was an "agent" of MUSC under the terms, provisions, and definitions of the Tort Claims Act.
5. At all times complained of in the Complaint and the Notice of Intent, Steven Heath Cobb was covered by an insurance policy issued by the South Carolina Insurance Reserve Fund with limits in conformity with the damages caps in the South Carolina Tort Claims Act.



Lisa K. Saladin

SWORN to before me this 28th
day of March, 2013



Paula C. Burton

Notary Public for South Carolina

My Commission Expires: February 10, 2015

FILED
2013 APR 16 AM 11:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

12. Motion To Dismiss By Defendant Byron N. Bailey, M.D. And
Charleston Neurosurgical Associates, LLC Dated April 2, 2013.

[Pages 124 through 127 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe,

☐ Plaintiff,

Versus

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a
Bon Secours St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St. Francis Healthcare,
Bon Secours St. Francis Health System, Inc., d/b/a Bon
Secours St. Francis Xavier Hospital, et al.

☒ Defendants.

check box above indicating submitting party

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 13-CP-10-00090

)
) **DEFENDANT BYRON N. BAILEY, M.D. AND**
) **CHARLESTON NEUROSURGICAL ASSOCIATES,**
) **LLC'S NOTICE OF MOTION AND MOTION TO**
) **DISMISS**

Pro Se Plaintiff:

Arthur Peter Rowe
52 Chadwick Dr.
Charleston, SC 29407
Phone: (843) 763-2599; (843) 737-0733

Defendant's attorney:

Darren K. Sanders, Esquire (S.C. Bar No. 68296)
Buyck & Sanders Law Firm, LLC
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Phone: (843) 377-1400; Fax: (843) 377-1403
Email: dks@buyckfirm.com

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTION I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Dismiss

Estimated Time Needed: 20 minutes

Court Reporter Needed: YES ☒/ NO ☐

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order -

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendants

Date submitted 4/2/13

SECTION III: Motion Fee

- ☒ **PAID - AMOUNT:** \$25
☐ **EXEMPT:** (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: _____

DATE: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED-AMOUNT DUE: _____

\\MAINSERVER\Case Files\30.16 Arthur Rowe v. Bailey\Motions & Orders\Motion slip (MTD).doc

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe,

Plaintiff,

Versus

Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier Hospital,
Bon Secours St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon Secours St.
Francis Hospital and Roper St. Francis
Healthcare, Bon Secours Health System, Inc.,
d/b/a Bon Secours St. Francis Hospital and
Roper St. Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc., d/b/a
Roper St. Francis Healthcare, Byron N. Bailey,
M.D., Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA, Charleston Surgery
Center Limited Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw, CRNA, also
known as Tammy McGraw Speicher, CRNA,
Nurse Anesthesia of South Carolina, LLC,
Jeffery S. Wager, CRNA, Tricoastal
Healthcare Billing and Management, Inc., and
Steven Heath Cobb,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 13-CP-10-00090

) **DEFENDANT BYRON N. BAILEY, M.D.**
) **AND CHARLESTON NEUROSURGICAL**
) **ASSOCIATES, LLC'S NOTICE OF**
) **MOTION AND MOTION TO DISMISS**

2013 APR -3 PM 1:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

FILED

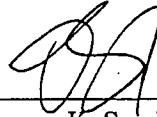
TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendants, Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC (hereinafter "these Defendants"), will move the Court in ten days or as soon thereafter as counsel may be heard for an Order dismissing the Summons and Complaint filed in the above-referenced matter pursuant to Rules 12(b)(1) and 12(b)(6), SCRCPP and S.C. Code Ann. Sections 15-79-125 and 15-36-100.

The Plaintiff alleges injury in the form of loss of consortium related to allegations of medical malpractice concerning medical care rendered to his wife, Beverly Moore-Rowe. Ms. Moore-Rowe has filed a Notice of Intent to File Suit alleging medical malpractice against these Defendants in a filing bearing civil action number 2013-CP-10-0088. It is the position of these Defendants that because the cause of action clearly arose after July 1, 2005 and because the Plaintiff alleges injury in this action as the result of medical malpractice in the form of loss of consortium, the Plaintiff was required to comply with the pre suit requirements set forth in S.C. Code Section 15-79-125 prior to moving forward with a Summons and Complaint. Moving forward with a Notice of Intent to File Suit is necessary because in order to prove his cause of action for loss of consortium, the Plaintiff must prove liability of these Defendants for his wife's injuries. The Plaintiff did not file a Notice of Intent to File Suit pursuant to S.C. Code Section 15-79-125. Furthermore, the Plaintiff has failed to provide an expert witness affidavit pursuant to S.C. Code Section 15-36-100. Accordingly, this matter should be dismissed with prejudice pursuant to S.C. Code Sections 15-79-125, 15-36-100 and South Carolina Rules of Civil Procedure Rules 12(b)(1) and 12(b)(6).

These Defendants reserve the right to submit a memorandum of law at or before the time of the hearing on this motion.

BUYCK & SANDERS LAW FIRM, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 377-1403
Email: dks@buyckfirm.com



Darren K. Sanders (S.C. Bar # 68296)
Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for the Defendants
Byron N. Bailey, M.D. and
Charleston Neurosurgical Associates, LLC

4/2, 2013
Mt. Pleasant, South Carolina
\\MAINSERVER\Case Files\30.16 Arthur Rowe v. Bailey\Motions & Orders\MTD (Loss of Consortium).doc

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 2 day of April, 2013.



13. Answer Of Defendant Byron N. Bailey, M.D. And Charleston
Neurosurgical Associates, LLC Dated April 2, 2013

[Pages 129 through 138 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe,

Plaintiff,

Versus

Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier Hospital,
Bon Secours St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon Secours St.
Francis Hospital and Roper St. Francis
Healthcare, Bon Secours Health System, Inc.,
d/b/a Bon Secours St. Francis Hospital and
Roper St. Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc., d/b/a
Roper St. Francis Healthcare, Byron N. Bailey,
M.D., Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA, Charleston Surgery
Center Limited Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw, CRNA, also
known as Tammy McGraw Speicher, CRNA,
Nurse Anesthesia of South Carolina, LLC,
Jeffery S. Wager, CRNA, Tricoastal
Healthcare Billing and Management, Inc., and
Steven Heath Cobb,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 13-CP-10-00090

) **DEFENDANT BYRON N. BAILEY, M.D.**
) **AND CHARLESTON NEUROSURGICAL**
) **ASSOCIATES, LLC'S ANSWER TO**
) **PLAINTIFF'S COMPLAINT**

BY

2013 APR -3 PM 1:53
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

COMES NOW, the Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC (hereinafter "these Defendants") by and through their undersigned attorneys answering the Plaintiff's Complaint subject to their Motion to Dismiss as follows:

1. These Defendants deny each and every allegation of the Plaintiff's Complaint which is not hereinafter specifically admitted.

2. These Defendants lack sufficient information to admit or deny Paragraphs 1 and 2 of the Plaintiff's Complaint.

3. Paragraphs 3, 4, 5, 6, 7, 8, and 9 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

4. Answering Paragraph 10 of the Plaintiff's Complaint, these Defendants admit Dr. Bailey is a resident of Charleston County, South Carolina, that he is a physician licensed to practice medicine in South Carolina and that he is a board certified neurosurgeon.

5. Paragraphs 11, 12, and 13 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

6. Answering Paragraph 14 of the Plaintiff's Complaint, these Defendants admit Charleston Neurosurgical Associates, LLC was originally established as a limited liability company in the State of South Carolina. At the time of the events described within the Complaint, the Defendant Dr. Bailey was employed by a charitable entity and not by Charleston Neurosurgical Associates, LLC. Accordingly, the Defendant Charleston Neurosurgical Associates, LLC should be dismissed from this lawsuit.

7. Paragraphs 15, 16, 17, 18, and 19 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

8. These Defendants deny Paragraphs 20 of the Plaintiff's Complaint.

9. Paragraphs 21, 22, 23, 24, and 25 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

10. Answering Paragraph 26 of the Plaintiff's Complaint, these Defendants admit the allegations set forth within the Complaint occurred in Charleston County, South Carolina. These Defendants deny the allegations as set forth within this Answer.

11. Answering Paragraph 27 of the Plaintiff's Complaint, these Defendants admit venue is appropriate in this action but deny the Court has jurisdiction over this matter as set forth within this Answer due to the Plaintiff's failure to file a Notice of Intent to File Suit and an expert affidavit.

12. Paragraph 28 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and

treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

13. These Defendants deny Paragraphs 29 and 30 of the Plaintiff's Complaint.

14. Paragraph 31 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

15. Answering Paragraph 32 of the Plaintiff's Complaint, these Defendants admit all care and treatment provided to the Plaintiff's wife complied with the standard of care in all respects.

16. Paragraph 33 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

17. Answering Paragraph 34 of the Plaintiff's Complaint, these Defendants admit all care and treatment provided to the Plaintiff's wife complied with the standard of care in all respects. These Defendants deny all conclusions of law set forth within this Paragraph.

18. Answering Paragraphs 35, 36, 37, 38, 39, 40, and 41 of the Plaintiff's Complaint, these Defendants refer to the medical records related to the the Plaintiff's wife care and treatment and to the testimony of the healthcare providers referenced for a complete and accurate recitation of the care rendered. Additionally, all allegations of these Paragraphs that are inconsistent with these Defendants' defense that all care and treatment provided by these Defendants to the Plaintiff's wife complied with the standard of care in all respects are denied.

19. These Defendants deny Paragraph 42 of the Plaintiff's Complaint.

20. Answering Paragraphs 43, 44, and 45 of the Plaintiff's Complaint, these Defendants refer to the medical records related to the the Plaintiff's wife care and treatment and to the testimony of the healthcare providers referenced for a complete and accurate recitation of the care rendered. Additionally, all allegations of these Paragraphs that are inconsistent with these Defendants' defense that all care and treatment provided by these Defendants to the Plaintiff's wife complied with the standard of care in all respects are denied.

21. Answering Paragraph 46 of the Plaintiff's Complaint, these Defendants admit all of the care and treatment they rendered to the Plaintiff's wife complied with the standard of care as it is defined by the law of the State of South Carolina in all respects.

22. Paragraph 47 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

23. These Defendants deny Paragraphs 48, 49, 50 including all subparts (a) through (n), 51 including all subparts (a) through (p), 52 and 53 of the Plaintiff's Complaint.

24. Answering Paragraph 54 of the Plaintiff's Complaint, these Defendants deny that the Plaintiff or his wife are allowed pursuant to South Carolina law to file actions against these Defendants without an expert affidavit. Accordingly, this action should be dismissed.

25. These Defendants deny Paragraphs 55, 56, and 57 of the Plaintiff's Complaint.

26. These Defendants deny the Plaintiff is entitled to the relief requested within his Prayer for Relief.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(No Deviation from Standard of Care)

27. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 26 above as if fully repeated herein verbatim.

28. That the care and treatment administered by these Defendants to the Plaintiff's wife conformed to and was in full compliance with the standard of care. All care and treatment administered by these Defendants to the Plaintiff's wife was within acceptable medical standards and methods, and, at no time pertinent hereto, did these Defendants deviate from any medical standard while caring for or tending to the Plaintiff's wife. Consequently, the Plaintiff is barred from recovery against these Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(No Proximate Cause)

29. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 28 above as if fully repeated herein verbatim.

30. That, even if these Defendants were negligent, as alleged in the Complaint, which is specifically denied, the negligence of these Defendants was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore the Defendants are not liable for any damages allegedly sustained.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Failure to State a Claim)

31. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 30 above as if fully repeated herein verbatim.

32. The allegations contained in Complaint fail in their entirety to state a claim upon which relief may be granted against these Defendants. As a result, this matter should be dismissed against these Defendants pursuant to Rule 12(b)(6), SCRPC.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Charitable Immunity)

33. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 32 above as if fully repeated herein verbatim.

34. The Defendant Dr. Bailey is an "employee" or "agent" of a 501(c)(3) corporation and/or a 501(c)(3) corporation which operates exclusively for benevolent, educational, scientific and charitable purposes. The Defendant Dr. Bailey is entitled to the protections set forth in the limitations of liability referenced in the S.C. Code Ann. § 33-56-180(A) of the 1976 Code of Laws of South Carolina as amended, all provisions of the South Carolina Solicitation of Charitable Funds Act S.C. Code Ann. § 33-56-10, et. seq., and/or the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et. seq. which limits recovery against a charitable Defendant and its employees/agents. The Defendant Dr. Bailey further answers they are exempt from a claim of punitive damages as claimed within the Complaint. As an employee of a charitable organization as defined by Chapter 56 of Title 33 of the South Carolina Code of Laws (1976 as amended) and pursuant to said statutory scheme, recovery against the agents/employees of a charitable entity for any tortuous act or omission is specifically limited to actual damages in a specified amount not to exceed the limitations set forth within the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq. and

the Defendant Dr. Bailey pleads said statutory scheme as a bar and/or limitation to recovery by the Plaintiff against him in this action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THESE DEFENDANTS ALLEGE:
(Punitive Damages Unconstitutional)

35. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate these Defendants' constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THESE DEFENDANTS ALLEGE:
(Limitation on liability/Noneconomic Damage Awards Act)

37. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 36 above as if fully repeated herein verbatim.

38. All provisions and subparts including but not limited to all limitations on noneconomic damage awards set forth within the South Carolina Noneconomic Damage Awards Act of 2005 S.C. Code Ann. § 15-32-200, et. seq. apply to this action. These Defendants deny liability as set forth within this Answer. However, these Defendants answer the limitations set forth within § 15-32-220 apply to this action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THESE DEFENDANTS ALLEGE:
(Application of S.C. Code Ann. § 15-38-15)

39. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 38 above as if fully repeated herein verbatim.

40. These Defendants hereby reserve the right to seek all remedies, rights and privileges available pursuant to S.C. Code Ann. § 15-38-15. That, upon information and belief,

even if these Defendants were negligent as described in the Complaint, which is specifically denied, these Defendants were less than fifty percent liable for the total fault alleged. Accordingly, joint and several liability should not apply to this action and each Defendant should be held liable only for the percentage of fault, which is specifically denied, to be determined by the trier of fact.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Statute of Limitations)

41. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 40 above as if fully repeated herein verbatim.

42. The Plaintiff failed to commence properly this action within the requisite statute of limitations. Accordingly, the Court lacks jurisdiction over the subject matter of this action and these Defendants should be dismissed.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:

43. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 42 above as if fully repeated herein verbatim.

44. The Plaintiff did not comply with the Medical Malpractice Reform Act and all applicable provisions of South Carolina law in filing and/or commencing this action. Additionally, the Plaintiff has failed to file a Notice of Intent to File Suit pursuant to S.C. Code Section 15-79-125 and an expert affidavit as required by S.C. Code Section 15-36-100. Accordingly, this case should be dismissed.

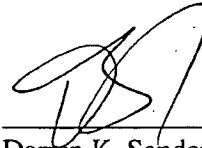
FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Reservation and Non-Waiver)

45. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 44 above as if fully repeated herein verbatim.

46. These Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE having answered all of the allegations of the Plaintiff's Complaint and asserting these affirmative defenses herein subject to their Motion to Dismiss, these Defendants hereby move the Court for a dismissal of all claims, for costs and fees associated with the defense of this action, and for such other relief as the Court deems appropriate.

BUYCK & SANDERS LAW FIRM, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 377-1403
Email: dks@buyckfirm.com



Darren K. Sanders (S.C. Bar # 68296)
Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for the Defendants
Byron N. Bailey, M.D. and
Charleston Neurosurgical Associates, LLC

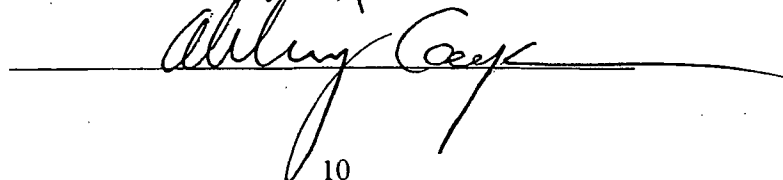
4/2, 2013
Mt. Pleasant, South Carolina

\\MAINSERVER\Case Files\30.16 Arthur Rowe v. Bailey\Pleadings & Discovery\Answer.doc

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 2 day of April, 2013.


10

14. Motion To Dismiss By Defendant Charleston Surgery Center
Limited Partnership Dated March 26, 2013.

[Pages 140 through 143 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe

Plaintiff,

vs.

Charleston Surgery Center, et. al.

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-00090

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Arthur Peter Rowe, Bar No. _____

Address:

52 Chadwick Drive

Charleston, SC 29407

Phone: (843) 763-2599 Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Jack G. Gresh, Esq., Bar No. 75188

Address:

Hall Booth Smith, P.C.

40 Calhoun Street, Suite 550

Charleston, SC 29401

Phone: (843) 720-3460 Fax: (843) 720-3458

E-mail: jgresh@hallboothsmith.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 15 min

Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant

3/26/2013

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** 25.00

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-10-0090

Arthur Peter Rowe,

Plaintiff,

v.

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis Healthcare, Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, P.A., Charleston
Surgery Center Limited Partnership, d/b/a
Charleston Surgery Center, Tammy
McGraw, CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse Anesthesia
Of South Carolina, LLC, Jeffrey S. Wager,
CRNA, Tricoastal Healthcare Billing And
Management, Inc., and Steven Heath Cobb,

Defendants.

**DEFENDANT CHARLESTON SURGERY
CENTER LIMITED PARTNERSHIP d/b/a
CHARLESTON SURGERY CENTER'S
MOTION TO DISMISS**

FILED
2013 MAR 27 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: Arthur Peter Rowe, *pro se* Plaintiff:

Pursuant to S.C.R.C.P. 12(b)(6) and S.C. Code Ann § 15-36-100(E), Defendant
Charleston Surgery Center Limited Partnership d/b/a Charleston Surgery Center (hereinafter

referred to as "This Defendant") moves this Court for an Order dismissing with prejudice all causes of action enumerated within Plaintiff's Complaint.

As grounds for this Motion, this Defendant will show that Plaintiff's Complaint pleads loss of consortium. See Complaint, *generally*. Which arose from his wife's medical malpractice claim. See Plaintiff Beverly Moore-Rowe's Notice of Intent, *generally*.

Defendant's Motion to Dismiss is predicated on well-established South Carolina law governing medical malpractice actions, that is compliance with South Carolina's Medical Malpractice Reform Act of 2005 S.C. Code Ann. §15-79-110 *et seq.* (hereinafter "The Act") and S.C. Code Ann. § 15-36-100 . The Act applies to this case and controls its disposition.

Failure to Comply with The Act

The Act became effective for all suits alleging medical negligence arising after July 1, 2005. The alleged medical negligence arose on or after November of 2007, therefore the Plaintiff must comply with The Act, including S.C. Code Ann. § 15-36-100, which requires a contemporaneous affidavit from an expert specifying at least one act or omission of the Defendant. The statute specifically states "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." (emphasis added). The Plaintiff failed to comply with the Act as they failed to attach any affidavit to their Complaint.

When, as here, a defendant challenges the requirement of an expert affidavit, the defendant must file a motion to dismiss contemporaneously with its initial responsive pleading alleging, with specificity, the deficiencies of the expert affidavit filed with the Complaint. S.C. Code Ann. § 15-36-100(E). To that end, the Defendants would show that they, as licensed

medical doctors and employer of the same, are healthcare providers to whom this section requires a sufficient affidavit. See S.C. Code Ann. § 15-36-100(G)(9).

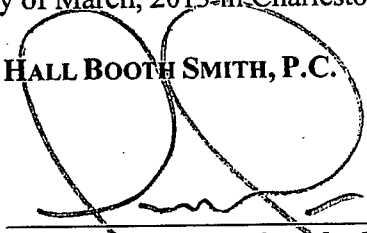
Plaintiff's failure to attach an affidavit is a fatal error that warrants a dismissal with prejudice of their Complaint. See Ranucci v. Crain, 397 S.C. 168 (S.C. Ct. App. 2012); and Barnes v. Seigler, 2012 U.S. Dist. LEXIS 10523 (D.S.C. Jan. 30, 2012).

Conclusion

This Defendant's Motion is based upon the South Carolina Rules of Civil Procedure, upon the common and statutory laws of South Carolina, and upon a Memorandum of Law to be filed in support prior to the Motion being called for hearing, and such other and further argument or information as may be properly presented to the Court.

Upon these grounds, this Defendant moves the Court to dismiss all causes of action enumerated within Plaintiff's Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action.

Respectfully submitted this 26th day of March, 2013 in Charleston, South Carolina.


HALL BOOTH SMITH, P.C.

Jack G. Gresh, S.C. Bar No. 75188
40 Calhoun Street, Suite 550
Charleston, South Carolina 29401
Phone: (843) 720-3460
Fax: (843) 720-3458
Email: jgresh@hallboothsmith.com

*Attorney for Defendant Charleston Surgery
Center Limited Partnership, d/b/a Charleston
Surgery Center*

15. Exhibit A To Motion To Dismiss Of Defendant, Bon Secours St.
Francis Xavier Hospital, Inc.

[Pages 145 through 155 attached]

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Beverly C. Moore-Rowe

Plaintiff(s)

vs.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia Of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing And Management, Inc., and Steven Heath Cobb,

Defendant(s)

(Please Print)

Submitted By: Beverly C. Moore-Rowe

Address: 52 Chadwick Drive; Charleston, S.C. 29407

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 00088

SC Bar #: Pro Se Plaintiff
 Telephone #: 843-763-2599
 Fax #:
 Other: 843-737-0733
 E-mail: excommunicated@comcast.net

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.

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 Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 ____-CP-_____
☒ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Label (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

PLAINTIFF'S
EXHIBIT

A

- Inmate Petitions**
- ☐ PCR (500)
 - ☐ Mandamus (520)
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ 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 (850)
 - ☐ 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 (650)
 - ☐ Motion to Quash Subpoena In an Out-of-County Action (660)
 - ☐ Sexual Predator (510)

Submitting Party Signature: Beverly Moore-Rowe Date: 01/07/2013

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, 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 CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 06088

NOTICE OF INTENT TO FILE SUIT

2013 JAN -7 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Defendants)
_____)

THE PLAINTIFF HEREIN, Beverly C. Moore-Rowe (hereinafter referred to herein as the "**Plaintiff**") hereby submits this Notice of Intent to File Suit pursuant to Section 15-79-125 of the South Carolina Code of Laws of 1976, as amended (hereinafter referred to herein as the "**S.C. Code**").

1. **ADVERSE PARTIES.**

1.1 The Defendant, **Bon Secours-St. Francis Xavier Hospital, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Xavier Hospital, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.2. The Defendant, **Bon Secours St. Francis Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours St. Francis Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.3. The Defendant, **Bon Secours Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a Maryland corporation registered to do business in the State of South Carolina. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.4. The Defendant, **Roper St. Francis Foundation**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper St. Francis Foundation held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.5. The Defendant, **Bon Secours-St. Francis Health System Foundation, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Health System Foundation, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.6. The Defendant, **Roper Hospital, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper Hospital, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.7. The Defendant, **Byron N. Bailey, M.D.** is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in neurology.

1.8. The Defendant, **Christine Thompson, M.D.**, also known as Christine C. Thompson, M.D., is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in anesthesiology.

1.9. The Defendant, **Tammy McGraw, CRNA**, also known as Tammy McGraw Speicher, CRNA, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.10. The Defendant, **Jeffery S. Wager, CRNA**, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.11. The Defendant, **Charleston Neurosurgical Associates, LLC**, is a South Carolina limited liability company organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.12. The Defendant, **Mt. Pleasant Anesthesia Associates, PA**, is a South Carolina Corporation, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.13. The Defendant, **Charleston Surgery Center Limited Partnership**, doing business as Charleston Surgery Center, is a South Carolina Limited Partnership organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.14. The Defendant, **Nurse Anesthesia Of South Carolina, LLC**, is a South Carolina Limited Liability Company, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.15. The Defendant, **Tricoastal Healthcare Billing And Management, Inc.**, is a South Carolina Corporation organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.16. The Defendant, **Steven Heath Cobb** (hereinafter referred to herein as "**Defendant Student**") is a resident of the State of South Carolina, County of Greenville, at all times relevant herein, was a student nurse anesthetist not then licensed to practice as a nurse anesthetist in the State of South Carolina and not then a Certified Registered Nurse Anesthetist, but was at that time a Student Certified Registered Nurse Anesthetist ("**SCRNA**").

2. A SHORT AND PLAIN STATEMENT OF FACTS SHOWING THAT THE PARTY FILING THE NOTICE OF INTENT IS ENTITLED TO RELIEF.

On January 7, 2010, the Plaintiff, Beverly C. Moore-Rowe, was admitted to Bon Secours-St. Francis Xavier Hospital, Inc. ("**Defendant St. Francis**"), by her physician, Byron N. Bailey, M.D. for anterior cervical spine surgery consisting of anterior cervical discectomy with fusion, as treatment for Plaintiff's neck pain and complaints of bilateral arm numbness and other symptoms.

The Plaintiff met with Tammy McGraw, CRNA ("**Defendant McGraw**"), the Certified Registered Nurse Anesthetist, and at that time Defendant McGraw introduced the Plaintiff to Steven Heath Cobb ("**Defendant Student**"), who was then a Student Certified Registered Nurse Anesthetist. Defendant McGraw requested Plaintiff's permission for Defendant Student to observe Plaintiff's Surgical procedure. The Plaintiff never gave any consent or permission whatsoever, verbally, written or otherwise, for the Defendant Student to administer any medical services, including those normally performed by a Certified Registered Nurse Anesthetist, such as the endotracheal intubation of the Plaintiff as patient. Had the Plaintiff been asked for permission to allow Defendant Student to administer the endotracheal intubation, she would have refused to give such permission.

The Plaintiff specifically stated to Defendant McGraw prior to her surgery that she was a singer with the Symphony Gospel Chorus and Symphony and asked her to please protect the Plaintiff's vocal chords, knowing that she would be receiving general anesthesia endotracheal intubation. Plaintiff also asked Defendant McGraw to make certain Plaintiff received sufficient oxygen.

The Plaintiff had also requested that she have an Anesthesiologist and was relieved to know that Christine Thompson, MD ("**Defendant Thompson**") was the Anesthesiologist for her procedure.

On January 7, 2010, the Defendant Bailey performed the anterior cervical spine surgery (the "**Surgery**") on the Plaintiff in Defendant St. Francis with Defendant Thompson serving as the Plaintiff's Anesthesiologist, and Defendant McGraw serving as Plaintiff's Certified Registered Nurse Anesthetist and Jeffery S. Wager, CRNA ("**Defendant Wager**") also serving as Plaintiff's Certified Registered Nurse Anesthetist.

Without the Plaintiff's prior knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff during her Surgery and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff as patient in her surgery.

The Plaintiff remained in the Defendant Hospital from January 7, 2010 through January 10, 2010, at which time she was referred for rehabilitation services through Defendant Hospital, due to difficulties in swallowing and speech.

After the Surgery, the Plaintiff has suffered from serious and permanent injuries including dizzy spells, blocked right ceratoid, hoarseness in her voice, difficulty with speech, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue changes in her temperament, and other executive physical function problems, which the Plaintiff, under information and belief, is the result of the Surgery, and in particular, the endotracheal intubation.

The Plaintiff began to inquire her physicians and other physicians to determine the cause of her ailments and injuries that began after her Surgery.

As a result of the Surgery, Plaintiff was caused to undergo additional painful and costly medical exams and procedures and has suffered and continues to suffer the serious and permanent injuries and pain and suffering stated above and mental anguish therefrom.

In addition, attached hereto as Exhibit A, and incorporated herein by specific reference thereto, is a complete copy of the Complaint that sets forth the factual allegations and legal claims, as well as the identity of the Defendants.

3. ANSWERS TO STANDARD INTERROGATORIES

Attached hereto as Exhibit B and incorporated herein by specific reference thereto, are answers to the Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure.

4. AFFIDAVIT OF EXPERT WITNESS.

The Affidavit of the Expert Witness required under S.C. Code Section 15-79-125 is not being provided at this time pursuant to S.C. Code Section 15-36-100(C)(1). The Plaintiff is informed and believes that the applicable statute of limitations on one or more claims alleged in the Complaint, which is attached to this Notice Of Intent to File Suit as Exhibit A, will expire within ten (10) days of the date of the filing of the Complaint, and that due to time constraints, an affidavit of an expert could not be prepared. The Plaintiff is informed and believes that S.C. Code Section 15-36-100(C)(1) is applicable to enable the Plaintiff to supplement the pleadings with the required affidavit.

5. **STANDARD INTERROGATORIES DIRECTED TO DEFENDANTS**

Attached hereto as Exhibit C and incorporated herein by specific reference thereto, are Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure, directed to each Defendant.

Respectfully submitted by:

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: January 7, 2013

EXHIBIT A

Attached to this Exhibit A is a copy of the Plaintiff's Complaint, which is attached hereto and incorporated herein by specific reference thereto.

16. Motion To Dismiss Of Defendant, Bon Secours St. Francis
Xavier Hospital, Inc.

[Pages 157 through 160 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe,
☐ Plaintiff

v.

Bon Secours-St. Francis Xavier Hospital, Inc., D/B/A
Bon Secours St. Francis Xavier Hospital, Et Al.,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-10-0090

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Arthur Peter Rowe, pro se, Bar No.
Address:
52 Chadwick Drive, Charleston, SC 29407
phone: 843-763-2599 fax:
e-mail: other:

Defendant's Attorney:
Fred W (Trey) Suggs Iii, Bar No. 70222
Address:
P.O. Box 10529, Greenville, SC 29603
phone: 864-349-2616 fax: 864-349-0303
e-mail: tsuggs@roecassidy.com other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

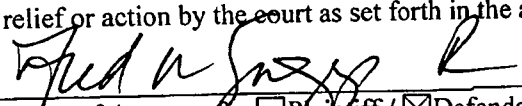
Nature of Motion: Notice of Motion and Motion to Dismiss

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 22, 2013

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter Rowe,

Plaintiffs,

vs.

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis
Xavier Hospital, Bon Secours St. Francis
Hospital and Roper St. Francis Healthcare,
Bon Secours St. Francis Health System,
Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc. d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.
d/b/a Roper St. Francis Healthcare. Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston)
Neurosurgical Associates, LLC; Mt. Pleasant)
Anesthesia Associates, PA, Charleston)
Surgery Center Limited Partnership, d/b/a)
Charleston Surgery Center, Tammy)
McGraw, CRNA a/k/a Tammy McGraw)
Speicher, CRNA, Nurse Anesthesia of)
South Carolina, LLC, Jeffery S. Wager,)
CRNA, Tricoastal Healthcare Billing and)
Management, Inc., and Steven Heath Cobb,)

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2013-CP-10-0090

**DEFENDANTS, BON SECOURS HEALTH
SYSTEM, INC., BON SECOURS ST.
FRANCIS HOSPITAL, AND BON SECOURS
ST. FRANCIS HEALTH SYSTEM
FOUNDATION, INC.'S, NOTICE OF
MOTION AND MOTION TO DISMISS**

2013 MAR 25 PM 1:42
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The Defendants, Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc., hereby move this Court for an order to dismiss this action and show the Court as follows:

FACTS

The Plaintiff, Arthur Peter Rowe (hereinafter "Rowe"), filed a Summons and Complaint alleging loss of consortium on January 7, 2013. Mr. Rowe's wife, Beverly C. Moore-Rowe, filed a separate Notice of Intent to file suit on January 7, 2013, attached hereto as exhibit "A". The allegations in this Complaint are identical to those in Ms. Moore-Rowe's Notice of Intent to File Suit. Rowe did not file a Notice of Intent to File Suit prior to filing the Summons and Complaint. The Defendants file this Motion to Dismiss based upon the Plaintiff's failure to comply with the applicable procedural requirements of South Carolina law with respect to medical malpractice actions.

ARGUMENT

This is a medical malpractice lawsuit. The Plaintiff seeks recovery of damages for loss of consortium due to alleged medical malpractice committed against his wife, Mrs. Moore-Rowe. Thus, the underlying allegations in this Complaint meet the definition of medical malpractice and are governed by South Carolina Code Section 15-79-125. This statute requires that the Plaintiff initiate a civil action alleging medical malpractice by contemporaneously filing a Notice of Intent to File Suit and an affidavit of an expert witness. *S.C. Code Ann. Section 15-79-125 (A)*. Because the Plaintiff failed to file a Notice of Intent to File Suit and an affidavit of an expert witness prior to filing a Summons and Complaint, this lawsuit must be dismissed.

This motion is based upon the South Carolina Rules of Civil Procedure, the statutory and case law of South Carolina, and such affidavits, documents, or memoranda that may be filed prior to the hearing on this motion.

(SIGNATURE ON FOLLOWING PAGE)

ROE CASSIDY COATES & PRICE, P.A.



Fred W. Suggs, III (SC Bar No. 70222)

P. O. Box 10529

Greenville, SC 29603

P: (864) 349-2600

F: (864) 349-0303

***Attorneys for Defendants, Bon Secours Health System,
Inc., Bon Secours St. Francis Hospital, Bon Secours St.
Francis Health System Foundation, Inc.,***

Greenville, South Carolina

March 15, 2013

17. Motion To Dismiss Of Defendant, Steven Heath Cobb, Dated
March 15, 2013

[Pages 162 through 164 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Rowe,

☐ Plaintiff

v.

Bon Secours-St. Francis Xavier Hospital, Inc., et al,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-10-00090

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Arthur Rowe (Pro Se), Bar No.
Address:
52 Chadwick Drive, Charleston, SC 29407
phone: (843) 763-2599 fax:
e-mail: excommunicated@comcast.net other: (843)
737 0733

Defendant's Attorney:
Andrew S. Halio, Bar No: 2459
Address:
Post Office Box 747
Charleston, SC 29402-0747
phone: 577-5200 fax: 577-7468
e-mail: haliolaw@bellsouth.net other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Andrew S. Halio
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 15, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2013-CP-10-00090

Arthur Peter Rowe,

Plaintiff,

vs.

MOTION TO DISMISS

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a)
Bon Secours St. Francis Xavier Hospital, Bon)
Secours St. Francis Hospital and Roper St. Francis)
Healthcare, Bon Secours St. Francis Health System,)
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,)
Bon Secours St. Francis Hospital and Roper St.)
Francis Healthcare, Bon Secours Health System,)
Inc., d/b/a Bon Secours St. Francis Hospital and)
Roper St. Francis Healthcare, Roper St. Francis)
Foundation, d/b/a Roper St. Francis Healthcare,)
Bon Secours-St. Francis Health System Foundation,)
Inc., d/b/a Roper St. Francis Healthcare, Roper)
Hospital, Inc., d/b/a Roper St. Francis Healthcare,)
Byron N. Bailey, M.D., Christine C. Thompson,)
M.D., a/k/a Christine Thompson, M.D., Charleston)
Neurosurgical Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA, Charleston Surgery)
Center Limited Partnership, d/b/a Charleston)
Surgery Center, Tammy McGraw, CRNA, also)
Known as Tammy McGraw Speicher, CRNA,)
Nurse Anesthesia of South Carolina, LLC,)
Jeffery S. Wager, CRNA, Tricoastal Healthcare)
Billing And Management, Inc., and Steven Heath)
Cobb,)

Defendants.

FILED
2013 MAR 15 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Pursuant to Rule 12 (b) (6) and (7), S.C.R.C.P., The Defendant, Steven Heath Cobb, moves the Court for an order dismissing this action as to him on the following grounds:

1. At the time of the incident, he was a student at the Medical University of South Carolina ("MUSC") acting an agent of MUSC at the time of the incident and was covered by the South Carolina Tort Claims Act, which requires that the lawsuit be brought against the governmental entity only.

2. This action can only be brought against MUSC under the Tort Claims Act, which Plaintiff has failed to plead.

3. To the extent applicable to a Tort Claims Act defendant, Plaintiff has failed to comply with the statutory requirements set forth in S.C. Code §15-79-110, *et seq.* for filing a medical malpractice action by failing to file a Notice of Intent to file suit, an affidavit of an expert witness subject to the affidavit requirements established in §15-36-100, and answers to standard interrogatories. Although captioned as a "loss of consortium" action, this action is a medical malpractice action seeking damages for loss of consortium.

HALIO & HALIO
Attorneys for Defendant Steven Heath Cobb


ANDREW S. HALIO
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
(843) 577-5200

March 15, 2013
Charleston, S.C.

18. Motion To Dismiss Of Defendant, Bon Secours St. Francis
Xavier Hospital, Inc., Dated March 12, 2013

[Pages 166 through 176 attached]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Charleston

CASE NO.: 2013-CP-10-00090

Arthur Peter Rowe

☐

Plaintiff(s)

vs.

Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis Health
System, Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon Secours Health
System, Inc., d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis Healthcare, Roper
St. Francis Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health System
Foundation, Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc., d/b/a Roper St.
Francis Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a Christine
Thompson, M.D., Charleston Neurosurgical
Associates, LLC, Mt. Pleasant Anesthesia
Associates, P.A., Charleston Surgery Center
Limited Partnership, d/b/a Charleston Surgery
Center, Tammy McGraw, CRNA, also known as
Tammy McGraw Speicher, CRNA, Nurse
Anesthesia of South Carolina, LLC, Jeffery S.
Wager, CRNA, Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath Cobb

☒

Defendant(s)

Check box above indicating submitting party

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

<u>Name, SC Bar No. and Address of Plaintiff's Attorney</u>		<u>Name, SC Bar No. and Address of Defendant's Attorney</u>	
Telephone: _____		Christine Kent Toporek SC Bar #:	
e-mail: _____		Address: Young Clement Rivers, LLP	
fax: _____		Post Office Box 993	
other: _____		Charleston, SC 29402-0993	
		Telephone: (843) 720-5402	
		e-mail: ctoporek@ycrlaw.com	
		fax: (843) 579-2946	
☒ MOTION HEARING REQUESTED (attach <i>written</i> motion and complete SECTIONS I and III)			
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
☐ PROPOSED ORDER/CONSENT ORDER (COMPLETE SECTIONS II and III)			
SECTION I: HEARING INFORMATION			
Nature of Motion: Motion to Dismiss			
Estimated Time Needed: 20 minuets		Court Reporter Needed?: ☒ YES ☐ NO	
SECTION II: MOTION TYPE			
☐ Written Motion Attached			
☐ Form Motion -			
I hereby move for relief or action by the Court as set forth in the attached proposed order.			
Dated: _____			
Signature of Attorney for ☐ Plaintiff (s) ☐ Defendant(s)			
SECTION III: MOTION FEE			
☒ PAID - AMOUNT \$ 25.00			
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support			
(check reason) ☐ Domestic Abuse or Abuse and Neglect			

- ☐ Indigent Status ☐ State Agency w. Indigent Party
☐ Sexually Violent Predator Act
☐ Post-Conviction Relief
☐ Motion for Stay Bankruptcy
☐ Motion for Publication
☐ Motion for Execution (Rule 69, *SCRCP*)
☐ Proposed order submitted at request of the Court; or, reduced to writing
 from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order
☐ Other: _____

JUDGE: _____

CODE: _____ DATE: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 (print name)

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ARTHUR PETER ROWE,

PLAINTIFF,

vs.

BON SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., D/B/A BON
SECOURS ST. FRANCIS XAVIER
HOSPITAL, BON SECOURS ST.
FRANCIS HOSPITAL AND ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS ST. FRANCIS HEALTH
SYSTEM, INC., D/B/A BON SECOURS
ST. FRANCIS XAVIER HOSPITAL,
BON SECOURS ST. FRANCIS
HOSPITAL AND ROPER ST. FRANCIS
HEALTHCARE, BON SECOURS
HEALTH SYSTEM, INC., D/B/A BON
SECOURS ST. FRANCIS HOSPITAL
AND ROPER ST. FRANCIS
HEALTHCARE, ROPER ST. FRANCIS
FOUNDATION, D/B/A ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS-ST. FRANCIS HEALTH
SYSTEM FOUNDATION, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
ROPER HOSPITAL, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
BYRON N. BAILEY, M.D., CHRISTINE
C. THOMPSON, M.D., A/K/A
CHRISTINE THOMPSON, M.D.,
CHARLESTON NEUROSURGICAL
ASSOCIATES, LLC, MT. PLEASANT
ANESTHESIA ASSOCIATES, P.A.,
CHARLESTON SURGERY CENTER
LIMITED PARTNERSHIP, D/B/A
CHARLESTON SURGERY CENTER,
TAMMY MCGRAW, CRNA, ALSO
KNOWN AS TAMMY MCGRAW
SPEICHER, CRNA, NURSE

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-00090

BY

2013 MAR 13 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

**MOTION TO DISMISS ON BEHALF OF
DEFENDANTS BON SECOURS-ST.
FRANCIS XAVIER HOSPITAL, INC.,
D/B/A BON SECOURS ST. FRANCIS
XAVIER HOSPITAL, BON SECOURS ST.
FRANCIS HOSPITAL AND ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS ST. FRANCIS HEALTH
SYSTEM, INC., D/B/A BON SECOURS ST.
FRANCIS XAVIER HOSPITAL, BON
SECOURS ST. FRANCIS HOSPITAL AND
ROPER ST. FRANCIS HEALTHCARE,
BON SECOURS HEALTH SYSTEM, INC.,
D/B/A BON SECOURS ST. FRANCIS
HOSPITAL AND ROPER ST. FRANCIS
HEALTHCARE, ROPER ST. FRANCIS
FOUNDATION, D/B/A ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS-ST. FRANCIS HEALTH
SYSTEM FOUNDATION, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
ROPER HOSPITAL, INC., D/B/A ROPER
ST. FRANCIS HEALTHCARE'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

ANESTHESIA OF SOUTH CAROLINA,)
LLC, JEFFERY S. WAGER, CRNA,)
TRICOASTAL HEALTHCARE)
BILLING AND MANAGEMENT, INC.,)
AND STEVEN HEATH COBB,)
)
DEFENDANTS.)
_____)

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the improperly named Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital And Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital And Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare (hereinafter "Defendants"), by and through their undersigned attorneys, will move before this Honorable Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, at a time and place set by the Court, for an Order dismissing the Plaintiff's Complaint on the grounds that: (1) Plaintiff failed to comply with the statutory requirements set forth under S.C. Code Ann. §15-79-125 for filing a medical malpractice cause of action; and (2) Plaintiff failed to comply with S.C. Code Ann. §15-36-100.

PROCEDURAL BACKGROUND

The above captioned action was filed on January 7, 2013. The Plaintiff's wife, Beverly C. Moore-Rowe, contemporaneously and separately filed a Notice of Intent to File Suit (C.A. #2013-CP-10-00088) in which she alleges medical negligence. Mrs. Rowe did not contemporaneously file

the affidavit of a medical expert. The Defendants have filed a Motion to Dismiss the Plaintiff's Notice of Intent for failure to comply with S.C. Code Ann. §15-79-125, and specifically for her failure to contemporaneously file the affidavit of a medical expert.

SUMMARY OF LAW

1. Loss Of Consortium

The above named Plaintiff has filed a claim for loss of consortium. In the Complaint, the Plaintiff alleges that due to the medical negligence of the Defendants during an anterior cervical spine surgery and contemporaneous endotracheal intubation performed on his wife, Beverly C. Moore-Rowe, his wife has suffered a serious and permanent personal injury. *See* Complaint, ¶¶ 48, 49, 50, 51, 52, 53 and 55. He further alleges that the serious and permanent personal injury suffered by his wife has deprived him of her services, society and companionship and that he is entitled to damages for such losses. *See* Complaint, ¶¶ 56 and 57.

In order to prevail in an action for loss of consortium, a Plaintiff must prove: (1) the liability of the defendant for the spouses injuries; and (2) damages to the plaintiff resulting from the spouses injuries. *See Creighton v. Coligny Plaza Limited Partnership*, 334 S.C. 96, 512 S.E.2d 510 (Ct. App. 1998). A loss of consortium claim is an independent claim in South Carolina. *Id.* However, if there is no tort committed against the impaired spouse then a loss of consortium claim cannot exist. *Id.* In the matter before this court, the Plaintiff must establish medical negligence on the part of these Defendants with regard to medical care provided to his wife in order to succeed on his claim for consortium. Therefore, the Plaintiff's Complaint should be subject to the requirements of S.C. Code Ann. §§15-79-125 and 15-36-100, which govern medical negligence actions.

2. Notice of Intent to File Suit

"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." S.C. Code Ann. §15-79-125(A). S.C. Code Ann. §15-79-125 and S.C. Code Ann. §15-36-100 operate independently of one another, except that S.C. Code Ann. §15-79-125 relies on the provisions of S.C. Code Ann. §15-36-100 concerning the preparation and content of a medical expert affidavit. Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), reh'g denied (Mar. 15, 2012). As it relates to the content of the affidavit, the affidavit "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." S.C. Code Ann. § 15-36-100(B).

In Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), the plaintiff filed a Notice of Intent to File Suit in a medical malpractice action naming Dr. Crain as a defendant. In her complaint, the plaintiff claimed that due to time constraints she was prevented from contemporaneously filing an affidavit of a medical expert as required by South Carolina Code §15-79-125(A). Id. In response, Dr. Crain filed a Motion to Dismiss the Notice of Intent for failing to file an expert witness's affidavit along with her Notice. Id. Forty-five days after filing her Notice of Intent to File Suit (and after the defendant filed a Motion to Dismiss) the plaintiff supplemented her pleadings with the affidavit of a medical expert. Id. The circuit court dismissed the complaint and the plaintiff appealed.

The issue before the Court of Appeals in Ranucci turned on the proper application of S.C. Code Ann. §§15-79-125 and 15-36-100. The Court found that each statute governs a distinct time period during the litigation process, with §15-79-125 governing "the process that commences with

the filing of a Notice of Intent to File Suit and ends with pre-litigation mediation.” Ranucci, 397 S.C. at 176. In that regard, S.C. Code Ann. §15-79-125(A) imposes two requirements on the affidavit: (1) that it be filed at the same time as the Notice of Intent to File Suit; and (2) that it comply with the affidavit requirements of S.C. Code Ann. §15-36-100. The court found that only the provisions governing the preparation and content of the affidavit were invoked by S.C. Code Ann. §15-79-125(A). Id. This section (S.C. Code Ann. §15-79-125) is silent as to any procedures for challenging an affidavit filed with a Notice of Intent and the court found that “this silence denotes those provisions do not apply to affidavits filed in compliance with section 15-79-125.” As such, the plaintiff’s arguments that provisions of S.C. Code Ann. 15-36-100 allowed her to file the affidavit late were unpersuasive. Id. at 178. The court expressly held that the provisions of S.C. Code 15-36-100 “do not permit a potential plaintiff to file her expert witness’s affidavit after she files her Notice of intent to File Suit. Id. at 179.

3. Filing Requirements For Medical Negligence Actions

S.C. Code Ann. §15-36-100 “establishes the procedure of commencing suits for professional negligence against professionals in twenty-two different areas.” Ranucci, *supra*. This section requires the plaintiff “to craft a viable complaint supported by the sworn testimony of a qualified expert witness.” Id. “Because an affidavit filed pursuant to this section is ‘part of the complaint’, it is a pleading for the purpose of the circuit court’s evaluation of motions and the merits of the Plaintiff’s case.” Id.

“[T]he 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.” S.C. Code Ann. §15-36-100(B). “The contemporaneous filing requirement of subsection (B) does not apply to

any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.” S.C. Code Ann. §15-36-100(C)(1). When an affidavit is not filed contemporaneously due to time constraints, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. S.C. Code Ann. §15-36-100(C)(1). “If an affidavit is not filed within the period specified in this subsection...and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. §15-36-100(C)(1).

ARGUMENT

1. Plaintiff's Complaint Should Be Dismissed For Failure To Comply With S.C. Code Ann. §15-79-125

In the above captioned matter, on January 7, 2013 the Plaintiff filed a Complaint for loss of consortium. In an action for loss of consortium, a plaintiff must prove the liability of the defendant for the spouse's injuries. Therefore, in order to succeed on his claim, Plaintiff must establish medical negligence on the part of these Defendants and other parties, with regard to care provided to his wife, Beverly C. Moore-Rowe. To that end, Plaintiff's Complaint is replete with allegations of medical negligence related to the care and treatment provided to his wife. (As an example, ¶50 of the Plaintiff's Complaint sets forth several alleged negligent acts and/or omissions of the Defendants with regard to the care provided to his wife.) However, the Plaintiff did not comply with the pre-litigation requirements set forth in S.C. Code Ann. §15-79-125 in that Plaintiff has not filed a Notice of Intent to File Suit accompanied by the affidavit of an expert witness as required by S.C. Code Ann. §15-79-125. Instead, Plaintiff alleges in his Complaint that the applicable statute of

limitations would expire within 10 days of filing and due to such time constraints the affidavit of an expert could not be prepared. *See* Complaint, ¶54.

As is explained in detail above, the Ranucci court expressly held that the provisions of S.C. Code 15-36-100 related to filing the expert affidavit late do not apply to a Notice of Intent to File Suit. Failure to contemporaneously file an expert affidavit is grounds for dismissal pursuant to the holding of the court in Ranucci, supra. The Plaintiff must establish medical negligence to succeed on his loss of consortium claim and has filed what is essentially a Complaint alleging medical negligence. However, Plaintiff failed to comply with S.C. Code Ann. §15-79-125, including the contemporaneous filing and mediation requirements. Wherefore, Defendants respectfully request that this Court dismiss Plaintiff's Complaint and all claims against them, under South Carolina Rules of Civil Procedure Rule 12(b)(6), in accordance with S.C. Code §15-79-125 and the decision by the Court of Appeals of South Carolina in Ranucci v. Crain.

2. In The Alternative, Plaintiff's Complaint Should Be Dismissed For Failure To Comply With S.C. Code Ann. §15-36-100

If the court determines the Plaintiff's Complaint is not subject to dismissal for failure to comply with S.C. Code Ann. §15-79-125, then in the alternative, Defendants pray for an order dismissing the case for failure to comply with S.C. Code Ann. §15-36-100.

The Plaintiff filed his Complaint in the above captioned matter on January 7, 2013. The Complaint contains numerous allegations of medical negligence that are beyond the ambit of common knowledge. However, the Plaintiff did not contemporaneously file the affidavit of an expert witness as required by S.C. Code Ann. §15-36-100. Plaintiff alleges in his Complaint that the applicable statute of limitations would expire within 10 days of filing and due to such time constraints the affidavit of an expert could not be prepared. *See* Complaint ¶54. If Plaintiff's

contention is correct, the deadline to submit the expert affidavit was February 21, 2013. However, as of the date of this motion, Plaintiff has not supplemented his pleadings with an expert affidavit.

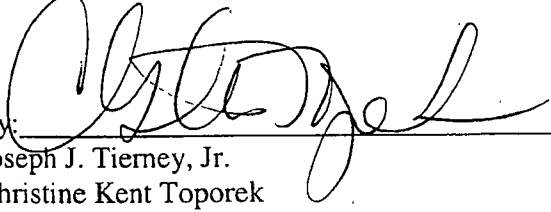
The statutes are clear that in a professional negligence action “[i]f an affidavit is not filed within the period specified in this subsection...and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. §15-36-100(C)(1). As such, these Defendants respectfully request that this Court dismiss Plaintiff’s Complaint and all claims against them, under South Carolina Rules of Civil Procedure Rule 12(b)(6), in accordance with S.C. Code §15-36-100 on account of Plaintiff’s failure to timely file an expert affidavit.

CONCLUSION

WHEREFORE, for the reasons set forth above, these Defendants pray for an Order of this court dismissing the Plaintiff’s Notice of Intent to File Suit.

This Motion may be supported by applicable law, the arguments of counsel, and any other material the Court may receive.

YOUNG CLEMENT RIVERS, LLP

By: 

Joseph J. Tierney, Jr.

Christine Kent Toporek

P.O. Box 993, Charleston, SC 29402

(843) 720-5402; ctoporek@ycrlaw.com

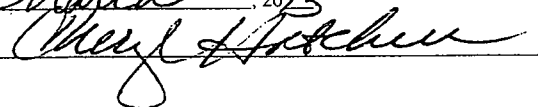
Attorneys for the improperly named Defendants Bon
Secours-St. Francis Xavier Hospital, Inc.; d/b/a Bon
Secours St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis Health System,
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,
Bon Secours St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours Health System,
Inc., d/b/a Bon Secours St. Francis Hospital And
Roper St. Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis Healthcare,
Bon Secours-St. Francis Health System Foundation,
Inc., d/b/a Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis Healthcare

Charleston, South Carolina

Dated: 3/12/2013

CERTIFICATE OF MAILING .

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this 13th day of

March, 2013


19. Answer Of Defendant, Bon Secours St. Francis Xavier Hospital,
Inc., Dated March 12, 2013

[Pages 178 through 184 attached]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ARTHUR PETER ROWE,

PLAINTIFF,

vs.

BON SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., D/B/A BON
SECOURS ST. FRANCIS XAVIER
HOSPITAL, BON SECOURS ST.
FRANCIS HOSPITAL AND ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS ST. FRANCIS HEALTH
SYSTEM, INC., D/B/A BON SECOURS
ST. FRANCIS XAVIER HOSPITAL,
BON SECOURS ST. FRANCIS
HOSPITAL AND ROPER ST. FRANCIS
HEALTHCARE, BON SECOURS
HEALTH SYSTEM, INC., D/B/A BON
SECOURS ST. FRANCIS HOSPITAL
AND ROPER ST. FRANCIS
HEALTHCARE, ROPER ST. FRANCIS
FOUNDATION, D/B/A ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS-ST. FRANCIS HEALTH
SYSTEM FOUNDATION, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
ROPER HOSPITAL, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
BYRON N. BAILEY, M.D., CHRISTINE
C. THOMPSON, M.D., A/K/A
CHRISTINE THOMPSON, M.D.,
CHARLESTON NEUROSURGICAL
ASSOCIATES, LLC, MT. PLEASANT
ANESTHESIA ASSOCIATES, P.A.,
CHARLESTON SURGERY CENTER
LIMITED PARTNERSHIP, D/B/A
CHARLESTON SURGERY CENTER,
TAMMY MCGRAW, CRNA, ALSO
KNOWN AS TAMMY MCGRAW
SPEICHER, CRNA, NURSE

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-00090

FILED
2013 MAR 12 PM 12:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

**ANSWER OF DEFENDANTS BON
SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., D/B/A BON SECOURS
ST. FRANCIS XAVIER HOSPITAL, BON
SECOURS ST. FRANCIS HOSPITAL AND
ROPER ST. FRANCIS HEALTHCARE,
BON SECOURS ST. FRANCIS HEALTH
SYSTEM, INC., D/B/A BON SECOURS ST.
FRANCIS XAVIER HOSPITAL, BON
SECOURS ST. FRANCIS HOSPITAL AND
ROPER ST. FRANCIS HEALTHCARE,
BON SECOURS HEALTH SYSTEM, INC.,
D/B/A BON SECOURS ST. FRANCIS
HOSPITAL AND ROPER ST. FRANCIS
HEALTHCARE, ROPER ST. FRANCIS
FOUNDATION, D/B/A ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS-ST. FRANCIS HEALTH
SYSTEM FOUNDATION, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
ROPER HOSPITAL, INC., D/B/A ROPER
ST. FRANCIS HEALTHCARE TO
PLAINTIFF'S COMPLAINT**

ANESTHESIA OF SOUTH CAROLINA,)
 LLC, JEFFERY S. WAGER, CRNA,)
 TRICOASTAL HEALTHCARE)
 BILLING AND MANAGEMENT, INC.,)
 AND STEVEN HEATH COBB,)
)
 DEFENDANTS.)
 _____)

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

The improperly named Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital And Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital And Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare (hereinafter "Hospital Defendants"), by and through their undersigned attorneys respond to the allegations in Plaintiff's Complaint as follows:

1. Any allegation in Plaintiff's Complaint not hereinafter admitted, denied or otherwise modified is expressly denied and strict proof demanded thereof.
2. Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 1 and 2 of Plaintiff's Complaint and therefore denies the same.
3. Responding to Paragraphs 3, 4, 5, 6, 7 and 8 of Plaintiff's Complaint, the proper name for Defendant is CareAlliance Health Services d/b/a Bon Secours St. Francis Xavier Hospital, Inc. Hospital Defendant admits only that it is an entity organized and existing under the laws of the State of South Carolina doing business in Charleston County. Hospital Defendant

Code Ann. §33-56-170(a) and therefore, is not subject to a claim for punitive damages and is only subject to a judgment for actual damages in an amount not to exceed Three Hundred Thousand and 00/100 Dollars (\$300,000.00). Defendant denies the remaining allegations in Paragraphs 3, 4, 5, 6, 7 and 8 of Plaintiff's Complaint.

4. Hospital Defendant denies the allegations set forth in Paragraph 9 of Plaintiff's Complaint as these allegations call for a legal conclusion.

5. The allegations set forth in Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Plaintiff's Complaint are directed to parties other than Hospital Defendant and Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Plaintiff's Complaint and therefore denies the same.

6. Hospital Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30 and 31 of Plaintiff's Complaint as these allegations call for a legal conclusion.

7. Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 32 of Plaintiff's Complaint and therefore denies the same.

8. Hospital Defendant denies the allegations set forth in Paragraph 33 of Plaintiff's Complaint as these allegations call for a legal conclusion.

9. The allegations set forth in Paragraph 34 of Plaintiff's Complaint are directed to parties other than Hospital Defendant and Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 34 of Plaintiff's Complaint and therefore denies the same.

10. Responding to the allegations contained in Paragraphs 35, 36, 37, 38, 39, 40 and 41 of Plaintiff's Complaint, Hospital Defendant craves reference to Ms. Moore-Rowe's hospital charts and medical records for a more complete summary of Ms. Moore-Rowe's medical care and treatment, and Hospital Defendant denies any allegation inconsistent with the records. Hospital Defendants further deny any allegations in Paragraphs 35, 36, 37, 38, 39, 40 and 41 of Plaintiff's Complaint intended to allege liability or a deviation from the standard of care against Hospital Defendants.

11. Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 42 of Plaintiff's Complaint and therefore denies the same.

12. Responding to the allegations contained in Paragraphs 43, 44 and 45 of Plaintiff's Complaint, Hospital Defendant craves reference to Ms. Moore-Rowe's hospital charts and medical records for a more complete summary of Ms. Moore-Rowe's medical care and treatment, and Hospital Defendant denies any allegation inconsistent with the records. Hospital Defendants further deny any allegations in Paragraphs 43, 44 and 45 of Plaintiff's Complaint intended to allege liability or a deviation from the standard of care against Hospital Defendants.

13. Hospital Defendant denies the allegations set forth in Paragraph 46 of Plaintiff's Complaint as these allegations call for a legal conclusion.

14. Responding to the allegations contained in Paragraph 47 of Plaintiff's Complaint, Hospital Defendant craves reference to Ms. Moore-Rowe's hospital charts and medical records for a more complete summary of Ms. Moore-Rowe's medical care and treatment, and Hospital Defendant denies any allegation inconsistent with the records. Hospital Defendants further deny

any allegations in Paragraph 47 of Plaintiff's Complaint intended to allege liability or a deviation from the standard of care against Hospital Defendants.

15. Hospital Defendant denies the allegations set forth in Paragraphs 48, 49, 50 (including all subparts), 51 (including all subparts), 52 and 53 of Plaintiff's Complaint and demands strict proof thereof.

16. Hospital Defendant denies the allegations set forth in Paragraphs 54 and 55 of Plaintiff's Complaint as these allegations call for a legal conclusion.

17. Hospital Defendant denies the allegations set forth in Paragraphs 56 and 57 of Plaintiff's Complaint and demands strict proof thereof.

18. Hospital Defendant denies Plaintiff's prayer for judgment and damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

Hospital Defendant states that pursuant to S.C. Code Ann. §33-56-170 and §33-56-180, their liability is limited to \$300,000 actual damages as a protected "charitable organization" and is not subject to a claim for punitive damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Hospital Defendants under South Carolina Rules of Civil Rule 12(b)(6) and therefore should be stricken.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

The Plaintiff has failed to comply with S.C. Code Ann. §§15-79-125 and 15-36-100 and therefore Plaintiff's Complaint should be dismissed.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Joint and several liability does not apply to Hospital Defendant to the extent it is less than fifty percent at fault in accordance with S.C. Code Ann. §15-38-15.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

The Plaintiff's cause of action is barred by the applicable Statute of Limitations.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Hospital Defendant would affirmatively state that at all times it complied with the applicable standard of care.

**FUTHER ANSWERING AND FOR A
FURTHER AFFIRMATIVE DEFENSE**

There was no negligence, recklessness, gross negligence or wantonness on the part of Hospital Defendant which proximately caused or contributed to Plaintiffs' alleged injuries.

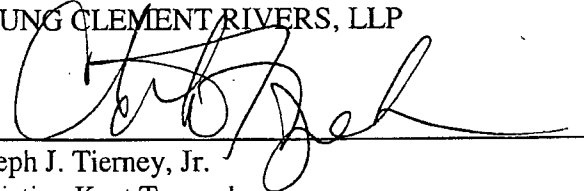
**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Hospital Defendant does not waive any defense that whatever injury or damage that was suffered by the Plaintiff was the proximate result of the intervening negligence, recklessness, willfulness and wantonness of parties other than Hospital Defendant (should the discovery process reveal this), barring Plaintiff from recovery from Hospital Defendant.

WHEREFORE, HAVING FULLY ANSWERED SAID COMPLAINT, Hospital Defendant prays as follows:

1. That their Liability for Actual Damages be limited to \$300,000;
2. That Punitive Damages be stricken;
3. That the Plaintiff's Complaint be dismissed, and that Hospital Defendant be granted its costs, expenses, and a reasonable attorney's fee for defending this action; and
4. For such other relief as this Court deems just and proper.

YOUNG CLEMENT RIVERS, LLP

By: 

Joseph J. Tierney, Jr.

Christine Kent Toporek

P.O. Box 993, Charleston, SC 29402

(843) 720-5402; ctoporek@ycrlaw.com

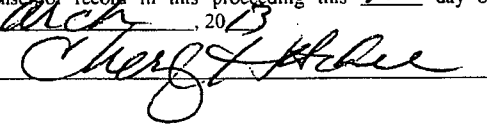
Attorneys for the Attorneys for the improperly
named Defendants Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon Secours St.
Francis Health System, Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon Secours St. Francis
Hospital and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon Secours St.
Francis Hospital And Roper St. Francis Healthcare,
Roper St. Francis Foundation, d/b/a Roper St.
Francis Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc., d/b/a Roper St.
Francis Healthcare

Charleston, South Carolina

Dated: 3/12/2013

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this 12th day of

March, 2013


20. Motion In Opposition Of Defendants' Motions to Dismiss By
Beverly C. Moore-Rowe, Dated May 28, 2013

[Pages 186 through 214 attached]

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-0088

Beverly C. Moore - Rowe
Plaintiff,

vs.

Ben Secours St. Francis Xavier
Hospital Inc.
Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Prose</u> _____, Bar No: _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____ _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia Of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing And Management, Inc., and Steven Heath Cobb,

Defendants

Correct Copy

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-00088

NOTICE OF MOTION AND MOTION

In opposition of Defendants
motion to Dismiss

BY

[Signature]

JULIE J. ARMSTRONG
CLERK OF COURT

2013 MAY 29 PM 2:25

FILED

TO: Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St.

Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare; Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the "**Defendants**"), and their Legal Counsel:

Comes now, the Plaintiff, Beverly C. Moore-Rowe, giving Notice to the Defendants, by and through their Attorneys, and states that the Plaintiff will move to this Honorable Court on the tenth (10th) day or as soon thereafter as possible for an Order

denying defendants motion to dismiss
pursuant to Rule 56
and Rule 12 of the South Carolina Rules Of Civil Procedure.

This Motion is supported by the Plaintiff's Memorandum in Support of Motion, which is attached hereto as "**Exhibit A**".

RESPECTFULLY SUBMITTED BY, Anthony Peter Rowe

Beverly Moore-Rowe
BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated @comcast.net

Charleston, South Carolina
Dated: April May 28, 2013

EXHIBIT A
TO
MEMORANDUM IN SUPPORT OF MOTION

The Memorandum In Support Of Motion For Summary Judgment is attached hereto and incorporated herein by specific reference thereto.

1.

The Memorandum in Support Of Motion For Summary Judgment is Attached hereto and incorporated herein by specific reference thereto.

Opening Statement

Comes now, the Plaintiff Beverly C. Moore-Rowe Pro Se, giving notice to the Defendants, by and through their attorneys and hereby responding in opposition, to the afore list of named Defendants Motion to dismiss, respectfully requests that this honorable court deny their motion or dismissal.

In support thereof, Plaintiff states as follows:

The defendants motion to dismiss the plaintiffs case states a variety of reasons to include the absence of a medical affidavit of merit, and a hired Medical expert to act as a witness. Also responsibility for student Health Cobbs actions were under the direction of anesthesia staff at St Francis. Blame is being directed at Medical University, without anyone looking at the involvement and participation of other health care professionals affiliated with St Francis.

The plaintiff refutes the defendants motion to dismiss on the grounds that Tort Reform violates the guaranteed protections afforded by the US Constitution, which are Due process and equal protection. Furthermore the financial caps are also unconstitutional.

The plaintiff states at this time that it is not always a hired gun Medical expert that establishes, a cause of action for medical malpractice. In reality the medical standards of care are actually established by various professional organizations such as *The Centers for Medicare and Medicaid, Joint Commission on Hospital Accreditation, The American Medical Association, and The American Nursing Association et. Al.*

Beverly Moore-Rowe will now demonstrate that there were violations of statutes, which allows for a civil litigation as a remedy.

Established Regulations:

"Center's for Medicare and Medicaid

FILED
2013 MAY 24 PM 3:55
JULIE J. ARMS
CLERK OF COURT

2.

Through Medicare Interpretive Guidelines, "CMS attempts to expand Surgical Informed Consent through hospitals that participate in Medicare programs and have always been **responsible for complying with the surgical informed consent requirements** set forth in a group of regulations known as, the Conditions of Participation for Hospitals (COPS)."

In other words hospitals must be in compliance with Medicare and Medicaid Conditions of Participation for Hospitals, in order to have a Medicare/Medicaid program.

This policy requires that, patients must be informed of other practioner and the important tasks each will carry out. Failure to Comply with Medicare Interpretive Guidelines can cause a hospital to loose there right to have a Medicare program. Medicare also accepts complaints about violations.

Note: the Plaintiff was not informed that a student trainee would be actually performing any procedures upon the plaintiffs person. Consent was only given allowing SRNA, Mr. Cobb to "OBSERVE" the surgery. No other consent was given.

Joint Commission On Hospital Accreditation

According to JCOHA Hospital healthcare services are vital components of any well-ordered and humane society.

JCOHA provides a means of self-assessment and external peer assessment used by health care organizations, to accurately assess their level of performance in relation to ***established Standards*** and to implement ways to improve. Hospital accreditation is one component of **maintaining patient safety**. **Joint Commission requires that hospitals be familiar with current standards, policies, and procedures relative to standards and prepare to improve areas not in compliance.** They also receive complaints about violations.

JCAHO defines Malpractice as "improper or unethical conduct or unreasonable skill by the holder of a professional or official position."

Asking for a student to be permitted to "Observe" a patients surgery, when the intent is actually to get him into the operating room to perform procedures on the patient is improper and unethical conduct. Malpractice under the State Nurse Practice Act institutional policies, and federal guidelines such as JCAOH Standards may be taken under consideration by courts.

The American Medical Association promotes "Standards in Care" and favors passing *Patients Rights Legislation* as well as expanding Medicare payments.

American Nursing Association establishes **Standards of Care and Practice** for Nurses. Nurses are expected to act as patient advocates and they are expected to uphold patient Rights. "Patient Rights" are supposed to be the Hallmark for Patient Advocacy by Nurses.

LAWS THAT DO NOT REQUIRE AN EXPERT WITNESS

1. Negligence Per Se

Negligence Per se can provide for a cause of action in this case.

In Negligence Per se cases the defendant has violated an existing law or statute, and that *establishes the Standard of Care*. There are cases in which an injured plaintiff may be able to prove that a standard of care was breached, without the use of an expert witness.

In Negligence Per Se cases, the defendants must have violated an established statute or law. It is the law not an affidavit of merit or an expert witness, that establishes the standard of care. In this case **The Federal Patient Rights Act** was violated by the CRNA Tammy McGraw and the student, Heath Cobb. **Also if the Anesthesiologist was responsible for supervision then she is also responsible for the plaintiffs injuries.** The Patient Right Act was established, with its intent as a protection for the people, and the plaintiff is one of the people the law was established, to protect. This law was intended to prevent the types of injuries that occurred to the plaintiff. The Plaintiff Beverly Moore-Rowe was a hospitalized patient, a citizen of this country and a person with totaled permanent Disability, as determined by Social Security in 1997. She was in the class of persons that this law was intended to protect. Negligence per se may be brought against physicians or hospitals that violate a law intended to protect patients. *If determined guilty of negligence per se no other proof is needed.*

2. Criminal Negligence

Criminal Negligence by a healthcare provider is defined as a reckless act with battery (unpermitted touching). Reckless or indifferent behavior can

4.

completely destroy the criminal negligence protection afforded most healthcare providers by informed consent, creating instead a battery. Battery that causes harm is considered a criminal act. A medical touching, without consent, constitutes the intentional tort of Battery for which a cause of action and remedy exists.

The (SRNA), Mr. Cobb never had permission to touch Beverly Moore-Rowe. He only had consent to "observe" her surgery.

According to *Medical expert Dr. Seth Cohen at Duke University* the *plaintiff sustained vocal cord paralysis related to intubation.*

According to the plaintiffs research, retraction displaces the larynx against the unyielding endotracheal tube shaft creating an injury. This type injury could be avoided through monitoring and releasing the pressure on the cuff frequently.

The plaintiffs Carotid Artery is also totally blocked, a problem she did not have prior to the surgery. Injury to the Carotid Artery is rare but could have also been caused through over retraction. Vascular complications can result from improper and excessive retraction.

Furthermore this writer has injury to the (right side of her tongue) the hypoglossal nerve as well as possibly other cranial nerves have injuries according to Dr. Cohen. Since three years have passed Dr. Cohen felt the injuries were unlikely to improve.

Dr. Lucinda Halstead MUSC expert is treating the plaintiff and stated that cranial nerve damage may have to be assessed through a painful procedure by placing a large needle in the vocal cords.

3. Negligence

Informed Consent is an expected Standard of Care in Hospitals. Violation of this standard of care would allow for a claim of negligence. The hospital anesthesia team along with the student in training had exclusive control over the plaintiff, during the endotracheal Intubation and administration of the medications for accomplishing Deep Sedation. If the Anesthesiologist or Certified Nurse Anesthetist had performed the procedures, which was the expectation of the plaintiff, instead of a student in training perhaps the plaintiff would not have sustained injury to her vocal cords, and nerves. Also perhaps the plaintiffs cognitive, memory, and executive function injuries might not have occurred.

4. Consumer Protection Act 1986-

Under this act a patient can seek redress of grievances from the Consumer Courts.

CASE LAW

Bloskas v. Murray, 646. 2d 907, 1982

This case is based on the distinction between lack of informed consent and one based on negligent misrepresentation: "one who negligently gives false information to another is subject to liability, for physical harm caused by the action taken by the other in reasonable reliance upon such information, where such harm results (a) to the other or (b) to such third person as the actor should expect to be put in peril by the actions taken. Such negligence may coexist of failure to exercise a reasonable care in the manner in which it was communicated. False information should be considered under negligent misrepresentation.

Tammy McGraw CRNA misrepresented the students Heath Cobbs reason for being present in the Operating Room and cognitive and physical injuries occurred. The anesthesiologist should have been the one performing intubation on the plaintiff. Instead a planned switch too place.

Hidding v. Williams, 578.S.O. 2d 1192, 1991

Louisiana court stated that despite the fact that the patient signed a consent for surgery form for surgery, his right to informed consent was violated.

Beverly Moore-Rowe signed a consent for surgery. The misrepresentation and fraudulent acts of the defendants made Informed Consent null and void.

Perma v. Pirozzi, 457. A. 2d 431, 1983

The court determined that switching surgeons constitutes malpractice, a battery or both. Switching surgeons amounted to deceit., and therefore the lack of informed consent should be treated as battery.

Tammy McGraw switched her role in the plaintiffs treatment and care. She placed her patients care into the hands of a trainee. Instead of the anesthesiologist or the CRNA incubating the plaintiff they allowed the

student to do this delicate procedure.

Rogers v. Lumberman's Mutual Company, 119 SO. 2d 649, 1960

In this case the court rejected a blanket consent form as too ambiguous. The form read, I hereby authorize the physician or physicians to administer such anesthetics as necessary to perform this operation. The court ruled authorization was so ambiguous as to be almost worthless.

Robert White v. Warren Leinbach II, MD Ohio

The trial judge dismissed the case because of the lack of an expert witness. The appeal court overruled the trial court decision and expanded the patient's rights in malpractice cases. It was determined that physicians who fail to provide informed consent are engaging in a form of battery, and battery cases do not require expert witnesses to provide proof.

The defendants involved in the plaintiff's induction, intubation maintenance and monitoring of Anesthesia and extubation as well as managing and monitoring equipment for safety during surgery carry responsibility for what occurred. The plaintiff did not have the above documented injuries prior to having her surgery at St. Francis. No one provided anesthesia informed consent.

Catalano v. Moreland, 299 A.D. 2d 881, 202

The court rejected using the bylaws of a hospital as a way to determine whether Informed Consent was proper.

"Thus the reasonableness of the defendant's conduct will be measured, not against hospital bylaws, but rather what would have been dictated by a reasonable medical practitioner.

St Francis has no Policy and procedure on Students performing intubation in surgery.

The South Carolina Tort Reform Law was established by the South Carolina Legislature led committee headed by senator Glenn F. McConnell. This law violates both the US Constitution's and the South Carolina Constitution's, guaranteed protections to victims of Medical Malpractice, by establishing standards, which can not be met by every person and citizen due to financial

constraints. Not every citizen is able to pay for an affidavit of merit and an expert witness, when the financial burden of out of pocket expense amounts to \$20,000- \$30,000.

Attorneys are now reluctant to take chances defending a case on a contingency unless they feel that there will be a large financial award or settlement, which results in other cases being rejected. **This problem by no means indicates that a medical malpractice case is frivolous and that it has no merit. To the injured victim, their injuries are just as valid and life changing as any other persons injuries.**

One attorney the plaintiff contacted, said that there had not been a successful medical malpractice case in the Charleston courts in twelve years.

No one would take on the task that this writer has chosen, unless they truly felt that they were treated wrongly, and the plaintiff wants this court to understand that she now is living with multiple medical issues, which she did not have prior to her operation.

Beverly Moore-Rowe is educated and has a BA degree in Biology and Behavioral Science and a MA degree in Counseling Services. She has extensive research and work experience from MUSC from working in Pathology, Basic and Clinical Immunology and Microbiology, and Biochemistry. She also has worked years in The Department Of Psychiatry on the adult in Patient Unit.

The plaintiff did not have cognitive problems prior to her surgery. Her intelligence seems intact for the most part. She now has to deal with the daily problems associated with short term memory loss and mild executive function problems. Beverly Moore-Rowe believes that this document is fairly well written, however the plaintiff wants the court to understand that she has to struggle to do everything that came easy prior to January 2010. With her cognitive and memory problems she repeats herself in talking and writing, and most times is unaware of the repetition.

The United States Constitution guarantees its citizens equal protection and due process of law, ***therefore this writer request that this honorable court protect the rights of the plaintiff***; a citizen of the United States of America and a resident and citizen of the state of South Carolina, by upholding her constitutional right to equal protection of the law, as well as to her rights to a trial before a jury of her peers.

According to the law "a state may not deprive a citizen of his or her civil rights including Due Process and Equal Protection."

Each State has its own Constitution, which generally provides due process and equal protection guarantee's.

State courts can interpret their own Constitutions to provide **more, but not less protection** than that offered by the US Federal Equal Protection Clause.

A State may enforce it's own laws, but the US Federal Laws take persistence, when there is any question about protection of the peoples rights, which are firmly established by the U. S. Constitution..

The Fourteenth amendment protects rights of the people from abridgement by state leaders and governments.

In the wake of the Fourteenth Amendment, the state can not among other things deprive people of the equal protection of the Law. According to the Law, "No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or process without Due Process of law, nor deprive or deny to any person within its jurisdiction the Equal Protection of the law."

Due Process: is a fundamental principal of fairness in all legal matters both civil and criminal, especially in the courts. Its aim is to safeguard both private and public rights for both the rich and the poor, against unfairness and is found in the Fifth Amendment to the Constitution.

Furthermore if a law is written that could be construed as unjust, unfair or Unconstitutional, a remedy is provided. The remedy says, "***Even if an unconstitutional law is passed and signed into law legally through (Procedural Due Process), Substantive Due Process can make the law unconstitutional.*** Procedural Due Process has to do with rights the rules by which the court hears and determines what happens. Example; the right to choose or decide or say NO. Substantive Due process refers to the actual claim and defenses, whose validity is tested through the procedural law. It defines duties, civil rights, and provides the machinery for enforcing those rights.

Example; Rowe V. Wade- Texas law was found in violation of Due Process.

The laws were written to protects all persons including persons charged with criminal acts and they are guaranteed legal representation. The judicial

system has reached a sad state of affairs, when a law is written that does not protect ALL People.

The plaintiff Beverly Moore-Rowe; an ordinary citizen, felt that this case was important, not just for herself but for all people. She filed this case Pro se when she was unable to obtain legal representation and she can not afford the cost of a medical expert.

Pertinent Amendments

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the **rights of trial by jury shall be preserved**, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of common law.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved respectively, or to the people.

The 10th Amendment to the Constitution gives states the right to enact laws to protect the health and safety of their citizens.

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. ***No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***

State Supreme Courts Decisions Find Tort Reform Unconstitutional

Georgia State Supreme Court declared unanimously that Tort Reform

Legislation violated the guaranteed Constitution right to a trial by jury. And they decided that non economic caps were unconstitutional.

North Carolina- sets cap on the amount a court may award. The sole exception to the law is that the cap does not apply if the trier of facts find the defendant's reckless, grossly negligent, fraudulent, intentional, or malicious conduct caused the plaintiffs disfigurement, loss of part of the body, permanent injury or death.

State Supreme Courts for Alabama , Illinois, Texas, Washington and New Hampshire determined damage caps as unconstitutional.

Washington Supreme Court 2006 introduced and passed it.

In *Waples v. YI* 2009 the court struck down the 90 day notice of intent to file lawsuit. The State Supreme Court found "Tort Reform law to be an unconstitutional violation of the separation of powers.

Putman v. Wenatchee valley Medical the requirement violated both separation of powers and the right to access to courts since it conflicted with the court developed pleading requirement.

Wisconsin Supreme Court held that the state \$350,000 non-economic damage cap was unconstitutional and that it violates the equal protection clause. Wisconsin's legislature intended to ensure quality health care to the people. The court found it could not do this by shielding negligent health care providers from responsibility for their negligent actions. Furthermore the court found that the burden of non-economic damages fell on the most seriously injured victims of malpractice. They ruled caps as arbitrary and said that they created undue hardship on a small unfortunate group of plaintiffs and that there was no rational basis for the burden of tort reform.

Illinois Supreme Court 2010 struck down non-economic damage cap as an unconstitutional violation of separation of powers. The separation of powers clause prohibits one branch of government from exercising power belonging to another. The court found that the cap duly encroached upon the judiciary's "sphere of authority and impeded the court in the performance of their functions.

Lebron v. Gottlieb - Illinois stood up for the citizens civil rights and rejected state law capping damages. They also decided tort reform violated Separation of Powers'.

Missouri State Supreme Court upholds the US Constitution and determined that "Tort Reform" was unconstitutional. They determined and stated that it was the historic role of a trial by juries in the US to find facts and determine awards. Heretofore trial by jury shall remain inviolate. It is every citizens right to seek redress from someone who has injured them.

Tennessee State Supreme Court- finds Juries should determine damages and that victims of medical malpractice have a right to trial by jury.

Oregon State Supreme Court decided that non-economic caps were Unconstitutional.

Arkansas prohibits tort restrictions, and holds them unconstitutional.

Facts and History

There are three extremely important facts concerning this case.

1. *Informed Consent is the Cornerstone of The Federal Patient Rights Act.* It is not valid when the "patient is mislead." This law was established to protect patients and their rights and they have been violated by the defendants.

Medicare's Interpretive Guidelines has clear and concise ***Standards of Care***. They establish a clear picture of the importance they place upon **surgical Informed Consent** and this writer will quote there position.

"CMS attempts to expand Surgical Informed Consent through hospitals that participate in Medicare Programs and have always been responsible for complying with the surgical informed consent requirements set forth in a group of regulations known as the ***Conditions of Participation for Hospitals (COPS)***." Medicare says ***compliance is mandatory***.

2. ST Francis Hospital has *no policy and procedure regarding student*

participation during surgery. Failure to have a policy was failure to provide the Standard Informed Consent.

See the attached copy of the policy and procedure for 2010, which was provided by Risk management Nurse/ Attorney Marketa Eversol. Note this writer extensively questioned Ms. Eversol on several occasions about any other policy and Procedure, which might contain references to students participation in the OR and she was told that the only policy is that, which is attached to this document. Since the hospital has no policy this means in essences that ***Any Thing Go's***. Usually hospitals have extensive policies and procedures to cover every possible issue. ***"Hospital Policies Can Create A Standard of Care with Surprise Liability"*** With no policy how does the hospital state their Standard of conduct and Care?

Note that Hospitals are public Accommodations and are held accountable under ADA guidelines and Law.

Note that Mrs. Marketta Eversol; ***an attorney and hospital risk management person*** contacted this writer, when the plaintiff first contacted the hospital. Mrs. Eversol; a kind and pleasant person telephoned this writer. She spoke of having reviewed Beverly's hospital medical records from the surgery, and she stated that she could find no indication of anything, that could have occurred that, would have caused the injuries the plaintiff experienced. After this lengthy conversation Mrs. Eversol stated that she had also reviewed the plaintiffs medical records from Windermere Family Medicine and that she had seen the Duke University records. The plaintiff was shocked, because she had not even seen the Duke records yet. Beverly asked Mrs. Eversol how she had accessed the records and she said, "electronically through the computer." This writer believes that the federal HIPAA laws were also violated in this instance, as the plaintiff did not give any verbal or written consent for anyone to view her doctors office records.

When the plaintiff met with Dr. Bailey, her doctor of many years as well as the other medical professionals as part of the planning for the surgery to take place; a type of contract was established that carried with it the expectation of safety, protection, and care.

The Plaintiff followed all the directions given to her for preparation for her operation. She went to pre-opt and was prepared for surgery and she signed the consent for surgery form. She trusted the medical professionals to be

honest and truthful and she expected them to treat her with care and respect. Deceit is not honesty and respect and is not demonstrated by abuse of power, which is what the plaintiff received.

When the plaintiff signed the consent for surgery she was agreeing to have the operation she was not was agreeing for an inexperienced student in training to practice Endotracheal Intubation on her. She gave the student verbal consent to "observe" her surgery, which is exactly what the CRNA McGraw requested. It is now evident that Tammy MCGRAW had a different agenda and her agenda did not consider, Patients Rights, advocacy for appropriate Standards of Care, and guidelines for Informed Consent. **The plaintiff was not given a choice to refuse something she did not know was going to happen to her.** There was nothing in this form to define or clarify that a trainee or student might be performing any treatments on patients during surgery. The plaintiff ended up injured by negligent acts. Furthermore the Certified Nurse Anesthesiologist identified herself as the anesthesia person taking care of the plaintiff during the surgery, which was obviously not true.

Since Mrs. McGraw Speicher is an employee performing services for the Anesthesia Department of the hospital, her employer or possibly the hospital's head anesthesiologist, would be her supervisor and is responsible for her actions. The hospital and the supervising anesthesiologist are liable as (respondent superior). Since Dr. Christine Thompson signed in as the Anesthesiologist for the surgery, it is the belief of the plaintiff that she is culpable for the supervision or lack there of for the CRNA McGraw, and SRNA student Cobb.

Note that hospitals usually require that patients be made aware of student participation and they **must be given a chance to decline** or refuse to have students practicing on them. ***The plaintiff could not decline or refuse something she was not told.***

Some hospitals put an arm band on patient to clarify that they do not want students working with them. Since the defendant McGraw used the word "OBSERVE", the Defendants McGraw denied the plaintiff the opportunity and right to say NO, which was **fraudulent, deceitful, and a misrepresentation**, of the students presence in the operating. **Freud and misrepresentation alone, violates Nursing ethics and the Standard of Care** and makes **null and void** the entire Informed Consent process as required by the Patient Rights Act and Medicare. Violations of a statute

allows for a remedy, through civil litigation, and does not carry the requirement for an expert witness.

Had this writer know that a student in training was the person who was going to intubate her, she would have refused and if necessary would have gotten up and gone home.

The Anterior cervical spine surgery was performed at Bons Secor St Francis Hospital in Charleston, South Carolina on January 7, 2010. The hospital is responsible for what happens in their facility under Respondent Superior since their staff are involved in the 'procedures' that occur in the surgery suite.

Dr Byron Bailey was neurosurgeon for the plaintiff's surgery.

The Plaintiff went back to see Dr. Bailey several times for follow up after discharge from the hospital and then the Nursing Home, where she went for Rehabilitation. She reported that she was having significant difficulties with memory problems. Dr Bailey sent plaintiff for a CT scan of her brain and a swallow study. The plaintiff explained that she remembered almost nothing of the five days of her six day hospitalization and she wasn't even aware that she could not remember, until she went to the nursing home for rehabilitation and the staff began asking her questions that she was unable to answer, such as what did Occupational Therapy, Physical Therapy, and Speech Therapy do with you, while you were in the hospital. The Plaintiff remembered having Occupation therapy walk her once. She had no memory of having Physical Therapy at all and had to look at an itemized bill to know that she received these services.

After the CT scan, the plaintiff returned to Dr. Bailey to find out the results. Dr. Bailey reviewed the CT scan by putting the CD into a computer in his office and showed it to the Plaintiff. He said Your brain actually looks pretty good except for here. He pointed to specific spots on the scan and stated that plaintiff had one possibly two TIA's. This was very frightening to the plaintiff, because; a TIA is a mini stroke and can be a precursor to a major debilitating stroke.

Later the plaintiff went for another opinion with a neurologist Dr. John Lucas, who sent plaintiff for two more CT scans and an EEG. Upon review of the records Dr. Lucas stated that the plaintiff had not had any TIAs, strokes, brain shrinkage, and no Alzheimer's disease or dementia. Dr Lucas felt that the memory problems were related to anesthesia and he sent

Beverly for Neuropsychological testing with DR. Randy Wade. The testing confirmed mild short term memory loss and mild executive function deficits. This diagnosis was again confirmed by Kelly Crisp at Duke University.

The plaintiff's mood and temperament changed with the surgery.

This writer is now easily frustrated and temperamental.

Friends kept telling her that she had to calm down and she was unaware that her temperament was so drastically changed.

In the beginning she thought that she was losing her intelligence and she feared that these cognitive deficits, were going to get worse.

At this point the neurologist Dr. John Lucas feels that the plaintiffs cognitive problems are not likely progressive. Regardless the deficits as they currently exist are life changing and extremely frustrating and difficult for the plaintiff to deal, with and yet she has to deal, with it every day of her life.

Having worked in Health Care, it is difficult for the plaintiff to accept that medical professionals, would care so little that they would violate a patients rights. To allow a unlicensed student to perform a dangerous procedure on a patient, who already had significant known disabilities is morally unacceptable.

The actions of Ms. McGraw and Mr. Cobb have served to further disable the plaintiff and furthermore they destroyed the one thing that Beverly loved, enjoyed, and looked forwards; **her singing**. The plaintiffs disabilities hindered and prevent her from participating in most of the enjoyable activities of life that other people, who are not disabled are able to do. These medical professionals destroyed the plaintiffs vocal cords, which prevents her from being able to sing, without pain and discomfort and it appears that after three years it is likely permanent. The plaintiffs doctor stated the vocal cords were not coming back after all this time. *Unfortunately there were some possible treatments that may have helped if any of the consulted doctors, would have diagnosed the injury and cause, when the problems started. Mediation would have brought the vocal folds back together resolving the breathing problems of the plaintiff, and possibly speeding any possibility of recovery from the paralysis.*

For the Plaintiff these surgical, anesthesia, and intubation related injuries seem anything but mild in regards to the life complications, which result from not being able to remember. From a cognitive prospective everything that was easy is now difficult and everything has to be written down to be

remembered. Even then things are lost or forgotten if no one reminds the plaintiff to look at her appointment book and lists. Also (expressive aphasia) makes getting words out and expressing oneself more difficult and it is especially hard, when the plaintiff is tired.

Short term memory loss is an complex problem . This problem causes the *person* to be unable to make and retain new memories.

Note also the plaintiff has vocal cords that are paralyzed and partially open, which results in shortness of breath upon mild exertion, (breathy dysphonia) as well as a swallowing disorder (dysphasia), which cause coughing, choking, throat clearing , feeling like something is stuck in her throat all the time. Note that the right side of the plaintiffs tongue is always burning and there is some question as to whether this is from a condition called Tapia's syndrome.

Dr. Bailey's diagnosis of TIA'S was incorrect and the plaintiff now wonders if she was told this so that she would think she had a non-surgery related medical problem, that caused her problems.

The plaintiff asks that the court Judge think about how he or she might feel in this situation. Note that when Dr. Bailey was told of Dr. Lucas findings, he quickly denied having ever told his patient that she had TIA's

Also note that since the plaintiff was having severe swallowing problems, which caused her to cough and choke as well as shortness of breath. At times she awoke from sleep feeling short of breath and she contacted Dr. Bailey's office and the nurse Blair Turnage told her to go to the Emergency Room if she was having breathing problems. The plaintiff had read that symptoms she was having could cause a patient to have to have a tracheotomy; a procedure that she absolutely will not agree to have. The way the plaintiff deals with the breathing problem is to limit activity and move around less.

During an appointment the plaintiff asked Dr. Bailey if it were possible that he touched a nerve such as the recurrent laryngeal nerve. He adamantly denied this stating that he never got near the nerve. The Researched literature states that the nerve and carotid artery are retracted back during the operation and that over retraction could cause damage to the artery and the nerve as they run side by side and parallel to each other. Also the surgery was done of the right side of the plaintiffs neck. According to the research operating on the left side of the neck reduces the chances of injury to the recurrent laryngeal nerve and the carotid artery, because both are positioned lower than they are on the right side. Unfortunately doctors,

who are right handed do not want to change the technique that they are used to using.

The plaintiff has a totally blocked right carotid artery that she did not have prior to the surgery. Note that Rose, Dr. Baileys Physician Assistant stated that this was likely caused from a small piece of plaque breaking loose and stabbing the artery causing a BLOOD CLOT. The blocked carotid artery problem caused the plaintiff to have a retinal artery occlusion in her right eye. She actually had four aneurysms diagnosed by Eye Institute expert physician Dr Patel. Miraculously to date two of the aneurysms have resolved and disappeared.

The plaintiff read about her various symptoms in an attempt to find out what was wrong with her and what caused the problems. Most of what she read indicated that an **inexperienced intubator** was the likely cause of her vocal cord problems. She asked Dr. Bailey who intubated her. His response was that he did not know as he was not in the room. Dr. Bailey may not have been in the room, but this writer would suspect he would know, who was standing next to him and monitoring and administering medications during the surgery and he should have been aware of the presence of the student if and when he was participating in any of Beverly's treatment. Regardless the student Heath Cobb did not have permission to be doing anything on the plaintiff.

Dr Bailey was aware that the plaintiff was having breathing , swallowing and memory problems. He did not sent her for further test nor did he offer any other diagnosis or treatment options to help her.

The staff of St. Francis Hospital failed to provide accurate and adequate Informed Consent to the ***Plaintiff by Misleading, Misrepresentations, and Fraudulently deceit of Plaintiff***. Tammy McGraw Speicher is a CRNA working for the hospital. She allowed the Plaintiff to believe that a student in training would only be "**observing**" her surgery. The Student; a (SRNA) Student Registered Nurse Anesthetist, Steven "Heath Cobb" was introduced by Tammy McGraw a (CRNA) Certified Nurse Anesthetist as a student, who had been *shadowing the her for the past month*. Tammy McGraw asked if it was alright for the student to "Observe " the plaintiffs surgery. The plaintiff had no problem with the student "Observing," however she had a tremendous objection to his performing invasive procedures upon her person. No consent was given for the student to do anything other than

"Observe" and no request was given on the part of the CRNA to give the plaintiff; a reason to suspect that he would be allowed to do any procedures, upon the patient during her surgery. The plaintiff feels that she was deceived to get the student into the operating room and that this was intentional on the part of the CRNA. Note that Ms McGraw failed to inform the plaintiff of any dangers of general anesthesia or intubation. She did ask the plaintiff if she had anything that she wished to say to her prior to leaving the pre-opt Room for surgery. The plaintiff asked Tammy McGraw to "please protect her vocal cords as she was a singer and wished to be able to continue singing with the Symphony Chorus." Ms McGraw walked out of the room ahead of the stretcher and into the OR where she then allowed a trainee to intubate the plaintiff. She did this when she was **fully cognizant** of the plaintiff's request yet she blatantly denied the plaintiff of her request by allowing an unlicensed, uncertified, student to intubate her patient, when he had not graduated, and was nowhere near graduation. According to Dr Chiapas at MUSC Mr. Cobb did not graduate, until after December of 2011. After graduation he still would have had to have passed the certification test. Note MUSC Catalyst newspaper recorded Mr. Cobb as graduating in the Spring of 2011.

The CRNA was a registered nurse prior to becoming a Certified Nurse Anesthetist and she would have had to study ethics of Nursing. Using the word "Observe" when she really meant for the student in training to intubate the plaintiff represents Deceit and Fraud during the informed consent process and this is an ethical violation. Her actions represent ethical violations of the standard of nursing practice and misconduct by the (ANA) American Nursing Association. Ms McGraw had to know that withholding the truth of her plan for Mr. Cobb to perform endotracheal intubation, was a violation of her patient's rights as well as a violation of federal law. The cornerstone of "The Patient Rights Act", is Informed Consent. Furthermore by her actions the defendant McGraw made total **null and void** the informed consent process of the plaintiff. Failure to obtain the required informed consent is essentially a tortious liability, a civil wrong (right in rem); a breach that attracts judicial intervention by awarding damages. Note that not at any time did any of the doctors or medical professionals inform the plaintiff of any potential permanent injuries. The injuries as explained and described by doctor Bailey were expected to be mild and temporary and Tammy McGraw did not discuss any potential injuries of any type. Also Mr. Cobb was a registered nurse prior to admission to the advanced

practice program for nurse anesthesia, and he made no disclosure comments, to indicate that he would be doing any procedures upon the plaintiff, therefore he also deceived the plaintiff through omission and this is also in violation of the American Nursing Association guidelines for ethics.

Both McGraw and Cobb can be charged with misconduct through the American Nursing Association and both possibly will face criminal charges for **Medical Battery**; a medical touching without consent, which constitutes the intentional tort of battery by establishes a cause of action. Medical Battery is a Felony.

Ms McGraw allowed the student in training to perform Endotracheal Intubation for General Anesthesia on the plaintiff. There is a question as to who actually administered the medications for deep sedation for General anesthesia, which included Propofol; a drug for which there is no reversal drug for adverse reaction and which requires a anesthesiologist for administration. Other dangerous drugs were also part of the medications used for deep sedation.

3. Gross Negligence

Reckless or wanton behavior is gross Negligence. It involves a known or obvious risk of harm. It is done with conscious indifference to the welfare of another. Any motive other than the welfare of the patient constitutes gross negligence. Ms McGraw and student Cobb through their behavior and action have shown that *their motive was for the student to get his experience and clinical hours for necessary for graduation and this was done at the expense of the plaintiff.* The defendants knew that they were taking a risk allowing a student in training to perform an invasive procedure placing a tube between **delicate vocal cords**. They choose, without the plaintiffs knowledge or consent to do it anyway, which is **wanton, reckless, intentional behavior.**

The Plaintiff was a singer and she has sung for years, with various groups and churches in the Charleston area. She is a past president of the Greater Charleston Choral Society. At the time of her surgery, the plaintiff was singing with the Charleston Symphony Orchestra's gospel Chorus, which at time combined with the chorus. She had been performing in musical events at the Gaillard Auditorium and was about to audition for singing, with the Symphony Chorus once she recovered from her surgery. Three years have come and gone and she is still not recovered due to the acts of the

defendants.

The plaintiff feels that the afore named defendants should face Punitive Damages for their action and treatment, which resulted in injury to the plaintiff.

The plaintiff sought diagnosis and treatment in Charleston not knowing the cause of all her problems. Each medical professional named a problem, but would not identify the actual cause, which is the reason the plaintiff finally went to Duke. At times the plaintiff felt that medical professionals she sought help from were taking payment but were unwilling to state the cause of this writers injuries. The more the plaintiff researched the topics, the more she felt that the doctors were protecting their colleagues'. A local attorney actually warned this writer of one medical practice that gets all the referrals from Roper St Francis Health Care for injuries to throats. The attorney stated that no one from that office would ever tell this writer, the cause of her injuries, because the practice would loose all their source of referrals.

Examples:

Dr Byron Bailey said Plaintiff had TIA'S.

Dr. John Lucas said cognitive and memory problems were related to anesthesia and that the tests showed no Dementia, Alzheimer's, brain shrinkage, Strokes, or TIA's.

Dr. Lucas also performed a Doppler study on plaintiffs Carotid arteries and determined that the right carotid was totally blocked.

According to research literature sudden memory and cognitive problems occur, with the presence of a stroke, which the plaintiff did not have. Carotid artery occlusion may occur due to excessive retraction, which may occur from dislodgment of plaque, with subsequent intracranial embolus. To avoid this it is important to identify the artery before placement of the retractor.

Dr. Randy Wade diagnosed plaintiff, with short term memory loss and mild executive function deficits through neuropsychological testing..

Dr. Thomas Dozier said plaintiff had massive swelling and inflammation in

her throat for months. She constantly has felt pain and burning in right side of her tongue since the surgery. She asked Dr. Dozier what was the likely cause and he said, "from stretching of a nerve."

Dr Lucinda Halstead stated vocal cords were apart, not quite together and she questions if there is cranial nerve damage. The plaintiff is being treated by Dr. Halstead as well as speech therapist Kate Humphries. No testing has been done to evaluate the cranial nerves.

The research states that a CT scan could be used to examine the entire course of the nerve, from the skull to the chest as an assessment for injury. None of the physicians or other medical professionals have ever suggested this procedure and the only test that has been mentioned is the painful insertion of a large needle into the already injured vocal cords.

Dr Halstead was asked to act as Beverly Moore-Rowe's expert witness and she was asked to provide the certificate of merit, which she declined to do stating that she would be going against her employer.

MUSC attorney Joe Goode had already told the plaintiff that Dr. Halstead, as her treating physician, could act as the medical expert, because she was treating the plaintiff's injuries. Her testimony would not have required the \$20,000-\$30,000 financial burden, that must be paid to obtain an expert.

Also an anesthesiologist at MUSC, who acted as an expert witness locally some years ago and does not wish to be identified, declined to act as an expert "because "MUSC does not want doctors speaking out against other doctors and medical professionals." This anesthesiologist was very supportive and referred this writer to two attorneys outside of Charleston, both of which declined to take the case.

This the intent letter was filed Pro se to protect the statute of limitations after the plaintiff completed the time that the physicians stated for the projected recovery time. The plaintiff allowed every possible opportunity for recovery to occur.

Note that approximately 40 attorneys were contacted in an attempt to get legal representation. This was done after the notice of intent and then the actual complaint was filed Pro se. Some attorneys did not want to take the case because it was filed Pro se. Others declined, because of other cases

about to go to court. Most declined, because the plaintiff had no affidavit or expert witness. Furthermore no one wanted to take the case on a contingency, because of the cost of and expert witness. One attorney's that the plaintiff contacted, website defines that there law firm only takes "meritorious cases," which implies that suffering and injuries of some citizens in the state of South Carolina, are unimportant and have no merit unless of course the case guarantee's a landfall financial award for the attorney.

A couple of the attorneys outside of Charleston, said that they did not wish to bring any more cases in the Charleston Court, because they did not feel that they could get an honest jury and a fair trial.

Beverly Moore-Rowe was told she had a swallowing disorder, with coughing and choking on foods and beverages and even her own saliva. She was treated for this by a speech pathologist in a skilled nursing home, to which she transferred upon discharge from the hospital January 12, 2010. After discharge from inpatient rehabilitation the plaintiff was treated with continued OT, PT, and speech therapy at home. Speech therapy continued from February 2010 until November 2010 and still her problems did not resolve. The plaintiff's voice was horse, at times she sounded like she had laryngitis, and could hardly speak. She had symptoms of dysphasia, breathy dysphonia, hoarseness, and cognitive problem, short term memory loss mild executive function deficits and expressive aphasia. Her personality was changed and she was irritable and impatient and no one was saying what actually was causing the plaintiffs problems.

In October of 2012 the plaintiff got a referral to Duke university in North Carolina. Just prior to leaving for Duke the plaintiff began reviewing her own medical records to select test records for them to review at Duke. This is when she discovered that the anesthesia medical record was difficult to read. She enlarged and darkened the document and noticed that the intubation was done by a SRNA. She then goggled the letters SRNA and discovered that it meant student registered Nurse Anesthetist.

Duke University Expert Dr. Seth Cohen has diagnosed the plaintiff with **vocal cord paralysis**, which is documented in the Medical Records from Duke. Dr. Cohen is willing to provide any clinical any clinical notes needed for this case and is recommending further treatment for the Mrs. Moore-

Rowe..

The Anesthesiologist for the surgery was Dr. Christine Thompson; a contract person hired to provide anesthesia services for St Francis Hospital in the hospital Anesthesia Department. Note that the Plaintiff never met Dr. Thompson and received no informed Consent from her prior to the surgery. Dr. Thompson never came into pre -opt prior to the surgery to evaluate or provide any informed consent. The plaintiff was never told of potential injury from intubation or anesthesia. There are Discrepancies in Dr. Thompson sign in time and sign out time Dr. Thompson documentation on the anesthesia medical record, would lead one to have concern as to what parts of induction, intubation, and surgery she was actually present in the room to supervise.. And the plaintiff questions if the CRNA and SRNA were left to their own devices, with regards to the intubation and administration of medications for deep sedation. Propofol is a dangerous medication and requires an anesthesiologist for administration. Did Dr. Thompson supervise Ms. McGraw and Mr. Cobb?

The sign in records indicate that Dr. Thompson wasn't present during induction and intubation and she signed out well before the extubation at the end of plaintiffs surgery. In medicine if there is not documentation in the records, what ever is verbally stated after the fact didn't happen.

If the documented sign in time was 9:45 am and the surgery started at 9:30 am, where was the anesthesiologist when the intubation and induction occurred at 8:35 am. See Anesthesia medical record for the times and the note which states that the plaintiff was intubated by the SRNA.

Anesthesiologist are suppose to supervise certified nurse anesthetist. So who was supervising the CRNA who supervised the SRNA, when he did a procedure upon the plaintiffs person, without her knowledge and permission. Since one of the diagnosed problems the plaintiff has is related to cognitive problems, mild short term memory loss and mild Executive function deficits, who really administered the drugs for deep sedation. Dr John Lucas felt than anesthesia was the cause of the plaintiffs cognitive problems. Did medications or the amounts given result in the plaintiffs cognitive problems and who actually administered them?

According to research memory and cognitive problems can be caused by too much anesthesia or it can be caused from a surgery gone wrong.

Note that the plaintiffs 2010 Care Improvements Plus Medicare Advantage plan could not determine, who billed for intubation and administering of

medications due to the medical coding.

Also St Francis Hospital Could not define who billed for what and stated that the bills for the physicians would have been billed through their private billing . Even their private billing agency could not make head or tails out of the codes to determine, who billed for administration of anesthesia or intubation. Intubation was documented on the Medical record/Anesthesia sheet as having been done by a (SRNA) student Registered Nurse Anesthetist. Note that according to Medicare they do not pay for intubation or procedures performed by students. Of course if the intubation was billed for, when the student did the intubation this would constitute Fraud. See attached Anesthesia Medical Records

There was an extensive list of persons present in the operating room who were listed as part of the surgical team. The roster does not identify what role those named on the list actually had, nor does it identify what they did during the plaintiffs surgery. Furthermore the medical records of the plaintiff does not identify their roles during the operation.

Note that Jeffry Wager, another Certified Nurse Anesthetist was listed on the Surgery roster. Nothing is stated in the record to explain his presence in the operating room.

Regardless of their role during Beverly's surgery they all had some responsibility for protecting and seeing that their patient was safe from injuries during her operation, especially, while she was under deep sedation and unconscious and unable to protect herself. Sedation for surgery is not just being put to sleep it is more like being in a drug induced coma.

Conclusion

Tort reform violates the rights of all persons injured during surgery, through no fault of their own. This law has been established with guidelines and constraints that most ordinary citizens would find difficult, if not impossible to accomplish. This law limits access by excluding the people from having their day in court. The requirement of a certificate of merit by a specialist, places the severe burden financially on the victims, who are suffering from their injuries, and who are *spent out* from seeking medical help. The paid expert witness gets a large payment plus expenses, for travel from out of state to testify in court, because no local expert will agree to testify against a colleague. Furthermore Tort Reform denies the people a remedy for redress for the wrongs they have experienced. It denies justice and protects and

rewards negligence and negligent actions, which makes us all less safe.

The events that occurred at St Francis Hospital on January 7, 2010, were unconscionable.

The plaintiffs cranial nerve are thought to have injuries, which have not been evaluated.. If the defendants are allowed to continue denying Patients their Rights others will suffer injury and possibly death in future cases.

It is the belief of this writer that these issues would be in the interest of to the public and should be addressed in court for the protection of the public.

In review malpractice case it was difficult to find cases other than malpractice for death, adults, who are so injured as to need nursing home care, or adults or baby's with severe permanent brain injuries. It appears that only a select portion of citizens, who are injured through no fault of their own have right to have justice. Tort reform laws make it appear that injuries are not important for the rest of us and that we all just should learn to live with them.

John Adams said, "Representative Government and trial by Jury are the heart and lungs of Liberty. Without these we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle and fed and clothed like swine and hounds"

The preamble to the US Constitution says,

"We the people of the United States in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Tort reform represent what "We the People" are Not.

Since this writer believes in the U.S. Constitution, and views herself is one of "We the People," she respectfully request that this honorable court hold the defendants culpable for her injuries, by not dismissing this case and she requests that equal protection and due process be upheld, according to the guidelines established and which are binding by the US Constitution.

Respectfully Submitted to the Charleston South Carolina Court of Common Pleas, May 23, 2013. Beverly Moore -Rowe

Beverly C. Moore-Rowe

21. Memorandum of Appellant In Support of Motion In Opposition
Of Defendants' Motions to Dismiss By Beverly C. Moore-Rowe, Dated
May 28, 2013

[Pages 216 through 220 attached]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-00088

MEMORANDUM IN SUPPORT
OF MOTION

FILED
2013 MAY 29 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendants)

The Plaintiff, Beverly C. Moore-Rowe (hereinafter referred to herein as the "Plaintiff"), presents the following grounds in support of the Motion submitted to this Court.

Facts and History:

Include cites to medical records where applicable.

LAW:

South Carolina Code of Laws of 1976, as amended

United States Code Annotated:

United States Constitution:

Case Law:

DISCUSSION

CONCLUSION

RESPECTFULLY SUBMITTED BY: X

Beverly Moore-Rowe
BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: April May 28, 2013

2013-CP-10-0088

FILED
2013 MAY 29 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT
Clerk's Office
CANCELED

The Memorandum in Support of Motion For Summary Judgment is Attached Hereto and Incorporated Herein by Specific Referenced thereto.

OPENING STATEMENT

Comes now the Plaintiff Arthur Peter Rowe Pro se, giving notice to the Defendants, by and through their attorneys, and thereby responding in opposition to dismiss, respectfully requests that this honorable court, deny their motion for dismissal.

FILED
2013 MAY 29 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

In support thereof, the plaintiff states as follows:

The defendants have made motions requesting the dismissal of this case for loss of consortium, based on my wife's failure to meet Tort Reform guidelines for filing, a malpractice case such as having a medical affidavit of merit and a medical expert opinion, which I don't even begin to understand.

My wife has explained how The SC legislature established this law removing medical malpractice cases out of the hands of the courts and juries and into the hands of a highly paid expert witness. It is now difficult if not impossible for the average citizen to seek redress for injuries they sustain, through negligent treatment and acts of medical professionals.

Tort Reform violates the US Constitutional rights afforded to every citizen for due process and Equal Protection of the Law.

Furthermore this law removes the responsibility for my wife's injuries away for those persons actually responsible for what happened to her.

There are a lot of people injured in hospital annually. Rarely is a medical malpractice case actually frivolous. Most injured patients don't even file malpractice cases, and when they do, it is because, they feel as my wife that they were treated wrongly.

The only remedy for Medical malpractice is civil litigation and it

appears that tort reform is designed to prevent most cases from ever getting into a court room for redress, which is wrong.

My wife has medical problems that she did not have prior to her surgery and it affects her ability to do the things she did prior to that event.

I am 87 years old, disabled, deaf, have significant visual impairment and have serious health problems, for which I require a lot of help and care and it has been my wife that has managed our affairs and taken care of me. Several year ago I had brain surgery for Trigeminal facial Nerve Neuralgia; a very painful disorder which resulted in me having difficulty with remembering my required daily activities. Beverly has to do just about everything now.

Beverly's health is now not as good and she has problems remembering to do things necessary to keep us both going. She was always even tempered and she now becomes easily upset and tearful.

She cough and chokes sometimes at night to the point that she is she is just miserable. I can't hear much at all and I have heard her coughing so loudly that I have gotten up to check on her and have sat with her holding her hand for several hours, until she was able to stop coughing.

I am worried about her and all these health problems she now has. Beverly has told me there are laws, which do not require the use of a medical expert and I ask this court to protect my rights and those of my wife by use those laws in determining this case. What they did to my wife is wrong and it affects her ability to take care of me like she did prior to all this happening.

My wife is especially upset over her memory loss and is frightened that it will worsen and cause us both to have to go into a home for care, which neither of us wants. Beverly's mind has been the very thing that has made it possible for her to manage al the responsibilities she now carries.

Beverly was always a singer and we met singing in a church choir. Now her voice is damaged so badly that she can no longer sing, without pain, which stops her singing all together. Music and singing gave her great joy and now that has been taken from her to get some student his required experience for graduation. I think this is a shame and a disgrace against the Medical Profession for something like this to happen. This act seems irresponsible and negligent to me and I know I would not like it if it had been done to me.

My guesses is that the rest of the people in Charleston will not like it either, because it might happen to them next time they go to the hospital to have surgery. The public needs to be protected from irresponsible, negligent health care workers, and hospitals that do not abide by the laws, morals, and ethics that have always been associated with medicine. The courts decision in this case is important because it stands to impact on health care safety for all of us.

Conclusion

Arthur Peter Rowe request that the Court of Common pleas uphold and protect my rights and I request that they grant me the right to have a jury determine the out come of this case.

Respectfully to the Charleston South Carolina Court of Common Pleas May 26, 2013. By Arthur Peter Rowe

AP Rowe

22. Transcript Of Hearing In Trial Court On May 31, 2013 On Motions To
Dismiss

[Pages 222 through 235 attached]

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Beverly C. Moore,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-CP-10-0088
	)	
Bon Secours - St. Francis Xavier	)	
Hospital, <i>et al</i>	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 31, 2013, before The Honorable R. Markley Dennis, Jr. in Courtroom 3E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Beverly Moore-Rowe
Mr. Rowe
..... Appearing *Pro Se*

Jeff Bogdan, Esq.
HOOD LAW FIRM

Andrew Halio, Esq.
HALIO LAW FIRM

Jonathon Dunlap, Esq.
BATTEN LEE LAW FIRM

Trey Suggs, Esq.
ROE CASSIDY

...Appearing for Defendants

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: The next one is another
2 Motion to dismiss, Rowe-Moore versus Bon
3 Scours.

4 All right, if everyone will -- are you
5 Beverly Moore-Rowe?

6 MS. ROWE: Rowe.

7 THE COURT: Rowe. I'm sorry. Excuse
8 me for mispronouncing your name. I
9 apologize, Ms. Rowe. You are the plaintiff
10 in this matter?

11 MS. ROWE: I am.

12 THE COURT: Thank you, ma'am.
13 Okay, all of y'all identify yourself --
14 there are multiple defendants?

15 MR. BOGDAN: Yes, Your Honor. I'm
16 Jeff Bogdan from the Hood Law Firm. I
17 represent Christine Thompson, M.D. There
18 have been numerous defendants served in
19 this case.

20 THE COURT: Okay.

21 MR. BOGDAN: We all have similar
22 Motions.

23 THE COURT: So they are Motions to
24 Dismiss?

25 MR. BOGDAN: Right.

1 THE COURT: And they look to be based
2 on -- well, just glancing at the first
3 memorandum -- based on some technical
4 issues, filings that are required.

5 MR. BOGDAN: Correct.

6 THE COURT: So it is based on the
7 pleadings alone?

8 MR. BOGDAN: Correct. And there could
9 be some unique arguments but ---

10 THE COURT: Oh, I understand that.
11 But the statute requires certain things to
12 be done, as well, which would not require
13 me to go outside the pleadings themselves.

14 MR. BOGDAN: Correct. So we have
15 decided amongst ourselves that I am going
16 to take the lead ----

17 THE COURT: That will be fine.

18 MR. BOGDAN: --- and argue for every-
19 body. Then if anybody has anything to add,
20 they'll get up and do that.

21 THE COURT: All right. Ms. Rowe,
22 what I'm going to do is I'm going to hear
23 all the parties at one time. They are
24 similar in nature. Then at the end of
25 that, I will give you an opportunity to

1 respond to that.

2 MS. ROWE: Thank you.

3 THE COURT: You are very welcome.
4 Please proceed. Thank you. Whomever.

5 MR. BOGDAN: Your Honor, this is
6 actually two separate actions that were
7 filed, one by Ms. Beverly Moore-Rowe and
8 one by her husband, I believe that it's
9 Peter Rowe -- or Arthur Rowe.

10 Both are based on medical malpractice,
11 a cervical spine surgery that was performed
12 January 7th, 2010.

13 Beverly Moore-Rowe filed her Notice of
14 Intent exactly three years later, January
15 the 7th, 2013. She did not attach an expert
16 affidavit. Your Honor, clearly Rule 15-79-
17 125 says that an expert affidavit has to be
18 filed contemporaneously with a Notice of
19 Intent.

20 In her Notice of Intent she did argue
21 that Section 15-36-100 allowed her an
22 exception to supplement ---

23 THE COURT: Which is ---

24 MR. BOGDAN: Actually to supplement
25 her affidavit at a later time ---

1 THE COURT: I gotcha.

2 MR. BOGDAN: --- to add an expert's
3 affidavit.

4 THE COURT: That's right.

5 MR. BOGDAN: The plain language of
6 15-79-125 says that the affidavit has to be
7 filed contemporaneously. Since an expert's
8 affidavit was not filed contemporaneously,
9 we have moved to dismiss the Notice of
10 Intent.

11 THE COURT: Okay.

12 MR. BOGDAN: The exception in 15-36-
13 100 does not apply. That section addresses
14 what has to be included in that expert
15 affidavit, and specifically says that that
16 expert affidavit has to be filed
17 contemporaneously with a Complaint, not a
18 Notice of Intent in med mal case.

19 The Court of Appeals has addressed
20 this very issue in *Renuchi* ---

21 THE COURT: Yeah.

22 MR. BOGDAN: --- and found that
23 exception did not apply to the Notice of
24 Intent.

25 THE COURT: That's correct.

1 MR. BOGDAN: Your Honor, for those
2 reasons all of the defendants move to
3 dismiss Beverly Moore-Rowe's Notice of
4 Intent in this case.

5 THE COURT: Okay.

6 MR. BOGDAN: As to her husband,
7 he actually filed a Complaint, not a Notice
8 of Intent. The Complaint is for loss of
9 consortium based on the underlying alleged
10 medical negligence.

11 THE COURT: Okay.

12 MR. BOGADN: Your Honor, that --
13 since it is a medical negligence case, it
14 had to be preceded by a Notice of Intent
15 pursuant to the statute. It was not
16 preceded by a Notice of Intent. Therefore
17 the Complaint was not properly filed.

18 Secondly, even if there was no
19 requirement for the Notice of Intent, he
20 would have had to file an expert affidavit
21 with his Complaint, which -- as with his
22 wife's, there was no expert affidavit
23 attached to his Complaint. Therefore, his
24 Complaint also must be dismissed along with
25 his wife's Notice of Intent.

1 THE COURT: Thank you, sir. Does
2 anyone else wish to supplement the
3 argument?

4 MR. HALIO: Your Honor, ---

5 THE COURT: Mr. Halio?

6 MR. HALIO: I represent MUSC. We're
7 in a slightly different position than the
8 private position, but it is our contention
9 that there is nothing in the frivolous
10 civil proceedings actions statute that
11 exempts the requirement of filing of an
12 affidavit when you bring a medical
13 malpractice action against MUSC. So we
14 would join in the Motion.

15 We also have provided the Court with
16 an affidavit indicating that Steven Heath
17 Cobb, who is the student registered nurse
18 anesthetist who has been sued in this case
19 is subject to the -- is covered by the
20 South Carolina Tort Claims Act, under the
21 definition of the Tort Claims Act is
22 considered to be an employee or agent of
23 MUSC at the time. If the Court were to
24 decide not to dismiss it based on the
25 failure to file the Affidavit and with the

1 naming of the wrong entity, we would
2 suggest that MUSC would have to be
3 substituted for Mr. Cobb. Thank you, Your
4 Honor.

5 THE COURT: Thank you. Anyone else?

6 MR. DUNLAP: Very briefly.

7 THE COURT: Yes?

8 MR. DUNLAP: Your Honor, for the
9 record, I am Jon Dunlap with the law firm
10 of Batten Lee. I am here today in this
11 hearing only on behalf of Nurse Anesthesia
12 South Carolina, LLC.

13 While we do represent Jeffrey S. Wager
14 and Tammy McGraw Speicher, we are not
15 appearing on their behalf in this hearing,
16 because it is our position that they have
17 not been properly served.

18 THE COURT: Okay. All right. Thank
19 you. Anyone else?

20 MR. SUGGS: Judge, I am Trey Suggs.
21 I am here on behalf of Bon Secours Health
22 System, Bon Secours St. Francis Xavier
23 Hospital, and Bon Secours Health System
24 Foundation, Inc. We join in the arguments
25 that have already been made. Thank you,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 All right. Mr. and Mrs. Rowe, I will be
4 happy to hear from you now.

5 MS. ROWE: Judge Dennis, is it okay
6 if I sit?

7 THE COURT: It is certainly okay.

8 MS. ROWE: Thank you very much.

9 THE COURT: You're welcome.

10 MS. ROWE: I brought some documents.
11 The first one that I am going to present is
12 the consent for surgery. There was nothing
13 in the Consent that allowed any information
14 to tell me that they were going to allow a
15 student nurse ---

16 THE COURT: Ma'am, this is critical.
17 That may at certain stages will have,
18 certainly, some relevance but it doesn't
19 have anything to do today with the Motion
20 that is pending.

21 MS. ROWE: Okay.

22 THE COURT: The Motion that is
23 pending is a very technical Motion that --
24 it is really a legal issue. As counsel has
25 cited -- I've read the case on numerous

1 times, Oddly enough in the last six
2 months, I think that I have had two where I
3 have had to dismiss them because the case
4 that he cited says exactly that. There is
5 not -- in fact it was -- I think in that
6 case that they later did obtain an
7 affidavit but the Court said "no." You
8 have to strictly comply with the statute.
9 The Legislature has set forth what had to
10 be done, and it can't be waived.

11 MS. ROWE: Okay. Your Honor, ---

12 THE COURT: That is what we have to
13 address.

14 MS. ROWE: --- the Legislature has
15 established a law that makes it almost
16 impossible for a regular citizen to make a
17 medical malpractice case regardless of
18 their injuries, because of the twenty to
19 thirty thousand dollar payout that has to
20 go to pay an expert witness.

21 THE COURT: Oh, I'm -- Ma'am, I --
22 I practiced law for twenty-one years and I
23 did some medical malpractice. I am well
24 aware of the expense of a plaintiff's case.
25 I am well aware of the difficulty of

1 bringing a case. The Legislature chose to
2 do that, not just for the medical
3 profession but -- this, I think, applies
4 strictly to the medical profession. But
5 from the standpoint of -- the affidavit
6 really applies to any professional lawsuit,
7 as I understand it.

8 The reason for that -- that is not
9 anything new. Do you know that South
10 Carolina is really kind of on the tail-end
11 for that one? North Carolina has had that
12 in place for years, because I had a clerk
13 years ago that took the Bar in North
14 Carolina, as well, and that's -- that's
15 been the requirement to bring a medical
16 malpractice in North Carolina for a long
17 time. It's a logical thing, because it's
18 critical -- except in very limited areas,
19 you have to have an expert. As a lawyer,
20 I never filed a Complaint until I had one.
21 You just -- you just can't. You just can't
22 afford to.

23 So I appreciate your position and your
24 frustration but, unfortunately, that
25 doesn't persuade ---

1 MS. ROWE: In negligence, *per se*, my
2 understanding was that you could bring a
3 case without ---

4 THE COURT: In negligence *per se*
5 there is a limited exception, or common
6 knowledge perception, maybe. But even then
7 you still can't get by the problem that you
8 have with respect to what the Court has
9 said. You have to file it. In this case,
10 I don't think that it's going to be common
11 knowledge, from what I've read. So ---

12 MS. ROWE: I tried to get an
13 affidavit of merit and I tried to get a
14 medical expert and I was unable to do that.

15 THE COURT: Thank you, ma'am. And,
16 Mr. Rowe, you have don't have an affidavit
17 with yours either, sir?

18 MS. ROWE: He's not going to be able
19 to hear. He's almost totally deaf.

20 THE COURT: Well, he doesn't have an
21 affidavit. Based on the statements and
22 arguments and the memoranda submitted and
23 the affidavits, I am granting the Motion to
24 Dismiss. If you will prepare the
25 appropriate Order, each client, I will be

1 happy to sign them.

2 Good luck to you, ma'am. You have a
3 right to appeal this. Once the Order is
4 served upon you, you have thirty days in
5 which to file your Notion of Intent to
6 appeal.

7 MS. ROWE: Thank you very much.

8 THE COURT: Thank you, Ms. Rowe. Have
9 a great day.

10 MS. ROWE: I hope you do, too.

11 THE COURT: Thank you.

12 MR. BOGDAN: You want separate Orders
13 from everybody?

14 THE COURT: I will defer to y'all.
15 If one can incorporate it, I don't have a
16 problem with one covering -- I will let
17 y'all decide what you want to do among
18 yourselves. Thank you very much. Y'all
19 have a great day.

20 MR. SUGGS: Thank you, Judge.

21 THE COURT: Yes, sir. Thank you all.

22 (HEARING CONCLUDED)

23

24

25

STATE OF SOUTH CAROLINA)

)

CERTIFICATE

COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on May 31, 2013, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Charleston, South Carolina
December 10, 2013

23. June 13, 2013 Letter from Office of the Honorable Judge R.
Markley Dennis, Jr. With copy of Appellant's Wife's Letter dated May
25, 2013

[Pages 237 through 243 attached]



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

R. Markley Dennis, Jr.
Judge

2013 CP-10-0090

Post Office Box 1800
300 B California Avenue
Moncks Corner, SC 29461-1800
Phone: (843) 719-4435
Fax: (843) 719-4599
mdennisj@sccourts.org

FILED
2013 JUN 18 AM 10:05
JULIE J. HARRIS
CLERK OF COURT
BY *ASB*

June 13, 2013

Beverly C. Moore-Rowe
52 Chadwick Drive
Charleston, SC 29407

RE: Beverly C. Moore-Rowe vs. Bon Secours-St. Francis Xavier Hospital, Inc., et al
2013-CP-10-0088
Arthur Peter Rowe vs. Bon Secours-St. Francis Xavier Hospital, Inc., et al
2013-CP-10-0090

Dear Ms. Moore-Rowe,

I am in receipt of your correspondence mailed to my attention on May 25, 2013. I must advise you that despite the fact that your letter is marked personal and confidential, it is still considered ex parte communication with the Court and must be shared with all involved parties.

By copying this correspondence to the Charleston County Clerk of Court, I am asking them to please file this letter and your attached correspondence with the above referenced cases. Please note that I am also copying all counsel of record.

Cordially,

Kamila Szymczynska-Sas
KSS/

Enclosure: Correspondence from Beverly C. Moore-Rowe mailed 5/25/13

Cc: Charleston County Clerk of Court ✓
Jonathan Hopkins Dunlap
Jack G. Gresh
Andrew S. Halio
James Bernard Hood

Darren Kent Sanders
Fred W. Suggs, III
Christine Kent Toporek

Beverly C. Moore-Rowe
52 Chadwick Drive
Charleston, S.C. 29407
(843) 737-0733

PERSONAL & CONFIDENTIAL

Kamila Czymczynska-Sas, Law Clerk
The Honorable Judge Markley R. Dennis, Jr.
P.O. Box 1800

Moncks Corner, S.C. 29461

RE: Request for Recusal to Hear Motions

Plaintiffs: Beverly C. Moore-Rowe ("**Beverly**") & Arthur Peter Rowe
("**Peter**")

Beverly C. Moore-Rowe vs. Bon Secours-St Francis Xavier Hospital, Inc.,
et al

Charleston County Civil Action No.: **2013-CP10-00088**;

Arthur Peter Rowe vs. Bon Secours-St Francis Xavier Hospital, Inc., et al
Charleston County Civil Action No.: **2013-CP10-00090**

Dear Ms. Czymczynska-Sas:

I understand that I must not communicate directly with the Honorable Judge Dennis except in Court. This is an extremely sensitive matter that must be communicated discreetly and I am not aware of any other way to do so other than through this letter. My husband, Peter and I are the Plaintiffs in the above-referenced actions filed in the Court. I am informed that Judge Dennis is scheduled to hear the Motions in these matters on May 31, 2013. With all due respect for Judge Dennis, I am respectfully requesting that Judge Dennis please recuse himself in these proceedings. I am making this request based upon information provided to me by attorneys, who previously represented me in legal proceedings that were brought before Judge Dennis as Judge.

I had become aware of certain improprieties taking place at my Church. When I attempted to bring it to the attention of the Church, the Church officials excommunicated me. I thereafter commenced my own Lawsuit against the Church, ["**Beverly Christine Moore v. Holy Trinity Church, The Protestant Episcopal Church in the Diocese of South Carolina, The Protestant Episcopal Church, AKA The Episcopal Church USA and The Foreign And Domestic Missionary Society, Charleston County Ninth**"]

Circuit Court of Common Pleas 2007-CP-10-243]. I thereafter hired Geoffrey H. Waggoner, Esquire and his offices.

My motivation for bringing the lawsuit was not to benefit myself financially. My goal was to expose the improprieties and to prevent the offenders from repeating their offenses. I was aware that the Church's goal was to keep the improprieties private. The church officials intended to continue providing a safe harbor for the perpetrator, as they had apparently done for decades. I feared for future victims, knowing that such offenders tend to repeat their offenses and I wanted them stopped.

I realize that the awards in most civil lawsuits are limited to financial recoveries. A criminal case was proceeding in this matter as well. One of my Attorneys, Geoffrey Waggoner, did state in correspondence to me that the Attorneys must be in charge of the manner in which the litigation is handled. I did make it clear to them however that I wanted to be present for all Hearings and conferences. Later I discovered that my attorneys did not honor my wishes.

I felt I was unreasonably pressured into agreeing to mediation and thereafter threatened by my Attorneys, when they informed me that they would withdraw as my Attorneys, if I did not agree to go to mediation accept the decisions, and their purposed outcome of the mediation. I realized that I could not proceed to trial without legal representation. The end result was a settlement with me as the Plaintiff receiving a net amount of approximately \$70,000.00, which I have always been reluctant to touch. I was told by my attorney's that the only thing that would be sealed was the dollar amount of the settlement.

I was extremely upset when my Attorneys informed me that the record was sealed and that I was prohibited from publicly speaking about the matter. I was not told of this hearing in which the records were supposedly sealed until after the mediation and settlement was agreed upon by my attorneys. My very purpose for bringing the lawsuit was to prevent further offenses by the same offenders. My purpose had been frustrated. The perpetrator is no longer at Holy Trinity. He did move on but he just went across the bridge to James Island, where he now attends St James Episcopal Church. According to the Priest he has been welcomed as a "repented sinner."

When I met with my Attorneys at their offices for final settlement, they informed me that I was not allowed to remove any of the files' contents from the offices, because Judge Dennis had sealed the Church's discovery records under a "**Protective Order**". This was the first time that my Attorneys informed me of the Hearing and their receipt of any of the Church's secrete

records(Interrogatories for Discovery). I had requested to see the Church records but my Attorneys denied me access stating that special permission must be obtained from the Court. I was eventually allowed to view the Church records in my attorney's offices on September 24, 2008, but only after I signed an Agreement not to disclose them. My Attorneys informed me that I would be in contempt if I revealed the contents.

One of my Attorneys informed me that she had been present in the Courtroom when "Judge Dennis", acting on his own volition, sealed the records and then recused himself after sealing the records. She also disclosed to me that "Judge Dennis's son would be working for Nexsen Pruet", the Law Firm that was defending the Church, which was the reason for his recusal. When I inquired about the "Protective Order" sealing the case, my Attorney informed me that Judge Dennis had issued that Order sealing the case on his own volition. Based upon what my Attorney informed me, I lost confidence in the integrity of our Judicial System, the Judicial Process and in Judge Dennis. My Attorney's statements about the Hearing and the Court's action sealing the record convinced me that Judge Dennis had a conflict of interest in my proceedings or was simply acting impartially to my detriment.

The Office of the Clerk of Court has never been able to provide me with a copy of the Protective Order signed by Judge Dennis. The only Protective Order on file is a certain Order issued by the Honorable Judge Roger Young on October 12, 2008, which appears to be a Consent Order issued at the end of the case. The cover letter to the Honorable Judge Roger Young dated October 8, 2008 from Nexsen Pruet indicates the Order to be a proposed Confidentiality Order to which all counsel had consented. My attorneys never told or included me in the decision to seal these records. A copy of that letter and Order are enclosed. In addition, on September 19, 2008, a Stipulation of Dismissal was filed with the Court informing the Court that the Parties had resolved the case.

I was so disappointed in the way that the record was sealed, that I refused to retrieve the check from the Waggoner Law Firm. When my former Attorneys began contacting me about the check, I eventually accepted it but I have been reluctant to touch the funds.

When a request was made for a copy of the Protective Order signed by Judge Dennis in my case, the Waggoner Law Firm provided a copy of the enclosed Order signed by the Honorable Judge Roger Young.

I trusted my Attorneys and believed that they would be honest and truthful with me. Accordingly, I have always wanted to ask Judge Dennis why he

chose to issue an Order sealing the record on his own volition especially in light of the fact that child sex abuse in a church, would be of public interest, because it involves the safety of children, and children in a church.

Due to Judge Dennis being the Judge assigned to hear the Motions in these proceedings, I am compelled to bring this matter to the Judge's attention. Based upon the information previously provided to me by my Attorneys in the prior proceedings, I am afraid to appear before Judge Dennis as a party litigant in any legal proceedings. If Judge Dennis did not issue an Order sealing the record in my prior proceedings on his own volition, then both Judge Dennis and I have been greatly wronged and I apologize to Judge Dennis. In any event, I apologize to the Court and to Judge Dennis for having to bring this matter to the attention of the Court at this time.

Under the circumstances, I thought it best to inform you of my concerns and fears and allow you to communicate with Judge Dennis and give him the opportunity to recuse himself from these proceedings and possibly inquire as to the former proceedings.

Thank you for your consideration in this matter.

With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Beverly C. Moore-Rowe".

Beverly C. Moore-Rowe

243
Beverly Moore - Rowe
52 Chadwick Dr
Charleston SC 29407

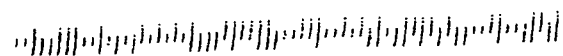
CHARLESTON SC 294

25 MAY 2013 PM 2 L



Kamila Czymczynska - Sec, Law Clerk
The Honorable Judge Markley R. Dennis, Jr.
PO Box 1800
Monks Corner, SC 29461

2946131800



24. Certificate Of Appellant

The undersigned hereby certifies that the Record On Appeal contains all material proposed to be included by any of the parties and not any other material.



ARTHUR PETER ROWE, PRO SE
708 St. Andrews Boulevard
52 Chadwick Drive
Charleston, South Carolina 29407
Phone: (843) 737-0733

June 2, 2014

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

HONORABLE R. MARKLEY DENNIS
CIRCUIT COURT JUDGE

C.A. NO. 2013-CP-10-00090
CT. APP. NO.: 2013-001682

RECEIVED
JUN 05 2014
SC Court of Appeals

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DEC 4 2020
SC Court of Appeals
RECEIVED
DEC 4 2020
SC Court of Appeals

ARTHUR PETER ROWE..... Appellant,

vs.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; ROPER ST. FRANCIS FOUNDATION, D/B/A ROPER ST. FRANCIS HEALTHCARE; BON SECOURS-ST. FRANCIS HEALTH SYSTEM FOUNDATION, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; ROPER HOSPITAL, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; BYRON N. BAILEY, M.D.; CHRISTINE C. THOMPSON, M.D., A/K/A CHRISTINE THOMPSON, M.D.; CHARLESTON NEUROSURGICAL ASSOCIATES, LLC; MT. PLEASANT ANESTHESIA ASSOCIATES, PA; CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, D/B/A CHARLESTON SURGERY CENTER; TAMMY MCGRAW, CRNA, ALSO KNOWN AS TAMMY MCGRAW SPEICHER, CRNA; NURSE ANESTHESIA OF SOUTH CAROLINA, LLC; JEFFERY S. WAGER, CRNA; TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC.; AND STEVEN HEATH COBB

..... Respondents,

PROOF OF SERVICE

I certify that I have served a copy of the Reply Brief and the Record On Appeal on the Respondents listed above, with all enclosures referenced therein, by depositing a copy of it in the United States Mail, postage prepaid, on Monday, June 2, 2014, addressed to the Respondents' Attorneys of record, as listed below:

Darren Kent Sanders, Esquire
Buyck & Sanders Law Firm, LLC
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Mount Pleasant, S.C. 29465-2424

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Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
P.O. Box 10529
Greenville, S.C. 29603

Jack Gordon Gresh, Esquire
Hall, Booth, Smith & Slover, P.C.
40 Calhoun Street, Suite 550
Charleston, S.C. 29401

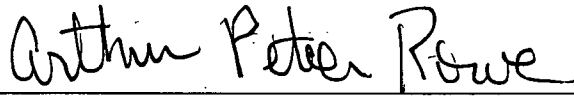
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Charleston S.C. 29402-1508

Christine Kent Toporek, Esquire
PO Box 993
Charleston, S.C. 29402

A handwritten signature in cursive script that reads "Arthur Peter Rowe". The signature is written in dark ink and is positioned above a horizontal line.

ARTHUR PETER ROWE, Pro Se
Plaintiff/Appellant
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733

Charleston, South Carolina
Dated: June 2, 2014