

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No 2010-CP-10-3410

Dr Cynthia Holmes, M D

Appellant,

v

East Cooper Community Hospital, Inc ,
Tenet HealthSystem Medical, Inc ,

Respondents

RECEIVED
MAY 26 2012
SC Court of Appeals

RECORD ON APPEAL

Vol 1 of 3

Chalmers C Johnson
523 So G St Apt 402
Tacoma, WA 98405
Attorney for the Appellant

Lindsay Smith-Yancey
Chip McQueeney
E D Pratt-Thomas
POD 22247
Charleston, SC 29413
Attorneys for the Respondent

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FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No 2010-CP-10-3410

Holmes

versus

East Cooper Hospital

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and the verdict has been rendered
- ☒ **DECISION BY COURT** This action came to trial or hearing before the court The issues have been tried or heard 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 THE 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 Reconsider is denied

Dated at Charleston, South Carolina, this 8th day of March, 2011

BY _____
R Markley Dennis, Jr. PRESIDING JUDGE

FILED
2011 MAR -9 PM 12:24
JULIE J ARMSTRONG
CLERK OF COURT

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class 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)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C A NO 2010 CP-10-3410

Dr Cynthia Holmes, M D ,
Plaintiff,

vs

East Cooper Community Hospital, Inc ,
and Tenet HealthSystem Medical, Inc ,
Defendants

SUMMARY JUDGMENT ORDER

FILED
2011 JUL 29 PM 4 13
JULIE J ARMSTRONG
CLERK OF COURT

This action came before the undersigned on July 8, 2011, on Defendants' Motion for Summary Judgment. Counsel for Plaintiff and Defendants submitted Memoranda of Law, Affidavits, and oral argument, which have been considered by the Court and incorporated into the record. As explained more fully below, the Court finds there is no genuine issue of material fact as to Plaintiff's claims and that Defendants are entitled to summary judgment.

Undisputed Facts

Plaintiff is a medical doctor specializing in the field of Ophthalmology. Defendant East Cooper Community Hospital, Inc., owns, operates, and does business as East Cooper Medical Center (hereinafter referred to as the 'Hospital') and is a wholly owned subsidiary of Defendant Tenet HealthSystem Medical, Inc.

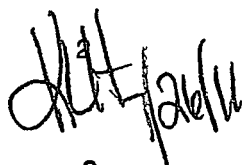
At the times relevant herein, Plaintiff was a member of the Hospital's Consulting Medical Staff. All appointments to the Hospital's Medical Staff are for a limited two (2) year term. Plaintiff's 2004 appointment to the Medical Staff, which was the subject of previous litigation between the parties, was nearing expiration in October of 2006, at

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7/26/11

which time Plaintiff submitted a reappointment application. In her application Plaintiff requested advancement in Medical Staff category and clinical privileges to perform surgery on the eye. The Hospital's Credentials and Medical Executive Committees found Plaintiff's application to contain insufficient evidence that she was currently clinically competent for the Medical Staff category and surgical privileges requested and recommended that she be reappointed to the Consulting Staff category. Plaintiff requested and was granted an administrative hearing of this recommendation. The Hospital's Governing Board upheld the recommendation and Plaintiff was reappointed to the Consulting Medical Staff for another two year term.

Prior to the expiration of this 2006 appointment, in or around October of 2008, Plaintiff submitted another reappointment application again requesting advancement in Medical Staff category and surgical privileges. The Hospital, through its Credentials Committee, Medical Executive Committee, and Governing Board, this time determined Plaintiff's application to be incomplete and a deemed voluntary resignation from the Medical Staff without appellate rights under the Medical Staff Bylaws.

On April 26, 2010, Plaintiff instituted this civil action against Defendants alleging causes of action for breach of contract and breach of the covenant of good faith and fair dealing. Plaintiff alleges the actions taken with respect to her 2006 and 2008 reappointment applications breached a Settlement Agreement among the parties arising from a previous lawsuit filed against these same Defendants also regarding her Medical Staff privileges at the Hospital. The Settlement Agreement, entered in 2003, called for Plaintiff's reappointment to the Hospital's Consulting Medical Staff from 2002 to 2004 with "the right to apply for a change in status in accordance with the Bylaws."

A handwritten signature in black ink, appearing to be "J. H. [unclear]", is written over the page number.

Standard of Review

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law Rule 56(c) S C R Civ P, City of Columbia v American Civil Liberties Union, 323 S C 384, 475 S E 2d 747 (1996) Summary judgment is proper where plain, palpable and indisputable facts exist on which reasonable minds cannot differ Byerly v Conner, 307 S C 441, 415 S E 2d 796 (1992) Summary judgment is not a 'disfavored procedural shortcut' but an important mechanism for weeding out "claims and defenses [that] have no factual basis" Celotex Corp v Catrett, 477 U S 317, 327 (1986) The party seeking summary judgment has the burden of establishing the absence of a genuine issue of material fact McCall v State Farm Mut Auto Ins Co, 359 S C 372, 597 S E 2d 181 (Ct App 2004) Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations contained in the pleadings Regions Bank v Schmauch, 354 S C 648, 582 S E 2d 432 (Ct App 2003) The nonmoving party must come forward with specific facts showing there is a genuine issue for trial Rife v Hitachi Constr Mach Co, Ltd, 363 S C 209, 609 S E 2d 565 (Ct App 2005) A party's response to the motion must set forth specific facts, admissible evidence, showing that there is a genuine issue for trial It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine Dickert v Metropolitan Life Ins Co, 306 S C 311, 411 S E 2d 672 (Ct App 1991)

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I This Court lacks subject matter jurisdiction to review the actions of private hospitals concerning medical staff privileges

"Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong Bunkum v. Manor Properties, 321 S C 95, 100, 467 S E 2d 758, 761 (Ct App 1996) 'Claims of lack of subject matter jurisdiction may be raised at any time, and subject matter jurisdiction may not be waived by filing responsive pleadings or otherwise consenting to the jurisdiction of a particular court " Eldridge v. City of Greenwood, 331 S C 398, 408, 503 S E 2d 191, 196 (Ct App 1998)

South Carolina courts have consistently held that private hospitals are free in the absence of regulatory provisions to decide the nature and extent of medical practice permitted to persons to whom it grants medical staff privileges 'A private hospital is free to adopt reasonable regulations for the conduct of its affairs " Gowan v. St. Francis Cmty Hosp., 275 S C 203, 204, 268 S E 2d 580, 581 (1980) It is well settled in South Carolina that the Court does not have jurisdiction to review the decisions of the medical staff of a private hospital concerning the membership and credentialing of its physicians Strauss v. Marlboro County Gen Hosp., 185 S C 425, 194 S E 65, 65 (1937), Wood v. Hilton Head Hosp., Inc., 292 S C 403, 405, 356 S E 2d 841, 842 (1987), Gowan, 275 S C at 204, 268 S E 2d at 581

It is undisputed that the Defendant Hospital herein is a private, for-profit hospital governed by a Board of Directors It is also undisputed that its Medical Staff operates pursuant to written Medical Staff Bylaws, Rules and Regulations, which have been approved by the Governing Board of the Hospital, and by which all physicians receiving



privileges at the Hospital agree to be bound as a condition of membership in the Medical Staff

Plaintiff alleges that her present lawsuit is not a challenge of the Hospital's implementation of the Medical Staff Bylaws, nor of the Hospital's credentialing decisions concerning her reappointment applications, but, rather, of the term of the previous Settlement Agreement allowing her the right to apply for a change in status in accordance with the Bylaws. Indeed, Plaintiff conceded at the hearing of this Motion that a challenge of the Hospital's implementation of its Bylaws and credentialing decisions are matters outside the scope of this Court's subject matter jurisdiction.

Despite Plaintiff's argument that her claim is one for breach of the Settlement Agreement, the Plaintiff's Complaint and the evidence in the record clearly show she is indeed seeking a judicial interpretation of the Hospital's implementation of its Medical Staff Bylaws and of the decisions regarding her Medical Staff privileges. Specifically, the Plaintiff requests this Court to review whether the Hospital's denial of advancement in Medical Staff category and surgical privileges in 2006, reappointment of her to the Consulting Medical Staff in 2006, refusal to accept her 2008 application as complete, refusal to process and consider her 2008 application for advancement in Medical Staff category and surgical privileges, and denial of an administrative hearing regarding her 2008 reappointment process were decisions made in accordance with the applicable Bylaws.

Though styled as a breach of contract action, as her multiple previous lawsuits against Defendants were, the Plaintiff's claims all arise out of the peer review process at the Hospital and, as such, are not subject to judicial review. Both the Plaintiff's


-6-

Complaint and the Affidavits submitted by the Plaintiff in opposition to summary judgment support this conclusion. In fact, the Affidavit of Plaintiff's expert witness contains a lengthy discussion and interpretation of the Bylaws, but omits any reference to the subject Settlement Agreement. This Affidavit unequivocally shows the Plaintiff's claims are dependent upon the issue of whether the Hospital properly applied the Bylaws in reviewing the Plaintiff's 2006 and 2008 reappointment applications, as this is the sole basis on which the expert opines. None of the evidence or testimony submitted by the Plaintiff demonstrates a genuine issue of material fact as to whether the subject Settlement Agreement was breached, but, rather, only challenges the decisions regarding her peer review processes. The Court does not have jurisdiction to determine these issues, and the Plaintiff has presented no evidence or reason to persuade the Court to depart from the long-standing principle that such actions are not subject to judicial review.

The Plaintiff contends that the Court has jurisdiction over this matter based on Lee v. Chesterfield General Hosp., 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986). The Court declines to adopt the Plaintiff's interpretation of the Lee decision and, in any event, Lee applies only to actions for civil conspiracy, not claimed herein, rather than causes of action sounding in contract. In Lee, the Court of Appeals confirmed the decision reached by the Supreme Court in Gowan but found subject matter jurisdiction where the Plaintiff did not seek to conduct a judicial review of internal hospital rules, but claimed that the Bylaws were imposed in furtherance of a conspiracy, the purpose of which was to injure the Plaintiff. Id. In this case, Plaintiff asks the Court to review the basis for the Hospital's privileging decisions and substitute its judgment for the Hospital



and its review committees by determining that the decisions were inappropriately made. This is precisely the type of intervention that the Supreme Court of South Carolina in Strauss, Gowen, and Wood sought to prevent.¹

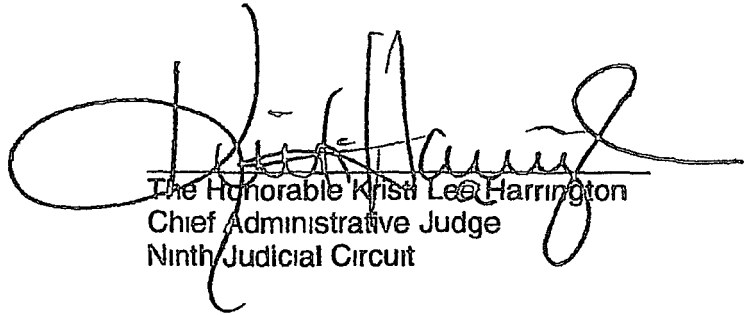
Finally, the Plaintiff's contentions that this Court has previously ruled on and agreed to accept subject matter jurisdiction of this controversy are without merit. Plaintiff argues the Court's previous denial of Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings based, in part, on lack of subject matter jurisdiction, now confer subject matter jurisdiction on this Court. Plaintiff concedes that the Court's denial of said Motion was based upon prematurity of the issues rather than merit. Regardless, an Order denying a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable and does not, as the Plaintiff contends, bind the parties. See Deskins v. Boltin, 319 S.C. 356, 357, 461 S.E.2d 395, 396 (1995) ("The denial of a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable"), Woodard v. Westvaco Corp., 319 S.C. 240, 243, 460 S.E.2d 392, 394 (1995) overruled on other grounds by Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002) ("An order *denying* a motion to dismiss for lack of subject matter jurisdiction does not *finally* determine anything.")

¹ In deciding this issue, this Court relies only on the Plaintiff's Complaint and the Plaintiff's own Affidavits in opposition to summary judgment. This Court does not rely on filings and orders from previous actions, however, at least two prior orders entered by The Honorable R. Markley Dennis, Jr., in a previous case between these parties operate as res judicata and/or collateral estoppel as to this issue, and these also support the Court's decision herein.

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7/26/11

Conclusion

For the foregoing reasons, there is no genuine issue of material fact as to the causes of action asserted by the Plaintiff and Defendants Motion for Summary Judgment is GRANTED


The Honorable Kristi Lee Harrington
Chief Administrative Judge
Ninth Judicial Circuit

July 26, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C A

DR CYNTHIA HOLMES, M D ,)
Plaintiff,)

Vs)

COMPLAINT
(Jury Trial Requested)

EAST COOPER COMMUNITY)
HOSPITAL, INC , TENETHEALTH)
SYSTEM MEDICAL, INC ,)
Defendants)

The Plaintiff, by and through her undersigned counsel, hereby makes the following claims and allegations

JURISDICTION

- 1 The Defendants, East Cooper Regional Medical Center, Tenethealth System (hereinafter referred to as Defendants), comprise an entity which is located in, does business in, and which derives benefit from the laws of the State of South Carolina, and which is subject to the jurisdiction of this Honorable Court
- 2 The Plaintiff, Dr Cynthia Holmes (hereinafter referred to as Plaintiff), is a resident of the State of South Carolina, and is subject to the jurisdiction of this Honorable Court
- 3 That all parties and subject matter herein mentioned are within the jurisdiction of this Honorable Court

FACTS

- 4 The Plaintiff is an Ophthalmology Doctor, who practices in the Sullivan's Island area of the East Cooper region of Charleston, SC

- 5 East Cooper is the sole hospital with Operating Room facilities which is located in
and directly serves the immediate geographic location in which the Plaintiff's
practice is located
- 6 In or about 2002, Plaintiff and the Defendants entered into a contract, the terms of
which required Defendants to, in good faith, provide a fair consideration of
Plaintiff's future applications for privileges with the Defendants' Hospital
- 7 The Defendants breached the contract with the Plaintiff on separate and
independent dates, which, seen as a whole, shows a pattern of actions taken in bad
faith, designed to and which successfully have, to date, resulted in Plaintiff being
denied a fair opportunity to obtain or be considered, in good faith for certain
privileges at the Defendant Hospital, and thereby caused the Plaintiff to suffer
foreseeable special damages
- 8 As set forth more specifically below (and hereby incorporated into the facts as set
forth), the Defendants have engaged in several distinct breaches of the contract
between the parties, breaching the language of the contract which required it to
provide and afford the Plaintiff, in good faith, with a fair opportunity to apply for
and obtain application for advancement in staff privileges with the Defendants'
hospital In doing so, the Defendants also breached the implied covenant of good
faith and fair dealing, implied in the contractual relationship between the parties on
each of the dates on which it denied the Plaintiff's attempts to apply for an
advancement in staff privileges
- 9 That, as a direct and proximate result of the Defendants' actions, as plead herein,
occurring in the years 2006-2007 and 2008-2009 (the last two times Plaintiff

applied for a change in status for medical privileges with the Defendants), Plaintiff has suffered severe damages, in the form of actual damages, consequential damages, and compensatory damages Plaintiff has also incurred attorneys fees and costs in pursuing this action and in mitigation of her losses due to actions of the Defendants

- 10 The damages that the Plaintiff has suffered are the foreseeable results of the Defendants' actions

FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT/ BREACH OF COVENANT OF GOOD
FAITH AND FAIR DEALING

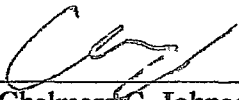
- 11 Paragraphs one (1) through ten (10) are hereby incorporated verbatim
- 12 The Plaintiff and Defendant were and are parties to a contractual agreement, the terms of which are set forth as part of a settlement agreement
- 13 As with every contractual relationship, this contract involved an implied covenant of good faith and fair dealing
- 14 That the Defendant breached this duty by attempting (successfully to date) to block Plaintiff from being able to seek review of its decision to deny her application for advancement in staff privileges in violation of the letter and the spirit of the applicable bylaws
- 15 In 2006-2007 and 2008-2009 (in each of the two years), Plaintiff submitted an application for advancement in staff privileges, which was complete on its face
- 16 The Credentials Committee then denied the Plaintiff's application, an act which should have given Plaintiff the right to pursue an appeal, under the applicable bylaws

- 17 When Plaintiff did timely pursue an appeal, the Defendants, in bad faith, denied her access to a complete, fair and full review
- 18 The Defendant's actions were taken in bad faith, and in willful and knowing violation of the implied covenant of good faith and fair dealing, with the purpose of denying the Plaintiff access to the administrative process, and in an attempt to restrict Plaintiff from seeking a judicial remedy for the denial of her application for advancement in staff privileges through appropriate litigation
- 19 That, as a direct and proximate result of the Defendants' breach of contract, the Plaintiff has suffered actual damages and special damages, in the form of lost income, and loss of business to her practice, as she has been unable to admit any patients to the hospital to perform medical procedures from 2007 through the date of the filing of this Complaint, and continuing presently
- 20 The damages and injury suffered by Plaintiff were the foreseeable result of the Defendants' willful and knowing breach of contract, and breach of the covenant of good faith and fair dealing
- 21 Plaintiff is entitled to an award of damages against the Defendant in the amount of actual damages, compensatory damages, an injunction, requiring Defendant to proceed under the terms of its contract with Plaintiff, and other damages such as this Honorable Court deems appropriate and just

PRAYER FOR DAMAGES

WHEREFORE, the Plaintiff prays for an award of damages against the Defendants, jointly and severally, and as specifically set forth above (as to each cause of action), in the amount of

- A. Actual damages,
- B. Consequential damages,
- C. Compensatory damages,
- D. equitable enforcement of the terms of the contract between Plaintiff and Defendant by permanent injunction,
- E. Other damages and remedies such as this Honorable Court deems appropriate and just



Chalmers C Johnson
S C Bar # 11583
523 So G Street, Apt # 402
Tacoma, WA 98405
(425) 999-0900
Counsel for the Plaintiff

April 13, 2010

9-17-10

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) C A NO 2010-CP-10-3410

Dr Cynthia Holmes, M D)

Plaintiff)

vs)

East Cooper Community Hospital Inc
and Tenet HealthSystem Medical Inc)

Defendants)

2010 SEP 17 PM 3:34
JULIE J ARMSTRONG
CLERK OF COURT

FILED

ANSWER, MOTION TO DISMISS, AND COUNTERCLAIMS OF DEFENDANTS EAST
COOPER COMMUNITY HOSPITAL, INC , AND
TENET HEALTHSYSTEM MEDICAL, INC

Defendants East Cooper Community Hospital Inc and Tenet HealthSystem Medical Inc (collectively Defendants') by and through their undersigned attorneys, answer the Plaintiff's Complaint herein, move for the dismissal of same, counterclaim and hereby state and allege as follows

FOR A FIRST DEFENSE

1 Each and every allegation of the Plaintiff's Complaint (hereinafter the 'Complaint') not admitted, qualified or explained, is deemed to be denied and strict proof demanded thereof

2 With respect to the allegations in Paragraph 1 of the Complaint, Defendants admit that East Cooper Community Hospital Inc, is a corporation organized and existing under the laws of the State of South Carolina, which owns, operates and does business as East Cooper Regional Medical Center (the Hospital). Defendants further admit that East Cooper Community Hospital Inc is a wholly owned subsidiary of Tenet HealthSystem Medical Inc, a corporation organized and existing under the laws of the State of Delaware. All allegations in Paragraph 1 of the Complaint inconsistent with the above are denied.

10-16-123

3 Defendants upon information and belief, admit that the Plaintiff is a resident of the State of South Carolina All allegations contained in Paragraph 2 of the Complaint inconsistent with the above are denied

4 With respect to the allegations in Paragraph 3 of the Plaintiff's Complaint, Defendants admit that this Court has personal jurisdiction over them but specifically deny that this Court has jurisdiction over the subject matter in the Plaintiff s Complaint

5 Defendants upon information and belief admit the allegations in Paragraph 4 of the Plaintiff s Complaint

6 Defendants deny the allegations in Paragraph 5 of the Plaintiff s Complaint as stated

7 Defendants deny the allegations in Paragraphs 6 7 8 9 and 10 of the Plaintiff s Complaint

8 The allegations in Paragraph 11 of the Plaintiff s Complaint require no response To the extent a response may be required Defendants deny the same, demanding strict proof thereof Defendants further incorporate the other allegations contained herein in response to Paragraph 11 of the Plaintiff s Complaint

9 Answering Paragraphs 12 and 13 of the Plaintiff s Complaint Defendants admit that they entered into a Settlement Agreement and General Release in Full which was fully executed in January of 2003 and which is contained in pp 21-25 of the attached Exhibit A Defendants further admit that they, acting in good faith and fair dealing fulfilled their obligations under same All allegations contained in Paragraphs 12 and 13 of the Complaint inconsistent with the above are denied

10 Defendants deny the allegations in Paragraphs 14, 15 16 17 18 19 20 and 21 of the Plaintiff s Complaint

**FOR A SECOND DEFENSE AND IN SUPPORT OF DEFENDANTS' FIRST DEFENSE,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

11 The Plaintiff is a licensed attorney in the State of South Carolina practicing under the name of Cynthia Collie Esquire as well as a licensed medical doctor practicing ophthalmology under the name of Cynthia Holmes, M D

12 These Defendants and other parties have been dragged through five (5) previous lawsuits filed by Plaintiff all arising from her medical staff privileges at the Hospital

13 In these lawsuits, Plaintiff has been warned or sanctioned by South Carolina trial and appellate courts at least five (5) separate times that her various filings arising out of her medical staff privileges are frivolous (Ex B)

14 The background of Plaintiff's medical staff privileges at East Cooper Hospital as well as her five previous lawsuits relating to same are set forth in detail in the Amended Answer of these Defendants to a previous Complaint filed by the Plaintiff in the Court of Common Pleas of Charleston County identified as Civil Action No 05-CP-10-5113 The Defendants specifically incorporate by reference said Amended Answer and Exhibits to the Answer herein as **Exhibit A**

15 Plaintiff's instant Complaint alleges breach of a Settlement Agreement reached in yet another of Plaintiff's previous lawsuits filed in the Court of Common Pleas of Charleston County, identified as Civil Action No 00-CP-10-1888, which also involved allegations of wrongdoing regarding the Plaintiff's medical staff membership and privileges at the Hospital This Settlement Agreement and General Release in Full (hereinafter referred to as the Settlement Agreement) was fully executed by the Plaintiff and these same Defendants in January of 2003 (Ex A, pp 21-25) The terms of the Settlement Agreement called for the Plaintiff's reappointment to the Hospital's consulting staff for a term of two (2) years Specifically the provision the Settlement Agreement alleged to have been breached in the Plaintiff's instant Complaint stated That Dr Holmes has been reappointed to consulting status for a term of two

(2) years Dr Holmes shall have the right to apply for a change in status in accordance with the Bylaws (Ex A at pp 21 and 22)

16 It is undisputed that pursuant to the Settlement Agreement Plaintiff was reappointed to the Hospital's consulting medical staff in December 2002 for a term of two years

17 It is also undisputed the Plaintiff has claimed that the Defendants breached the same Settlement Agreement in one of her previous lawsuits against these Defendants On December 16 2005 Plaintiff filed yet another lawsuit against Defendants (the 2005 Lawsuit) in the Court of Common Pleas for Charleston County, identified as Civil Action No 05-CP-10-5113 alleging among other things, that Defendants breached this same Settlement Agreement by denying her 2002 and 2004 applications to the Hospital for an advancement in medical staff category and privileges to perform surgery on the eye (Ex C, Plaintiff's Amended Complaint in Civil Action No 05-CP-10-5113 and Ex D, Plaintiff's Response to Defendants' Motion to Dismiss)

18 On November 29 2006 upon Defendants motion the Honorable R Markley Dennis Jr granted partial dismissal of the 2005 Lawsuit finding that Plaintiff's claims regarding her 2002 reappointment were unambiguously released in the same Settlement Agreement complained of in the Plaintiff's present action (Ex E, Order of Partial Dismissal)

19 Subsequently Defendants moved for summary judgment on the remaining allegations in the 2005 lawsuit arguing inter alia, that the circuit court lacked jurisdiction to review this private Hospital's decisions regarding the credentialing of its medical staff (Ex F, Defs' Mot for Summ J, Ex G, Mem in Support of Mot for Summ J)

20 On May 23 2007, Judge Dennis granted summary judgment to Defendants holding in pertinent part as follows

The Plaintiff's Amended Complaint seeks judicial determination of whether the decisions regarding her credentialing and privileges at East Cooper Hospital were reasonable and in compliance with the Hospital's Bylaws Specifically she requests the Court to review whether the failure to process and consider her application for associate status and surgical

privileges, her reappointment to the consulting staff, and the denial of an administrative hearing were reasonable decisions made in accordance with the Bylaws The Plaintiff's claims all arise out of the peer review process at East Cooper Hospital and, as such, are not subject to judicial review The Court does not have jurisdiction to determine these issues and the Plaintiff has presented no evidence or reason to persuade the Court to depart from the long-standing principle that such actions are not subject to judicial review

(Ex H, Order Granting Summary Judgment filed May 23, 2007) (double emphasis added)

21 Thereafter the Plaintiff began a barrage of appeals of the Summary Judgment Order Plaintiff filed multiple redundant appeals challenging this same Order which the Court of Appeals has repeatedly dismissed The Court of Appeals has issued orders warning Plaintiff that additional attempts to appeal this Order will result in sanctions (Ex B) Specifically on December 2 2009 the Court of Appeals entered an order warning Plaintiff The other orders listed in Appellant's [Dr Holmes] amended notice of appeal have been the subject of previous appeals to this Court Appellant has attempted to appeal those previous orders several times If Appellant again attempts to pursue appeals of those orders she will be sanctioned (Ex B, Court of Appeals Order filed Dec 2, 2009) (emphasis added)

22 The Plaintiff also filed a Petition for Writ of Certiorari with the South Carolina Supreme Court appealing the Summary Judgment Order On July 8 2010 the South Carolina Supreme Court denied Plaintiff's Petition finding "[T]his Court will not accept for filing anything further in this case Such action is necessitated by petitioner's [Dr Holmes] long history of abusing the legal process at both the trial and appellate levels" (Ex B Order Denying Pet for Cert Filed July 8, 2010)

23 Despite these orders from both the Court of Appeals and the Supreme Court the Plaintiff has recently reinstated her appeal of the 2005 Summary Judgment Order to the South Carolina Court of Appeals Defendants Motion to Dismiss the reinstated appeal is pending

24 After the Court of Appeals dismissal of the Plaintiff's original appeal of the Summary Judgment Order the trial court issued sanctions against the Plaintiff for the frivolous

nature of the claims asserted in her 2005 Lawsuit On August 6 2009, The Honorable R Markley Dennis, Jr issued an Order of sanctions against the Plaintiff pursuant South Carolina Frivolous Civil Proceedings Sanctions Act codified at section 15-36-10

25 In his order Judge Dennis ruled that the Plaintiff's 2005 Lawsuit constituted sanctionable conduct by the initiation and pursuit of claims over which the circuit court lacked subject matter jurisdiction, stating

Despite clear case law to the contrary, the Plaintiff filed this action seeking judicial determination of whether the decisions regarding her credentialing and privileges were reasonable and in compliance with the Hospital's Bylaws Specifically she sought the Court to review whether the failure to process and consider her application for associate status and surgical privileges, her reappointment to the consulting staff, and the denial of an administrative hearing were reasonable decisions made in accordance with the Bylaws The Plaintiff's claims all arose out of the peer review process and under South Carolina law are not subject to judicial review, and the Plaintiff presented no evidence or reason to persuade the Court to depart from this long-standing principle

(Ex B, Order Awarding Sanctions filed Aug 6, 2009) (double emphasis added)

26 Judge Dennis awarded Defendants \$90,000.00 in attorneys' fees and costs pursuant to this order (Ex B, Order Awarding Sanctions filed Aug 6, 2009)

The Lawsuit Herein

27 On April 26 2010, the Plaintiff filed the present lawsuit claiming yet again that the Defendants breached the Settlement Agreement and, yet again seeking this Court to review the credentialing decisions this private Hospital has made regarding her medical staff privileges

28 Defendant East Cooper Community Hospital Inc owns, operates and does business as East Cooper Regional Medical Center and is a wholly owned subsidiary of Defendant Tenet HealthSystem Medical Inc The Hospital is a private for-profit Hospital governed by a Board of Directors with the purpose of serving as a general acute care hospital providing patient care education and research The organizational structure of the Hospital as is the case at most hospitals, is bifurcated, reflecting the distinct roles of the Hospital

administration and of the Medical Staff. The Hospital is governed by a Governing Board comprised of physicians, administrative personnel and lay representatives of the community, and retains the ultimate responsibility for the operation of the facility. The administrative staff is led by a President and Chief Executive Officer who manages the Hospital on a day-to-day basis. The Medical Staff organization, which consists of all doctors with active privileges to practice at the Hospital, represents the physicians in the Hospital's government. The Medical Staff is led by an elected Chief of Staff who presides over the Medical Executive Committee (MEC) comprised of the chairpersons of the various clinical departments as well as officers elected by the staff at large. **(Ex I and J, East Cooper Medical Staff Bylaws 2006 and 2007)**

29. The Medical Staff operates pursuant to written Medical Staff Bylaws, Rules and Regulations which have been approved by the Governing Board of the Hospital. **(Id)** Specifically, the Governing Board promulgates Bylaws for the Medical Staff by which all physicians receiving staff privileges at the Hospital agree to be bound. The Medical Staff of the Hospital is divided into categories including, in pertinent part, active, associate, and consulting. The active staff category consists of physicians who regularly admit and provide services within the Hospital to a specified number of patients per calendar year. Active staff members must, among other things, attend Medical Staff meetings, participate in emergency room call, participate in performance improvement activities, and are allowed to vote for and hold Medical Staff and departmental assignments. **(Id)** The associate medical staff consists of practitioners who meet all the criteria for active staff membership except the minimum required number of patient contacts in the hospital per year. If an associate applicant desires privileges for surgical or invasive medical procedures, he or she is required to submit documentation of current clinical competence to the satisfaction of the appropriate Department Chairman and Credentials Committee. **(Id)** Lastly, the consulting medical staff consists of physicians who do not admit patients to the Hospital but who do desire privileges to provide consultative services to patients at the request of active or courtesy staff physicians. Consulting staff members are not eligible to

admit patients, perform surgery vote or hold office They are not required to serve on committees or to take part in the emergency room call schedule (Id)

30 The Medical Staff Bylaws set forth the process by which physicians are granted Medical Staff status and clinical privileges at East Cooper Hospital Pursuant to the Bylaws membership on the Medical Staff and assignment of clinical privileges shall be granted and maintained only by those professionally qualified and currently competent practitioners who continuously meet the qualifications standards and requirements set forth therein No medical doctor is entitled to initial or continued membership on the Medical Staff or the exercise of clinical privileges at the Hospital merely because he or she is licensed to practice medicine, has previously been a member of the Medical Staff has memberships or privileges at another healthcare facility or is a member of any professional organization Applicants and reapplicants to the Medical Staff are required and obligated to document among other things demonstrated current clinical competence for the privileges they seek, abide by the Medical Staff Bylaws Rules and Regulations supply requested information and appear for interviews with regard to membership or privileges, and consent to inspection of all records and documents that may be material to an evaluation of his or her professional qualifications for the clinical privileges he or she requests (Id)

31 Initial appointments and reappointments to the Medical Staff at East Cooper Hospital are made by the Governing Body for a period not to exceed two (2) years (Id) Such appointments are made by the Governing Board after receipt and consideration of peer input from the Medical Executive and Credentials Committees which are comprised of physician members of the active Medical Staff (Id) Although the Governing Board retains the ultimate authority over staff privileges, the recommendations of the Credentials and Medical Executive Committees are given considerable weight This system which is known as peer review is designed to raise the quality of medical care by encouraging physicians to police one another

South Carolina law and federal law, as well as Hospital accreditation entities mandate that Hospitals provide for peer review and credentialing of their staff physicians (Id)

32 After the expiration of each two (2) year Medical Staff appointment at East Cooper Hospital, physicians have the burden of completing and submitting an application for reappointment prior to the expiration of their previous appointment term The reapplicant has the burden of producing adequate information for a proper evaluation of his or her current clinical competence in terms of his or her ability to practice or continue to practice, in the area for which clinical privileges are sought (Id) Reapplicants requesting a change in staff category or clinical privileges have the burden of supplying information in support thereof (Id) Pursuant to the Medical Staff Bylaws requests for clinical privileges shall be evaluated on the basis of a physician's training experience and education, demonstrated current clinical competence, and other relevant information (Id) In granting privileges consideration is given to objective information received from sources outside the Hospital including information that addresses adequate ongoing experience to maintain proficiency (Id) A medical staff member may at any time request a change of staff category by submitting a written notification to the medical staff office and need not wait for the expiration of his or her previous two (2) year term (Id)

33 The Medical Staff Bylaws specifically state that neither the Governing Board nor any Medical Staff committee shall have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material (Id) A physician who fails to supply all of the information required for the appointment process or who fails to respond in a timely manner to a request for information shall be deemed to have resigned from the Medical Staff and shall not be entitled to hearing and appellate rights under the Bylaws (Id)

34 The Credentials Committee of East Cooper Hospital is responsible for reviewing and evaluating the qualifications of each applicant for initial appointment reappointment or modification of appointment to the Medical Staff, and for clinical privileges (Id) The Credentials

Committee must review each application for appointment or reappointment prior to processing to determine if it is complete for processing (Id) The Bylaws prohibit the Credentials Committee from processing any application for membership or privileges that is incomplete (Id) The term completed application is defined in the Medical Staff Bylaws as an application either for initial appointment or reappointment to the Medical Staff or for clinical privileges that has been determined by the applicable Medical Staff department(s) Credentials Committee Medical Executive Committee and the Governing Body to meet the requirements of the Medical Staff Bylaws Rules and Regulations (Id) The Credentials Committee must then submit a report to the Medical Executive Committee on the qualifications of each applicant including its recommendations for appointment staff category assignment, and clinical privileges (Id)

35 The Medical Executive Committee (hereinafter referred to as 'the MEC) of East Cooper Hospital is responsible for, among other things receiving reports from the Credentials Committee relating to physician appointments reappointments clinical privileges and assignment of Medical Staff category The MEC is also responsible for the review and consideration of said reports and then making its own determinations and recommendations to the Governing Board for physician appointments reappointments clinical privileges and Medical Staff category assignment (Id) The Governing Board of the Hospital is the ultimate authority on the appointment reappointment clinical privileges and Medical Staff category assignment (Id)

PLAINTIFF'S 2006 CREDENTIALING PROCESS

36 As stated above following the Plaintiff's 2002 reappointment to the Hospital's consulting medical staff pursuant to the subject Settlement Agreement the Plaintiff was reappointed to the Hospital's consulting staff for another two (2) year term from 2004 to 2006 As also indicated above, the Plaintiff's 2005 Lawsuit claimed that the Defendants breached the

Settlement Agreement by denying her requested advancement in medical staff category and privileges for these 2002 and 2004 reappointment terms

37 On October 7, 2006, when the Plaintiff's 2004 term was about to expire the Plaintiff applied for reappointment and again requested an advancement from consulting staff status to associate medical staff. She also again requested clinical privileges to perform surgery on the eye. **(Ex K, Plaintiff's Oct 7, 2006 Reappointment Application)**

37 As indicated above the Hospital's Bylaws required medical doctors seeking associate status and surgical privileges to submit documentation of current clinical competence to perform the surgical procedures associated with the privileges requested. The Plaintiff's application was accompanied by what appeared to be a summary of office notes which were not dated, contained no identifying patient information and were not compiled in a hospital or accredited surgical facility setting. **(Id)** The Plaintiff's application failed to contain any documentation that she had performed or was competent in the surgical procedures for which she requested privileges and the Hospital had no record of the Plaintiff admitting or surgically treating patients there since 1998. **(Id and Ex L)**

38 On December 20, 2006 the Hospital's Chief Executive Officer informed Plaintiff in writing of the recommendation of the Hospital's Medical Executive Committee that the documentation submitted was insufficient to show clinical competency for the privileges requested and that it was the Committee's recommendation that she again be reappointed to the consulting medical staff. The Plaintiff was also advised of her right to an administrative hearing under the Bylaws. **(Ex L, December 20, 2006 letter of Andrea Wozniak)**

39 Contrary to the allegations set forth in the Complaint herein, the Plaintiff requested and was afforded an administrative appellate hearing of this decision on September 17, 2007 before the Hospital's Medical Review Committee (MRC). The MRC concluded that Plaintiff failed to meet her burden of demonstrating her clinical competency and failed to show that the MEC's recommendation that she be reappointed to the consulting staff was arbitrary.

capricious, or unreasonable. On October 12, 2007, the Hospital's Governing Body adopted the findings of the MRC and issued an Order affirming the MEC's recommendation. (Ex M, **Final Decision of the Governing Body**) Pursuant to said Order, the Plaintiff was reappointed to the Hospital's consulting medical staff.

PLAINTIFF'S 2008 CREDENTIALING PROCESS

40 Plaintiff's 2006 reappointment term to the consulting medical staff was set to expire on December 13, 2008, and on October 30, 2008, Plaintiff submitted an application for reappointment to the Hospital's medical staff, but failed to complete the required Delineation of Privileges portion of the application requiring the Plaintiff to confirm that she had performed at least 48 ophthalmology surgical procedures in the past 24-month period in a hospital or surgical outpatient setting. And again, the Plaintiff failed to submit any documentation showing that she was currently clinically competent for the surgical procedures she requested privileges to perform. (Ex N, **2008 Reappointment Application**)

41 On November 11, 2008, Elaine Meuli, the Hospital's Director of Medical Staff Services, wrote to Plaintiff confirming receipt of her application for reappointment and explaining that Plaintiff failed to complete the required Delineation of Privileges portion of the application and failed to include any evidence of her current clinical competency. (Ex O) In this letter, Meuli explained that Plaintiff's failure to respond in a timely manner would result in her being deemed to have resigned from the medical staff pursuant to the Medical Staff Bylaws (Rev. Feb. 2007). (Id)

42 The Plaintiff failed to respond to Meuli's letter, did not complete the requisite Delineation of Privileges portion of the application, and did not supply any documentation of her current clinical competency to perform the surgical procedures for which she requested privileges.

43 On December 1, 2008, the Hospital's Credentials Committee met and determined Plaintiff's application was incomplete due to her failure to complete the Delineation

of Privileges portion of the application and provide any evidence of her current clinical competency and recommended that her actions be deemed a resignation from the medical staff under the Hospital's Bylaws (Rev Feb 2007) (Ex J)

44 The Hospital's MEC and Governing Body adopted the recommendations of the Credentials Committee and on December 19 2008 Janie Sinacore-Jaberg the Hospital's Chief Executive Officer, informed the Plaintiff that her medical staff membership and privileges were deemed to be voluntarily resigned under the applicable Bylaws (Ex P)

45 As indicated above, the Hospital Bylaws expressly prohibit the consideration of an incomplete application and prohibit an administrative appellate hearing under these circumstances stating that a practitioner who fails to return the form or supply all of the required information within thirty (30) days prior to the expiration of the current appointment period or respond in a timely manner to a request for information shall be deemed to have resigned his Medical Staff membership, effective as of the date of the expiration of his current appointment and that a practitioner who is deemed to have resigned voluntarily under this section shall not be entitled to a hearing and appeal rights (Ex J)

46 On January 6 2009 the Plaintiff requested an administrative hearing (Ex Q)
On January 21, 2009 the Plaintiff was informed that the Hospital Bylaws prohibited a hearing and appellate rights under these circumstances (Ex R)

FOR A THIRD DEFENSE (COMPLIANCE WITH CONTRACT AS A MATTER OF LAW)

47 The term of the January 2003 Settlement Agreement alleged to have been breached by the Defendants in this lawsuit states 'That Dr Holmes has been reappointed to consulting status for a term of two (2) years Dr Holmes shall have the right to apply for a change in status in accordance with the Bylaws (Exhibit A at pp 21 and 22)

48 As shown fully above the Plaintiff was allowed to and did apply for a change in her medical staff status and her applications in this regard were processed 'in accordance with

the Bylaws ' Because the Defendants have complied fully with the Settlement Agreement, Plaintiff s claims are barred as a matter of law

**FOR A FOURTH DEFENSE AND BY WAY OF A MOTION TO DISMISS PURSUANT TO
RULE 12(B)(1), SCRCP**

(Lack of Subject Matter Jurisdiction)

49 Defendants further answering the Plaintiff s Complaint and as an affirmative defense thereto hereby move, pursuant to Rule 12(b)(1) SCRCP to dismiss Plaintiff s Complaint on the grounds that this Court lacks subject matter jurisdiction to address a private hospital s staffing or privileging decisions

**FOR A FIFTH DEFENSE AND BY WAY OF A MOTION TO DISMISS PURSUANT TO RULE
12(B)(6), SCRCP**

(Failure to state a cause of action recognizable under S C law)

50 Defendants further answering the Plaintiff s Complaint and as an affirmative defense thereto hereby move pursuant to Rule 12(b)(6) SCRCP to dismiss Plaintiff s Complaint on the grounds that it fails to state facts sufficient to constitute a cause of action against Defendants as South Carolina law does not recognize a cause of action against a private hospital for its credentialing decisions concerning its Medical Staff

FOR A SIXTH DEFENSE (COLLATERAL ESTOPPEL)

51 Plaintiff s claims are barred by the doctrine of collateral estoppel in that this Court has already ruled that the Defendants have complied with the Settlement Agreement and has issued multiple orders against the Plaintiff including imposing sanctions stating that the Court does not have jurisdiction over claims of the nature asserted herein

FOR A SEVENTH DEFENSE (RES JUDICATA)

52 Plaintiff s claims are barred by the doctrine of res judicata in that this Court has already ruled that the Defendants have complied with the Settlement Agreement and has issued multiple orders against the Plaintiff, including an order for sanctions stating that the Court does not have jurisdiction over claims of the nature asserted herein

FOR AN EIGHTH DEFENSE (LAW OF THE CASE DOCTRINE)

53 Plaintiff's claims are barred by the law of the case doctrine in that this Court has already ruled that the Defendants have complied with the Settlement Agreement and has issued multiple orders against the Plaintiff including an order for sanctions stating that the Court does not have jurisdiction over claims of the nature asserted herein

FOR A NINTH DEFENSE (STATUTE OF LIMITATIONS)

54 Plaintiff's claims are barred by the statute of limitations

FOR A TENTH DEFENSE (UNCLEAN HANDS)

55 Plaintiff's claims are barred by the doctrine of unclean hands in that the Plaintiff stands in contempt of Court for asserting claims previously ruled on by this Court and for which the Plaintiff has been previously sanctioned for asserting

**FOR AN ELEVENTH DEFENSE
(IMMUNITY UNDER THE SC STATUE AND
THE HEALTH CARE QUALITY IMPROVEMENT ACT)**

56 Plaintiff's claims are barred under S C Code Ann § 40-71-10 and the Health Care Quality Improvement Act which provide immunity to these Defendants under the circumstances herein

FOR A TWELFTH DEFENSE (FAILURE TO MITIGATE)

57 Plaintiff has failed to mitigate her alleged damages by failing to apply for and securing medical staff membership and surgical privileges at other healthcare facilities and as such Plaintiff is barred from recovery or in the alternative, Defendants are entitled to a set-off

**FOR A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(ABUSE OF PROCESS)**

58 Defendants hereby re allege and restate all previous allegations contained herein

59 The aforementioned facts show that the Plaintiff's employment of the present legal process is for a purpose other than that for which it was intended by the law to effect

60 These facts show that the Plaintiff's claims herein have been asserted with an ulterior purpose of gaining an objective not legitimate in the use of the process

61 These facts also show that the Plaintiff's refusal to abide by the terms of the Settlement Agreement or the Medical Staff Bylaws, and her repeated and multiple filings of legal actions against these Defendants and other parties for the same causes of action and the same or similar damages after specifically being sanctioned and warned by the trial and appellate courts of this State constitute willful acts in the use of the legal process that are improper unauthorized and aimed at an illegitimate collateral objective

62 As a result of Plaintiff's repeated abuse of the legal process, Defendants are entitled to actual and compensatory damages including attorneys fees as well as punitive damages

FOR A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(MALICIOUS PROSECUTION)

63 Defendants hereby re allege and restate all previous allegations contained herein

64 The aforementioned facts show that the Plaintiff's employment of the present legal process is an institution or continuation of a civil proceeding previously terminated in Defendants favor with malice and without probable cause causing injury and damage to the Defendants

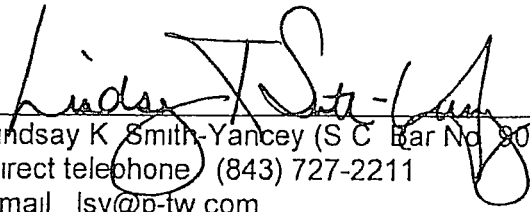
65 As a result of Plaintiff's malicious prosecution of this action, Defendants are entitled to actual and compensatory damages including attorneys fees, as well as punitive damages

**FOR A FIFTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM AND MOTION
PURSUANT TO THE SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS
ACT, CODIFIED AT SECTION 15-36-10 OF THE SOUTH CAROLINA CODE**

66 Plaintiff hereby re-alleges and restates all previous allegations contained herein

67 For the reasons shown and stated fully in the factual allegation of this pleading the present action filed by Plaintiff is frivolous and appropriate for sanctions pursuant to Section 15-36-10 of the South Carolina Code including all costs attorneys fees and such relief as this Court determines is just to prevent like conduct in the future

Respectfully Submitted


Lindsay K. Smith-Yancey (S C Bar No. 9083)
Direct telephone (843) 727-2211
Email lsy@p-tw.com
Daniel S. McQueeney Jr (S C Bar No. 6802)
Direct telephone (843) 727-2256
Email dsm@p-tw.com
Pratt-Thomas Walker P A
Post Office Drawer 22247
Charleston South Carolina 29413-2247
Telephone (843) 727-2200
Fax (843) 727-2231
Attorneys for Defendants

Sept. 17, 2010
Charleston South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dr Cynthia Holmes, M D

☐ Plaintiff

v

East Cooper Comm Hosp, Et Al

☐ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO

2010-CP-10-3410

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney

Chalmers C Johnson, Bar No

Address

523 So G Street, Apt #402, Tacoma, WA 98405

phone (425) 999 0900 fax

e-mail chalmersjohnson@gmail com other

Defendant's Attorney

Lindsay K Smith-Yancey , Bar No 9083

Address

Pratt-Thomas Walker, P A P O Drawer 22247,

Charleston, SC 29413-2247

phone 843 727-2256 fax 843-579-4811

e-mail lsy@p-tw 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 Rule 12(b)(1) and 12(b)(6) 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

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) IN THE COURT OF COMMON PLEAS
C A NO 05 CP-10-5113

Dr Cynthia Holmes M D

Plaintiff

vs

East Cooper Community Hospital Inc
Tenet HealthSystem Medical Inc John
Grady M D Paul Yantis M D

Defendants

2006 JUL 13 PM 4 21
JULIE J ANGLIS TRONG
CLERK OF COURT
BY

FILED

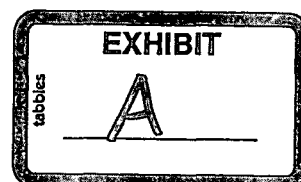
**AMENDED ANSWER, MOTION TO DISMISS,
AND COUNTERCLAIM ON BEHALF OF
DEFENDANTS EAST COOPER COMMUNITY HOSPITAL, INC.,
TENET HEALTHSYSTEM MEDICAL, INC.,
JOHN GRADY, M D , AND PAUL YANTIS, M D**

Defendants East Cooper Community Hospital Inc Tenet HealthSystem Medical Inc ,
John Grady M D , and Paul Yantis M D , by and through their undersigned attorneys,
answering the Amended Complaint of the Plaintiff herein moving for dismissal of same and
counterclaiming, would amend their original Answer filed on June 16 2006, and state and
allege as follows

FOR A FIRST DEFENSE

That each and every allegation of the Amended Complaint not hereinafter specifically
admitted, modified or explained is deemed to be denied and proof demanded thereof

1 That Defendants answering Paragraph 1 of the Amended Complaint, admit that
the website of the Charleston County Clerk of Court indicates that the Plaintiff filed a Complaint
on December 16 2005 which bears the same case number as the Amended Complaint herein
Defendants East Cooper Community Hospital Inc , John Grady M D , and Paul Yantis, M D
admit service of the Amended Complaint herein but deny service of the Complaint filed
December 16 2005 Tenet HealthSystem Medical Inc denies service of both the Complaint



filed December 16, 2005 and the Amended Complaint herein All allegations contained in Paragraph 1 of the Amended Complaint inconsistent with the above are denied

2 That Defendants answering Paragraph 2 of the Amended Complaint, admit that East Cooper Community Hospital Inc , is a corporation organized under the laws of the State of South Carolina which owns and operates East Cooper Regional Medical Center Defendants further admit that Tenet HealthSystem Medical Inc is a corporation organized under the laws of the State of Delaware and is the parent corporation of East Cooper Community Hospital, Inc All allegations contained in Paragraph 2 of the Amended Complaint inconsistent with the above are denied

3 That Defendants answering Paragraph 3 of the Amended Complaint, admit that Defendants Grady and Yantis are residents of the State of South Carolina All allegations contained in Paragraph 3 of the Amended Complaint inconsistent with the above are denied

4 That Defendants, answering Paragraph 4 of the Amended Complaint admit upon information and belief that Plaintiff is a resident of the State of South Carolina All allegations contained in Paragraph 4 of the Amended Complaint inconsistent with the above are denied

5 That Defendants deny Paragraph 5 of the Amended Complaint

6 That Defendants admit upon information and belief Paragraph 6 of the Amended Complaint

7 That Defendants, answering Paragraph 7 of the Amended Complaint admit that East Cooper Regional Medical Center is located in the City of Mt Pleasant, in the County of Charleston, in the State of South Carolina but deny that it is the only facility located in and serving the geographic area in which the Plaintiff's medical practice is located All allegations contained in Paragraph 7 inconsistent with the above are denied

8 That Defendants deny Paragraphs 8, 9 10 11, 12 13 14 15 16 and 17 of the Amended Complaint

FOR A SECOND DEFENSE

9 That Defendants answering Paragraph 18 of the Amended Complaint, reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

10 That Defendants answering Paragraph 19 of the Amended Complaint admit that Defendants Grady Yantis and East Cooper Regional Medical Center and the Plaintiff are bound by the terms and provisions of the Medical Staff Bylaws Rules and Regulations of East Cooper Regional Medical Center and assert that these Defendants have abided by said terms and provisions

By way of further answer, Defendants deny that said Medical Staff Bylaws Rules and Regulations constitute a contractual agreement between the parties herein All allegations contained in Paragraph 19 inconsistent with the above are denied

11 That Defendants answering Paragraph 20 of the Amended Complaint admit that the Medical Staff Bylaws Rules and Regulations of East Cooper Regional Medical Center contain terms and provisions applicable to the creation compilation, and responsibilities of a Credentials Committee but deny that said terms and provisions are contractual in nature All allegations contained in Paragraph 20 inconsistent with the above are denied

12 That Defendants, answering Paragraph 21 of the Amended Complaint admit that the Credentials Committee of East Cooper Regional Medical Center is charged with certain duties and responsibilities and craves reference to the Medical Staff Bylaws, Rules and Regulations of said facility as to the nature of said duties and responsibilities All allegations contained in Paragraph 21 inconsistent with the above are denied

13 That Defendants answering Paragraph 22 of the Amended Complaint admit that the Medical Staff Bylaws Rules and Regulations of East Cooper Regional Medical Center set forth the duties and responsibilities of its Credentials Committee but deny that said Bylaws Rules and Regulations are contractual in nature By way of further answer, Defendants admit that that the Credentials Committee of East Cooper Regional Medical Center is charged with

certain duties and responsibilities and craves reference to the Medical Staff Bylaws Rules and Regulations of said facility as to the nature of said duties and responsibilities All allegations contained in Paragraph 22 inconsistent with the above are denied

14 That Defendants deny Paragraphs 23 24 25 26 27 and 28 of the Amended Complaint

FOR A THIRD DEFENSE

15 That Defendants answering Paragraph 29 of the Amended Complaint, reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer

~~Motion to Dismiss and Counterclaim, as fully as if repeated verbatim herein~~

16 That Defendants deny Paragraph 30 of the Amended Complaint

17 That Defendants answering Paragraph 31 of the Amended Complaint admit that the Medical Staff Bylaws Rules and Regulations of East Cooper Regional Medical Center set forth certain procedural processes regarding medical staff privileges and crave reference to said Medical Staff Bylaws Rules and Regulations for the nature and availability of said processes By way of further answer Defendants deny that the Medical Staff Bylaws Rules and Regulations of East Cooper Regional Medical Center are contractual in nature All allegations contained in Paragraph 31 inconsistent with the above are denied

18 That Defendants deny Paragraphs 32 33 34 35 and 36 of the Amended Complaint

19 That Defendants in answering the remaining allegations of the Plaintiff's Amended Complaint would show that the Paragraphs **following** the first 36 Paragraphs of the Plaintiff's Amended Complaint are mis-numbered, and will hereinafter be designated as the number appearing in the Amended Complaint followed by a (sic)" designation

20 That Defendants deny Paragraph 23 (sic) contained on the sixth page of the Amended Complaint

21 That Defendants deny Paragraphs 24 (sic) 25 (sic) 26 (sic), 27 (sic), 28 (sic) and 29 (sic) contained on the seventh page of the Amended Complaint

FOR A FOURTH DEFENSE

22 That Defendants answering Paragraph 30 (sic) contained on the seventh page of the Amended Complaint, reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

23 That Defendants deny Paragraph 31 (sic) contained on the seventh and eighth

pages of the Amended Complaint

24 That Defendants in answering Paragraph 32 (sic) contained on the eighth page of the Amended Complaint, deny that there was a contractual relationship between the parties All allegations contained in Paragraph 32 (sic) inconsistent with the above are denied

25 That Defendants deny Paragraphs 33 (sic) 34 (sic) 35 (sic) 36 (sic) 37 (sic) 38 (sic) 39 (sic) 40 (sic), 41 (sic), 42 (sic), 43 (sic), 44 (sic), 45 (sic) and 46 (sic) contained on the eighth ninth and tenth pages of the Amended Complaint

FOR A FIFTH DEFENSE

26 That Defendants answering Paragraph 47 (sic) contained on the tenth page of the Amended Complaint reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss, and Counterclaim, as fully as if repeated verbatim herein

27 That Defendants, answering Paragraph 48 (sic) contained on the tenth page of the Amended Complaint admit that Defendant Grady is a physician specializing in the practice of ophthalmology and that his practice is located in the City of Mt Pleasant in the County of Charleston in the State of South Carolina All allegations contained in Paragraph 48 (sic) inconsistent with the above are denied

28 That Defendants answering Paragraph 49 (sic) contained on the tenth page of the Amended Complaint, deny that Defendant Grady was a member of the Credentials Committee of East Cooper Regional Medical Center during the times complained of in the Amended Complaint All allegations contained in Paragraph 49 (sic) inconsistent with the above are denied

29 That Defendants answering Paragraph 50 (sic) contained on the tenth page of the Amended Complaint deny that Defendant Grady was the only physician specializing in the area of ophthalmology with active staff privileges at East Cooper Regional Medical Center during the times complained of in the Amended Complaint All allegations contained in Paragraph 50 (sic) inconsistent with the above are denied

30 That Defendants deny Paragraph 51 (sic) contained on the tenth page of the Amended Complaint

31 That Defendants answering Paragraph 52 (sic) contained on the eleventh page of the Amended Complaint admit upon information and belief that a physician may collect fees for services performed for a patient referred to him or her by another physician All allegations contained in Paragraph 52 (sic) inconsistent with the above are denied

32 That Defendants deny Paragraphs 53 (sic) and 54 (sic) contained on the eleventh page of the Amended Complaint

33 That Defendants deny Paragraph 55 (sic) including its subparts (A) and (B) contained on the eleventh page of the Amended Complaint

34 That Defendants deny Paragraphs 56 (sic) 57 (sic) and 58 (sic) contained on the eleventh and twelfth pages of the Amended Complaint

FOR A SIXTH DEFENSE

35 That Defendants answering Paragraph 59 (sic) contained on the twelfth page of the Amended Complaint reiterate all of the allegations contained in each and every foregoing

paragraph of this Amended Answer Motion to Dismiss and Counterclaim, as fully as if repeated verbatim herein

36 That Defendants deny Paragraphs 60 (sic) 61 (sic) 62 (sic), 63 (sic) 64 (sic), 65 (sic) 66 (sic) 67 (sic) and 68 (sic) contained on the twelfth and thirteenth pages of the Amended Complaint, those being the remaining paragraphs of the Amended Complaint

FOR A SEVENTH DEFENSE AND BY WAY OF 12(B)(6) MOTION TO DISMISS

37 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim, as fully as if repeated verbatim herein

38 That Defendants further answering the Amended Complaint and as an affirmative defense thereto, hereby move pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure (hereinafter S C R Civ P) to dismiss Plaintiff's action on the grounds that it fails to state facts sufficient to constitute a cause of action against these Defendants as the decisions of private hospitals concerning medical staff privileges are not subject to judicial review in the State of South Carolina

FOR AN EIGHTH DEFENSE AND BY WAY OF 12(B)(1) MOTION TO DISMISS

39 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Answer Motion to Dismiss, and Counterclaim as fully as if repeated verbatim herein

40 That Defendants further answering the Amended Complaint and as an affirmative defense thereto, hereby move pursuant to Rule 12(b)(1) of the S C R Civ P to dismiss Plaintiff's action on the grounds that this Court lacks subject matter jurisdiction to review the decisions of governing boards of a private hospital concerning the privileges and credentialing of practitioners including the Plaintiff

FOR A NINTH DEFENSE AND BY WAY OF 12(B)(2) MOTION TO DISMISS

41 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

42 That Defendants further answering the Amended Complaint and as an affirmative defense thereto hereby move, pursuant to Rule 12(b)(2) of the S C R Civ P to dismiss Plaintiff's action on the grounds that this Court does not have jurisdiction over these Defendants who are immune from civil liability with regard the issues surrounding the credentialing of Plaintiff under applicable state and federal statutes Defendant Tenet HealthSystem Medical Inc further moves to dismiss on the grounds that this Court does not have jurisdiction over it in that this Defendant has not been served with Plaintiff's Complaint filed December 16, 2005, or the Amended Complaint herein

FOR A TENTH DEFENSE

43 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer, Motion to Dismiss and Counterclaim, as fully as if repeated verbatim herein

44 That Defendants further answering the Amended Complaint and as an affirmative defense thereto, hereby move to dismiss Plaintiff's claims herein which were previously released by way of a Settlement Agreement and General Release in Full entered in January of 2003 and dismissed with prejudice by this Court on February 20, 2003 (Exhibit A)

FOR AN ELEVENTH DEFENSE

45 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim, as fully as if repeated verbatim herein

46 That Defendants further answering the Amended Complaint and as an affirmative defense thereto hereby move to dismiss Plaintiff's claims herein on the grounds that this matter

is barred by the doctrines of res judicata and collateral estoppel pursuant to previous orders and rulings of this Honorable Court (Exhibits E F and A)

FOR A TWELFTH DEFENSE

47 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer, Motion to Dismiss, and Counterclaim as fully as if repeated verbatim herein

48 That Defendants further answering the Amended Complaint and as an affirmative defense thereto, hereby move to dismiss Plaintiff's action on the grounds of insufficient service of process in that the Defendants were never served with the Plaintiff's original Complaint filed on or about December 16 2005 Defendants hereby reserve their right to assert insufficient service of process and do not waive this right by filing the Amended Answer Motion to Dismiss and Counterclaim herein

FOR A THIRTEENTH DEFENSE

49 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

50 That Defendant Tenet HealthCare Medical Inc answering the Amended Complaint and as an affirmative defense thereto, hereby moves to dismiss Plaintiff's action on the grounds of insufficient service of process in that this Defendant has never been served with the Plaintiff's original Complaint filed on or about December 16, 2005 or the Amended Complaint herein Defendant Tenet HealthSystem Medical Inc , hereby reserve its right to assert insufficient service of process and does not waive this right by filing the Amended Answer Motion to Dismiss and Counterclaim herein

FOR A FOURTEENTH DEFENSE

51 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

52 That Defendants further answering the Amended Complaint and as an affirmative defense thereto hereby move to dismiss Plaintiff's Amended Complaint which was filed more than 30 days after the filing of the original Complaint without leave of Court and without the consent of the Defendants

FOR A FIFTEENTH DEFENSE

53 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

54 That Defendants further answering the Amended Complaint and as an affirmative defense thereto hereby move to dismiss Plaintiff's claims herein which are barred by the applicable statutes of limitations governing each claimed cause of action

FOR A SIXTEENTH DEFENSE

55 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss, and Counterclaim, as fully as if repeated verbatim herein

56 That Plaintiff has failed to mitigate her damages and, as such Plaintiff is barred from recovery or in the alternative Defendants are entitled to a set-off

FOR A SEVENTEENTH DEFENSE

57 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

58 That Plaintiff's Amended Complaint to the extent that it seeks exemplary or punitive damages, violates the right of Defendants to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina violates the right to protection of Defendants from excessive fines as provided in the Eighth Amendment of the United States Constitution and the Constitution of the State of South Carolina violates the right of Defendants to due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina, and violates the rights of Defendants and is barred by reason of Article Six of the United States Constitution and therefore fails to state a cause of action upon which either punitive or exemplary damages can be awarded

FOR AN EIGHTEENTH DEFENSE AND BY WAY OF
12(B)(6) MOTION TO DISMISS

59 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer, Motion to Dismiss and Counterclaim as fully as if repeated verbatim herein

60 That Defendants further answering the Amended Complaint and as an affirmative defense thereto hereby move pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure (hereinafter 'S C R Civ P ') to dismiss Plaintiff's cause of action for civil conspiracy as she has not made specific allegations of such conduct as to this cause of action different than the conduct complained of in her other causes of action In doing so she has incorporated prior allegations and then alleged the existence of a civil conspiracy Further, the damages sought by the Plaintiff in her cause of action for civil conspiracy are the same as those sought in her other causes of action Under these circumstances the Plaintiff's cause of action for civil conspiracy fails as a matter of law

**FOR A FIRST COUNTERCLAIM
(ABUSE OF PROCESS)**

61 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer, Motion to Dismiss, and Counterclaim, as fully as if repeated verbatim herein

62 That Plaintiff first applied for medical staff privileges at East Cooper Regional Medical Center in January of 1994 and in making said application agreed to be bound by the terms of the applicable Medical Staff Bylaws Rules and Regulations to release from liability all representatives of East Cooper Regional Medical Center and its Medical Staff for their acts in

connection with evaluation her credentials and qualifications and to produce adequate information for proper evaluation of her professional competence

63 That Plaintiff was appointed to the Medical Staff of East Cooper Regional Medical Center in 1994

64 That following the Plaintiff's appointment certain disputes developed regarding her medical staff privileges and on or about December 6 1999 the Plaintiff filed a lawsuit in the United States District Court for the District of South Carolina Charleston Division captioned *J Doe, M D vs Tenet HealthSystem Medical Inc and East Cooper Community Hospital* identified as Civil Action Number 2 99-0833-23 (Exhibit B) In this federal action the Plaintiff alleged the same state claims she now alleges in the present action, along with certain claims that the Defendants violated Federal Anti-Trust Statutes (Id)

65 That on or about April 17, 2000 the District Court granted Defendants Tenet HealthSystem Medical Inc and East Cooper Community Hospital summary judgment on the federal claims stating in its Order of Dismissal that the Plaintiff's claims were the product of a disgruntled physician (Exhibit C) The Plaintiff appealed the dismissal of her federal claims to the U S Court of Appeals, which affirmed, and then to the U S Supreme Court which denied Plaintiff's petition for writ of certiorari

66 In the federal case referenced above, the District Court declined jurisdiction over the Plaintiff's state claims and on or about May 16, 2000 Plaintiff filed a Complaint in the Court of Common Pleas for Charleston County captioned *J Doe M D vs Tenet HealthSystem Medical, Inc , East Cooper Community Hospital, Inc John Grady M D , Paul Yantis M D William Cone and Coastal Emergency Services Inc* and identified as Civil Action Number 00-CP 10-1888 (Exhibit C) In this state action the Plaintiff again alleged virtually identical causes of action that she did in her federal action and which she currently alleges in the present action herein including wrongful termination of hospital privileges breach of contract breach of contract accompanied by a fraudulent act civil conspiracy and unfair trade practices With the exception of two party Defendants the Defendants in the present action are identical to the Defendants to the Plaintiff's action filed on May 16 2000

67 That at issue in the Plaintiff's action filed on May 16, 2000 was the Plaintiff's ability to admit to and surgically treat patients at East Cooper Regional Medical Center The Defendants alleged that the Plaintiff had failed to satisfy the requirements set forth in the Bylaws to be granted such privileges The Plaintiff alleged that the Bylaw requirements in this regard were inapplicable to her or alternatively, unreasonable and that the Bylaws were implemented by the Defendants in furtherance of a conspiracy to detrimentally effect her medical practice, which she alleged to be in direct competition with Defendant Grady who was at that time a member of the Credentials Committee of East Cooper Regional Medical Center

68 That on or about October 17 2002 the parties through their counsel discussed a procedure to allow the Plaintiff to undergo certain board examinations retraining programs and proctoring processes to allow her to admit to and surgically treat patients at East Cooper Regional Medical Center and to allow East Cooper Regional Medical Center to ensure her clinical competency for same The Plaintiff however refused to agree to the terms of the proposed procedure

69 That on October 28 2002, the Plaintiff's case was called to trial and presided over by The Honorable A Victor Rawl At the request of the parties Judge Rawl mediated the case The parties reached a settlement during the evening hours of October 28 2002 which involved the payment of a confidential cash amount to the Plaintiff and her reappointment to the Medical Staff of East Cooper Regional Medical Center with consulting privileges only for a term of two years with the right to apply for a change in status in accordance with the Bylaws

70 That on October 29 2002 the parties returned to Court to advise Judge Rawl of the settlement and to place the terms of the settlement on the record At this time the Plaintiff attempted to renege on the settlement reached the previous evening and Judge Rawl enforced the settlement (Exhibit E)

71 That thereafter Plaintiff refused to execute the requisite settlement paperwork and Order of Dismissal The Defendants filed a Motion to Compel Settlement which was heard and granted by Judge Rawl on January 7 2003 (Exhibit F)

72 That pursuant to the Order of Judge Rawl the parties executed a Settlement Agreement and General Release in Full in January of 2003 which was personally drafted by Plaintiff who is also a licensed attorney in the State of South Carolina The Settlement Agreement was a mutual release forever discharging the Defendants from any and all claims, then existing or which may accrue on account of or in any way growing out of the subject of the Complaint dated May 16 2000 Likewise, an Order of Dismissal with Prejudice was entered on February 19 2003, dismissing the action (Exhibit A)

73 That on or about October 22, 2004 the Plaintiff made an application to East Cooper Regional Medical Center for an advancement in staff privileges from consulting stauts to associate active status and requesting privileges to perform certain ophthalmologic surgical procedures That pursuant to the Bylaws of East Cooper Regional Medical Center the Plaintiff, as a member of the consulting staff could not admit patients to this facility and could only provide consultative services at the request of active or courtesy staff physicians (Art IV,

Section 5) That also pursuant to the Bylaws members of the associate active staff do admit patients and if they also desire privileges to perform surgical or invasive procedures they must submit documentation of current clinical competence to the satisfaction of the appropriate Department Chairman and Credentials Committee (Art IV Section 3) Therefore, the Bylaws required the Plaintiff to submit with her application documentation of her current clinical competence to perform the surgical procedures therein The Plaintiff's application however failed to contain this requisite information

74 That on November 19 2004 representatives of East Cooper Regional Medical Center advised the Plaintiff in writing that her application was incomplete for processing and could not be forwarded to the Credentials Committee for determination of advancement to associate active status because of her failure to include information on her current clinical competency She was specifically advised that because she had not admitted patients to East Cooper Regional Medical Center since 1998, she would need to identify other hospitals and surgical facilities where she had admitted and surgically treated patients within the preceding two years and provide the names of individuals who were in a position to directly evaluate her work Plaintiff was advised that upon receipt of this information her application for associate active privileges would be processed but that without this information her application would be processed as a request for reappointment to the consulting staff the category of which she was currently a member

75 That the Plaintiff failed to submit the requested information on her current clinical competency and on December 15, 2004, the Plaintiff was reappointed to the consulting staff of East Cooper Regional Medical Center

76 That on or about December 17 2004 the Plaintiff requested a hearing before the Medical Review Committee of East Cooper Regional Medical Center to contest her reappointment to the consulting staff

77 That on February 7, 2005, the Plaintiff was informed that her reappointment to the consulting staff did not give rise to hearing under the Bylaws, Rules and Regulations of East Cooper Regional Medical Center in that her reappointment was not an adverse action but, rather, a reappointment to the same staff category to which she had previously been appointed affording the same privileges which she previously enjoyed. Indeed the provisions of the Bylaws give rise to a hearing only when an adverse action has been taken based on the member's professional conduct or competence (Art VIII Section 2(B)). Because the Plaintiff failed to submit information on her current clinical competency her application could not be reviewed by the Credentials Committee and the decision to reappoint her to the consulting staff was not based on her competency, but on the fact that her application was incomplete.

78 That on April 13, 2006, the Plaintiff filed the present action.

79 That the present action names the same Defendants and alleges the same causes of action and damages alleged in the Plaintiff's May 16, 2000 Complaint referenced above (See Plaintiff's Amended Complaint herein and Exhibit D).

80 That the Plaintiff's claims in the present action are barred by the reasons set forth in the affirmative defenses above, namely the previous orders and rulings of this Honorable Court, the Settlement Agreement and General Release in Full, and Order of Dismissal relating to the May 16, 2000 action. The Settlement Agreement was a general release forever discharging these same Defendants from any and all claims then existing or which may accrue on account of or in any way growing out of the subject of the Plaintiff's Complaint dated May 16, 2000, said subject being the wrongful termination of hospital privileges, breach of contract, breach of contract accompanied by a fraudulent act, civil conspiracy, and unfair trade practices, the very subject of the present action.

81 That in the present action the Plaintiff alleges Defendant Grady, an ophthalmologist, was a member of the Credentials Committee during the times complained of in the present Complaint (2002 and 2004) and that he conspired with the remaining Defendants to

deny her associate active privileges because he is in direct competition with the Plaintiff's medical practice (See Plaintiff's Complaint) Defendant Grady however, was not a member of the Credentials Committee at the times complained of in the Amended Complaint herein

82 That in the present action the Plaintiff alleges her appointment to the consulting staff in 2002 was illegal, contrary to the provisions of the Bylaws Rules and Regulations of East Cooper Regional Medical Center and done in the furtherance of a civil conspiracy by the Defendants This appointment, however was a term of the settlement of the Plaintiff's previous May 16, 2000 action against these Defendants and is specifically included in the Settlement Agreement and General Release in Full which was drafted by the Plaintiff herself (Exhibit A)

83 That the causes of action and damages claimed by Plaintiff in the present action are also virtually identical to those claimed by her in an additional two legal malpractice cases she has filed against attorneys who represented her in the previous federal and state cases referenced above On or about April 1, 2002 the Plaintiff filed a Complaint in the Court of Common Pleas of Charleston County captioned *J Doe vs Manton Grier James Y Becker and Sinkler & Boyd P A* and identified as Civil Action Number 02 CP-10-1448 alleging legal malpractice against the attorneys who represented her in the federal action referenced above (Exhibit G) Likewise, on or about October 27, 2005 the Plaintiff filed a Complaint in the Court of Common Pleas of Charleston County captioned *J Doe vs Richard L Duncan, Meredith Bond Sidney Gilreath and Gilreath and Associates*, and identified as Civil Action Number 05-CP-10-4351 alleging legal malpractice against the attorneys who represented her in the previous state action against the Defendants herein (Exhibit H) In her legal malpractice actions the Plaintiff alleges causes of action for breach of contract, breach of contract accompanied by a fraudulent act, unfair trade practices and civil conspiracy, and damages associated therewith, just as she has done in the present action herein

84 That all of the aforementioned facts show that the Plaintiff's employment of the present legal process is for a purpose other than that for which it was intended by the law to

effect These facts show that the Plaintiff's claims herein have been asserted with an ulterior purpose of gaining an objective not legitimate in the use of the process including medical staff privileges and alleged damages from immune Defendants for which she has already released of liability These facts also show that the Plaintiff's refusal to abide by the terms of the previous settlement the Bylaws Rules and Regulations of East Cooper Regional Medical Center the immunity agreements as they relate to her credentialing processes and her repeated and multiple filings of legal actions against these Defendants and other parties for the same causes of action and the same or similar damages constitute willful acts in the use of the legal process that are improper unauthorized and aimed at an illegitimate collateral objective

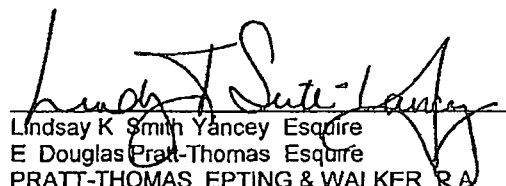
85 That as a result of Plaintiff's actions the Defendants are entitled to actual and compensatory damages including attorneys fees, as well as punitive damages

**FOR A SECOND COUNTERCLAIM
(S C CODE ANN § 15-36-10)**

86 That Defendants reiterate all of the allegations contained in each and every foregoing paragraph of this Amended Answer, Motion to Dismiss, and Counterclaim, as fully as if repeated verbatim herein

87 That for the reasons shown and stated fully above in the preceding Counterclaim, the present action filed by the Plaintiff is frivolous and appropriate for sanctions pursuant to S C Code Ann § 15-36-10 including costs attorneys fees and the imposition of fines payable to the Court

By


Lindsay K. Smith Yancey Esquire
E Douglas Pratt-Thomas Esquire
PRATT-THOMAS EPTING & WALKER P.A.
P O Drawer 22247
Charleston S C 29413 2247
Tel (843) 727-2211
Attorneys for Defendants East Cooper Community
Hospital Inc Tenet HealthSystem Medical Inc John
Grady M D and Paul Yantis M D

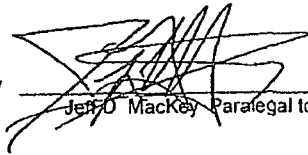
Charleston South Carolina
July 13 2006

DS-5113

I hereby certify that I have served a true copy of the foregoing by delivering a copy to the following counsel/parties in accord with applicable Rules of Civil Procedure on July 13, 2006 by first class mail (postage prepaid properly addressed)

Chalmers C Johnson Esquire
182 East Bay Street Suite 203
Charleston SC 29401

By



Jeff D Mackey Paralegal to Lindsay K Smith Yancey

FILED
2006 JUL 13 PM 4 22
JULIE J. ANTHONY
CLERK OF COURT
BY _____

A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SETTLEMENT AGREEMENT &
GENERAL RELEASE IN FULL

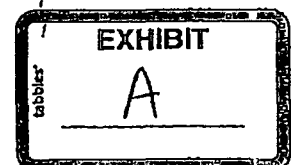
THIS SETTLEMENT AGREEMENT & GENERAL RELEASE IN FULL is entered into by C Holmes, M D , (hereinafter at times referred to as 'Releasor') to Tenet HealthSystem Medical, Inc East Cooper Community Hospital, Inc John Grady, M D , Paul Yantis, M D , and William Cone, and their insurance carrier (hereinafter 'Releasees')

WHEREAS, C Holmes, M D , filed a Complaint against Tenet HealthSystem Medical, Inc East Cooper Community Hospital, Inc , John Grady, M D Paul Yantis, M D , and William Cone, in the Court of Common Pleas for the State of South Carolina, County of Charleston, said case bearing Civil Action Number 00-CP-10-1888, which Complaint arose out of certain alleged causes of action and/or theories of liability as against the Releasees In the Complaint, Releasor sought to recover equitable and monetary damages sustained by Releasor arising out of incidents as set forth in said Complaint and,

WHEREAS, the parties recognize that serious controversies and disputes exist and that if the Releasor's claims and questions of responsibility therefore, if any, be litigated that such would involve serious and extensive questions insofar as the parties are concerned, in consequence of which the parties have agreed in consideration of the amounts and terms hereinafter recited to settle any and every claim which the Releasor has asserted, might assert, or which Releasor may have against the Releasees in this case, it being recognized and agreed that the controversies and disputes that exist are adequate consideration for final settlement of all the claims in accordance with this Settlement Agreement & General Release in Full

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, in consideration of the payment of [REDACTED] to the Releasor in hand paid by and on behalf of the Releasees, and in consideration of the following agreement among the parties, to wit

- (1) That Dr Holmes has been reappointed to consulting status for a term of two (2) years Dr Holmes shall have the right to



apply for a change in status in accordance with the Bylaws,

- (2) That Releasees agree that they, their agents, servants, and employees shall not say or do anything detrimental to the Releasor obtaining privileges elsewhere. If asked, they will say about this dispute that there came a time when the Releasor did not have a sufficient number of contacts, that this resulted in a change of status to consulting, and that this had nothing to do with professional competence,

that all parties, Releasor and Releasees, hereby completely release and forever discharge each other from any and all claims, demands, obligations, causes of action, rights, damages, costs, losses of services, fees, expenses and compensation of any nature whatsoever, whether based on a tort, contract, or other theory of recovery, which the parties now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Complaint (and all related pleadings) including, without limitation, any and all known or unknown claims for injuries and damages to the parties which may have resulted, or may result from any alleged acts or omissions of the parties which are the subject of the Complaint (and all related pleadings)

IT IS FURTHER UNDERSTOOD AND AGREED THAT this release and discharge shall also apply to Releasor's and Releasees' past, present, and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, parent corporations, affiliates, partners, predecessors, successors in interest, assigns, and all other persons, firms, or corporations with whom any of the former have been, are now, or may hereafter be affiliated

The Releasor and Releasees acknowledge and agree that the respective release and discharge by all parties set forth above is a general release. The Releasor and Releasees expressly waive and assume the risk of any and all claims for damages arising out of Civil Action Number 00-CP-10-1888, but of which the parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the parties' decision to enter into this Settlement Agreement & General Release in Full. The parties further agree that the parties have accepted the

consideration specified herein as a complete compromise of matters involving disputed issues of law and fact. It is understood and agreed to by all parties that this settlement is a compromise of a disputed claim and the payments are not to be construed as an admission of liability on the part of any party.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that each party hereto shall bear all attorney's fees and costs arising from the actions of their own counsel in connection with the lawsuit, this Settlement Agreement & General Release in Full, and the matters and documents referred to herein, the filing of an Order of Dismissal with prejudice of the Complaint, and all related matters.

IT IS FURTHER UNDERSTOOD AND AGREED that concurrently with the execution of this Settlement Agreement & General Release in Full, counsel for the Releasor shall deliver to the counsel for the Releasees an executed Order of Dismissal with prejudice of the Complaint. Releasor hereby authorizes counsel for the Releasees to file said Order of Dismissal with prejudice with the Court and enter it as a matter of record.

In entering into this Settlement Agreement & General Release in Full the parties represent that each has had the advice of their respective attorneys, who are attorneys of each party's own choice, concerning the legal consequences of this Settlement Agreement & General Release in Full, that the terms of this Settlement Agreement & General Release in Full have been completely read and explained to each party by each party's attorney and that the terms of this Settlement Agreement & General Release in Full are fully understood and accepted by each party.

Releasor and Releasees represent and warrant that no other person or entity has, or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement & General Release in Full, further, the Releasor and the Releasees agree to indemnify and hold harmless the other party or parties, their respective agents, servants, employees, directors, stockholders, attorneys, representatives, employees, subsidiaries, parent corporations, affiliates, partners, predecessors, successors in interest, and assigns for any costs, fees, and/or judgment which may be suffered by said party or parties upon the bringing of any claim by any person claiming damages as the result of said party or parties having sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or

causes of action referred to in this Settlement Agreement & General Release in Full

The parties agree that neither they nor their attorneys nor representatives shall reveal to or discuss with anyone, other than as may be mutually agreed to in writing, or as may be ordered by a court of competent jurisdiction, any of the monetary terms of this Settlement Agreement & General Release in Full or any of the amounts, numbers, or terms and conditions of any sums payable to the Releasor

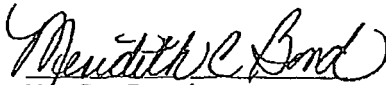
This Settlement Agreement & General Release in Full shall be construed and interpreted in accordance with the laws of the State of South Carolina

This Settlement Agreement & General Release in Full contains the entire agreement between the Releasor and Releasees and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each

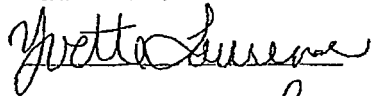
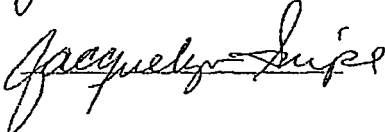
This Settlement Agreement & General Release in Full shall become effective immediately following execution by each of the parties

ATTORNEY'S CERTIFICATE

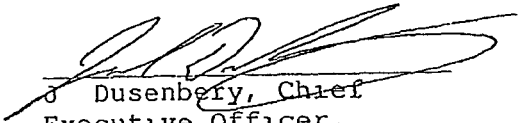
As attorney for C Holmes, M D , I have explained the meaning of this Settlement Agreement & General Release in Full to Dr Holmes and have recommended the acceptance of its terms and conditions

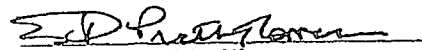

M C Bond
Dated 1/12/03

WITNESSES


C Holmes, M D
Dated 1/14/03


J. Dusenberry, Chief
Executive Officer,
East Cooper
Community Hospital, Inc
Dated 1/20/03


E D Pratt-Thomas
As Attorney for Releasees
Dated 1/20/03

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO 00 CP-10-1888

Cynthia C Holmes M D
Plaintiff

vs

Tenet HealthSystem Medical Inc
East Cooper Community Hospital Inc
John Grady M D Paul Yantis M D and
William Cone
Defendants

ORDER OF DISMISSAL
WITH PREJUDICE

FILED
2003 FEB 20 PM 6 14
JULIE J ARMSTRONG
CLERK OF COURT

IT APPEARING to the Court that this case has been settled by and among Plaintiff and Defendants now on motion of Pratt-Thomas Epting & Walker P A Attorneys for Defendants and with the consent of Gilreath & Associates Attorneys for Plaintiff it is hereby

ORDERED that this cause be and the same hereby is discontinued and ended that the Complaint herein be and the same hereby is dismissed and that the causes of action herein sued upon be and the same hereby are forever barred with prejudice

AND IT IS SO ORDERED

St S L. Jeffers

Charleston South Carolina

Dated 2/19/03

ATTEST A TRUE COPY
JULIE J ARMSTRONG (SEAL)
CLERK CP 165
BY *Julie J Armstrong*
DEPUTY CLERK

WE MOVE

PRATT-THOMAS EPTING & WALKER P A

BY *E Douglas Pratt-Thomas*

E Douglas Pratt-Thomas
Attorneys for Defendants

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail postage prepaid properly addressed to the attorney(s) of record for such party(s) on this 19 day of March 20 03 Charleston South Carolina

Rebecca

WE CONSENT

GILREATH & ASSOCIATES

BY *Meredith C Bond*

Meredith C Bond
Attorneys for Plaintiff

B

B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION



J Doe, M D ,

Plaintiff,

v

Tenet HealthSystem Medical Inc
And East Cooper Community
Hospital Inc

Defendants

CIVIL ACTION NO 2-99-0833-23

AMENDED COMPLAINT
(Jury Trial Requested)

Plaintiff, J Doe, M D by the undersigned attorneys, complaining of the Defendants
herein, would respectfully allege and show unto this Honorable Court as follows

PARTIES

1 The Plaintiff, J Doe, is a medical doctor and a resident of Charleston County,
South Carolina

2 The Defendant East Cooper Community Hospital, Inc d/b/a East Cooper
Regional Medical Center ('East Cooper' or the "Hospital") is, upon information and belief, a
corporation organized under the laws of South Carolina and operates a regional hospital located
in Mount Pleasant, South Carolina.

3 The Defendant, Tenet HealthSystem Medical, Inc ("Tenet") is, upon information
and belief, a corporation organized under the laws of one of the United States and has its
principal place of business in Charleston, South Carolina Upon information and belief, Tenet is
engaged in the business of owning and operating hospitals and is the owner and manager of East
Cooper Upon information and belief, Tenet owns and operates a division or subsidiary

corporation known as Tenet Physicians Services—East Cooper, which is engaged in the business of owning the assets of physician medical practices and operating and managing physician medical practices, and is the manager of Best Care Providers, Durst Family Medicine, P A , which is the successor to Durst & Durst Physicians, P A

JURISDICTION

4 This Court has jurisdiction of the parties and subject matter of this action pursuant to 28 U S C § 1331, as the Plaintiff alleges a violation of the Sherman Anti-Trust Act, 15 U S C

§§ 1 and 2, the Federal Anti-Kickback Statute, 42 U S C A § 1320a-7b (West Supp 1999), and the Federal Stark Law, 42 U S C A § 1395nn (West Supp 1999) The Court has supplemental jurisdiction of the other causes of action stated in this Complaint pursuant to 28 U S C § 1367

5 Venue in this Court is proper pursuant to 28 U S C § 1391, as several of the Defendants reside in this judicial district and the events complained of occurred in this judicial district

FACTUAL ALLEGATIONS

6 East Cooper's affairs are governed by its Board of Directors ("Board of Directors" or "Board ") which has the ultimate authority and responsibility for directing its affairs and operations Licensed physicians and other health care providers may provide services to patients at East Cooper only upon being granted the requisite membership and clinical privileges by the Board upon recommendation of the Hospital's Medical Staff ("Medical Staff"), which is composed of all physicians and oral surgeons practicing at the Hospital The Medical Staff is organized in conformity with a set of By-laws, but is subject to the ultimate authority of the Board

7 At all times mentioned herein, Plaintiff has been a licensed, practicing medical doctor in Charleston County, South Carolina. Plaintiff graduated from the Medical University of South Carolina with an M.D. degree in May of 1988, completed internship at the Medical College of Georgia, Augusta, in July of 1990, and completed ophthalmology residency training at the Storm Eye Institute Medical University of South Carolina in July of 1993.

8 The Plaintiff applied for and was granted temporary medical staff privileges at East Cooper in early 1994 pending final review of Plaintiff's application and credentials. On July 25, 1994, Plaintiff was formally granted initial appointment to the Medical Staff in the Associate category, with provisional status, under the provisions of Art. IV, § 3(A) of the Hospital's bylaws in effect at the time, which, upon information and belief, were similar in most, but not all material respects to the Medical Staff By-laws adopted May 11, 1995 (the By-laws). At all relevant times, the Medical Staff was divided into the following categories: Active, Associate, Courtesy, Consulting, and Honorary (By-laws, Art. IV, §1).

9 Pursuant to Art. III, § 3 B of the By-laws, all initial appointments to the Medical Staff shall be for a period of 12 months, and pursuant to Art. III, § 5 A, all initial appointments to any category of the Medical Staff shall serve a provisional term for a maximum of 12 months, in which the appointee's performance shall be observed and reviewed by the chief of the department to determine the appointee's eligibility for regular staff membership in the staff category to which he was provisionally appointed.

10 At the time of Plaintiff's initial appointment, the Associate Staff category included "physicians who are eligible for advancement to Active Staff membership and will, in the ordinary course of events and *unless he requests otherwise*, be advanced to Active Staff status after serving not more than two (2) years on the Associate Staff and each of whom meet

the qualifications specified for the members of the Active Staff' (By-laws, Art IV, §3 A (emphasis added)) Associate Staff members could not vote on any matters presented at meetings or hold office on the Medical Staff or any department or committee By contrast, the Active Staff "shall consist of physicians and oral surgeons who consult in connection with or attend or admit to the Hospital a minimum of twenty-four(24) patients per year" (By-laws, Art IV, § 2 A) Active Staff members were also entitled to vote and hold office on the Medical Staff or the department or committee of which he is a member' (By-laws Art IV, § 2 B 3),4))

11 By November 1994, the Plaintiff recognized that the care of his/her young children, (ages 8, 3, and 1, at the time), while building a new, general ophthalmology practice, would make it difficult to meet the patient contact requirement for the Active medical staff and after consultation with the hospital's medical staff coordinator, Plaintiff requested that he/she not advance to the Active Staff category, and Plaintiff further requested and was granted a change to the Courtesy Staff category defined in Art IV § 4(A) of the By-laws At that time the Courtesy Staff category permitted a physician to admit patients to the Hospital and to exercise clinical privileges but did not require a minimum number of patient contacts per year Also, Courtesy staff members were not required to attend meetings of the Medical staff

12 In July 1995, the Plaintiff completed his/her initial appointment and provisional year and was reappointed to the Courtesy staff category pursuant to Art III, § 4(B) of the Bylaws, and the customary practices of the hospital, for a period of two (2) years Plaintiff rightfully relied upon the provisions of the By-laws and the customary practices of the Hospital and reasonably expected that his/her July 1995 reappointment would be for a two year period

13 Shortly thereafter, on July 20, 1995, the Bylaws were amended by the Board of Directors of the Hospital to require that Courtesy staff members have Active staff privileges at

another local hospital Plaintiff did not attend any meetings of the Medical Staff in which this change was discussed or approved and, upon information and belief no notice of the change was ever sent to Courtesy staff members affected by this change in the By laws

14 Because Plaintiff was content with his/her Courtesy Staff category and with the size and nature of his/her medical practice, and in reliance upon the By-laws in effect at the time of his/her July 1995 reappointment to the Medical Staff, specifically the prerogatives of the Courtesy Staff category, Plaintiff elected to confine his/her medical practice to the Sullivans

Island area and the Hospital Plaintiff did not seek appointment to the medical staff of other area hospitals Plaintiff did not seek Active Staff status at East Cooper, nor did he/she seek to expand his/her medical practice in an effort to meet or be able to meet the 24 patient contact requirement for the Active Staff category

15 In violation of the Plaintiff's rights under the By-Laws and in contravention of his/her reasonable expectations based upon the By-laws of a two-year reappointment, Plaintiff was asked by the Medical Staff to submit updated credentials information in November of 1995 and further requested to submit an application for reappointment to the Courtesy medical staff in April of 1996 Plaintiff was provided with a form with the application, which falsely stated that the effective date of the Bylaws change affecting Courtesy staff members was May 26, 1994 Plaintiff was misled by the false communication and erroneously believed that his/her July 1995 change to the Courtesy staff category may have been improper On information and belief, other Medical Staff members were misled by this same false communication from the Hospital

16 On April 22, 1996 the Plaintiff was advised his/her application for reappointment to the Courtesy medical staff could not be processed because he/she did not have privileges at another local hospital as required by Article IV, Section 4(A) of the Bylaws which, as explained

above, had been amended after the Plaintiff's 1995-1997, two (2) year reappointment to the Courtesy medical staff in July of 1995

17 Plaintiff consulted with the Medical Staff representatives and again made a request to continue his/her Courtesy staff category through the end of his/her then current term. The Medical Staff denied this request and presented Plaintiff with the sole option of applying for "Associate Active privileges for a one year provision." The Medical Staff also sought to impose upon Plaintiff the requirements of the Active Staff, i.e., attending 50% of quarterly medical staff meetings and departmental meetings, and have 24 patient contacts per year."

18 Without any other effective recourse, and acting under the erroneous hospital created assumption that his/her July 1995 change to the Courtesy staff category had been improper, Plaintiff then sought reappointment to the Medical Staff with a requirement of only 12 patient contacts, but this request was also summarily denied.

19 In violation of the Plaintiff's rights and reasonable expectations under the Bylaws, and without following the reappointment procedures required by Article VI of the Bylaws, on August 19, 1996, the Plaintiff was advised by the Hospital President that he/she had been appointed to the Associate Active staff category, a category which did not exist under the Bylaws for an additional one (1) year period, provisional status. This would require the Plaintiff to meet the twenty-four (24) patient contact requirement of the Associate staff within one (1) year, by August 1997. This requirement was contrary to the provisions of the Bylaws which allow members of the Associate staff two (2) years to meet the patient contact requirement.

20 The Plaintiff requested an appeal of his/her appointment to the Associate Active medical staff category and subjection to the 24 patient contact requirement within one year but his/her request for an appeal was denied. The Plaintiff then requested an amendment to the

Bylaws as suggested by the Hospital and medical Staff to allow general practice ophthalmologists to maintain Active staff privileges with 12 patient contacts per year, and this request was also denied

21 Because reappointments are routinely for two years, upon being denied all appeals, Plaintiff wanted clarification on the length of the reappointment and when the 24 patient contact requirement would be imposed Plaintiff discussed the reappointment with Kara L Meln the Medical Staff Coordinator in the Medical Staff office Meln said that Associate Staff practitioners consistent with the Bylaws, have two years to meet the patient contact requirement This statement was consistent with the Bylaws relating to Associate staff

22 Plaintiff reasonably relied upon this interpretation of the Bylaws by a trusted member of the medical staff office in arranging his/her medical practice and conducting his/her affairs in the following months

23 During the period of the Plaintiff's appointment, the Plaintiff leased office space from Durst & Durst Physicians, P A at the Durst Family Practice building located on Sullivan's Island pursuant to a Lease and Administrative Services Agreement ("Lease") entered into on November 1, 1993, which provided the Plaintiff would receive patient scheduling, patient reception, and patient file maintenance, telephone, billing, and other administrative services in consideration of his/her rent payments

24 In the Summer of 1994, the Hospital's then-current parent corporation, AMI, purchased the assets of Durst & Durst Physicians, P A , undertook the operation of the practice including the services the Plaintiff received under the terms of the Lease, and assumed all other obligations to the Plaintiff under the Lease In the Spring of 1995, Tenet purchased all AMI

hospitals and medical practices, including East Cooper and Durst Family Medical Practice, and assumed all obligations to the Plaintiff under the Lease

25 The Plaintiff paid Durst Family Medicine, and its successors AMI and Tenet a monthly fee in addition to his/her rent payments for his/her Yellow Pages telephone listing under the category of "Physicians & Surgeons - Ophthalmologists "

26 On or about May 15, 1996, an agent or employee of Tenet, struck the Plaintiff's name from the renewal form for the Yellow Pages telephone listing for Durst Family Medicine without knowledge or consent of the Plaintiff, causing the Plaintiff's existing Yellow Pages listing to be deleted from the July 1996 telephone book The deletion of the Plaintiff's Yellow Pages listing seriously compromised and hindered the Plaintiff's ability to meet the patient contact requirement improperly imposed upon him/her in violation of the Bylaws

27 Upon information and belief, during the following year, Tenet engaged in a course of conduct intended to and which did have a detrimental impact upon the Plaintiff's practice and his/her ability to conduct his/her practice and meet the patient contact requirement improperly imposed upon him/her in violation of the Bylaws by instructing its agents and employees to divert established patients of Plaintiff to physicians employed by Durst Family Medicine, misinforming potential patients who specifically called for appointments with the Plaintiff or the ophthalmologist that they had to first see one of the primary care physicians employed by Durst Family Medicine, and demanding an unreasonable and unconscionable 300% to 400% increase in the amount the Plaintiff was paying under his/her lease agreement for administrative services Upon information and belief, Tenet intended to augment the medical practice of Durst Family Medicine at the expense of the Plaintiff's medical practice

28 In October, 1996, at a Department of Surgery meeting, pursuant to complaints by other physicians, the Plaintiff learned that the ER physicians were not using the ER call list properly. Specifically, there were some physicians who were never called when they were listed as covering ER call. Though the Plaintiff was on the call list, there was not one opportunity for a patient contact through ER call.

29 By letter dated August 19, 1997 the Hospital advised the Plaintiff that the Credentials Committee of the Medical Staff had appointed the Plaintiff to Consulting staff category and had terminated all admitting privileges. The Hospital's action, taken without notice or any opportunity to be heard, was a violation of the Plaintiff's constitutional rights and rights under the Bylaws because the Hospital failed to follow the reappointment procedures required by Art. IV, § 2 and Art. III § 7 of the Bylaws. The action also violated Art. VI, § 4 C of the Bylaws, which provide that the Credentials Committee has only the authority to recommend appointments and does not have the authority to summarily terminate a physician's admitting privileges.

30 Further, the Hospital allowed John Grady, M.D., an ophthalmologist in direct economic competition with the Plaintiff, to participate in the Credentials Committee meeting of August 13, 1997 at which time, upon information and belief and as set forth in minutes of the Medical Staff committee meetings, he improperly urged the committee to allow the Plaintiff only a medical (non-surgical) ophthalmology practice at the hospital and suggested he/she should be required to refer his/her surgical cases to "other practitioners" with the purpose and intent of restraining and preventing the Plaintiff from practicing ophthalmology, of destroying a competing ophthalmology practice, and to financially benefit himself.

31 The Plaintiff attempted to appeal the unauthorized reduction in his/her Medical Staff category to the Consulting staff and the improper termination of his/her hospital admitting privileges but on September 4, 1997 his/her appeal was again denied and the Plaintiff was advised the letter of August 19, 1997 was in error pending review by the Medical Executive Committee

32 On September 16, 1997 the Hospital advised the Plaintiff his/her appointment to the Consulting staff and the termination of his/her admitting privileges had been affirmed by the Medical Executive Committee of the Medical Staff and his/her admitting privileges were again terminated causing irreparable damage to the Plaintiff's reputation, interfering with his/her ability to provide patient care, and further hindering any possibility that the Plaintiff would be able to meet the patient contact requirement within the two year time frame normally afforded to practitioners at the Hospital The Hospital's action was in violation of Art IX and the Fair Hearing Plan and Appellate Review Procedure of the Bylaws, which provide such action can only be taken by the Hospital's Board after exhaustion of the appeal process

33 By letter dated October 1, 1997, the Hospital refused to allow the Plaintiff to schedule and perform surgery on an established patient The Hospital's improper termination of the Plaintiff's admitting privileges continued until late November, 1997 causing continuing irreparable damage to the Plaintiff's reputation, patient care, and ability to meet the patient contact requirement, when the Plaintiff's hospital admitting privileges were restored pending appeal to the Board

34 Effective December 1, 1997, Tenet changed the answering service for Durst Family Medicine and failed to advise the new service of Plaintiff's joint telephone listing with

Durst Family Medicine Tenet failed to notify the Plaintiff of the change in the answering service, and Plaintiff was left without answering services during most of December 1997

35 Plaintiff appealed the September 24, 1997 action of the MEC, and was eventually granted a hearing before the Medical Review Committee (MRC) of the Medical Staff For this hearing, the Hospital, refused to produce documents, refused to produce critical witnesses for the Plaintiff including, Kara Melin and Shirley T Thomas, who terminated Plaintiff's yellow page listing Upon information and belief, the Hospital falsely and improperly represented to another

witness that he must cooperate with the Hospital and submit an affidavit, and testify or he could be subpoenaed

36 The unauthorized and improper actions of the MEC in reducing Plaintiff's staff category and terminating Plaintiff's admitting privileges were not overturned by the MRC, which failed to make findings of fact as required by the Bylaws The Board of Directors refused to allow the Plaintiff and/or counsel to appear at the appellate hearing and refused to allow the Plaintiff or counsel to review documentation and evidence presented to the Board

37 On information and belief, in December 1998, Defendant's agent Bill Cone, while acting within the course and scope of his employment, told an established patient of Plaintiff, that the patient should not seek Plaintiff's care as an ophthalmologist despite there being absolutely no issue raised about Plaintiff's professional competence Specifically, Cone told the Plaintiff's patient "I know who you should not see and that is Dr J Doe " On information and belief, Cone made other derogatory comments regarding Plaintiff in 1994

38 Due solely to the Hospital's improper application of the By-laws to Plaintiff, Plaintiff currently has no admitting privileges Plaintiff now has at least four patients who need and require surgical procedures but Plaintiff is unable to perform such procedures The

unjustified loss of admitting privileges continues to cause irreparable damage to the Plaintiff's professional reputation and medical practice

**For A First Cause Of Action Against All Defendants
(Violation of the Sherman Anti-Trust Act)**

39 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

40 Pursuant to Section 1 of the Sherman Anti-Trust Act, 15 U S C § 1, Defendants

actions constitute a contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States

41 Pursuant to Section 2 of the Sherman Anti-Trust Act, 15 U S C § 2, Defendants' actions constitute a conspiracy or agreement with a specific intent to monopolize the provision of medical services, including ophthalmology, in the market area served by East Cooper, and Defendants have engaged in overt acts in furtherance of that conspiracy or agreement

42 Plaintiff has suffered injury to his/her business, property, and profession including mental anguish, loss of professional reputation, and loss of trade as a direct and proximate result of Defendant's illegal actions in restraint of trade

43 Defendants' actions have caused and are continuing to cause Plaintiff irreparable harm, for which there is no adequate remedy at law

44 Pursuant to Rule 65 of the Federal Rules of Civil Procedure and Section 16 of the Clayton Act, 15 U S C § 26, Plaintiff is entitled to have defendants, including their officers directors, agents, consultants, servants, employees, attorneys, and those acting in concert with them, and persons acting for, with, and under their supervision, enjoined from denying Plaintiff's admitting privileges at the Hospital

45 As a direct and proximate result of Defendants' illegal actions in restraint of trade, Plaintiff has suffered and is entitled to recover , actual damages in an amount to be determined at trial, as well as treble damages pursuant to § 15 of the Sherman Act, costs, and attorneys' fees

**For A Second Cause Of Action Against all Defendants
(Arrangements Lessening Competition)**

46 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

47 Pursuant to S C Code § 39-3-10, Defendants' actions constitute an arrangement that lessens and negatively affects the full and free competition in a branch of trade, business or commerce and is, therefore, against public policy unlawful, and void

48 Plaintiff has suffered damages as a direct and proximate result of the Defendants' unlawful arrangement lessening competition and is entitled to recover his/her actual damages and costs

**For A Third Cause Of Action Against Defendant East Cooper
(Wrongful Termination of Hospital Privileges)**

49 The public's interest in the quality of hospital care is furthered by maintaining the Plaintiff's ability to practice medicine, including surgical procedures, within the Hospital

50 The Hospital owes a duty to the public and the members of the Medical Staff to scrupulously follow the Bylaws provisions governing a hospital's award, limitation, or revocation of medical staff privileges

51 The Hospital failed to follow the Bylaws provisions with respect to Plaintiff and the Bylaws, as applied to Plaintiff, are arbitrary and capricious

52 The Hospital's actions accomplish improper retroactive application of Bylaw provisions not yet in effect and not adopted until 10/7/97

53 Plaintiff has suffered damages by the wrongful, arbitrary, and capricious actions of the Hospital and the unauthorized and unwarranted termination of Plaintiff's admitting privileges

**For A Fourth Cause Of Action Against Defendant East Cooper
(Breach of Contract)**

54 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

55 The Bylaws of the Medical Staff constitute a valid, binding and enforceable contract between the Plaintiff and the Hospital

56 The Hospital has violated the provisions of the Bylaws by the arbitrary and capricious application of certain provisions to the Plaintiff, and the unwarranted termination of his/her admitting privileges

57 Plaintiff has suffered damages as a direct and proximate result of the Hospital's actions in violation of the Bylaws and is entitled to recover his/her direct and consequential damages in an amount to be determined at trial as well as the costs of this action

**For A Fifth Cause Of Action Against Defendants Tenet And East Cooper
(Breach of Contract Accompanied by a Fraudulent Act)**

58 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

59 On information and belief, Defendant Hospital committed material breaches of the Bylaws and its contractual duties to Plaintiff

60 On information and belief, Defendant Tenet committed material breaches of the Lease Agreement and its contractual duties to Plaintiff

61 On information and belief these Defendants' material breaches of contract were accompanied by dishonest, unfair, and improper acts as set forth herein

62 As a direct and proximate result of Defendants' breaches of contract accompanied by fraudulent acts, Plaintiff has suffered, and is entitled to recover actual, compensatory and consequential damages, in an amount to be determined at trial as well as punitive damages, interest and costs

For A Sixth Cause Of Action Against Defendants Tenet and East Cooper
(Slander)

63 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

64 Defendants, through their agent Bill Cone, have made statements regarding the Plaintiff which had a defamatory meaning

65 Defendants' statements were false and made with actual or implied malice to others

66 Plaintiff has suffered special damages to his/her professional and personal reputation as a direct and proximate result of Defendants' defamatory statements and is entitled to recover from Defendants its actual damages, as well as punitive damages and costs

For a Seventh Cause of Action Against all Defendants
(Civil Conspiracy)

67 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

68 Upon information and belief, Defendants willfully and unjustifiably conspired together to commit the breaches, torts, unfair and deceptive acts, and other violations of duty

alleged herein in order to harm Plaintiff, and Defendants engaged in overt acts to carry out their conspiracy

69 As a direct and proximate result of Defendants' conspiracy and their overt acts in connection therewith, Plaintiff suffered special damages and is entitled to recover from defendants its actual damages as well as punitive damages and costs

**For an Eighth Cause of Action Against all Defendants
(Unfair Trade Practices)**

70 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

71 This cause of action arises under the South Carolina Unfair Trade Practices Act (SCUTPA), S C Code Ann § 39-5-10 *et seq*

72 On information and belief, Defendants are engaged in trade and commerce, and the facts complained of herein occurred in the ordinary course of defendants' businesses and are capable of repetition and affect the public interest

73 On information and belief, Defendants knowingly and willfully engaged in unfair methods of competition or unfair and deceptive acts and practices in the conduct of trade or commerce within the meaning of the SCUTPA, which, if not enjoined, are likely to recur and which has affected, and will continue to affect, the public interest

74 On information and belief, Defendants knew or should have known, that the conduct complained of herein constituted unfair methods of competition or unfair or deceptive acts or practices in the conduct of trade or commerce

75 As a direct and proximate result of Defendants violations of the SCUTPA Plaintiff has suffered, and is entitled to recover, actual damages, attorneys' fees, and costs

76 On information and belief, Defendants' violations of the SCUTPA were willful and knowing, and Plaintiff is entitled to recover three times his/her actual damages, attorneys' fees, and costs

77 As a direct and proximate result of Defendants' violations of the SCUTPA, Plaintiff has also suffered immediate and irreparable harm and is entitled to a preliminary injunction and a permanent injunction in accordance with its First Cause of Action -

**For a Ninth Cause of Action Against all Defendants
(Interference with Existing Contractual Relations)**

78 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

79 By means of the acts described in the preceding paragraphs of this Complaint Defendants have intentionally, and without justification, interfered, and continue to interfere, with Plaintiff's contractual relations and physician patient relationship with established patients who now need or may in the future need surgical procedures

80 As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered, and is entitled to recover, actual damages in an amount to be determined at trial, as well as punitive damages, interest, and costs

**For a Tenth Cause of Action Against all Defendants
(Interference with Prospective Contractual Relations)**

81 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

82 By means of the acts described in the preceding paragraphs of this Complaint, Defendants have intentionally, and without justification, interfered and continue to interfere, with

Plaintiff's prospective contractual relations with patients who now need or may in the future need Plaintiff's medical services and surgical procedures

83 Upon information and belief, Defendants' acts of interference with Plaintiff's physician patient relationship were made for an improper purpose or by improper methods

84 As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered, and is entitled to recover, actual damages in an amount to be determined at trial as well as punitive damages, interest, and costs

**For an Eleventh Cause of Action Against Defendant East Cooper
(Promissory Estoppel)**

85 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

86 Defendant agent and employee Kara Melin made an unambiguous representation to Plaintiff that Defendant East Cooper had allowed additional time to others in the past and would allow additional time to meet the patient contact requirement

87 Plaintiff was injured when he/she reasonably relied on this promise by maintaining his/her privileges at East Cooper and by foregoing earlier opportunities to apply for appointment to the medical staff at other area hospitals

88 This reliance was both expected and foreseeable by Defendant

89 As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered damages which he/she is entitled to recover

**For an Twelfth Cause of Action Against Defendant East Cooper
(Violation of Federal Anti-Kickback Statute,
Federal Stark Law, and South Carolina "Provider Self-Referral Act")**

90 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

91 Defendants By-laws provision which conditions Active Staff membership and hospital admitting and surgical privileges on the requirement that the physician admit at least 24 patients per year to the Hospital is a violation of the Federal Anti Kickback Statute, 42 U S C A § 1320a-7b (West Supp 1999), the Federal Stark Law, 42 U S C A § 1395nn (West Supp 1999), and the South Carolina "Provider Self-Referral Act, S C Code § 44-113-10, et seq.

92 Because these By-laws provisions contravene federal and state law, they should be declared null and void by this Court, and the Hospital should be permanently enjoined from applying this By-laws provision to Plaintiff and others

PRAYER FOR RELIEF

Therefore, for the reasons set forth above, Plaintiff prays that judgment be entered in the Plaintiff's favor against Defendants for the following

a. Equitable relief, including a preliminary injunction and permanent injunction restraining and enjoining Defendants from improperly depriving Plaintiff's hospital admitting privileges

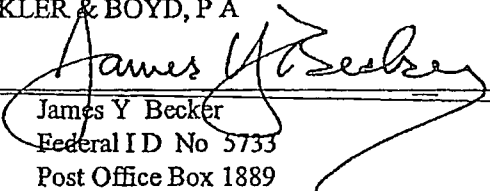
b Actual, compensatory, and consequential damages, including past and future lost profits and lost opportunity costs,

b Prejudgment interest in accordance with Section 15 of the Sherman Anti-Trust Act, 15 U S C § 15,

- c Treble damages in accordance with Section 15 of the Sherman Anti-Trust Act, 15
U S C § 15, and the SCUTPA,
- d Punitive damages,
- e The costs of this action,
- f Such other and further relief as this Court may deem just and proper

SINKLER & BOYD, P A

By


James Y Becker
Federal ID No 5733
Post Office Box 1889
Columbia, SC 29211-1889
(803) 779-3080

Attorneys for Plaintiff J Doe, M D

December 6, 1999

Columbia, South Carolina

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J Doe, M D ,

Plaintiff,

v

Tenet HealthSystem Medical Inc
And East Cooper Community
Hospital, Inc ,

Defendants

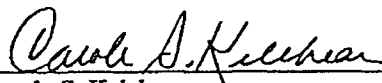
CIVIL ACTION NO 2-99-0833-23

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Sinkler & Boyd, P A , attorneys for Plaintiff J Doe, M D , do hereby certify that I have served all counsel specified below in this action with a copy of the Pleadings specified below by mailing a copy of the same by United States Mail, postage prepaid to the following address(es)

Pleading PLAINTIFF'S AMENDED COMPLAINT

Counsel Served. E Douglas Pratt-Thomas, Esq
Pratt-Thomas, Pearce Epting & Walker, P A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247


Carole S Kelehear

December 6, 1999
Columbia, South Carolina

ALL STATE LEGAL 804226410 EDS RECYCLED

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ORIGINAL FILED

APR 17 2000

AO450 Judgment in a Civil Case

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LARRY W PROPES CLERK
- CHARLESTON SC

ENTERED

4-17-00

J DOE M D

JUDGMENT IN A CIVIL CASE

vs

Case Number 2 99-0833-23

TENET HEALTH SYSTEM
~~MEDICAL, INC. and EAST COOPER~~
COMMUNITY HOSPITAL, INC

- ☐ **Jury Verdict** This action came before the Court for a trial by jury The issues have been tried and the jury has rendered its verdict
- ☒ **Decision by Court** This action came to a hearing before the Court The issues have been duly heard and a decision has been duly rendered

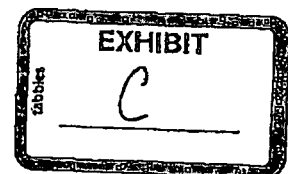
IT IS ORDERED AND ADJUDGED that the defendants motion for summary judgment is hereby granted as to the federal causes of action, and the remaining state law causes of action are dismissed and this action is hereby dismissed

LARRY W PROPES Clerk

By

By Chisaly
Deputy Clerk

April 17, 2000



FILED

APR 17 2000

LARRY W PROPPS CLERK
CHARLESTON SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J Doe M D,¹

Plaintiff,

v

C A No 2 99-0833-23

Tenet HealthSystem Medical, Inc
and East Cooper Community
Hospital, Inc ,

ORDER

Defendants

This matter is before the court upon the defendants' motion for summary judgment. The undersigned has thoroughly reviewed the record and both parties' briefs. Because there is no federal claim which presents a genuine issue of material fact, the defendants' motion for summary judgment is granted with respect to the plaintiff's antitrust and federal statutory claims. The remaining state law causes of action are dismissed pursuant to 28 U S C § 1367 (c) (3).

I FACTUAL BACKGROUND

Dr Holmes brings this action against East Cooper Hospital (the Hospital) for revoking her staff privileges due to a failure to meet the eligibility requirements under the Hospital's Bylaws. Dr Holmes is a citizen of South Carolina. The Hospital, a wholly owned subsidiary of Defendant Tenet HealthSystem Medical, Inc, is a South Carolina corporation which owns and operates East Cooper Regional Medical Center in Mt Pleasant, South Carolina. There is no diversity jurisdiction. This action has been brought under 42 U S C § 1331 which provides

¹ As plaintiff was denied permission to proceed under the above fictitious name and was also denied permission to file certain pleadings under seal, she will be referred to by her name Dr Cynthia C Holmes, M D

Amw

subject matter jurisdiction for actions arising under federal law

The Hospital's Organizational Structure

Defendant Hospital is a private hospital operating for profit and a wholly owned subsidiary of Defendant Tenet HealthSystem Medical, Inc. It is governed by a Board of Directors. The Board of Directors is comprised mostly of non-physicians and retains ultimate responsibility for the operation of the Hospital. The Board employs an administrative staff, led by a president and chief executive officer to manage the day-to-day business. Physicians practicing in the hospital are organized into a ~~medical staff which operates pursuant to Bylaws,~~

rules and regulations. Within the Hospital, the medical staff is represented by the Medical Executive Committee, which is comprised of chairpersons of the various clinical departments as well as several other officers elected by the staff at large, and led by an elected chief of staff.

The Board promulgates Bylaws for the medical staff, by which all physicians receiving staff privileges at the Hospital agree to be bound. The Bylaws provide a detailed series of procedures for the granting of privileges and for the handling of physician disciplinary actions. Under those Bylaws, the Medical Executive Committee may recommend changes to the Bylaws, may recommend granting privileges to physicians, and may recommend that the Board suspend, modify, or revoke the privileges of a physician. Although the Board retains the ultimate authority over staff privileges, the recommendations of the medical staff through the Medical Executive Committee are given considerable weight. This system is known as peer review. Both South Carolina and federal law mandate that hospitals provide for peer review.

To keep medical staff members apprized of their ongoing responsibilities and any changes in the Bylaws, rules, and/or regulations, medical staff meetings are regularly scheduled.

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along with departmental staff meetings for each of the medical staff departments. All medical staff physicians are encouraged to attend these meetings. The medical staff also maintains an office within the Hospital managed by a full-time medical staff coordinator. Any physician needing information regarding the Bylaws, rules, and/or regulations and any changes or amendments to same can go to that office for guidance and updated information.

All decisions regarding the credentialing of the Dr. Holmes were ultimately made by the Board based upon the recommendation of the Medical Executive Committee. Defendant Tenet

HealthSystems had no direct involvement in the decisions made with regard to the Dr. Holmes.

The Credentialing Process

A physician desiring staff privileges at the Hospital must apply for and be granted same. At the pertinent times in question the medical staff was divided into categories designated Active, Associate, Courtesy, Consulting, and Honorary. The active staff consists of physicians who consult in connection with or attend or admit to the hospital (patient contacts) a minimum of twenty-four (24) patients per year and who are located closely enough to the hospital to provide continuous care to their patients. Members of the active staff are granted privileges to admit or attend to patients in the hospital and to exercise such clinical privileges as have been granted to the particular physician. As members of the active staff, physicians may vote on medical staff issues, hold office in the medical staff organization, and are required to attend a requisite number of medical staff and departmental meetings. The twenty-four (24) patient per year contact requirement has existed since at least 1989.

Associate staff members consist of physicians who are eligible for advancement to the active staff and who will in the ordinary course of events, unless the physician requests

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otherwise, be advanced to the active staff after serving not more than two years on the associate staff. Members of the associate staff may admit or attend to patients in the hospital within the clinical privileges granted. Associate members may also serve on committees and are required to attend a requisite number of staff meetings. They are not, however, eligible to hold office or to vote.

Courtesy staff members consist of physicians who are eligible for active staff membership but who admit or attend to not more than twenty five (25) patients in any twelve month period or act only as consultants. ~~Courtesy staff members may admit or attend to patients~~

in the hospital within the clinical privileges granted to them. They may attend staff and departmental meetings but are not eligible to hold office or vote. At the time Dr. Holmes was first granted privileges at the Hospital in July of 1994, there was no specific requirement that courtesy staff members have active privileges at one local hospital before courtesy privileges would be granted. The Bylaws were amended in July 1995 to include said requirement. This amendment was first proposed by the Medical Executive Committee, approved, and ultimately approved by the Board on July 20, 1995.

Consulting staff members consist of physicians who do not admit patients to the hospital but who do desire privileges to provide consultative services to patients at the request of staff physicians. Consulting staff members are not eligible to admit patients and are not eligible to vote or hold office within the medical staff. They are also not allowed to perform surgery in the capacity of primary surgeon. They may attend departmental and staff meetings.

Pursuant to the Bylaws, all initial appointments to any category of the medical staff shall serve a provisional term for twelve months. This provisional status may be renewed for not more

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than a total of two six-month periods. An initial appointee shall remain provisional until certain requirements are met as set forth in the Bylaws. If the provisional appointee fails within that period to furnish the certification required in the Bylaws his staff membership or particular clinical privileges, as applicable, shall automatically terminate.

Physicians are considered for reappointment to the medical staff every two years. Dr. Holmes first applied for staff privileges in January 1994, her application for active staff privileges was processed, and in July 1994 she was appointed to the associate staff. This was customarily referred to as "associate active" staff. ~~In the ordinary course of events she would~~

have remained in this status for a period of one year, at the conclusion of which her status would be reviewed. In order to progress to active staff she would have been required to attend a requisite number of medical staff meetings and would have been required to consult, attend, or admit to the hospital at least twenty-four (24) patients in the twelve month period. If Dr. Holmes did not have the requisite patient contacts within that first year there are provisions in the Bylaws which would allow the provisional status to be extended in six month increments, but in no event is this provisional status to exceed two years from the initial appointment.

On November 30, 1994, Dr. Holmes requested that her status be changed from associate active staff to the courtesy staff. This request was granted and, as such, she was then in provisional courtesy staff. As indicated above, at the time this request was made by Dr. Holmes and granted, there were no requirements in the Bylaws that physicians on courtesy staff have active privileges at any other local hospital. As a member of the provisional or associate courtesy staff, Dr. Holmes was not required to attend meetings nor were there any minimum patient contact requirements.

Due to the fact that Dr Holmes first came on staff in July of 1994, her status came up for review in July of 1995. At that time, Dr Holmes did not have the requisite number of patient contacts to be on the active staff, indeed she only had one patient contact between July 1994 and July 1995. As such, Dr Holmes came off of the provisional year and remained a member of the courtesy staff.

Reappointment to the medical staff pursuant to the Bylaws, occurs every two years and, as such, Dr Holmes came up for reappointment in July of 1996, two years after her initial appointment. In the spring of 1996, Dr Holmes was sent correspondence reminding her of the necessity to complete a reappointment application, and Dr Holmes did so on April 18, 1996. She requested reappointment to the courtesy staff. She was then reminded that in order to be granted courtesy status she would need to have active privileges at another local hospital pursuant to the Bylaws in effect at the time of her application for reappointment. At this point, Dr Holmes first complained that she was never notified nor was she aware of the Bylaw change to this effect which had been approved the previous year in July 1995. Dr Holmes then attempted to assert that the new Bylaws should not apply to her and that the older requirements should apply instead.

As the time approached for Dr Holmes reappointment to the staff to be considered in July 1996, Dr Holmes did not have active privileges at any other local hospital and, therefore, did not qualify for courtesy staff, nor did she have the requisite patient contacts to qualify for active staff. Indeed, she only had two patient contacts from January 1, 1995, to December 31, 1995. In an effort to work with Dr Holmes, the Credentialing Committee offered, by letter, to allow Dr Holmes to apply again for associate active staff privileges for another year, but reminded her of the requirement that she would have to meet the twenty-four (24) patient contact

provision to progress to active staff Dr Holmes purportedly agreed, but attempted to modify the twenty-four (24) patient contact requirement by indicating on the letter that only twelve (12) patient contacts should be required in her particular case This attempted modification was rejected, and Dr Holmes was informed that twenty-four (24) patient contacts would be required and the only way to change the requirement would be through an amendment to the Bylaws As such Dr Holmes was appointed to the associate active staff for a period of one year beginning in August 1996 and ending in August 1997 Despite her acceptance of this associate active

~~appointment, Dr Holmes continued to contest the twenty-four (24) patient requirement by first~~
attempting to appeal her reappointment requirements, and then by requesting a Bylaw amendment which would permit general ophthalmologists to maintain privileges with twelve (12) patient contacts per year This proposed amendment was unanimously rejected by the Medical Executive Committee

In August 1997, Dr Holmes came up for review at the end of the additional provisional year, she did not have the requisite twenty-four (24) patient contacts In fact, Dr Holmes had less than ten (10) patient contacts from August 1996 to August 1997 Additionally, Dr Holmes had chosen not to seek active status at any other local hospital and as such, did not qualify for courtesy staff Under these circumstances, she was granted consulting staff privileges and was notified of her right to appeal

It is undisputed, and actually admitted within the Hospital's correspondence, that the actions taken in regard to Dr Holmes' privileges did not in any way implicate her professional competence or patient care There is no allegation that Dr Holmes is not a fully qualified and competent physician, nor any allegation of a single incident or problem with her medical care

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to any patient

Dr Holmes pursued her appeal through the appropriate committees and governing mechanisms in place at the Hospital Her appeal was denied, and her status on the consulting staff affirmed This lawsuit was thereafter initiated

Dr Holmes has also made factual allegations concerning her relationship with Durst Family Medicine, a medical practice which sold its assets to the defendants in 1994 However, a detailed rendition of these factual allegations is not necessary as they do not relate directly to the federal claims asserted

II DISCUSSION

To grant a motion for summary judgment, this court must find that "there is no genuine issue as to any material fact " Fed R Civ P 56(c) The judge is not to weigh the evidence, but rather to determine if there is a genuine issue for trial Anderson v Liberty Lobby, Inc., 477 U S 242, 249 (1986) If no material factual disputes remain, then summary judgment should be granted against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party bears the burden of proof at trial Celotex Corp v Catrett, 477 U S 317 (1986) All evidence should be viewed in the light most favorable to the non moving party Perini Corp v Perini Constr , Inc., 915 F 2d 121, 123-24 (4th Cir 1990) "[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate " Teamsters Joint Council No 83 v Centra, Inc., 947 F 2d 115, 119 (4th Cir 1991) "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence

of an element essential to that party's case, and on which that party will bear the burden of proof at trial " Celotex 477 U S at 322 Summary judgment is not 'a disfavored procedural shortcut,' but an important mechanism for weeding out 'claims and defenses [that] have no factual basis "

Celotex, 477 U S at 327

A Federal Antitrust Claims

Summary judgment is a vital procedural tool to avoid wasteful trials and may be particularly important in antitrust litigation to prevent lengthy and drawn out trials that have a chilling effect on competitive market forces ~~See Matsushita Elec Indus Co v Zenith Radio~~

Corp., 475 U S 574, 593-94 (1986) Dr Holmes filed suit under the Sherman Act alleging that the defendants violated section one by conspiring to restrain trade in enforcing the twenty-four (24) patient contact prerequisite for active staff Section one of the Sherman Act provides in part

Every contract combination in the form of trust or otherwise or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal

15 U S C § 1 In addition to the claim under section one, Dr Holmes asserts that the defendants have also violated section two To establish such a violation, Dr Holmes must first prove defendants' "possession of a monopoly power in the relevant market " United States v Grinnell Corp., 384 U S 563, 571 (1966)

Dr Holmes is a disgruntled physician who has brought antitrust claims challenging a staffing decision at a single hospital Various reasons have been set forth for why cases such as this do not state cognizable section one antitrust claims BCB Anesthesia Care, Ltd v Passavant Memorial Area Hospital Ass'n, 36 F 3d 664, 667-68 (7th Cir 1994) (citing over thirty

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cases which concluded that the staffing decision of a single hospital was not a violation of section one of the Sherman Act) The reasons for the unavailability of antitrust relief include an insufficient nexus to interstate commerce, lack of standing lack of antitrust injury, failure to show a detrimental effect on competition the inability for a hospital to conspire with its staff, and insufficient market power in the relevant market Id This case is no different in that Dr Holmes has failed to establish a cognizable antitrust injury, a cognizable conspiracy, and sufficient market power in a relevant market

1 Section One Concerted Action- Conspiracy

Unilateral action is not considered actionable under section one of the Sherman Act Thus section one applies only to concerted action Monsanto Co v Spray-Rite Serv Corp, 465 U S 752, 761 (1984) Proof of concerted action requires evidence of a relationship between at least two legally distinct persons or entities " Oksanen v Page Memorial Hosp, 945 F 2d 696, 702 (4th Cir 1991) (en banc) It is well established that there can be no concerted action between a corporate parent and its wholly owned subsidiary as the two are viewed a single enterprise for purposes of section one of the Sherman Act Copperweld Corp v Independence Tube Corp, 467 U S 752, 772 (1984) Therefore, any claim that Tenet HealthSystem and its wholly owned subsidiary, the Hospital, acted in violation of section one of the Sherman Act must fail

Moreover, the Fourth Circuit has held that a hospital cannot conspire with its medical staff for peer review purposes Oksanen, 945 F 2d at 699 Although individual members of a medical staff are legally capable of conspiring with each other, a medical staff as an entity cannot be said to have conspired with a hospital or its board because the staff and the hospital share a unity of interest. Id Dr Holmes argues that because the reason she was denied privileges-her

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failure to attain twenty-four (24) patient contacts – does not concern her competence or performance as an ophthalmologist, the Oksanen court's extension of intracorporate immunity to the peer review process is distinguishable. Either labeled "peer review" or "staffing," internal proceedings concerning one hospital's decisions about staff privileges or staffing patterns entails various factors, including but not limited to malpractice concerns, quality of care, market perceptions, cost, and administrative considerations. See BCB Anesthesia Care, 36 F 3d at 667. Limiting the Oksanen holding to only matters of competence is not warranted where the fact remains that the reason there are no antitrust concerns within peer review proceedings is that the hospital and the medical staff are not competitors. Id. at 703. A hospital "makes its decisions to serve its own interests not those of the staff, and thus should not be seen as a possible co-conspirator with them." Id. at 705 (quoting P. Areeda and H. Hovenkamp, Antitrust Law, ¶ 1471b (1990 Supp.)). Here just as in Oksanen, id. at 704, the Hospital, through its Board, could modify the Medical Executive Committee's recommendation at any time and it retained ultimate responsibility for all of the Hospital's credentialing decisions. This type of ultimate control over the credentialing/staffing decisions enables the Board to use the process to pursue its interests.

The question remains whether the medical staff has the capacity to conspire among itself in the adoption of the twenty-four (24) patient contact requirement for active privileges. When physicians with independent and at times competing economic interests join together to take action among themselves, they are unlike a single entity and therefore have the capacity to conspire as a matter of law. Oksanen, 945 F 2d at 706. In order for Dr. Holmes to establish such concerted action, she must present evidence that "tends to exclude the possibility of independent action." Monsanto, 465 U.S. at 768. Such evidence must tend to prove "a conscious

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commitment to a common scheme designed to achieve an unlawful objective " Id Dr Holmes submits that the illegal purpose of this concerted action was to impede those physicians who are new to the area have yet to establish a requisite level of patients warranting twenty-four (24) visits to the Hospital per year, or practice their field in a manner which does not warrant that number of contacts with a Hospital This she deems as anti competitive Notwithstanding the fact that Dr Holmes has not sued any individual members of the medical staff, she has failed to present evidence of the requisite concerted action First, to speak of a conspiracy among the medical staff in recommending either the ~~twenty-four (24) patient contact requirement or the~~ requirement that a courtesy staff physician with less than twenty five (25) patient contacts also have active status at another hospital is not very meaningful in antitrust terms because the staff, through the Medical Executive Committee, lacked the final authority to adopt such Bylaw requirements Only the Board is conferred with that authority Furthermore, the argument that such requirement impedes new or fledgling physicians from establishing their medical practices is discounted by the fact that any applicant for privileges at the Hospital is allowed an associate year (or provisional year) in order to meet the Bylaws requirements In Dr Holmes case, the medical staff through the Credentialing Committee effectively gave her an extra year (August 1996 through August 1997) in which to meet the requirement that she have at least twenty-four (24) patient contacts Furthermore, if Dr Holmes had failed to attain the requisite number of contacts, she, or any other physician in her position, would have been able to admit patients to the Hospital if she were on the active staff at any other hospital This discounts any inference of anti competitive intent

In Ezekwo v American Board of Internal Medicine, 18 F Supp 2d 271, 278 (S D N Y

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1998) the plaintiff Dr Ezekwo, was denied privileges at Montefiore Medical Center for failing to become board certified in her field Dr Ezekwo sued the certification board, the hospital and two health insurers for developing and relying upon arbitrary certification criteria which set her up for failure The court found that such an allegation failed to establish even the possibility of concerted action where there was no evidence that the defendants agreed to or colluded in conduct injurious to the market of "internal medicine Id at 279 "The ordinary prospect of competition from any defendant is not enough on which to base her claim, and any consequent commercial injury to her as an individual is irrelevant ~~Id (citations omitted)~~

"That the challenged conduct is consistent with legitimate activities also weighs against inferring a conspiracy " Cooper v Forsyth County Hosp Auth, Inc , 789 F 2d 278, 282 n 14 (4th Cir 1986) The Hospital has put forth expert evidence that the terms and conditions of the Hospital Bylaws concerning the twenty-four (24) patient contact requirement are in accordance with standards within the health care industry, and that similar requirements are present in hundreds of sets of bylaws across the country Likewise, the same expert testified that the requirement that courtesy staff members have active privileges at another local hospital is also very common in the industry Apparently, such minimum patient contact provisions have been established primarily "to assure that the physicians who are helping the hospital establish policy know and understand its issues, its mission, how it operates, how the nursing service works " (Def 's Ex 6 at p 34) Secondly, this type of requirement provides the hospital the opportunity "to review directly the quality of the physician's work " Id at 35 Similar to the legitimacy of a process concerning quality of care and the harmonious working environment, see Oksanen, 945 F 2d at 706, requirements which enable a hospital to assure a certain amount of

familiarity with the inter-workings of a hospital and maintain the opportunity for direct review of the performance of a physician are legitimate activities Dr Holmes has offered nothing other than an assertion that the medical staff in general will benefit economically from a reduced number of physicians who can admit patients to the Hospital This complete lack of concerted action on the part of the medical staff through the Medical Executive Committee leads naturally into the next failure of Dr Holmes with respect to her antitrust claims-- that of the absence of a cognizable antitrust injury

~~2 Section One Cognizable Antitrust Injury Harm to Competition~~

In order to establish an antitrust violation, the Dr Holmes must demonstrate that the defendants' actions have caused injury to competition The Sherman Act protects competition, not competitors Balaklaw v Lovell, 14 F 3d 793, 797 (2d Cir 1994) (citing Brunswick Corp v Pueblo Bowl-O-Mat, Inc., 429 U S 477, 488 (1977)) Plaintiff must demonstrate "an impact on the competition as a whole within the relevant market " Patel v Scotland, 91 F 3d 132 (4th Cir 1996) Under this it follows that only those restraints on trade which are unreasonable due to their detrimental effect upon competition violate the Sherman Act See Atlantic Richfield Co v USA Petroleum Co., 495 U S 328, 341 (1990)

The courts use two judicially created approaches to assess the reasonableness of the restraint at issue The first category consists of those "agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality--they are 'illegal per se '" Oksanen, 945 F 2d at 708 (quoting National Soc of Prof Engineers v United States, 435 U S 679, 692 (1978)(internal quotations marks omitted)), see also, Lie v St Joseph's Hosp., 964 F 2d 567, 569 (6th Cir 1992) (per se illegal restraints do

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not require proof of market power) These include horizontal and vertical price-fixing, division of market into territories certain tying arrangements, and certain group boycotts See Capital Imaging Associates v Mohawk Valley Medical Assoc., Inc., 996 F 2d 537 542 43 (2d Cir 1993) (listing cases) Dr Holmes contends that the combined action of the medical staff and the Hospital amounted to a group boycott" and should be classified as a per se violation of the Act However, the Fourth Circuit has noted that courts should be weary of expanding the category of restraints classed as group boycotts where the economic effects of the restraint are far from clear See Oksanen, 945 F 2d at 708 (citing FTC v Indiana Fed. of Dentists, 476 U.S. 447, 458-59 (1986)) The second approach to analyzing the reasonableness of restraints is "the rule of reason " Under the rule of reason, the plaintiff bears the burden of proving that the actions of the defendants have unreasonably restrained trade Id. at 709 To meet this burden, Dr Holmes must prove (1) what market she contends was restrained and (2) that the defendants played a significant role in the relevant market Id. Whether to apply a per se rule or the rule of reason is a question of law See In re American Honda Motor Co., Inc Dealerships Relations Litigation, 941 F Supp 528, 562 (D Md 1996)

Dr Holmes seeks to equate the defendants' requirement that a physician have twenty-four (24) patient contacts before becoming eligible for active status as a type of "group boycott." If such "agreement" were a per se illegal agreement, Dr Holmes would not be required to prove harm to competition through economic and market- specific evidence Dr Holmes alleges that the physicians on the medical staff at the Hospital adopted the twenty-four (24) patient contact requirement for active staff in order to exclude persons in her similar situation from the Hospital Courts have recognized the difficulty in determining whether a concerted action qualifies as a

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group boycott in the context of the per se rule See In re American Honda, 941 F Supp at 562 See also Northwest Wholesale Stationers, Inc v Pacific Stationary and Printing Co 472 U S 284 294 (1985) (There is more confusion about the scope and operation of the per se rule against group boycotts than in reference to any other aspect of the per se doctrine ” (quoting L Sullivan, Law of Antitrust 229-230 (1977)) Accordingly the per se rule has “generally been limited to cases in which firms with market power boycott suppliers or customers in order to discourage them from doing business with a competitor Indiana Federation of Dentists 476 U S at 458 The Court has further cautioned that if the economic impact of a certain business practice is not immediately obvious, the per se rule should not be used by classifying the conduct as a group boycott Id at 458-59 In order to establish the existence of a “group boycott, Dr Holmes must present evidence “showing that the challenged activity is manifestly anti-competitive conduct that would always or almost always, tend to restrict competition and decrease output ” Cogan v Harford Memorial Hosp, 843 F Supp 1013, 1019 (D Md 1994) (citing Northwest Wholesale Stationers, 472 U S at 289)

Dr Holmes has failed to make such a showing She has presented no evidence of the economic impact of the Hospital's enforcement of the twenty-four (24) patient contact requirement And, it is not obvious to this court of any such detrimental effect All physicians who fail to meet this requirement can continue to admit patients at the Hospital provided that they maintain active privileges at another local hospital Moreover, the requirement that a physician have twenty-four (24) patient contacts or active status at another hospital actually encourages that physician to do business with other hospitals, thereby enhancing competition This requirement helps the Hospital maintain a desired level of physician involvement in the day-

to-day operations of the Hospital, and allows the it directly review the qualify of care its patients receive Furthermore, a per se violation cannot be found unless the defendant possesses market power or exclusive access to an element essential to effective competition Nova Design v. Scuba Retailers Assoc., 202 F 3d 1088, 1092 (9th Cir 2000) This is not such a case, making the rule of reason applicable

Apparently recognizing her failure to produce evidence of the Hospital's role in any relevant market, Dr Holmes argues, in the alternative that if the court were to apply the rule of reason, she should not be required to establish market power because the defendants' alleged agreement was similar to a group boycott While it is true that the Supreme Court has not demanded inquiry into the industry and proof of market power in all rule of reason cases, this lessening of the burden on the plaintiff generally only occurs in the presence of "a naked restriction on price or output" Lie, 964 F 2d at 569 See Indiana Federation of Dentists, 476 U S at 458-61 Dr Holmes has not suggested that she can show a naked restraint or an actual detrimental effect on competition flowing from the Hospital's enforcement of the twenty-four (24) patient contact requirement

The Fourth Circuit has addressed the antitrust injury requirement in the context of a hospital-physician relationship

[A] plaintiff cannot demonstrate the unreasonableness of a restraint merely by showing that it caused him an economic injury For example, the fact that the hospital's decision caused a disappointed physician to practice medicine elsewhere does not of itself constitute an antitrust injury If the law were otherwise, many a physician's workplace grievance with a hospital would be elevated to the status of an antitrust action To keep the antitrust laws from becoming so trivialized, the reasonableness of a restraint is evaluated based on its impact on competition as a whole within the relevant market

Oksanen, 945 F 2d at 708 (citations omitted)

Dr Holmes has only shown that she has suffered personal injury a loss of personal income and the convenience of being able to admit patients to the hospital closest to her home She suggests no injury to competition in the form of increased cost or reduced supply of services In the absence of such a showing, Dr Holmes has failed to create an issue of fact material to her antitrust claims²

3 Section Two Monopoly

Dr Holmes further contends that the defendants violated section two of the Sherman Act by participating in the offenses of monopolization and conspiracy to monopolize "While section one of the Act focuses on concerted action, monopolization under section two involves the actions of a single firm to control a market" Oksanen, 945 F 2d at 710 Here, Dr Holmes appears to contend that the Hospital was engaging in efforts to monopolize trade by excluding all physicians without twenty four (24) patient contacts per year from obtaining active staff privileges First, section two requires injury to the market, as opposed to individual impact, which is not established in this record See Jefferson Parish Hospital Dist No 2 v Hyde 466 U S 2, 31 (1984) Additionally, Dr Holmes must also present evidence that the defendants (1) possessed monopoly power in the relevant market and (2) willfully acquired or maintained that power as distinguished from growing or developing as a consequence of a superior product,

² Dr Holmes refers to the fact that the Hospital claimed to be part of only the East Cooper market for a request for funding or a certificate of need (CON) However, plaintiff bears the burden of establishing the relevant market based upon highly technical economic evidence Cogan, 843 F Supp at 1019-20 A relevant market definition must encompass the realities of competition See Oksanen, 945 F 2d at 709 See also Minnesota Ass'n of Nurse Anesthetists v Unity Hosp, 2000 WL 340760 at *5 (8th Cir April 3, 2000) ("Geographic market evidence 'must address where consumers could practically go, not on where they actually go'")

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business acumen, or historic accident. See Oksanen, 945 F 2d at 710, Aspen Skiing Co v Aspen Highlands Skiing Corp 472 U S 585, 596 n 19 (1985) (quoting Grinnell Corp., 384 U S at 570-71)

As determined infra n 2, Dr Holmes has offered little or no evidence to support her proposed definition of East Cooper as the relevant market. Furthermore, there is no evidence that the Hospital exercised market or monopoly power in a market defined to account for commercial reality. Even assuming that Dr Holmes could demonstrate the existence of monopoly power, she must still prove that the Hospital willfully acquired such power or sought to maintain it. To satisfy this burden, Dr Holmes must show "that a jury could find no valid business reason or concern for efficiency in the hospital's choice" to adopt the said twenty-four (24) patient contact requirement. See White v Rockingham Radiologists, Ltd., 820 F 2d 98, 105 (4th Cir 1987). The Hospital in this case had valid business reasons for requiring Dr Holmes, and any other physician, to have a certain number of patient contacts within the Hospital prior to being allowed active status. Consequently, Dr Holmes has failed to demonstrate the monopolistic intent necessary for a section two claim.³

B. Federal Stark and Anti-kickback Statutes

As an additional basis for federal jurisdiction under 28 U S C § 1331, Dr Holmes asserts claims under the Federal Anti-kickback Statute, 42 U S C § 1320a-7b, and the Federal Stark Law, 42 U S C § 1395nn. The Hospital maintains that summary judgment is warranted because

³ In light of the determination that Dr Holmes has failed to establish that the Hospital possesses monopoly power, any application of the "essential facilities" doctrine is inapplicable as that doctrine assumes the monopoly, see Laurel Sand & Gravel, Inc v CSX Transportation, Inc., 924 F 2d 539, 544 (4th Cir 1991)

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there is no private right of action under either of these statutes. The court agrees, and has found no cases holding that the provisions of these statutes under which the plaintiff is proceeding provide a private right of action.

Section 1320a-7-b is titled "Criminal penalties for acts involving Federal health care programs." It provides that anyone who solicits or receives certain kickbacks or bribes is guilty of a felony. While neither the United States Supreme Court nor the Fourth Circuit has had the opportunity to determine whether section 1320a-7b provides an implied private cause of action, the Seventh Circuit Court of Appeals has so decided. In West-Allis Memorial Hosp. v. Bowen,

852 F.2d 251, 255 (7th Cir. 1988), the court held that neither the structure of the then effective section 1395nn(b)(2)(B) [the predecessor to the current section 1320a-7b] nor its legislative history suggests that Congress intended to provide a private remedy to Medicare providers who may be injured as a result of a competitor's noncompliance with the provisions of the statute. Applying the Cort v. Ash, 422 U.S. 66, 78 (1975), analysis for the creation of implied private causes of action, the court found a complete lack of intent on the part of Congress to create a private right of action, citing the following expression of the purpose in the legislative history:

Legislation to amend the Social Security Act to strengthen the capability of the Government to detect, prosecute, and punish fraudulent activities under the Medicare and Medicaid programs

Id. (citing 1977 U.S. Code Cong. & Admin. News 3039, 3040). This court has been unable to find any court which has held to the contrary. For the same reason, this court finds that section 1320a-7b fails to provide a private cause of action, and is therefore incapable of sustaining federal question jurisdiction.

The Stark law, 42 U.S.C. § 1395nn, prohibits physicians from making self-interested

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referrals for services otherwise payable to Medicare. However, just as the Anti-kickback statute, section 1395nn specifically contemplates that the Secretary of Health and Human Services may initiate a civil action to recover payments made in violation of the statute or assess civil fines. See 42 U.S.C. § 1395nn(g). This factor evinces a lack of congressional intent to confer a private right of action on the plaintiff through section 1395nn. See also Home Health Servs. Inc. v. Currie, 531 F. Supp. 476 (D.S.C. 1982), aff'd 706 F.2d 497 (4th Cir. 1983) (no implied private cause of action under 42 U.S.C. § 1395a).

~~Probably recognizing the likelihood that the court would find no implied cause of action~~
in these statutes, Dr. Holmes asserts that she is only seeking declaratory relief in regard to the Anti-kickback and Stark provisions, and thus there is no need to establish whether those statutes provide private causes of action. This reasoning, however, is flawed. Regardless of whether a party seeks monetary damages, injunctive relief, or declaratory relief, the complaint must state an independent basis for federal question jurisdiction. See Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1 (1983). The Court in Franchise Tax Board held that subject matter jurisdiction under 28 U.S.C. § 1331 exists if either party could have brought a federal law claim – not a federal defense or a request for declaratory judgment. The Court explained “Federal courts have regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question.” Id. at 19.

In addition, Dr. Holmes relies on cases which have declared certain agreements unenforceable as violative of the Anti-kickback and Stark statutes, apparently, for the proposition that her claims under these statutes are actionable in this court. See, e.g., Nursing Home

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Consultants, Inc v Quantum Health Servs , Inc 926 F Supp 835 (E D Ark 1996), Modern Medical Laboratories Inc v Smith Kline Beecham Clinical Laboratories, Inc, 1994 WL 449281 (N D Ill 1994), Polk County v Peters, 800 F Supp 1451 (E D Tex 1992), Vana v Vista Hosp Sys , Inc, 1993 WL 597402 (Cal Super 1993) (not certified for publication), see also Feldstein v Nash Community Health Servs , Inc, 51 F Supp 2d 673 (E D N C 1999) (not cited by plaintiff) However, in all of these cases the federal statutes were the basis of a defense to state law causes of action for breach of contract. It is well established that a possible defense that

a contract provision was in violation of a federal statute cannot properly serve as the sole basis for federal jurisdiction. See Skelly Oil Co v Phillips Petroleum Co, 339 U S 667, 672 (1950), see also Homecare Leasing Corp v Harrisburg Medical Management, Inc, 1998 WL 36358 (E D Pa 1988) (applying same reasoning to cases purportedly brought under the Stark law). The fact that the plaintiff may be able to raise the specter of the Hospital's violation of the Anti-Kickback and Stark laws as a defense to a state law cause of action for breach of contract, in either a case in which there is proper diversity jurisdiction or in state court, does not give this court federal question subject matter jurisdiction where there is no recognized federal cause of action. As no federal question exists under either the Anti kickback or Stark statutes, Dr Holmes' claims under 42 U S C § 1320a-7b and 42 U S C § 1395nn are dismissed.

C State Law Causes of Action

With regard to the remaining eight state law causes of actions for violation of S C Code Ann § 39-10-10, Breach of Employment Contract, Breach of Employment Contract by a Fraudulent Act, Defamation, Civil Conspiracy, Interference with Existing and Prospective Contractual Relations, Unfair Trade Practices, and Promissory Estoppel, the court exercises its

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discretion, pursuant to 28 U S C § 1367 (c) (3), to decline jurisdiction over these supplemental claims

III CONCLUSION

It is, therefore,

ORDERED, for the foregoing reasons that the defendants' motion for summary judgment is **GRANTED** as to the federal causes of action, and the remaining state law causes of action are **DISMISSED**

AND IT IS SO ORDERED


PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
April 17, 2000

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STATE OF SOUTH CAROLINA)
 CHARLESTON)
 COUNTY)
 J DOE, M D)
 vs)
 TENENT HEALTH SYSTEM MEDICAL, INC ,)
 etc)

IN THE CIRCUIT COURT FOR THE
 NINTH JUDICIAL CIRCUIT

COVER SHEET FOR
 CIVIL ACTIONS

Case No 00-CP-10-1888

Docket No

The cover sheet and the 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.

NATURE OF ACTION (check one category for the main cause of action)

☐ TORT - Motor Vehicle	☐ CONTRACT - Debt Collection
☐ TORT - Professional Malpractice	☐ CONTRACT - Employment
☒ TORT - Unfair Trade Practices, and Other Economic or Business-Related Wrongs	☐ CONTRACT - Construction
☐ TORT - Products Liability	☐ CONTRACT - Wrongful Breach
☐ TORT - General or Other	☐ CONTRACT - General or Other
☐ PCR	☐ REAL PROPERTY
☐ GOV/ADM - Workers Comp	☐ MINOR SETTLEMENTS
☐ GOV/ADM - General or Other	☐ DOMESTIC/FOREIGN JUDGMENTS
	☐ OTHER (Please Describe)

FILED
 JULIE J. ARISTON
 CLERK OF COURT
 2000 MAY 16 PM 4 28

JURY DEMAND ☐ YES ☐ NO

Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does NOT constitute a demand for or a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION (Check one box.)

- ☐ This case is subject to arbitration (all cases with monetary damages less than \$25,000 are subject to arbitration, unless otherwise exempt)
- ☒ This case is subject to mediation (all cases not subject to arbitration must be mediated unless otherwise exempt)
- ☐ This case is exempt from ADR and certificate is attached

Date May 15, 2000

PO BOX 187

Address

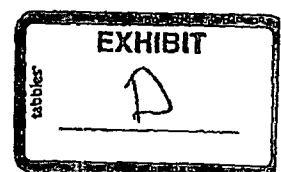
SULLIVAN'S ISLAND, SC 29482-0187

City, State, Zip Code

(843) 883-3010

Telephone

SEE REVERSE SIDE FOR FURTHER IMPORTANT INFORMATION



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
J. DOE M.D.)
Plaintiff)
- vs -)
TENENT HEALTH SYSTEM MEDICAL, INC.)
Defendant)
etc)
Docket No. _____

I certify that this action is exempt from arbitration because

_____ monetary relief requested in this case exceeds \$25,000,

_____ this is a class action

☒ there is a substantial claim for injunction or declaratory relief requested in this case,

_____ this case involves (check one or more of the following)

_____ title to real estate,

_____ wills, trust and decedent's estates,

_____ mortgage foreclosure,

_____ partition,

☒ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition,

☒ monetary relief requested in this case is unspecified but exceeds \$25,000.00,

_____ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue,

_____ this action is appellate in nature,

_____ this is a post-conviction relief matter

_____ this is a forfeiture proceeding brought by the State, or

_____ this is a contempt of court proceeding

Date May 15, 2000

Attorney for
C. HOLMES attorney for Plaintiff

* NOTE Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration

SCRCCA APP C-3

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 00-CP-10-1888

J Doe, M D ,)
Plaintiff,)

-vs-

S U M M O N S

(Jury Trial Requested)

Tenent HealthSystem Medical)
Inc , East Cooper Community)
Hospital, Inc , John Grady, M D)
Paul Yantis, M D , William Cone)
and Coastal Emergency)
Services, Inc ,)
Defendants)

FILED
2000 MAY 16 PM 4 28
JULIE J. ANTONIO
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint
in this action, a copy of which is herewith served upon you and to serve a copy of your
Answer upon the subscribers, at their offices at No 61 Broad Street, P O Box 9
Charleston, South Carolina 29402 within thirty (30) days after the service thereof,
exclusive of the day of such service, and if you fail to answer the Complaint within the
time aforesaid judgement by default will be rendered against you for the relief
demanded in the Complaint

C. HOLMES
Post Office Box 187
Sullivan's Island, South Carolina 29482-0187
(843) 883-3010

May 16, 2000

Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 00-CP-10- 1888

J Doe, M D ,)

Plaintiff,)

-vs-)

COMPLAINT

(Jury Trial Requested)

Tenet HealthSystem Medical)
Inc , East Cooper Community)
Hospital Inc , John Grady M D ,)
~~Paul Yantis, M D , William Cone,~~)
and Coastal Emergency)
Services Inc)

Defendants)

FILED
2000 MAY 16 PM 4 28
JULIE J ARMSTRONG
CLERK OF COURT

The Plaintiff proceeding pro se, complaining of the Defendants herein
would respectfully allege and show to this Honorable Court

PARTIES AND JURISDICTION

1 The Plaintiff is a medical doctor and a resident of the County of Charleston,
State of South Carolina

2 The Defendant East Cooper Community Hospital, Inc , d/b/a East Cooper
Regional Medical Center ("East Cooper" or the "Hospital") is upon information and belief
a corporation organized and existing under the laws of the State of South Carolina which
has its principal place of business and conducts its business of operating a hospital in the
County of Charleston, State of South Carolina

3 The Defendant Tenet HealthSystem Medical, Inc ("Tenet") is, upon

information and belief a corporation organized under and existing under the laws of the State other than the State of South Carolina which is engaged in the business of owning and operating hospitals and is the owner and operator of East Cooper as well as a corporation known as Tenet Physicians Services - East Cooper, which is engaged in the business of owning and operating medical practices including Best Care Physicians in the County of Charleston State of South Carolina

4 The Defendant John Grady M D is a medical doctor and a resident of the County of Charleston, State of South Carolina

5 The Defendant Paul Yantis, M D is a medical doctor and a resident of the County of Charleston, State of South Carolina

6 The Defendant William Cone is a resident of the County of Charleston, State of South Carolina

7 The Defendant Coastal Emergency Services, Inc , is, upon information and belief a corporation organized and existing under the laws of the State of South Carolina which has its principal place of business located in and conducts its business of staffing emergency room physicians at East Cooper Hospital in the County of Charleston, State of South Carolina

8 This Honorable Court has jurisdiction of the parties and subject matter of this action and venue is proper by reason of the Plaintiff's residence in at least one of the Defendant's residence in, and the acts or omission hereinafter complained of having occurred in the County of Charleston, State of South Carolina

FACTUAL ALLEGATIONS

9 East Cooper's affairs are governed by its Board of Directors (Board of Directors" or Board') which has the ultimate authority and responsibility for directing its affairs and operations. Licensed physicians and other health care providers may provide services to patients at East Cooper only upon being granted the requisite membership and clinical privileges by the Board upon recommendation of the Hospital's Medical Staff (Medical Staff") which is composed of all physicians and oral surgeons practicing at the Hospital. The Medical Staff is organized in conformity with a set of By-laws, but is subject to the ultimate authority of the Board

10 At all times mentioned herein, Plaintiff has been a licensed, practicing medical doctor in Charleston County, South Carolina. Plaintiff graduated from the Medical University of South Carolina with an M.D. degree in May of 1988, completed internship at the Medical College of Georgia, Augusta, in July of 1990, and completed ophthalmology residency training at the Storm Eye Institute, Medical University of South Carolina in July of 1993.

11 The Plaintiff applied for and was granted temporary medical staff privileges at East Cooper in early 1994, pending final review of Plaintiff's application and credentials. On July 25, 1994, Plaintiff was formally granted initial appointment to the Medical Staff in the Associate category, with provisional status, under the provisions of Art. IV, § 3(A) of the Hospital's bylaws in effect at the time, which, upon information and belief, were similar in most but not all, material respects to the Medical Staff By-laws adopted May 11, 1995 (the "By-laws"). At all relevant times, the Medical Staff was divided into the following

categories Active Associate, Courtesy Consulting, and Honorary (By-laws, Art IV §1)

12 Pursuant to Art III, § 3 B of the By-laws all initial appointment to the Medical Staff shall be for a period of 12 months and pursuant to Art III § 5 A all initial appointments to any category of the Medical Staff shall serve a provisional term until submission of the provisional certification form signed by the staff member's department chief The Plaintiff's provisional certification form was signed by the Chief of Surgery and submitted in 1995

~~13 At the time of Plaintiff's initial appointment the Associate Staff category~~
included 'physicians who are eligible for advancement to Active Staff membership and will in the ordinary course of events and *unless he requests otherwise*, be advanced to Active Staff status after serving not more than two (2) years on the Associate Staff and each of whom meet the qualifications specified for the members of the Active Staff ' (By-laws Art IV §3 A (emphasis added)) Associate Staff members could not vote on any matters represented at meetings or hold office on the Medical Staff or any department or committee By contrast, the Active Staff shall consist of physicians and oral surgeons who consult in connection with or attend or admit to the Hospital a minimum of twenty-four (24) patients per year " (By-laws, Art IV, §2 A) Active Staff members were also entitled to vote and hold office on the Medical staff or the department or committee of which he is a member ' (By-laws, Art IV § 2 B 3) 4)

14 By November 1994, the Plaintiff recognized that the care of young children, (ages 8, 3, and 1, at the time), while building a new, general ophthalmology practice, would make it difficult to meet the patient contact requirement for the Active medical staff and,

after consultation with the hospital's medical staff coordinator Plaintiff requested that not to be advanced to the Active Staff category and Plaintiff further requested and was granted a change to the Courtesy Staff category defined in Art IV § 4(A) of the By-laws At that time, the Courtesy Staff category permitted a physician to admit patients to the Hospital and to exercise clinical privileges but did not require a minimum number of patient contacts per year Also, Courtesy staff members were not required to attend meetings of the Medical staff

15 In July 1995, the Plaintiff completed the initial appointment and provisional year and was reappointed to the Courtesy staff category pursuant to Art III § 4(B) of the Bylaws, and the customary practices of the hospital, for a period of two (2) years Plaintiff rightfully relied upon the provisions of the By-laws and the customary practices of the Hospital and reasonably expected that the July 1995 reappointment would be for a two year period

16 Shortly thereafter, on July 20 1995, the Bylaws were amended by the Board of Directors of the Hospital to require that Courtesy staff members have Active staff privileges at another local hospital Plaintiff did not attend any meetings of the Medical Staff in which this change was discussed or approved, and, upon information and belief, no notice of the change was ever sent to Courtesy staff members affected by this change in the By-laws

17 Because Plaintiff was content with Courtesy Staff category and with the size and nature of the medical practice, and in reliance upon the By-laws in effect at the time of the July 1995 reappointment to the Medical Staff, specifically the prerogatives of the

Courtesy Staff category, Plaintiff elected to confine the medical practice to the Sullivans Island area and the Hospital. Plaintiff did not seek Active staff status at East Cooper, nor did she seek to expand her medical practice in an effort to meet or be able to meet the 24 patient contact requirement for the Active Staff category.

18 In violation of the Plaintiff's rights under the By-Laws and in contravention of her reasonable expectations based upon the By-laws of a two-year reappointment, Plaintiff was asked by the Medical Staff to submit updated credentials information in November of 1995 and further requested to submit an application for reappointment to the Courtesy medical staff in April of 1996. Plaintiff was provided with a form with the application which falsely stated that the effective date of the Bylaws change affecting Courtesy staff members was May 26, 1994. Plaintiff was misled by the false communication and erroneously believed that the July 1995 change to the Courtesy staff category may have been improper. On information and belief, other Medical Staff members were misled by this same false communication from the Hospital.

19 On April 22, 1996 the Plaintiff was advised the application for reappointment to the Courtesy medical staff could not be processed because the Plaintiff did not have privileges at another local hospital as required by Article IV, Section 4(A) of the Bylaws which, as explained above, had been amended after the Plaintiff's 1995-1997, two (2) year reappointment to the Courtesy medical staff in July of 1995.

20 Plaintiff consulted with the Medical Staff representatives and again made a request to continue Courtesy staff category through the end of the then current term. The Medical Staff denied this request and sought to impose upon Plaintiff the requirements of

the Active Staff, i.e. attending 50% of quarterly medical staff meetings and departmental meetings and have 24 patient contacts per year '

disproven 18
21 Plaintiff then requested reappointment to the Medical Staff with a requirement of 12 patient contacts, but this request was denied

del 19
22 In violation of the Plaintiff's rights and reasonable expectations under the Bylaws, and without following the reappointment procedures required by Article VI of the Bylaws, on August 19 1996 the Plaintiff was advised by the Hospital President that she had been appointed to the Associate Active staff category, ~~a category which did not exist~~ under the Bylaws

same 20
23 The Plaintiff requested an appeal of her appointment to the Associate Active medical staff category and subjection to the 24 patient contact requirement within one year but her request for an appeal was denied. The Plaintiff then requested an amendment to the Bylaws as suggested by the Hospital and Medical Staff representative to allow general practice ophthalmologists to maintain Active staff privileges with 12 patient contacts per year, and this request was also denied

same 21
24 Because reappointments are routinely for two years, upon being denied all appeals, Plaintiff wanted clarification on the length of the reappointment and when the 24 patient contact requirement would be imposed. Plaintiff discussed the reappointment with Kara L. Melin, the Medical Staff Coordinator in the Medical Staff office. Melin said that Associate Staff practitioners consistent with the Bylaws, have two years to meet the patient contact requirement. This statement was consistent with the Bylaws relating to Associate staff

25 Plaintiff reasonably relied upon this interpretation of the Bylaws by a trusted member of the medical staff office in arranging the medical practice in the following months

26 During the period of the Plaintiff's appointment, the Plaintiff leased office space from Durst & Durst Physicians, P A at the Durst Family Practice building located on Sullivan's Island pursuant to a Lease and Administrative Services Agreement ("Lease") entered into on November 1 1993 which provided the Plaintiff would receive patient scheduling patient reception and patient file maintenance, telephone services billing, and other administrative services in consideration of rent payments

27 In the Summer of 1994, the Hospital's then-current parent corporation, AMI purchased the assets of Durst & Durst Physicians, P A undertook the operation of the practice including the services the Plaintiff received under the terms of the Lease, and assumed all other obligations to the Plaintiff under the Lease In the Spring of 1995, Tenet purchased all AMI hospitals and medical practices, including East Cooper and Durst Family Medical Practice, and assumed all obligations to the Plaintiff under the Lease

28 The Plaintiff paid Durst Family Medicine, and its successors AMI and Tenet a monthly fee in addition to rent payments for Yellow Pages telephone listing under the category of "Physicians & Surgeons - Ophthalmologists "

29 On or about May 15, 1996, an agent or employee of Tenet, struck the Plaintiff's name from the renewal form for the Yellow Pages telephone listing for Durst Family Medicine without knowledge or consent of the Plaintiff, causing the Plaintiff's existing Yellow Pages listing to be deleted from the July 1996 telephone book The

deletion of the Plaintiff's Yellow Pages listing seriously compromised and hindered the Plaintiff's ability to meet the patient contact requirement improperly imposed upon the Plaintiff in violation of the Bylaws

30 Upon information and belief during the following year Tenet engaged in a course of conduct intended to and which did have a detrimental impact upon the Plaintiff's practice and ability to conduct the practice and meet the patient contact requirement improperly imposed upon the Plaintiff in violation of the Bylaws by instructing its agents and employees to divert established patients of Plaintiff to physicians employed by Durst

Family Medicine misinforming potential patients who specifically called for appointments with the Plaintiff or the ophthalmologist that they had to first see one of the primary care physicians employed by Durst Family Medicine and demanding an unreasonable and unconscionable 300% to 400% increase in the amount the Plaintiff was paying under the lease agreement for administrative services Upon information and belief, Tenet intended to augment the medical practice of Durst Family Medicine at the expense of the Plaintiff's medical practice

31 In October, 1996, at a Department of Surgery meeting, pursuant to complaints by other physicians, the Plaintiff learned that the Coastal Emergency Services, Inc through its ER physicians was not using the ER call list properly Specifically, there were some physicians who were never called when they were listed as covering ER call Though the Plaintiff was on the call list, there was not one opportunity for a patient contact through ER call

32 By letter dated August 19, 1997 the Hospital advised the Plaintiff that the

Chairman of the Credentials Committee Paul Yantis had appointed the Plaintiff to Consulting Staff category and had terminated all admitting privileges. The Hospital's action, taken without notice or any opportunity to be heard, was a violation of the Plaintiff's constitutional rights and rights under the Bylaws because the Hospital failed to follow the reappointment procedures required by Art. IV § 2 and Art. III, § 7 of the Bylaws. The action also violated Art. VI § 4 C of the Bylaws, which provide that the Credentials Committee has only the authority to recommend appointments and does not have the authority to summarily terminate a physician's admitting privileges.

33 Further, the Hospital allowed John Grady, M.D., an ophthalmologist in direct economic competition with the Plaintiff, to participate in the Credentials Committee meeting of August 13, 1997 at which time, upon information and belief and as set forth in minutes of the Medical Staff committee meetings, he improperly urged the committee to allow the Plaintiff only a medical (non-surgical) ophthalmology practice with referral of surgical cases to another physician with the purpose and intent of restraining and preventing the Plaintiff from practicing ophthalmology, of destroying a competing ophthalmology practice, and to financially benefit himself.

34 The Plaintiff attempted to appeal the unauthorized reduction in Medical Staff category to the Consulting Staff and the improper termination of hospital admitting privileges but on September 4, 1997 the Plaintiff was advised the letter of August 19, 1997 was in error. (Plaintiff was not even heard)

35 By letter dated September 16, 1997 the Hospital advised that the Plaintiff's admitting privileges were again terminated causing irreparable damage to the Plaintiff's

reputation interfering with ability to provide patient care, and further hindering any possibility that the Plaintiff would be able to meet the patient contact requirement within the two year time frame normally afforded to practitioners at the Hospital. The Hospital's action was in violation of Art. IX and the Fair Hearing Plan and Appellate Review Procedure of the Bylaws, which provide such action can only be taken by the Hospital's Board after exhaustion of the appeal process.

36 By letter dated October 1, 1997, the Hospital refused to allow the Plaintiff to ~~schedule and perform surgery on an established patient.~~ The Hospital's improper termination of the Plaintiff's admitting privileges continued until late November, 1997, causing continuing irreparable damage to the Plaintiff's reputation, patient care, and ability to meet the patient contact requirement, when the Plaintiff's hospital admitting privileges were restored pending appeal to the Board.

37 Effective December 1, 1997, Tenet changed the answering service for Durst Family Medicine and failed to advise the new service of Plaintiff's joint telephone listing with Durst Family Medicine. Tenet failed to notify the Plaintiff of the change in the answering service, and Plaintiff was left without answering services during most of December 1997.

38 Plaintiff appealed the September 24, 1997 action of the MEC, and was eventually granted a hearing before the Medical Review Committee ("MRC") of the Medical Staff. For this hearing, the Hospital refused to produce documents, refused to produce critical witnesses for the Plaintiff including Kara Melin and Shirley T. Thomas, who on information and belief terminated Plaintiff's Yellow Page listing. Upon information and

belief the Hospital falsely and improperly represented to another witness that he must cooperate with the Hospital and submit an affidavit, and testify or he could be subpoenaed

Sumner
36

39 The unauthorized and improper actions of the MEC in reducing Plaintiff's staff category and terminating Plaintiff's admitting privileges were not overturned by the MRC, which failed to make findings of fact and include recommendations as required by the Bylaws. The Board of Directors refused to allow the Plaintiff and/or counsel to appear at the appellate hearing and refused to allow the Plaintiff or counsel to review ~~documentation and evidence presented to the Board.~~

ditto
37

40 On information and belief, in December 1998, Defendant's agent William (Bill) Cone, while acting within the course and scope of his employment, told an established patient of Plaintiff, that the patient should not seek Plaintiff's care as an ophthalmologist. Specifically, Cone told the Plaintiff's patient, "I know who you should not see and that is Dr. J. Doe." At this time, the Plaintiff learned that in 1994 when the Plaintiff submitted an application for privileges, Cone stated that the Plaintiff "bought his/her medical education." Cone made other derogatory comments regarding Plaintiff in 1994.

Sumner
38

41 Due solely to the Hospital's improper application of the By-laws to Plaintiff, Plaintiff currently has no admitting privileges. The hospital has admitted that there is no competency, professional judgment, or other patient care issues. Plaintiff now has at least four patients who need and require surgical procedures but Plaintiff is unable to perform such procedures. The unjustified loss of admitting privileges continues to cause irreparable damage to the Plaintiff's professional reputation and medical practice.

**For a First Cause of Action Against All Defendants
(Arrangements Lessening Competition)**

42 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

43 Pursuant to S C Code § 39-3-10 Defendants' actions constitute an arrangement that lessens and negatively affects the full and free competition in a branch of trade business or commerce and is, therefore against public policy, unlawful, and void

44 Plaintiff has suffered damages as a direct and proximate result of the Defendants unlawful arrangement lessening competition and is entitled to recover her actual damages and costs

**For A Second Cause Of Action Against Defendant East Cooper
(Wrongful Termination Of Hospital Privileges)**

45 The public's interest in the quality of hospital care is furthered by maintaining the Plaintiff's ability to practice medicine, including surgical procedures, within the Hospital

46 The Hospital owes a duty to the public and the members of the Medical Staff to scrupulously follow the Bylaws provisions governing a hospital's award, limitation, or revocation of medical staff privileges

47 The Hospital failed to follow the Bylaws provisions with respect to Plaintiff and the Bylaws, as applied to Plaintiff, are arbitrary and capricious

48 The Hospital's actions accomplish improper retroactive application of Bylaw provisions not yet in effect and not adopted until 10/7/97

49 Plaintiff has suffered damages by the wrongful, arbitrary, and capricious

actions of the Hospital and the unauthorized and unwarranted termination of Plaintiff's admitting privileges

**For A Third Cause Of Action Against Defendant East Cooper
(Breach of Contract)**

50 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

51 The Bylaws of the Medical Staff constitute a valid, binding and enforceable contract between the Plaintiff and the Hospital

52 The Hospital has violated the provisions of the Bylaws by the arbitrary and capricious application of certain provisions to the Plaintiff, and the unwarranted termination of her admitting privileges

53 Plaintiff has suffered damages as a direct and proximate result of the Hospital's actions in violation of the Bylaws and is entitled to recover her direct and consequential damages in an amount to be determined at trial as well as the costs of this action

**For A Fourth Cause of Action Against Defendants Tenet And East Cooper
(Breach of Contract Accompanied by a Fraudulent Act)**

54 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

55 On information and belief, Defendant Hospital committed material breaches of the Bylaws and its contractual duties to Plaintiff

56 On information and belief, Defendant Tenet committed material breaches of the Lease Agreement and its contractual duties to Plaintiff

57 On information and belief these Defendants' material breaches of contract were accompanied by dishonest, unfair, and improper acts as set forth herein

58 As a direct and proximate result of Defendants' breaches of contract accompanied by fraudulent acts, Plaintiff has suffered, and is entitled to recover, actual, compensatory, and consequential damages, in an amount to be determined at trial, as well as punitive damages, interest, and costs

**For A Fifth Cause Of Action Against Tenent and East Cooper
(Slander)**

59 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

60 Defendants through their agent Bill Cone, have made statements regarding the Plaintiff which had a defamatory meaning

61 Defendants' statements were false and made with actual or implied malice to others

62 Plaintiff has suffered special damages to her professional and personal reputation as a direct and proximate result of Defendants' defamatory statements and is entitled to recover from Defendants its actual damages, as well as punitive damages and costs

**For A Sixth Cause Of Action Against All Defendants
(Civil Conspiracy)**

63 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

64 Upon information and belief, Defendants willfully and unjustifiably conspired

together to commit the breaches, torts, unfair and deceptive acts, and other violations of duty alleged herein in order to harm Plaintiff and Defendants engaged in overt acts to carry out their conspiracy

65 As a direct and proximate result of Defendants' conspiracy and their overt acts in connection therewith, Plaintiff suffered special damages and is entitled to recover from Defendants its actual damages as well as punitive damages and costs

**For A Seventh Cause of Action Against All Defendants
(Unfair Trade Practices)**

66 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

67 This cause of action arises under the south Carolina Unfair Trade Practices Act ("SCUTPA"), S C Code Ann § 39-5-10 *et seq*

68 On information and belief, Defendants are engaged in trade and commerce and the facts complained of herein occurred in the ordinary course of Defendants' businesses and are capable of repetition and affect the public interest

69 On information and belief, Defendants knowingly and willfully engaged in unfair methods of competition or unfair and deceptive acts and practices in the conduct of trade or commerce within the meaning of the SCUTPA which, if not enjoined are likely to recur and which has affected, and will continue to affect, the public interest

70 On information and belief, Defendants knew or should have known, that the conduct complained of herein constituted unfair methods of competition or unfair or deceptive acts or practices in the conduct of trade or commerce

71 As a direct and proximate result of Defendants' violations of the SCUTPA, Plaintiff has suffered, and is entitled to recover, actual damages attorneys fees, and costs

72 On information and belief, Defendants violations of the SCUTPA were willful and knowing, and Plaintiff is entitled to recover three times her actual damages, attorneys' fees, and costs

73 As a direct and proximate result of Defendants violations of the SCUTPA, Plaintiff has also suffered ~~immediate and irreparable harm and is entitled to a~~ preliminary injunction and a permanent injunction in accordance with its First Cause of Action

**For An Eighth Cause Of Action Against All Defendants
(Interference With Existing Contractual Relations)**

74 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

75 By means of the acts described in the preceding paragraphs of this Complaint, Defendants have intentionally, and without justification, interfered, and continue to interfere, with Plaintiff's contractual relations and physician-patient relationship with established patients who now need or may in the future need surgical procedures

76 As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered, and is entitled to recover, actual damages in an amount to be determined at trial, as well as punitive damages, interest, and costs

**For a Ninth Cause Of Action Against All Defendants
(Interference With Prospective Contractual Relations)**

77 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

78 By means of the acts described in the preceding paragraphs of this Complaint, Defendants have intentionally, and without justification, interfered and continue to interfere, with Plaintiff's prospective contractual relations with patients who now need or may in the future need Plaintiff's medical services and surgical procedures

79 Upon information and belief, Defendants' acts of interference with Plaintiff's physician-patient relationship were made for an improper purpose or by improper methods

80 As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered and is entitled to recover actual damages in an amount to be determined at trial, as well as punitive damages, interest, and costs

**For A Tenth Cause Of Action Against Defendant East Cooper
(Promissory Estoppel)**

81 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

82 Defendant agent and employee, Kara Melin, made an unambiguous representation to Plaintiff that Defendant East Cooper had allowed additional time to others in the past and would allow additional time to meet the patient contact requirement

83 Plaintiff was injured when she reasonably relied on this promise by maintaining her privileges at East Cooper and by forgoing earlier opportunities to apply for appointment to the medical staff at other area hospitals

84 This reliance was both expected and foreseeable by Defendant

85 As a direct and proximate result of Defendants' wrongful acts Plaintiff has suffered damages which she is entitled to recover

**For An Eleventh Cause Of Action Against Defendant East Cooper
(Violation Of South Carolina "Provider Self-Referral Act")**

86 Plaintiff realleges and incorporates herein by reference the foregoing allegations, as well as the allegations that follow this cause of action

87 Defendants' By-laws provision which conditions Active Staff membership and hospital admitting and surgical privileges on the requirement that the physician admit at least 24 patients per year to the Hospital is a violation of the South Carolina 'Provider Self-Referral Act,' S C Code § 44-113-10, et seq

88 Because these By-Laws provisions contravene state law, they should be declared null and void by this Court, and the Hospital should be permanently enjoined from applying this By-laws provision to Plaintiff and others

PRAYER FOR RELIEF

THEREFORE, for the reasons set forth above, Plaintiff prays that judgment be entered in the Plaintiff's favor against Defendants for the following

- a Equitable relief, including a preliminary injunction and permanent injunction restraining and enjoining Defendants from improperly

depriving Plaintiff's hospital admitting privileges,

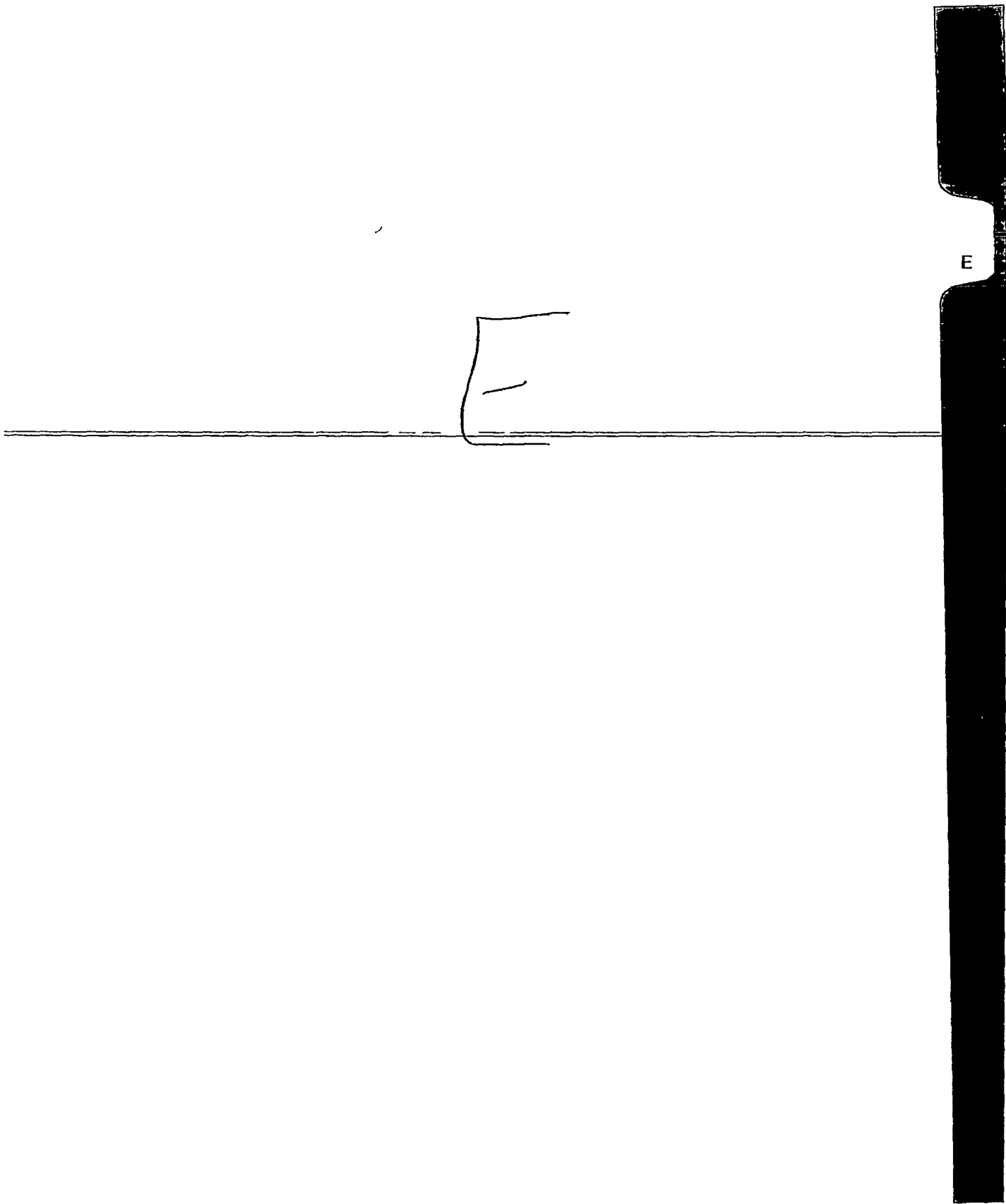
- b Actual compensatory, and consequential damages, including past and future lost profits and lost opportunity costs
- c Treble damages and attorneys' fees in accordance with the SCUTPA,
- d Punitive damages
- e The costs of this action,

~~Such other and further relief as this Court may deem just and~~
proper


C HOLMES
Post Office Box 187
Sullivan's Island, South Carolina 29482-0187
(843) 883-3010

May 15, 2000

Charleston, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
DOCKET NO 00-CP-10-1888

CYNTHIA C HOLMES M D

TRANSCRIPT OF PROCEEDINGS

Plaintiff,

October 29, 2002
Charleston, South Carolina

VS

TENENT HEALTHSYSTEM MEDICAL,
et al,

Defendants

BEFORE

THE HONORABLE A VICTOR RAWL Judge

APPEARANCES

MERRILL BOND, ESQ

- and -

RICHARD L DUNCAN, ESQ
ATTORNEYS FOR PLAINTIFF

E DOUGLAS PRATT-THOMAS, ESQ
ATTORNEY FOR DEFENDANT EAST COOPER

LINDSAY K SMITH YANCEY, ESQ
ATTORNEY FOR DEFENDANTS

HEATHER GAYLE BURNS, RDR
RESIDENT COURT REPORTER
9TH JUDICIAL CIRCUIT



1 THE COURT On the record please
2 Mr Pratt-Thomas, you indicated to me this
3 morning that this case had been resolved
4 Would you tell me the circumstances, please,
5 sir?

6 MR PRATT-THOMAS Yes, sir, your
7 Honor As your Honor knows, we were involved
~~8 with, in your auspices of your office~~
9 yesterday for many hours in settlement
10 negotiations Those continued into the
11 evening hours and approximately 8 30 or nine
12 o'clock last night I was contacted by
13 plaintiff's counsel and told of an agreement
14 to settle the case, an offer to settle the
15 case along the following lines, that we
16 had -- the defendants would agree to pay to
17 the plaintiff, if I could say it this way,
18 your Honor, a sum of money that had been
19 agreed to -- I'll be glad to show this to
20 your Honor, but part of the terms and
21 conditions of the settlement were agreed to
22 be and remain confidential, that Dr Holmes
23 would be reappointed to the consulting staff
24 of East Cooper Hospital for a term of two
25 years and she shall have the right to apply

1 for a change of status in accordance with the
2 bylaws

3 The defendants agreed that they and
4 their agents, servants, and employees shall
5 not say or do anything detrimental to Dr
6 Holmes obtaining privileges elsewhere If
7 asked they will say about this dispute that

~~8 there came a time when she did not have~~
9 sufficient number of patient contacts, that
10 this resulted in her change of status to
11 consulting and that this had nothing to do
12 with her professional conduct

13 Those words were read to me last night
14 as part of the offer I contacted Mr Jack
15 Dusenberry, who is the president and C E O
16 of the hospital, and got his consent or
17 permission to settle the case along those
18 terms I contacted Dr Paul Yantis, who is
19 not only a defendant in this case but
20 chairman of the credentials committee of East
21 Cooper Hospital and got his consent I
22 called Dr John Langley, who's the chief of
23 staff of the medical staff of the East Cooper
24 Hospital, who had previously been given
25 authority by the medical staff, delegated the

1 authority to negotiate the terms in this
2 case He agreed Dr Langley was one of the
3 witnesses that I was planning to call I
4 released him from his subpoena when we had
5 the deal

6 I called Mr Duncan back and I told
7 him do you -- I asked him specifically during
8 these conversations, ~~"Do you have authority~~
9 from Dr Holmes to settle the case according
10 to these terms?"

11 He was -- I was told by her legal
12 representative that he had such authority
13 We accepted on behalf of the defendants The
14 deal was done I arrived at the office this
15 morning I've asked my staff to start
16 releasing witnesses, most of whom are doctors
17 who had surgeries and other things scheduled
18 during the week, from their subpoenas I
19 asked the defendants to come here today only
20 out of courtesy to the Court because I knew
21 we would be putting a settlement on the
22 record and asked them in respect to the Court
23 to come out here and to make an appearance
24 today so if you wanted to ask each one of
25 them do they consent, they would be here to

1 say so

2 And so it's my understanding now that
3 the plaintiff is trying to change the terms
4 of this settlement and wants to renegotiate
5 it We move that this settlement be
6 enforced It's a deal Her legal
7 representatives have the authority, et

8 ~~cetera~~

9 THE COURT Mr Duncan, Mr Duncan --

10 MR DUNCAN Your Honor, we had a deal
11 last night and Mr Pratt-Thomas has stated
12 the terms and conditions correctly of the
13 deal that we reached and I had authority to
14 make that deal I was given that by my
15 client

16 THE COURT You agree with that,
17 Mr Bond?

18 MR BOND Yes, your Honor, I do

19 THE COURT Dr Holmes, do you
20 disagree with that?

21 DR HOLMES I had requested an
22 explanation of the circumstances and was
23 denied that

24 THE COURT Explanation about what
25 circumstances? What circumstances?

1 DR HOLMES About what has been
2 described this morning

3 THE COURT Did you or did you not
4 give your attorneys last night terms and
5 conditions to present to the defendant to
6 resolve this case?

7 DR HOLMES Yes, I did

~~8 THE COURT Thank you Let the record~~
9 reflect that this is a very difficult
10 dispute The reason it is most difficult is,
11 one, it deals with professionalism in the
12 medical field and deals in a very unique and
13 difficult and normally protected field of
14 endeavor with regard to information, that is
15 credentialing committees, hospital boards,
16 staffs that are designed to protect both the
17 physician's professional reputation as well
18 as the hospital's right to have some control
19 over the quality of medical care provided and
20 of course the patients' ability to receive
21 said care

22 I am well aware of the fact that
23 insurance issues are involved I am very,
24 very, very cognizant of the fact that when
25 you go to trial in a jury setting the only

1 thing that can be achieved in a case like
2 this is either the award by jury of money or
3 the denial of jury by money, or denial of
4 money by jury

5 The bottom line is there is no way
6 that a jury can deal with issues of
7 accreditation, issues of privileges, issues
~~8 of reinstatement in this kind of environment~~

9 Now let the record further reflect
10 that as of yesterday at the request of the
11 Court with the consent of the parties, I
12 entered into an attempt to try to resolve
13 this case knowing full well that what the
14 plaintiff was requesting was impossible for a
15 jury to be able to achieve, even if they
16 found entirely her way We went round and
17 round Every time I thought we had achieved
18 something, it broke down It broke down
19 because of issues that the jury could not
20 deal with, and that is questions of status in
21 terms of privileges, questions of C L E
22 hours, questions of peer review, for lack of
23 a better term

24 And, quite frankly, I told parties for
25 both sides either this case was going to

1 trial at nine o'clock this morning or it was
2 going to be resolved Now, I'm going to
3 retain jurisdiction to enforce this
4 settlement that has been reached I find the
5 settlement very much in the best interests of
6 the plaintiff I find the settlement very
7 much in the best interests of the defense

~~8 No one in the medical field, legal field,~~
9 dental field, priest field, or any other
10 field of professional endeavor needs to have
11 dirty laundry, if any, aired in public, and
12 that's exactly what would occur had this case
13 gone to trial

14 The issues of reputation, the issues
15 of libel and slander, the issues of
16 credibility, all would be presented to the
17 jury of twelve people They could not have
18 solved the problem, period

19 I am retaining jurisdiction to enforce
20 the settlement which has been agreed to by
21 both sides, and I so find Thank you very
22 much

23 MR DUNCAN Thank you, Judge

(24 THE COURT Good luck to everyone and
25 thank you for your hard work

1 MR BOND Thank you, your Honor
2 MR PRATT-THOMAS Thank you, your
3 Honor We appreciate your effort
4 (Whereupon, the matter was concluded)
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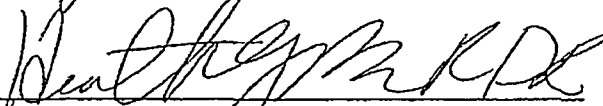
CERTIFICATION

I the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true accurate, and complete transcript of the proceedings in the captioned case relative to appeal, heard in the Court of Common Pleas for Charleston County South Carolina on the 29th day of October 2002

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

DATED

January 9, 2003


HEATHER GAYLE BURNS, R D R
Official Court Reporter

F

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
DOCKET NO 00-CP-10-1888

CYNTHIA C HOLMES M D ,

Plaintiff

VS

TRANSCRIPT OF PROCEEDINGS

January 7, 2003
Charleston, South Carolina

TENENT HEALTHSYSTEM MEDICAL
et al,

Defendants

BEFORE

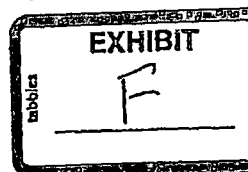
THE HONORABLE A VICTOR RAWL Judge

APPEARANCES

TIFFANY R SPANN-WILDER, ESQ
ATTORNEY FOR PLAINTIFF

E DOUGLAS PRATT-THOMAS, ESQ
ATTORNEY FOR DEFENDANTS

HEATHER GAYLE BURNS, RDR
RESIDENT COURT REPORTER
9TH JUDICIAL CIRCUIT



1 THE COURT All right,

2 Mr Pratt-Thomas, please, sir

3 MR PRATT-THOMAS Good morning, your
4 Honor

5 THE COURT Good morning, sir

6 MR PRATT-THOMAS Your Honor, we're
7 here pursuant to defendant's motion to

8 ~~compel The settlement has already been~~

9 approved, but to compel plaintiff to sign the
10 settlement agreement and release that's been
11 submitted to her through her counsel And if
12 I could approach, so we can kind of read off
13 the same materials

14 THE COURT Certainly Certainly

15 MR PRATT-THOMAS What I'm handing up
16 to the Court at this time is the settlement
17 agreement that was typed up the morning, as
18 you recall we settled this case on October
19 the twenty-ninth This set forth the basic
20 terms of the settlement that was read into
21 the record at that time, and then this is the
22 settlement agreement and release

23 THE COURT I have a copy

24 MR PRATT-THOMAS Well, there's been
25 a -- there was a typo that was pointed out to

1 me so it's now -- the typos have been
2 corrected and that's the document we're
3 working off of

4 And, your Honor, from the defendant's
5 perspective as you will recall, just for the
6 record, this suit was filed in May of 1999
7 and alleged causes of action against the
~~8 defendants with regards to the plaintiff's or~~
9 allegations that she had wrongfully been
10 demoted in her privilege status at the
11 hospital, and in general terms there was
12 allegations of tortious interference with her
13 private practice The suit was filed in May
14 of 1999 but there was testimony prepared to
15 be presented and it was my understanding at
16 all times, as you know your Honor was
17 involved in the settlement negotiations in
18 this case, that Dr Holmes was alleging that
19 the wrongful termination -- if I could use
20 that generic term -- of her privileges or
21 diminution of her privileges had happened in
22 the past and was continuing In other words,
23 that she was consulting and she was, as we
24 stood in the trial in the courtroom in 2002,
25 there were allegations that her

1 reappointments since the filing of the
2 complaint in 1999 were also wrongful and that
3 she was entitled to a different status of
4 privileges than had been granted to her by
5 the hospital

6 So when we agreed on this settlement,
7 we agreed to pay her a sum of money as set

~~8 forth in that agreement. And looking, the~~
9 first couple of paragraphs as you can see on
10 this release, your Honor, are just
11 identifying the parties and the fact that
12 there was a lawsuit with the civil action
13 number and the second paragraph is the usual
14 paragraph that there is controversies and
15 disputes that exist, that everybody
16 recognizes there was risk to go forward to
17 trial and because of that we were going to
18 settle the case So the consideration
19 paragraph talks about the amount of money to
20 be paid, and then it has some -- as part of
21 the consideration of settlement of the case
22 it had two subparagraphs, and as you'll
23 notice in subparagraph one it was agreed that
24 she would be reappointed in 2002 to the
25 consulting status of medical staff of East

1 Cooper Regional Medical Center for a term of
2 two years and she shall have the right to
3 apply for a change of status in accordance
4 with the medical staff bylaws in effect at
5 the time of any such request

6 That document and kind of the history
7 of this after we settled the case and you
~~8 approved it in the courtroom on October -- I~~
9 think it was the twenty-ninth I --
10 thirty-first, excuse me, I sent a copy of the
11 proposed settlement agreement and release to
12 Mr Duncan and Mr Bond as her attorneys of
13 record to make sure they agreed that it
14 accurately contemplated or accurately
15 reflected the agreed-upon settlement

16 They indicated to me at that time, and
17 with some minor changes we discussed at that
18 time, that it was in accordance with their
19 understanding of the settlement And, for
20 example, I think that this is going to come
21 up, in paragraph one, it is a little bit more
22 definitive saying she shall be reappointed in
23 2002 If you look at the settlement
24 agreement that we read in the Court it just
25 says that she shall be reappointed to

1 consulting status for a period of two years
2 It was silent as to when that appointment
3 would actually take place So in talking to
4 Mr Duncan at the time we added "shall be
5 reappointed in 2002" to make it clear in
6 fairness to the plaintiff that we were
7 agreeing to reappoint her in 2002, not at

~~8 some unknown date into the future, to~~
9 consulting status And that she had a right
10 to reapply for changes in accordance with the
11 medical staff bylaws And Mr Duncan and I
12 agreed that in protection for both parties
13 that it should be clear that it was in effect
14 at the time of any such request, meaning that
15 if she asked for a change of status in 2003,
16 for example, that she would be bound by the
17 bylaws that were in effect in 2003 as opposed
18 to some earlier version of the bylaws,
19 because as your Honor knows, they are often
20 amended

21 The second paragraph of subparagraph
22 two is verbatim to the language that was read
23 into the record about not doing anything
24 detrimental with regards to her obtaining
25 privileges elsewhere The release otherwise

1 is pretty general as you can -- standard as
2 you can see

3 I think the next issue in controversy
4 if you read the paragraph following
5 subparagraph two, it says "she releases any
6 and all claims which may result as alleged in
7 the lawsuit and any claims that she may have
8 ~~prior to the date of this settlement on~~
9 October twenty-nine, 2002 "

10 As your Honor will recall in the
11 settlement negotiations that you participated
12 in, there was ongoing allegations of wrongful
13 conduct by the defendants after the filing of
14 the complaint in May of 1999, meaning that
15 her privileges -- there was ongoing wrong
16 duties -- wrong-doing with regard to her
17 privilege status and there was ongoing
18 tortious interference with her practice after
19 the filing of the complaint As your Honor
20 knows in those settlement negotiations what
21 my client wanted to do was get some idea that
22 this case was settled and behind them

23 With Mr Duncan's approval October
24 twenty-nine, 2002 was added in the release to
25 make it clear that this ends any and all

1 claims that may exist prior to the date this
2 case was settled on the second day of trial

3 The rest of the language I don't
4 believe -- from the defendant's perspective,
5 is pretty general about it being a general
6 release Everybody bears their own
7 attorney's fees They agreed it will be -- I

~~8 called it an order of discontinuance. I~~
9 understand Dr Holmes wants that to be order
10 of dismissal That's fine with me I'm of
11 the old school and it's an order of
12 discontinuance And otherwise there was an
13 agreement as to confidentiality

14 Since this agreement, this settlement
15 agreement was sent to the plaintiff's
16 counsel, again on October thirty-first, 2002
17 for their approval of the wording I was
18 advised that they approved

19 On November fifteenth, 2002 I sent to
20 plaintiff's counsel, Mr Bond and Mr Duncan,
21 the settlement agreement and general release
22 in full I sent to them an order of
23 discontinuance Again if they want to call
24 it an order of dismissal, that's fine with
25 me And I sent to them a settlement check in

1 the agreed amount as set forth in that
2 agreement

3 Since that time Dr Holmes has refused
4 to sign this settlement agreement, has
5 submitted to me several other versions of a
6 settlement agreement that she would prefer be
7 signed We have objected because it's not in
8 ~~accordance with the agreed-upon settlement at~~
9 the time

10 She has now pursuant to the agreement
11 been reappointed in December of nineteen --
12 excuse me December of 2002 to the
13 consulting staff It is our position that
14 we've lived up to our obligations under this
15 settlement agreement We've reappointed her
16 We've done nothing detrimental and lived up
17 to the language in regards to any privileges
18 that she's seeking in any other hospital We
19 sent the check We sent a release which we
20 believe contemplates the agreement of the
21 parties upon the settlement

22 If I could add, if you recall when you
23 approved this settlement you retained
24 jurisdiction over the settlement in case if a
25 controversy such as this would arise, and

1 we're before you asking that you order that
2 the release be executed and that her attorney
3 sign the order of dismissal with prejudice

4 THE COURT Yes, ma'am

5 MS SPANN-WILDER Good morning, your
6 Honor Tiffany Spann-Wilder, a limited
7 appearance for the plaintiff in this matter

~~8 Your Honor, I have appeared in motions~~

9 on this case I was not an attorney as part
10 of the actual trial and the negotiations that
11 led to this As your Honor can see from the
12 transcript and even from the terms of the
13 settlement agreement that Mr Pratt-Thomas
14 passed up, some of the language was pretty
15 loose and it was the plaintiff's
16 understanding that when the actual settlement
17 would come across that if there were any
18 terms that needed elaboration or if there
19 were any concerns about taking something out,
20 that there would be a dialogue between the
21 parties, and apparently that has not taken
22 place

23 I've passed up a copy of the
24 settlement agreement and general release in
25 full that the plaintiff has submitted as this

1 is the second one that was submitted after
2 the letter being reinstated to the hospital

3 Your Honor, Mr Pratt-Thomas has
4 pointed out most of the issues that the
5 plaintiff does have In the subparagraph
6 one, the plaintiff is just merely asking that
7 the language from the settlement agreement

~~8 that you have before you that was read into~~
9 the record be substituted in this paragraph
10 one and that an additional sentence be added
11 that all parties, the releasor, the releasee,
12 act in good faith in this dealing

13 And, your Honor, in effect that takes
14 out that language at the very end after the
15 word "bylaws", which states in effect at the
16 time of any such request, and so by putting
17 in what was read into the record that that is
18 the plaintiff's contention in that matter

19 Your Honor, in subparagraph two, the
20 language that Mr Pratt-Thomas has submitted
21 is the general language that is often used,
22 but the plaintiff has asked for a further
23 elaboration due to the nature of this claim,
24 that all of the parties who could possibly
25 come into contact with anyone asking about

1 her privilege status would be bound by this,
2 and so it's a further elaboration stating
3 "representatives, subsidiaries, parent
4 corporation, affiliates, and partners,
5 predecessors," just anyone who could have had
6 any dealing in this matter and might be asked
7 about her credentialing process, and so this

~~8 is an elaboration. It doesn't change~~

9 anything It's just asking for further
10 clarification in the matter

11 Then, your Honor, in the paragraph
12 right below subparagraph two, it is stating
13 for an agreement of items, that the release
14 as to matters known and unknown It's the
15 plaintiff's understanding that in agreeing to
16 settle and resolve the case that the lawsuit
17 itself was to be dismissed, but not that any
18 items that she was unaware of be written off
19 She is leary of signing a waiver of rights to
20 any further action if it is found out that
21 something else has taken place and she has
22 signed a document blindly without that
23 knowledge It's the equivalent as far as I
24 can relate it to a patient signing a release
25 before surgery that whatever happens, they

1 have no recourse against the doctor and a
2 year later finds out that the scalpel is
3 still inside And so Dr Holmes does have
4 serious concerns about that

5 Then, your Honor, on page four,
6 subparagraph two, which talks about
7 nondisclosure of the terms of the agreement,
8 ~~the plaintiff's first position at this point~~
9 is that that matter is moot as in filing the
10 motion to compel the actual settlement
11 agreement excluding the dollar amount for the
12 settlement has been published already through
13 the clerk's office The plaintiff's
14 understanding is that there would have been
15 some dialogue and if there had been dialogue,
16 the motion to compel would not have needed to
17 be filed, but at this point it has been and
18 so the settlement is, is public knowledge at
19 this point The plaintiff will gladly agree
20 to nondisclosure of the settlement amount as
21 the terms have already been, been provided

22 And then, your Honor, there's a matter
23 of public interest as to the nondisclosure,
24 and I don't believe I've passed this up and I
25 don't have the extra copy I'll allow

1 Mr Pratt-Thomas to look at this and pass up
2 to your Honor, if you'd allow The A M A
3 has called on the Office of Inspector General
4 to assist in gathering information about
5 restrictive credentialing processes by
6 hospitals and health care corporations which
7 have been done to stifle competitors and to,
8 ~~and to doctors who don't practice within~~
9 their network

10 As the allegations in this lawsuit
11 definitely center on those types of
12 practices, the plaintiff wants to be able to
13 give her response to the A M A and the
14 O I G about what's happened in this regard
15 so that, one, it doesn't happen again to any
16 other doctors and, two, that these matters
17 won't have to come before the court again
18 As your Honor stated at the, at the time of
19 trial when this matter was being put on
20 record, that a lot of the issues before the
21 Court weren't necessarily things that a jury
22 could decide or that you had the jurisdiction
23 to, to decide And so by her being allowed
24 to participate in these open discussions, it
25 would make for a better situation down the

1 road, that these issues won't have to be
2 before the Court And so if the Court does
3 not determine by the publishing at this point
4 that the nondisclosure is actually moot,
5 definitely that there is a great public
6 interest in sharing what her experience has
7 been, to prevent future issues

8 ~~And, your Honor, that is pretty much~~
9 the extent I'd like to pass up this request
10 by the A M A We have no problems to the
11 nondisclosure of the settlement amount, but
12 as to the other terms there is concern

13 THE COURT Yes, sir Anything
14 further?

15 MR PRATT-THOMAS Just a couple of
16 comments if I could, your Honor You have
17 before you the draft settlement agreement
18 that was faxed to me by plaintiff's counsel
19 on the morning of October twenty-ninth when
20 we agreed to settle this case, and this was
21 the plaintiff's offer which we accepted And
22 plaintiff says that she wanted the terms and
23 conditions of the settlement to remain
24 confidential, and we agreed to it So we
25 agree also We think that was agreed to We

1 accepted it It's confidential This is not
2 normally, it would be a case that would be
3 brought before the Court for approval of the
4 settlement I know the Court is -- the
5 Supreme Court has been frowning on
6 confidential settlements But be that as it
7 may, that's how that came into being

~~8 I don't think any desire Dr. Holmes~~

9 has to report to the A I G or O I G
10 about any of the issues that they've
11 submitted up has anything to do with her
12 revealing the terms of this settlement

13 And just on the confidentiality, the
14 release was sent It was approved by her
15 attorneys I was forced to file a motion to
16 compel I don't think the fact when I filed
17 a motion to compel I had to give your Honor a
18 copy of the document that's in dispute means
19 that I'm so-to-speak without clean hands in
20 breaching any confidentiality agreement She
21 refused to sign the settlement that was
22 approved by her attorneys

23 But we've -- you know, we had a deal
24 We want the deal to be the deal And she's
25 changing the terms I've received two

1 revised agreements since that time The
2 paragraph that she submitted to you changes
3 significantly what we agreed that we would or
4 would not do with regards to any inquiries
5 and in fact their paragraph says that we
6 shall -- you know, the agreement was if she
7 applied for privileges elsewhere we would not

~~8 do anything that would harm her as~~
9 contemplated in that agreement The one she
10 submitted says we will not say or do anything
11 detrimental to the releasor obtaining
12 privileges, period, which means that if she
13 came up for review before the credentials
14 committee at East Cooper Regional Medical
15 Center we could not discuss her case at this
16 hospital It was elsewhere The whole point
17 of all that was if she wanted to go to Roper,
18 if she wanted to go to Saint Francis, we
19 won't do anything detrimental to jeopardize
20 her ability So we think the agreement that
21 I've submitted to the Court and submitted to
22 the plaintiff's counsel and had her approval
23 or at least her previous counsel is the
24 agreement and she needs to sign it

25 THE COURT Anything further,

1 Miss Spann-Wilder?

2 MS SPANN-WILDER Your Honor, this
3 subparagraph two, the hospital sent a letter
4 and I did not have a copy of that with me
5 today, which pretty much details this exact
6 same language to Dr Holmes, assuring her
7 that in terms of moving to another hospital,

~~8 that she would have no problems. And because~~

9 this is the language that was stated in that
10 letter, it is why Dr Holmes wanted it to be
11 put into the agreement, so that it could be
12 enforced as well The letter is one thing,
13 but to have it in writing in the agreement
14 is, is what she thought would be a, a perfect
15 match to what's already been stated to her
16 And if your Honor would like we could produce
17 that letter to you, could fax it over

18 THE COURT No I don't need it The
19 case was fully settled in front of me on the
20 twenty-ninth of October of the year 2002
21 The gravamen of the details are on the
22 record The issues with regard to the
23 settlement have nothing to do with the issues
24 raised to me at this time They are issues
25 that may come up in the future If they do

1 come up in the future, it deals with the
2 issue of good faith and fair dealing, which
3 is clearly enunciated in the settlement
4 agreement

5 The doctor has exactly one week to
6 sign this or I'll hold her in contempt for
7 not signing it Thank you very much Good

~~8 luck to you~~

9 MS SPANN-WILDER Thank you, your
10 Honor

11 MR PRATT-THOMAS And just for the
12 record, when you say "sign this", you mean
13 the settlement agreement?

14 THE COURT Yes The agreement
15 proposed

16 I might note for the record, one of
17 the recourses available if failure to sign is
18 an issue at the end of seven days, is to set
19 aside the entire agreement and to let both
20 sides go to trial If I do that, there will
21 be substantial issues involving exactly what
22 we're going to go to trial on based on the
23 discussions and decisions made earlier

24 Thank you Good luck to you

25 MR PRATT-THOMAS Your Honor, I know

1 you have to go forward I need to make sure
2 because I don't want to do something I'm not
3 supposed to do Am I -- what counsel am I
4 now to be dealing with? Because Mr Bond's
5 got the check They're the attorneys of
6 record I'm not -- but I just need to know
7 what names to put on these orders

8 ~~MS - SPANN-WILDER - Mr Bond~~

9 THE COURT Mr Bond
10 MR PRATT-THOMAS Okay Fine
11 (Whereupon, the matter was concluded)

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CERTIFICATION

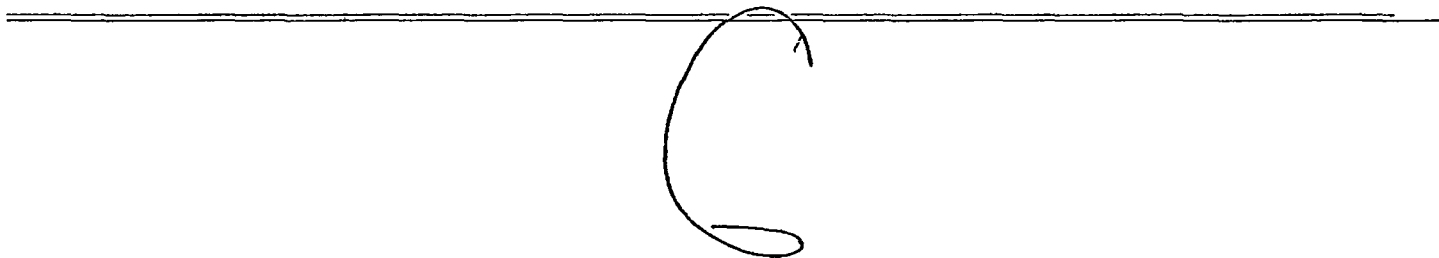
I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case relative to appeal heard in the Court of Common Pleas for Charleston County, South Carolina on the 7th day of January, 2003

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

DATED

January 7, 2003

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R D R
Official Court Reporter



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO 02-CP-10-1448

J Doe,

Plaintiff

-vs-

Manton Grier, James Y
Becker, and Sinkler &
Boyd, P A

Defendants

COMPLAINT
(Jury Trial Requested)

BY

JULIE J. ARISTON
CLERK OF COURT

2002 APR -1 PM 4:08

FILED

The Plaintiff, proceeding pro se, complaining of the Defendants herein, would respectfully allege and show to this Honorable Court

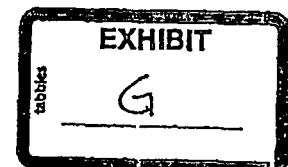
1 The Plaintiff is a resident of the County of Charleston, State of South Carolina, and is respectfully requesting leave to proceed under the current caption

2 The Defendant James Y Becker is an attorney with Defendant Sinkler & Boyd, P A , and upon information and belief, works out of the Charleston and Columbia offices for the Defendant Sinkler & Boyd, P A

3 The Defendant Manton Grier is an attorney with Defendant Sinkler & Boyd, and upon information and belief, works out of the Charleston and Columbia offices for the Defendant Sinkler & Boyd, P A

4 The Defendant Sinkler & Boyd, P A , upon information and belief is a law firm with principal offices in Charleston and Columbia, SC

5 This Honorable Court has jurisdiction of the parties and subject matter of this action and venue is proper by reason of the Plaintiff's residence in, the Defendants' office in, and the acts and omissions herein complained of having occurred in the County of Charleston, State of South Carolina



FACTUAL ALLEGATIONS

6 East Cooper's affairs are governed by its Board of Directors (Board of Directors or Board) which has the ultimate authority and responsibility for directing its affairs and operations. Licensed physicians and other health care providers may provide services to patients at East Cooper only upon being granted the requisite membership and clinical privileges by the Board upon recommendation of the Hospital's Medical Staff ("Medical Staff"), which is composed of all physicians and oral surgeons practicing at the Hospital. The Medical Staff is organized in conformity with a set of By-laws, but is subject to the ultimate authority of the Board.

7 At all times mentioned herein, Plaintiff has been a licensed, practicing medical doctor in Charleston County, South Carolina. Plaintiff graduated from the Medical University of South Carolina with an M.D. degree in May of 1988, completed internship at the Medical College of Georgia Augusta in July of 1990, and completed ophthalmology residency training at the Storm Eye Institute Medical University of South Carolina in July of 1993.

8 The Plaintiff applied for and was granted temporary medical staff privileges at East Cooper in early 1994, pending final review of Plaintiff's application and credentials. On July 25, 1994, Plaintiff was formally granted initial appointment to the Medical Staff in the Associate category, with provisional status, under the provisions of Art. IV, § 3(A) of the Hospital's bylaws in effect at the time, which, upon information and belief, were similar in most, but not all, material respects to the Medical Staff By-laws adopted May 11, 1995 (the "By-laws"). At all relevant times, the Medical Staff was divided into the following

categories Active, Associate, Courtesy, Consulting, and Honorary (By laws, Art IV, §1)

9 Pursuant to Art III, § 3 B of the By-laws, all initial appointment to the Medical Staff shall be for a period of 12 months and pursuant to Art. III, § 5 A, all initial appointments to any category of the Medical Staff shall serve a provisional term until submission of the provisional certification form signed by the staff member's department chief. The Plaintiff's provisional certification form was signed by the Chief of Surgery and submitted in 1995.

10 At the time of Plaintiff's initial appointment the Associate Staff category included "physicians who are eligible for advancement to Active Staff membership and will in the ordinary course of events and *unless he requests otherwise*, be advanced to Active Staff status after serving not more than two (2) years on the Associate Staff and each of whom meet the qualifications specified for the members of the Active Staff" (By-laws, Art. IV, §3 A. (emphasis added)). Associate Staff members could not vote on any matters represented at meetings or hold office on the Medical Staff or any department or committee. By contrast, the Active Staff "shall consist of physicians and oral surgeons who consult in connection with or attend or admit to the Hospital a minimum of twenty-four (24) patients per year" (By-laws Art. IV, §2 A.) Active Staff members were also entitled to vote and hold office on the Medical staff or the department or committee of which he is a member" (By-laws, Art. IV, § 2 B 3, 4.)

11 By November 1994, the Plaintiff recognized that the care of young children, (ages 8, 3, and 1, at the time), while building a new, general ophthalmology practice, would make it difficult to meet the patient contact requirement for the Active medical staff and,

after consultation with the hospital's medical staff coordinator, Plaintiff requested that not to be advanced to the Active Staff category, and Plaintiff further requested and was granted a change to the Courtesy Staff category defined in Art. IV § 4(A) of the By-laws. At that time, the Courtesy Staff category permitted a physician to admit patients to the Hospital and to exercise clinical privileges but did not require a minimum number of patient contacts per year. Also, Courtesy staff members were not required to attend meetings of the Medical staff.

12 In July 1995, the Plaintiff completed the initial appointment and provisional year and was reappointed to the Courtesy staff category pursuant to Art. III, § 4(B) of the Bylaws, and the customary practices of the hospital, for a period of two (2) years. Plaintiff rightfully relied upon the provisions of the By-laws and the customary practices of the Hospital and reasonably expected that the July 1995 reappointment would be for a two year period.

13 Shortly thereafter, on July 20, 1995, the Bylaws were amended by the Board of Directors of the Hospital to require that Courtesy staff members have Active staff privileges at another local hospital. Plaintiff did not attend any meetings of the Medical Staff in which this change was discussed or approved, and, upon information and belief, no notice of the change was ever sent to Courtesy staff members affected by this change in the By-laws.

14 Because Plaintiff was content with Courtesy Staff category and with the size and nature of the medical practice, and in reliance upon the By-laws in effect at the time of the July 1995 reappointment to the Medical Staff, specifically the prerogatives of the

Courtesy Staff category, Plaintiff elected to confine the medical practice to the Sullivan's Island area and the Hospital. Plaintiff did not seek Active staff status at East Cooper nor did she seek to expand her medical practice in an effort to meet or be able to meet the 24 patient contact requirement for the Active Staff category.

15 In violation of the Plaintiff's rights under the By Laws and in contravention of her reasonable expectations based upon the By laws of a two-year reappointment, Plaintiff was asked by the Medical Staff to submit updated credentials information in November of 1995 and further requested to submit an application for reappointment to the

Courtesy medical staff in April of 1996. Plaintiff was provided with a form with the application which falsely stated that the effective date of the Bylaws change affecting Courtesy staff members was May 26, 1994. Plaintiff was misled by the false communication and erroneously believed that the July 1995 change to the Courtesy staff category may have been improper. On information and belief, other Medical Staff members were misled by this same false communication from the Hospital.

16 On April 22, 1996 the Plaintiff was advised the application for reappointment to the Courtesy medical staff could not be processed because the Plaintiff did not have privileges at another local hospital as required by Article IV, Section 4(A) of the Bylaws which, as explained above, had been amended after the Plaintiff's 1995-1997, two (2) year reappointment to the Courtesy medical staff in July of 1995.

17 Plaintiff consulted with the Medical Staff representatives and again made a request to continue Courtesy staff category through the end of the then current term. The Medical Staff denied this request and sought to impose upon Plaintiff the requirements of

the Active Staff, i.e., attending 50% of quarterly medical staff meetings and departmental meetings and have 24 patient contacts per year

18 Plaintiff then requested reappointment to the Medical Staff with a requirement of 12 patient contacts, but this request was denied

In violation of the Plaintiff's rights and reasonable expectations under the Bylaws, and without following the reappointment procedures required by Article VI of the Bylaws, on August 19, 1996, the Plaintiff was advised by the Hospital President that she had been appointed to the Associate Active staff category, a category which did not exist under the Bylaws

19 The Plaintiff requested an appeal of her appointment to the Associate Active medical staff category and subjection to the 24 patient contact requirement within one year but her request for an appeal was denied. The Plaintiff then requested an amendment to the Bylaws as suggested by the Hospital and Medical Staff representative to allow general practice ophthalmologists to maintain Active staff privileges with 12 patient contacts per year, and this request was also denied

20 Because reappointments are routinely for two years upon being denied all appeals, Plaintiff wanted clarification on the length of the reappointment and when the 24 patient contact requirement would be imposed. Plaintiff discussed the reappointment with Kara L. Melin, the Medical Staff Coordinator in the Medical Staff office. Melin said that Associate Staff practitioners, consistent with the Bylaws, have two years to meet the patient contact requirement. This statement was consistent with the Bylaws relating to

~~Associate staff~~

22 Plaintiff reasonably relied upon this interpretation of the Bylaws by a trusted member of the medical staff office in arranging the medical practice in the following months

22 During the period of the Plaintiff's appointment the Plaintiff leased office space from Durst & Durst Physicians, P A at the Durst Family Practice building located on Sullivan's Island pursuant to a Lease and Administrative Services Agreement (Lease) entered into on November 1 1993, which provided the Plaintiff would receive patient scheduling, patient reception and patient file maintenance, telephone services, billing and other administrative services in consideration of rent payments

23 In the Summer of 1994, the Hospital's then-current parent corporation, AMI, purchased the assets of Durst & Durst Physicians P A, undertook the operation of the practice including the services the Plaintiff received under the terms of the Lease, and assumed all other obligations to the Plaintiff under the Lease In the Spring of 1995, Tenet purchased all AMI hospitals and medical practices, including East Cooper and Durst Family Medical Practice, and assumed all obligations to the Plaintiff under the Lease

24 The Plaintiff paid Durst Family Medicine, and its successors AMI and Tenet a monthly fee in addition to rent payments for Yellow Pages telephone listing under the category of "Physicians & Surgeons - Ophthalmologists "

25 On or about May 15, 1996, an agent or employee of Tenet, struck the Plaintiff's name from the renewal form for the Yellow Pages telephone listing for Durst Family Medicine without knowledge or consent of the Plaintiff, causing the Plaintiff's existing Yellow Pages listing to be deleted from the July 1996 telephone book. The

deletion of the Plaintiff's Yellow Pages listing seriously compromised and hindered the Plaintiff's ability to meet the patient contact requirement improperly imposed upon the Plaintiff in violation of the Bylaws

26 Upon information and belief during the following year, Tenet engaged in a course of conduct intended to and which did have a detrimental impact upon the Plaintiff's practice and ability to conduct the practice and meet the patient contact requirement improperly imposed upon the Plaintiff in violation of the Bylaws by instructing its agents and employees to divert established patients of Plaintiff to physicians employed by Durst

Family Medicine misinforming potential patients who specifically called for appointments with the Plaintiff or the ophthalmologist that they had to first see one of the primary care physicians employed by Durst Family Medicine, and demanding an unreasonable and unconscionable 300% to 400% increase in the amount the Plaintiff was paying under the lease agreement for administrative services Upon information and belief Tenet intended to augment the medical practice of Durst Family Medicine at the expense of the Plaintiff's medical practice

27 In October, 1996, at a Department of Surgery meeting, pursuant to complaints by other physicians, the Plaintiff learned that the Coastal Emergency Services, Inc. through its ER physicians was not using the ER call list properly Specifically, there were some physicians who were never called when they were listed as covering ER call Though the Plaintiff was on the call list, there was not one opportunity for a patient contact through ER call

28 By letter dated August 19, 1997 the Hospital advised the Plaintiff that the

Chairman of the Credentials Committee, Paul Yantis had appointed the Plaintiff to Consulting Staff category and had terminated all admitting privileges. The Hospital's action, taken without notice or any opportunity to be heard, was a violation of the Plaintiff's constitutional rights and rights under the Bylaws because the Hospital failed to follow the reappointment procedures required by Art. IV, § 2 and Art. III, § 7 of the Bylaws. The action also violated Art. VI, § 4 C of the Bylaws which provide that the Credentials Committee has only the authority to recommend appointments and does not have the authority to summarily terminate a physician's admitting privileges.

29 Further the Hospital allowed John Grady M.D. an ophthalmologist in direct economic competition with the Plaintiff, to participate in the Credentials Committee meeting of August 13, 1997 at which time, upon information and belief and as set forth in minutes of the Medical Staff committee meetings, he improperly urged the committee to allow the Plaintiff only a medical (non-surgical) ophthalmology practice with referral of surgical cases to another physician with the purpose and intent of restraining and preventing the Plaintiff from practicing ophthalmology, of destroying a competing ophthalmology practice, and to financially benefit himself.

30 The Plaintiff attempted to appeal the unauthorized reduction in Medical Staff category to the Consulting Staff and the improper termination of hospital admitting privileges but on September 4, 1997 the Plaintiff was advised the letter of August 19, 1997 was in error.

31 By letter dated September 16, 1997 the Hospital advised that the Plaintiff's admitting privileges were again terminated causing irreparable damage to the Plaintiff's

reputation interfering with ability to provide patient care, and further hindering any possibility that the Plaintiff would be able to meet the patient contact requirement within the two year time frame normally afforded to practitioners at the Hospital. The Hospital's action was in violation of Art. IX and the Fair Hearing Plan and Appellate Review Procedure of the Bylaws, which provide such action can only be taken by the Hospital's Board after exhaustion of the appeal process.

32 By letter dated October 1, 1997, the Hospital refused to allow the Plaintiff to schedule and perform surgery on an established patient. The Hospital's improper termination of the Plaintiff's admitting privileges continued until late November, 1997, causing continuing irreparable damage to the Plaintiff's reputation, patient care, and ability to meet the patient contact requirement when the Plaintiff's hospital admitting privileges were restored pending appeal to the Board.

33 Effective December 1, 1997, Tenet changed the answering service for Durst Family Medicine and failed to advise the new service of Plaintiff's joint telephone listing with Durst Family Medicine. Tenet failed to notify the Plaintiff of the change in the answering service, and Plaintiff was left without answering services during most of December 1997.

34 Plaintiff appealed the September 24, 1997 action of the MEC, and was eventually granted a hearing before the Medical Review Committee ("MRC") of the Medical Staff. For this hearing, the Hospital refused to produce documents, refused to produce critical witnesses for the Plaintiff including, Kara Melin and Shirley T. Thomas, who on information and belief terminated Plaintiff's Yellow Page listing. Upon information and

belief, the Hospital falsely and improperly represented to another witness that he must cooperate with the Hospital and submit an affidavit and testify or he could be subpoenaed

35 The unauthorized and improper actions of the MEC in reducing Plaintiff's staff category and terminating Plaintiff's admitting privileges were not overturned by the MRC, which failed to make findings of fact and include recommendations as required by the Bylaws. The Board of Directors refused to allow the Plaintiff and/or counsel to appear at the appellate hearing and refused to allow the Plaintiff or counsel to review documentation and evidence presented to the Board

36 On information and belief, in December 1998, Defendant's agent William (Bill) Cone while acting within the course and scope of his employment told an established patient of Plaintiff, that the patient should not seek Plaintiff's care as an ophthalmologist. Specifically, Cone told the Plaintiff's patient, "I know who you should not see and that is Dr. J. Doe. At this time, the Plaintiff learned that in 1994 when the Plaintiff submitted an application for privileges, Cone stated that the Plaintiff bought his/her medical education." Cone made other derogatory comments regarding Plaintiff in 1994.

37-38 Due solely to the Hospital's improper application of the By-laws to Plaintiff, Plaintiff currently has no admitting privileges. The hospital has admitted that there is no competency, professional judgment, or other patient care issues. Plaintiff now has at least four patients who need and require surgical procedures but Plaintiff is unable to perform such procedures. The unjustified loss of admitting privileges continues to cause irreparable damage to the Plaintiff's professional reputation and medical practice.

39 The Defendants entered into a binding agreement to provide legal representation for the Plaintiff. The Plaintiff has paid over \$100,000.00 to the Defendants. The Defendants materially breached their contract with the Plaintiff for legal representation. Further, on information and belief, these breaches were accompanied by dishonest, unfair, and/or improper acts.

40 The Defendants' conduct was willful, wanton and/or in reckless disregard for the Plaintiff's rights.

41 The Defendants breached the fiduciary duty owed to their client, the Plaintiff. Further, the Defendants wrongfully abandoned their client.

For a First Cause of Action Against All Defendants
(Abandonment)

42 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action.

43 Defendants as attorneys for the Plaintiff wrongfully abandoned their client, the Plaintiff.

44 Plaintiff has suffered damages as a direct and proximate result of the Defendants' wrongful abandonment and is entitled to recover consequential damages in an amount to be determined at trial as well as punitive damages and the costs of this action.

For a Second Cause of Action Against All Defendants
(Breach of Fiduciary Duty)

45 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action.

46 As attorneys for the Plaintiff, the Defendants wrongfully breached the fiduciary duty owed to their client, the Plaintiff.

47 Plaintiff has suffered damages as a direct and proximate result of the Defendants' wrongful breach of fiduciary duty owed to the client and is entitled to recover consequential damages in an amount to be determined at trial as well as punitive damages and the costs of this action.

For a Third Cause of Action Against All Defendants
(Breach of Contract)

48 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

49 At all times hereinafter mentioned, the parties had entered into a binding contract to provide legal representation for the Plaintiff

50 The Defendants breached the contract without justification

51 As a direct and proximate result of the wrongful conduct of the Defendants, the Plaintiff has sustained substantial compensable losses including certain consequential damages, attorneys fees and costs

52 The Defendants' actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and upon information and belief the Plaintiff is entitled to punitive damages against Defendants

For A Fourth Cause of Action Against All Defendants
(Breach of Contract Accompanied By Fraudulent Act)

53 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

54 At all times hereinafter mentioned, the parties had entered into a binding contract to provide legal representation for the Plaintiff

55 The Defendants without justification breached that contract with fraudulent intent

56 The breach of contract was accompanied by bad faith, unreasonable conduct, dishonesty in fact, unfair dealing, and/or unlawful appropriation by design

57 As a direct and proximate result of the Defendants wrongful conduct, the Plaintiff has suffered and is entitled to recover actual damages and certain consequential damages, attorneys fees, and costs

58 The Defendants' actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and upon information and belief the Plaintiff is entitled to punitive damages against Defendants

For A Fifth Cause Of Action Against All Defendants
(Professional Malpractice)

59 Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action

60 Defendants in providing legal representation for the Plaintiff owed a duty of care to the Plaintiff

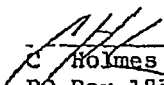
61 Defendants wrongfully breached that duty by negligent acts and/or omissions

62 As a direct and proximate result of the Defendants wrongful conduct, the Plaintiff has suffered and is entitled to recover actual damages and certain consequential damages, attorneys fees, and costs

63 The Defendants' actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and upon information and belief the Plaintiff is entitled to punitive damages against Defendants

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, in an amount of actual damages to be determined by the jury for punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as this Court might deem just and proper

Respectfully submitted,

 3/31/02
C. Holmes
PO Box 187
Sullivans Island,
SC 29482-0187
(843 883 3010)

H

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

J Doe,

Plaintiff

-vs-

Richard L Duncan,
Meredith Bond,
Sidney Gilreath, and
Gilreath & Associates

Defendants

) IN THE CIRCUIT COURT FOR
)
) THE NINTH JUDICIAL CIRCUIT
)
) CIVIL ACTION NO
) 05-CP-10- 4351

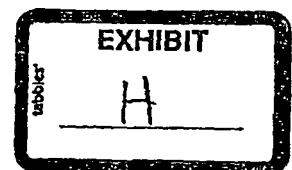
) COMPLAINT
) (JURY TRIAL DEMANDED)
)
)
)

FILED
CLERK OF COURT
OCT 27 AM 8 57

The Plaintiff, requesting permission to proceed pro se,
complaining of the Defendants herein, would respectfully
allege and show to this Honorable Court

1 The Plaintiff is a resident of the County of Charleston,
State of South Carolina, and is respectfully requesting
leave to proceed under the current caption for good cause
and at no prejudice to the adverse parties

2 The Defendants Richard L Duncan, Meredith Bond, and
Sidney Gilreath are attorneys with Gilreath & Associates and
upon information and belief, work out of the Knoxville



offices for the Defendant Gilreath & Associates in
Knoxville, Tennessee

3 The Defendant Gilreath and Associates, upon information and belief is a law firm doing business as a professional association providing professional services substantially as plaintiff's trial lawyers including suing medical doctors
~~for medical malpractice and professional malfeasance~~

FACTUAL ALLEGATIONS

4 This action is based upon professional malfeasance by the Defendants and Defendant law firm For good cause, the Plaintiff requests permission to proceed as captioned The circumstances giving rise to this cause of action are set forth below

5 One or more of the Defendants engaged in improper and wrongful solicitation One or more of the Defendants represented themselves as 'trial attorneys' with a collective experience of more than 50 years in trying cases and on a par with the "Ness, Motley law firm "

6 The Defendants entered into an agreement to provide legal representation at trial for the Plaintiff The Plaintiff satisfied the contract, however, Defendants breached the

contract causing damage to the Plaintiff Defendants failed and refused to provide a written contract in violation of the code of professional conduct and in direct contravention of professional ethics

7 Further, Defendants committed professional malfeasance and deviated from the professional standard causing damage to the plaintiff

8 On information and belief, one or more Defendants failed to provide adequate supervision

9 Further, on information and belief, the breach was accompanied by dishonest, unfair, fraudulent, and/or improper acts

10 Further, the Defendants wrongfully abandoned their client and when objection was taken to abandonment, one or more Defendants replied 'so sue me '

11 The Defendants' conduct was willful, wanton and/or in reckless disregard for their client's interests causing damage to the plaintiff

12 On information and belief, the Defendants breached the fiduciary duty they owed to their client causing damage to the plaintiff

13 As a result of Defendants' wrongdoing, Plaintiff has suffered consequential damages and special damages

14 As a result of Defendants' wrongdoing and willful, wanton, and reckless disregard, Plaintiff is entitled to punitive damages

15 As a result of Defendants' wrongdoing, Plaintiff is entitled to costs, expenses, and fees, including attorneys' fees, in recovering damages and monies unlawfully retained by Defendants

For a First Cause of Action Against All Defendants
(Abandonment)

16 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

17 Defendants as attorneys for the Plaintiff wrongfully abandoned their client, the Plaintiff

18 Plaintiff has suffered damages as a direct and proximate result of the Defendants' wrongful abandonment and is

entitled to recover special damages and consequential damages in amounts to be determined at trial as well as punitive damages and the costs of litigation including attorneys' fees under this and/or other causes of action that follow

~~For a Second Cause of Action Against All Defendants~~

(Breach of Fiduciary Duty)

19 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

20 As attorneys for the Plaintiff, the Defendants wrongfully breached the fiduciary duty owed to their client, the Plaintiff

21 Plaintiff has suffered damages as a direct and proximate result of the Defendants' wrongful breach of fiduciary duty and is entitled to recover special damages and consequential damages in amounts to be determined at trial as well as punitive damages and the costs of litigation including attorneys' fees

For a Third Cause of Action Against All Defendants
(Breach of Contract)

22 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

23 At all times mentioned herein, the parties had entered into a binding contract to provide legal representation at trial for the Plaintiff

24 The Defendants wrongfully breached that contract without justification

25 As a direct and proximate result of the wrongful conduct of the Defendants, the Plaintiff has sustained substantial compensable losses including special damages, consequential damages, attorneys' fees, costs, and expenses

26 The Defendants' actions were willful, wanton, and/or in reckless disregard for Plaintiff's rights and upon information and belief the Plaintiff is entitled to punitive damages against Defendants

For a Fourth Cause of Action Against All Defendants
(Breach of Contract Accompanied By Fraudulent Act)

27 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow

~~this cause of action.~~

28 At all times mentioned herein, the parties had entered into a binding contract to provide legal representation at trial for the Plaintiff

29 Without justification and/or with fraudulent intent, Defendants breached their contract with the Plaintiff

30 The breach of contract and breach of professional conduct was accompanied by bad faith, unreasonable conduct, dishonesty in fact, unfair dealing, and/or unlawful appropriation by design

31 As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff has suffered and is entitled to recover actual damages, special damages, consequential damages, attorneys' fees, costs, and expenses

32 The Defendants' actions were willful, wanton, and/or in reckless disregard for Plaintiff's rights and upon information and belief, the Plaintiff is entitled to punitive damages against Defendants

For a Fifth Cause of Action Against All Defendants

~~(Professional-Malpractice)~~

33 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

34 Defendants in providing legal representation for the Plaintiff owed a duty of care to the Plaintiff

35 Defendants wrongfully breached that duty by negligent acts and/or omissions

36 As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff has suffered and is entitled to recover actual damages, special damages, consequential damages, attorneys' fees, costs, and expenses

37 The Defendants' actions were willful, wanton, and/or in reckless disregard for their client, the Plaintiff, and upon

information and belief, the Plaintiff is entitled to
punitive damages against Defendants

For a Sixth Cause of Action Against All Defendants
(Unfair Trade Practices)

38 Plaintiff realleges and incorporates by reference the
foregoing allegations as well as the allegations that follow
this cause of action

39 This cause of action arises under the South Carolina
Unfair Trade Practices Act (SCUTPA), S C Code Ann Sections
39-5-10 et seq

40 On information and belief, Defendants are engaged in
trade and commerce, and the facts complained of herein
occurred in the ordinary course of Defendants' businesses
and are capable of repetition and affect the public
interest

41 On information and belief, Defendants knowingly and
willfully engaged in unfair and/or deceptive acts and
practices in the conduct of trade or commerce within the
meaning of the SCUTPA, which, if unchecked, are likely to
recur and which has affected, and will continue to affect,
the public interest

42 On information and belief, Defendants knew or should have known, that the conduct complained of herein constituted unfair, improper, unethical, and/or deceptive acts or practices in the conduct of trade or commerce

43 As a direct and proximate result of Defendants' ~~violations of the SCUTPA, Plaintiff has suffered, and is~~ entitled to recover, actual damages, attorneys' fees, and costs

44 On information and belief, Defendants' violations of the SCUTPA were willful and knowing, and Plaintiff is entitled to recover three times actual damages, attorneys' fees, and costs

For a Seventh Cause of Action Against All Defendants
(Civil Conspiracy)

45 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

46 Upon information and belief, Defendants willfully and unjustifiably conspired together to commit the breaches, torts, unfair and deceptive acts, and other violations of duty alleged herein in order to harm Plaintiff, and

Defendants engaged in overt acts to carry out their conspiracy

47 As a direct and proximate result of Defendants' conspiracy and their overt acts in connection therewith, Plaintiff suffered special damages and is entitled to recover from Defendants actual damages and special damages ~~as well as punitive damages and costs~~

For an Eighth Cause of Action Against All Defendants
(Promissory Estoppel)

48 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

49 One or more Defendants made unambiguous representations to Plaintiff upon which the Plaintiff relied. The Plaintiff's reliance was reasonable. This reliance was both expected and foreseeable by Defendants.

50 As a direct and proximate result, Plaintiff has suffered damages, including special damages, which the Plaintiff is entitled to recover.

For a Ninth Cause of Action Against All Defendants
(Breach of Fiduciary Duty)

51 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

52 Defendants owed a fiduciary duty to the Plaintiff

53 Defendants knowingly breached that fiduciary duty

54 As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered damages, including special damages, and is entitled to recover actual, special, and punitive damages

For a Tenth Cause of Action Against All Defendants
(Constructive Fraud)

55 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

56 Upon information and belief, one or more Defendants knowingly made false representations to the Plaintiff. The false representations were material and were made with the

intent that the false representation would be acted upon
The Plaintiff had no knowledge of the falsity and had a
right to rely upon the representation The Plaintiff
reasonably relied upon the representation

57 As a direct and proximate result of Defendants' wrongful
acts, Plaintiff has suffered damages, including special
~~damages, and is entitled to recover actual, special, and~~
punitive damages

For an Eleventh Cause of Action Against All Defendants
(Conversion)

58 Plaintiff realleges and incorporates by reference the
foregoing allegations as well as the allegations that follow
this cause of action

59 Upon information and belief, Defendants exercised
unauthorized assumption and illegal right of ownership over
the Plaintiff's goods and/or chattels, to the alteration of
the condition or the exclusion of the Plaintiff's ownership
rights Defendants wrongfully converted Plaintiff's
property to their own use without permission

60 As a direct and proximate result of Defendants' wrongful
acts, Plaintiff has suffered damages, including special

damages, and is entitled to recover actual, special, and
punitive damages

For a Twelfth Cause of Action Against All Defendants
(Negligent Misrepresentation)

61 Plaintiff realleges and incorporates by reference the
foregoing allegations as well as the allegations that follow
this cause of action

62 Upon information and belief, Defendants made false
representations to the Plaintiff

63 The false representations were made in the course of the
Defendants' profession and/or business

64 Defendants owed a duty of care to the Plaintiff

65 Defendants breached that duty by failing to exercise due
care

66 The Plaintiff justifiably relied on the Defendants'
false representations

67 As a direct and proximate result of Defendants' willful
and wanton acts, Plaintiff has suffered damages, including

special damages, and is entitled to recover actual, special,
and punitive damages

For a Thirteenth Cause of Action Against All Defendants
(Negligent Supervision)

68 Plaintiff realleges and incorporates by reference the
foregoing allegations as well as the allegations that follow
this cause of action

69 Upon information and belief, one or more Defendants had
a duty of reasonable care and supervision owed to the
Plaintiff

70 One or more Defendants breached that duty of reasonable
care and supervision

71 Upon information and belief, one or more Defendants had
knowledge of the wrongdoing, had the means and opportunity
to correct the wrongdoing, had knowledge of previous
wrongdoing and/or impairment, yet failed to supervise and
provide reasonable care and failed to disclose

72 As a direct and proximate result of Defendants' willful
and wanton acts, Plaintiff has suffered damages, including

special damages, and is entitled to recover actual, special,
and punitive damages

For a Fourteenth Cause of Action Against All Defendants
(Fraud and Misrepresentation)

73 Plaintiff realleges and incorporates by reference the
foregoing allegations as well as the allegations that follow
this cause of action

74 Upon information and belief, Defendants knowingly made
material false representations with reckless disregard for
truth or falsity

75 Upon information and belief, Defendants intended for the
Plaintiff to act upon the false representation

76 The Plaintiff reasonably relied on the Defendants' false
representations. The Plaintiff was unaware that the
representations were false

77 As a direct and proximate result of Defendants' willful
and wanton acts, Plaintiff has suffered damages, including
special damages, and is entitled to recover actual, special,
and punitive damages

WHEREFORE, the Plaintiff prays for permission to proceed under the current caption and prays for jury trial. The Plaintiff also prays for judgment against the Defendants, jointly and severally, in an amount of actual damages, special damages, consequential damages, attorneys' fees, costs, and expenses to be determined by the jury and ~~for punitive damages in an appropriate amount to be~~ determined by the jury and for such other and further relief as this Court might deem just and proper.

Respectfully submitted,

Dated 10/21/01


C. Holmes, Esq

PO Box 187

Sullivan's Island, SC

29482-0187

(843 883 3010)

PRATT-THOMAS | EPTING | WALKER

ATTORNEYS AT LAW

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON SC 29403

PO DRAWER 22247
CHARLESTON SC 29413-2247

PHONE 843 727 2200
FAX 843 727 2238

WWW.WISELAW.COM

(843) 727 2230 (direct dial)
(843) 805-6521 (direct fax)
jdm@wiselaw.com (e-mail)

E DOUGLAS PRATT THOMAS

ANDREW K EPTING JR

G TRENHOLM WALKER

W ANDREW GOWDER JR

JOH L AUSTEN

I KEITH MCCARTY (SC TH)

LINDSAY K SMITH-YANCEY (SC NC)

CLAYTON B MCCULLOUGH

FRANCIS M ERVIN II (SC MA)

AMANDA R MAYBANK

IAN W FREEMAN (SC CA)

LAURA JOHNSON EVANS

THOMAS H HESSE (SC GA)

July 13 2006

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad Street, Suite 106
Charleston SC 29401

RE Dr. Cynthia Holmes, M.D. vs. East Cooper Community Hospital, Inc., Tenet HealthSystem Medical, Inc., John Grady, M.D., Paul Yantis, M.D.
CA No. 05-CP 10-5113
Our Clients: East Cooper Community Hospital, Inc., Tenet HealthSystem Medical, Inc., John Grady, M.D., Paul Yantis, M.D.
Matter No. 2006-00422
Our File No. 0722-097

Dear Ms. Armstrong

Enclosed for filing in the above-referenced case are the original and one copy of the *Amended Answer Motion to Dismiss and Counterclaim on Behalf of Defendants East Cooper Community Hospital, Inc., Tenet HealthSystem Medical, Inc., John Grady, M.D., and Paul Yantis, M.D.*

By copy of this letter to all counsel of record, I am providing a copy of the enclosures.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact me at your convenience.

With warmest regards, I am

Sincerely Yours,

PRATT-THOMAS EPTING & WALKER P A



Jeff D. Maskey
Paralegal to Lindsay K. Smith-Yancey

jdm

Enclosures

cc Chalmers C. Johnson Esquire
Gary W. Robinson Esquire
Mr. James Riley

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C A NO 05 CP-10-5113

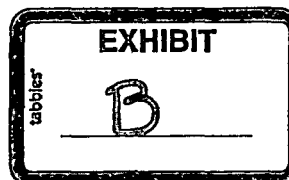
Dr Cynthia Holmes M D)
Plaintiff)
vs)
East Cooper Community Hospital, Inc)
Tenet HealthSystem Medical Inc John)
Grady M D Paul Yantis M D)
Defendants)

ORDER AWARDING SANCTIONS

2009 AUG -6 PM 2 143
CLERK OF COURT

This matter came before the Court on motion of Defendants pursuant to S C Code Ann §15 36-10 known as the South Carolina Frivolous Civil Proceedings Sanctions Act (hereinafter referred to as "the FCPSA" or "the Act") A hearing on Defendants' motion was held on December 3 2008 during which the parties presented oral argument memoranda of law affidavits and other materials to the Court for consideration In addition, Plaintiff was allowed to and did make additional submittals following the hearing which the Court has also considered in making its ruling As indicated fully below this Court grants Defendants motion and issues sanctions against the Plaintiff in the amount of \$90 000 00 (Ninety Thousand and No/100ths Dollars) payable to Defendants for partial reimbursement of attorneys' fees incurred in the defense of this action

The Plaintiff herein is a medical doctor specializing in the field of ophthalmology Her Complaint alleges causes of action for breach of contract breach of contract accompanied by a fraudulent action breach of the covenant of good faith and fair dealing and civil conspiracy concerning her medical staff privileges at Defendant East Cooper Community Hospital, Inc (hereinafter referred to as East Cooper Hospital) This is the third lawsuit filed by the Plaintiff arising out of her medical staff privileges at



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the Hospital ¹ In all of these lawsuits the Plaintiff has alleged the same causes of action as those alleged herein based upon an alleged civil conspiracy among the Defendants to deny her certain Hospital medical staff status and privileges in order to promote the practice of Defendant John Grady M D an ophthalmologist whom Plaintiff alleges to be her economic competitor Plaintiff's previous actions have asserted these causes of action in the context of previous appointments to the Hospital's medical staff

In the instant action Plaintiff asserts these allegations in reference to her appointments to the medical staff in the years 2002 and 2004 On November 29 2006, the Court entered an Order dismissing Plaintiff's claims related to her 2002 appointment, finding said claims to have been released by the Plaintiff pursuant to a previous Settlement Agreement and General Release in Full entered by the parties On May 23 2007 the Court granted Defendants summary judgment on the Plaintiff's remaining claims This motion followed

Based upon the arguments, filings and the record in this matter, the Court hereby makes the following findings

I The Plaintiff is competent to defend this Motion in a pro se capacity

At the hearing of this Motion Plaintiff verbally moved the Court to continue the hearing on the grounds that she had terminated her counsel of record and needed addition time to secure substitute counsel A motion for continuance is within the sound discretion of the trial court *Jackson v Speed*, 326 S C 289 309 486 S E 2d 750 760 (1997) In *Jackson* a party requested a continuance due to his counsel s absence

¹ Plaintiff's first lawsuit filed on or about December 6 1999 in the United States District Court for the District of South Carolina Charleston Division captioned *J Doe M D vs Tenet HealthSystem Medical Inc and East Cooper Community Hospital* identified as Civil Action Number 2 99-0833 23 was dismissed via summary judgment in favor of Defendants Plaintiff's second lawsuit was filed on or about May 16 2000 in the Court of Common Pleas for Charleston County captioned *J Doe M D vs Tenet HealthSystem Medical Inc East Cooper Community Hospital Inc John Grady M D Paul Yantis M D William Cone and Coastal Emergency Services Inc* and identified as Civil Action Number 00 CP 10 1888 was resolved by a Settlement Agreement and General Release in Full executed by the parties

Id After his attorney appeared, the party claimed the attorney no longer represented him and requested another continuance in order to obtain counsel *Id* Moreover, the hearing had already been continued at least once *Id* Under these circumstances the Supreme Court of South Carolina affirmed the trial court's refusal to grant a continuance *Id*, see also 17 C J S Continuances §50 (A party is not entitled to a continuance where the desire to employ new counsel is merely a whim)

The Court takes notice of the fact that the Plaintiff, in addition to being a medical doctor, also holds a juris doctor degree is an attorney licensed by the State of South Carolina is an active member of the South Carolina Bar Association and has filed and representative herself in a *pro se* capacity in a number of lawsuits, motions and appeals in this Court, the Court of Appeals and the Supreme Court

On the eve of the hearing of the Defendants Motion herein Plaintiff filed a motion in the Court of Appeals to relieve her former counsel in this matter, Chalmers Johnson Esq requesting that she personally be substituted as her own counsel of record In addition, Plaintiff was given the opportunity to proceed with the hearing represented by her counsel of record in lieu of proceeding *pro se* which she declined to do Lastly and as indicated below the hearing on Defendants' motion had been continued on two prior occasions For the above stated reasons the Court finds Plaintiff competent to represent herself and that her stated desire to employ new counsel to be merely a whim designed to prolong these proceedings *Jackson supra*

II The Defendant's Motion is governed by the FCPSA, as amended effective July 1, 2005

The FCPSA was substantially rewritten in 2005 See S C Laws 2005 Act No 27 (Act No 27) Plaintiff argues the 2004 version of the FCPSA applies, in lieu of the amended version because the events alleged in her Complaint occurred prior to the amendment

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Initially as set forth more fully *infra* Defendants are entitled to sanctions under either version of the FSPCA See *McCall v Finley*, 294 S C 1 4 362 S E 2d 26 28 (Ct App 1987) (Whatever doesn't make any difference doesn't matter) However, it is the time of the *filing* of the action alleged to be frivolous rather than the events complained of therein, that determines the applicable version of the Act *Horry County v Parbel* 378 S C 253, 266 n 1 662 S E 2d 466, 473 n 1 (Ct App 2008) (applying the FCSPA in effect at the time the alleged frivolous filing occurred) (emphasis added)

The filings alleged by the Defendants herein to be sanctionable under the FCSPA were made by the Plaintiff on December 16 2005 after the enactment of the July 1 2005 version of the FCSPA As a result Defendants' cause of action for violation of the FCSPA arose on or after that date and the amended version of the FCSPA applies to Defendants' Motion

III Defendants timely filed their motion under the FCSPA

Plaintiff argues that Defendants failed to timely file their motion pursuant to the FCSPA A motion for sanctions under the FCSPA is a post trial motion to be filed pursuant to the deadlines set forth in Rule 59 of the South Carolina Rules of Civil Procedure "not later than 10 days after *receipt* of written notice of entry of the order *Pitman v Republic Leasing Co , Inc ,* 351 S C 429, 570 S E 2d 187 (Ct App 2002) (emphasis added)

The record in this matter reflects that Defendants received the Court's formal order granting summary judgment on May 29 2007, and that ten days thereafter on June 8 2007 Defendants filed and served their motion for sanctions The Motion specifically stated [t]he Plaintiff's allegations and causes of action alleged in her Amended Complaint have terminated in favor of the Defendants by way of an Order granting Defendants Summary Judgment entered on May 23 2007 and received by the Defendants on May 29 2007

In addition, Defendants also moved for sanctions under the FCPSA in their Amended Answer to Holmes s Amended Complaint. A motion for sanctions under the FCPSA is timely if raised prior to the final order. *Rutland v Holler, Dennis, Corbett, Ormond & Garner (Law Firm)* 371 S C 91 96, 637 S E 2d 316, 319 (Ct App 2006)

Lastly Plaintiff entered into a consent order dated March 13, 2008 staying Defendants' Motion pending the appeal of the summary judgment order providing in pertinent part [t]he Defendants timely filed a Motion for Sanctions. Accordingly, Defendants motion for sanctions was timely filed.

IV Plaintiff was provided sufficient notice and opportunity to be heard on this motion

Plaintiff asserts that she was not provided sufficient notice of Defendants' motion or an opportunity to be heard. A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of [the FCPSA] " S C Code Ann §15-36-10(D) (Supp 2006). A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. *Id*

Defendants provided Plaintiff ample notice of their intent to file a motion under the FCPSA. As stated above Defendants first notified Plaintiff of their intent to seek sanctions under the FCPSA in their Amended Answer filed on July 13 2006. On June 8 2007, ten days after receipt of the Court's order granting them summary judgment Defendants filed a formal motion for sanctions specifically notifying Plaintiff of the conduct thought to be sanctionable. The Plaintiff then appealed the summary judgment order to the Court of appeals. Defendant's motion was first scheduled for hearing on March 12 2008 and the parties then entered into a Consent Order staying Defendants' motion pending resolution of Plaintiff's appeal. Plaintiff's appeal was ultimately

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dismissed and Defendants' motion was then scheduled for hearing on November 4 2008 This hearing was continued by consent of the parties The Court then held a properly-noticed hearing on this matter on December 3, 2008 after timely notice of same to the parties In addition to its acceptance and consideration of the filings made by Plaintiff's former counsel in opposition of the motion the Court also permitted the Plaintiff to submit documents and evidence after the hearing In ruling on this matter the Court considered all affidavits case law, and other evidence submitted by Plaintiff and her former attorney prior to, during and after the hearing on this motion Accordingly Plaintiff has been provided sufficient notice and opportunity to respond

V This Court has jurisdiction to rule on this motion

Plaintiff contends that redundant notices of appeal filed with the Court of Appeals on November 26 2008 deprives this Court of jurisdiction to consider Defendants' motion

"When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter *Wise v S C Dep t of Corrs*, 372 S C 173 174 642 S E 2d 551, 551 (2007) (citing *Mickle v Blackmon*, 255 S C 136 177 S E 2d 548 (1970) *Thomas v Lynch*, 87 S C 44 68 S E 817 (1910) *Carpenter v Lewis*, 65 S C 400 43 S E 881 (1903) *State v Keels* 39 S C 553 17 S E 802 (1893)) When an order is not appealable the notice of intent to appeal does not transfer jurisdiction to [the appellate court], nor does it stay further proceedings in the lower court *S C Pub Serv Auth v Arnold* 287 S C 584 586 340 S E 2d 535 536 (1986)

On November 29 2006 this Court partially dismissed Plaintiff's Amended Complaint with respect to all claims arising from her 2002 reappointment to the Hospital's medical staff On May 23 2007 this Court granted summary judgment to Defendants on Plaintiff's remaining claims On June 21 2007 Plaintiff served a notice

of appeal of Court's order granting summary judgment By order entered July 15, 2008, the Court of Appeals dismissed Plaintiff's appeal and on July 31 2008 issued the Remittur to this Court The Court of Appeals subsequently awarded fees and costs to Defendants which Plaintiff paid

On Wednesday, November 26 2008, Plaintiff filed a redundant notice of appeal purporting to appeal for the second time this Court's order of summary judgment In addition, Plaintiff's redundant notice of appeal for the first time sought to appeal the Court's order of November 29, 2006 issued over two years prior, which dismissed her causes of action arising from her 2002 reappointment to the Hospital's medical staff In both written brief and at the December 3 2008, hearing on Defendants' motion for sanctions Plaintiff moved for a stay contending that the redundant appeal divested this Court of jurisdiction to entertain Defendants' motion

This Court finds Plaintiff's redundant appeal does not divest this Court of jurisdiction to consider and rule on Defendants' motion Remittitur, having been issued by the Court of Appeals on July 31 2008, granted this Court said powers The Court finds that Plaintiff's filing of redundant notices of appeal in an attempt to have reheard matters already appealed dismissed and remitted by the Court of Appeals, to be frivolous, not warranted under existing law, and additional evidence of sanctionable conduct under the FCSPA ²

VI FCPSA Standard

The FCPSA allows for the imposition of sanctions for the initiation and prosecution of civil lawsuits without merit Section 15-36-10(C)(1) of the FCPSA provides when an action has been dismissed by summary judgment upon motion of the prevailing party the court shall proceed to determine if the claim was frivolous '

² On February 9 2009 the Court of Appeals dismissed Plaintiff's redundant appeal

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Section 15-36-10(C)(1) further provides that a party shall be sanctioned for a frivolous claim if the court finds that the party failed to comply with one of the following conditions

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension modification or reversal of existing law

(b) a reasonable attorney in the same circumstances would believe that *his procurement, initiation continuation or defense of the civil suit was intended merely to harass or injure the other party or*

(c) a reasonable attorney in the same circumstances would believe that *the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties or adjudication of the claim or defense upon which the proceedings are based*

(emphasis added)

Section 15-36-10 (E) of the Act sets forth the elements a court should consider when determining whether an attorney party or a pro se litigant has violated the provisions of [the Act] stating the court shall take into account the following

(1) the number of parties

(2) the complexity of the claims and defenses

(3) the length of time available to the attorney party or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4),

(4) information disclosed or undisclosed to the attorney party, or pro se litigant through discovery and adequate investigation

(5) previous violations of the provisions of this section

(6) the response, if any, of the attorney party or pro se litigant to the allegation that he violated the provisions of this section, and

(7) other factors the court considers just equitable or appropriate under the circumstances

Section 15-36-10 (G) of Act sets forth the sanctions allowable including (1) reasonable costs and attorney's fees, (2) a reasonable fine to the court, or (3) a directive of a nonmonetary nature including injunctive relief, designed to deter a future frivolous action or an action in bad faith

The determination of whether attorney's fees should be awarded under the Frivolous Proceedings Act is treated as one in equity" *Hanahan v Simpson* 326 S C 140 156 485 S E 2d 903, 912 (1997) An appellate court applies an abuse of discretion standard in reviewing the decision to award sanctions *Ex parte Beard*, 359 S C at 357 597 S E 2d at 838

South Carolina Courts have found sanctions to be appropriate under the Act when a party repeatedly files lawsuits against the same defendants on the same set of facts and alleging the same causes of action *Rulland vs Holler, Dennis Corbett, Ormond & Garner* 371 S C 91 637 S E 2d 316 (Ct App 2006) Our Courts have also found sanctions to be appropriate under the FCPSA when a plaintiff's complaint alleges facts which are exaggerated or misrepresented (See *Kilcawley v Kilcawley* 312 S C 425 428 440 S E 2d 892 894 (Ct App 1994))

VII Defendants are entitled to sanctions under the FCPSA

This Court having considered the record and the factors set forth in Section 15-36-10 (E) of the FCPSA finds the Plaintiff's conduct to be in violation of subsections (a) (b) and (c) of Section 15-36-10(C)(1) of the FCPSA in the following particulars

- A The Plaintiff initiated this lawsuit in an effort to seek damages for actions consented to and released in a previous Settlement Agreement and General Release entered by the parties**

It is black letter law that a settlement agreement and release is a binding contract *Bowers v S C Dept of Transportation, et al*, 360 S C 149, 600 S E 2d 543

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(Ct App 2004) *rehearing and cert denied* 2005 In construing the terms of a contract the language of the contract determines the intent of the parties *CAN Enterprises Inc v SC Health & Human Services Fin Comm'n* 296 S C 373 373 S E 2d 584 (1988) If the terms of a release or contract are ambiguous said ambiguities are to be strongly construed against the drafting party *Blakeley v Rabon* 266 S C 68 221 S E 2d 767 (1976) So *Atlantic Financial Services, Inc v Middleton*, 349 S C 77 562 S E 2d 482 (Ct App 2002)

Plaintiff's present law suit alleges, *inter alia* that her reappointment to the Hospital's consulting staff in 2002 was contrary to the Hospital Bylaws and was a product of a conspiracy amongst the Defendants to promote the ophthalmology practice of Dr Grady who she alleges is an economic competitor However, the record shows that the parties, in resolution of the Plaintiff's second lawsuit filed against the Defendants captioned *J Doe MD vs Tenet HealthSystem Medical, Inc East Cooper Community Hospital Inc, John Grady MD Paul Yantis MD William Cone and Coastal Emergency Services Inc*, and identified as Civil Action Number 00-CP-10-1888 a settlement which specifically called for Plaintiff's 2002 reappointment to the Hospital's consulting medical staff Indeed, the Plaintiff personally prepared and executed the pertinent Settlement Agreement and General Release in Full related to this previous action dated January 20, 2003 which stated in pertinent part

'(1) That Dr Holmes has been reappointed to consulting status for a term of two (2) years Dr Holmes shall have the right to apply for a change in status in accordance with the Bylaws

In compliance with the terms of the agreement the Plaintiff was indeed reappointed to the Hospital's consulting staff on December 16 2002 Thereafter the Plaintiff did not apply for a change in her staff category or privileges until the expiration of this reappointment term in 2004

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The language of the Release is unambiguous and clearly shows that the intent of the parties was for the Plaintiff to be reappointed to the consulting medical staff in 2002. This was recognized by the Court's November 29, 2006 Order partially dismissing the Plaintiff's claims.

The evidence presented to the Court shows that Plaintiff's allegations and causes of action concerning her 2002 appointment pled in the Complaint herein are barred by the Release previously executed by the parties. The language of the Release is unambiguous and clearly shows that the Plaintiff's 2002 reappointment to the consulting medical staff was partial consideration for the settlement of the previous state action against these same Defendants. The language of the Release clearly shows the intent of the parties was for the Plaintiff to be reappointed to the consulting medical staff in 2002. Likewise, the evidence shows that the Plaintiff was reappointed to the consulting staff in December of 2002 pursuant to the terms of the Release and that she made no request for an advancement in medical staff category or privileges until her 2004 application for reappointment complained of in the present action. Because the terms of the Release are clear and unambiguous, they must be given full force and effect. As such, the Plaintiff's allegations and causes of action concerning her 2002 appointment are barred by the Release and her claims and allegations in this regard are dismissed with prejudice pursuant to Rule 12(b)(6). "

In addition, the record shows that Plaintiff's claims for civil conspiracy in the present action are based on the very same events released in the same Settlement Agreement. The Plaintiff's previous lawsuit alleged causes of action for breach of contract, breach of contract accompanied by a fraudulent act, breach of the covenant of good faith and fair dealing, and civil conspiracy concerning her medical staff privileges. Plaintiff's claims in this regard were based upon a statement allegedly made by Defendant Dr. Yantis at the Hospital's August 13, 1997, credentials committee meeting. In the Settlement Agreement reached by the parties, the Plaintiff released all future claims, on account of, or may in any way grow out of, or which are the subject of her previous Complaint.

The Plaintiff asserts the same causes of action in the instant matter. When requested in written discovery to identify each and every instance of how Defendants conspired against Plaintiff with respect to her 2002 and 2004 reappointments, the only evidence submitted by the Plaintiff was the same alleged conspiratorial statement made in 1997 asserted and released in her previous litigation.

The record reveals that the instant matter is premised on the same events as the Plaintiff's previous lawsuits. *Cf. Rutland v. Holler, Dennis Corbett Ormond & Garner*, 371 S.C. 91-97, 637 S.E.2d 316, 319 (Ct. App. 2006). The record also reflects that the Plaintiff has previously been compensated for and has released any and all claims relating to the alleged 1997 conspiratorial statement of Dr. Yantis, showing that the present lawsuit alleges the same complaint as the previous lawsuits. *Rutland*. A reasonable attorney in the same circumstances would believe Plaintiff's causes of action for conspiracy and those surrounding her 2002 reappointment to have been released and unwarranted under existing law.

B Plaintiff's initiation of uninvestigated and unsubstantiated claims as to Defendant Dr. Grady and her continuation of such claims after the production of clear and convincing evidence to the contrary are sanctionable under the Act

The Plaintiff's claim for civil conspiracy is based on the alleged involvement of Defendant Dr. Grady in the decisions regarding her reappointments to the Hospital's medical staff in 2002 and 2004. The Plaintiff alleged that Dr. Grady was a competing ophthalmologist, that he was a member of the Hospital's Credentials Committee, and that in this capacity he conspired with the remaining Defendants to restrict Plaintiff's medical staff privileges for the financial benefit and promotion of his own medical practice. She further alleged that Dr. Grady was the only ophthalmologist practicing in the same geographic area of her practice and that he was the only ophthalmologist at the Hospital with the medical staff privileges she sought.

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The record shows that these allegations are blatant mischaracterizations to the Court. The record shows that at the times relevant to the Plaintiff's 2004 reappointment process, there were nine other ophthalmologists on staff at the Hospital with the same surgical privileges as those held by Defendant Dr. Grady and sought by the Plaintiff. Most importantly, the record shows that Defendant Dr. Grady has not been a member of the Hospital's Credentials Committee since 1998 and that he had no involvement in the review and evaluation of the Plaintiff's qualifications during her 2002 and 2004 reappointment processes as alleged in her Complaint.

On August 22, 2006, the Defendants produced to the Plaintiff an affidavit refuting her claims that Defendant Dr. Grady was in any way involved in the decisions regarding her 2002 and 2004 reappointments. The affidavit contained sworn testimony from the Hospital's Director of Medical Staff Services that Dr. Grady had not been a member of the Hospital's Credentials Committee since 1998 and had no duties or involvement in the credentialing of physicians, including the Plaintiff, since that time. Despite this evidence, Plaintiff continued with her cause of action for conspiracy. In addition, she failed to conduct any discovery, written or otherwise, on this or any other claim pled in her Complaint.

The Plaintiff's misrepresentation of Dr. Grady's involvement in her 2002 and 2004 credentialing processes and her exaggeration regarding the lack of physicians on staff with the same privileges as Dr. Grady and those sought by her are sanctionable under the Act. *Kilcawley v. Kilcawley*, 312 S.C. 425, 428, 440 S.E.2d 892, 894 (Ct. App. 1994).

In addition, "in determining if an attorney, party, or a pro se litigant has violated the provisions of [the Act], the court shall take into account (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation." S.C. Code Ann. § 15-36-10(E)(4) (Supp. 2005). Here, after

Defendants refuted the Plaintiff's allegations of Dr. Grady's involvement in her 2002 and 2004 reappointment processes, the Plaintiff continued to assert unfounded claims of conspiracy resulting in Defendants' unnecessary expenditures of attorneys' fees and costs. This Court recognized the Plaintiff's lack of evidentiary support for her position in its order granting summary judgment, stating:

There is no evidence that Defendant Dr. Grady was a member of, participated in, influenced, or had any role in the determinations made by the Credentials Committee, the Medical Executive Committee, or the Governing Board of East Cooper Hospital regarding the Plaintiff's reappointment application. Likewise, there is no evidence that there was any consideration of Dr. Grady or his medical practice in these determinations.

The foregoing, in addition to the record in this matter, shows that the Plaintiff failed to make a reasonable investigation or research the facts or law prior to the filing and during the prosecution of this action. A reasonable investigation would have precluded the filing of this action or, at the least, warranted its voluntary dismissal upon the discovery of facts completely inconsistent with Plaintiff's causes of action. The Plaintiff's failure to conduct any discovery on Dr. Grady's alleged role in her credentialing process is evidence of her blatant disregard for the truth surrounding these events and her continuation of this action despite evidence to the contrary is evidence that this action was intended merely to harass and injure the Defendants.

C Plaintiff's efforts to have this Court consider matters over which it has no jurisdiction is contrary to South Carolina law and sanctionable under the Act

South Carolina courts have consistently held that private hospitals are free in the absence of regulatory provisions to decide the nature and extent of medical practice permitted to persons it grants medical staff privileges. A private hospital is free to adopt reasonable regulations for the conduct of its affairs. *Gowan v. St. Francis Community Hospital*, 275 S.C. 203, 268 S.E.2d 580, 581 (1980). It is well-settled law in S.C. that the courts do not have jurisdiction to review the decisions of the medical staff of a private

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hospital concerning the membership and credentialing of its physicians *Strauss v Marlboro County General Hospital*, 185 S C 425 194 S E 65 (1937), *Wood v Hilton Head Hosp , Inc*, 292 S C 403 356 S E 2d 841 *Gowan vs St Francis Community Hospital* 275 S C 203, 268 S E 2d 580 (1980)

It is undisputed and the Plaintiff never contested that the Defendant Hospital is a private for-profit Hospital governed by a Board of Directors It is also undisputed that the Hospital's medical staff operates pursuant to written Medical Staff Bylaws Rules and Regulations which have been approved by the Governing Board of the Hospital by which all physicians receiving staff privileges at the Hospital agree to be bound

Despite clear case law to the contrary the Plaintiff filed this action seeking judicial determination of whether the decisions regarding her credentialing and privileges were reasonable and in compliance with the Hospital's Bylaws Specifically, she sought the Court to review whether the failure to process and consider her application for associate status and surgical privileges her reappointment to the consulting staff and the denial of an administrative hearing were reasonable decisions made in accordance with the Bylaws The Plaintiff's claims all arose out of the peer review process and under South Carolina law are not subject to judicial review and the Plaintiff presented no evidence or reason to persuade the Court to depart from this long standing principle

Plaintiff's interpretation and reliance on *Lee v Chesterfield General Hospital* 289 S C 6 344 S E 2d 379 (Ct App 1986) in an effort to justify her quest to have the Court review the decisions regarding her credentialing is without merit In *Lee* the Court confirmed the decision reached in *Gowan* but found subject matter jurisdiction where the Plaintiff did not seek to conduct a judicial review of internal hospital rules but claimed that the Bylaws were imposed in furtherance of a conspiracy, the purpose of which was to injure the Plaintiff *Lee* at 10 Here the Plaintiff asked the Court to review the basis for the credentialing decisions and substitute its judgment for the Hospital and its review

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committees by determining that the credentialing decisions were made inappropriately. This is precisely the type of intervention that *Strauss*, *Gowan*, and *Wood* decisions sought to prevent (Id)

Based on the ample case law on this issue, a reasonable attorney in the same circumstances would believe that under the facts herein, that Plaintiff's claim was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law. As such, Defendants are entitled to sanctions under the Act.

VIII Defendants are entitled to \$90,000.00 in attorneys' fees incurred in defending against Plaintiff's frivolous lawsuit

In Feldman v. Feldman, 380 S.C. 538, 546-47, 670 S.E.2d 669, 673 (Ct. App. 2008), the South Carolina Court of Appeals explained:

If an award of attorneys' fees is appropriate, the reasonableness of the fees should be determined according to (1) the nature, extent, and difficulty of the case, (2) the time necessarily devoted to the case, (3) the professional standing of counsel, (4) the contingency of compensation, (5) the beneficial results obtained, and (6) the customary legal fees for similar services.

In support of their request for attorneys' fees, Defendants submitted affidavits setting forth the fees incurred in the defense of this action and a detailed itemization of said fees. Defendants request costs and attorneys' fees in the amount of \$142,311.36 (One Hundred Forty Two Thousand and 36/100ths Dollars).

In considering the factors set forth in *Feldman*, the Court finds that \$90,000.00 (Ninety Thousand and No/100th Dollars) of the time and charges submitted for defending this action is comparable to the compensation charged by and paid to other attorneys with comparable legal ability, experience, success, and standing within the South Carolina Bar in connection with healthcare litigation throughout the State of South Carolina. That the services set forth in the record for defending this matter were

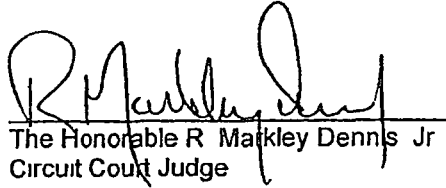
EMP 9/16

reasonable under the circumstances, that Defendants' requirement to pay for the defense of this case was not contingent on the outcome, and that counsel for Defendants obtained beneficial results in this action through the partial dismissal of Plaintiff's amended complaint the granting of summary judgment of the remaining claims, the appeal of the award of summary judgment and the successful prosecution of the present motion

In addition, this Court has also considered that since the December 3 2008 hearing on Defendants motion for sanctions Plaintiff has served upon Defendants over sixteen (16) additional motions filed by primarily in this Court and the Court of Appeals but also in the South Carolina Supreme Court pertaining to both the instant case as well as a related legal malpractice case Plaintiff filed against former legal counsel who represented her in a previous action against the Defendants Among these subsequently filed motions is the redundant notice of appeal referenced above in which she requests the Court of Appeals re open the merits of her previously-remitted action against Defendants and stay the pending motion for sanctions currently under consideration by this Court In addition to the redundant appeal referenced above Plaintiff's filings also seek the appeal of non-existent orders orders denying repeated requests for continuance, and orders which appear to have been issued in other litigation matters The Plaintiff also seeks intervention by the South Carolina Supreme Court in the present motion for sanctions through a Petition for Writ of Certiorari filed in her related legal malpractice action co-mingling the issues in this case with those at issue in her related legal malpractice action The subsequent filings of Plaintiff have required the Defendants to incur additional attorneys' fees and are additional evidence of the Plaintiff's violation of the Act in that they improperly attempt to appeal matters that are moot interlocutory, or are otherwise improper under the South Carolina Rules of Civil Procedure and Appellate Court Rules

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Based on the foregoing the Court awards Defendants \$90,000 00 (Ninety Thousand Dollars) in attorney s fees to be paid by the Plaintiff for her frivolous initiation and continuation of this proceeding Accordingly, this order shall be enrolled as a judgment against Plaintiff in that amount


The Honorable R. Markley Dennis Jr.
Circuit Court Judge

July 28, 2009
Charleston South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CYNTHIA HOLMES, M D

Plaintiff,

vs

HAYNSWORTH, SINKLER & BOYD, P A ,
successor to SINKLER & BOYD, P A ,
MANTON GRIER, and JAMES Y BECKER,

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
DOCKET NO 07-CP-10-1444

ORDER on POST TRIAL MOTIONS

2009 NOV 18 AM 11 37
JULIE J ARMSTRONG
CLERK OF COURT

FILED

This matter came before the Court on several post trial motions filed by Plaintiff and on Defendants' Motion for Sanctions Pursuant to S C Code Ann 15-36-10, Rule 11, SCRCP, and pursuant to the Court's inherent authority to award attorneys' fees where the losing party has acted in bad faith, vexatiously, or for oppressive reasons Having considered the materials submitted by Plaintiff in support of her motion, and having heard oral argument from the parties, the Court finds as follows with respect to Plaintiff's post trial motions

1 Plaintiff's Motion to Dismiss Defendants' Motion for Sanctions that she filed with the Court on July 7, 2009, is **DENIED**

2 Plaintiff's Motion for New Trial that she filed on July 20, 2009 is **DENIED**

3 Plaintiff's Motion for Reconsideration of the Court's Order denying her Motion for Continuance that she filed on July 21, 2009, is **DENIED**

4 Plaintiff's Motion for Reconsideration of the Court's Order Granting Directed Verdict to Defendants that she filed on August 3, 2009 is **DENIED**

5 Plaintiff's Motion to Strike and/or Dismiss Defendants' Motion for Sanctions that she filed on September 21, 2009 is **DENIED**

6 To the extent Plaintiff has moved that Defendants or their counsel be sanctioned, such motion is **DENIED**

DEFENDANTS' MOTION FOR SANCTIONS

I have also considered Defendants' Motion for Sanctions and find that, given the circumstances discussed below, sanctions are appropriate and Defendants' Motion is hereby **GRANTED**

I need not provide another detailed recitation of the facts of this case or the evidence presented or not presented at trial. Rather, I refer to the discussion in my Order Granting Defendants' Directed Verdict. In ruling on Defendants' Motion, I specifically find that sanctions are warranted under either the former South Carolina Frivolous Civil Proceedings Act, or the Act that became effective on July 1, 2005. I also find that sanctions are appropriate under Rule 11, SCRPC, and under the Court's inherent authority. It became clear to me that Plaintiff lacked any substantial evidence to support her claims against these Defendants, her former lawyers, and that Plaintiff's initiation and continuation of this lawsuit was done with no reasonable cause, and that any reasonable attorney would have believed that the proceedings to date have been frivolous.

As became evident throughout trial, Plaintiff filed a non-meritorious and baseless lawsuit. Prior to filing suit, Plaintiff obviously conducted no serious investigation of the facts she would be required to prove to substantiate her wide-ranging claim. Rather, the entire tenor of Dr. Holmes' case appears to be her belief that she is right and her former lawyers and 4 other courts are all wrong. Plaintiff failed to develop any evidence that could satisfy her burden of proof at trial. Any reasonable attorney would conclude that Plaintiff's entire case was

#2
T.L.B.

completely frivolous and was brought, and continued for seven years, without any reasonable basis

Plaintiff engaged in dilatory litigation tactics and appealed numerous interlocutory matters, including orders regarding venue and several orders on discovery matters. These appeals were likewise frivolous and dilatory. Plaintiff also has submitted numerous affidavits and memoranda accusing Defendants and defense counsel of engaging in all manner of inappropriate and abusive conduct, each of which has been dismissed and discounted by the Court, and all of which were submitted without reasonable basis. Plaintiff has never accepted the rulings of the Court and has moved for reconsideration on each and every order denying whatever relief she sought, sometimes multiple times.

Based upon the complete dearth of any evidence whatsoever to support any essential element of any of the 15 separate causes of actions Plaintiff asserted, I granted Defendants' Motion for Directed Verdict. I had, at the very beginning of trial, denied Defendants' Motion for Summary Judgment. However, as I stated, that ruling was based on the Court's unfamiliarity with the facts of the case and was not directed to the merits of Defendants' Motion. Given our system for assigning cases for trial, I had only a few days earlier gained any knowledge of this case. It is three Clerk's files, each about four inches thick for a total of twelve inches of paper, and that does not include the depositions. There was no practical way for me to deal with competing Motions for Summary Judgment on Monday of the trial week. I simply let the case go forward. If I had known then what I knew five days later, I would have granted Defendants' Motion for Summary Judgment. Plaintiff did not sustain her burden of establishing a genuine issue of material fact for trial even after several days of testimony. This, quite simply, is because there were no genuine issues of material fact for trial. Most importantly, Plaintiff presented no

expert testimony regarding the essential elements of her attorney malpractice claim and presented no testimony or evidence that anything done by the Defendants or not done by the Defendants was wrong. Furthermore, the record contains no evidence that Plaintiff suffered any damages as a proximate result of anything the Defendants either did or did not do. In short, Plaintiffs claims were so utterly baseless and lacking in any evidentiary support that no reasonable lawyer, judge, or jury could conceivably think her claims had any merit whatsoever.

1 Sanctions are appropriate pursuant to the current §15-36-10

The Frivolous Civil Proceedings Sanctions Act (hereinafter "the Act"), S.C. CODE ANN. §15-36-10 allows the Court to impose sanctions for the initiation and prosecution of meritless civil actions. In 2005, the former Frivolous Civil Proceedings Act, S.C. CODE ANN. §§15-36-10 through 15-36-50 was repealed effective March 21, 2005, by Act No. 27, 2005 S.C. Acts, 121, §12. Act 27 §4 reenacted the Frivolous Civil Proceedings Act effective July 1, 2005. See *Rutland v. Holler, Dennis Corbett Ormond & Garner*, 637 S.E.2d 316 (S.C. 2006). The new statute is applicable to all causes of action arising on or after that date.

The tortured procedural history of this case is as follows. Plaintiff filed her original Complaint in Charleston County in 2002. Venue was transferred to Richland County on the motion of Sinkler & Boyd, and Dr. Holmes appealed the Order transferring venue, ultimately to the South Carolina Supreme Court. Dr. Holmes' appeal was dismissed as interlocutory. On August 17, 2004, after Dr. Holmes' first round of appeals concluded, Judge Barber in Richland County granted Defendants' Motion to Strike or for a More Definite Statement and required Dr. Holmes to serve and file an Amended Complaint within thirty (30) days. Then followed a number of appeals on various issues, each of which ultimately went to the South Carolina Supreme Court and each of which again was dismissed. Those appeals concluded in November,

2006 Dr Holmes then served an Amended Complaint that all Defendants answered Dr Holmes then moved to transfer venue back to Charleston County, which Motion was granted by Judge Childs in Richland County¹ On February 3, 2007, Plaintiff filed and served another Amended Complaint, in which she added numerous additional claims and allegations against the Defendants, to which the Defendants timely filed answers This final Amended Complaint was the pleading that formed the entire basis for the case that went to trial in June, 2009 It is this Amended Complaint that constituted the frivolous civil proceeding that Dr Holmes instituted and continued and is the pleading on which Defendants' Motion for Sanctions is based See *e g Horry County v Parbel*, 378 S E 2d 253, 266, n 1 (S C Ct App 2008)

Section 15-36-10(C)(1) of the Act, provides, in pertinent part that after a case has been dismissed by a directed verdict, upon motion of the prevailing party, the court *shall* proceed to determine if the claim was frivolous S C CODE ANN §15-36-10(C)(1) An attorney, party, or *pro se* litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or *pro se* litigant failed to comply with one of the following conditions

- (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law,
- (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party, or
- (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonable founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or

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¹ As a further example of Dr Holmes manner of litigating, the Court notes that in seeking transfer of venue from Richland County to Charleston County based upon the convenience of witnesses Plaintiff submitted an affidavit stating that she had more than 50 physicians who were potential trial witnesses all of whom were located in Charleston Dr Holmes called only 1 physician to testify at trial and that testimony was completely irrelevant to any of Dr Holmes claims

adjudication of the claim or defense upon which the proceedings are based

Section 15-36 10(E) of the Act sets forth the elements a court should consider when determining whether an attorney, party, or a pro se litigant has violated the provisions of [the Act], stating the court shall take into account the following

- (1) the number of parties,
- (2) the complexity of the claims and defenses,
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4),
- (4) information disclosed or undisclosed to the attorney, party or pro se litigant through discovery and adequate investigation,
- (5) previous violations of the provisions of this section,
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section, and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances

In particular, Dr Holmes violated the Act by virtue of her baseless attempt to couch what was, in all events, a meritless legal malpractice case, as a far reaching conspiracy and fraud claim Dr Holmes never produced any tangible evidence to support any of her fifteen (15) separate causes of action, much less to support her legal malpractice case Over the course of seven years of litigation, Dr Holmes apparently failed to adduce an iota of evidence to support any of her claims—she failed to come forward with evidence to support any of the essential elements of her claims and causes of action and relied solely on her own conclusory narrative as the “proof” of the validity of her claims Furthermore, she never provided any evidence whatsoever of her alleged damages In short, though this case was pending and active for seven

years, Dr Holmes could not prove her case, and she failed to present any substantive evidence in support of her claims. She had no evidence of her damages, nor did she ever produce any substantive evidence of proximate causation. No reasonable attorney would have brought such claims without a shred of evidence to support the allegations Dr Holmes made in her lengthy Amended Complaint, and no reasonable attorney would have pressed such claims without any evidence of damages.

Additionally, Dr Holmes appealed nearly every ruling on pretrial motions throughout the case. All told, Dr Holmes filed at least six separate appeals of interlocutory orders, failing on each and every one. Dr Holmes appealed an order transferring venue, she appealed the dismissal of her motions filed in one county after venue had been transferred to another county, she appealed an order ruling that she could not proceed anonymously, and she appealed orders on discovery matters, including orders quashing her own improperly issued subpoenas. In each appeal, Dr Holmes petitioned for writ of *certiorari* from the Supreme Court and, when that was denied, she requested *en banc* hearings and filed petitions for review of the decision in the original jurisdiction of the Supreme Court. Dr Holmes has, quite simply, invoked every conceivable appellate procedure with respect to matters that were almost uniformly interlocutory.

Throughout the history of this case, Dr Holmes has proven herself to be profoundly litigious. Since being reassigned to Courtesy Staff at East Cooper Hospital in 1997, Dr Holmes engaged in a lengthy, albeit fruitless, administrative appeal of the Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr Becker and Mr Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her

state court case against the Hospital² In 2005, Dr Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges³ In Dr Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the Act In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in the absence of evidentiary support Her tactics have been dilatory, vexatious, that is, brought without sufficient grounds, oppressive and unreasonable Her conduct clearly warrants a severe punishment

Section 15-36-10(G) of the Act sets forth the sanctions allowable under the Act including (1) reasonable costs and attorney's fees, (2) a reasonable fine to the court, or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith "The determination of whether attorney's fees should be awarded under the

#8
7.1.16

2 In very similar fashion to the claims against these Defendants, Dr Holmes alleged a wide array of claims against the Tennessee lawyers including attorney malpractice unfair trade practices civil conspiracy promissory estoppel conversion and inadequate supervision, breach of fiduciary duty, and unspecified fraudulent conduct *See Doe v Duncan* 2008 WL 4367314 (Tenn Ct App 2008) Dr Holmes' cases against the Tennessee attorneys have been dismissed in both states Dr Holmes appealed the Tennessee court's order granting summary judgment against her but both the Court of Appeals of Tennessee and the Tennessee Supreme Court affirmed that decision Dr Holmes has appealed the dismissal of her South Carolina case as well

3 In the 2005 case she sued East Cooper Hospital, Tenet HealthSystem Medical Inc Dr John Grady and Dr Paul Yantis for (1) breach of contract, (2) breach of a covenant of good faith and fair dealing (3) breach of contract accompanied by a fraudulent act (4) civil conspiracy, and (5) violation of the South Carolina Unfair Trade Practices Act

Frivolous Proceedings Act is treated as one in equity ” *Hanahan v Simpson*, 326 S C 140, 156, 485 S E 2d 903, 912 (1997) I find that Plaintiff should be sanctioned under the Act

2 Dr Holmes’ claims are also sanctionable under the former §15-36-10

Even were the former version of the Act to be applied, I find that Dr Holmes’ claims are, in fact, frivolous, completely without evidentiary support, and wholly meritless Under the former provisions of §15-36-10

Any person who takes part in the procurement, initiation, continuation, or defense of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney’s fees and court costs of the other party if

(1) he does so primarily for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based, and

(2) the proceedings have terminated in favor of the person seeking an assessment of fees and costs

As is discussed above, Plaintiff had no logical or reasonable basis for bringing these claims against the Defendants Section 15-36-20 is instructive in interpreting Section 15-36-10 It speaks in terms of reasonableness Given my opportunities to observe and hear Dr Holmes, I have no doubt she is sincere in her beliefs about this case It is just that her beliefs are not reasonable Any competent, reasonable attorney would reach this conclusion Some of her unreasonable conclusions can be attributed to the fact that she has really never practiced law in any real sense of those words This was revealed in her testimony when she tried to testify as her own expert I cannot imagine a competent, experienced trial attorney telling her she had a case It was unreasonable for her to conclude such on her own She had no evidence of any sort that the Defendants did anything incorrectly, nor did she have any evidence that anything the Defendants did or did not do had any effect on her Rather, her entire case consisted of a belief

that everything bad that has happened in her career was the fault of the Defendants. Sadly, her blame was, and is, totally misplaced. This case never should have been brought in the first place.

Based on the foregoing, it is clear to me that Plaintiff's claims were completely frivolous within the meaning of the former §15-36-10 and that Plaintiff ought be assessed for payment of all or part of Defendants' attorney's fees.⁴

3 Plaintiff's commencement and continuation of this action is sanctionable under Rule 11

Dr. Holmes is an attorney licensed to practice law in the State of South Carolina. Her license is active and she is in good standing with the South Carolina Bar. Rule 11 allows an award of attorney's fees when the court finds the opposing party has filed pleadings that were made in bad faith or were frivolous. *Harris-Jenkins v Nissan Car Mart*, 557 S.E.2d 708, 711 (S.C. Ct. App. 2001). The standard for Rule 11 sanctions is essentially the same as that of the Frivolous Civil Proceedings Act. *Father v S.C. Dept. of Soc. Services*, 578 S.E.2d 11, 15 (S.C. 2003).

As is set forth more fully above, it is clear to me that Plaintiff's claims were entirely frivolous and, for that reason, I find that Dr. Holmes is subject to sanction under Rule 11.

4 Dr. Holmes' conduct is subject to sanction under the Court's inherent authority

As the United States Supreme Court has held, Courts have an inherent authority to award attorney's fees where the losing party has "acted in bad faith, vexatiously, or for oppressive reasons." See e.g. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975). Plaintiff

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⁴ During Plaintiff's oral argument, she seemed to take the position that attorney's fees meant the fees charged by one attorney and that the Court could not award fees for all the attorneys and staff who worked on the defense of the case. Plaintiff's contention is unpersuasive and the Court rejects her position. The reality of the practice of law is that oftentimes several attorneys and staff work on large and complex cases and that all these fees and the expense of defending a frivolous suit can be assessed.

conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains. I find that Dr. Holmes' case against these Defendants was completely baseless and that she is subject to sanction based upon the inherent authority of courts to sanction litigants who act in bad faith, vexatiously, that is, without proper grounds, or for oppressive and improper purposes. It is not her actual intent to harm, but harm is the reasonably foreseeable outcome.

CONCLUSION

Dr. Holmes' frivolous case against James Becker, Manton Grier, and Haynsworth Sinkler Boyd, and her manner of litigating, and appealing, every issue in the case, has caused the Defendants to incur very substantial legal fees and costs over the seven year span of the case. The Defendants' actual attorneys' fees and expenses incurred in the defense of this action amounts to over \$400,000.00. The attorneys' fees for trial alone were \$27,531.00. Time spent preparing for trial (twice, due to Dr. Holmes' last minute plea for a continuance) resulted in actual attorneys' fees of \$94,600.00. This case also resulted in Defendants having to pay \$32,240.22 in expert witness fees. I find these fees to be reasonable and, given the manner in which Plaintiff chose to litigate this frivolous case, expected.

Furthermore, the Defendants themselves were forced to devote time to defending the case—time that was taken away from other clients and other matters, resulting in considerable lost opportunity costs to the Defendants. The Defendants' time devoted to defending Plaintiff's

baseless claims resulted in the Defendant lawyers and their staff devoting nearly 600 hours of their own time to the case. Dr. Holmes' frivolous complaint and dilatory and vexatious actions resulted in lost opportunity costs to the Defendant lawyers more than \$200,000.00 in lost revenue. The trial alone cost Defendants \$36,752.00 in lost opportunity costs. The time spent preparing for trial resulted in lost opportunity costs for the Defendants equal to \$45,844.00. Under Rule 11 and pursuant to the Court's inherent powers, the Court is authorized to award an appropriate sanction that may include a monetary award to defendants to compensate them for the revenue lost by these defendants.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions, and the potential remains for her to continue that practice unless severe sanctions are levied against her.

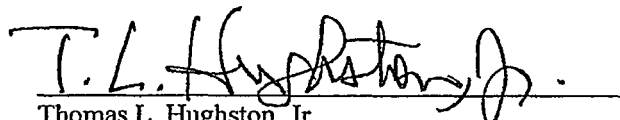
Based upon the foregoing, the Court sanctions Plaintiff, Dr. Cynthia Holmes, and enters judgment against her in the amount of \$200,000.00. This represents a combination of some reasonable attorneys' fees, necessary costs and fees. I have not included any lost opportunity costs. It is not as much as is justified by the facts. I am giving Dr. Holmes a "break." It boils down to where this cost should fall--on Defendants' liability insurance carrier, or on Dr. Holmes who is obviously, in my opinion, laboring under an obsession not grounded in fact or reason. It is a figure that is tempered by equity and mercy, but I hope will deter her from similar conduct in the future.

By this Order, the Court instructs the Clerk of Court to enroll the amount awarded as a sanction against Dr Holmes on the Roll of Judgments as a judgment against her

Pursuant to S C Code of Laws Section 15-36-10(G)(3), I enjoin Dr Homes from filing any other suit on her own behalf If she desires to file a suit for a claim of her own, she must have another attorney sign any pleading subsequent to this date If she desires relief from this, she may petition by giving notice of such to the Chief Administrative Judge for the Circuit in which she wishes to file suit and may be heard on her petition within 30 days

I cannot conclude without saying that my heart and sympathies go out to Dr Holmes It is painful for me to see and hear her put herself through this She is well educated with a law degree and medical degree with a specialty She can do much that is worthwhile and of benefit to her clients and herself Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this She needs help-- legal and perhaps otherwise I hope she gets it

AND IT IS SO ORDERED

#13

Thomas L. Hughston, Jr
Presiding Judge

November 18, 2009
Charleston, South Carolina

The South Carolina Court of Appeals

Dr Cynthia Holmes, M D

Appellant,

v

East Cooper Community Hospital, Inc ,
Tenet HealthSystem Medical, Inc ,
John Grady, M D , and Paul Yantis,
M D

Respondents

The Honorable R Markley Dennis, Jr
Charleston County
Trial Court Case No 2005-CP-10-05113

ORDER

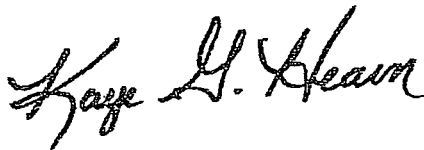
On July 30, 2008, the above-captioned appeal was remitted to the Clerk of Court for Charleston County. Approximately one year later, Appellant filed "A Motion for Leave to Motion," seeking leave to file a Rule 60, SCRPC motion, which was denied. Accordingly, the Court declined to rule on the Rule 60, SCRPC, motion. Appellant also filed a motion pursuant to "Rule 224(J), SCACR for Panel Review," and a "Motion to Dismiss and/or Strike Respondent's Return " which were denied by the Court.

On October 15, 2009, we received a petition for rehearing. Pursuant to Rule 224(1), SCACR, rehearing is not available. Because the case was remitted, no appeal is pending, and this Court no longer has jurisdiction. See Wise v South Carolina Dept of Corrections, 372 S C 173, 174, 642 S E 2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter "). The

Court will not act on the petition for rehearing and your filing fee will be returned. Further, we will not accept any motions or filings regarding this case.

Moreover, we also note that Appellant has filed two separate appeals in this Court challenging identical orders of Judge Dennis dated November 29, 2006 and May 23, 2007. One is the above-captioned appeal, which was remitted in July of 2008. The other appeal was dismissed in March of 2009. During the pendency of Appellant's appeals, Respondents' have repeatedly moved for sanctions, which this Court has denied. However, Appellant is hereby cautioned and is put on notice that any more filings or motions in this matter will result in sanctions. See Rule 269, SCACR ("Where an appeal, petition, motion or return is frivolous the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose sanctions.")

AND IT IS SO ORDERED



Columbia, South Carolina

November 10, 2009

cc Chalmers C. Johnson, Esquire
Cynthia Colhe, Esquire
E. Douglas Pratt-Thomas, Esquire
Lindsey K. Smith-Yancy
Daniel S. McQueeney, Jr., Esquire



The South Carolina Court of Appeals

Dr Cynthia Holmes, M D , Appellant,

v

East Cooper Community Hospital, Inc ,
Tenet HealthSystem Medical, Inc ,
John Grady, M D , and Paul Yantis,
M D , Respondents

The Honorable R. Markley Dennis, Jr
Charleston County
Trial Court Case No 2005-CP-10-05113

ORDER

Appellant in the above-captioned appeal filed a motion seeking to have Mr Pratt-Thomas remain counsel of record. The motion is denied

Appellant also filed a petition for writ of supersedeas or clarification, seeking to determine whether the "orders" on appeal should be stayed We request Respondents provide a return to Appellant's petition within ten days

We also take the opportunity to clarify that the only orders properly being challenged on appeal are the orders dated August 6, 2009 and the form order dated June 25, 2009 The other orders listed in Appellant's amended notice of appeal have been the subject of previous appeals to this Court Appellant has attempted to appeal those previous orders several times If Appellant again attempts to pursue appeals of those orders she will be sanctioned

AND IT IS SO ORDERED

The Supreme Court of South Carolina

Dr Cynthia Holmes M D ,¹ Petitioner,

v

East Cooper Hospital Inc ,
Tenet HealthSystems Medical
Inc , John Grady, M D , and
Paul Yantis, M D , Respondents

ORDER

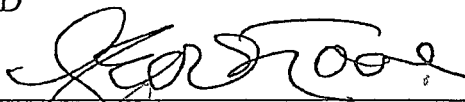
This matter is before this Court by way of a petition for a writ of certiorari, filed pursuant to Rule 242, SCACR, seeking review of an order of the Court of Appeals dismissing the appeal. The petition is denied.

Moreover, in light of our order of December 2, 2009, stating that no further filings will be accepted from petitioner in actions relating to the revocation of her medical staff privileges at East Cooper Community Hospital unless filed by an attorney, other than petitioner, licensed to practice law in this state, this Court will not accept for filing anything further in this

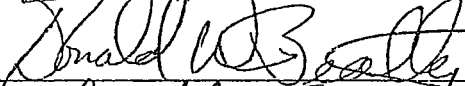
¹ Petitioner has at various times in other actions gone by the names J Doe, Cynthia Holmes, and Cynthia Collie. We point out that J Doe, Cynthia Holmes, Cynthia Collie, and Dr Cynthia Holmes, M D are one and the same.

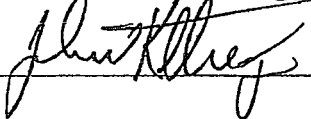
case² Such action is necessitated by petitioner's long history of abusing the legal process at both the trial and appellate levels

IT IS SO ORDERED



George CJ


William J


Donald W. Beatty J


Hearn J

Hearn, J , not participating

July 8, 2010

Columbia, South Carolina

² The only reason we have acted on the petition for a writ of certiorari is because it was filed prior to our order of December 2, 2009

The Supreme Court of South Carolina

J Doe,¹

Petitioner,

05-CP-10 4357

v

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents

FILED
2009 DEC -3 AM 11 35
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op No 2008-UP-596 (S C Ct App filed Oct 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital in 1997.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collie. In order to avoid any confusion we point out that J. Doe, Cynthia Holmes and Cynthia Collie are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner:

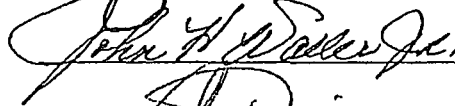
Throughout the history of this case Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997 Dr. Holmes engaged in a lengthy, albeit fruitless administrative appeal of the

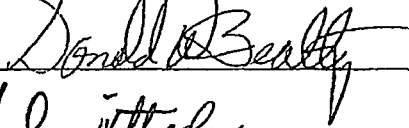
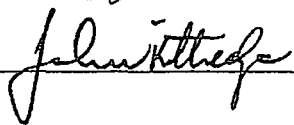
Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff's conduct through the case appears to have been nothing but vexatious, that is brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

IT IS SO ORDERED


C J

J

J

J

J

Columbia, South Carolina

December 2, 2009

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C A 05-10-5113

DR CYNTHIA HOLMES M D ,)

Plaintiff,)

Vs)

EAST COOPER COMMUNITY)
HOSPITAL, INC , TENETHEALTH)
SYSTEM MEDICAL, INC , JOHN)
GRADY, M D , PAUL YANTIS,)
M D ,)

Defendants)

AMENDED SUMMONS
(Jury Trial Requested)

BY

JULIE J ARMSTRONG
CLERK OF COURT

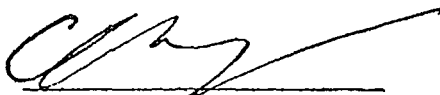
2006 APR 13 AM 10 48

FILED

TO THE DEFENDANTS ABOVE NAMED

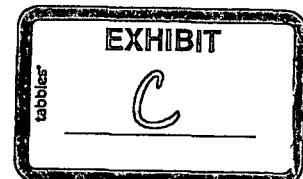
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is hereby served upon you, and to serve a copy of your Answer to the
Complaint upon the attorney listed below at 182 East Bay Street, Suite 203, Charleston,
South Carolina, 29401, within thirty (30) days after service of the Complaint, exclusive of
the day of such service If you fail to answer the Complaint within that time, judgment by
default will be rendered against you for the relief demanded in the Complaint

CHALMERS JOHNSON LAW FIRM, LLC



Chalmers C. Johnson
S C Bar # 11583
182 East Bay Street, Suite 203
Charleston, SC 29401
(843) 723-8288

April 12, 2006



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) C A 05-10-5113

DR. CYNTHIA HOLMES, M.D.,)

Plaintiff,)

Vs)

EAST COOPER COMMUNITY)
HOSPITAL, INC., TENETHEALTH)
SYSTEM MEDICAL, INC., JOHN)
GRADY, M.D., PAUL YANTIS,)
M.D.,)

Defendants)

AMENDED
COMPLAINT
(Jury Trial Requested)

BY _____
JULIE J. STRONG
CLERK OF COURT
2006 APR 13 AM 10 48

FILED

The Plaintiff, by and through her undersigned counsel, hereby makes the following claims and allegations

JURISDICTION

- 1 The original Complaint, in this case, listing the same parties and causes of action herein set forth, was filed on December 16, 2005. The Amended Summons and Complaint are being delivered to the Sheriff for Charleston County for service of process within 120 days of the filing thereof.
- 2 The Defendant, East Cooper Regional Medical Center, Tenethealth System (hereinafter referred to as East Cooper), is an entity which is located in, does business in, and which derives benefit from the laws of the State of South Carolina, and which is subject to the jurisdiction of this Honorable Court.
- 3 The Defendants, Dr. Grady and Dr. Yantis, are residents of the State of South Carolina and are subject to the jurisdiction of this Honorable Court.
- 4 The Plaintiff, Dr. Cynthia Holmes (hereinafter referred to as Plaintiff), is a

resident of the State of South Carolina, and is subject to the jurisdiction of this
Honorable Court

- 5 That all parties and subject matter herein mentioned are within the jurisdiction of
this Honorable Court

FACTS

- 6 The Plaintiff is an Ophthalmology Doctor, who practices in the Sullivan's Island
area of the East Cooper region of Charleston, SC
- 7 East Cooper is the sole hospital with Operating Room facilities which is located in
and directly serves the geographic area in which the Plaintiff's practice is located
- 8 East Cooper and Plaintiff are parties to a contractual agreement, the terms of
which are set forth in the medical staff by-laws
- 9 As set forth more specifically below (and hereby incorporated into the facts as set
forth), the Defendant, East Cooper, breached its contract with the Plaintiff by
refusing to process Plaintiff's application for privileges at the hospital and by
denying the Plaintiff's contractual right to an appeal under the contract
- 10 As set forth more specifically below (and hereby incorporated into the facts as set
forth), the Defendant, East Cooper, breached the implied covenant of good faith
and fair dealing, implied in the contractual relationship between the two, and
engaged in a fraudulent and deceptive act, by reviewing and processing the
Plaintiff's application, denying it, and then, when Plaintiff applied for an appeal
under the contract, changing its position, and claiming, fraudulently, that the
application was never actually processed, and that, therefore, Plaintiff had no
appeal rights

- 11 As set forth more specifically below (and hereby incorporated into the facts as set forth), the Defendants, Dr Yantis and Dr Grady, in conspiracy with Defendant East Cooper, conspired to act together and did act together to injure the Plaintiff, stifling her practice by continually blocking her attempts to gain certain privileges at East Cooper
- 12 As set forth more specifically below (and hereby incorporated into the facts as set forth), the Defendants, Dr Grady and East Cooper, have engaged in a common enterprise designed to limit the scope of practice of doctors (including the Plaintiff) in the area of Ophthalmology, and in the geographic area around East Cooper, by taking actions in bad faith, and in breach of the medical by-laws, designed to and effectively denying advancement of competing Ophthalmologists by restricting their privileges to East Cooper
- 13 That the Defendants, East Cooper and Dr Grady have taken actions to harm the Plaintiff and have harmed the Plaintiff, in a manner which is not only capable of repetition and further harm to other doctors, but has been repeated concerning the Plaintiff
- 14 That the actions of Defendants East Cooper and Dr Grady are in violation of the S C Unfair Trade Practices Act
- 15 That, as a direct and proximate result of the Defendants' actions, as plead herein, occurring in the years 2002 and 2004 (the last two times Plaintiff applied for a change in status for medical privileges with East Cooper), Plaintiff has suffered severe damages, in the form of actual damages, consequential damages, and compensatory damages. Plaintiff has also incurred attorneys fees and costs in

pursuing this action and in mitigation of her losses due to actions of the
Defendants

16 The damages that the Plaintiff has suffered are the foreseeable results of the
Defendants' actions

17 The Defendants' actions are so egregious as to warrant an award of punitive
damages against the Defendants, associated with the appropriate causes of action
under which punitive damages are available

**FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT
(Refusal to Process Plaintiff's Application for Privileges)**

18 Paragraphs one (1) through seventeen (17) are hereby incorporated verbatim

19 The Plaintiff and Defendant were and are parties to a contractual agreement, the
terms of which are set forth in the Medical Staff Bylaws, Rules and Regulations
and related documents

20 That the contractual terms call for the creation of a Credentials Committee (Article
XI, Section 3, Credentials Committee), and govern the responsibilities and duties
of that committee

21 That the Credentials Committee is responsible for reviewing and evaluation of
qualifications for each applicant seeking appointment, modification of
appointment, or clinical privileges at the hospital (Article XI, Section 3 B
Responsibilities, Duties, and Authority, subsection 1)

22 That the terms of the contract require the Credentials Committee to review each
application to determine if it is complete, and, if it is complete, to review the
application and submit a report, in accordance with the by-laws, to the Medical

Executive Committee (MEC) both on pending applications, and with recommendations after an evaluation has been made (Article XI, Section 3 B Responsibilities, Duties, and Authority)

- 23 That Plaintiff submitted a complete application for privileges to the Credentials Committee, in compliance with the requirements of the terms of the contract, in late 2004
- 24 That the Defendant breached its contract with Plaintiff by refusing to review the application, and refusing to process it, although the application was complete, within the meaning of the terms of the contract
- 25 That this breach of its contract with the Plaintiff resulted in the denial of Plaintiff's access to privileges at East Cooper, and resulting economic damages to her
- 26 That, as a direct and proximate result of Defendant's breach of contract, the Plaintiff has suffered actual damages in the form of lost income, and loss of business to her practice, as she has been unable to admit any patients to the hospital to perform medical procedures
- 27 That the damages suffered by Plaintiff are a foreseeable result of the Defendant's breach of its duties under the contract
- 28 That the Plaintiff is entitled to an award of actual damages and equitable enforcement of the contract

**FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(Denial of Plaintiff's Right to Appeal)**

- 29 Paragraphs one (1) through twenty eight (28) are hereby incorporated verbatim
- 30 The Plaintiff and Defendant were and are parties to a contractual agreement, the

terms of which are set forth in the Medical Staff Bylaws, Rules and Regulations, and related documents

- 31 That the terms of the contract confer upon the Plaintiff the right to proceed with a request for Judicial intervention only after having exhausted the administrative remedies afforded under the contract (Article VIII, Section I, A Duty to Exhaust Administrative Remedies)
- 32 The Defendant derives a significant benefit from this contractual restriction upon the Plaintiff's rights to engage in litigation to protect her interests
- 33 That the Plaintiff applied for privileges in 2002 and 2004, by submitting a complete application to the Credentials Committee
- 34 That the Credentials Committee refused to process and review the Plaintiff's application, in violation of its contractual obligations to do so
- 35 That the decision to deny the Plaintiff's application for privileges was an adverse action (Article VIII, Section 2 B Grounds for Hearing 9 Denial of requested advancement in staff category)
- 36 That the Plaintiff, in accordance with the applicable terms of the contract (Article VIII, Section 2, A Notice of Adverse Action of Recommended Action/ Request for Hearing), the Plaintiff timely (on December 15, 2004) delivered a request for an appeal and notified the Defendant that she intended to be represented by counsel
- 23 That the Defendant thereafter (once as to the application in 2002 and once as to the application in 2004) denied Plaintiff the right to appeal the Defendant's decision to deny her application for advancement in staff category, thereby breaching its

contract with the Plaintiff

- 24 In the 2004 process, Defendant denied her the right to be represented by counsel,
thereby breaching the contract between Plaintiff and Defendant
- 25 Had Defendant allowed Plaintiff to have access to the appeal process and to have
the right to be represented by Counsel, the Plaintiff would have obtained the staff
advancement that she sought
- 26 By denying the Plaintiff the right to participate in the administrative appeal
process, and the right to be represented by counsel in that process, the Defendant
breached its contract with Plaintiff, and effectively prohibited her from pursuing
her rights under the contract
- 27 As a direct and proximate result of the Defendant's breach of contract, the Plaintiff
has suffered actual damages in the form of lost income, and loss of business to her
practice, as she has been unable to admit any patients to the hospital to perform
medical procedures
- 28 That the damages suffered by Plaintiff are a foreseeable result of the Defendant's
breach of its duties under the contract
- 29 That the Plaintiff is entitled to an award of actual damages, and equitable
enforcement of the contract

**FOR A THIRD CAUSE OF ACTION
BREACH OF CONTRACT/ BREACH OF COVENANT OF GOOD
FAITH AND FAIR DEALING**

And

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

- 30 Paragraphs one (1) through twenty nine (29) are hereby incorporated verbatim
- 31 The Plaintiff and Defendant were and are parties to a contractual agreement, the

terms of which are set forth in the Medical Staff Bylaws, Rules and Regulations and related documents

32 As with every contractual relationship, this contract involved an implied covenant of good faith and fair dealing

33 That the Defendant breached this duty by attempting (successfully to date) to block Plaintiff from being able to seek review of its decision to deny her application for advancement in staff privileges by claiming, fraudulently, that Plaintiff's application for privileges was incomplete, when it was not

34 In 2002 and 2004 (in each of the two years) Plaintiff submitted an application for advancement in staff privileges, which was complete on its face

35 The Credentials Committee did, in 2002 and in 2004, begin review of the application

36 The Credentials Committee then denied the Plaintiff's application, an act which should have given Plaintiff the right to pursue an appeal, under the Contract

37 When Plaintiff did timely pursue an appeal, the Committee, in bad faith, changed its position, and claimed that *Plaintiff's application had not been processed at all, or reviewed, by claiming, fraudulently, that the application was incomplete*

38 By claiming that the application was incomplete, and by claiming that the application had never been "processed," under the terms of the contract, the Defendant claimed that no adverse action had been taken, and that the Plaintiff had no right to invoke her right to administrative review under the contract

39 The Defendant's actions were taken in bad faith, and in violation of the implied covenant of good faith and fair dealing, with the purpose of denying the Plaintiff

access to the administrative process and in an attempt to restrict Plaintiff from seeking a judicial remedy through litigation

- 40 Defendant's knowingly fraudulent stance, claiming that Plaintiff's application was not complete as a pretextual reason for failing "process" it, was asserted, knowingly, by Defendant, as a deception, and a fraudulent basis through which it attempted to deny the Plaintiff's application for advancement in staff privileges while also prohibiting the Plaintiff from exercising her contractually protected rights to a review of the denial
- 41 That the Defendant's knowingly fraudulent and deceptive acts did accompany the breaches of the contract, although the act of misrepresenting the process itself did not constitute the breach (the breach being the Defendant's refusal to process the claim or to allow the Plaintiff access to the appeal process)
- 42 That, as a direct and proximate result of the Defendant's breach of contract, the Plaintiff has suffered actual damages and special damages, in the form of lost income, and loss of business to her practice, as she has been unable to admit any patients to the hospital to perform medical procedures from 2002 through the date of the filing of this Amended Complaint, and continuing presently
- 43 Plaintiff, as a direct and proximate result of the Defendant's breaches of contract accompanied by fraudulent acts, suffered emotional injury, humiliation, and severe anxiety
- 44 The damages and injury suffered by Plaintiff were the foreseeable result of the Defendant's bad faith breach of contract, breach of the covenant of good faith and fair dealing, and of its accompanying fraudulent actions

45 The Defendant's actions, in this matter, were so egregious as to warrant an award
of punitive damages

46 Plaintiff is entitled to an award of damages against the Defendant in the amount of
actual damages, compensatory damages, punitive damages, an injunction, requiring
Defendant to proceed under the terms of its contract with Plaintiff, and other
damages such as this Honorable Court deems appropriate and just

FOR A FOURTH CAUSE OF ACTION
CIVIL CONSPIRACY
(As to all Defendants)

47 Paragraphs one (1) through forty-six (46) are hereby incorporated verbatim

48 That the Plaintiff's business, a physician's practice in the area of ophthalmology,
and in the Sullivan's Island/ East Cooper area, is in direct competition with
Defendant John Grady, M D , who is also an M D and practices in the same area
of medicine, and in the same geographical area as the Plaintiff

49 That Dr Grady is part of the Credentials committee, which controls the decisions
concerning the issuance of and advancement of staff privileges for the East Cooper
Hospital

50 That Dr Grady is the only Doctor in the area of Ophthalmology, who has staff
privileges at the level of practitioner at the East cooper Community Hospital, Inc ,
and has been the only physician who practices in this area to have staff privileges at
that level for many years

51 That Dr Grady has in the past, suggested that Plaintiff should refer her patients to
him, as long as she did not have the staff privileges at East Cooper Community
Hospital, Inc to perform surgical procedures at the Hospital

- 52 That, when Plaintiff refers a patient to another doctor, the doctor to whom the
patient is referred collects fees for the work done as a result of the referral
- 53 That Dr Grady benefits, financially, by the fact that Plaintiff is not allowed to treat
patients surgically at East Cooper Community Hospital, Inc (because she was not
granted staff privileges to do so)
- 54 That Defendants Dr Grady, Dr Yantis, and TenetHealth System Medical, Inc ,
East Cooper Community Hospital, Inc have conspired together to restrict
Plaintiff's business from competing with Dr Grady's business, by consistently
denying Plaintiff's applications for advancement of staff privileges at East Cooper
Community Hospital, Inc , by denying her right to the appeal process, and by
negatively affecting her reputation as a practitioner
- 55 That, as a direct and proximate result of the Defendants' engaging in a civil
conspiracy to injure the Plaintiff, the Plaintiff has
- A) Suffered lost profits and income from having to refer patients to other
doctors for certain procedures rather than performing them herself
 - B) Suffered special damages arising from the conspiracy, including injury to
her reputation, in that she is unable to perform surgical procedures, accept
referrals for this type of work, or create a reputation for her practice in this
area.
- 56 That the Defendants' actions, in engaging in civil conspiracy against the Plaintiff,
were and are intentional, and intended to cause the Plaintiff harm, while benefiting
the defendant, Dr Grady
- 57 That the Defendants' actions are and were so egregious as to warrant an award of

punitive damages

- 58 That the Plaintiff is entitled to an award of damages against the Defendants, jointly and severally, in the amount of actual damages, special damages, compensatory damages, and punitive damages

**FOR A FIFTH CAUSE OF ACTION
UNFAIR TRADE PRACTICES ACT (UTPA)
(Against Defendants Dr Grady and East Cooper)**

- 59 Paragraphs one (1) through fifty eight (58) are hereby incorporated verbatim
- 60 That the Defendants, Dr Grady and East Cooper engaged in a common plan or enterprise designed to limit the scope of practice of doctors (including the Plaintiff) in the East Cooper region, in the area of Ophthalmology, by denying said doctors the privilege of practicing medicine at East Cooper Hospital
- 61 That this tactic was especially effective as to the East Cooper area, as it is the only hospital serving the immediate communities of Sullivan's Island, Isle of Palms, Mt Pleasant, and the immediate area
- 62 That the Defendants named in this cause of action engaged in a violation of the UTPA in that the method used to hinder the competition was unfair
- 63 The Defendants' method of restricting the Plaintiff's business has a potential for repetition, and has, in fact, been repeated against the Plaintiff
- 64 The Defendants' actions, resulting in Plaintiff's inability to provide in hospital services for her patients, affects the public interest in that it limits the public's access to doctors for in patient treatment in the area of ophthalmology, in the East Cooper geographic location, and limit's the public's access to new medical procedures, not employed by Dr Grady

65 That the Defendants' actions, in wrongfully denying the Plaintiff (a competing
ophthalmologist) certification to practice medicine in East Cooper Hospital
facilities, caused her actual damages in the form of the loss of profits and income
she would have realized had she been able to perform surgery at the hospital from
2002 through the present

66 That the Defendant's violation of the UTPA is the proximate cause of the Plaintiff's
damages

67 The Defendants' conduct was willful, within the statutory definition of the term,
under the UTPA

68 The Plaintiff is entitled to an award of damages in the amount of actual damages,
consequential damages, liquidated damages under the UTPA (treble damages)
attorney's fees, and costs

PRAYER FOR DAMAGES

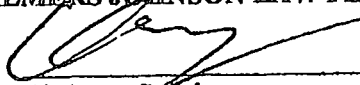
WHEREFORE, the Plaintiff prays for an award of damages against the Defendants, jointly
and severally, and as specifically set forth above (as to each cause of action), in the
amount of

- A Actual damages,
- B Consequential damages,
- C Compensatory damages,
- D Punitive damages,
- E Special damages (as to Civil Conspiracy),
- F All damages and remedies available under the UTPA,
- G equitable enforcement of the terms of the contract between Plaintiff and

Defendant,

H Other damages and remedies such as this Honorable Court deems appropriate and just

CHALMERS JOHNSON LAW FIRM, LLC



Chalmers C. Johnson
S C Bar # 11583
182 East Bay Street, Suite 203
Charleston, SC 29401
(843) 723-8288
Attorney for the Plaintiff

April 12, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
DR CYNTHIA HOLMES, M D)
Plaintiff,)
Vs)
EAST COOPER COMMUNITY)
HOSPITAL, INC , TENETHEALTH)
SYSTEM MEDICAL, INC JOHN)
GRADY, M D , PAUL YANTIS,)
M D ,)
Defendants)

IN THE COURT OF COMMON PLEAS

C A 05-10-5113

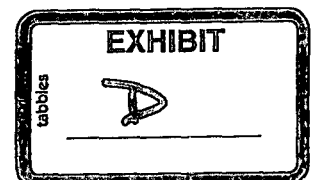
**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS**

FILED
2006 NOV -6 AM 9 35
JULIE J AR-STRONG
CLERK OF COURT

I The release from a prior case involving the Defendant does not preclude the Plaintiff's claims

A Plaintiff's 2002 claim

The defendant claims that a settlement agreement executed by the parties which required that the Plaintiff be reappointed to the consulting staff in 2002 precludes Plaintiff from suing in this case because she was, actually, reappointed to the consulting staff in 2002. The Defendant misinterprets the complaint, which should be clear on its face. Plaintiff was given two rights under the former agreement. One was to be reappointed to the consulting staff in 2002 for two years. The other, as Defendant explains in its own brief, was that the Plaintiff would have the right to apply for a change in status pursuant to the by-laws. It is the denial of the Plaintiff's right to apply for a change in status pursuant to the by-laws which is the basis of her claims in this case. Plaintiff did apply for a change in status in 2002. By a letter of December 16, 2002, Defendant denied her attempt to seek a change in status, in violation of the by-laws. Plaintiff was then relegated to the 'status quo'



position of having consulting privileges. Thus, while defendant did not breach its agreement by granting Plaintiff consulting privileges, it did breach the agreement by denying her right to apply for a change in status pursuant to the by-laws.

B Plaintiff's claims arising in 2004

Defendant and Plaintiff executed a Release prior to 2004 (Exhibit A to Defendant's Answer). The agreement allowed Plaintiff to apply for a change in privilege status with the hospital pursuant to the by-laws. In 2004, Plaintiff did this. As the Amended Complaint explains, the defendant breached both the by-laws, and the settlement agreement by refusing to even consider Plaintiff's application, as it should have (Plaintiff alleges) under the by-laws. The 2002 release includes, as most releases do, a release of all claims which had arisen or could arise from the subject matter of the lawsuit that was ended per the agreement. The Defendant attempts to argue that a release for a wrong committed prior to 2002 should release the Defendant from liability for a similar wrong committed for a second and third time, after the release. This is counter intuitive. If a person commits a wrong, is sued, and settles the case, it does not give the defendant carte blanche to commit the same misdeed in the future with impunity.

II Res Judicata and collateral estoppel do not apply in this case because the claim does not involve the same set of facts

The Defendant's argument on this issue is basically the same as the arguments concerning the applicability of the release, and should fail for the same reason. While it is true that many of the causes of action are similar to those brought in prior litigation between the Plaintiff and the Defendants in this case, and the facts upon which the legal theories are similar, it should be clear to anyone reading the two complaints, simply from

the dates of the alleged actions of the parties set forth in the pleadings, that the complaints do not address the same set of facts. Plaintiff is not re-litigating an issue and a set of facts which have already been litigated. Put simply, Plaintiff is saying "they did it again," and suing the defendant for engaging in the same conduct over which the parties litigated in the past for a second and third time. A simple review of the situation and application of common sense shows that a party who commits a wrong against another party and is sued for it, no matter the outcome, is not free to later commit the same type of wrong at another time and be free of liability. It seems that the reverse would be true, that a party who persists in committing a wrong against another party over and over should be subjected to more liability the second and third time due to the repetitious and unrepenting nature of the wrongs perpetrated on the Plaintiff.

Further, the case upon which the Defendant bases its res judicata argument was not determined on the merits. By Defendant's own argument and presentation of the facts, the former case was settled rather than adjudicated on the merits. In this case, although the parties are the same, the instant case neither arises from the same set of facts litigated before nor was the prior action decided on its merits.

III The Court is not being asked to review the decision of a private hospital regarding the credentialing of its medical staff

Although the Defendant's recitation of the law concerning attempts to challenge the fairness of by-laws, rules and regulations imposed by hospital credentialing committees appears to be extensive and accurate, the defendant's reliance on the litany of cases in which the Court declines to re-write private hospital by-laws is simply inapplicable to this case. The Defendant misinterprets the Complaint in order to make its

argument on this issue. It seems to be re-casting the complaint as a challenge to the credentialing committee's final decision "on the merits" concerning Dr. Holmes' application for privileges. Nor is Dr. Holmes asking the Court to rewrite the by-laws or the settlement agreement under which she was given the right to re-apply for a change in status with the hospital. On the contrary, she wants to enforce those things, and is suing for a breach of the rights granted to her there under. The Amended Complaint in this matter clearly states that the breach occurred when the hospital refused to review her application at all, thereby denying her right to apply for and be considered at all for a change in privileges.

IV Because the Court does have jurisdiction over the parties, the complaint does allege facts sufficient to support a claim for civil conspiracy

A Because the Court does have jurisdiction over the named defendants, the Complaint does allege facts sufficient to satisfy the first element of Civil Conspiracy

As argued above, the Defendant's arguments as to a lack of jurisdiction over the hospital defendants and Mr. Yantis, although sound, in legal principal, are not applicable to this case. Defendant's argument as to why the claim for civil conspiracy against Dr. Grady is based on its confidence that the Court would have found that it did not have jurisdiction over the hospital, thereby depriving the Plaintiff of being able to allege a conspiracy among two or more parties. Because the Court does have jurisdiction over the parties named as Defendants, the Complaint does, in fact, contain allegations of fact sufficient to support the elements of conspiracy against Dr. Grady.

B The cause of action for civil conspiracy should not be dismissed upon a motion upon the pleadings because it contains parallel damages claims to other causes of action

The defendant is correct in pointing out that the claim for civil conspiracy as to some of the Defendants, includes parallel claims for damages to other claims in the Complaint. At the trial of this case, should it be tried, the Plaintiff may be faced with a choice of remedies from the Court. However, the Court should not dismiss the claim for civil conspiracy on the pleadings. A Plaintiff may plead cumulative or even mutually exclusive causes of action in a complaint. The Court should consider the claim for civil conspiracy, even if it does plead damages subsumed in other causes of action, to be an alternative claim.

If two or more statements are made in the alternative and one of them if made independently would be sufficient the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.”
Rule 8(e)(2) SCRCP

V The issue of whether certain Defendants are immune to tort claims pursuant to 40-71-10 is one of fact, and should not be decided at a motion upon the pleadings

Although the Defendant correctly quotes S C Code section 40-71-10, and Plaintiff agrees that the existing law would apply this statute to a credentialing committee, such as the one mentioned in the Amended Complaint in this matter, the Defendant fails to address the fact that the statute does not provide absolute immunity from tort liability for members of professional committees. Importantly, the statute only provides immunity from tort claims “if the committed member acts without malice, has made a reasonable effort to obtain the facts relating to the matter under consideration, and acts in the belief that the action taken by him is warranted by the facts known to him.” Id.

In this case, at least on the face of the pleadings, it is clear that the Plaintiff does in fact accuse the Defendants of malicious intent to do her harm by harming her ability to do

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business as an ophthalmologist. In determining whether a cause of action is stated, a complaint must be construed liberally in favor of the pleader. *Layne v. International Brotherhood of Electrical Workers*, 271 S. C. 346, 247 S. E. 2d 346 (1978). Plaintiff has also alleged, at the basis of her claim, that the committee has breached its obligation to even allow her to submit information and facts upon which it could have considered her application for privileges. It seems that it is premature, at a motion on the pleadings, for the Defendant to claim immunity under the limited and conditional immunity afforded by this statute.

VI The Plaintiff has commenced her action as to the 2002 claim within the applicable statute of limitations

A Under the discovery rule, an issue of fact is raised as to whether the 2002 claim falls within the statute of limitations

Generally, a cause of action accrues at the time of injury. *Holy Loch Distributors, Inc. v. Hitchcock*, 332 S. C. 247, 503 S. E. 2d 787 (Ct. App. 1998). The defendant's argument that Dr. Holmes was aware of the denial of her 2002 request for a change in status occurred when she signed a settlement agreement, rather than when the Defendants actually notified her that her request for a change in status was denied is not correct. Defendant, in its brief, explains that the settlement agreement did have Plaintiff reappointed to the consulting staff in 2002, for a term of two years. However, the agreement also gave the Plaintiff the right to apply for a change in status in accordance with the bylaws. (Defendant's brief, p. 10, Ex. A to Defendant's Amended Answer). Plaintiff's complaint is not that she was not appointed to the proper position in the first place. She was appointed to the consulting staff. Her complaint is that the Defendant did not comply with the by-laws when she submitted a request for a change in status, which she

was allowed to do, pursuant to the agreement. As the Defendant, itself correctly states, the Plaintiff did receive a letter confirming that her application for a change in position was denied. That letter was dated December 16, 2002, and was delivered a few days later, by mail. (Holmes Aff.) Plaintiff's appointment to a consulting position, therefore, was no surprise. It was part of the original agreement. The condition which gave rise to the claim in 2002, was the Plaintiff's receipt of a letter (after December 16, 2002) which denied her agreed upon right to apply for a change in status pursuant to the by-laws.

The application of the discovery rule requires a finding of fact. The burden of establishing the bar of the statute of limitations rests upon the one interposing it. *Moore v Smith*, 29 S C 254, 7 S E 485. Where there is testimony conflicting upon the question, it becomes an issue for the jury to decide. *Brown v Finger*, 240 S C 102, 113, 134 S E 2d 781 (1962), see also *Latimer v Trowbridge*, 52 S C 193, 29 S E 634, *Worth v Norton*, 60 S C 293, 38 S E 605. In this case, the Defendant points out, in its own brief, that there is an issue of fact as to when the right of action as to the 2002 application for a change in status accrued. It seems clear that the Plaintiff is bringing her claim as to the denial of her right to apply for a change in status, not the fact that the Defendant put her in a consulting status, as per an agreement. Thus, the denial of her attempt to be considered for a change in status (the December 16th letter) would mark the date that Plaintiff would first have been aware of her injury.

B The instant suit was served within 120 days of filing of the Original Summons and Complaint

The Original Summons and Complaint in this matter was filed on December 16, 2005, a few days less than three years after the Plaintiff had received confirmation that her

application for a change in privilege status was rejected by the Defendant (Affidavit of Holmes) Thereafter, on April 13, 2006, prior to the filing of a responsive pleading, the Plaintiff filed an Amended Summons and Complaint The Amended Summons and Complaint were delivered to the Charleston County Sheriff's office for service of process on April 13, 2006 for service on Mr Yantis and Mr Grady, personally The undersigned is unable to locate the certificate for the other two defendants, but believes that they were all served by the same method, and requests time to locate the affidavits of service (Exhibit # 1) Defendant admits that it received service on April 17, 2006 (Defendant's brief p 27) and argues that this is more than 120 days from December 16, 2005 120 days from December 16, 2006 would have been April 16th, if the undersigned has counted correctly on the calendar The Summons and Complaint were delivered to the sheriff for service on April 13th (Exhibit #1) The undersigned is in the process of trying to locate the other two affidavits of service and respectfully requests the Court's permission to supplement them should the Court accept the Plaintiff's argument that delivery to the sheriff tolls the deadline for service of the Summons and Complaint

VII The Defendants were served with the original copy of the Amended Summons and Complaint The rules do not require the service of a Summons and Complaint to which the Defendant need not respond

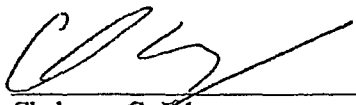
The Defendant makes an interesting semantic argument concerning the rules of service, arguing that the words 'original Summons and Complaint' require that in a case where the Complaint has been amended prior to service, the Summons and Complaint (to which the Defendant need not respond, as they were amended) must be served with the amended summons and Complaint to make good service This is a fun semantic argument

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to entertain. However, the undersigned can find no authority to support Defendant's stance, and Defendant does not put forth any in its brief. This interpretation is not practical. If there is an amendment prior to service, and the Defendant is intended to respond to the amended Summons and Complaint, then that is the one that ought to be served. The Plaintiff would opine that it makes more sense to read the words "copy of the original" in Rule 4 to mean that the Summons and Complaint must be copies of the same allegations and causes of action which have been filed, so that the Defendant will be able to respond to those same allegations which were filed with the Court.

CONCLUSION

The Amended Summons and Complaint in this case were plead sufficiently, and served properly. The jurisdictional issues raised by defendants are not applicable at this stage of the case, as one requires a finding of fact and the other applies to a request for relief not requested by the Plaintiff. The Plaintiff therefore respectfully requests that the Court deny the Defendants' motion to dismiss.



Chalmers C. Johnson
S C ID 11583
182 East Bay Street, Suite 203
Charleston, SC 29401
(843) 723-8288

November 6, 2006

J Al Cannon, Jr, Esq
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

Attorney or Party Without Attorney CHALMERS JOHNSON LAW FIRM LLC 182 EAST BAY STREET, # 203 CHARLESTON, SC 29401 Att For HOLMES, M D, DR CYNTHIA		Telephone No 843-723-8288	Court Use Only
Name and Address of Court CHARLESTON COUNTY COURT OF COMMON PLEAS		SHERIFF NO CISC-06004719-001	
Plaintiff DR CYNTHIA HOLMES M D Defendant EAST COOPER COMMUNITY HOSPITAL, INC, ET AL			
PROOF OF SERVICE (SUMMONS & COMP)	Hearing Date 0/00/00	Time	Case Number 05CP105113

I, J AL CANNON, JR, ESQ, SHERIFF in and for said County and State, do hereby certify that I have received the annexed

AMENDED SUMMONS, AMENDED COMPLAINT

on the 13th day of APRIL, 2006, and that I served the same on the 17th day of APRIL, 2006, at the hour of 10 29 AM within the County of CHARLESTON, State of SOUTH CAROLINA, as follows on

PERSON SERVED GRADY, DR JOHN L

BY DELIVERING TO THE DEFENDANT(S) OR PERSON(S) NAMED ABOVE, A COPY

Address Served 1156 BOWMAN RD, SUITE 104 OR 105
MOUNT PLEASANT, SC 29464

Service By MURRAY, GEORGE W

SHERIFF'S FEES	Charges
SERVICE FEE	15 00
** TOTALS **	15 00

I am a SOUTH CAROLINA SHERIFF,
and I certify that the foregoing
is true and correct

ATTEST OF CERTIFIED TRUE COPY

Dianne G. Brown
NOTARY PUBLIC SOUTH CAROLINA

MY COMMISSION EXPIRES 02/01/16

J AL CANNON, JR, ESQ, SHERIFF
COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

DATE 4/17/06

BY *[Signature]*

J Al Cannon, Jr, Esq
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

Attorney or Party Without Attorney CHALMERS JOHNSON LAW FIRM LLC 182 EAST BAY STREET, # 203 CHARLESTON, SC 29401 Att For HOLMES, M D , DR CYNTHIA		Telephone No 843-723-8288 SHERIFF NO CISC-06004719-002	Court Use Only
Name and Address of Court CHARLESTON COUNTY COURT OF COMMON PLEAS			
Plaintiff DR CYNTHIA HOLMES, M D Defendant EAST COOPER COMMUNITY HOSPITAL, INC , ET AL			
PROOF OF SERVICE (SUMMONS & COMP)	Hearing Date 0/00/00	Time	Case Number 05CP105113

I, J AL CANNON, JR , ESQ , SHERIFF in and for said County and State, do hereby certify that I have received the annexed

AMENDED SUMMONS, AMENDED COMPLAINT

on the 13th day of APRIL, 2006, and that I served the same on the 17th day of APRIL, 2006, at the hour of 10 14 AM within the County of CHARLESTON, State of SOUTH CAROLINA, as follows on

PERSON SERVED YANTIS, M D , PAUL L

BY DELIVERING TO THE DEFENDANT(S) OR PERSON(S) NAMED ABOVE, A COPY

Address Served	1300 HOSPITAL BLVD MOUNT PLEASANT, SC 29464
Service By	MURRAY, GEORGE W

SHERIFF'S FEES	Charges
SERVICE FEE	15 00
** TOTALS **	15 00

I am a SOUTH CAROLINA SHERIFF,
and I certify that the foregoing
is true and correct

ATTEST OF CERTIFIED TRUE COPY

NOTARY PUBLIC SOUTH CAROLINA

MY COMMISSION EXPIRES

J AL CANNON, JR , ESQ , SHERIFF
COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

DATE 4/17/06

BY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C A NO 05 CP-10 5113

Dr Cynthia Holmes M D)

Plaintiff)

vs)

East Cooper Community Hospital Inc)
Tenet HealthSystem Medical Inc , John)
Grady M D Paul Yantis M D ,)

Defendants)

ORDER PURSUANT TO
DEFENDANTS' MOTION TO DISMISS

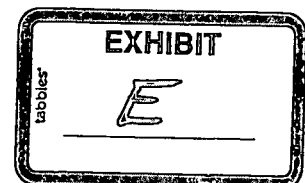
FILED
2006 NOV 29 PM 2:31
JULIE A. ASTROFF
CLERK OF COURT
BY _____

This matter came before the Court on Motion of Defendants East Cooper Community Hospital Inc Tenet HealthSystem Medical Inc John Grady M D , and Paul Yantis M D for dismissal pursuant to Rules 12(b)(1) (2) and (6) of the South Carolina Rules of Civil Procedure (S C R Civ P) A hearing was held on November 6 2006 during which counsel for both parties presented oral argument In addition both parties presented memoranda of law to the Court for consideration

The Plaintiff herein is a medical doctor specializing in the field of ophthalmology Her Complaint alleges causes of action for breach of contract breach of contract accompanied by a fraudulent action breach of the covenant of good faith and fair dealing and civil conspiracy concerning her medical staff privileges at Defendant East Cooper Community Hospital Inc (hereinafter referred to as East Cooper Hospital) Specifically the allegations and causes of action set forth in the Complaint concern the Plaintiff s reappointment to the consulting category of the medical staff of East Cooper Hospital in the years 2002 and 2004

The Plaintiff had previously filed an action in the Court of Common Pleas for Charleston County captioned *J Doe M D vs Tenet HealthSystem Medical Inc East Cooper Community Hospital Inc John Grady M D Paul Yantis M D William Cone and Coastal Emergency Services Inc* and identified as Civil Action Number 00-CP-10 1888 This previous action

rmf/1



involved similar allegations and causes of action as the matter herein. The parties to the previous action entered into a Settlement Agreement and General Release in Full (hereinafter referred to as Release) in January of 2003. One of the terms of the Release called for the Plaintiff's reappointment to the consulting staff of East Cooper Hospital in 2002 for a term of two years with the right to apply for advancement in staff category in accordance with the Hospital bylaws. The Release reads in pertinent part 'in consideration of the following agreement among the parties to wit: (1) That Dr. Holmes has been reappointed to consulting status for a term of two (2) years. Dr. Holmes shall have the right to apply for a change in status in accordance with the Bylaws. While the Release was not executed by the parties until January of 2003, the Plaintiff was indeed reappointed to the consulting staff pursuant to the terms of the settlement in December of 2002. Thereafter, the Plaintiff did not apply for an advancement in medical staff category or privileges until 2004 upon the expiration of her 2002 reappointment.

A settlement agreement and release is a contract. *Bowers v. S.C. Dept. of Transportation et al.* 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004) rehearing and cert. denied 2005. In construing the terms of a contract, the Court must look at the language of the contract to determine the intent of the parties. *CAN Enterprises, Inc. v. S.C. Health & Human Services Fin. Comm'n.* 296 S.C. 373, 373 S.E.2d 584 (1988).

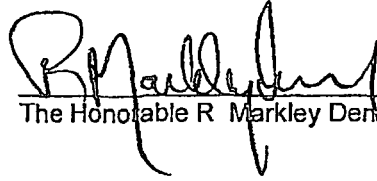
The evidence presented to the Court shows that Plaintiff's allegations and causes of action concerning her 2002 appointment pled in the Complaint herein are barred by the Release previously executed by the parties. The language of the Release is unambiguous and clearly shows that the Plaintiff's 2002 reappointment to the consulting medical staff was partial consideration for the settlement of the previous state action against these same Defendants. The language of the Release clearly shows the intent of the parties was for the Plaintiff to be reappointed to the consulting medical staff in 2002. Likewise, the evidence shows that the Plaintiff was reappointed to the consulting staff in December of 2002 pursuant to the terms of the Release and that she made no request for an advancement in medical staff category or

privileges until her 2004 application for reappointment complained of in the present action. Because the terms of the Release are clear and unambiguous, they must be given full force and effect. As such, the Plaintiff's allegations and causes of action concerning her 2002 appointment are barred by the Release and her claims and allegations in this regard are dismissed with prejudice pursuant Rule 12(b)(6).

The Defendants further argue that the Plaintiff's claims concerning her 2004 reappointment at East Cooper Hospital are also barred by the Release. The Agreement was a General Release in Full whereby the parties mutually agreed to 'completely release and forever discharge each other from any and all claims of any nature whatsoever whether based on a tort, contract, or other theory of recovery, which the parties now have or which may hereafter accrue or otherwise be acquired on account of or may in any way grow out of or which are the subject of the Complaint (and all related pleadings) including without limitation any and all known or unknown claims for injuries and damages to the parties which may have resulted or may result from any alleged acts or omissions of the parties which are the subject of the Complaint (and all related pleadings). The evidence presented to the Court shows that Plaintiff's allegations and causes of action concerning her 2004 appointment pled herein are not barred by the Release as said events and allegations occurred subsequent to the execution of the Release.

The Defendants have also moved for dismissal of Plaintiff's allegations and causes of action concerning her 2004 reappointment on the additional grounds of lack of subject matter jurisdiction over a private hospital's decisions regarding the privileging of its medical staff, statutory immunity of the Defendants, insufficiency of service of process and insufficiency of pleading concerning Plaintiff's cause of action for civil conspiracy. The Court declined consideration of the Defendants' Motion on these grounds as consideration of same would require the Court to review evidence outside of the scope of the pleadings and outside of the scope of Rules 12(b)(1), (2) and (6).

IT IS SO ORDERED


The Honorable R. Markley Dennis Jr

Charleston South Carolina

Dated Nov 15 2006

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C A NO 05-CP-10-5113

Dr Cynthia Holmes M D

Plaintiff

vs

East Cooper Community Hospital Inc ,
Tenet HealthSystem Medical Inc , John
Grady M D Paul Yantis, M D ,

Defendants

NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT

BY

JULIE J ARSTRONG
CLERK OF COURT

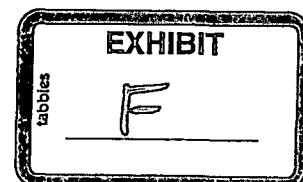
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FILED

TO Chalmers C Johnson, Esquire
Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for Tenet HealthSystem Medical Inc East Cooper Community Hospital Inc John Grady M D and Paul Yantis, M D will move before the Presiding Judge of the Court of Common Pleas for Charleston County South Carolina on such day and at such time as the Court may appoint more than ten (10) days after the service hereof or as soon thereafter as counsel may be heard for an Order in the above-entitled action granting summary judgment in favor of the Defendants under the provisions of Rule 56 of the South Carolina Rules of Civil Procedure as well as subsections (1) (2) and (6) of Rule 12(b) on the grounds that there is no genuine issue of material fact as to any of the causes of action alleged by the Plaintiff and that Defendants are entitled to summary judgment as a matter of law This Motion is made on the following grounds

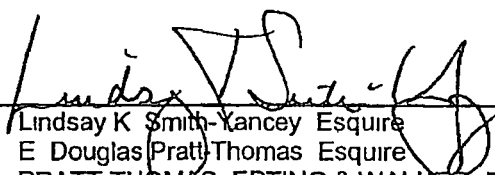
The Plaintiff Cynthia Holmes M D is a medical doctor specializing in the field of ophthalmology The Plaintiff has a long and protracted history of litigation against the Defendants concerning her medical privileges at East Cooper Regional Medical Center (hereinafter referred to as "East Cooper Hospital") In her present action the Plaintiff alleges wrongful denial of hospital privileges breach of contract breach of contract accompanied by a fraudulent act civil conspiracy and unfair trade practices relating to her reappointments to the



consulting category of the medical staff of East Cooper Hospital in December of 2002 and 2004. The Plaintiff's 2002 claims were dismissed by previous Order of the Court and dismissal of the 2004 claims was held in abeyance. The Defendants hereby move for dismissal of these remaining claims as there is no genuine issue of material fact with regard thereto for the following reasons: the Court does not have jurisdiction over the decisions of private hospitals concerning medical staff privileges; the Defendants are immune from civil liability under applicable state and federal statutes regarding physician credentialing; insufficiency of service of process; the Plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel in that the Plaintiff's claims were previously released by way of a Settlement Agreement and General Release in Full; Plaintiff's claims are barred by the doctrine of issue preclusion in that the allegations and damages alleged herein are the same as those alleged in two pending legal malpractice actions filed by Plaintiff; insufficiency of pleading as to Plaintiff's claims for civil conspiracy; and Plaintiff's failure to produce any evidence in support of her claims, including, but not limited to, Plaintiff's allegations that Defendant Dr. Grady was involved in decisions regarding her 2004 reappointment.

This Motion will be based on the pleadings, discovery and Orders from this and other cases involving the Plaintiff, the attached Affidavit of Elaine Meuli, other Affidavits to be provided, and a forthcoming Memorandum of Law.

By

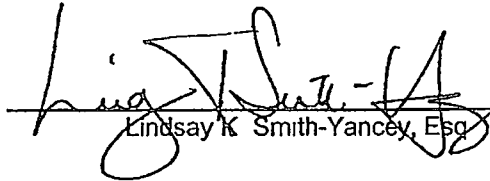

Lindsay K. Smith-Yancey Esquire
E. Douglas Pratt Thomas Esquire
PRATT-THOMAS EPTING & WALKER P.A.
P.O. Drawer 22247
Charleston, S.C. 29413-2247
Tel. (843) 727-2211
Attorneys for Defendants East Cooper Community
Hospital, Inc., Tenet HealthSystem Medical, Inc.,
John Grady, M.D., and Paul Yantis, M.D.

Charleston, South Carolina

February 5 2007

AFFIRMATION OF COUNSEL

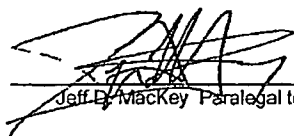
In accordance with Rule 11 (SCRCP), I affirm that communication with opposing counsel would serve no useful purpose


Lindsay K. Smith-Yancey, Esq.

FILED
2007 FEB -7 PM 2 33
JULIE J. ABBOTT
CLERK OF COURT
BY _____

I hereby certify that I have served a true copy of the foregoing by delivering a copy to the following counsel/parties in accord with applicable Rules of Civil Procedure on February 5 2007 by first class mail (postage prepaid properly addressed)

Chalmers C. Johnson Esquire
182 East Bay Street Suite 203
Charleston SC 29401

By 
Jeff D. Mackey Paralegal to Lindsay K. Smith-Yancey

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C A NO 05-CP-10-5113

Dr Cynthia Holmes M D

Plaintiff,

vs

East Cooper Community Hospital Inc
Tenet HealthSystem Medical Inc John
Grady M D Paul Yantis, M D ,

Defendants

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

BY JUDGE JAMES A. STRONG
CLERK OF COURT
2007 APR 19 PM 4 43

FILED

Defendants East Cooper Community Hospital, Inc Tenet HealthSystem Medical Inc , John Grady M D and Paul Yantis, M D , submit this Memorandum of Law in support of their Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (S C R Civ P) on the grounds that there is no genuine issue as to any material fact in this matter and that the Defendants are entitled to summary judgment as a matter of law This Motion is supported by the below-referenced facts, case law state and federal statutes and the attached Affidavits of fact witnesses Danny H Mullis Esq member of the Governing Board of East Cooper Regional Medical Center Kevin Keenan M D , Chief of Staff and Chairman of the Medical Executive Committee, Susan Jones M D Credentials Committee member and Chairperson of the Department of Medicine and Elaine Meuli Medical Staff Services Director as well as the Affidavits of local and nationwide physician credentialing expert witnesses Donald Pocock M D former Chief Medical Officer of Roper St Francis Health Care, and Hugh Greeley founder of The Greeley Company This Motion is further based on documents previously filed with the Court as exhibits to the Defendants Amended Answer and incorporated herein by reference

STATEMENT OF FACT

This case involves the right of a private hospital to set the parameters and requirements for the granting of clinical privileges to its Medical Staff The Plaintiff, Cynthia Holmes M D , is a medical doctor specializing in the field of ophthalmology She is not Board Certified does not have admitting or surgical privileges at any healthcare facility other than the Defendant Hospital herein and upon information and belief has not performed surgery since 1998 The Plaintiff



holds a juris doctor degree is a licensed attorney and active member of the South Carolina (S C) Bar Association and has a long and protracted history of litigation against the Defendants herein A summary of the governance of East Cooper Regional Medical Center, the Plaintiff's credentialing saga and her previous lawsuits against these Defendants is provided below

A THE GOVERNANCE AND CREDENTIALING PROCESS

Defendant East Cooper Community Hospital Inc owns, operates and does business as East Cooper Regional Medical Center (hereinafter referred to as East Cooper Hospital or 'the Hospital) and is a wholly owned subsidiary of Defendant Tenet HealthSystem Medical Inc East Cooper Hospital is a private for-profit Hospital governed by a Board of Directors with the purpose of serving as a general acute care hospital providing patient care education and research The organizational structure of the Hospital as is the case at most hospitals is bifurcated reflecting the distinct roles of the Hospital administration and of the Medical Staff The Hospital is governed by a Governing Board comprised of physicians, administrative personnel and lay representatives of the community and retains the ultimate responsibility for the operation of the facility The administrative staff is led by a President and Chief Executive Officer who manages the Hospital on a day-to day basis The Medical Staff organization which consists of all doctors with active privileges to practice at East Cooper Hospital represents the physicians in the Hospital's government The Medical Staff is led by an elected Chief of Staff who presides over the Medical Executive Committee (MEC) comprised of the chairpersons of the various clinical departments as well as officers elected by the staff at large

The Medical Staff operates pursuant to written Medical Staff Bylaws Rules and Regulations which have been approved by the Governing Board of the Hospital (Exhibit A) Specifically the Governing Board promulgates Bylaws for the Medical Staff by which all physicians receiving staff privileges at the Hospital agree to be bound The Medical Staff of East Cooper Hospital is divided into categories including in pertinent part, active, associate and consulting The active staff category consists of physicians who regularly admit and provide services within the Hospital to at least 24 patients per calendar year Active staff members must among other things attend Medical Staff meetings participate in emergency room call participate in performance improvement activities and are allowed to vote for and hold Medical Staff and departmental assignments (Exhibit A Article IV Section 2 (A)) The **associate** staff consists of practitioners who meet all the criteria for active staff except the minimum required number of patient contacts who may not have active privileges at any other Hospital and who otherwise enjoy the same privileges and obligations as the active staff If an

applicant to the associate staff desires privileges for surgical or invasive procedures, he or she is 'required to submit documentation of current clinical competence to the satisfaction of the appropriate Department Chairman and Credentials Committee " (Exhibit A Article IV, Section 3 (A)) **Consulting** staff members do not admit patients to the Hospital but provide consultative services to patients at the request of active or courtesy staff physicians (Exhibit A, Article IV, Section 5 (A))

The Medical Staff Bylaws set forth the process by which physicians are granted Medical Staff status and clinical privileges at East Cooper Hospital Pursuant to the Bylaws membership on the Medical Staff and assignment of clinical privileges shall be granted and maintained only by those professionally qualified and currently competent practitioners who continuously meet the qualifications standards, and requirements set forth therein (Exhibit A, Article III, Section I (A) Exhibits B, C and D) No individual is automatically entitled to initial or continued membership on the Medical Staff or the exercise of clinical privileges at the Hospital merely because he or she is licensed to practice medicine has previously been a member of the Medical Staff, has memberships or privileges at another healthcare facility, or is a member of any professional organization (Exhibit A, Article III Section I (B), Exhibits B C and D) Applicants and reapplicants to the Medical Staff are required and obligated to document, among other things, demonstrated current clinical competence for the privileges they seek (Exhibit A Article III Section 3 (A) Exhibits B, C and D) abide by the Medical Staff Bylaws, Rules and Regulations (Exhibit A Article III Section 3 (B)(6) Exhibits B C and D) supply requested information and appear for interviews with regard to membership or privileges (Exhibit A Article III Section 3 (B)(12), Exhibits B C and D) and consent to inspection of all records and documents that may be material to an evaluation of his or her professional qualifications for the clinical privileges he or she requests (Exhibit A Article III Section 3 (B)(18) and Exhibits B C and D) Applicants and reapplicants also agree to release from liability all persons for their acts performed in connection with the investigation and evaluation of the applicant and his or her credentials (Exhibit A Article III Section 3 (B)(19) Exhibits B C and D) Initial appointments and reappointments to the Medical Staff at East Cooper Hospital are made by the Governing Body for a period not to exceed two (2) years (Exhibit A Article V Section 1 Exhibits B C and D) Such appointments are made by the Governing Board after receipt and consideration of peer input from the Medical Executive and Credentials Committees which are comprised of physician members of the active Medical Staff *Id* Although the Governing Board retains the ultimate authority over staff privileges the recommendations of the Credentials and Medical Executive Committees are given considerable weight This system which is known as peer

review is designed to raise the quality of medical care by encouraging physicians to police one another (Exhibits B C D and E) South Carolina law and federal law, as well as Hospital accreditation entities mandate that Hospitals provide for peer review and credentialing of their staff physicians (S C DHEC Reg § 61-16 Chapter 3 42 U S C § 482 22 Exhibits B, C D and E) **A comprehensive summary of the requirements of health care facilities in the context of physician credentialing is set forth in the attached Affidavit of Hugh Greeley, an expert in the area of Medical Staff Bylaws, physician credentialing, and the various state, federal and accreditation regulations governing this field (Exhibit E)**

Reapplicants to the Medical Staff of East Cooper Hospital have the burden of completing and submitting an application for reappointment at least ninety (90) days prior to the expiration of their previous appointment term (Exhibit A Article V Section 3 (A) and Exhibits B C D and E) The reapplicant has the burden of producing adequate information for a proper evaluation of his or her current clinical competence in terms of his or her ability to practice or continue to practice, in the area for which clinical privileges are sought (Exhibit A Article V Section 3 (C) and Exhibits B C, D E and F) Reapplicants requesting a change in staff category or clinical privileges have the burden of supplying information in support thereof (Exhibit A Article V Section 3 (A)(2) and Exhibits B C D E and F) Pursuant to the Medical Staff Bylaws requests for clinical privileges shall be evaluated on the basis of a physician's training experience and education demonstrated current clinical competence and other relevant information (Exhibit A Article VI, Section 2 (B)) In granting privileges consideration must be given to objective information received from sources outside the Hospital, including information that addresses adequate ongoing experience to maintain proficiency *Id*

The Medical Staff Bylaws specifically state that neither the Governing Board nor any Medical Staff committee shall have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material (Exhibit A, Article V Section 2 (B) and Exhibits B C and D) A physician is entitled to an administrative hearing and appellate rights under the Bylaws when his or her Medical Staff membership or privileges have been adversely affected by the action of the Medical Executive Committee and/or Governing Board when such action is based upon professional conduct or competence (Exhibit A Article VIII Section 1 (B)(1) Section 2 (A) and (B) and Exhibits B C D E and F) A physician who fails to supply all of the information required for the appointment process or who fails to respond in a timely manner to a request for information shall be deemed to have resigned from the Medical Staff and

shall not be entitled to hearing and appellate rights under the Bylaws (Exhibit A Article V Section 3 (B) and Exhibits B, C, D, E and F)

The Credentials Committee of East Cooper Hospital is responsible for reviewing and evaluating the qualifications of each applicant for initial appointment reappointment, or modification of appointment to the Medical Staff and for clinical privileges (Exhibit A, Article XI, Section 3 (B)) The Credentials Committee must review each application for appointment or reappointment prior to processing to determine if it is complete for processing (Exhibit A Article XI Section 3 (B)(2)) The Bylaws prohibit the Credentials Committee from processing any application for membership or privileges that is incomplete *Id* The term "completed application" is defined in the Medical Staff Bylaws as an application either for initial appointment or reappointment to the Medical Staff or for clinical privileges, that has been determined by the applicable Medical Staff department(s), Credentials Committee, Medical Executive Committee and the Governing Body to meet the requirements of the Medical Staff Bylaws Rules and Regulations" (Exhibit A Medical Staff Bylaws "Definitions") The Credentials Committee must then submit a report to the Medical Executive Committee on the qualifications of each applicant including its recommendations for appointment staff category assignment, and clinical privileges (Exhibit A Article XI Section 3 (B)(5))

The Medical Executive Committee (hereinafter referred to as 'the MEC') of East Cooper Hospital is responsible for among other things, receiving reports from the Credentials Committee relating to physician appointments reappointments clinical privileges and assignment of Medical Staff category The MEC is also responsible for the review and consideration of said reports and then making its own determinations and recommendations to the Governing Board for physician appointments, reappointments, clinical privileges and Medical Staff category assignment (Exhibit A Article XI Section 2 (B)(2)) The Governing Board of East Cooper Hospital is the ultimate authority on the appointment, reappointment clinical privileges and Medical Staff category assignment

B PLAINTIFF S PREVIOUS LITIGATION ACTIVITIES

The Plaintiff first applied for and was granted Medical Staff privileges at East Cooper Hospital in January of 1994 Following the Plaintiff's appointment certain disputes developed regarding her Medical Staff privileges and on or about December 6 1999 the Plaintiff filed a lawsuit in the United States District Court for the District of South Carolina Charleston Division captioned *J Doe, MD vs Tenet HealthSystem Medical Inc and East Cooper Community Hospital* identified as Civil Action Number 2 99 0833-23 (See Exhibit B to Defendants

Amended Answer Motions to Dismiss and Counterclaim filed July 13 2006) In this federal action the Plaintiff alleged the same state claims she now alleges in the present action along with claims that the Defendants violated federal anti-trust statutes *Id* The Plaintiff was initially granted injunctive relief to maintain her Medical Staff privileges but on March 9 2000 The Honorable Patrick Duffy dissolved the injunction stating **"Dr Holmes you have treated this Court's rules the same way you have treated the hospital's rules, and I apologize to the hospital for having allowed that to happen, but I will not allow you to abuse this court and I'm not going to allow you to abuse the defendant The injunction is dissolved** (Exhibit G pages 14-15 [emphasis added]) On or about April 17 2000, the District Court granted the Defendants summary judgment on the federal claims characterizing the Plaintiff in its Order as a disgruntled physician (Exhibit C to Defendants Amended Answer) The Plaintiff appealed the dismissal of her federal action to the U S Court of Appeals which affirmed the District Court's decision and then to the U S Supreme Court which denied Plaintiff's petition for writ of certiorari

The District Court had declined jurisdiction over the Plaintiff's state claims in the federal case and on or about May 16 2000, the Plaintiff filed a Complaint in the Court of Common Pleas for Charleston County captioned *J Doe, MD vs Tenet HealthSystem Medical, Inc, East Cooper Community Hospital, Inc John Grady MD Paul Yantis, MD William Cone and Coastal Emergency Services Inc* and identified as Civil Action Number 00-CP-10-1888 (Exhibit D to Defendants Amended Answer) In this state action the Plaintiff again alleged causes of action virtually identical to those of her federal action, and which she currently alleges in the present action herein, including wrongful termination of hospital privileges breach of contract breach of contract accompanied by a fraudulent act, civil conspiracy and unfair trade practices The Defendants in the present action were also named as Defendants in the Plaintiff's 2000 state action

Like the present action the factual issues in the Plaintiff's 2000 state action involved the Plaintiff's ability to admit and surgically treat patients at East Cooper Hospital The Defendants alleged that the Plaintiff had failed to satisfy the requirements set forth in the Bylaws to be granted such privileges The Plaintiff alleged that the Bylaw requirements in this regard were inapplicable to her or alternatively unreasonable *Id* She further alleged that the Bylaws were implemented by the Defendants in furtherance of a conspiracy to detrimentally affect her medical practice, which she alleged to be in direct competition with Defendant John Grady MD who at the time in question was a member of the Credentials Committee of East Cooper Hospital *Id* The parties participated in extensive discovery and on or about October 17, 2002

the parties through their counsel, discussed a procedure to allow the Plaintiff to undergo certain board examinations retraining programs and proctoring processes to allow her to admit and surgically treat patients at East Cooper Hospital, and to allow the Hospital to ensure her clinical competency for same (Exhibit H) The Plaintiff, however refused to agree to the terms of the proposed procedure and instead began negotiating a cash settlement

On October 28 2002 the Plaintiff's case was called to trial and was presided over by The Honorable A Victor Rawl Judge Rawl proceeded to mediate the case and the parties reached a settlement during the evening hours of October 28 2002 which involved the payment of a confidential cash amount to the Plaintiff and her reappointment to the Medical Staff with consulting privileges for a term of two years with the right to apply for a change in Medical Staff status and privileges in accordance with the Bylaws The day following the settlement the parties returned to the Court to advise Judge Rawl of the agreement and to place the terms of the settlement on the record At this time the Plaintiff attempted to renege on the settlement reached the previous evening and Judge Rawl enforced the settlement (Exhibit E to Defendants Amended Answer) Thereafter, the Plaintiff refused to execute the requisite settlement paperwork and Order of Dismissal The Defendants then filed a Motion to Compel Settlement which was heard and granted by Judge Rawl on January 7 2003 (Exhibit F to Defendants' Amended Answer) The Plaintiff continued to refuse execution of settlement documents prepared by the Defendants and instead personally drafted prepared and executed a Settlement Agreement and General Release in Full in January of 2003 The Settlement Agreement was a mutual release forever discharging the Defendants from any and all claims then existing or which may accrue on account of or in any way growing out of the subject of the 2002 state action **including those claims for civil conspiracy dating back to 1997** (Exhibit A to Defendants Amended Answer) Likewise an Order of Dismissal was entered on February 19 2003 dismissing the action with prejudice *Id*

C CURRENT CONTROVERSY

In compliance with the terms of the Settlement Agreement the Plaintiff was indeed reappointed to the consulting staff of East Cooper Hospital in December of 2002 Again as a member of the consulting staff the Plaintiff could not admit patients to East Cooper Hospital or perform surgical procedures but could provide consultative services at the request of active or courtesy staff physicians As stated above, the terms of the Settlement Agreement allowed the Plaintiff the right to apply for a change in staff category in accordance with the Bylaws and the Bylaws indeed allowed her to request an advancement in Medical Staff status and clinical

privileges at any time, outside of the two-year reappointment cycle (Exhibit A, Article III Section 5) The Plaintiff however, made no such request until October 22, 2004, when she was up for reappointment immediately prior to the expiration of her previous two year term on the consulting staff At this time the Plaintiff made an application for reappointment to the Medical Staff requesting advancement in staff privileges to associate status and requesting privileges to perform surgery on the eye As indicated above the Medical Staff Bylaws required and obligated the Plaintiff to document her demonstrated current clinical competence for the privileges she sought The Plaintiff's application however, failed to contain any information that she had recently performed and was competent in the surgical procedures for which she was requesting privileges (Exhibits I C D E and F) East Cooper Hospital had no current in house records upon which to evaluate the Plaintiff's competency as the Hospital had no record of the Plaintiff admitting a patient or performing surgery there since 1998 (Exhibits B C and D), and the Plaintiff's application did not contain any information that she had admitted and surgically treated patients at other healthcare facilities (Exhibit I)

As indicated above the Medical Staff Bylaws specifically state that neither the Governing Board nor any Medical Staff committee shall have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material (Exhibit A Article V, Section 2(B) and Exhibits B C and D) On November 9 2004, representatives of East Cooper Hospital advised the Plaintiff in writing that her application could not be forwarded to the Credentials Committee for consideration of the requested privileges because of her failure to include information on her current clinical competency (Exhibit J) The Plaintiff was advised that because there was no record of her having admitted patients or performed surgery at East Cooper Hospital since 1998 she would need to identify other hospitals and surgical facilities where she had admitted and surgically treated patients within the preceding two years and provide the names of individuals who were in a position to directly evaluate her work in order for her application to be processed (*Id*) The Plaintiff was advised that upon receipt of this information her request for associate status and surgical privileges would be processed but that without this information her application would be considered as a request for reappointment to the consulting staff the category of which she was currently a member (*Id*) The Plaintiff failed to submit the requested information and on December 15 2004 she was reappointed to the consulting staff of East Cooper Hospital The Plaintiff then requested a hearing before a Medical Review Committee to contest her reappointment to the consulting staff On February 7 2005 the Plaintiff was informed that her reappointment to the consulting staff did not give rise to hearing under the Bylaws because her

reappointment was not an adverse action but, rather, a reappointment to the same staff category to which she had previously been appointed affording the same privileges which she previously held (Exhibit K) As indicated above the Bylaws give rise to a hearing only when there is an adverse action that has been taken based on the member's professional conduct or competence and do not afford hearing and appellate rights when an application is deemed to be incomplete (Exhibit A Article III, Section I(B)(1) Section 2(A) and (B) Article V Section 3(B) and Exhibits B C D E and F) Because the Plaintiff failed to submit information on her current clinical competency her application was deemed to be incomplete and could not be reviewed by the Credentials Committee As such the decision to reappoint her to the consulting staff was not based on her competency but on the fact that her application was incomplete to evaluate her competency The Plaintiff was, however afforded the opportunity to meet with the Credentials Committee to discuss the information needed to complete her application which she declined (Exhibit N and Exhibit D at ¶¶ 22-24)

On December 16 2005 the Plaintiff filed the original Summons and Complaint herein (See Plaintiff's original Complaint) The Plaintiff failed to serve this Complaint on any of the Defendants, and on April 13 2006 the Plaintiff filed an Amended Summons and Complaint (See Plaintiff's Amended Summons and Complaint) In her present Amended Complaint the Plaintiff has named the same Defendants and has asserted the same causes of action and damages alleged in her two previous actions referenced above (See Plaintiff's original and Amended Complaints herein and Exhibits B and D to Defendants Amended Answer) Specifically, and for the third time she complains of events relevant to and causes of action for wrongful denial of hospital privileges breach of contract breach of contract accompanied by a fraudulent act and unfair trade practices arising out of an alleged civil conspiracy to promote the practice of Dr Grady concerning both her 2002 and 2004 reappointments to the consulting staff

At the time of the events complained of herein Defendant Paul Yantis M D was Chairman of the Credentials Committee of East Cooper Hospital and a member of the MEC He is a gastroenterologist practicing in the Charleston area Defendant John Grady M D is an ophthalmologist whose practice is located in Mt Pleasant, S C Dr Grady was not a member of the Credentials Committee at the time of the events complained of in the Amended Complaint nor did he have any involvement in the decisions regarding the Plaintiff's medical privileges at the times relevant to this matter (Exhibits B, C D and L)

On June 16 2006 Defendants filed an Answer to the Amended Complaint which included Motions to Dismiss and Counterclaims for abuse of process and for costs penalties and fines pursuant to the S C Frivolous Civil Proceedings Sanctions Act On or about June 30,

2006, Plaintiff served an Answer to the Counterclaims asserted by Defendants containing a general denial thereof. On July 13, 2006, Defendants filed an Amended Answer which asserted the affirmative defenses of insufficient service of process and the doctrines of res judicata and collateral estoppel and again asserted Motions to Dismiss and Counterclaims for abuse of process and damages pursuant to the S.C. Frivolous Civil Proceedings Sanctions Act. To date, Plaintiff has failed to file a responsive pleading to the Defendants' Amended Answer and Counterclaims. Upon Defendants' Motion to Dismiss, the Plaintiff's claims regarding her 2002 reappointment were dismissed by order of the Court on November 29, 2006, as barred by the terms of the settlement agreement reached in the Plaintiff's 2000 state action. (Exhibit M)

As shown fully below, there is no genuine issue as to any material fact regarding the remaining claims concerning the Plaintiff's 2004 reappointment, and the Defendants are entitled to summary judgment as a matter of law.

ARGUMENT

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. Rule 56(c) S.C. R. Civ. P. *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). Summary judgment is proper where plain, palpable and indisputable facts exist on which reasonable minds cannot differ. *Bylerly v. Conner*, 307 S.C. 441, 415 S.E.2d 796 (1992). Summary judgment is not a "disfavored procedural shortcut" but an important mechanism for weeding out "claims and defenses [that] have no factual basis." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). The party seeking summary judgment has the burden of establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). A party opposing a motion for summary judgment may not rest on the mere allegations or denials of his pleading but must set forth or point to specific facts showing that there is a genuine issue of material fact and the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment. *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994).

I **THE COURT DOES NOT HAVE JURISDICTION TO REVIEW THE RULES,
REGULATIONS AND DECISIONS OF A PRIVATE HOSPITAL REGARDING
THE CREDENTIALING OF ITS MEDICAL STAFF**

Subject matter jurisdiction refers to the Court's power to hear and determine cases of the general class to which the proceedings in question belong. *Bunkum v Manor Properties* 321 S C 95 467 S E 2d 758 (Ct App 1996). Where the relief requested by a party is precluded due to the immunity of another party, the Court is said to be lacking subject matter jurisdiction to grant the relief sought. *Washington v Whitaker* 371 S C 108 451 S E 2d 894 (1994), citing *Hutchins v Mills* 363 So 2d 818 821 (Fla 1st DCA 1978) cert denied 368 So 2d 1368 (Fla 1979). Claims of lack of subject matter jurisdiction may be raised at any time and may not be waived by pleadings or other filings. *Eldridge v City of Greenwood*, 331 S C 398 503 S E 2d 191 (S C App 1998).

It is well settled law in S C that Courts do not have jurisdiction to review the decisions of the medical staff of a private hospital concerning the membership and credentialing of its physicians. In *Strauss v Marlboro County General Hospital* 185 S C 425 194 S E 65 (1937) a physician sought judicial review of the reasonableness of the rules and regulations adopted by a private hospital's board of trustees which deprived him of the privilege to practice surgery in the hospital and requested that the Court revoke said rules. The Court declined such review, finding that the hospital was indeed a private corporation and that for this reason it was precluded from review of the hospital's rules and regulations. Likewise in *Wood v Hilton Head Hosp Inc*, 292 S C 403, 356 S E 2d 841 (1987), the executive committee of a private hospital's Board of Trustees summarily and without an opportunity to be heard suspended a physician's medical staff privileges. Thereafter the physician's privileges were permanently revoked by the same Board. The physician sought judicial review of this decision and reinstatement of his privileges. The S C Supreme Court refused to exercise jurisdiction over the matter ruling "[i]t is well settled in South Carolina, and throughout the country, that it is improper for the courts to review the decisions of governing boards of private hospitals concerning the staff privileges of practitioners." *Id* at 405 (emphasis added). This issue was addressed again by the Supreme Court in 1980 in *Gowen vs St Francis Community Hospital* 275 S C 203 268 S E 2d 580 (1980). The *Gowen* case involved a physician plaintiff licensed and certified by the American Board of Family Physicians who sought injunctive relief after being denied certain specialized privileges by the defendant hospital. The Circuit Court denied the requested relief and the S C Court of Appeals affirmed the denial in a two sentence opinion citing *Strauss* and stating **a private hospital is free to adopt**

reasonable regulations for the conduct of its affairs. Here we are not persuaded respondent's implementation of such regulations to the restriction of the appellant's practice in its hospital requires us to depart from the long-standing principle that such action is not subject to judicial review. *Id.* at 581 (emphasis added). The decision was then appealed to the S.C. Supreme Court which denied the appellant's petition for writ of certiorari.

The Plaintiff's Amended Complaint herein seeks judicial determination of whether the decisions regarding her credentialing and privileges at East Cooper Hospital were in compliance with the Hospital's Bylaws. Specifically, she requests the Court to review whether the refusal to process and consider her application for associate status and surgical privileges, her reappointment to the consulting staff, and the denial of an administrative hearing was reasonable under the Bylaws. As indicated by the cases above, however, the Court does not have jurisdiction to determine these issues. **This very principle was recognized by the Court when enforcing the settlement in the Plaintiff's previous state action.** (Exhibit E to Defendants' Amended Answer)

II THE PLAINTIFF'S CLAIM FOR CIVIL CONSPIRACY IS UNSUPPORTED BY THE EVIDENCE, INSUFFICIENTLY PLED, AND FAILS AS MATTER OF LAW BECAUSE A HOSPITAL AND ITS MEDICAL STAFF ARE LEGALLY INCAPABLE OF CONSPIRING

A THE PLAINTIFF HAS FAILED TO PRODUCE ANY EVIDENCE OF CONSPIRACY SUFFICIENT TO CREATE A GENUINE ISSUE OF MATERIAL FACT

A plaintiff must demonstrate three elements in order to prove civil conspiracy: (1) the combination of two or more persons; (2) for the purpose of injuring the plaintiff; and (3) causing special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006). It is essential that the plaintiff prove all of these elements in order to recover. *Pye v. Estate of Dorothy Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006) citing *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938). In order to establish a conspiracy, evidence must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the conspiracy. *Cowburn v. Leventis*, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005). The essential consideration in civil conspiracy is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the **primary purpose** or object of the combination is injury to the plaintiff. *Lee v. Chesterfield General Hosp. Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986) (emphasis added). An action for civil conspiracy is an action at law.

and the trial Court's dismissal of same will be upheld on appeal unless it is without evidentiary support. *McMillian v Oconee Memorial Hospital, Inc.* 367 S.C. 559, 626 S.E.2d 884 (2006).

The Plaintiff's claim for civil conspiracy is based on the alleged involvement of Defendant John Grady, M.D., in the decisions regarding her privileges. The Plaintiff alleges that Defendant Dr. Grady, who is a member of the Medical Staff of East Cooper Hospital, is a competing ophthalmologist and has conspired with the Defendants to restrict her privileges for the financial benefit and promotion of his own medical practice. (See Plaintiff's Amended Complaint ¶¶ 48 – 58). She alleges that Dr. Grady is the only ophthalmologist practicing in the same geographic area of her practice; that he is the only ophthalmologist at East Cooper Hospital with the same privileges sought by her; and that he, as a member of the Credentials Committee, conspired with the remaining Defendants to stifle her privileges in the furtherance of his own practice. *Id.* She alleges that these actions are particularly damaging because East Cooper Hospital is the only surgical facility in the geographic area of her practice. *Id.* Although not pled in her Complaint, the Plaintiff, in answers to discovery, also alleges that the Defendants' actions were motivated by a desire to punish her for previous litigation activities against them. As shown below, the Plaintiff's allegations in this regard are not only unsupported by the evidence in this case, but are, at times, blatant misrepresentations to this Court.

First, and as reflected in the attached Affidavit of Elaine Meuli, Medical Staff Services Director of East Cooper Hospital, at the times relevant to the Plaintiff's 2004 reappointment process, there were **nine** other ophthalmologists on staff at East Cooper Hospital with the same surgical privileges as those held by Defendant Dr. Grady and those sought by the Plaintiff in her 2004 reappointment application. (Exhibit I). These ophthalmologists are specifically listed and identified in Exhibit I.

Secondly, there are numerous hospitals and surgical facilities in the same county and in close proximity to the Plaintiff's practice. The mileage from the Plaintiff's office to East Cooper Hospital is approximately 3.6 miles, whereas the mileage from Plaintiff's office to the Medical University of S.C. and Roper Hospital is only approximately 6.5 miles. St. Francis Hospital is approximately 12.2 miles from the Plaintiff's practice, and Trident Medical Center and Summerville Medical Center are only approximately 20 miles away.

Thirdly, and perhaps most importantly, Defendant Dr. Grady has not been a member of the Credentials Committee since 1998, and has had no involvement in the review and evaluation of the qualifications of any physician applicant at East Cooper Hospital, including those involving the Plaintiff, since 1998. (Exhibits I, B, C and D).

The overwhelming evidence in this case shows that the primary purpose of the actions of the Defendants was quality health care rather than injury to her and that there was no consideration of Defendant Dr Grady his medical practice or the previous litigation activities of the Plaintiff whatsoever during her reappointment process. Attached hereto are the Affidavits of pertinent Medical Staff committee and Board members involved in this process, Danny H Mullis Esq Kevin Keenan M D and Susan Jones, M D (Exhibits B C and D). Dr Susan Jones has given Affidavit testimony regarding the deliberations and recommendations of the Credentials Committee regarding the Plaintiff's 2004 reappointment process (Exhibit D). Dr Jones is a medical doctor specializing in the practice of internal medicine. She is Board Certified in internal medicine and is a member of Mt Pleasant Internal Medicine, a private medical practice located in Mt Pleasant S C. Dr Jones became a member of the Medical Staff of East Cooper Hospital in 1988 and has had privileges at the Hospital since that time. She also maintains Medical Staff privileges at Roper Hospital. At the times relevant herein Dr Jones was Chairperson of the Department of Medicine at East Cooper Hospital and a member of the Credentials and Medical Executive Committees. Likewise Kevin Keenan M D has given Affidavit testimony regarding the deliberations of the Medical Executive Committee (MEC) regarding the Plaintiff's reappointment application (Exhibit C). He is a medical doctor Board Certified and specializing in the practice of emergency medicine and is employed by and is the managing partner of East Cooper Emergency Physicians also a private medical practice. Dr Keenan became a member of the Medical Staff of East Cooper Hospital in 1986 and has had privileges there since that time. At the times relevant herein Dr Keenan was Chief of Staff an elected position voted on by physician members of the Medical Staff. As Chief of Staff he was also Chairman of the MEC and a non-voting member of the Governing Board. **Both Dr Jones and Dr Keenan have testified that they were present and actively participated in all discussions, deliberations and recommendations of the Credentials Committee and MEC concerning the Plaintiff's 2004 reappointment application and that at no time was Dr Grady or his medical practice discussed, considered or contemplated by the Credentials Committee or MEC in arriving at the determinations and recommendations regarding the Plaintiff's reappointment application (Exhibits C and D). These physicians have likewise testified that Dr Grady did not participate in, influence or have any role in the determinations or recommendations made by the Credentials Committee or MEC regarding the Plaintiff's reappointment application, and that the Plaintiff's previous litigation activities against the Defendants were never discussed, considered or contemplated by the Credentials Committee or the MEC in arriving at the determinations**

and recommendations regarding her reappointment application (Id) In fact Dr Jones has testified that she and several members of the Credentials Committee were unaware that the Plaintiff had previously filed suit against Defendants Dr Grady and Paul Yantis, M D , Chairman of the Credentials Committee (Exhibit D) Dr Jones and Dr Keenan have testified that the determinations and recommendations of the Credentials Committee and MEC herein were made in accordance with the Medical Staff Bylaw provisions discussed above and were arrived at solely because the Plaintiff's reappointment application was incomplete for processing due to the lack of required information by which to determine her current clinical competency (Exhibits C and D) They have testified that the Plaintiff's reappointment process was handled in accordance with the Bylaws in the same manner as any other physician under the same circumstances (Id)

Also attached hereto is the Affidavit of Danny H Mullis Esq (Exhibit B) Mr Mullis is a lawyer licensed to practice law in the State of S C in good standing with the S C Bar Association Since 1999 he has been employed as the Director of the Alternative Dispute Resolution Program of the U S District Court for the District of S C Mr Mullis is currently a member of the Governing Board of East Cooper Hospital and has served in this role continuously since his original appointment on February 1, 2000 He has testified in his Affidavit that he has knowledge of and is familiar with the governance of East Cooper Hospital its Medical Staff Bylaws Rules and Regulations, and the process and requirements for the granting of Medical Staff privileges Mr Mullis has testified that he was present and participated in the Board's decisions regarding the Plaintiff's reappointment application He has testified that the Plaintiff's application was determined by the Governing Board to be incomplete as reported by the Credentials Committee and MEC because it did not contain documentation showing the Plaintiff's current clinical competency for the privileges requested **Mr Mullis has testified that at no time was Defendant Dr Grady or his medical practice discussed, considered or contemplated by the Governing Board in arriving at the decisions regarding the Plaintiff's reappointment application and that he is not aware of any participation, influence or involvement of Dr Grady in the determinations or recommendations of the Credentials Committee or the MEC (Id)** Mr Mullis has testified that Dr Holmes' previous litigation activities against the Defendants were never discussed, considered or contemplated by the Governing Board in arriving at the decisions regarding her 2004 reappointment application and that he is not aware of any discussion or consideration of said activities on the part of the Credentials Committee or the MEC either (Id) Like the testimony of Dr Jones and Dr Keenan regarding the recommendations of the Credentials and

Medical Executive Committees Mr Mullis has testified that the determinations and decisions of the Governing Board were made in accordance with the Medical Staff Bylaws were arrived at solely because the Plaintiff's application was incomplete for processing due to a lack of required documentation upon which to determine her current clinical competency and that her reappointment process was handled in accordance with the Medical Staff Bylaws and in the same manner as any other physician under the same or similar circumstances (*Id*)

The Plaintiff has failed to establish any of the three required elements to prevail on her cause of action for civil conspiracy There is no evidence whatsoever of (1) an agreement or combination between any of the Defendants (2) for the primary purpose of injuring her Indeed the evidence in the case indicates that the primary purpose of the actions of the Defendants was furtherance of quality health care (Exhibits B C D E and F) When asked in written discovery in this matter to 'identify each and every instance of how Defendants conspired against Plaintiff the Plaintiff in a pathetic attempt to support her claim was required to go back to an alleged statement made by Defendant Dr Yantis **10 years ago in 1997** that Dr Grady had suggested that if the Plaintiff was denied privileges, eh (sic) could have all her clients as referrals for surgery " (Exhibit O) Even in the light most favorable to the Plaintiff this statement does not establish any wrongful intent by Defendants Dr Yantis or Dr Grady to injure the Plaintiff and does not implicate Defendants East Cooper Community Hospital Inc or Tenet HealthSystem Medical Inc whatsoever Further, the Plaintiff has already been compensated for these alleged conspiratorial statements in the settlement of her 2000 litigation (Exhibits A and D and Defendant's Amended Answer) Lastly and as shown in the following Section II B of this Memorandum the Plaintiff has neither alleged nor proven special damages as a result of the alleged civil conspiracy

The Plaintiff has failed to establish any of the required elements to prevail on her cause of action for civil conspiracy and Defendants are entitled to summary judgment on this cause of action as a matter of law

B THE PLAINTIFF'S CLAIM FOR CIVIL CONSPIRACY IS INSUFFICIENTLY PLED

A review of the Plaintiff's Amended Complaint shows that her cause of action for civil conspiracy is insufficiently pled and fails as a matter of law Under S C law when asserting a claim for civil conspiracy a plaintiff must plead and describe special damages that have occurred as a result of the conspiracy itself, in addition to those damages alleged as a result of other claims *James v Pratt and Whitney* 126 Fed Appx 607 (4th Cir U S Ct App 2005) A

plaintiff must also plead separate factual allegations constituting a civil conspiracy and may not incorporate prior factual allegations from other causes of action *Todd v S C Farm Bureau Mutual Ins Co* 276 S C 284 278 S E 2d 607 (1981) *rev'd on other grounds* 282 S C 155 321 S E 2d 602(1984) *quashed in part on other grounds* 287 S C 190 336 S E 2d 472 (1985) A cause of action for civil conspiracy that does no more than incorporate prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting therefrom, is insufficiently pled and will fail *Id* A cause of action for civil conspiracy may not be predicated on the same facts as a cause of action for breach of contract *Vaught supra* In *Vaught* a city sanitation director sued a city manager and various city council members for terminating his employment without cause The trial court granted summary judgment to the defendants because the plaintiff predicated his conspiracy claim on the same facts as his breach of contract claim In affirming the decision the Court of Appeals held that the trial court had correctly determined that the plaintiff's claim for civil conspiracy was nothing more than an embellishment of his breach of contract action *Id* at 94

The Plaintiff herein has failed to plead allegations and damages separate and distinct from her other causes of action sufficient to constitute a cause of action for civil conspiracy The Plaintiff's contract and unfair trade practices causes of action allege that the Hospital's refusal to consider her application for associate status her reappointment to the consulting staff and her denial of an administrative hearing were in violation of the Hospital Bylaws Rather than pleading additional and separate allegations to support her alleged claim for civil conspiracy the Plaintiff instead simply alleges that said actions were done in furtherance of a civil conspiracy There are no acts or omissions alleged in Plaintiff's cause action for civil conspiracy independent of those alleged in her other causes of action Her claim in this regard is therefore nothing more than an embellishment of her other causes of action and, accordingly fails as a matter of law *Vaught v Waites*, 300 S C 201, 387 S E 2d 91 (1989)

Likewise the Plaintiff has failed to plead damages special and distinct to her cause of action for civil conspiracy The damages the Plaintiff attributes to the alleged civil conspiracy are lost profits and income and injury to her reputation for having to refer patients to other doctors for surgical procedures (See Plaintiff's Amended Complaint at ¶¶ 55) The Plaintiff however alleges these same damages with respect to her causes of action for refusal to process her application breach of contract breach of good faith and fair dealing, breach of contract with fraudulent intent and unfair trade practices Specifically the Plaintiff's first cause of action based on 'refusal to process Plaintiff's application for privileges prays for damages in the form of lost income loss of business to her practice and an inability to admit patients and

perform surgical procedures at East Cooper Hospital (*Id* at ¶¶ 26) Likewise, under her causes of action for breach of the covenant of good faith and fair dealing and breach of contract accompanied by a fraudulent act the Plaintiff alleges damages in the form of lost income, loss of business and an inability to admit patients and perform surgical procedures in addition to emotional injury humiliation and severe anxiety (*Id* at ¶¶ 42 and 43) It is clear that the damages pled by the Plaintiff in her other causes of action are the same as those claimed as a result of the alleged civil conspiracy herein Because the Plaintiff has failed to allege damages special and distinct from her other causes of action her cause of action for civil conspiracy is insufficient and fails as a matter of law *James v Pratt and Whitney* 126 Fed Appx 607 (4th Cir U S Ct App 2005)

**C THE DEFENDANT HOSPITAL AND ITS MEDICAL STAFF ARE
LEGALLY INCAPABLE OF CONSPIRING**

As stated above S C law defines civil conspiracy as a combination of **two or more persons** joining for the purpose of injuring the plaintiff causing special damage thereto *Vaught v Waites* 300 S C 201 387 S E 2d 91 (1989) In *McMillian* the S C Supreme Court examined the ability of a hospital to conspire with its governing board and held that **a claim for civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities** *McMillian v Oconee Memorial Hospital, Inc* 367 S C 559 626 S E 2d 884 (2006) citing *Perk v Vector Resources Group Ltd* 253 Va 310 485 S E 2d 140 (1997) (emphasis added) overruling by implication *Lee v Chesterfield General Hospital*, 289 S C 6 344 S E 2d 379 (Ct App 1986)

In *McMillian* the physician plaintiff, an anesthesiologist brought a lawsuit against Oconee Memorial Hospital and a competing anesthesiology practice for among other things, civil conspiracy relating to an award of an exclusive contract to perform anesthesiology services within the Hospital to the defendant practice The awarding of the exclusive contract necessarily resulted in the termination of the plaintiff's Hospital staff privileges which he had held for over 13 years The trial court denied the defendants motion for summary judgment on the cause of action for civil conspiracy and the jury brought back a verdict against Oconee Hospital alone for civil conspiracy The plaintiff then made a motion to conform the pleadings to the evidence to allege conspiracy as to Oconee Hospital only **The S C Supreme Court reversed the trial Court's denial of summary judgment finding that the Hospital was legally incapable of conspiring with itself The Supreme Court found that the Hospital**

Board, in awarding the contract to the competing practice, was acting as an agent of the Hospital and noted "a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities" *McMillian, supra, citing Perk v Vector Resources Group, Ltd*, 253 Va 310, 485 S E 2d 140 (1997) (emphasis added) The Court stated "[i]t is well settled that a corporation cannot conspire with itself" *McMillian* at 564 citing 6 Am Jur 2d *Conspiracy* § 56 (2005) The Court further held "a civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors in their official capacity conspiring with the corporation" *Id*

Likewise, in *Oksanen v Page Memorial Hosp et al*, 945 F 2d 696 (4th Cir 1991), the Court examined whether a hospital and its medical staff while engaged in the peer process constituted two legally distinct persons or entities for the purpose of concerted action under the Sherman Anti-Trust Act The Sherman Anti-Trust Act allows for recovery upon a showing of an agreement in the form of a contract combination or conspiracy that imposes an unreasonable restraint on trade The Plaintiff in the *Oksanen* case was a physician who contended that the Sherman Anti Trust Act was violated when the medical staff of the defendant hospital conspired amongst itself and with the hospital's Board of Trustees to revoke his privileges and exclude him as an economic competitor in the market The Court found that **a medical staff, when engaged in peer review, acts as an agent of the Hospital and, as such, is indistinct therefrom** The *Oksanen* Court's view was premised upon the same principle of intracorporate immunity recognized by the S C Supreme Court in *McMillian, supra* which holds that the unilateral actions of a single enterprise cannot constitute a concerted action sufficient to form a conspiracy The Court stated "[l]ike a corporation delegating authority to its officers, the Board of Trustees at Page Memorial delegated peer review decision-making in the first instance to the medical staff As such with regard to these decisions the medical staff operated as an officer of a corporation would in relation the corporation" *Weiss v York Hosp* 745 F 2d 786 817 (3d Cir 1984) In effect the medical staff was working as the Board's agent under an internal agreement to implement a single unitary firm's policies of evaluating the conduct and competence of those to whom the hospital extended privileges *Cooperweld* 467 U S 769, 104 S Ct at 2740 The Court noted that while the hospital delegated peer review activities to its medical staff the Board of Trustees maintained the ultimate authority to grant, restrict or terminate clinical privileges The Court likened this practice to a parent corporation's ability to exercise control over its subsidiary The Court also noted that a hospital's interests generally would not be furthered by engaging in a conspiracy to restrain competition among doctors The

Court stated [g]iven that hospitals compete for the admission of patients they have an incentive to maximize the number of physicians to whom they grant admitting and staff privileges. If a physician is qualified and does not disrupt the hospital's operations it is in the hospital's interest to include not exclude the physician. While the *Oksanen* Court held that individual members of a medical staff are capable of conspiring amongst itself to find so requires evidence that tends to prove a conscious commitment to a common scheme to achieve an unlawful objective. *Oksanen* at 706. The Court noted the mere opportunity to conspire and the making of a peer review recommendations do not prove the existence of a conspiracy there must be something more such as a conscious commitment to coerce the hospital into accepting its recommendation. The Court stated that to speak of a conspiracy among a medical staff during the peer review process is not very meaningful if the staff lacks the final authority to implement any agreement that it reaches without evidence that the staff attempted to usurp the Board's power to make the final determination. *Id*

Like those of the defendant hospital in *Oksanen* the Medical Staff Bylaws of East Cooper Hospital delegated the credentialing of the physicians practicing there to its Medical Staff. In doing so, the Hospital and its Medical Staff when engaged in the peer review activities regarding the Plaintiff's credentialing process herein acted with a unity of interest to the extent that they cannot be considered separate and distinct entities sufficient to constitute a conspiracy under the S.C. Supreme Court holding in *McMillian, supra*. There is no evidence of and the Plaintiff does not even allege that the actions of the members of the Medical Staff who participated in the decisions concerning her reappointment process were done outside of the scope of their duties as members of the Credentials Committee and MEC. Also like the defendant hospital in *Oksanen*, the Medical Staff Bylaws of East Cooper Hospital delegated ultimate authority regarding the credentialing of physicians to the Governing Board. The Plaintiff has not alleged or produced any evidence that that the members of the Medical Staff who participated in her reappointment process attempted to influence or usurp the power of the Governing Board in its decisions regarding the Plaintiff's privileges. Indeed the Affidavit testimony of Governing Board member Danny Mullis Esq. clearly shows otherwise. (Exhibit B)

III THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OF THE PLAINTIFF'S CLAIMS BECAUSE THE DEFENDANTS ARE ENTITLED TO IMMUNITY UNDER FEDERAL AND STATE STATUTES

Subject matter jurisdiction refers to the Court's power to hear and determine cases of the general class to which the proceedings in question belong *Bunkum v Manor Properties*, 321 S C 95 467 S E 2d 758 (Ct App 1996) Where the relief requested by a party is precluded due to the immunity of another party the Court is said to be lacking subject matter jurisdiction to grant the relief sought *Washington v Whitaker* 371 S C 108 451 S E 2d 894 (1994), citing *Hutchins v Mills*, 363 So 2d 818, 821 (Fla 1st DCA 1978) *cert denied* 368 So 2d 1368 (Fla 1979) The Defendants herein are immune from civil damages for the Plaintiff's claims pursuant to state statute and therefore the Court does not have subject matter jurisdiction of this case

A DEFENDANTS TENET HEALTHSYSTEM MEDICAL, INC EAST COOPER HOSPITAL AND PAUL YANTIS M D ARE IMMUNE FROM THE PLAINTIFF'S CLAIMS PURSUANT TO THE FEDERAL HEALTH CARE QUALITY IMPROVEMENT ACT

The Health Care Quality Improvement Act (hereinafter referred to as "the HCQIA") was enacted in 1986 to improve the quality of medical care by, among other things, imposing a duty on hospitals to obtain information on applicants for hospital privileges and to update such information every two years after privileges are granted 42 U S C § 11135 To assure that hospitals and doctors cooperate with the system and engage in meaningful professional review Congress found it essential to provide qualified immunity from damages actions for hospitals doctors and others who participate in the professional review process *Imperial v Suburban Hosp Assoc Inc* 37 F 3d 1026 (4 th Cir 1994) *citing* 42 U S C § 11101 and *H R Rep/ 903 at 6385* Thus 42 U S C § 11101 provides that persons participating in professional review activities that meet the standards imposed by 42 U S C § 11112 shall not be liable for damages under any law of the United States or of any State with respect to the person's participation in such activities *Imperial, supra* (emphasis added) The immunity also extends to persons providing information to professional review committees *Id*

Section 11112 of the HCQIA provides a "professional review body with immunity from damages whenever a professional review action is taken

- (1) in the reasonable belief that the action was in the furtherance of quality health care
- (2) after a reasonable effort to obtain the facts of the matter,

- (3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances and
- (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3)

The term professional review body means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity 42 U S C § 11151(11) The term "professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients) and which affects (or may affect) adversely the clinical privileges or membership in a professional society of the physician Such term includes a formal decision of a professional review body **not to take an action** or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action 42 U S C § 11151(9) (emphasis added) **A professional review action shall be presumed to have met the preceding standards necessary for the protections set out in Section 11111(a) of the HCQIA unless the presumption is rebutted by a preponderance of the evidence** 42 U S C § 11112(a), *Gabaldoni v Washington Cnty Hospital Assoc* 250 F 3d 255 (4th Cir 2001) (emphasis added)

The HCQIA clearly grants broad discretion with regard to staff privileges decisions and the role of the Courts on review of such actions is not to substitute their judgment for that of the hospital's governing board or to reweigh the evidence regarding the renewal or termination of medical staff privileges *Bryan v James E Holmes Reg Med Ctr* 33 F 3d 1318 1333 (11th Cir 1994) **Rather, due to the presumption of immunity contained in Section 11112(a), the Court must apply an unconventional standard in determining whether a defendant is entitled to summary judgment under the HCQIA, by determining whether the Plaintiff has shown by a preponderance of the evidence that the Defendant's actions fell outside of the scope of Section 11112(a)** *Gabaldoni supra, citing Sugarbaker v SSM Health Care*, 190 F 3d 905 912 (8th Cir 1999) *and Brader v Allegheny General Hospital* 167 F 3d 832 839 (3d Cir 1999) (emphasis added) **Because of the rebuttable presumption of the HCQIA, the**

Plaintiff bears the burden of proving by a preponderance of the evidence that the peer review process did not satisfy the standards of § 11112(a) *Rogers v Columbia/HCA of Central Louisiana Inc* 971 F Supp 229 233 (W D La 1997) (emphasis added) Immunity under the HCQIA is a question of law that the Court may determine on summary judgment *Id* Congress intended the immunity provisions of the HCQIA to allow defendants to file motions to resolve the issue of immunity in as expeditious a manner as possible *Fobbs v Holy Cross Health System Corp* 789 F Supp 1054 (E D Cal 1992) quoting legislative history

The Defendants herein qualify as a professional review body as defined under the HCQIA The evidence in the case clearly shows that East Cooper Hospital is a health care entity conducting professional review activity through its Medical Staff committees (Exhibits A, B, C, D E and F) Further, the HCQIA specifically states that a hospital qualifies as a health care entity 42 U S C § 11151(4)(A)(I) The Hospital's parent corporation Defendant Tenet HealthSystem Medical Inc also qualifies for immunity under the HCQIA It makes little sense to provide immunity for an agent and deny it for the corporation on whose behalf the agent is acting *Mathews v Lancaster Gen Hosp* 883 F Supp 1016 1027 (E D Pa 1995) *aff'd* 87 F 3d 624 (3d Cir 1996) If a plaintiff could circumvent the Act's immunity provisions merely by naming as a defendant a parent corporation then corporate agents such as physicians or hospital boards would be deterred from meaningful participation in the peer review process " *Id* at 1025 Principles of corporate law also support this holding the parent cannot act except through its subsidiary *Id* at 1026 Lastly the term professional review body includes any committee of the medical staff of a qualifying entity assisting the governing body in a professional review activity and as such the individual physician members of the Credentials and Medical Executive Committees and the Governing Board including Defendant Paul Yantis M D fall under this term as well

Likewise if the actions taken herein were adverse as is alleged by the Plaintiff, then said actions qualify as a professional review action The term "professional review action" refers to preliminary investigative and planning activity in a search for the facts a series of which results in a professional review action which is a decision resulting from a review of the facts obtained *Mathews supra* Such term also includes a formal decision of a professional review body **not to take an action** 42 U S C § 11151(9) Again the action contemplated under the HCQIA refers to one which affects (or may affect) **adversely** the clinical privileges, or membership in a professional society of the physician 42 U S C § 11151(9) (emphasis added) As shown extensively above, the action taken herein did not adversely affect the Plaintiff's clinical privileges or staff membership The Plaintiff however, alleges otherwise and

for purposes of argument if these actions were adverse then said actions are of the nature contemplated under the HCQIA. The decisions regarding the Plaintiff's reappointment application were based on her inability to document and, e.g. the Defendants inability to investigate her current clinical competency. Granting privileges to the Plaintiff or any physician without proof of current clinical competence could adversely affect the health or welfare of patients. The decision of the Defendants to not take action and refrain from processing the Plaintiff's application until her competency for same was established falls within the definition of activities relating to a professional review action. 42 U.S.C. § 11151(9)

In addition, the Defendants meet the four criteria for immunity under the HCQIA. First, the evidence shows that the Defendants' actions were done in the reasonable belief that the actions were in the furtherance of quality health care. This prong of the HCQIA immunity test is met if the reviewers, with the information available to them at the time of the professional review action, would have reasonably concluded that their action would protect patients. *Bryan v. Holmes Regional Medical Ctr*, 33 F.3d 1318 (11th Cir. 1994, citing H.R. Rep. No. 903 at 10). In determining whether a professional review action was undertaken in the reasonable belief that quality health care was being furthered, the Court is to apply an objective test which looks to the totality of circumstances. *Imperial v. Suburban Hosp. Assoc.*, 37 F.3d 1026 (4th Cir. 1994). Because the test of § 11112(a) is an objective one, **assertions of bad faith or anticompetitive motive are irrelevant to the question of whether a decision was taken in a reasonable belief that it would further quality health care.** *Mathews v. Lancaster Gen. Hosp.*, 883 F.Supp. 1016, 1027 (E.D. Pa. 1995), *aff'd*, 87 F.3d 624 (3d Cir. 1996) (emphasis added). Instead, the court must consider the adequacy of the basis for the decision made. *Id.* In *Gabaldoni v. Washington Cnty. Hosp. Assoc.*, 250 F.3d 255 (4th Cir.), the Court, relying on the test established in *Imperial supra*, looked at letters from the hospital's board to the affected practitioner as objective evidence to determine whether the denial of reappointment and termination of medical staff privileges was done in the reasonable belief that the action was in the furtherance of patient care. The letters contained information on grievances, malpractice lawsuits and suspensions regarding the physician's activities. The Court found the practitioner's deviations from hospital policy and the applicable standard of medical care as cited in the letters to be objective evidence for the board to believe that it was furthering the quality of health care in terminating the practitioner's privileges.

Like in *Gabaldoni*, there is objective evidence showing that the actions of the Defendants herein were taken in the reasonable belief that quality health care was being furthered. As indicated above, physicians seeking reappointment are required by state and federal regulations

and accreditation entities in addition to Medical Staff Bylaws, to submit documentation of current clinical competency. The Plaintiff requested associate status to admit and treat patients in the Hospital and clinical privileges to perform surgery on the eye. She did not, however, submit documentation showing her current clinical competency to perform these activities. East Cooper Hospital had no current record of the Plaintiff having admitted patients or performing surgery at the Hospital in over six years and the Plaintiff failed to provide any information that she had recently performed these activities at other facilities. Without this information, the Defendants were unable to determine whether the Plaintiff was competent to perform the activities she sought in her reappointment application. The correspondence from the Defendants herein shows that this was the reason the Plaintiff's application could not be processed for the staff status and privileges requested. (Exhibit J). Deciding to table the Plaintiff's application until she was able to prove her current clinical competency was indeed in furtherance of quality health care as granting privileges to any physician without first investigating and confirming current clinical competency could adversely affect the health or welfare of patients. Like in *Gabaldoni*, the reasoning of the Defendants was cited in correspondence to the Plaintiff thereby demonstrating objective evidence of the Defendants' reasonable belief that their actions were in the furtherance of the quality of health care. (Exhibit J).

In addition, the Affidavit testimony of medical committee and Board members who participated in the decisions regarding the Plaintiff's application process confirm that the Defendants' actions were taken in a reasonable belief that quality care was being furthered by requiring that the Plaintiff demonstrate her current clinical competency prior to being granted privileges to admit and surgically treat patients at East Cooper Hospital. (Exhibits B, C and D).

The Defendants have satisfied the second criteria for immunity under the HCQIA as well in their reasonable efforts to obtain facts relevant to the Plaintiff's competency. Again, state and federal regulations, accreditation agencies and the Bylaws of East Cooper Hospital required the Hospital to assess the Plaintiff's competency for the status and privileges she requested. The Plaintiff's application, however, did not contain any documentation that she had recently performed or was competent in the surgical procedures for which she requested privileges, and East Cooper Hospital had no internal records of the Plaintiff admitting a patient or performing surgery there in over six years. In a reasonable effort to obtain the facts relating to the Plaintiff's competency, the Plaintiff was specifically asked to provide information on the hospitals and/or surgical centers where she had performed such activities in the preceding two years. (Exhibit

J) This request for information shows that the Defendants made a reasonable effort to obtain facts relating to the Plaintiff's competency to which the Plaintiff failed to respond

The third criteria for immunity under the HCQIA requires that the professional review action be taken "after adequate notice and hearing procedures are afforded *or* after such other procedures are fair to the physician under the circumstances 42 U.S.C. § 11112(a)(3) (emphasis added) The evidence shows that the Plaintiff herein was indeed afforded fair procedures under the circumstances As indicated above, the decisions surrounding the Plaintiff's reappointment process did not give rise to a hearing and appellate rights under the Medical Staff Bylaws The Bylaws specifically state that a physician who fails to supply all of the information required for the appointment process or who fails to respond in a timely manner to a request for information **may be deemed to have resigned from the Medical Staff and shall not be entitled to hearing and appeal rights under the Bylaws** (Exhibit A Article V Section 3 (B) (emphasis added) Further the Bylaws provide hearing and appellate rights when a physician's membership or privileges have been *adversely* affected by the action of the Medical Executive Committee and/or Governing Board when such action is based upon professional conduct or competence (Exhibit A Article VIII Section 1(B)(1) and Sections 2(A) and (B) (emphasis added) The provisions of the HCQIA mirror this principle as the professional review action contemplated thereunder is one which affects (or may affect) *adversely* the clinical privileges or membership in a professional society of the physician 42 U.S.C. § 11151(9) (emphasis added)

However, even if the Bylaws were not followed in this case as alleged by the Plaintiff which is expressly denied nothing in the HCQIA makes immunity depend on adherence to hospital Bylaws as long as fair procedures were afforded *Wieters v Roper Hospital Inc*, 58 Fed Appx 40 2003 WL 5550327 (4th Cir 2003) In this case the Plaintiff was afforded fair procedures As indicated above the Bylaws allowed the Defendants to deem the Plaintiff's incomplete application as a resignation from the Medical Staff in its entirety without hearing and appellate rights Rather than taking this route the Defendants notified the Plaintiff that her application was incomplete for consideration and gave her the opportunity to provide the required information (Exhibit J) She was advised that if the information was not received that her application would be considered as a request for reappointment to the consulting staff of which she was currently a member *Id* The Plaintiff failed to supply the required information and was reappointed to the consulting as previously notified The Plaintiff's reappointment to the consulting staff afforded her the same Medical Staff status and privileges she previously held

In addition, the Plaintiff was afforded the opportunity to meet with the Credentials Committee to discuss the information needed to complete and process her request for associate status and surgical privileges (Exhibit N). The Plaintiff, however, declined to engage in this peer to peer discussion (Exhibits B, C and D). Given that the Bylaws allowed the Defendants to deem the Plaintiff's incomplete application as a resignation from the Medical Staff in its entirety, giving her the opportunity to cure this deficiency, discuss this deficiency with the Credentials Committee and reappointing her to the same staff category with the same privileges previously held indeed constitute procedures fair to the Plaintiff under the circumstances.

The Defendants have also satisfied the last criteria for immunity under the HCQIA. The fourth criteria requires that the actions are taken in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts. Again, the Hospital had no record of the Plaintiff admitting or surgically treating a patient at East Cooper Hospital since 1998. Further, the Plaintiff provided no evidence that she had engaged in these activities at any other hospital or accredited surgical facility or that she was otherwise currently competent in the procedures for which she requested privileges (Exhibit I). The facts known to the Defendants at the time were that they had insufficient information to determine the Plaintiff's competency for the staff status and clinical privileges she requested. Tabling her application until her competency could be evaluated was indeed warranted by these facts as extending privileges to the Plaintiff or any other physician under these circumstances would be contrary to quality patient care, the Medical Staff Bylaws, and state, federal, and accreditation credentialing mandates as there was no record establishing that she was competent for same.

In support of their immunity arguments under the HCQIA, the Defendants have also proffered the testimony of a nationally-recognized expert in the HCQIA and physician credentialing, Hugh Greeley. As reflected in his attached Affidavit, Mr. Greeley is the founder of the hospital/medical staff consulting firm, The Greeley Company, and its predecessor, Greeley Associates, Ltd. (Exhibit E). He was also the founding member of Confidential Peer Review Ltd., an organization dedicated to assisting hospitals and medical staffs with external peer review activities, and co-founded and was principal faculty in The Credentialing Institute. In the past, he has served in a number of capacities with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and has served as a contributing editor to the publications *Briefings on JCAHO*, *The Credentials Resource Center*, and *Briefings on Credentialing*. He has been a member of the editorial advisory boards for such journals as *Medical Staff Briefings*, *Medical Records Briefing*, *Briefings on Hospital Safety*, *Briefings on JCAHO Homecare*, and *The Health Governance Report*, and currently authors a regular column on the subject of

credentialing for Synergy magazine, a publication of the National Association of Medical Staff Services. Over the past thirty years Mr. Greeley has lectured at more than 3,500 seminars or institutes on subjects relating to hospital/medical staff credentialing, hospital quality assessment, medical staff organization, hospital trustee responsibilities and other related subjects, and has visited approximately 1,000 hospitals or health care facilities in his capacity as educator or consultant. He is the author of numerous publications, letters and articles dealing with issues relating to hospital medical staff organization, credentialing, quality assessment, performance improvement and other related matters, and is regularly requested to provide assistance to hospitals and medical staffs in areas of credentialing, medical staff bylaws, quality review, internal management and governance. (*Id.*)

Mr. Greeley has reviewed the pertinent materials in this case, has consulted the applicable standards of the HCQIA, and has opined, within a reasonable degree of certainty in the field of physician credentialing, that the Defendants' actions herein were in compliance with the specific principles of the HCQIA. *Id.* Mr. Greeley has testified that the HCQIA was passed by Congress in the hopes that it would create an environment in which hospitals would be more likely to establish rules and practices which were in furtherance of quality patient care. Prior to the Act, it was feared that hospitals were not willing to risk the possibility of costly litigation arising if they denied a physician's request for appointment or staff privileges. The Act established principles under which hospitals could be considered immune from having to pay damages if they acted in accordance with the principles of the Act and if their actions were taken in furtherance of quality patient care. Mr. Greeley has opined that this is exactly the situation involving the Plaintiff and the Defendants. He has testified that East Cooper Hospital is under an obligation to appoint or reappoint only competent physicians to its staff and to grant privileges only after confirming specific current clinical competence. He has testified that the evidence shows that the Plaintiff did not provide the information needed to make a proper evaluation of her competence in the areas covered within her request for clinical privileges and that the Defendants could not simply take the Plaintiff's word that she was a 'good doctor' and that her patients received good care. Rather, the obligation of the Defendants is to seek verification of these issues and withhold appointment and clinical privileges until such verification has been received. Mr. Greeley has testified that the information provided by the Plaintiff was not sufficient to confirm that she had recently performed any of the surgical procedures in question in any setting and that without said information her competency could not be evaluated. (*Id.*)

Mr. Greeley's Affidavit sets forth the criteria for immunity under the HCQIA referenced above and he has testified that the evidence shows that the Defendants satisfied same. He has testified that the evidence herein reflects that Defendants processed the Plaintiff's application based upon their belief that such action was necessary to both protect and further patient care quality (Criteria 1 of the HCQIA). Mr. Greeley has also testified that the Defendants made reasonable and repeated attempts to obtain the facts needed to process the Plaintiff's application and that there is evidence that the Plaintiff not only received these requests but that she did not provide the requested information nor an acceptable alternative (Criteria 2 of the HCQIA). Mr. Greeley has testified that under the specific provisions of the Medical Staff Bylaws of East Cooper Hospital and the standard of care within the field of physician credentialing no hearing was required as no adverse action was taken against the Plaintiff that the Defendants afforded the Plaintiff fair procedures and opportunity to meet with its Credentials Committee in an attempt to resolve any outstanding issues, and to permit her to provide additional information directly to that Committee (Criteria 3 of the HCQIA). Lastly, Mr. Greeley has opined that based on the evidence herein the Defendants did reasonably believe that the action they recommended and ultimately took was warranted by the facts known to them at the time the action was taken (Criteria 4 of the HCQIA). In conclusion, Mr. Greeley has testified, to a reasonable degree of certainty within the field of physician credentialing that the Defendants complied with the principles of the HCQIA, its own Medical Staff Bylaws, the generally recognized standards of the JCAHO, and applicable generally recognized practices of similar hospitals throughout both S.C. and the remainder of the country in this case.

As stated above, **a professional review action shall be presumed to have met the preceding standards necessary for the protections set out in Section 11111(a) of the HCQIA unless the presumption is rebutted by a preponderance of the evidence.** 42 U.S.C. § 11112(a). *Gabaldoni v. Washington Cnty. Hospital Assoc.*, 250 F.3d 255 (4th Cir. 2001) (emphasis added). **Because of the rebuttable presumption of the HCQIA, the Plaintiff bears the burden of proving by a preponderance of the evidence that the peer review process did not satisfy the standards of § 11112(a).** *Rogers v. Columbia/HCA of Central Louisiana, Inc.*, 971 F.Supp. 229, 233 (W.D. La. 1997) (emphasis added). The Plaintiff, however, has failed to show by a preponderance of the evidence any testimony or evidence rebutting the immunity provided by the HCQIA. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). As such, the Defendants are entitled to summary judgment as a matter of law.

B THE DEFENDANTS TENET HEALTHSYSTEM MEDICAL, INC EAST COOPER HOSPITAL AND PAUL YANTIS M D ARE IMMUNE FROM LIABILITY FOR THE PLAINTIFF'S CLAIMS PURSUANT TO S C CODE ANN § 40-71-10

S C Code Ann § 40-71-10 insulates certain professional committees from tort liability. This statute states "[t]here is no monetary liability on the part of and no cause of action for damages arising against an appointed member of a committee of a Medical Staff of a licensed hospital provided the Medical Staff operates pursuant to written bylaws that have been approved by the governing board of the hospital for any act or proceeding undertaken or performed within the scope of the functions of the committee if the committee member acts without malice, has made a reasonable effort to obtain the facts relating to the matter under consideration and acts in the belief that the action taken by him is warranted by the facts known to him. The Courts of S C have ruled that the committees of a hospital's Medical Staff qualify as a committee of a Medical Staff of a licensed hospital under § 40-71-10 where the committee operates pursuant to written bylaws approved by the hospital. *McGee v Bruce Hospital System*, 312 S C 58, 439 S E 2d 257 (1993).

It is uncontested that East Cooper Hospital operates pursuant to written Bylaws approved by the Hospital's Governing Board (Exhibits A B C and D). Likewise the attached Affidavit testimony of pertinent committee and Board members involved in the events herein show that said actions were undertaken and performed within the scope and function of professional committees of the Hospital namely the Credentials Committee, the MEC and the Governing Board (Exhibits B C and D). Therefore the Defendants and their actions herein fall under the provisions of § 40-71-10.

The Defendants' actions also satisfy the criteria for immunity under § 40-71-10. First there is absolutely no evidence of malice on the part of the Defendants in this case. Common law malice is defined as ill will toward the Plaintiff or reckless or wanton conduct with conscious indifference toward the Plaintiff's rights. *Padgett v Sun News* 278 S C 26 292 S E 2d 30 (1982). Actual malice is not presumed and must be proved. *Jones v Garner* 250 S C 479 158 S E 2d 909 (1968). The Plaintiff has presented no evidence of malice and did not even plead malice in her Complaint. The only evidence on this issue shows that the Defendants' actions were based upon the Plaintiff's failure to follow the Medical Staff Bylaws and submit required documentation of current clinical competency rather than the nefarious considerations alleged by the Plaintiff (Exhibits B C and D).

The evidence also shows that the Defendants made a reasonable effort to obtain the facts relating to the matter under consideration thereby satisfying the second criteria for

immunity under § 40-71-10. As with the HCQIA, the second criteria of the HCQIA requires a showing that the Defendants' actions were taken after a reasonable effort to obtain the facts of the matter. Defendants would refer to the arguments set forth in the preceding Section III A of this Memorandum regarding the satisfaction of this criteria under the second criteria of the HCQIA and Exhibit J, as evidence that the Defendants meet this criteria under § 40-71-10 as well.

Lastly, it is clear that the actions taken by the Defendants were warranted by the facts known to them. For the same reasons set forth in the preceding Section III A of this Memorandum regarding the satisfaction of this same criteria under the HCQIA the Defendants have satisfied this criteria under S.C. Code Ann. § 40-71-10 as well.

In addition to the above factual evidence establishing immunity under § 40-71-10, the only expert testimony in the case relevant to this issue is that the actions of the Defendants herein were devoid of malice based on a reasonable belief that the actions were warranted by the facts known to them, and taken after reasonable efforts to obtain the facts relating to her application. Attached hereto is the Affidavit of Donald Pocock, M.D. Dr. Pocock is familiar with and has over 20 years of experience in Medical Staff Credentialing and Hospital Staff Bylaws creation and application (Exhibit F). He is currently Chief Medical Officer for Morton Plant Mease Health Care, a four hospital system in Clearwater, Florida, and in that capacity is in charge of the office of Medical Affairs, which handles the credentialing of nearly 600 physicians annually. From 2001 to 2005, he was Chief Medical Officer at Roper Saint Francis Health Care in Charleston, S.C., where he had responsibility for two medical staffs with credentialing of over 250 physicians annually. In this capacity, he worked closely with other area hospitals, such as Trident Medical Center and East Cooper Hospital, and is familiar with their Bylaws and physician appointment processes. Dr. Pocock has knowledge of the Charleston, S.C. healthcare industry and knows the local standards applied to medical staff membership eligibility, granting of privileges, and reappointment. He is also familiar with the immunity provided by the law of S.C. for physician credentialing and peer review activities. Dr. Pocock has reviewed pertinent materials in this case and has opined within a reasonable degree of certainty in the field of hospital Medical Staff Bylaws and physician credentialing that there is no evidence of ill will, reckless, wanton conduct, or indifference to the Plaintiff's rights on the part of the Defendants concerning the Plaintiff's 2004 reappointment process, that the Defendants made a reasonable effort to obtain the facts relating to her application, and that the Defendants acted in the belief that the action taken was warranted by the facts known to them. *Id.*

As shown above, the Defendants meet the criteria for immunity under S C Code Ann § 40-71-10. The Plaintiff has produced no fact or expert evidence rebutting this immunity and she may not simply rest on mere allegations contained in her Amended Complaint to refute said immunity which does not even plead malice. *Regions Bank v Schmauch* 354 S C 648, 582 S E 2d 432 (Ct App 2003). Because the Defendants have satisfied the criteria for immunity under § 40-71-10 the Court does not have subject matter jurisdiction to grant the relief sought, and the Defendants are entitled to summary judgment as a matter of law. *Washington v Whitaker* 371 S C 108, 451 S E 2d 894 (1994) citing *Hutchins v Mills* 363 So 2d 818, 821 (Fla 1st DCA 1978) cert denied, 368 So 2d 1368 (Fla 1979).

IV PLAINTIFF'S BREACH OF CONTRACT CLAIMS ARE MERITLESS, AND THE COURT SHOULD GRANT SUMMARY JUDGMENT AS TO THEM

In general hospital Medical Staff Bylaws encompass such items as the relationship between the Medical Staff physicians and the hospital, the organization of the practitioners into a Medical Staff with officers and committees, delineation of requirements for obtaining and maintaining staff privileges, organization of the staff by departments or specialties, and quality assurance including peer review, confidentiality, immunity and releases.

Under S C law specifically S C Reg 61-16 (Minimum Standards for Licensing Hospitals and Institutional Infirmaries) hospitals licensed by the State of S C like East Cooper Hospital must maintain a single organized medical staff appointed by the governing authority in accordance with the hospital's bylaws. S C Reg 61-16 301. This single organized medical staff must, with the approval of the hospital governing body, adopt bylaws, rules and regulations to govern its operation as an organized medical staff. *Id*. The regulation further requires that 'prior to a physician's initial appointment and periodic reappointment the governing authority shall assure itself that the physician is qualified and competent to practice in his profession. *Id*. To be eligible for membership on any S C hospital Medical Staff, a physician must be licensed to practice within the state, worthy in character and in matters of professional ethics, and meet the requirements of the hospital's bylaws. S C Reg 61-16 302. Regulations such as S C Reg 61-16 authorized by the legislature have the force and effect of a statute. *Goodman v City of Columbia* 458 S E 2d 531 (S C 1995). *Glover by Cauthen v Suitt Const Co*, 458 S E 2d 535 (S C 1995).

Likewise for those hospitals which accept Medicare and/or Medicaid patients as does East Cooper Hospital, federal law requires that the hospital must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the

quality of medical care provided to patients by the hospital 42 U S C §482 22 This same statute requires that the medical staff "must periodically conduct appraisals of its members including an examination of the credentials of candidates for medical staff membership in order to make recommendations to the governing body on the appointment of applicants *Id* at §482 22(a)(1)-(2) Other than following the general mandates of state and federal law regarding the implementation of medical staff bylaws a S C 'private hospital is free to adopt reasonable regulations for the conduct of its affairs *Gowan v St Francis Comm Hosp* 268 S E 2d 580 (S C 1980)

The Medical Staff Bylaws at issue clearly meet the standards set forth both under S C and federal law in that they define the Medical Staff itself, require that the Medical Staff accept responsibility for the quality of medical care provided to the Hospital's patients and set forth detailed requirements for appointment and reappointment of members to the Medical Staff as well as appellate remedies available to both the hospital and the physician if the Medical Staff Bylaws are not followed In the present case Plaintiff alleges that Defendant East Cooper Hospital's Medical Staff Bylaws create a contractual relationship between physicians granted medical staff privileges and the hospital Plaintiff further claims that East Cooper Hospital¹ has breached such contract with her by "refusing to review a "complete application for privileges allegedly submitted by her to the Medical Staff Credentials Committee Plaintiff argues that she has suffered damage from such breach in the form of lost income and loss of business to her practice 'as she has been unable to admit any patients to the hospital to perform medical procedures (See Amended Complaint at ¶¶ 23-27)

In addition, Plaintiff argues that East Cooper Hospital has breached a contractual relationship with her again allegedly created by the Medical Staff Bylaws by refusing to grant appeal rights set forth in the Medical Staff Bylaws including the right to be represented by counsel In making this argument Plaintiff alleges that East Cooper's refusal to process and review" her completed application was an adverse action as defined by the Medical Staff Bylaws thus affording her rights under the appeals process defined therein Plaintiff alleges that the failure to allow access to the appeal process' was a breach of the Medical Staff Bylaws and that had she had access to such including the right to counsel, she would have obtained the staff advancement that she sought Therefore she reasons she has been damaged in the form of lost income and loss of business to her practice as she has been unable to admit any patients to the hospital to perform medical procedures (See Amended Complaint, Second

¹ While not clear in Plaintiff's Amended Complaint she pleads that the Defendant has breached the contract allegedly created by the Medical Staff Bylaws For purposes of this argument Defendants assume that the breach of contract claims are pled against East Cooper Hospital only

Cause of Action²)

As in any breach of contract claim a binding valid contract must exist for a cause of action sounding in breach of contract to lie. See *Tidewater Supply Co v Industrial Elec Co* 171 S E 2d 607 (S C 1969) *Regions Bank v Schmauch*, 582 S E 2d 432 (S C App 2003). The elements necessary to form a contract are offer, acceptance, and valuable consideration. *Sauner v Pub Serv Auth of South Carolina* 581 S E 2d 161 (S C 2003) *Hughes v Edwards*, 220 S E 2d 231 (S C 1975). Vital to the Court's consideration of this issue is the longstanding rule that the consideration required for a valid contract *cannot* be a promise to do something which the promisor is already obligated to do. *Castell v Stephenson Fin Co*, 135 S E 2d 311 (S C 1964) ('The authorities are clear that an agreement to do that which one is already legally bound to do is not sufficient consideration to support a new contract'). Where the facts concerning the formation of an alleged contract are not in dispute," the issue of the existence of the alleged contract is a question of law for the court. *WE Gilbert & Associates v South Carolina Nat Bank* 330 S E 2d 307 (S C App 1985) (citations omitted).

A breach of contract is defined as a failure without legal excuse to perform any promise which forms the whole or part of a contract. See *Black's Law Dictionary* 188 (6th ed 1990). In other words, a party may be said to breach a contract when it does not perform as agreed under the contract. To recover for a breach of contract, the plaintiff must prove (1) a binding contract entered into by the parties, (2) a breach or unjustifiable failure to perform the contract, and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v Eastern Fire & Cas Ins Co* 124 S E 2d 602 (S C 1962). If a true breach has occurred, the nonbreaching party may be entitled to damages following as a natural consequence and a proximate result of such breach. *Id*. As an additional caveat, the damages sought either must flow as a natural consequence of the breach or must have been reasonably within the parties' contemplation at the time of the contract. *Manning v City of Columbia* 377 S E 2d 335 (S C 1989) *Kline Iron & Steel Co v Superior Trucking Co* 201 S E 2d 388 (S C 1973).

A EAST COOPER HOSPITAL'S MEDICAL STAFF BYLAWS DO NOT AND DID NOT CREATE A CONTRACT BETWEEN THE HOSPITAL AND PLAINTIFF

In the present case, Plaintiff cannot prove even the first element of the above test because hospital medical staff bylaws do not create a contract between a hospital and physicians granted hospital privileges because they lack appropriate consideration. This is

² Defendants note that the Plaintiff's Second Cause of Action is misnumbered and contains Paragraphs 29-36 followed by Paragraphs 23-29. Thus, to avoid confusion, Defendants simply refer to the Second Cause of Action.

recognized, first and foremost by the subject Medical Staff Bylaws themselves which clearly state in their Preamble that these Bylaws “were prepared for compliance and are to be construed in conformity with applicable hospital licensing laws, applicable accreditation guidelines and regulatory requirements **they do not constitute an express or implied contract between or among any individual, committee or entity**, unless otherwise expressly determined by state law (Exhibit A [emphasis added]) Thus the very document that Plaintiff deems a contract is clearly not defined as such in its first few paragraphs

Notwithstanding the very clear language of the Medical Staff Bylaws at issue, the document does not meet the traditional definition of a contract Under traditional principles of contract law, hospital medical staff bylaws like the Medical Staff Bylaws of East Cooper Hospital do not constitute an enforceable contract between a hospital and a plaintiff physician Because as outlined above there is a legal duty imposed by the State of S C as well as the federal government for a hospital such as East Cooper Hospital to adopt medical staff bylaws the governing board of East Cooper Hospital had a legal duty to do so This legal duty to adopt such Medical Staff Bylaws logically implies that the hospital must abide by them

In *Robles v Humana Hosp Cartersville* 785 F Supp 989 (N D Ga 1992) (applying Georgia law) the District Court addressed the above premise The question of whether the medical staff bylaws before the *Robles* court created a contract *per se* was a matter of first impression for the court The Court noted that like the East Cooper Hospital Medical Staff Bylaws at issue the Humana Hospital bylaws govern[ed] both the hospital's right to ensure quality care at its facilities and the procedures the hospital must follow when disciplining a doctor for deviating from that level of quality care 785 F Supp at 992 Thus the alleged contract's subject matter was the procedures utilized by the hospital to govern that relationship By applying for and assenting to such procedures the physician agreed to abide by the bylaws By accepting the physician onto the medical staff the hospital agreed that if Plaintiff did not act in “[a] manner” in accordance with the bylaws it would utilize a given procedure to discipline the doctor's behavior *Id* While these may be thought of as mutual assent to certain procedures the problem arises however with what was the consideration in th[e] alleged contract *Id*

Substantively identical to S C law cited above Georgia law holds that consideration for a new contract cannot be based on an already existing legal obligation of a party As such the *Robles* court held that the Humana Hospital medical staff bylaws could not be considered a contract *per se* because there [was] no mutual exchange of consideration which brought them into existence *Id* In other words because the hospital had the legal duty to develop the

bylaws and the procedures therein *independently* of its association with any physician, no consideration could have been given for their creation. As the *Robles* court rightly noted, if it declared Humana Hospital's bylaws to be a contractual obligation, it would be tantamount to creating an additional damages action against a hospital for failure to follow its statutory mandate of having a peer review system, and would run counter to this state's policy of allowing the hospital to grant or withhold staff privileges from doctors it believes are unqualified to serve on its staff. *Id.* The Georgia Court of Appeals reached the same holding in *St. Mary's Hospital of Athens, Inc. v. Radiology Prof. Corp.*, 421 S.E.2d 731, 734 (Ga. App. 1992) (because hospitals have the authority to establish and revise rules and regulations governing the appointment of physicians to the hospital staff, medical staff bylaws alone do not create any contractual right to continuation of staff privileges; no cause of action lies against a hospital *ex contractu* based solely on an alleged breach of bylaw provisions).

Other courts have agreed with the above reasoning, including the Supreme Court of Connecticut in *Gianetti v. Norwalk Hospital*, 557 A.2d 1249 (Conn. 1989). Utilizing a substantively similar line of reasoning as the *Robles* court, the *Gianetti* court reasoned that the medical staff bylaws at issue before it did not constitute a contract due to lack of consideration. In so holding, the court cited to regulatory authority similar to S.C. Reg. 61-16. Because the hospital ha[d] the preexisting legal duty to adopt and abide by the medical staff bylaws, the hospital's agreement to do just that [could not] constitute valid consideration to adopt an enforceable contract. 557 A.2d at 1253. As under S.C. law in Connecticut, "a promise to do something which the promisor is already legally obligated to do does not constitute consideration." *Id.* at 1254 (citations omitted).

Similar decisions based upon the same reasoning (i.e. the lack of consideration) were reached by the Eighth Circuit Court of Appeals in *Madsen v. Audrain Health Care, Inc.*, 297 F.3d 694 (8th Cir. 2002) (applying Missouri law), the Supreme Court of Idaho in *Miller v. St. Alphonsus Reg. Med. Ctr., Inc.*, 87 P.3d 934 (Idaho 2004), the North Carolina Court of Appeals in *Virmani v. Presbyterian Health Svcs.*, 488 S.E.2d 284 (N.C. App. 1997), and the California Court of Appeals (2nd District) in *O'Byrne v. Santa Monica UCLA Med. Ctr.*, 114 Cal. Rptr. 2d 575 (Cal. App. 2d 2001). Because the reasoning in each case is almost identical to the reasoning in the *Robles* and *Gianetti* cases, the facts of each case will not be discussed in detail.

Based upon the lack of consideration, the East Cooper Hospital Medical Staff Bylaws did not and do not constitute a contract *per se* and thus, Plaintiffs' causes of action sounding in

breach of contract lack the first element of proof, the existence of a valid contract and summary judgment should be granted as to both breach of contract causes of action

B EVEN IF EAST COOPER HOSPITAL'S MEDICAL STAFF BYLAWS POTENTIALLY COULD CREATE A CONTRACT BETWEEN THE HOSPITAL AND PLAINTIFF NO CAUSE OF ACTION SHOULD LIE IN BREACH OF CONTRACT BECAUSE DURING THE PLAINTIFF'S 2004 APPLICATION PROCESS THERE WAS NO VALID OFFER OR ACCEPTANCE

Plaintiff's First and Second Causes of Action presuppose that a contract (i.e. the East Cooper Hospital Medical Staff Bylaws) was in place and applicable to both Plaintiff and East Cooper Hospital. Thus, she argues failure to process her application for appointment to a higher class of staff privileges and failure to grant a hearing after her application was returned as incomplete were breaches of such contract.

It is important here to note that at the time she submitted her application in 2004, Plaintiff was a member of the consulting Medical Staff. Her application requested a change in her medical staff membership classification from consulting to associate, a classification which would allow her to admit patients and perform surgical procedures, actions which she was prohibited from doing while a member of the consulting staff. As can be seen in the Medical Staff Bylaws, specifically Article IV, an associate staff member has many more rights and obligations than a consulting staff member, including the right to admit patients and perform surgical procedures, the obligation to take emergency room call, the obligation to perform required disaster plan duties, the obligation to receive and perform consultations to other physician's patients, the obligation to attend committee and medical staff meetings, and the right to serve on medical staff departmental or assigned committees as a voting member. (Exhibit A, Article IV, Section 3). These rights and obligations are far removed and far exceed the rights and obligations of a consulting staff member. *Id.* at Section 5.

For argument's sake, if the Medical Staff Bylaws could potentially be considered a contract, this request to modify Plaintiff's membership classification is analogous to a request to amend or to establish a new contract with new rights, obligations, and privileges. As discussed above, the elements necessary to form a contract or amended contract are offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of South Carolina*, 581 S.E.2d 161 (S.C. 2003); *Hughes v. Edwards*, 220 S.E.2d 231 (S.C. 1975). Thus, for Plaintiff's 2004 application to have created a contractual relation between she and East Cooper Hospital, there would need to be an offer, acceptance, and consideration. Even assuming for purposes of this argument that the Medical Staff Bylaws of East Cooper Hospital could possibly create some

type of contractual relationship between the Hospital and Plaintiff and the performance of an action statutorily mandated could constitute consideration which Defendants clearly deny a cause of action in contract will not lie because there was no valid offer or acceptance

An offer identifies the bargained for exchange and creates a power of acceptance in the offeree' *Carolina Amusement Co Inc v Connecticut Nat Life Ins Co* 437 S E 2d 122 (S C App 1993) (citing the *Restatement (2nd) of Contracts* § 24 (1981) defining an offer as 'a manifestation of willingness to enter into a bargain so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it) Put another way an offer is [a]ny conduct from which a reasonable person in the offeree's position would be justified in inferring a promise in return for a requested act or a requested promise by the offeree *Broadway v Jeffers* 194 S E 642 645 (S C 1938) When the offer is in the form of an application the application is considered the offer and until accepted by the offeree no contractual relationship exists See *Moore v Palmetto State Life Ins Co* 73 S E 2d 688 (S C 1952) (interpreting the application for insurance coverage as an offer) If something remains to be done to establish a contractual relationship such as the completion of a required application, acceptance is not present and no contractual relationship is established See *Insurance Co of N Am v United States* 159 F 2d 699 (4th Cir 1947)

Plaintiff's Medical Staff reappointment application required and obligated the Plaintiff to document her demonstrated current clinical competence for the privileges she sought (Exhibit A Article IV Section 3(A) Article III Sections 3(A) and (B)(18) and Exhibits B C D, E and F) The Plaintiff's application however failed to contain any information that she had recently performed and/or was competent in the surgical procedures for which she was requesting privileges (Exhibit I) East Cooper Hospital had no current in house records upon which to evaluate the Plaintiff's competency as the Hospital had no record of the Plaintiff admitting a patient or performing surgery there since 1998 (Exhibits B C and D) Because Plaintiff failed to complete her application (i e failed to complete her offer) East Cooper Hospital had no other choice than to advise the Plaintiff in writing that her application could not be forwarded to the Credentials Committee for consideration of the requested privileges because of her failure to include information on her current clinical competency (Exhibit J) The Plaintiff was advised that because there was no record of her having admitted patients or performed surgery at East Cooper Hospital since 1998, she would need to identify other hospitals and surgical facilities where she had admitted and surgically treated patients within the preceding two years and provide the names of individuals who were in a position to directly evaluate her work in order for her application to be processed *Id* The Plaintiff was advised that upon receipt of this

information her application for associate status and surgical privileges would be processed but that without this information her application would be considered as a request for reappointment to the consulting staff the category of which she was currently a member *Id* Although East Cooper Hospital went out of its way to allow Plaintiff to complete her application and submit her *completed offer to be accepted onto the associate staff*, she failed to do so Therefore her application/offer was returned to her as incomplete thus communicating to her the non-acceptance of her offer In short there was no complete offer, and there was a rejection/non-acceptance of the incomplete offer Therefore, Plaintiff fails to meet the first two prongs of the test for whether a valid contract existed assuming for this argument that the Medical Staff Bylaws could indeed constitute a contract and consideration could be that which the Hospital was already obligated to do by law Thus the East Cooper Medical Staff Bylaws are not applicable and no action can lie regarding them

C EVEN IF EAST COOPER HOSPITAL'S MEDICAL STAFF BYLAWS ARE A CONTRACT APPLICABLE TO PLAINTIFF'S 2004 APPLICATION PROCESS, NO CAUSE OF ACTION SHOULD LIE IN BREACH OF CONTRACT BECAUSE PLAINTIFF FAILED TO FOLLOW THE MANDATES OF THE CONTRACT AND EAST COOPER HOSPITAL FOLLOWED THE MANDATES

Central to the Plaintiff's argument is that the Medical Staff Bylaws created a contract between East Cooper Hospital and her If that is true then Plaintiff undertook the obligation to follow the guidelines contained within the document Assuming *arguendo* that the East Cooper Hospital Bylaws effective in 2004 created a contractual relationship between the Hospital and Plaintiff and those Bylaws were applicable to the Plaintiff's application which Defendant denies Plaintiff's cause of action still fails because Plaintiff failed to follow the mandates of the Bylaws in her pursuit of appointment to associate staff status

As indicated above the Medical Staff Bylaws specifically state that **neither the Governing Board nor any Medical Staff committee shall have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material** (Exhibit A Article V Section 2(B) and Exhibits B C and D) As is described in detail above Plaintiff's application was woefully inadequate (actually completely lacking pertinent information) with regard to her professional competency Despite numerous attempts to allow her to correct and complete her application when she failed to do so representatives of East Cooper Hospital were forced to advise Plaintiff that her application could not be forwarded to the Credentials Committee for consideration of the requested privileges Finally after months of attempting to allow Plaintiff to complete her application for

associate status without success on December 15 2004 East Cooper Hospital notified the Plaintiff that because she had not submitted the required and requested information to complete her application it was being processed as incomplete It is ludicrous for Plaintiff to argue that her failure despite being given numerous opportunities to complete her application is somehow a breach of duty on the Hospital's part **In fact, it was Plaintiff's own inaction and failure to prove valid evidence of her competency for the privileges which she requested which has placed her in the position in which she finds herself today** Despite having no duty to act in any way and having the option to allow Plaintiff's Medical Staff membership to lapse completely East Cooper Hospital reappointed Plaintiff to the consulting staff of East Cooper Hospital The Plaintiff then requested a hearing before a Medical Review Committee to contest her reappointment to the consulting staff pursuant to the Medical Staff Bylaws **What Plaintiff failed to understand then, and obviously now, is that because her application for change in status was incomplete, it was not accepted by the Medical Staff even for simple processing** **Therefore, there could be no adverse action because her application was never acted upon** As such on February 7 2005 the Plaintiff was informed that her reappointment to the consulting staff did not give rise to hearing under the Bylaws in that her reappointment was not an adverse action but, rather a reappointment to the same staff category to which she had previously been appointed affording the same privileges she previously enjoyed (Exhibit K) The Bylaws give rise to a hearing **only** when there is an adverse action that has been taken based on the member's professional conduct or competence and do not afford hearing and appellate rights when an application is deemed to be incomplete (Exhibit A Article III, Section I(B)(1) Section 2(A) and (B) Article V Section 3(B) and Exhibits B C D E and F) The action taken in the present case was not adverse and therefore no hearing rights are attached

Contrary to Plaintiff's actions Defendant East Cooper Hospital followed its own Medical Staff Bylaws even though such do not constitute a contract As is discussed in detail above, the Hospital's actions are so important as to merit brief reiteration here As indicated above the Medical Staff Bylaws specifically state that the Governing Board and any Medical Staff committee **do not have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material** (Exhibit A Article V Section 2(B) and Exhibits B C and D) When Plaintiff's application failed to contain evidence of appropriate clinical competency on November 9 2004 representatives of East Cooper Hospital advised the Plaintiff in writing of such and requested that due to her complete lack of surgical activity at East Cooper Hospital since 1998 she would need to identify

other hospitals and surgical facilities where she had admitted and surgically treated patients within the preceding two years and provide the names of individuals who were in a position to directly evaluate her work in order for her application to be processed (Exhibit J) The Plaintiff was specifically advised that upon receipt of this information her application for associate status and surgical privileges would be processed but that without this information her application would be considered as a request for reappointment to the consulting staff, the category of which she was currently a member /d The Plaintiff failed to submit the requested information and on December 15, 2004 the Plaintiff was reappointed to the consulting staff of East Cooper Hospital The Plaintiff then requested a hearing before a Medical Review Committee to contest her reappointment to the consulting staff On February 7 2005, the Plaintiff was informed that her reappointment to the consulting staff did not give rise to hearing under the Bylaws in that her reappointment was not an adverse action but rather a reappointment to the same staff category to which she had previously been appointed affording the same privileges which she previously enjoyed (Exhibit K)

The first-hand adherence of East Cooper Hospital to its Medical Staff Bylaws is well documented in the Affidavits of Danny H Mullis Esquire (Exhibit B) as well as the Affidavits of Drs David Keenan and Susan Jones (Exhibits C and D) As well one of the premiere experts on medical staff credentialing and privileging in the United States Hugh P Greeley has opined that East Cooper Hospital did in fact act in accordance with its own bylaws and within the standard of care within the credentialing industry in its interaction with Dr Holmes ' (Exhibit E at ¶¶33 see also ¶¶44) To bolster Mr Greeley's opinion, also presented with this Memorandum is the Affidavit of Dr Donald Pocock another expert within the credentialing and privileging field who has worked within our local community as Chief Medical Officer of Roper Saint Francis Healthcare and is familiar with the various medical staff bylaws of our local hospitals Dr Pocock too opines that Defendants herein "were in compliance with their Medical Staff Bylaws and the local and national standard of care in the field of Physician Credentialing regarding Dr Holmes' 2004 reappointment process and "were closely and correctly followed in this case ' (Exhibit F at ¶¶6 12) Plaintiff has presented no firsthand or expert evidence otherwise

**D NO CAUSE OF ACTION SHOULD LIE IN BREACH OF CONTRACT
ACCOMPANIED BY A FRAUDULENT ACT OR WITH FRAUDULENT
INTENT**

To recover for breach of contract accompanied by a fraudulent act a plaintiff must prove three elements breach of a contract fraudulent intent relating to the breach and a fraudulent act accompanying the breach " *Scott v Mid Carolina Homes, Inc* 359 S E 2d 291

294 (S C App 1987) *overruled on other grounds by Ward v Dick Dyer & Assoc, Inc*, 403 S E 2d 310 (1991) 'There is no cause of action distinct from breach of contract for breach of contract accompanied by a fraudulent act *Smith v Canal Ins Co* 269 S E 2d 348, 350 (S C 1980) A claim for breach of contract accompanied by a fraudulent act would merely allow a plaintiff to recover punitive damages if it proves that the breach of contract was accompanied by a fraudulent act *Smith* 269 S E 2d at 350

As is discussed in great detail herein there has been no breach of contract because there was no contract created by the Medical Staff Bylaws *See Armstrong v Collins* 621 S E 2d 368 (S C App 2005) (Having a contract is a prerequisite to proving breach of contract accompanied by a fraudulent act') Even if the Court assumes *arguendo* that a contract did exist there was no breach as is detailed in Exhibits B through F the Affidavits of those involved in the review of Plaintiff's 2004 incomplete application for associate staff privileges from a firsthand and expert point of view because Defendant East Cooper Hospital and its Medical Staff followed the Medical Staff Bylaws in their review of Plaintiff's 2004 Application **Plaintiff has produced no evidence to contradict these thorough Affidavits**

Even if Plaintiff could prove a contract existed or the breach thereof, which she cannot she must show fraudulent intent accompanied by a fraudulent act Fraudulent intent is normally proved by circumstances surrounding the breach *Floyd v Country Squire Mobile Homes Inc*, 336 S E 2d 502 503-04 (S C App 1985) The fraudulent act may be prior to contemporaneous with or subsequent to the breach of contract but it must be connected with the breach itself and **cannot be too remote in either time or character** *Id* at 504 There has been no showing of fraudulent intent or a fraudulent act except Plaintiff's continuing illusory claims of some longstanding conspiracy between Defendants to deny her surgical privileges to better the practice of Dr Grady Not only are these allegations illusory even if taken as true it is clear that Dr Grady was not involved in the 2004 process at issue As shown in Exhibit I **Defendant Dr Grady has not been a member of the Credentials Committee since 1998, and specifically has had no involvement in the review and evaluation of the qualifications of any physician applicant at East Cooper Hospital, including those involving the Plaintiff, since 1998** (Exhibit I) It appears that Plaintiff bases her claims of fraudulent intent on some ill-founded and unsupported conspiracy theory based upon a statement made in the distant past (1997) (Exhibit O) This unsupported speculative, and far fetched theory does not support a claim for fraudulent intent

**E NO CAUSE OF ACTION SHOULD LIE IN BREACH OF CONTRACT OR
BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT INTENT
AGAINST EITHER DRS YANTIS OR GRADY OR TENET HEALTH
SYSTEM MEDICAL, INC**

It is well settled that only a party to a contract can breach that contract. See *Drafts v Shull Sausage Co Inc* 275 S E 2d 577 (S C 1981) [citing 17A C J S Contracts § 520) (only the parties to a contract owe any duty or obligation under the contract), 17A C J S Contracts § 520 (a contract binds no one but the parties thereto, and an action on a contract cannot be maintained against a person who is not a party to it) 17A C J S Contracts § 451 (only parties to a contract are required to perform according to its terms')]. Even if a contract was created by the Medical Staff Bylaws which Defendants deny such contract would be between Defendant East Cooper Hospital and Plaintiff. Neither Defendant Yantis, Defendant Grady nor Defendant Tenet Health System Medical Inc can or would be parties to such a contract, and therefore could not ever be said to breach said contract, with or without fraudulent intent.

Based on the above arguments summary judgment as to Plaintiff's breach of contract claims should be granted on any one of a number of grounds.

**V PLAINTIFF'S UNFAIR TRADE PRACTICES CAUSE OF ACTION IS
MERITLESS AND THE COURT SHOULD GRANT SUMMARY JUDGMENT AS
TO SUCH CAUSE**

**A EAST COOPER HOSPITAL AND MEMBERS OF ITS MEDICAL STAFF
ARE EXEMPT FROM THE MANDATES OF THE SOUTH CAROLINA
UNFAIR TRADE PRACTICES ACT**

Plaintiff asserts in her Fifth Cause of Action as against Defendants East Cooper Hospital and Defendant Grady that both 'engaged in a common plan or enterprise designed to limit the scope of practice of Plaintiff and other unnamed physicians in the practice of ophthalmology. Plaintiff asserts that this 'tactic' is a violation of the South Carolina Unfair Trade Practices Act (the Act) (see Amended Complaint at ¶¶ 60-68). Pursuant to S C Code § 39-5-40(a), the Act is inapplicable to actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other S C State law. S C Code Ann § 39-5-40(a). In other words, the actions of regulated entities which "are allowed or authorized by a regulatory agency or other statutes are exempt from the Act. *Ward v Dick Dyer and Associates Inc* 403 S E 2d 310 (S C 1991). Exemption for certain activities is based on the concept that the legislature has determined certain matters are appropriate for resolution by state or federal administrative agencies with particular expertise, rather than by the general jurisdiction of a trial court. See

InMed Diagnostic Svcs L L C v MedQuest Associates Inc 594 S E 2d 552 (S C App 2004)

As is discussed in detail in the argument regarding breach of contract above, under S C law, specifically S C Reg 61-16 (Minimum Standards for Licensing Hospitals and Institutional Infirmaries) and the Medicare and Medicaid Conditions of Participation hospitals licensed by the State of S C and who accept Medicare and Medicaid patients like East Cooper Hospital, must maintain an organized medical staff and must have in place methods to ensure each physician's continuing competencies. These very actions permitted and, if fact required by both state and federal regulatory and statutory law are the very actions complained of in Plaintiff's Amended Complaint. Thus because there is an extensive regulatory scheme in place to govern the actions and protocols applicable to hospital medical staff privileging such is a highly regulated area and is exempt from the Act.

B EVEN IF EAST COOPER HOSPITAL AND MEMBERS OF ITS MEDICAL STAFF WERE NOT EXEMPT FROM THE ACT PLAINTIFF CANNOT MEET THE REQUIREMENTS TO PROVE THAT A VIOLATION OF THE ACT HAS OCCURRED AND THEREFORE SUMMARY JUDGMENT IS APPROPRIATE

In order to bring an action under the Act a Plaintiff must demonstrate (1) that the defendant engaged in an unlawful trade practice (2) that the plaintiff suffered actual, ascertainable damages as a result of the unlawful trade practice and (3) that the unlawful trade practice engaged in by the defendant had an adverse impact on the public interest. *Havird Oil Co, Inc v Marathon Oil Co, Inc* 149 F 3d 283 (4th Cir 1998) (applying S C law) *Wright v Craft*, 640 S E 2d 486 (S C App 2006). An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive. *Johnson v Collins Entertainment Co, Inc* 564 S E 2d 653 (S C 2002) see also *Wright v Craft* 640 S E 2d 486 (S C App 2006), *deBondt v Carlton Motorcars, Inc*, 536 S E 2d 399, 407 (S C App 2000) (citation omitted). To maintain a cause of action under the Act one must first show that the allegedly deceptive acts or practices occurred "within the conduct of any trade or commerce." S C Code Ann § 39-5-20(a). Trade and commerce generally are defined as the sale or distribution of any services. S C Code Ann § 39-5-10(b).

In addition to be actionable under the Act the unfair or deceptive act or practice must have an impact upon the public interest. *Id* (citing *Haley Nursery Co v Forrest* 381 S E 2d 906 (S C 1989)). To have an impact on the public interest the act or practice in question must have the 'potential for repetition'. *Singleton v Stokes Motors Inc* 595 S E 2d 461, 466 (S C 2004) (citing *Crary v Djebelli* 496 S E 2d 21, 23 (S C 1998)). An act or practice may have the

potential for repetition by a showing that (a) the same kind of actions occurred in the past thus making it likely they will continue to occur absent deterrence or (2) by showing the alleged perpetrator's procedures created a potential for repetition of the unfair and deceptive acts *Id*

1 The Review Acceptance or Non-acceptance of an Application for Medical Staff Privileges by a Hospital Does Not Amount to a Trade or Commerce Under the Act

The Act defines the term "trade or 'commerce'" as "the advertising, offering for sale or distribution of any services and any property tangible or intangible real personal or mixed, and any other article commodity or thing of value wherever situate and shall include any trade or commerce directly or indirectly affecting the people of this State S C Code 39-5-10(b) The actions complained of in Plaintiff's Fifth Cause of Action while extremely vague in essence allege that East Cooper Hospital in concert with Defendant Grady, in failing to grant Plaintiff certification³, somehow committed a violation of the Act To meet the first prong of the test for an action violative of the Act, Plaintiff must demonstrate that the action complained of amounted to a 'trade' or 'commerce' The act of permitting a physician to offer her credentials for review to determine whether or not she meets the qualifications to become a member of a hospital medical staff certainly does not fit into the term 'trade' or 'commerce' as defined and intended by the Act Plaintiff in the present case never completed her application and thus no further action on it was taken Certainly this scenario does not fit into the definition of "trade' or 'commerce' under the Act

2 Even if the Granting of Medical Staff Privileges by a Hospital to a Physician Could be Defined as a 'Trade' or 'Commerce' the Act is Still Not Applicable Because Plaintiff's Claim Requests Redress for a Private Wrong

The Act is unavailable to redress private wrongs if the public interest is unaffected In other words an unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the Act's embrace *Ardis v Cox* 431 S E 2d 267 (S C App 1993) see also *Jeffries v Phillips* 451 S E 2d 21 (S C App 1994) (conduct which only affects the parties to the transaction provides no basis for a UTPA claim) In keeping with this doctrine, S C Courts uniformly have held that a breach of contract does not constitute a violation of the Act See *Omni Outdoor Advertising Inc v Columbia Outdoor Advertising Inc* 974 F 2d 502 (4th Cir 1992) (applying South Carolina law) *Columbia East Associates v Bi-Lo*

³ For purposes of this argument Defendants assume that this means the granting of associate staff privileges

Inc 386 S E 2d 259 (S C App 1989), *South Carolina Nat Bank v Silks* 367 S E 2d 421 (S C App 1988) *Noack Enterprises, Inc v Country Corner Interiors of Hilton Head Island Inc* 351 S E 2d 347 (S C App 1986) This is true even if the breach of contract was "deliberate" or intentional *Ardis* 431 S E 2d at 269 see also *Perry v Green* 437 S E 2d 150 (S C App 1993) In determining whether or not an alleged wrong is private or capable of impact upon the public the Courts of our state have consistently rejected speculative claims of adverse public impact and require strict evidentiary proof of such alleged effects *Omni Outdoor Advertising Inc v Columbia Outdoor Advertising, Inc* 974 F 2d 502 (4th Cir 1992) (applying S C law)

The crux of Plaintiff's claims in the present suit is that the East Cooper Hospital Medical Staff Bylaws created a contract between the Hospital and her, which defined both parties obligations to each other Plaintiff further alleges that a conspiracy existed between Dr Grady and the Hospital to somehow breach this contract by refusing to grant her the associate privileges she desired By Plaintiff's own allegations she has defined the alleged wrong as a breach of contract that was deliberate and willful in order to "restrict her business" (Amended Complaint at ¶63 emphasis added) Because the Plaintiff clearly pleads and alleges the redress of a private wrong (i.e. the failure to process her incomplete application and the failure to grant her a hearing) the Act is inapplicable It boggles the mind that a physician who failed to appropriately complete an application for medical staff privileges should now complain that the failure to process an incomplete document is somehow an action to which the Act applies

Plaintiff's allegation that the act of failing to process her incomplete application affects the public interest in that it limits the public's access to doctors for in patient [sic] treatment in the area of ophthalmology in the East Cooper geographic location, and limits [sic] the public's access to new medical procedures not employed by Dr Grady is again, an illusory argument and at best constitutes speculative claims of adverse public impact For Plaintiff's allegation to stand she presupposes that had she completed her application her application would have been accepted by the Hospital and her requested privilege status of associate (allowing her to admit and treat inpatients as well as perform surgical procedures) would have been granted This assumption is speculative and not sufficient to prove potential public impact See *Omni Outdoor Advertising Inc v Columbia Outdoor Advertising Inc*, 974 F 2d 502 (4th Cir 1992) (applying S C law) Had Plaintiff had evidence of her continuing competencies would she not have submitted them to avoid the situation the parties find themselves in today? Instead she failed to provide such evidence but now expects the Court to presuppose that the evidence which was never submitted to the Hospital exists and that it would have been sufficient to meet the requirements of the Hospital's qualification for associate active staff This argument is

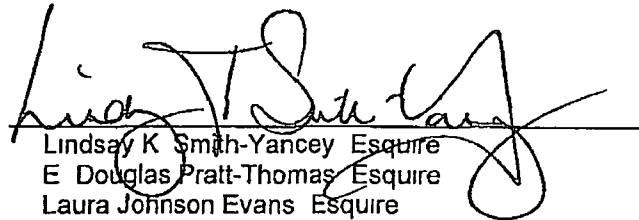
mentless and, in fact frivolous

Based on the above arguments Plaintiff's claim for violation of the Act should be dismissed on summary judgment

CONCLUSION

As shown extensively above there is no genuine issue of material fact in this matter. The Court does not have jurisdiction of the events complained of in Plaintiff's Amended Complaint. The Defendants are immune from the peer review activities complained of, and the Plaintiff's causes of action are unsupported only by her allegations and not by any substantive evidence. For these reasons the Defendants are entitled to summary judgment as a matter of law.

By



Lindsay K. Smith-Yancey Esquire
E. Douglas Pratt-Thomas Esquire
Laura Johnson Evans Esquire
PRATT-THOMAS EPTING & WALKER P.A.
P.O. Drawer 22247
Charleston, S.C. 29413-2247
Tel. (843) 727-2211

Attorneys for Defendants East Cooper Community
Hospital, Inc., Tenet HealthSystem Medical, Inc.,
John Grady, M.D., and Paul Yantis, M.D.

Charleston, South Carolina

April 19, 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C A NO 05 CP-10-5113

Dr Cynthia Holmes, M D

Plaintiff

vs

East Cooper Community Hospital, Inc ,
Tenet HealthSystem Medical Inc , John
Grady M D and Paul Yantis M D ,

Defendants

ORDER

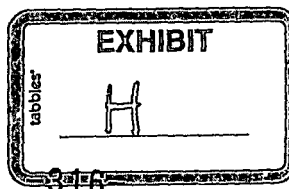
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JULIE J ARMSTRONG
CLERK OF COURT
BY _____

This matter came before the undersigned on April 23 2007 on Defendants' Motion for Summary Judgment Memoranda of Law affidavits and oral argument were presented by counsel for the Plaintiff and the Defendants incorporated into the record and considered by the Court As explained fully below the Court finds that there is no genuine issue of material fact as to the Plaintiff's claims and that the Defendants are entitled to summary judgment

UNDISPUTED FACTS

The Plaintiff Cynthia Holmes, M D is a medical doctor specializing in the field of ophthalmology Defendant East Cooper Community Hospital Inc owns operates and does business as East Cooper Regional Medical Center (hereinafter referred to as East Cooper Hospital" or the Hospital) and is a wholly owned subsidiary of Defendant Tenet HealthSystem Medical Inc Defendant Paul Yantis M D is a physician specializing in the field of gastroenterology He is member of the active Medical Staff of East Cooper Hospital and was the Chairman of the Hospital's Credentials Committee at the times relevant to this action Defendant John Grady M D is a physician specializing in the field of ophthalmology and he is also a member of the active Medical Staff at East Cooper Hospital Dr Grady was not a member of any Medical Staff committee or the Hospital's Governing Board at the times complained of in the Complaint

At the times relevant herein the Plaintiff was a member of the Medical Staff of East Cooper Hospital with consulting staff privileges As a member of the consulting staff the Plaintiff



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was not entitled to admit patients to the Hospital or perform surgery, and she could only consult on cases at the request of other physicians with higher staff categories and privileges. All appointments to the Medical Staff of East Cooper Hospital are granted for a two year term. In October of 2004, the Plaintiff's two year appointment to the consulting Medical Staff was nearing its expiration and she made an application for reappointment. In her reappointment application the Plaintiff requested advancement in staff category to associate status which would allow her to admit patients to the Hospital, take emergency room call, and hold Medical Staff appointments. In addition to associate status the Plaintiff requested clinical privileges to perform surgery on the eye.

At the time of the submission of the Plaintiff's application for reappointment, East Cooper Hospital had no record of the Plaintiff admitting patients or performing surgery at the Hospital since 1998 and the Plaintiff's application did not contain any information that she had admitted or surgically treated patients at any other healthcare facilities.

On November 9, 2004 representatives of East Cooper Hospital advised the Plaintiff that her application could not be forwarded to the Credentials Committee for consideration because of her failure to include information on her current clinical competency for the staff category and surgical procedures requested. She was advised that she would need to identify other hospitals and surgical facilities where she had admitted and surgically treated patients within the preceding two (2) years and provide the names of individuals who were in a position to directly evaluate her work in order for her application to be processed. The Plaintiff was advised that upon receipt of this information her request for associate status and surgical privileges would be processed but that without this information her application would be considered as a request for reappointment to the consulting staff the category of which she was a member. The Plaintiff failed to submit the requested information and on December 15, 2004 she was reappointed to the consulting staff of East Cooper Hospital. The Plaintiff then requested a hearing before a Medical Review Committee of the Hospital to contest her reappointment to the consulting staff. On February 7, 2005 the Plaintiff was informed that her reappointment to the consulting staff did not give rise to hearing and appellate rights under the Medical Staff Bylaws.

On December 16, 2005 the Plaintiff instituted this civil action alleging causes of action for breach of contract, breach of the covenant of good faith and fair dealing, breach of contract accompanied by a fraudulent act, unfair trade practices and civil conspiracy. The Plaintiff alleges that the actions taken with respect to her reappointment application were as a result of a civil conspiracy among the Defendants to promote the practice of Defendant Dr. Grady whom she alleges is her direct economic competitor and whom she alleges was a member of and/or

had influence over the Hospital's Credentials Committee. Alternatively, she argues that these actions were motivated by a desire to punish her for previous litigation activities against the Defendants.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. *Rule 56(c) S C R Civ P*. *City of Columbia v. American Civil Liberties Union*, 323 S C 384, 475 S E 2d 747 (1996). Summary judgment is proper where plain, palpable and indisputable facts exist on which reasonable minds cannot differ. *Byerly v. Conner*, 307 S C 441, 415 S E 2d 796 (1992). Summary judgment is not a disfavored procedural shortcut, but an important mechanism for weeding out claims and defenses [that] have no factual basis." *Celotex Corp. v. Catrett*, 477 U S 317, 327 (1986). The party seeking summary judgment has the burden of establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S C 372, 597 S E 2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations contained in the pleadings. *Regions Bank v. Schmauch*, 354 S C 648, 582 S E 2d 432 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co. Ltd.*, 363 S C 209, 609 S E 2d 565 (Ct. App. 2005). A party opposing a motion for summary judgment may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact and the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment. *Bravis v. Dunbar*, 316 S C 263, 449 S E 2d 495 (Ct. App. 1994).

I. The Court lacks subject matter jurisdiction to review the actions of private hospitals concerning medical staff privileges.

Subject matter jurisdiction refers to the Court's power to hear and determine cases of the general class to which the proceedings in question belong. *Bunkum v. Manor Properties*, 321 S C 95, 467 S E 2d 758 (Ct. App. 1996). Claims of lack of subject matter jurisdiction may be raised at any time and may not be waived by pleadings or other filings. *Eldridge v. City of Greenwood*, 331 S C 398, 503 S E 2d 191 (S C 1998).

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South Carolina courts have consistently held that private hospitals are free in the absence of regulatory provisions to decide the nature and extent of medical practice permitted to persons it grants medical staff privileges. A private hospital is free to adopt reasonable regulations for the conduct of its affairs. *Gowan v. St. Francis Community Hospital*, 275 S.C. 203, 268 S.E.2d 580, 581 (1980). It is well settled law in South Carolina that the Courts do not have jurisdiction to review the decisions of the medical staff of a private hospital concerning the membership and credentialing of its physicians. *Strauss v. Marlboro County General Hospital*, 185 S.C. 425, 194 S.E. 65 (1937). *Wood v. Hilton Head Hosp., Inc.*, 292 S.C. 403, 356 S.E.2d 841. *Gowen vs. St. Francis Community Hospital*, 275 S.C. 203, 268 S.E.2d 580 (1980).

It is undisputed that East Cooper Hospital is a private for profit Hospital governed by a Board of Directors. It is also undisputed that the Medical Staff operates pursuant to written Medical Staff Bylaws, Rules and Regulations which have been approved by the Governing Board of the Hospital by which all physicians receiving staff privileges at the Hospital agree to be bound as a condition of membership in the Medical Staff.

The Plaintiff's Amended Complaint seeks judicial determination of whether the decisions regarding her credentialing and privileges at East Cooper Hospital were reasonable and in compliance with the Hospital's Bylaws. Specifically, she requests the Court to review whether the failure to process and consider her application for associate status and surgical privileges, her reappointment to the consulting staff, and the denial of an administrative hearing were reasonable decisions made in accordance with the Bylaws. The Plaintiff's claims all arise out of the peer review process at East Cooper Hospital and, as such, are not subject to judicial review. The Court does not have jurisdiction to determine these issues and the Plaintiff has presented no evidence or reason to persuade the Court to depart from the long standing principle that such actions are not subject to judicial review.

The Plaintiff argues that the Court does have jurisdiction over this matter based on *Lee v. Chesterfield General Hospital*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986). The Court declines to adopt the Plaintiff's interpretation of the *Lee* decision as applicable to the matter herein. In *Lee*, the Court confirmed the decision reached in *Gowen* but found subject matter jurisdiction where the Plaintiff did not seek to conduct a judicial review of internal hospital rules but claimed that the Bylaws were imposed in furtherance of a conspiracy, the purpose of which was to injure the Plaintiff. *Lee* at 10. Here the Plaintiff asks the Court to review the basis for the credentialing decisions and substitute its judgment for the Hospital and its review committees by determining that the credentialing decisions were made inappropriately. This is precisely the type of intervention that *Strauss*, *Gowen*, and *Wood* decisions sought to prevent.

II There is insufficient evidence to support the Plaintiff's claims of breach of contract, breach of the covenant of good faith and fair dealing, breach of contract accompanied by fraudulent intent, unfair trade practices and civil conspiracy

Because the Court lacks subject matter jurisdiction of this matter it need not address the Plaintiff's claim that the Medical Staff Bylaws created a contract and that the failure to process her reappointment application for consideration of associate status and surgical privileges, her reappointment to the consulting staff and the denial of administrative hearing constitute causes of action for breach of contract, breach of the covenant of good faith and fair dealing breach of contract accompanied by fraudulent intent unfair trade practices and civil conspiracy. However, even if this Court did have subject matter jurisdiction over this matter there is no evidentiary support for these claims as the evidence in the case shows that the Medical Staff Bylaws were followed.

The Medical Staff Bylaws of East Cooper Hospital require the Credentials Committee to review each application for appointment or reappointment to determine whether the application is complete for processing. The Bylaws prohibit the Credentials Committee from processing any application for membership or privileges that is incomplete. The term "completed application" is defined in the Medical Staff Bylaws as an application either for initial appointment or reappointment to the Medical Staff or for clinical privileges that has been determined by the applicable Medical Staff department(s), Credentials Committee, Medical Executive Committee and the Governing Body to meet the requirements of the Medical Staff Bylaws, Rules and Regulations. The Medical Staff Bylaws specifically state that neither the Governing Board nor any Medical Staff committee shall have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material and that an incomplete application does not give rise to administrative hearing or appellate rights.

The reappointment application of the Plaintiff herein was determined by the Credentials Committee, the Medical Executive Committee and the Governing Board to be incomplete. The Medical Staff Bylaws grant these committees and the Governing Board the right to make this determination and preclude appellate and hearing rights when an application is deemed incomplete. The Plaintiff has presented no evidence showing that her reappointment process was not handled in accordance with these Bylaw provisions. Because the overwhelming evidence in this matter shows that the Medical Staff Bylaws were followed, there can be no

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cause of action for breach of contract breach of the covenant of good faith and fair dealing, breach of contract accompanied by fraudulent intent unfair trade practices and civil conspiracy

III There is insufficient evidence to support the Plaintiff's cause of action for civil conspiracy

In addition the record does not support a cause of action for civil conspiracy independent of the Plaintiff's contract based claims A plaintiff must demonstrate three elements in order to prove civil conspiracy (1) the combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing special damages *Pye v Estate of Fox* 369 S C 555 633 S E 2d 505 (2006) It is essential that the plaintiff prove all of these elements in order to recover " *Pye v Estate of Dorothy Fox*, 369 S C 555, 633 S E 2d 505 (2006) citing *Lyon v Sinclair Refining Co* 189 S C 136 200 S E 78 (1938) Evidence must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the conspiracy *Cowburn v Leventis* 366 S C 20 619 S E 2d 437 (Ct App 2005) The essential consideration in civil conspiracy is not whether lawful or unlawful acts or means are employed to further the conspiracy but whether the primary purpose or object of the combination is injury to the plaintiff *Lee v Chesterfield General Hosp , Inc* , 289 S C 6, 344 S E 2d 379 (Ct App 1986) An action for civil conspiracy is an action at law and the trial Court's dismissal of same will be upheld on appeal unless it is without evidentiary support *McMillian v Oconee Memorial Hospital Inc* 367 S C 559 626 S E 2d 884 (2006)

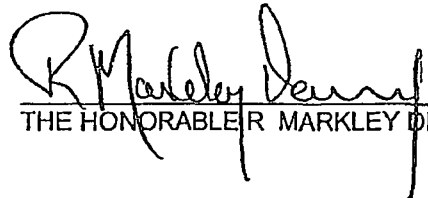
The Plaintiff claims that the decisions regarding her reappointment process were done in the furtherance of a civil conspiracy to promote the practice of Defendant Dr Grady Alternatively the Plaintiff argues that said decisions were taken to punish her for previous litigation activities against the Defendants The Plaintiff has not submitted sufficient evidence to withstand summary judgment on this cause of action There is no evidence that Defendant Dr Grady was a member of participated in influenced or had any role in the determinations made by the Credentials Committee the Medical Executive Committee or the Governing Board of East Cooper Hospital regarding the Plaintiff's reappointment application Likewise there is no evidence that there was any consideration of Dr Grady or his medical practice in these determinations Lastly there is no evidence that the Plaintiff's previous litigation activities against the Defendants were discussed considered contemplated or played a part in the decisions regarding her reappointment process The only evidence submitted by the Plaintiff in support of this cause of action is the alleged statement of Defendant Dr Yantis made ten (10) years ago in 1997 that Dr Grady had suggested that if the Plaintiff was denied privileges he

could have all her clients as referrals for surgery” Even in the light most favorable to the Plaintiff, this alleged statement does not establish a combination of the Defendants for the wrongful intent to injure the Plaintiff Further, this alleged statement is insufficient to create a genuine issue of fact sufficient to support Plaintiff’s claim that there was any conspiracy during the times relevant to the events complained of in the present action Lastly, the evidence shows that the Plaintiff has already been compensated for this same alleged conspiratorial statement in the settlement of a previous action against these Defendants

CONCLUSION

For the foregoing reasons there is no genuine issue of material fact as to any of the causes of action asserted by the Plaintiff and the Defendants Motion for Summary Judgment is granted

IT IS SO ORDERED


THE HONORABLE R. MARKLEY DENNIS, JR

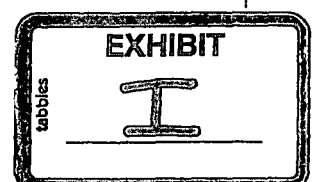
This the 22nd day of May 2007
Charleston South Carolina

RMD/7

 East Cooper
Regional Medical Center

MEDICAL STAFF BYLAWS

Revised July 20 2006



EAST COOPER REGIONAL MEDICAL CENTER
MEDICAL STAFF BYLAWS

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**EAST COOPER REGIONAL MEDICAL CENTER
A Tenet HealthSystem Facility
MEDICAL STAFF BYLAWS**

PREAMBLE

East Cooper Regional Medical Center, a Tenet HealthSystem Facility, is a corporation organized under the laws of the state of South Carolina and its purpose is to serve as a general acute care hospital providing patient care education and research

Recognizing that the Medical Staff is responsible for the quality of medical care in the Hospital and must accept and assume this responsibility, subject to the ultimate authority of the Hospital's Governing Body, and that the best interests of the patient are better protected by concerted effort, the Practitioners of this Hospital are organized in conformity with these Bylaws and the Medical Staff Rules and Regulations. These Medical Staff Bylaws Rules and Regulations create a framework within which medical staff members can act with a reasonable degree of freedom and confidence

These Bylaws were prepared for compliance and are to be construed in conformity with applicable hospital licensing laws, applicable accreditation guidelines and regulatory requirements, they do not constitute an express or implied contract between or among any individual, committee or entity, unless otherwise expressly determined by state law

DEFINITIONS

The use of the male pronoun (he/his/him) throughout these Bylaws is applicable to either male or female

- 1 **Administrator/Hospital President** the individual appointed by the Hospital to act on its behalf in the overall management of the Hospital
- 2 **Administrative Officer** a practitioner employed by the Hospital in a purely administrative capacity with no clinical duties or privileges and is subject to the regular personnel policies of the Hospital and to the terms of his contract or other conditions of employment, and need not be a member of the Medical Staff
- 3 **Chief of Staff** a member of the active Medical Staff who is elected in accordance with these Bylaws to serve as chief officer of the Medical Staff of this Hospital
- 4 **Clinical Privilege/Privileges** specified diagnostic and therapeutic services that may be exercised by authorized individuals on approval of the Governing Body

- 5 **Completed Application** an application, either for initial appointment or
reappointment to the Medical Staff or for clinical privileges that has been
determined by the applicable Medical Staff department (s) Credentials
Committee Medical Executive Committee (MEC) and the Governing Body to
meet the requirements of the Medical Staff Bylaws, Rules and Regulations
- 6 **Patient Contact** a patient contact is defined as any (1) inpatient admission,
(2) outpatient admission requiring direct physician contact, (3) consultation
or (4) direct emergency room contact
- 7 **Days** calendar days, unless otherwise noted
- 8 **Dentist** an individual, who has received a Doctor of Dental Surgery or a Doctor
of Dental Medicine degree and has a current, unrestricted license to practice
dentistry in this South Carolina Categorized as Specified Professional Personnel
- 9 **Department** a clinical division of the Medical Staff, grouping members in
accordance with their specialty or major practice interest, as specified in these
Bylaws
- 10 **Department Chairman** the member of the active Medical Staff who is duly
selected in accordance with these Bylaws to serve as the head or director
of a clinic department or service
- 11 **Ex Officio** service as a member of a body by virtue of an office or position held,
and unless otherwise expressly provided and doesn't have voting rights
- 12 **Good Standing** the term "good standing" means a staff member whom at the
time the issue is raised, has met the attendance and committee participation and
has the appropriate patient contacts requirements during the previous Medical
Staff year, and has not received a suspension or restriction of membership or
privileges in the previous twelve- (12) months
- 13 **Governing Body/Local Board** the local Governing Body of the Hospital, is the
Board of Directors of East Cooper Regional Medical Center
- 14 **Hospital** East Cooper Regional Medical Center, A Tenet Healthcare System
Facility
- 15 **Medical Executive Committee/(MEC)** the Medical Executive Committee of the
Medical Staff, unless otherwise specified
- 16 **Medical Review Committee (MRC)** the committee appointed pursuant to these
Bylaws for the purpose of evaluating the evidence and making findings in a
Medical Staff hearing

- 17 **Medical Staff** the formal organization of all physicians (M D or D O) who hold an unrestricted license in the state of South Carolina and who are privileged to provide patient care services at East Cooper Regional Medical Center within the scope of their licensure and approved clinical privileges
- 18 **Medical Staff Term/Year** two years
- 19 **Medico-Administrative Staff/CMO** - The Medico-Administrative Staff category shall consist of Practitioners who serve the hospital in an administrative capacity without consistent clinical responsibilities Medico Administrative Staff shall attain staff membership through the same procedure required for other Medical Staff categories Their clinical privileges will be determined by the Credentials Committee and approved by the Medical Executive Committee on an individual basis when and if the need arises for clinical duties They will not hold Medical Staff office nor have a vote on departmental or hospital-wide matters They will not be responsible for Emergency Room call unless performing approved consistent clinical duties with appropriate on call coverage with other physicians on the Medical Staff The right to Fair Hearing and Appeal process shall apply under these Bylaws only to clinical duties which are independent of the Practitioner's contract with the hospital
- 20 **Member** a practitioner who has been granted and maintains Medical Staff membership and (except for honorary staff) clinical privileges and who is in good standing pursuant to these Bylaws
- 21 **Physician** an individual who holds a current, unrestricted license as a M D or D O in this state
- 22 **Podiatrist** an individual who has a doctor of podiatric medicine degree and a current, unrestricted license to practice podiatry in this state Categorized as Specified Professional Personnel
- 23 **Practitioner** a physician as defined in these Bylaws with a current, unrestricted license issued by the state of South Carolina
- 24 **Service** a subdivision of either the Medical Staff or a clinical department, grouping members in accordance with their specialty or major practice interest, as specified in these Bylaws
- 25 **Specified Professional Personnel (SPP) a k a Allied Health Professional** individuals other than those defined under "Practitioner," who provide direct patient care services in the Hospital under a defined degree of supervision, exercising judgment within the areas of documented professional competence and consistent with applicable law These are individuals who are designated as SPP's by the Governing Body to be credentialed through the Medical Staff system SPP's are not eligible for Medical Staff membership

- 26 **Telemedicine** Telemedicine involves the use of electronic communication or other communication technologies to provide or support clinical care at a distance. Diagnosis and treatment of a patient may be performed via telemedicine link.
- 27 **Telemedicine Practitioner** Any licensed and appropriately credentialed practitioner who prescribes, renders a diagnosis or otherwise provides clinical treatment to a patient who has expressly applied for and been granted telemedicine privileges.

ARTICLE I

NAME

These are the Bylaws of the Medical Staff of East Cooper Regional Medical Center a Tenet Healthcare System Facility

ARTICLE II

PURPOSES AND RESPONSIBILITIES

SECTION I - PURPOSES OF THE MEDICAL STAFF

The purposes of the Medical Staff are to

- A provide an organized body through which the benefit of Medical Staff membership (mutual education, consultation, and professional support) may be obtained by each Medical Staff member and the obligations of Medical Staff membership may be fulfilled,
- B serve as the primary means for accountability to the Governing Body for the quality and appropriateness of the professional performance and ethical conduct of its members as well as of Specified Professional Personnel,
- C to strive for achievable quality patient care, efficiently delivered and maintained consistent with available resources, to the degree reasonably possible as determined by the state of the healing arts and resources locally available,
- D develop a structure, reflected in Medical Staff Bylaws, Rules and Regulations, policies, protocols, and other applicable documents, that adequately defines the responsibility and when appropriate the authority and accountability of each Medical Staff component and provide a means through which the Medical Staff may provide recommendations to the hospital's policy making and planning process

SECTION 2 - RESPONSIBILITIES OF THE MEDICAL STAFF

The responsibilities of the Medical Staff are to account for the quality and appropriateness of patient care rendered by all Practitioners and Specified Professional Personnel authorized to provide patient care services in the Hospital by

- A processing credentials in a manner that matches verified qualifications performance, and competence with clinical privileges for all Medical Staff applicants and

members and practice prerogatives for all Specified Professional Personnel,

B making recommendations to the Governing Body with respect to Medical Staff appointments reappointments, staff category provisional status, clinical privilege delineation, and as appropriate department, service and/or unit assignment and corrective actions

C participating in the Hospital quality performance improvement program by conducting objectively all required peer evaluation activities through Medical Staff and/or department service review, specific (committee) monitoring processes and a comprehensive occurrence screening program,

D providing an effective utilization review program for allocation of medical services based upon patient-specific determinations of individual medical needs,

E providing continuing education that is relevant to patient care provided in the Hospital as determined, to the degree reasonably possible, from the findings of quality/performance related activities,

F initiating and pursuing corrective action when indicated,

G enforcing the Medical Staff Bylaws, Rules and Regulations uniformly and consistently, and

H providing the Medical Staff Office a copy of their current State Medical license or Dental license, current State DEA and Federal DEA registration certificates and appropriate verification of malpractice insurance coverage annually

ARTICLE III

MEDICAL STAFF MEMBERSHIP

SECTION I - MEMBERSHIP AS A PRIVILEGE

A Membership on the Medical Staff of this Hospital and/or assignment of clinical privileges shall only be granted and maintained by those professionally qualified and currently competent practitioners who continuously meet the qualifications, standards, and requirements set forth in these Bylaws and the Rules and Regulations and policies of the Hospital Appointment to and membership on the Medical Staff shall confer on the member only such clinical privileges which the Governing Body in accordance with these Bylaws has granted rights as

B No individual is automatically entitled to initial or continued membership on the

Medical Staff or to exercise any clinical privilege in the Hospital merely because he is licensed to practice in this or any other state or because he has previously been a member of this Medical Staff, or because he had or now has membership or privileges at this or another health care facility or another practice setting or because he is a member of any professional organization

C Medical Staff membership does not create an employment or agency relationship between the Practitioner and the Hospital

D No physician shall admit or provide services to patients in the Hospital unless he is a member of the staff or has been granted temporary privileges in accordance with the procedures set forth in these Bylaws

SECTION 2 - GENERAL CRITERIA FOR MEMBERSHIP

Subject to exceptions provided by law or stated herein, Medical Staff membership and/or clinical privileges shall not be denied on the basis of sex, age, race, religion, creed, color, disability or national origin, but shall be related to professional ability and judgment, relevant training and experience health status (subject to any necessary reasonable accommodation to the extent required by law), current competence, and to the Hospital's purposes, needs, and non-exclusive capabilities. When the determination is based on the Hospital's needs or its non-exclusive ability to provide the facilities, beds, and support staffing/services, consideration will be given, or as otherwise provided by law, to utilization patterns, and actual and planned allocations of physical, financial and human resources, to general and specialized clinical and support services, and to the Hospital's specific goals and objectives as reflected in the Hospital's short and long range plans. It is recognized that some patient care services at the Hospital may be provided exclusively by a limited number of Practitioners selected by the Hospital, and who have been properly processed and granted Medical Staff membership and/or clinical privileges

SECTION 3 - QUALIFICATIONS AND OBLIGATIONS OF MEMBERSHIP OR PRIVILEGES

A **Qualification** In addition to the general criteria for membership, only physicians with a current, unrestricted license to practice in this state who can document their background professional experience, worthy character, education, relevant training, judgment, and demonstrated current competence, adherence to the ethics of their profession, good reputation, health status (subject to any necessary reasonable accommodation to the extent required by law), the ability to work with others (staff members, members of other health care disciplines, Hospital management and employees, visitors patients, and the community in general), and refrain from disruptive behavior which has or could interfere with patient care or the orderly operation of the Hospital so as to demonstrate to the Medical Staff and Governing Body that any patient treated by them in the Hospital or in any of its facilities will be given care of the professional level of quality and efficiency as established by the Medical Staff and Hospital, shall be qualified for membership on the Medical Staff

B Obligations In addition to the other obligations listed in these Bylaws each applicant by applying for or being granted membership or clinical privileges (temporary or otherwise) thereby agrees to

- 1 adhere to the generally recognized standards of professional ethics of his profession
- 2 not participate in fee splitting or "ghost" surgical or medical care
- 3 participate as required in peer evaluation activities
- 4 provide continuous care for his patients and delegate the responsibility for diagnosis or care of patients only to a member in good standing who has unrestricted clinical privileges to undertake that responsibility
- 5 obtain and document in the patient's medical record appropriate informed consent
- 6 abide by the Medical Staff Bylaws, Rules and Regulations, and applicable Hospital policies
- 7 complete adequately, and in a timely fashion, the medical and any other required records for all patients he admits or in any way provides care for in the Hospital. This will include timely completion of medical history and physical examinations for each patient admitted to the hospital
- 8 seek consultation whenever necessary
- 9 maintain the required amount of professional liability insurance in an amount and with a carrier approved by Tenet and the Governing Body and provide the hospital with a current certificate of insurance. The required coverage is \$1 million/\$3 million. The insurance must cover the types of privileges requested
- 10 reasonably assist the Hospital in fulfilling its uncompensated or partially compensated patient care obligations in the areas of professional competence and privileges
- 11 reasonably cooperate with the Hospital in its efforts to comply with accreditation reimbursement and legal or other regulatory requirements
- 12 supply requested information and appear for interviews with regard to membership or privileges

- 13 immediately notify the Administrator of the revocation or suspension of the applicant's professional license or the imposition of terms of probation or limitation of practice by any state licensing agency or the DEA or of any actions pending with regard to such adverse licensure activity of the voluntary or involuntary loss of staff membership or clinical privileges at any health care institution of the cancellation or restriction of professional liability coverage, of any adverse determination by a peer review organization or a third party payer reimbursement program concerning quality of care of the commencement of a formal investigation or the filing of charges by the Department of Health and Human Services or any law enforcement agency or health regulatory agency of the United States or of any state, of the notice of intent to file or the filing of a claim alleging professional liability, or the filing of any criminal charges
- 14 maintain the confidentiality of all Medical Staff peer review matters, pursuant to these Bylaws
- 15 provide patients with care at the professional level of quality and efficiency as defined by the Medical Staff and Governing Body
- 16 discharge staff, department, committee and hospital functions for which he is responsible by staff category assignment, appointment, and election or otherwise
- 17 authorize the Hospital to consult with members of the Medical Staffs of other Hospitals with which the applicant has been associated and with others who may have information bearing on his competence, skill, character, ethical and other qualifications
- 18 consent to the Hospital's inspection of all records and documents that may be material to an evaluation of his professional qualifications for the clinical privileges he requests as well as his moral and ethical qualifications for staff membership
- 19 release from any liability to the fullest extent permitted by law, all persons for their acts performed in connection with the investigation and evaluation of the applicant and his credentials
- 20 release from any liability, to the fullest extent permitted by law, all individuals and organizations who provide information regarding the applicant, including otherwise confidential information
- 21 consent to the disclosure to other health care entities medical associations, licensing boards and other organizations any information regarding his professional or ethical standing that the hospital or medical staff may have and release the medical staff and hospital from liability to the fullest

extent permitted by law

22 comply with Medical Staff policies, rules and regulations

SECTION 4 - PARTICULAR QUALIFICATIONS

A Physicians An applicant for physician membership in the Medical Staff must hold an M D or D O degree issued by a medical or osteopathic school approved, at the time of issuance of such degree, by the State Board of Medical Examiners of the State of South Carolina and must also hold a valid, unrevoked and unsuspended certificate to practice medicine issued to him by the Board of Medical Examiners of the State of South Carolina. The clinical departments will establish specific qualifications for the granting of clinical privileges. Applicant must possess Board Certification recognized by the American Board of Medical Specialties (ABMS) within the specified time frame as determined by the applicant's respective board. If a specialty board does not specify a time frame for certification, the physician will have five (5) years from the time of completion of residency training to obtain specialty board certification. Physicians not only must obtain board certification by the ABMS, but they must maintain board certification in order to maintain medical staff membership. The requirement to maintain board certification will only apply to physicians appointed to the medical staff after February 1, 2004.

B Oral and Maxillofacial Surgeons An applicant for oral and maxillofacial surgeon membership in the Medical Staff must hold a D D S or equivalent degree issued by a dental school approved, at the time of issuance of such degree by the Board of Dental Examiners of South Carolina and must hold a valid, unrevoked and unsuspended certificate to practice dental medicine, as well as, a specialty certificate in oral and maxillofacial surgery, issued to him by the Board of Dental Examiners of South Carolina and must have successfully completed a post graduate program in oral and maxillofacial surgery accredited by a nationally recognized accredited body approved by the United States Department of Education.

C Specified Professional Personnel Specified Professional Personnel are not eligible for membership in the Medical Staff but may be granted appropriate practice privileges in the Hospital because they are duly licensed to practice in this or any state or because they had, or presently have, staff membership or privileges at another health care facility or in another practice setting.

SECTION 5 - REQUEST FOR MODIFICATION OF MEMBERSHIP STATUS OR PRIVILEGES

A staff member may either in connection with reappointment or at any other time request modification of his staff category, department assignment, or clinical privileges by submitting a written request application to the Hospital President. Such request/application shall be processed as noted in Article VI Section 5.

ARTICLE IV

CATEGORIES OF THE MEDICAL STAFF

SECTION 1 - MEDICAL STAFF

The Medical Staff shall be divided into the following categories active associate, courtesy consultative and honorary

SECTION 2 - ACTIVE STAFF

A **Qualifications** The active staff category shall consist of physicians and oral surgeons who regularly admit, or personally provide services other than written consultation, to patients in the Hospital and who are located (primary or satellite office and temporary or permanent residence) within a reasonable distance and/or travel time to the Hospital in order to provide continuous care to their patients. Active staff members shall admit or provide the above-described services to at least 24 patient contacts per calendar year, and any less than this shall ordinarily be deemed a request for modification of membership status. Hospital-based Practitioners who do not admit patients may be members of the active Medical Staff if otherwise qualified. Active staff members assume the functions and responsibilities of membership including, when appropriate, emergency service care, disaster plan assignment, and consultation assignments. Members of the active staff shall be eligible to vote, hold staff and departmental office, serve on Medical Staff, departmental and Governing Body committees, and shall attend not less than the 50% of the Quarterly Medical Staff meetings. Departmental meeting attendance will be determined by each department. Attendance at departmental meetings is required for a member of the medical staff when one of the member's cases is being reviewed or when the member is assigned to review cases of his peers. Active staff members shall participate in the performance improvement activities required of the Medical Staff and shall serve, when qualified and required to do so, as proctors for other practitioners during any period of temporary privileges pending membership processing or during initial membership provisional status period. Active staff will be required to participate in the Emergency Room call schedule if their specialty has one. Active staff applicants will be on a provisional status for one year following Board approval. At that one-year anniversary date they will be re-evaluated to determine their status.

B **Request for Provisional Status Change** A physician can request in writing to the Medical Staff Office to be placed on a one-year probation when his Active status is in question. The Medical Staff Office will issue a letter stating the probationary period and the requirements. The requesting physician will read and sign the letter and return it back to the Medical Staff Office. The request will be forwarded to the Credentials Committee, Medical Executive Committee and the Board of Directors for final approval. If after one

year the physician fails to meet the requirements set forth in the Bylaws for Active staff he will be placed on Courtesy or Consulting staff until his next reappointment

SECTION 3 - ASSOCIATE

A Qualifications The Associate staff category shall consist of practitioners who meet all the criteria for Active staff membership except the minimum required number of patient's contacts per year. These practitioners shall not have active privileges at any other hospital.

In order to allow adequate medical peer review of the smaller number of patient contacts by members of the Associate staff, all patient contacts will be reviewed by the department to which the practitioner is assigned. In addition, if the applicant desires privileges for surgical or invasive medical procedures he will be required to submit documentation of current clinical competence to the satisfaction of the appropriate Department Chairman and Credentials Committee. Members of the Associate staff must fulfill all requirements of the Active staff including, when appropriate, emergency service care, disaster plan assignment, and consultation assignments. They may serve on medical staff departmental and Governing Body committees and shall attend not less than 50% of the Quarterly Medical Staff meetings. Departmental meeting attendance will be determined by each department. Attendance at departmental meetings is required for a member of the medical staff when one of the member's cases is being reviewed or when the member is assigned to review cases of his peers. Members of the Associate staff shall be eligible to vote at departmental and assigned committee meetings only. They may not vote at Quarterly Medical Staff meetings. Associate staff will be required to participate in the Emergency Room call schedule if their specialty has one. Associate staff members shall participate in the performance improvement activities of the medical staff.

If their number of patient's contacts should be 24 or more in any calendar year the Associate staff practitioner will be advanced to Active staff membership. If the practitioner should attain Active staff privileges at any other hospital he will be placed on Courtesy staff.

SECTION 4 - COURTESY STAFF

A Qualifications The Courtesy staff category shall consist of Practitioners who are located (primary or satellite office) within a reasonable distance and/or travel time to the Hospital to provide continuous care for their patients but who do not admit or provide services other than written consultation for more than twenty-four (24) patient contacts per calendar year. Patient care services of more than the specified number of patients in a year by any member will require that the member be appointed to the active staff category. Courtesy staff members shall be members of the active or associate active staff of another hospital in which their regular participation in performance improvement activities is documented and their performance evaluated.

Courtesy staff membership shall provide satisfactory evidence to the Credentials

Committee of such membership, participation and evaluation. Courtesy staff members are not eligible to vote on Medical Staff or departmental matters or hold Medical Staff office. They may serve as non-voting members of designated departmental and Hospital committees in which they participate, except for the Credentials Committee and the Medical Executive Committee. They shall not be required to attend Quarterly Medical Staff meetings or serve on the emergency roster.

SECTION 5 - CONSULTING STAFF

Qualifications The Consulting Medical Staff consists of physicians who do not admit patients to the hospital but who do desire privileges to provide consultative services to patients at the request of active or courtesy staff physicians. Consulting staff generally provides expertise in a specialty or subspecialty that is not otherwise available through active or courtesy membership. Consulting staff members are not eligible to admit patients, perform surgery, vote, or hold office. They are not required to serve on committees or to take part in the emergency room call schedule. Consulting staff members may render assistance in the operating room at the specific request of a surgeon who has admitting and operative privileges at East Cooper Regional Medical Center. They are required to abide by the Bylaws, Rules and Regulations of the Medical Staff and Governing Body and applicable hospital policies.

SECTION 6 - HONORARY STAFF

Qualifications The Honorary staff category shall consist of Practitioners who are not active in the Hospital or who are honored for emeritus positions. These Practitioners may have retired from active practice and may no longer reside in the immediate community. They are not eligible to vote on Medical Staff matters, hold Medical Staff or departmental office, serve on committees, or admit or care for patients. They must discharge the basic responsibilities of all Medical Staff members, abide by all policies, Bylaws, Rules and Regulations and uphold the ethical principles of their profession. They are not required to have professional liability insurance or to attend Medical Staff or departmental meetings, but may do so if they wish.

SECTION 7 - LIMITATIONS

The prerogatives set forth under each staff category are general in nature and may be subject to limitations by special conditions attached to a Practitioner's staff membership, by other Sections of these Bylaws and by other policies of the Hospital. The Board of Directors will have the prerogatives to waive and/or amend particular qualification only after due consideration and documentation of an individual's physical limitations.

SECTION 8 - WAIVER OF QUALIFICATIONS

Any qualifications may be waived at the discretion of the Board upon determination that such waiver will serve the best interests of the patients

ARTICLE V

PROCEDURES FOR APPOINTMENT AND REAPPOINTMENT

SECTION 1 - CONDITIONS AND DURATION OF APPOINTMENT AND REAPPOINTMENT

Initial appointment and reappointments to the Medical Staff shall be made by the Governing Body upon a recommendation from the MEC, and shall be for a period up to, but not to exceed two (2) years. However, in the event of unusual delay or inappropriate recommendation on the part of the MEC, the Governing Body may act without or contrary to such recommendation on the basis of documented evidence of the applicant's or member's professional and ethical conduct. Prior to taking such action, however, the Governing Body shall notify the MEC of its intent and shall designate an action date prior to which the MEC may still fulfill its responsibility. Peer input shall be obtained and considered for all applicants for appointment and reappointment.

SECTION 2 - PROCEDURE FOR APPOINTMENT

A Application for Initial Appointment Each application for appointment to the Medical Staff shall be in writing, submitted on the prescribed form, and signed by the applicant. When an applicant is provided an application, he shall also be given access to a copy of these Bylaws, the Medical Staff and departmental Rules and Regulations, and applicable Hospital policies.

B Applicant's Responsibility The applicant shall have the burden of producing adequate information for a proper evaluation of his competence, character, skill, ethics, health status (subject to necessary reasonable accommodation to the extent required by law), ability to work with others, and other qualifications. Neither the Governing Body nor any Medical Staff committee shall have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material. The applicant shall provide accurate, up to date information on the application. The applicant shall be responsible for resolving any doubts regarding the application and qualifications for membership and privileges requested. The application process must be completed within one (1) year from the time application was received by the Medical Staff Office. The applicant agrees to report immediately to the Administrator any change in the information that occurs after an application has been submitted. Any committee or its designee may request the applicant to appear for an interview with regard to the application. Failure to comply with any of these provisions including failure to appear for any requested interview may result in the application being deemed incomplete, or in the denial of membership or privileges, or may subject the practitioner to disciplinary action.

The information shall include, but not be limited to

- 1 identifying information
- 2 undergraduate education
- 3 postgraduate education and professional degrees (need source verification)
- 4 internship (need source verification)
- 5 residency/fellowship (need source verification)
- 6 all past and present Hospital and other health care entity affiliations (need source verification)
- 7 memberships in professional associations, societies, academies colleges and faculty/training appointments (need source verification)
- 8 specialty board certification status (need source verification)
- 9 state licensure with expiration date(s) (need source verification)
- 10 Drug Enforcement Administration (DEA) registration with expiration date (Both state and Federal DEA's)
- 11 professional references consisting of three (3) references two must be physicians, one in the same medical specialty as the applicant, and preferably one from an active ECRMC physician For applicants recently completing medical training the third reference will be the head of the clinical department where the applicant trained For applicants recently employed by a teaching or training hospital the third reference must be from the head of that clinical department For applicants who have not recently been associated with a teaching center the third reference must be a physician familiar with the applicant's medical expertise All references must have recently worked with the applicant and directly observed his professional performance over a reasonable period of time They must be willing to provide reliable information regarding the applicant's current clinical ability ethical character, and ability to work with others
- 12 previous practice data
- 13 continuing medical education for the past two years

- 14 bibliography of publications speeches and meetings attended with dates
- 15 professional liability insurance, including carrier amount and dates of coverage (need source verification) and past and present professional liability history
- 16 Responses to the following questions can and may be asked
- (a) Has any professional license of yours, in any jurisdiction or your DEA registration ever been denied, limited (either voluntarily or involuntarily), suspended, revoked, voluntarily or involuntarily surrendered or otherwise acted against or is any such action pending?
- (b) Have your clinical privileges (including, but not limited to temporary, locum tenens, admitting, consulting, and assisting) or membership at any health care facility ever been limited, suspended, reduced, denied, modified, revoked, not renewed, voluntarily or involuntarily relinquished or limited, or otherwise adversely acted upon, or is any such action pending?
- (c) Have your clinical privileges or membership in any managed care organization, or medical or professional group (e.g., HMO PPO IPA, etc.) ever been (either voluntarily or involuntarily) limited, suspended, reduced, denied, modified, revoked not renewed, voluntarily relinquished or otherwise adversely acted upon, or is any such action pending?
- (d) Have you ever been denied or voluntarily or involuntarily relinquished membership, or renewal thereof, or had your membership or affiliation revoked or otherwise acted against, or been subject to disciplinary action at any health care facility, medical group, in any medical or professional group or organization, or is any such action pending?
- (e) Have you ever been notified of an investigation or to appear before any licensing agency (State Board of Examiners, DEA etc.) for a hearing or complaint with regard to your professional license or DEA registration?
- (f) Have you ever been convicted of a felony or misdemeanor (other than minor traffic offenses) or is any such action pending?
- (g) Has any judgment or settlement been made against you in a professional liability case? If so, on a separate sheet list the complete case name, the court in which the case was filed, the date of loss, the date you first received notice of the claim, the date of resolution, your insurance carrier and the amount of judgment or settlement paid on your

behalf for each judgment or settlement

(h) Has any professional liability insurance claim been filed against you or have you reported any malpractice claim to your insurance carrier or have you received any letter of intent to sue?

(i) Are there any professional liability cases pending against you? If so on a separate sheet, list the complete case name court in which it was filed, date of loss date you received notice of the claim, its current status the name of your insurance carrier, and an explanation of the nature of the case

(j) Has any professional liability insurance carrier canceled, refused coverage, excluded specific procedures from your coverage, or has your insurance been rated up or has a surcharge been imposed by your insurance carrier, or is any such action pending?

(k) Have you ever discontinued practice for any reason (other than for routine vacation or formal education/training) for one month or more?

(l) Have you ever been sanctioned, suspended, or otherwise restricted from participation in Medicare, Medicaid, or any government or private insurance plan?

The Medical Staff and Governing Body shall inquire, to the extent and in a manner permitted by law, into the physical and mental health status of the applicant so as to determine the practitioner's qualifications to render the privileges requested

- 17 a request for staff membership category and, if such exists, the department or clinical service assignment desired
- 18 clinical privileges desired
- 19 a specific signed consent for immunity and release from liability for all individuals involved in and performing the credentialing function
- 20 a small photo for identification purposes only
- 21 a list of medical staff physicians who have agreed to provide patient coverage in the absence of the applicant

C **Submission of the Application** The application shall be submitted through the Administrator to the Medical Staff Office for the purpose of assisting the Credentials Committee chairman or designee to have all information verified. The Hospital shall query the National Practitioner Data Bank (NPDB) and applicable state licensing board,

it required in compliance with existing laws and hospital policy for all practitioners who are applying for privileges or membership. The applicant must immediately report to the Medical Staff Office any change in the information in the application that occurs after the application has been submitted.

D Significant Misrepresentation If an applicant supplies information in the application process that contains significant misrepresentations or omissions, this may be grounds for denial of the application, or if membership or privileges have been granted, for corrective action under these Bylaws.

E Incomplete Application - Further Information - Application Withdrawn From Processing Any committee or individual charged under these Bylaws with the responsibility of reviewing an application for appointment, reappointment, or new clinical privileges, may, upon review of the application, deem any such application incomplete. The fact that an application is deemed complete by the Medical Staff Office or a department or committee does not preclude the medical staff office or a committee or department which subsequently reviews the application from deeming it incomplete. If an application is deemed incomplete, it will not be processed. The individual or committee that deems an application incomplete shall request further documentation or clarification from the applicant. Such committee or individual requesting further documentation or clarification shall notify the applicant in writing and shall afford the applicant a set period of time to provide the requested information and clarification. Such Period of time shall be as deemed appropriate by the individual or committee requesting the information, but shall not exceed sixty (60) calendar days from receipt of the request to provide the requested information. Failure of an applicant to timely produce all of the requested information, documentation and clarification shall result in the application being deemed incomplete and voluntarily withdrawn. Such action will not result in the filing of a report with the applicable state-licensing agency nor with the National Practitioner Data Bank. Any subsequent application submitted by this Practitioner shall be processed as an initial application under these Bylaws. Notwithstanding any other provision of these Bylaws, any Practitioner whose application is discontinued from processing pursuant to this section will not be entitled to the hearing and appeal rights under these Bylaws.

F Departmental Review Within sixty (60) days of receipt of the completed application, the Chairman of each department in which the applicant seeks privileges shall provide the Credentials Committee with a specific written or oral recommendation relating to staff category, clinical privileges, department affiliation, and any conditions, or recommend that the application be deferred for further consideration.

G Credential Committee Review Within sixty (60) days of receipt of the completed application and recommendation of the department(s), the Credentials Committee shall make a written recommendation to the MEC as to membership, and, if membership is recommended, as to staff category, privilege delineation, department service assignment and any conditions attached to the appointment.

H **MEC Review and Recommendation** At its next regular meeting after receipt of the recommendations of the Credentials Committee, the MEC shall submit its recommendation to the Governing Body relating to membership and if appointment is recommended to staff category, clinical privileges and department affiliation and any special requirements or conditions. The recommendation shall be based on the review of all available information. The MEC may take action by recommending that the Governing Body either

- (a) defer making a recommendation,
- (b) appoint the applicant to a medical staff category in provisional status, clinical privileges, and department affiliation, or
- (c) reject the applicant's request for membership and/or privileges

- 1 The MEC may defer action on a complete application for a period not to exceed thirty (30) days except for good cause
- 2 When the recommendation of the MEC is favorable to the applicant, the Administrator will forward it, together with all supporting documentation, to the Governing Body for consideration at its next scheduled meeting
- 3 When the recommendation of the MEC is adverse to the applicant, the Administrator shall so inform the applicant within seven (7) working days, advising him of his hearing and appeal rights under these Bylaws
- 4 Notice of an adverse recommendation shall be forwarded to the Governing Body for its information, but shall not be acted upon until after the affected individual has exercised or waived the right to a hearing and appeal under these Bylaws

I **Action by the Governing Body**

- 1 Unless subject to the provisions of Hearing and Appellate Review Procedures of these Bylaws, the Governing Body or its duly authorized committee shall act on the matter at its next regular meeting following receipt of the recommendation of the MEC
 - (a) If the Governing Body adopts the recommendation of the MEC, it shall become the final action of the Hospital
 - (b) If the Governing Body does not adopt the recommendation of the MEC, the Governing Body may refer the matter to the MEC with instructions for further review and recommendation and a time frame for responding to the Governing Body. The MEC shall review the matter and shall forward its recommendation to the Governing Body. If the Governing Body adopts the recommendation of the MEC, it shall become the final action of the Hospital

- (c) If the action of the Governing Body is adverse to the applicant, the Administrator shall send written notice to the applicant within seven (7) working days advising the applicant if he is entitled to the hearing and appeal rights under these Bylaws
- (d) An adverse decision of the Governing Body shall not become final until the applicant has exercised or waived his hearing and appeal rights under these Bylaws. Except for corrective action taken pursuant to Article VII, Section 3, adverse action recommended by the MEC shall not take effect until the Governing Body has made its final decision. The fact that such adverse decision is not yet final shall not be deemed to confer membership or privileges when none existed before.

- 2. At its next regular meeting, after all of the affected individual's hearing and appeal rights under these Bylaws have been exhausted or waived, the Governing Body shall take final action. All decisions to appoint shall include a delineation of clinical privileges, staff category, department affiliation and any applicable conditions and the applicant shall be so notified.

Subject to any applicable provisions of the Fair Hearing and Appellate Review Procedures, notice of the Governing Body's final decision shall be given in writing through the Administrator to the applicant within seven (7) working days of the final decision. The Chief of Staff shall give notice to the MEC, the Credentials Committee, and the department chairman. In the event a hearing and/or appeal was held, Fair Hearing and Appellate Review Procedures, Appeal to Governing Body, shall govern notice of the Governing Body's final decision.

J Provisional Status All initial appointments to any category of the Medical Staff shall be provisional for twelve (12) months. The care observed shall be relevant to the privileges granted. The purpose of observation is to determine the individual's eligibility for advancement from provisional status and for exercising the clinical privileges provisionally granted. The Chairman shall complete a provisional form with comments on the appointee's performance. Each provisional report will be evaluated when the provisional year is completed in order to track the physician's compliance with the requirements of the Medical Staff. A Practitioner may request an additional year on provision to meet the Active staff requirements. If after that one (1) year, the practitioner fails to meet the necessary requirements, he'll be assigned to the Courtesy or Consulting staff category and will not be able to apply to the Active staff for one (1) year. No member may be on provisional status for a total period longer than twenty-four (24) months. Unless excused for good cause by the MEC and Governing Body, a Practitioner's failure to complete the required number of Patient Contacts, Quarterly Medical Staff meetings or required peer review assignments shall be deemed voluntary relinquishment of Active staff privileges and membership, such affected practitioner shall not be entitled to the hearing and appeal rights under these Bylaws.

K Previously Denied or Terminated Applicants Notwithstanding any other provision of these Bylaws if an application is tendered by an applicant who has been previously denied membership and/or privileges or who has had membership and/or privileges terminated or whose prior application was deemed incomplete and withdrawn and it appears that the application is based on substantially the same information as when previously denied, terminated, or deemed withdrawn, then the application shall be deemed insufficient by the Credentials Committee and returned to the applicant as unacceptable for processing. No such application shall be processed, and no right of hearing or appeal shall be available in connection with the return of such application. Applicant must then wait one calendar year before reapplying.

L Telemedicine Practitioner An appropriately credentialed practitioner who is responsible for the care of a patient via telemedicine link is subject to the credentialing and privileging process of the originating site that recommends the clinical services to be provided by the practitioner through a telemedicine link at their respective site.

SECTION 3 - THE REAPPOINTMENT PROCESS

A Application At least ninety (90) days prior to a Practitioner's privileges expiring (based on a two year reappointment) the Medical Staff Office shall provide each member with an approved "Application for Reappointment" form which must be completed and returned within thirty (30) days to the Medical Staff Office for review. A late fee will be charged for the continued processing of the application past the 30-day deadline. Information to be available for review shall include at least objective evidence of the individual's clinical competence based on peer review activities,

- 1 evidence of the individual's support of the Medical Staff and Hospital (e.g., medical record deficiency/delinquency status, meeting attendance, committee service, satisfaction of minimum patient care requirements to maintain staff category, compliance with the Bylaws, Rules and Regulations, and applicable hospital policies),
- 2 any request or recommendation for changes in staff category, clinical privileges, or department assignment, citing the reasons and supporting information,
- 3 evidence of consideration of the staff member's health status (subject to necessary reasonable accommodation to the extent required by law)
- 4 information regarding any sanctions imposed by another health care facility, professional organization, or licensing authority,
- 5 malpractice claims experience since the last reappraisal, including at a minimum final judgments and settlements against the applicant identifying the case name, court, date of loss, date of disposition,

amount paid in judgment or settlement and a description of the case

- 6 evidence of current licensure and DEA registration
- 7 evidence of professional liability coverage (carrier type, policy number amount and expiration date) and any limitations
- 8 information regarding previously successful or currently pending challenges to any licensure or registration (DEA) or the voluntary or involuntarily relinquishment of such licensure or registration,
- 9 information regarding voluntary or involuntary termination of membership, or the voluntary or involuntary limitation, reduction, or loss of clinical privileges at another health care facility,
- 10 evidence of a query sent to the National Practitioner Data Bank, information regarding any pending criminal charges or criminal convictions,
- 11 As of January 1, 2000, All staff members are required to complete forty (40) CME credit hours every two-(2) years in Category I AMA approved credit within the staff member's medical specialty Any staff member who fails to meet this requirement shall be given six (6) months to complete the required CME hours He will be on Provisional staff until the hours are accomplished Failure to complete the required hours in six (6) months will result in loss of staff privileges, and
- 12 List of staff member's physician to cover patients in his absence

B Failure to Complete Application/Incomplete Application. A Practitioner who fails to return the form or to supply all of the required information within thirty (30) days prior to the expiration of the current appointment period or respond in a timely manner to a request for information shall be deemed to have resigned his Medical Staff membership, effective as of the date of the expiration of his current appointment A Practitioner who is deemed to have resigned under this section shall not be entitled to the hearing and appeal rights under these Bylaws

C Applicant's Responsibility The applicant shall have the burden of producing adequate information for a proper evaluation of his current competence character, skill, ethics, health status in terms of his ability to practice in the area in which privileges are sought (subject to necessary reasonable accommodation to the extent required by law), ability to work with others, and other qualifications By applying for appointment or reappointment to the Medical Staff, or for clinical privileges the Practitioner agrees to comply with the Medical Staff Bylaws, the Medical Staff and departmental Rules and Regulations and applicable Hospital policies

D Processing Delays The time periods specified are to guide the parties in

accomplishing their tasks. If reappointment processing has not been completed by an appointment expiration date through no fault of the member, the member shall maintain his current membership status and privileges until such processing is completed, except to the extent that corrective action is taken. If the processing delay is attributable to the member's failure to provide required information, his membership shall terminate pursuant to Section 6 in this Article. Any extension of an appointment pursuant to this Section does not create a vested right in the member for continued appointment through the entire next cycle but only until such time as processing of the application is concluded.

E Department Review The Medical Staff Office shall forward to the department Chairman the reappointment application and all relevant information. The department Chairman shall render to the Credentials Committee within thirty (30) days of receipt, an individual specific written statement regarding the department member's reappointment and clinical privileges based on the above information and any other pertinent information available. The reason for any change shall be documented.

F Credentials Committee Review The Credentials Committee shall review all pertinent information and within thirty (30) days make its written recommendation to the MEC concerning the member's reappointment and clinical privilege delineation. The reason for any change of such recommendation shall be stated and documented. Action by the Governing Body shall be governed by Section 2 I of Article V of these Bylaws.

SECTION 4 - CLOSED-STAFF, EXCLUSIVE CONTRACTS

A Exclusive Contracts The Governing Body may determine as a matter of policy that certain Hospital clinical facilities may be used only on an exclusive basis in accordance with written contracts between the Hospital and qualified professionals. These may include, but are not limited to, emergency care services, anesthesiology services, radiology services, pathology and clinical laboratory services. Applications for initial appointment or for privileges related to those Hospital facilities and services specified in such contract(s) will not be accepted for processing unless submitted with confirmation from the Administrator that they are from applicants that have an existing or proposed contract with the Hospital.

B Contract Practitioners A Practitioner who is providing contract services pursuant to Section 4 A, must meet the same membership qualifications, must be processed for appointment, reappointment, and clinical privilege delineation in the same manner and must fulfill all of the obligations for membership category and clinical privileges as any other applicant or member.

C Termination/Reduction of Privileges Practice at the Hospital is always contingent upon continued staff membership and is also dependent on the clinical privileges granted. The right of a Practitioner who is providing contract services to practice at the Hospital is automatically terminated when his staff membership expires or

is terminated. Similarly, his right to render services under the contract is automatically limited to the extent that his clinical privileges are reduced, restricted or terminated.

D Expiration/Termination of Contract The effect of expiration or other termination of a contract upon a Practitioner's staff membership and clinical privileges will be governed solely by the terms of the Practitioner's contract. If the contract is silent on the matter, then contract expiration or termination will not affect the Practitioner's staff membership or clinical privileges, except that the Practitioner may not thereafter exercise any clinical privileges for which the Hospital has made exclusive contractual arrangements with another Practitioner.

SECTION 5 - MEDICO-ADMINISTRATIVE PRACTITIONERS

Practitioners who have a contract with the Hospital, either full time or part-time, in a Medico-Administrative position that includes staff clinical responsibilities or functions, must be members of the Medical Staff. In addition to any applicable terms of the contract, such Practitioners shall achieve staff membership and clinical privilege delineation through the same procedure as is required for other Medical Staff members. The right to the hearing and appeal procedures under these Bylaws shall apply if the Practitioner's clinical privileges, which are independent of the Practitioner's contract, are also terminated, removed, or suspended.

SECTION 6 - LEAVE OF ABSENCE FOR EDUCATIONAL, MEDICAL OR PERSONAL REASONS

A Request for Leave of Absence A member may request a voluntary leave of absence from the Medical Staff by submitting a written request to the Administrator, whom will transmit this request to the Credentials Committee and the MEC. The request shall state the reason for the request and the specific time period that may not exceed the member's current term of appointment. The MEC and the Governing Body must approve all leaves. By requesting a leave of absence, the member understands and agrees that he will be treated as an initial applicant for the purpose of evaluating his qualifications for reinstatement and he shall bear the burden of proof to demonstrate to the satisfaction of the MEC and the Governing Body that he is qualified for reinstatement. During the period of leave, the member's clinical privileges shall be inactive.

B Request for Reinstatement At least thirty (30) days prior to termination of leave or at any earlier time, the member may request reinstatement of privileges by submitting a written notice to that effect to the Administrator, who will transmit this notice to the Credentials Committee and the MEC. The member must also submit a written summary detailing his professional and patient care activities during the leave. The Credentials Committee shall evaluate the request and may deem it incomplete if any necessary information is not provided. The MEC, on receipt of the recommendation of the Credentials Committee, may deem the request incomplete, may request further

information from the member may defer action on the request or may make a recommendation to the Governing Body concerning the reinstatement of the member's privileges and any conditions that should be attached. Thereafter the procedure provided in Article V Section 2 shall apply.

C Failure to Request Reinstatement Failure without good cause to request reinstatement to supply sufficient information for the request to be deemed complete, or failure to provide a summary of professional and other activities as above required shall constitute a voluntary resignation from the staff, effective immediately. The MEC shall in its sole discretion, and after giving the Practitioner an opportunity to address the MEC determine whether good cause exists. Such voluntary resignation shall not entitle the Practitioner to the hearing and appeal rights under these Bylaws. A request for staff membership subsequently received from this Practitioner shall be treated and processed as an application for initial appointment.

D Routine Observation Requirement In the discretion of the MEC, reinstatement may be made subject to an observation requirement for a period of time during which the Practitioner's clinical performance is observed by one (1) or more designated Medical Staff members. Such routine observation shall not be considered disciplinary action and shall not entitle the practitioner to the hearing and appeal rights under these Bylaws.

E Request for Leave of Absence for Medical Reasons If a member of the medical staff is absent from his usual practice of medicine for greater than 30 days for medical reasons, a request for medical leave of absence must be submitted to the Chief of Staff who will refer the request to the Credentials Committee and the MEC. The request must state the reason for the medical leave and the anticipated length of leave. The request must be approved by the MEC and the Governing Body. Upon return to active medical practice, the member must submit a letter from his physician to the Chief of Staff stating the member's physical and mental competence to return to hospital medical practice. The MEC and the Governing Board will approve the member's return to the medical staff. If a significant period of time elapses between the time the competency letter is received and the next meeting of the MEC, the administrator in collaboration with the Chief of Staff can grant reinstatement pending approval at the next scheduled meeting of the MEC and Governing Board.

SECTION 7 – IMPAIRED PHYSICIAN POLICY

For the purpose of these Bylaws the term impaired is hereby defined as any physical, mental or pharmacologically induced disability that interferes with a practitioner's ability to perform his medical or administrative duties. This policy is separate from any disciplinary action towards the practitioner for any reason other than impairment. If any individual working in the medical center has a reasonable suspicion that a practitioner appointed to the medical staff exhibits signs of physical and/or mental impairment the following steps should be taken:

The individual who suspects the Practitioner of being impaired must give a written report to the Chief Executive Officer (CEO) and Chief of Staff (COS). The individual making the reports does not need to have definitive proof of the impairment, but a factual report must be submitted to include a description of the actions or incident(s) that led to the belief that a Practitioner might be impaired. The CEO will forward any reports received to the COS, and the COS will forward any reports received to the CEO for information. Initial informal resolution may be attempted with the involvement of the COS and CEO, the individual making the report, and the Practitioner. The Practitioner and the individual making the report may each meet separately with the COS and CEO in an attempt to resolve the issue. The name(s) of the individual(s) who filed the report will be kept confidential until such time as formal action is undertaken to address the incident or documented pattern of impairment. If, after discussion of the incident(s) with the parties involved, the COS believes there is enough information to warrant an investigation, an investigation shall be conducted and a report of the findings rendered by an investigating committee consisting of one of the following:

1. The COS and appropriate Department Chairman
2. A sub-committee of the medical staff as appointed by the COS

The Practitioner will be notified in writing by the COS that an investigation will occur in connection with obtaining the facts of the investigation; the Practitioner shall have the opportunity for an interview with the investigating committee. At this meeting, the Practitioner will be informed of the nature of the matter(s) being investigated and shall be invited to discuss, explain, or refute the allegations.

The interview is considered part of the investigation of the facts and does not constitute a hearing. This interview is preliminary to the taking of any professional review action, and the hearing procedural rules of the Fair Hearing and Appellate Review shall not apply to the interview. A written and/or audio tape recording of this interview shall be made. No video records will be made.

After the facts have been gathered and interview(s) conducted, the committee will meet to take action on the results of the investigation. The committee's investigation report and recommendations will then be prepared.

If the investigation produces sufficient evidence that the Practitioner is impaired, the COS shall meet personally with that Practitioner or designate another appropriate individual to do so. The Practitioner shall be informed that the results of the investigation identified that the Practitioner suffers from an impairment that affects his clinical judgment and/or competence to provide quality patient care.

The Practitioner has the right to be informed of the substantive details of the specific incident(s) in question. The name(s) of the individual(s) who filed the report will be kept confidential until such time as formal action is undertaken to address the incident or documented pattern of impairment.

A copy of the investigating committee's report and recommendations will be provided to the Practitioner who will then be permitted to submit a response. If the Practitioner does not feel the report is a fair representation of the investigation, they may submit an addendum to be attached to the report.

The investigating committee will then submit its report and the Practitioner's response to the Medical Executive Committee (MEC). A copy of both documents will also be provided to the CEO.

Depending upon the severity of the problem and the nature of the impairment, the MEC may recommend one or more of the following actions:

1. Require the Practitioner to undertake a rehabilitation program as a condition of continued appointment and clinical privileges.
2. Impose appropriate restrictions on the Practitioner's clinical practice.
3. Immediately suspend the Practitioner's clinical privileges to the medical center until rehabilitation has been successfully accomplished.
4. Accept the Practitioner's voluntary relinquishment of clinical privileges.
5. Any other action which the MEC and/or the Board in consultation with the CEO, determines will best serve the interests of the Practitioner, medical staff and/or medical center, and/or patients.

A report shall be made to all administrative bodies as required by law. The MEC shall seek the advice of the medical center's legal counsel to determine whether any conduct

must be reported to the law enforcement authorities or other government agencies, and what further steps must be taken.

If an "adverse action" is recommended by the MEC with respect to the Practitioner's privileges, the physician is entitled to procedural rights defined in the Fair Hearing and Appellate Review section of the Medical Staff Bylaws.

The original report and a description of the actions will be included in the Practitioner's peer review file. If the investigation reveals that there is no merit to the report, all copies of the report and all pertinent documents shall be removed from the practitioner's file and destroyed. If the investigation reveals that there may be some merit to the report, but not enough to warrant immediate action, the report shall be included in the peer review file. The Practitioner's activities and clinical privileges shall be monitored until it can be established whether there is an impairment problem.

The COS shall notify the individual in writing that filed the report and any action taken. The COS shall inform the CEO when the notification has taken place.

Throughout this process, all parties shall avoid speculation, conclusions, gossip, and any discussions of this matter to anyone not involved in the investigation and review process described in this policy. All reports and information gathered during the course of the investigation and review process will be treated by all parties as strictly confidential.

Rehabilitation

If a program of rehabilitation is necessary the COS or designee shall assist the Practitioner in locating a suitable rehabilitation program. The MEC shall not reinstate a Practitioner until it is established to the Board's satisfaction, that the Practitioner has successfully completed a rehabilitation program approved in writing by the MEC.

The MEC must be provided with a letter from the Medical Director of the rehabilitation program where the Practitioner was treated. This letter must be submitted monthly and must state

- 1 whether the Practitioner is participating in the program,
- 2 whether the Practitioner is in compliance with all the terms of the program,
- 3 whether the Practitioner attends program meetings regularly (if appropriate),
- 4 to what extent the Practitioner's behavior and conduct are monitored,
- 5 whether, in the opinion of the Medical Director of the rehabilitation program, the Practitioner is rehabilitated,
- 6 whether an after-care program has been recommended to the Practitioner and, if so, a description of the after-care program
- 7 whether, in the Medical Director's opinion, the Practitioner is capable of resuming medical practice and providing continuous, competent care to patients

The Practitioner must inform the MEC of the name, address and phone number of his primary care physician, and must authorize the physician to provide the MEC with information regarding the Practitioner's condition and treatment. The MEC has the right to require an opinion from other physician consultants of their choice. The MEC shall request the primary care physician to provide information regarding the precise nature of the Practitioner's condition and treatment as it related to the impairment.

Failure to comply with all of the above conditions may result in suspension or revocation of the Practitioner's medical staff privileges.

Reinstatement

If the MEC is satisfied that the Practitioner has successfully completed a rehabilitation program, the MEC may recommend to the Board consideration of the reinstatement of that Practitioner to the medical staff.

When considering an impaired Practitioner for reinstatement the MEC and the Board must consider interests concerning the quality of patient care to be paramount. If all information received by the MEC indicates that a Practitioner is rehabilitated and capable of resuming patient care, the Board must take the following additional precautions when considering restoration of the clinical privileges:

The Practitioner must identify two physicians who are willing to certify in writing their willingness to assume responsibility for the care of the Practitioner's patients in the event the Practitioner is unable or unavailable to care for them. The MEC shall require the Practitioner to provide periodic reports from the Practitioner's primary care physician for a period of time specified by the CEO and the COS stating that the Practitioner is continuing treatment or therapy as appropriate and his ability to treat and care for patients in the medical center is not impaired.

The Department Chairman or a medical staff member appointed by the department chairman should monitor the Practitioner's exercise of clinical privileges in the medical center. The MEC shall determine the nature of the monitoring after reviewing all of the circumstances.

The Practitioner must agree to submit to an alcohol, blood, or other substance screening test appropriate to the impairment at the request of the COS, or designee, if there is reasonable suspicion that the Practitioner may be under the influence of drugs, alcohol, or other substance.

Failure to comply with all the above conditions may result in suspension or revocation of the Practitioner's medical staff privileges.

All requests for information concerning the impaired Practitioner shall be forwarded to the COS for response.

SECTION 8 - RESIGNATION FROM THE MEDICAL STAFF

Any Practitioner who desires to resign from the Medical Staff must submit a letter of resignation, through the assigned department chairman, to the MEC and the Administrator. Such a Practitioner's subsequent application for Medical Staff membership or clinical privileges will not be processed if he has any unfulfilled obligations under these Bylaws or the Rules and Regulations, including, but not limited to, the need to complete delinquent medical records. Subsequent application for staff membership or clinical privileges will not be processed while outstanding obligations remain, and this status will be reported in response to any requests for references.

SECTION 9 - HOSPITAL EMPLOYEES

The Hospital may determine as a matter of policy that certain Practitioners may be employed in accordance with a written contract between the Hospital and the Practitioner. An employed Practitioner must meet the same membership qualifications, must be processed for appointment, reappointment, and clinical privilege delineation in the same manner, and must fulfill all of the obligations for membership category as any other member of the medical staff. Corrective action of an employed Practitioner shall be handled in accordance with the provisions of the Fair Hearing and Appellate Review Procedures, Exception to Hearing and Appeal Rights, Article VIII, Section 11g, termination of Hospital employed Practitioners.

ARTICLE VI

CLINICAL PRIVILEGES

SECTION 1 - EXERCISE OF PRIVILEGES

Every Practitioner providing direct clinical services at this Hospital by virtue of membership or otherwise, shall, in connection with such practice and except as provided in Sections 3 and 4 below, be entitled to exercise only those privileges specifically granted to him by the Governing Body. The privileges must be within the scope of the license authorizing the Practitioner to practice in this state. Regardless of the privileges granted, each Practitioner must obtain consultation when necessary for the safety of his patients or when required by these Bylaws, the Medical Staff and departmental Rules and Regulations and other policies of the Medical Staff and the Hospital.

SECTION 2 - DELINEATION OF CLINICAL PRIVILEGES

A Application Clinical privileges may be granted only upon formal request on forms provided by the hospital with subsequent processing and approval. Telemedicine practitioners must submit an application for telemedicine privileges. Every application for staff appointment and reappointment must contain a request for the specific clinical privileges desired by the applicant. A request by a Practitioner for a modification of privileges must be supported by documentation of additional training and/or experience supportive of the request.

B Basis for Privilege Determination Requests for clinical privileges shall be evaluated on the basis of the Practitioner's training, experience, education, demonstrated current competence, any required references, other relevant information, and to include an appraisal by the chairman of the department or by the chief of staff, and health status (subject to necessary reasonable accommodation to the extent required by law). In granting privileges, consideration must be given to objective information received from sources outside the Hospital, to the need for an adequate ongoing successful experience to maintain proficiency, to the Hospital's ability to support such patient care services, and to the objective findings of patient care evaluation and peer review activities. Peer input shall be obtained and considered in determining clinical privileges.

C Procedure All requests for clinical privileges shall be processed pursuant to the procedures outlined in Article III for Medical Staff membership.

D Special Conditions for Clinical Privileges Requests for practice privileges for Licensed Independent Practitioners shall be processed in the manner specified in the Specified Professional Personnel section of the Rules and Regulations, and shall be based

on their training, experience, education, health status in terms of the applicant's ability to practice in the area in which privileges are sought, demonstrated current competence, and the need for their services in the hospital. Surgical procedures that each dentist and podiatrist may perform shall be under the overall supervision of the Chairman of Surgery. An adequate history and physical examination on all dental and podiatric patient admissions shall be performed and recorded in the medical record by a physician member of the Medical Staff, or in some cases by a physician approved by the Medical Staff. The dentist or podiatrist shall be responsible for completing the part of the history and physical examination related to any dental or podiatric problem justifying the reason for admission. A physician member of the Medical Staff must be assigned the responsibility for the care of any medical problem present at the time of admission or that arises during hospitalization.

E Unavailable Clinical Privileges Notwithstanding any other provisions of these Bylaws, to the extent that any requested clinical privilege is not available at the Hospital (whether because of exclusive contract, lack of facilities, policy decision of the governing body, or otherwise), the request shall be rejected without the necessity of processing pursuant to Section 2C above. Because such a rejection is unrelated to the applicant's qualifications, an applicant whose request is so rejected shall not be entitled to the hearing and appeal rights under these bylaws.

SECTION 3 - TEMPORARY PRIVILEGES

A Qualifications for Temporary Privileges Prior to temporary privileges being granted, the Medical Staff Office must receive all application requirements and primary verification. The application must have been approved by the Credentials Committee and be awaiting approval by the Medical Executive Committee and the Governing Board. By applying for temporary privileges all Practitioners agree to be bound by the Medical Staff Bylaws, Rules and Regulations, departmental rules and regulations and applicable Hospital policies.

B Authority to Grant Temporary Privileges/Condition

1 The Administrator or his designee, with the written concurrence of the Chairman of the applicable department or in his absence the Chief of Staff may grant temporary privileges under the circumstances noted below. In all cases, temporary privileges shall be granted for a specific period of time, not to exceed ninety (90) days. The practitioner will automatically lose his temporary privileges unless an extension is granted through a written request by the Practitioner to the Credentials Committee for a specific reason. Temporary privileges shall terminate automatically at the end of the ninety-(90) days or the specific period for which they were granted, without the hearing and appeal rights set forth in these bylaws. Special requirements of supervision and consultation may be imposed upon the granting of temporary privileges.

2 In all cases, if temporary privileges are granted prior to the Medical Staff and

Governing Board's receipt and review of a report from the National Practitioner Data Bank (NPDB) the Practitioner agrees, as a condition of applying for or being granted temporary privileges that such privileges are strictly conditional upon the receipt and review of a response from the NPDB deemed favorable by both the MEC and the Governing Body. In the event that a response is received which the MEC or the Governing Body believes warrants further investigation and then the practitioner's conditional temporary privileges shall automatically expire and his application for temporary privileges shall be deemed incomplete. Irrespective of any other provision under these Bylaws, any Practitioner whose temporary privileges automatically expire under this provision shall not be entitled to the hearing and appeal rights under these Bylaws.

3 Temporary privileges may be granted for

(a) Care of a Specific Patient Temporary privileges may be granted to a Practitioner who is not an applicant for staff membership but whose services are required for the care of a specific patient who is not transportable and his required expertise is not available through the Medical Staff membership.

(b) Locum Tenens Temporary privileges may be granted to a qualified Practitioner serving as locum tenens for a member of the Medical Staff. Such privileges shall be limited based on the locum tenens Practitioner's individual training, experience, and qualifications. The locum tenens Practitioner will not be granted privileges in excess of those granted to the Practitioner being temporarily replaced, unless the Medical Staff and the Governing Body grant an exception.

(c) Pending Appointment to the Medical Staff In addition to the requirements noted in Section 3 A above, the applicant's professional degree must be verified (e.g., M.D., D.O.) as well as his current license, current DEA registration, any specialty training claimed, at least two (2) references relating positively to professional and ethical status, and documentation of the required professional liability insurance coverage. Temporary privileges may be granted for no more than three (3) separate and successive thirty (30) day periods (a maximum period of ninety (90) days) at which time they automatically expire. The Practitioner will automatically lose temporary privileges unless an extension has been granted by a written request from the Practitioner to the Credentials Committee for a specific reason. The applicant shall be under the supervision of the Chairman of the department to which he will be assigned. All of the care provided by the Practitioner shall be reviewed during this period. The supervising Practitioner may impose special consultation requirements and reporting.

(d) Organ/Tissue Harvesting Team Temporary privileges may be granted to Practitioners who need to attend the patient as part of their duties as a member of an Organ/Tissue Harvesting Team. If a physician is registered by any certified organ procurement agency, they may have temporary privileges without submitting the usual required information as set forth in Article VI,

Section 3A

(e) Participant in a Medical Review Committee In the rare situation where there are no qualified members of the Medical Staff to act as a member of a Medical Review Committee temporary privileges may be granted to a qualified individual for the limited purpose of participating as a member of a Medical Review Committee as defined under the fair hearing and appellate review article of these Bylaws

(f) Participate as a Consultant on Peer Review Matters In those cases where a peer review committee or department deems it necessary to obtain a review of a practitioner's practice by an outside consultant who is not a member of the Medical Staff, the outside consultant may be granted temporary privileges for the limited purpose of conducting the review, reporting to the peer review committee or department, and for testifying at a hearing or appeal with regard to that review

C Denial, Termination or Restriction of Temporary Privileges Temporary privileges, unless acted upon pursuant to other provisions of these bylaws, shall terminate automatically at the end of ninety (90) days or the specific period for which they were granted, without the hearing and appeal rights under these bylaws. The Administrator, Chief of Staff or department Chairman or their designees may terminate or restrict temporary privileges in the event of the discovery of questionable qualifications/ability or false information provided by the Practitioner, or when the life or health of a patient could be endangered by the treatment by that Practitioner or for similar reasons. No Practitioner is entitled to the hearing and appeal rights set forth in these Bylaws for the denial, nonrenewal, restriction or termination of temporary privileges based on the Practitioner's professional conduct or competence. In the event a Practitioner's temporary privileges are terminated or restricted, the Practitioner's patients then in the Hospital shall be assigned to another Practitioner by the department Chairman responsible for supervision or by the Chief of Staff. The wishes of the patient shall be considered, when feasible, in choosing a substitute practitioner

SECTION 4 - EMERGENCY PRIVILEGES

A Privileges In an emergency, any Practitioner to the degree permitted by his license shall be permitted to do everything he deems reasonably necessary and appropriate to save the life or limb of a patient. The Administrator shall be notified promptly in such cases

B Conclusion of Emergency When the emergency no longer exists, the practitioner must request the privileges necessary to continue to treat the patient if he so desires. In the event such privileges are denied or he does not desire to request privileges, the patient shall be assigned to an appropriate member of the Medical Staff

C Definition of Emergency For the purpose of this Section an "emergency" is defined as a condition in which serious harm would result to a patient or in which the life

or limb of a patient is in immediate danger and any delay in administering treatment would add to that danger

SECTION 5 - CHANGE IN MEMBERSHIP, PRIVILEGES OR STAFF CATEGORY

A staff member may, at any time, request a change of staff category or department affiliation by submitting a written notification to the Medical Staff Office. The Medical Staff Office will issue a letter requiring the physician to read and sign the letter stating the requirements of the provisional change in status. The request will be forwarded to the department Chairman, then to the Credentials Committee. The Credentials Committee will recommend to the MEC the request, and the MEC will forward their recommendation to the Board of Directors for final approval. After final approval, the medical staff office will notify the physician of the final decision. The Medical Staff Office will track the provisional change for one (1) year and the Credentials Committee will evaluate the physician at that time to determine if he meets the necessary requirements set forth by the requested status change. If a physician requests privileges addition/change/deletion, such application shall be processed in substantially the same manner as an initial appointment application. The physician must give supporting documentation of his additional training/experience. The physician's request will be forwarded to the department Chairman, Credentials Committee, MEC and the Board of Directors for approval.

ARTICLE VII

CORRECTIVE ACTIONS

SECTION 1 - ALTERNATIVES TO CORRECTIVE ACTION

Under certain circumstances, routine monitoring and education of a Practitioner in accordance with Departmental procedures as described in Article X, Section 2, may be an appropriate alternative to corrective action.

SECTION 2 - CORRECTIVE ACTION

A Grounds/Initiation Whenever the conduct of any Medical Staff member ("affected Practitioner") is considered to be lower than the standards of the Medical Staff, or to be disruptive to the operations of the Hospital, or to constitute fraud or abuse or to be detrimental to the quality of patient care at the Hospital, or to be detrimental to the Hospital's licensure or accreditation, or to be detrimental to Hospital or Medical Staff efforts to comply with any professional review organization third-party payer (private or governmental) or utilization review requirements, or to be in violation of the Medical Staff Bylaws rules and regulations, or policies of the Hospital Medical Staff or any Department or committee thereof or to be in violation of the ethics of their profession or

if any affected Practitioner is believed to have engaged in criminal conduct corrective action may be requested against such Practitioner by the requesting party who may be any member of the Medical Staff or the Governing Body or the Administrator. All requests for corrective action shall be in writing, shall be submitted to the MEC through its Chairman and shall set forth the specific conduct constituting the basis for the request.

B Investigation The MEC before taking action on the request, shall conduct such investigation as it deems necessary, which may, in its discretion include informal interviews with the requesting party and the affected Practitioner (each out of the presence of the other), informal interviews with or reports from other persons, any required or requested departmental review, and chart reviews, if applicable. Neither the investigation nor any other activities of the MEC in acting upon a request for corrective action shall constitute a hearing, they shall be informal, and none of the hearing and appeal rights under these Bylaws shall apply.

C Time for Taking Action/Notice/Right to Hearing Within sixty (60) days after receipt by the MEC of a request for corrective action, or within such reasonable additional time as the MEC deems necessary, the MEC shall take action upon the request. Within five (5) days after taking action, the MEC shall give written notice to the affected Practitioner and the Governing Body stating which of the actions set forth in this Section the MEC has taken or recommended. If the action is of a type requiring notice as described Article VIII Section 2, the notice shall comply with the applicable Sections of Article VIII. In no event shall the Practitioner be entitled to the rights under Article VIII when the only action of the MEC was to issue a letter of admonition or reprimand.

D Possible Action The action of the MEC on a request for corrective action may be to (1) reject the request, (2) issue a letter of admonition or reprimand, (3) impose terms of probation or require proctoring, co-admitting, or consultation, (4) recommend reduction, suspension, proctoring, co-admitting, consultation, or revocation of clinical privileges, (5) recommend that an already imposed summary suspension of membership or clinical privileges be terminated, modified, or sustained, (6) recommend that the Practitioner's membership be suspended or revoked, or (7) take or recommend other actions deemed appropriate by the MEC.

E Notice to Administrator The chairman of the MEC shall promptly notify the Administrator in writing of each request for corrective action received by the MEC and the date of its receipt, and shall keep the Administrator fully informed of all communications, meetings, and actions in connection with each request.

F Governing Body Action At any time that it believes corrective action to be warranted, the Governing Body, or its designee, may initiate it. Before initiating such corrective action, the Governing Body, or its designee shall consult with the Chief of Staff. Thereafter the Governing Body or its designee may direct the MEC to conduct an investigation or otherwise initiate corrective action. In the event the MEC fails to take action in response to a direction from the Governing Body or its designee, the Governing Body or its designee, may conduct an investigation or otherwise initiate corrective action.

proceedings. If applicable, such proceedings shall afford the affected Practitioner the hearing and appeal rights described in these Bylaws.

G Use of Membership/Privileges The affected Practitioner shall retain the use of his membership and privileges pending final action by the Governing Body unless such membership and/or privileges are otherwise suspended as provided in this Article.

SECTION 3 - SUMMARY SUSPENSION OR SUMMARY RESTRICTION

A Grounds/Authority All or any portion of a Practitioner's clinical privileges may be summarily suspended or restricted where the failure to take summary action may result in imminent danger to the health of any individual. The following persons are authorized by the Medical Staff to take summary action: the Chief of Staff, the Chairman of a clinical department, the MEC or the Administrator. Suspension or restriction pursuant to this paragraph shall be temporary and effective only until further action is taken by the MEC pursuant to Section 3. When no person or committee referenced above is available to impose a summary suspension or restrict clinical privileges, the Governing Body, or its designee, may take such action if a failure to do so would be likely to result in an imminent danger to the health of any individual.

B Effective Date/Notice A summary suspension or restriction shall become effective immediately upon imposition and the person or body imposing same shall promptly give written or verbal notice of the suspension or restriction to the suspended Practitioner, stating by whom it was imposed and the reasons for same. The notice shall be deemed to have been given on the date on which it is either personally delivered or sent by certified mail to the suspended or restricted Practitioner, whichever occurs first. The notice, or a written confirmation of it, shall inform the suspended or restricted Practitioner (1) of his right to an informal interview upon his written request under Section 3C, and (2) if the summary suspension or restriction could be reportable to the National Practitioner Data Bank and to any state licensing agency, and (3) that unless the suspension or restriction is terminated when the MEC takes further action under Section 3D the Practitioner will be entitled to the hearing and appeal rights under these Bylaws. In the event that the suspension or restriction is terminated when the MEC takes further action, the practitioner shall be entitled to a hearing and appeal under these Bylaws, however, the sole issue shall be whether there was probable cause for the summary suspension or restriction. A copy of the notice shall promptly be delivered to the Administrator, the MEC and the Governing Body.

C Investigation The MEC, before taking further action, shall conduct such investigation as it deems necessary, which shall include at least one (1) meeting of the MEC and may include an informal interview with the suspending party. An informal interview with the affected Practitioner (out of the presence of the suspending party, if other than the MEC) may be held if the affected practitioner delivers a request for an informal interview in writing within seven (7) days after notice of the suspension was given to him or if requested in writing by the MEC. The MEC's investigation may include chart reviews, if applicable, and informal interviews with or reports from other

persons or relevant departments or committees. Neither the investigation nor any other activities of the MEC in taking its further action shall constitute a hearing. They shall be informal and none of the hearing and appeal rights under these Bylaws shall apply.

D Further Action/Time Within fourteen (14) days after the date of the suspension or restriction, the MEC shall take further action with respect to the suspension, and may modify, continue for a definite or indefinite period, or terminate the summary suspension or restriction. Such further action shall remain in effect unless and until altered or terminated pursuant to other provisions of these Bylaws. If the MEC upholds a summary suspension or restriction, it shall also decide if the affected Practitioner's medical staff membership and clinical privileges should be terminated. The MEC shall promptly give written notice of its further action to the suspended Practitioner, the Administrator and the person or body who imposed the suspension or restriction (if other than the MEC).

E Rights to Hearing Following the decision of the MEC regarding further action, the provisions of Article VIII shall govern the hearing and appeal rights under these Bylaws.

F Alternate Patient Coverage Immediately upon the imposition of a summary suspension or restriction, the Chief of Staff or responsible departmental Chairman shall provide for alternate medical coverage by a member of the Medical Staff for the patients of the suspended Practitioner remaining in the Hospital at the time of such suspension, if the privileges to provide such coverage were suspended. The wishes of the patients shall be considered in the selection of such alternate coverage.

SECTION 4 - AUTOMATIC SUSPENSION, TERMINATION

The following shall result in the automatic suspension and possible termination of medical staff membership and/or clinical privileges and shall not entitle the affected Practitioner to the hearing and appeal rights specified in these Bylaws, unless otherwise expressly provided:

A Medical Records/Suspension Practitioners must complete their patients' medical records within 30 days of each patient's discharge or within such time, as the Governing Body requires. Medical records that the Practitioner fails to complete within the required period will be considered delinquent. The Director of Health Information Services shall send a written notice to a Practitioner who has incomplete medical records near delinquent status. This notice may be sent by either personal delivery or by certified mail, return receipt requested, and a phone call to remind the Practitioner that his clinical privileges will be automatically suspended if such records are not completed. If the Practitioner completes the records within the time allotted, the Director of Health Information Services shall notify the Chief of Staff who shall immediately reinstate the Practitioner's clinical privileges. If the Practitioner does not complete the medical records within the time provided, then the Administrator shall automatically impose a temporary suspension of all privileges. Such suspension shall be effective as of the first

day after the expiration of the prescribed time period and shall continue until the medical records in issue are satisfactorily completed. The suspension may be terminated by the joint action of the Administrator and the Chief of Staff if they or their designees determine that failure to timely complete the records was justified (e.g. illness or other circumstances beyond the control of the affected Practitioner) or, upon the request of the suspended Practitioner the Chief of Staff may temporarily lift the suspension only if the Chief of Staff as the designee of the MEC, determines that an emergency exists in which the health and safety of any patient will be jeopardized by failure to allow the Practitioner to treat that patient. With the exception of emergency care for which only the Practitioner is qualified and available and the care of patients already hospitalized at the time of the suspension, such temporary suspension shall include all admitting and clinical privileges, as well as the scheduling of elective operations, assisting at elective operations and deliveries. Unverified emergency admissions shall not be used to bypass such suspension. Failure to complete the medical records within sixty (60) days of suspension shall be deemed a voluntary resignation from the Medical Staff and the voluntary relinquishment of all clinical privileges. Practitioners whose clinical privileges are automatically suspended or who have been deemed to have voluntarily resigned from the staff pursuant to this Section shall not be entitled to the hearing and appeal rights under these Bylaws.

B Licensure Whenever a Practitioner's license to practice in this state is revoked, not renewed, restricted, suspended, voluntarily or involuntarily relinquished or made subject to any probationary provisions by the licensing agency, the Practitioner's staff membership and clinical privileges shall automatically terminate upon receipt by the hospital of notice thereof. If a Practitioner's license to practice is made subject to probationary terms by the licensing agency, the Practitioner's privileges and membership shall automatically become subject to the terms of probation, subject to review by the MEC and approval by the Governing Body. Action automatically imposed under this Section does not entitle the practitioner to the hearing and appeal rights provided under Article VIII of these Bylaws.

C Drugs/Medication A temporary automatic suspension of a Practitioner's privileges to prescribe or obtain controlled substances or other medications at or through the hospital or any of its facilities shall be immediately imposed by the Administrator upon the receipt by the hospital of notice that such Practitioner's right or license to prescribe or obtain controlled substances or medications has been suspended, revoked or otherwise restricted by the applicable governmental agency. Such automatic suspension shall include only those controlled substances or medications suspended or revoked by the governmental agency and shall be effective until the governmental agency reinstates the Practitioner's right or license in question, unless the MEC determines otherwise and so notifies the affected Practitioner. If a Practitioner's right or license to prescribe or obtain controlled substances or medications is subject to an order of probation, the Practitioner's privileges to prescribe or obtain controlled substances or other medications at or through the hospital or any of its facilities shall automatically become subject to the terms of the probation effective upon and for at least the term of the probation. An affected Practitioner shall not be permitted to prescribe medications under the hospital's

DEA number. Action imposed under this Section does not entitle the Practitioner to the hearing and appeal rights under these Bylaws.

D Loss of Malpractice Insurance If a Practitioner fails to maintain professional liability insurance as required by the Governing Body, or fails to provide evidence of such coverage, the Practitioner's membership and clinical privileges, after written warning of delinquency, shall be automatically suspended and shall remain so suspended until the Practitioner provides evidence to the MEC that he has secured the required professional liability coverage. Failure to provide such evidence within sixty (60) days after the date the automatic suspension became effective shall be deemed a voluntary resignation from the Medical Staff. A Practitioner whose clinical privileges are automatically suspended or who has been deemed to have voluntarily resigned from the Medical Staff pursuant to this Section may request a meeting to discuss the matter informally with the MEC or its designee, but the practitioner shall not be entitled to the hearing and appeal rights under these Bylaws.

E Felony Conviction A Practitioner who has been convicted or pled "guilty" or "no contest" or its equivalent to a felony in any jurisdiction shall be automatically suspended. Such suspension shall become effective immediately upon such conviction or plea regardless of whether an appeal is filed. Such suspension shall remain in effect unless and until the matter is resolved by subsequent recommendation by the MEC and action by the Governing Body or through corrective action, if necessary.

F Quality/Performance Improvement and Peer Review Inquiries Practitioners have an obligation to timely and satisfactorily respond to inquiries from Medical Staff committees and their designees on issues relating to the Practitioner's qualifications, character, behavior, ethics, health status in terms of the practitioner's ability to practice in the area in which privileges are sought or have been granted, case management, and the Practitioner's compliance with the Bylaws, rules and regulations, and policies of the Medical Staff and Hospital. Unless provided otherwise in these Bylaws, the Department or committee Chairman shall send a certified letter to the practitioner requesting a response within thirty (30) days. If the Practitioner fails to timely respond, the Chief of Staff shall send a notice advising that failure to comply within seven (7) days shall result in an automatic suspension of membership and all privileges. Such suspension shall continue until the inquiring person or body confirms that a satisfactory response has been received. With the exception of emergency care which only the Practitioner is qualified and available to render, and the care of patients already hospitalized at the time of the suspension, such suspension shall include all admitting and clinical privileges, as well as scheduling of elective operations, assisting in elective operations and deliveries. Unverified emergency admissions shall not be used to bypass such restriction. Failure to satisfactorily comply within sixty (60) days of the date of the suspension shall be deemed a voluntary resignation and relinquishment of all privileges. Action taken pursuant to this Section shall not entitle the affected Practitioner to the hearing and appeal rights of these Bylaws.

G Notice Unless otherwise specified in this Section, the Administrator shall

immediately notify the affected Practitioner and the Chief of Staff in writing either by personal delivery or certified mail of any suspension or termination under this Section. Such notice shall set forth the effective date and the reason for the suspension or termination. By state law the State Board of Medical Examiners shall be notified in writing by the Administrator of the Hospital of any revocation, suspension, or limitation of a practitioner's clinical privileges.

H Application to Medical Staff after Termination Unless reinstated by the MEC and the Governing Body, any Practitioner who is terminated from membership or who has clinical privileges terminated and who desires to be admitted to the Medical Staff or granted clinical privileges shall be required to apply for membership and privileges and such application shall be processed as for an initial applicant.

SECTION 5 - OTHER INVESTIGATIONS

Notwithstanding anything in these Bylaws to the contrary, the MEC in its sole discretion may investigate any matter or any Practitioner brought to its attention by anyone and may take any action it deems appropriate, subject to review by the Governing Body. Such investigation shall not be deemed a hearing and may be substantiated as described in Section 2B. The MEC shall act with reasonable promptness and shall be given notice of any action thus taken or recommended within seven (7) days therefrom, to any affected Practitioner and the Administrator. The Practitioner shall only have a right to request a hearing if the action or recommendation falls into one or more of the grounds for a hearing specifically set forth in Article VIII; in such cases, the notice to the affected practitioner shall comply with the notice requirements of Article VIII.

ARTICLE VIII

HEARING AND APPELLATE REVIEW PROCEDURES

SECTION I - GENERAL PROVISIONS, DEFINITIONS, SETTLEMENT

A Duty to Exhaust Remedies The purpose of this Article is to permit the Medical Staff and Hospital to resolve issues related to professional practice and qualifications for Medical Staff membership and clinical privileges fairly, expeditiously and with due regard for both the need to protect patients and the interest of Practitioners. Each applicant and member agrees to follow and complete the procedures set forth in this Article, including appellate procedures, before attempting to obtain judicial relief related to any issue or decision which may be subject to a hearing and appeal under this Article. The absence of an interlocutory appeal process (temporary/provisional process) for reviewing any alleged violation of the Bylaws or the affected Practitioner's fair procedure

rights does not warrant judicial intervention

B For the purposes of this Article, the following definitions shall apply

- 1 **Affected Practitioner** means the Medical Staff member or applicant for membership with respect to whom any of the actions specified in Section 2B below have been taken or recommended and whose membership or privileges may be affected thereby
- 3 **Body Whose Decision Prompted the Hearing** means the person, committee, or body (which will generally be the MEC that pursuant to these Bylaws, took the action or made the recommendation that resulted in a hearing being requested
- 3 **Parties or Party** means, unless clearly indicated otherwise by particular context, collectively or individually, as the case may be the affected Practitioner the MEC, and/or the body whose decision prompted the hearing (if other than the MEC)
- 4 **Notice** means a written communication delivered personally to the required addressee or sent by United States Postal Service first-class postage prepaid, certified or registered mail, return receipt requested addressed to the required addressee at his address as it appears in the records of the Hospital Copies shall be as effective as the original for the purpose of giving notice Any such notice shall be deemed effective on the date it was first received or five (5) working days after it was mailed first class postage prepaid, whichever occurs first.

C Settlements At any time following receipt of notice of a recommendation or action which would entitle a Practitioner to request a hearing under this Article, the Practitioner may ask the body whose decision prompted the hearing to discuss voluntary settlement or resolution of the matter Upon such request and subject to the Practitioner's waiver of time requirements to allow such discussions to proceed, the MEC may authorize one or more of its members to conduct confidential discussions with the Practitioner, provided, the MEC shall not be obligated to conduct such discussions if it concludes the request is interposed primarily for delay or a settlement is not feasible If the Practitioner and the body whose decision prompted the hearing reach a written agreement, which could settle the matter the body whose decision prompted the hearing shall promptly notify the Administrator and the Governing Body (Any such written settlement agreement should include an acknowledgment by the Practitioner that he voluntarily waives his hearing and appeal rights under these Bylaws, that the settlement is entered into voluntarily and that he will waive all claims relating in any way to the matter against all Medical Staff and Hospital personnel)

SECTION 2 - THE HEARING PROCESS

A Notice of Adverse Action or Recommended Action/Request for Hearing

Whenever any of the actions constituting grounds for a hearing as set forth in Section 2B below has been taken or recommended the person, committee or body causing same to occur shall give notice to the affected Practitioner

The notice shall

- 1 describe what action has been taken or recommended,
- 2 state the reasons for the action (a statement of charges will be provided in the event a hearing is properly requested),
- 3 advise the Practitioner of the right to request a hearing and, such request must be in writing and received by the Administrator within thirty(30) days after the affected practitioner's receipt of the Notice of Adverse Action or Recommendation,
- 4 contain a summary of the Practitioner's rights in the hearing,
- 5 state the action, if finally adopted, will be reported to the appropriate licensing entity and to the National Practitioner Data Bank (NPDB) as required by law

Whenever the MEC has given notice of action that constitutes grounds for a hearing as described in Section 2B below, the affected Practitioner shall have thirty (30) days following the date such notice was given within which to request a hearing. A request for a hearing must be in writing and delivered to the Administrator within the applicable time period set forth above. Failure of the affected Practitioner to request a hearing within the time and in the manner set forth in this subsection shall be deemed an acceptance by the Practitioner of such action or recommendation and a waiver by such party of all hearing and appeal rights under these Bylaws. The matter shall thereupon be forwarded to the Governing Body for its final decision in accordance with Article VIII, Section 6F. The Administrator shall give notice to all parties of any such waiver and acceptance.

B Grounds for Hearing. Except as otherwise provided in these Bylaws, the taking or recommending of any one or more of the following actions when based on the member's professional conduct or competence, unless taken in compliance with a policy decision of the hospital (e.g., closing a department or service or physical plant changes) shall constitute grounds for a hearing pursuant to this Article

1 **B Grounds for Hearing.** Except as otherwise provided in these Bylaws the taking or recommending of any one or more of the following actions when based on the member's professional conduct or competence unless taken in compliance

with a policy decision of the hospital (e.g., closing a department or service or physical plant changes), shall constitute grounds for a hearing pursuant to this Article

- 1 denial of initial appointment to the Medical Staff
- 2 denial of staff reappointment,
- 3 reduction or suspension of staff membership or clinical privileges for more than thirty (30) days
- 4 termination, revocation or reduction of staff, category
- 5 denial or termination of clinical privileges,
- 6 summary suspension of clinical privileges for more than thirty (30) days,
- 7 significant consultation or co-admitting requirements other than in compliance with the Medical Staff Bylaws, Rules and Regulations or departmental rules and regulations,
- 8 denial of requested advancement in staff category, and
- 9 denial of requested service affiliation, and

C Notice of Hearing

- 1 Upon receipt of a proper request for hearing, the Administrator shall deliver the request to the MEC, stating the date the Administrator received it, then
- 2 the MEC shall, within thirty (30) days after receipt by the Administrator of the request, schedule a date for a hearing, then
- 3 the MEC shall, not less than thirty (30) days prior to the date of the hearing, give notice to the parties of the time, place, and date thereof, and shall deliver a copy of these Bylaws and a Statement of Charges as provided in the following paragraph, to the affected Practitioner. The date of commencement of the hearing shall not be less than thirty (30) days from the date of the notice of hearing nor more than sixty (60) days from the date of receipt of the request for a hearing by the Administrator, except when the request is received from a member who is under suspension, the hearing shall commence as soon as reasonably practicable, but not later than forty (40) days from the date of receipt by the Administrator of the request for hearing. In such instances, the notice of hearing shall be provided within a reasonable time prior to the date of commencement. The parties and the MRC shall cooperate with each other in scheduling additional hearing sessions, as necessary to complete the process as soon as practicable.

D Statement of Charges As a part of or together with the Notice of Hearing referred to in the previous paragraph of these Bylaws the MEC shall state the acts or omissions with which the affected Practitioner is charged including if applicable a list of chart numbers under question if any and the reasons for the action or recommendation. The Medical Staff representative at the hearing may make amendments to the statement of charges from time to time, but not later than the close of the case. Such amendments may delete, modify or add to the acts, omissions, charts, or reasons specified in the original notice. Notice of each amendment shall be given to the affected Practitioner, the Hearing Officer, and each party. If the affected Practitioner promptly gives written request to the medical review hearing committee, he shall be entitled to a reasonable postponement of the hearing to prepare a response or defense to any such amendment that adds acts, omissions, charts or reasons to the original notice. The medical review hearing committee shall give prompt notice to the parties of each such postponement.

E Medical Review Committee (MRC) or Arbitrator, Appointment, Removal, and Qualifications Promptly after a hearing has been properly requested, the Chief of Staff as a designee of the MEC or alternatively the MEC shall determine if the hearing shall be held before (1) an arbitrator or arbitrators selected by a process mutually acceptable to the Practitioner and the MEC, or (2) before a panel referred to as a MRC. Should the Chief of Staff as a designee of the MEC or alternatively the MEC determine that a medical review committee shall be used, he shall promptly appoint such a MRC and its Chairman to act as the peer review group in the hearing. The MRC shall consist of not less than three (3) nor more than seven (7) members, at least the majority of whom shall be physicians who shall be licensed to practice medicine but need not be members of the Medical Staff. When feasible, the MRC shall include at least one (1) individual practicing in the same specialty as the affected Practitioner. They may have knowledge of the matters to be heard, but each shall be willing to hear the matters objectively and without prejudice. They shall not have acted as accusers, investigators, fact finders or initial decision makers in connection with the same matter, shall gain no direct financial benefit from the outcome, and shall not be in direct economic competition with the affected Practitioner.

F. Hearing Officer/Chairman of MRC The Administrator may appoint a Hearing Officer to conduct the hearing. The hearing officer may be a member of the South Carolina Bar and should be familiar with the law applicable to Hospital administrative proceedings.

The Hearing Officer shall conduct the hearing impartially such that the proceeding will be, to the extent reasonably possible, fair, efficient, and protective of the rights of all parties and witnesses. The Hearing Officer shall gain no direct financial benefit from the outcome of the hearing and shall not act as a prosecuting officer or advocate. The Hearing Officer shall act as advisor to the MRC as to procedural matters including the drafting of its decision and report, but he shall not be entitled to vote. In the alternative the Administrator after consulting the MEC may appoint a Medical Hearing Officer to conduct the hearing. The Medical Hearing Officer must be a member of the Medical

Staff but may not be in direct economic competition with the affected Practitioner. He should be familiar with the applicable medical issues and with medical staff administrative proceedings. He shall conduct the hearing impartially such that the proceeding will be to the extent reasonably possible, fair, efficient, and protective of the rights of all parties and witnesses. He shall decide all procedural matters. All references to the "Hearing Officer" shall refer to the Medical Hearing Officer if one is appointed. If a Hearing Officer is not appointed, the Chairman of the MRC shall conduct the hearing and rule on procedural matters, and all references to the "Hearing Officer" shall be deemed to refer to the Chairman of the MRC or the arbitrator, as appropriate.

G Postponements and Extensions After the appointment of the MRC and before the commencement of the hearing, postponements beyond the times required by these Bylaws may be requested by any of the parties, and shall be granted upon agreement of the parties or by the arbitrator or presiding officer on a showing of good cause. The MRC shall promptly give notice to the parties of each such postponement.

H Medical Staff Representative After a hearing has been properly requested, the Chief of Staff or alternatively the MEC shall promptly appoint a Medical Staff member ("Medical Staff Representative") to present the case on behalf of and otherwise represent, the body whose decision prompted the hearing. The Chief of Staff or alternatively the MEC may, in its sole discretion, remove or replace the Medical Staff Representative at any time.

SECTION 3 - HEARING PROCEDURE

A General It shall be the duty of the Practitioner and the body whose decision prompted the hearing to exercise reasonable diligence in notifying the Hearing Officer of any pending or anticipated procedural irregularity or any objection to the hearing panel or to the Hearing Officer, as far in advance of the scheduled hearing as possible, in order that decisions concerning such matters may expeditiously be made. Objection to any such pre-hearing decisions shall be raised on the record at the hearing and when so raised shall be preserved for consideration at any appellate review hearing which thereafter might be requested.

B Witness List At the request of either party, the parties must exchange at least ten (10) days before the hearing (1) lists of witnesses expected to testify at the hearing and (2) copies of all documents expected to be introduced at the hearing. Failure of a party to produce these materials or to update them, at least ten (10) days before the commencement of the hearing, shall constitute good cause for the Hearing Officer to grant a continuance, or to bar or otherwise limit the introduction of any documents not provided to the other party or testimony from witnesses not identified pursuant to this provision.

C Failure to Appear Failure of the affected Practitioner to appear at the hearing shall be deemed to constitute the affected Practitioner's voluntary acceptance of the

recommendation or action and waiver of all hearing and appeal rights under these Bylaws, unless the MRC finds good cause for such failure based upon written request by the affected Practitioner or his representative

D Representation The hearings provided for in these Bylaws are for the purpose intra-professional resolution of matters bearing on conduct or professional competency. The physician involved has the right to representation by an attorney or other person of the physician's choice. Any request for legal representation shall be made at the time the hearing request is made. In no event shall legal counsel represent the body whose decision prompted the hearing if the affected Practitioner is not so represented. Any request for legal representation shall be made at the time the hearing request is made. In no event shall legal counsel represent the body whose decision prompted the hearing if the affected Practitioner is not so represented. Any party may obtain legal counsel at their expense for the purpose of preparing for the hearing.

E Record of the Hearing The MRC proceedings shall be taken and transcribed by a court reporter and a copy of the transcript of each session shall be available for purchase by either party. Each party shall be responsible for payment of all costs and charges associated with any transcript that it requests.

F Oath of Witness The MRC may, in its discretion, order all testimony at the hearing to be under oath administered by a person authorized to administer oaths.

G Organization and Conduct of Hearing Process Unless otherwise expressly provided in these Bylaws the hearing shall be conducted as follows:

- 1 The parties shall have a reasonable opportunity to voir dire (examine) the MRC members and the Hearing Officer, and the right to challenge the appointment of any MRC member or the Hearing Officer. The Hearing Officer shall establish the procedure by which this right may be exercised, which may include requirements that voir dire (examine) questions be proposed in writing in advance of the hearing and that the questions be presented by the Hearing Officer. The Hearing Officer shall rule on any challenges in accordance with applicable legal principles defining standards of impartiality for hearing panels and Hearing Officers in proceedings of this type.
- 2 The Medical Staff representative shall present an opening statement summarizing the background of the matter, the notices given, any administrative decisions rendered to date, and, if he chooses, the salient general conclusions the representative expects to prove.
- 3 The medical staff representative shall then present the facts upon which he is relying by calling the witnesses and presenting the written evidence to support the case. He may call any person or opposing party, who is present, in support of the case.

- 4 At the close of the Medical Staff representative's case, unless the MRC believes the action or recommendation being reviewed was clearly not supported by the medical staff representative's presentation (in which case the hearing may terminate by such a ruling at this point), the affected Practitioner or his representative shall make an opening statement and shall make a case representation of evidence and testimony. He may call any person or opposing party who is present, in support of the case.
- 5 Upon the close of the initial presentations of the opposing parties, each party shall be entitled to present evidence to rebut the presentation of the other, subject to reasonable limitations by the Hearing Officer as to order, time, relevance and repetition.
- 6 In the close of all presentations and evidentiary rebuttals, the parties shall be entitled, subject to reasonable limitation by the Hearing Officer, to submit a written statement and give closing statements and argument.
- 7 Upon the close of all presentations, rebuttals, statements, and argument, the hearing Officer shall declare the hearing finally adjourned, and all persons other than the MRC and Hearing Officer shall thereupon leave the hearing. The MRC shall thereafter, at the convenience of its members but subject to the provisions of Section 4 below deliberate in order to reach its decision.
- 8 Liberality may be exercised in accommodating the schedules of witnesses, MRC members, parties, and representatives, in allowing modification of required notices, in allowing recesses or extensions of time upon a reasonable showing of need, and in allowing changes in the order of the proceedings or the presentation of evidence. The decision of the Hearing Officer after consultation with the MRC regarding such matters shall be final, subject to later reconsideration for good cause only.
- 9 No person shall disrupt any hearing. Any person in attendance (whether a party or any other person) who disrupts a hearing after being warned by the Hearing Officer to cease such disruption on penalty of indefinite exclusion, shall, at the direction of the Hearing Officer, leave the hearing. Unless directed otherwise for good cause by the Hearing Officer, the hearing shall proceed in the absence of such excluded person. If such excluded person is the affected Practitioner or a witness, he shall have the right to submit to the MRC, not later than ten (10) days after such exclusion (unless extended by the Hearing Officer for good cause) a written affidavit of his testimony or other evidence with copies thereof to the other parties.
- 10 Except as otherwise provided in these Bylaws and subject to reasonable restriction by the Hearing Officer, the following shall be permitted to attend the entire hearing in addition to the MRC: the Hearing Officer,

court reporter, and parties the Administrator or his designee one (1) person designated by the Administrator (or designee) the Medical Staff Coordinator or assistant one (1) key consultant for each party, and one (1) or more representatives of the entity that owns the hospital

H Burden of Proof The affected Practitioner shall have the burden of proving, by clear and convincing evidence, that the action or recommendation of the body whose decision prompted the hearing, which is the subject matter of the hearing, is arbitrary, capricious or unreasonable

I Admissible Evidence and General Procedure Except as otherwise provided in these Bylaws The following rules shall apply in the hearing

- 1 The general rule of evidence shall be that any relevant matter, Whether written or oral, upon which responsible individuals would be expected to rely in the conduct of serious affairs, shall be admitted, regardless of its admissibility in a court of law The MRC shall have the discretion to recognize any matters, either technical or scientific, including statistical data, relating to the issues under consideration, which is common knowledge in the general medical community and/or any medical specialty
- 2 Parties or their representatives shall have the right to
 - (a) a reasonable opportunity to voir dire the MRC members and the hearing officer, and the right to challenge the impartiality of any MRC member or the Hearing Officer The Hearing Officer shall rule upon such challenges,
 - (b) be provided with all information made available to the MRC,
 - (c) call and examine witnesses on relevant evidence and to cross-examine witnesses,
 - (d) introduce relevant documentary evidence,
 - (e) present evidence that tends to impeach any witness on relevant matters, provided that, to prevent abuse of this right, the Hearing Officer may in his discretion, require a prior offer of proof summarizing such evidence and may in his discretion reject such evidence if the party fails to submit such offer of proof or if the offer of proof reasonably justifies such rejection, and
 - (f) submit a written statement at the close of the presentation of evidence

3 Evidence of relevant activities or practices at any location or facility shall be admissible unless the Hearing Officer upon a showing of good cause imposes limitations

4 The MRC may receive and consider any brief or memorandum presented by any party

5 Any relevant material contained in Medical Staff files regarding the affected practitioner is admissible, including but not limited to applications, references, and accompanying documents

SECTION 4 - DECISION AND REPORT OF MRC NOTICE

After adjournment of the final session of the hearing, the MRC shall begin its deliberations. Within thirty (30) days after closure of the deliberations of the MRC, the MRC shall render and deliver to the Administrator a written report and decision. The MRC may recommend that the Governing Body affirm, terminate or modify the action or recommendation that prompted the hearing. If the recommendation is to modify the MRC must identify the modifications recommended. The decision and report shall be based on evidence produced at the hearing, including any recognized matters and reasonable inferences that may be drawn. The decision and report shall include findings of fact and conclusions articulating the connection between the evidence produced at the hearing and the decision reached. It shall include sufficient detail to enable the parties and the Governing Body to determine the basis for the MRC's decision on each issue contained in the statement of charges. It shall also contain a description of the appellate rights provided under these Bylaws. The Administrator, within five (5) working days after receiving the decision and report shall send a copy of them to the parties.

SECTION 5 - GOVERNING BODY ACTION AFTER MRC DECISION

The Governing Body shall take no action regarding the underlying matter or the decision and report of the MRC, until after the expiration of the time for requesting appellate review under Section 6, provided that if an appellate review is properly requested under Section 6, the Governing Body shall take no action except in compliance with the procedures and provisions of this Article. If an appellate review is not timely requested, the Governing Body shall make its final decision in accordance with Section 6.

SECTION 6 - APPEAL TO GOVERNING BODY

A **Time for Requesting Appeal** Within thirty (30) days after receipt of notice of the decision of the MRC either the affected Practitioner or the body whose decision prompted the hearing, may request an appellate review by the Governing Body. The

request shall be in writing and must be received by the Administrator within the applicable time period set forth above. The Administrator shall immediately deliver copies of the request to the Governing Body and to the other parties. The request shall set forth the ground (s) for appeal as noted under Section 6C. If in appellate review is not requested as set forth in this paragraph, all parties shall be deemed to have waived all rights to appeal.

B Nature and Effect of Appellate Review The appellate review shall be by the Governing Body or a committee thereof and all references to the "Governing Body" shall include such committees. Appellate review shall consist of a review of the prior proceedings and decision in the matter being reviewed, an appellate review meeting, deliberations, review of any further recommendations, and a final decision. In its final decision, the Governing Body may affirm, modify, or reverse the decision of the MRC. No person or entity that participated in bringing the charges or in officially reviewing the matter shall participate in the appellate review process, even if such removal leaves the Governing Body with less than a quorum.

C Grounds for Appeal The grounds for appeal are limited to: substantial and prejudicial failure of the MRC or the MEC to comply with these Bylaws or to afford due process or a fair hearing; the action or recommendation that prompted the hearing, or any substantial part, was arbitrary or capricious; or the MRC's decision or any substantial part was clearly contrary to the weight of the evidence, the MRC's decision or any substantial part was clearly contrary to the weight of the evidence.

D Notice of Time, Date, Place of Appellate Review Meeting The Governing Body shall, within thirty (30) days after receipt by the Administrator of a timely request for appeal, schedule a date for an appellate review meeting. The Governing Body shall, not less than ten (10) days prior to the date of the appellate review meeting, give the parties written notice of the time, place, and date. The date thereof shall be not less than ten (10) days, nor more than sixty (60) days from the date of receipt by the Administrator of the request for appellate review, except that when a request for appellate review is from a member who is then under suspension, the appellate review meeting shall be held as soon as reasonably practicable but not later than forty (40) days from the date of receipt of the request. The chairman of the governing body for good cause may extend the date for the appellate review meeting.

F Appellate Review Proceedings The appellate review shall be conducted as follows:

1. The Governing Body shall limit its review to the record of the hearing before the MRC, the MRC decision and report, and any written briefs submitted by the parties. The Governing Body may, however, in its sole discretion, accept additional issues or oral or written evidence subject to the same rights of cross-examination and rebuttal provided for MRC hearings. Such acceptance of additional issues or evidence may be based on the Governing Body's own motion or upon the request of a party if not less than seven (7) days prior to the appellate

review meeting date the party desiring to present such additional issues or evidence makes written request to the Governing Body to do so specifying the nature and relevance of the issues or evidence, and gives notice of such request to all other parties. The Governing Body shall give notice of its decision in such matters to all parties as soon as reasonably possible.

2 The Governing Body may in its sole discretion appoint a Hearing Officer to conduct the appellate review meeting rule on procedural matters act as advisor to the governing body as to procedural matters and without voting rights participate in its deliberations and assist in the preparation of its decision.

3 Each party shall have the right to submit a written brief in support of his position on appeal, provided that copies of such brief shall be given to all other parties at such time as may be directed by the Governing Body.

4 The Governing Body in its sole discretion, has the option to allow each party or party's representative to appear personally and make oral argument at the appellate review hearing provided that such party shall make written application therefor to the Governing Body not less than seven (7) days prior to the date of the appellate review meeting. The Governing Body shall give notice of its response to such applications to all parties as soon as reasonably possible. If personal appearance is allowed, the affected Practitioner, if present, and all other parties and representatives present, shall answer any questions posed by any member of the Governing Body.

5 The Governing Body may, from time to time, adjourn and continue the appellate review meeting to another date or dates if it decides, in its sole discretion, that such action is necessary or desirable in order to conduct a fair and thorough appellate review in the matter. The Governing Body shall give notice to the parties of any such date and time, unless the parties were present when the Governing Body announced such date and time.

6 At the conclusion of the appellate review meeting, including oral argument, if held, the Governing Body shall, at a time convenient to itself conduct deliberations outside the presence of the parties and their representatives, in order to determine whether to affirm modify, or reverse the decision of the MRC.

7 The Governing Body shall in its sole discretion decide the order of procedures to be followed in the appellate review, as well as answers to questions not otherwise addressed in these Bylaws to the end that the appellate review including the appellate review meeting shall be thorough, orderly efficient and fair.

8 No person shall disrupt any appellate review proceeding. Any person in

- (attendance (whether a party or any other person) who disrupts an appellate review meeting after being warned by the Chairman of the Governing Body (or his designee or the hearing officer) to cease such disruption on penalty of indefinite exclusion, shall at the direction of such chairman (or designee or the Hearing Officer), leave the meeting. Unless directed otherwise for good cause by the Chairman (or designee or the Hearing Officer), the appellate review meeting shall proceed in the absence of such excluded person.

F **Final Decision/Effective Date** The appellate review process shall conclude with the Governing Body's final decision in the matter, which shall be made in accordance with the following rules:

1 Within thirty (30) days after either the waiver of appellate rights or the conclusion of the appellate review meeting, the Governing Body shall render its final decision unless it refers the matter to the MRC for further review and recommendation. The governing body, however, may exercise its independent judgment in determining whether the hearing procedures in these Bylaws were followed.

2 If the Governing Body refers the matter to the MRC for further review and recommendation, such referral may include instructions such as that the MRC arrange for further hearings on specific issues. The Governing Body shall give notice of such referral to the parties. The MRC shall conduct such review in accordance with any such instructions, and shall deliver its written recommendation to the Governing Body within forty-five (45) days after the receipt of the referral from the Governing Body. Within forty-five (45) days after receipt of such recommendation, the Governing Body shall render its final decision.

The Governing Body's final decision shall be in writing and shall include a statement of the Governing Body's basis for its decision. The decision shall be effective immediately and not subject to further hearing or appeal. As soon as the final decision is effective, a copy of it shall be delivered to the affected Practitioner, the Administrator, and each party, in person or by certified mail.

SECTION 7 - RIGHT TO ONLY ONE MRC HEARING AND APPELLATE REVIEW

No party shall be entitled to more than one (1) evidentiary hearing and one appellate review on any matter that may be the subject of a MRC hearing or appeal.

SECTION 8 - INFORMAL INTERVIEWS

Nothing in these Bylaws shall be deemed to prevent any committee or person

contemplating any action or recommendation set forth in Section 2B from at its sole discretion inviting the affected Practitioner to participate in an informal discussion of the contemplated action or recommendation. Such discussion shall not be deemed to constitute a hearing under this Article.

SECTION 9 - RESIGNATION OR WITHDRAWAL OF APPLICATION

Notwithstanding any other provision of these Bylaws, whenever the affected Practitioner unconditionally (a) resigns from the Medical Staff (b) resigns and relinquishes the privileges that are the subject matter of a hearing, (c) withdraws the application that is the subject matter of hearing (d) amends an application or request with regard to the items that are the subject matter of the hearing or (e) consents in writing to the action or recommendation that prompted the hearing and there are no other issues before the hearing, all hearing and appellate review proceedings with respect to the Practitioner, his privileges or application, as the case may be, shall terminate as of the first day after such resignation withdrawal, amendment or consent. Once so terminated, the proceedings shall not be reopened except when ordered by the Governing Body, after receiving a written request from, or giving notice to, the affected Practitioner, and determining that good cause exists for such reopening.

SECTION 10-CONFIDENTIALITY

In addition to the provisions provided in Article XIII (Confidentiality/Immunity from Liability) of these Bylaws, all Medical Staff applicants and members, committee members and committee guests, peer review consultants, persons involved in any peer review activity at this hospital, as well as parties participants, and attendees at a Medical Staff peer review hearing shall keep all peer review investigations as well as all hearing and appellate review proceedings and the contents thereof confidential. No one shall disclose or release any information from or about the proceedings to any person or the public.

SECTION 11-EXCEPTIONS TO HEARING AND APPEAL RIGHTS

In addition to other exceptions set forth in these Bylaws, the hearing and appeal rights under these Bylaws are not applicable under the following circumstances:

A Closed Department/Exclusive Contracts The hearing and appeal rights under these Bylaws do not apply to a Practitioner whose application for Medical Staff membership and privileges was denied on the basis that the privileges he seeks are granted only pursuant to a closed staff or exclusive use policy.

B Medico-Administrative Practitioner The hearing and appeal rights under these Bylaws do not apply to those persons serving the hospital in a medico-administrative

capacity Termination of such persons' rights to practice in the hospital shall instead be governed by the terms of their individual contract with the hospital. However, the hearing and appeal rights of these Bylaws shall only apply to the extent that membership status or clinical privileges, which are independent of the Practitioner's contract, are also removed or suspended, unless the contract includes a specific provision establishing alternative procedural rights applicable to such decisions.

C Automatic Suspension or Termination of Privileges The hearing and appeal rights under these Bylaws are not granted if a member's Medical Staff membership or clinical privileges are automatically suspended or terminated in accordance with these Bylaws.

D Specified Professional Personnel Specified Professional Personnel are not entitled to the hearing and appeal rights under these Bylaws.

E Removal from Emergency Room Call Schedule Emergency Room call schedule participation is not a benefit or privilege or staff membership, but rather is an obligation. No hearing or appeal rights under these Bylaws are available for any action or recommendation affecting a Practitioner's emergency room call schedule obligation(s).

F Hospital Policy Decision The hearing and appeal rights of these Bylaws are not available if the hospital makes a policy decision (e.g., closing a department or service or physical plant changes) that adversely affects the staff membership or clinical privileges of any member or applicant.

G Termination of Hospital Employed Practitioner The privileges and staff membership of any Practitioner employed to the hospital shall be subject to termination in accordance with the terms of the Practitioner's contract. Such Practitioner shall not be entitled to the hearing and appeal rights under these Bylaws, except to the extent that the Practitioner's staff membership or privileges, which would otherwise exist independent of the contract, are to be limited or terminated, or unless otherwise provided in the Practitioner's contract.

ARTICLE IX

OFFICERS OF THE MEDICAL STAFF

SECTION I – OFFICERS Officers of the medical staff shall be the

- A Chief of Staff
- B Vice Chief of Staff
- C Immediate Past Chief of Staff
- D Secretary-Treasurer

SECTION 2 - QUALIFICATIONS

Officers must be members of the active staff at the time of their nomination and election. They must maintain their active status and remain in good professional and ethical standing during their term of office. Because of the peer responsibilities of their offices, the Chief of Staff and Vice Chief of Staff shall be physicians, with demonstrated competence in their fields of practice and ability to direct the medico-administrative aspects of medical staff activities. Officers must have demonstrated good interpersonal relationships with Medical Staff members and Hospital staff, and have indicated a willingness to accept the responsibilities of the office.

SECTION 3 - NOMINATION AND ELECTION OF OFFICERS

A Officers shall be elected for a two (2) year term by the active staff members at the final meeting of the designated medical staff term. Election shall be by oral vote or showing of hands unless written two (2) or more eligible voters request ballot. The candidate must be elected by a majority vote of the active staff members present at the meeting. When three (3) or more candidates are running and a majority is not obtained, the candidate with the least votes will be eliminated each time until a candidate receives a majority vote. Voting by proxy shall not be permitted.

B Nominations may be made in the following ways, provided that written consent to serve is obtained from the proposed nominee prior to placing the nominee's name into nomination:

- 1 By a nominating committee. The nominating committee shall consist of five (5) members of the active medical staff appointed by the Chief of Staff subject to approval of the MEC. The nominating committee shall convene at least thirty (30) days prior to the final meeting of the medical staff term and shall submit to the medical staff coordinator one (1) or more qualified nominees for each office at least thirty (30) days prior to the meeting. The nominees shall be for the offices of Chief of Staff, Vice Chief of Staff and Secretary-Treasurer.
- 2 By petition. Nominating by petition requires the signature of at least ten (10%) percent of the active staff members and must be filed with the medical staff coordinator at least ten (10) days prior to the final medical staff meeting. The Medical Staff shall be notified of these additional nominees at the time of this meeting.

- 3 From the floor Nominating may be done from the floor at the time of the final meeting of the medical staff term

SECTION 4 - TERM OF OFFICE/VACANCIES

A **Term of Office** Each officer shall serve a two-year term beginning the first day of the Medical Staff term following their election. Each officer shall serve until the end of his term or until a successor is elected unless he shall sooner resign or be removed from office.

B **Vacancies in Office** The Medical Staff MEC shall fill Vacancies in office during the Medical Staff term, except for the Chief of Staff. If there is a vacancy in the office of Chief of Staff, the Vice Chief of Staff shall serve out the remaining term. A vacancy in the office of immediate past Chief of Staff will not be filled.

SECTION 5 - REMOVAL OF ELECTED OFFICERS FROM OFFICE

A **Removal** Removal of a medical staff officer may be initiated by a two-thirds (2/3) majority vote of the active Medical Staff. The Governing Body may remove any officer for cause as described in Section 5B, below.

B **Grounds for Removal** Each of the following conditions in itself constitutes cause for removal of a staff officer from office:

- 1 Revocation of professional license by the authorizing state agency,
- 2 Suspension from the Medical Staff,
- 3 Failure to perform the required duties of the office
- 4 Failure to adhere to professional ethics,
- 5 Failure to comply with or support enforcement of the Hospital and
- 6 Medical Staff Bylaws, Rules and Regulations, and policies
- 7 Failure to maintain adequate professional liability insurance and
- 8 Failure to maintain active staff membership

SECTION 6 - RESPONSIBILITIES, DUTIES, AND AUTHORITY OFFICERS

A **Chief of Staff** The responsibilities, duties, and authority of the Chief of Staff are to

- 1 call, preside at and determine the agenda of all general and special meetings of the Medical Staff
- 2 serve as chairman of the MEC with tie-breaking vote prerogative only
- 3 enforce medical staff Bylaws, rules and regulations and appropriate hospital rules and policies, implement sanctions when they are indicated, and enforce the medical staff's compliance with procedural safeguards in all instances in which corrective action has been requested or initiated against a Practitioner
- 4 appoint the chairman and all Medical Staff members of Medical Staff standing and ad hoc committees, except the MEC appoint the Medical Staff members of Hospital and Governing Body committees when these are not designated by position or by specific direction of the Governing Body,
- 5 represent the views, policies, concerns, needs, and grievances of the Medical Staff to the Governing Body and Administration; serve ex officio as a voting member of the Governing Body,
- 6 advise the Governing Body on the effectiveness of the quality/performance improvement program and the overall quality of patient care in the Hospital,
- 7 advise the Governing Body, Administration and the MEC on that impact on patient care and clinical services, including the need for new or modified programs/ services for recruitment and training of professional and support staff personnel, and for staffing patterns, and
- 8 serve as spokesman for the Medical Staff in its external professional and relations

B Vice Chief of Staff The responsibilities, duties, and authority of the Vice Chief of Staff are to

- 1 assume the responsibilities, duties and authority of the Chief of Staff during the latter's absence whether the absence is temporary or permanent
- 2 serve as an ex-officio voting member of the MEC, and
- 3 serve as chairman of the Performance Improvement Committee

C Immediate Past Chief of Staff The responsibilities, duties and authority of the Immediate Past Chief of Staff are to

- 1 serve as an ex officio voting member of the MEC
- 2 advise the Chief of Staff and MEC on matters concerning the Medical Staff,
- 3 perform other functions at the request of the Chief of Staff and
- 4 assume the responsibilities, duties, and authority of the Chief of Staff when both the latter and the Vice Chief of Staff are temporarily absent

D Secretary-Treasurer The responsibilities, duties, and authority of the Secretary-Treasurer are to

- 1 serve as an ex-officio voting member of the MEC assure the preparation and maintenance of accurate and complete minutes for all medical staff meetings on order of the Chief of Staff,
- 2 supervise any staff funds if any, and perform other such duties as ordinarily pertain to the Office of Secretary- Treasurer

In the temporary absence of the Chief of Staff, Vice Chief of Staff and the immediate past Chief of Staff, the Secretary Treasurer shall assume all the duties and have the authority of the Chief of Staff. In the event that all four officers are absent the Executive Committee shall appoint an acting Chief of Staff who shall assume all the duties and have the authority of the Chief of Staff

ARTICLE X

CLINICAL DEPARTMENTS

SECTION I – ORGANIZATION

A Structure Each department shall be organized as a separate part of the Medical Staff and shall have a chairman who shall be responsible for the overall supervision of the clinical work within his department and is selected and has the authority, duties, and specific responsibilities as specified in this Article. Each department shall have at least five (5) members including the chairman and the vice-chairman

B Departments There shall be departments of Medicine, Surgery, Family Practice and OB/GYN/Pediatrics

- 1 The Medical Department shall include any staff members in the following practice specialties: internal medicine, cardiology, pulmonology, critical care, dermatology, oncology, hematology, nephrology, neurology, emergency

medicine diagnostic internal medicine radiology gastroenterology
hematology oncology nuclear medicine psychiatry rheumatology and infectious
disease

2 The Department of Surgery shall include any staff member in the
following practice specialties vascular surgery neurosurgery, orthopedic surgery
plastic surgery urologic surgery ophthalmology otorhinolaryngology
maxillofacial surgery general dentistry and all dental specialties podiatry
pathology psychiatry, and anesthesiology pediatric surgery colon rectal surgery
cardio thoracic

3 The Family Practice Department shall consist of Family Practitioners only

4 The OB/GYN/Pediatrics Department shall include the following
obstetricians and gynecologists and all pediatricians and sub-specialties of the
above

C Changes in Departments When deemed appropriate for better organizational
efficiency and improved patient care, the MEC with the approval of the Governing
Body, may create new eliminate, subdivide or combine clinical departments

D Clinical Services When clinical services are established, they shall be organized
as a specialty subdivision within a department shall be directly responsible to the
department within which they function, and have a Chief of Service who is selected and
has the authority, duties, and responsibilities as specified in this Article Each service
shall ordinarily have at least five (5) members

E Formation of Clinical Services A group of Practitioners of the same specialty
that desire to become a clinical service must have a recommendation for such from the
parent department to the MEC Denial of such a request by the department must be
accompanied by the reason for the denial The MEC and Governing Body will then act
on the request as follows

- 1 If the MEC approves a positive recommendation from the department,
the committee recommendation is forwarded to the Governing Body
- 2 If MEC disagrees with a positive recommendation from the department
the issue can then be referred to the next general Medical Staff meeting
The recommendation of the Medical Staff will then be forwarded to the
Governing Body
- 3 If a negative recommendation from the department is supported by the
MEC the issue is considered closed
- 4 If the MEC reverses a negative decision from the department the
department may request that the issue be referred to the next general
Medical Staff meeting The recommendation of the Medical Staff will

then be forwarded to the Governing Body

- 4 All final approval rests with the Governing Body

SECTION 2 - PERFORMANCE ASSESSMENT AND IMPROVEMENT

A Responsibility It shall be the responsibility of the chairmen of the clinical departments and specialty services, working through departmental committees and with the assistance as appropriate of the standing committees, to design and implement effective programs

- (1) to monitor and assess the quality of professional performance in each department and service and

- (2) to promote quality practice in each department and service by (a) providing education and counseling by the medical staff both to families of patients as well as to members of the hospital staff for general medical education and update, (b) issuing letters of instruction admonition warning or censure, as necessary (c) requiring routine monitoring when deemed appropriate by the department or service and (d) to participate as required in multi-disciplinary studies/systems

B Procedure

- (1) Each department or service committee shall conduct regular patient care reviews and studies of performance and patient care outcomes within the department or service in conformity with a written quality management plan approved by the MEC and Governing Body

- (2) In order to assist department or service members to conform their conduct or professional practice to the standards of the Medical Staff and Hospital, department or service chairmen may make informal comments or suggestions either orally or in writing. A summary of such statements will be kept in the member's credentials file. Such comments or suggestions shall be subject to the confidentiality requirements of all Medical Staff peer review information and may be issued with or without prior consultation with either the affected member or the department or service committee. Such comments or suggestions shall not constitute a restriction of privileges and shall not give rise to the hearing and appeal rights under these Bylaws. Such comments are eligible for peer review protection under state laws and statutes.

- (3) Following discussion of identified concerns with a member, any department or service committee may authorize the chairman to issue a letter of instruction, admonition or warning to the member or to require the member to be subject to routine monitoring for such time as shall appear reasonable to the department or service. The term "routine monitoring" as used in this section shall mean review of a member's performance for which the member's only obligation is to provide

reasonable notice of patient admissions procedures or other patient care activity. All members of the Medical Staff regardless of status shall be subject to potential routine monitoring. The discussions of such actions with individual members shall be informal. Such actions shall not constitute a restriction of privileges, shall not be considered to constitute corrective action and shall not give rise to the hearing and appeal rights under these Bylaws.

(4) Written letters of instruction, admonition or warning or routine monitoring required pursuant to subparagraph three (3) above shall be reported to the MEC promptly after such actions are taken.

SECTION 3 - ASSIGNMENT TO CLINICAL DEPARTMENTS

A Assignment Each member of the medical staff shall be assigned membership in one (1) clinical department based on the bulk of the clinical services he provides. Members may, in addition, be granted clinical privileges in one (1) or more other departments.

B Meetings Each member will be allowed to vote in only one (1) department and to represent only one (1) department on committees (including the MEC), and shall be responsible for attending the required number of meetings only in the department to which he is primarily assigned. However, each Practitioner is encouraged to attend meetings in all departments in which he exercises privileges and should keep himself informed of departmental activities, particularly as they relate to findings of patient care and performance evaluation activities.

C. Rules and Regulations The exercise of clinical privileges granted by the Governing Body or the performance of specified services within any department shall be subject to the rules and regulations of that department and the defined authority of the department chairman.

SECTION 4 - FUNCTIONS OF CLINICAL DEPARTMENTS

The primary responsibility delegated to each department is to implement and conduct ongoing specific review and evaluation activities that contribute to the preservation and improvement of the quality, performance, effectiveness and efficiency of patient care provided through the department. To carry out this responsibility, each department either alone or in concert with other organizational components of the Medical Staff and of the Hospital shall:

A Objectively review, analyze and evaluate the quality of care and performance provided through the department. In the interest of achieving quality patient care and performance, each department through an established system shall evaluate all clinical work performed under its jurisdiction, whether or not any particular Practitioner or other individual with clinical privileges whose work is subject to such evaluation is a member of the department. This must be done at least quarterly and must be based on objective,

measurable standards of care performance. All or part of such review may be carried out through clinical services or designated specialty groups with periodic (at least quarterly) reporting of the interpreted findings to the appropriate medical staff department(s). Alternatively, a department as a whole may perform the required review and evaluation functions. The department may also elect to send the review to the Medical Staff Peer Review Committee.

B Establish criteria for the granting of clinical privileges and, as appropriate, for the holding of office within the department.

C Recommend to the Credentials Committee the specific clinical privileges that each staff member or Medical Staff applicant may exercise in the department and the specific services that each designated professional personnel may provide.

D Establish such committees or other mechanisms as are necessary and desirable to maintain quality clinical performance.

E Monitor its members' performance on a concurrent basis for:

- 1 adherence to Medical Staff, Hospital and departmental rules and regulations, and policies/procedures,
- 2 meeting requirements for alternate coverage and for obtaining consultation, adherence to sound principles of clinical practice
- 3 appropriate invasive procedures and other patient care interventions,
- 4 unexpected clinical occurrences, including compliance with the Hospital Occurrence/Incident Screening Program (HOR), and
- 5 all relevant aspects of patient safety

F fulfill the responsibilities designated to the department as set forth in the quality performance improvement plan.

G receive and evaluate the compliance with medical necessity (admission and intervention) and clinical management criteria, the findings from use of occurrence screening criteria, reports of Medical Staff and other departmental committees, and compliance with the established patient care requirements (rules, regulations, policies, protocols) of the department and Medical Staff.

H coordinate with nursing and ancillary clinical patient care services and with other administrative support services the patient care provided by the department's members.

I conduct or participate in and make recommendations regarding the need for continuing education programs pertinent to state-of-the-art changes and in particular to

the findings of performance assessment and improvement activities

J maintain a permanent record of all department meetings activities to include the discussion content as well as conclusions reached or actions taken or recommended. Copies of minutes should be transmitted to the Medical Executive Committee.

SECTION 5 - DEPARTMENT CHAIRMAN AND VICE CHAIRMAN

A **Qualifications** Each chairman and vice chairman shall be a member of the active staff qualified by training, experience and demonstrated ability for the position. Each shall have demonstrated professional ability in at least one (1) of the clinical areas covered by the department, shall meet all state regulatory requirements, and shall be willing, able and eligible to discharge faithfully the functions of his office. The Department Director shall be certified by an appropriate specialty board or affirmatively establish comparable competence through the credentialing process.

B **Selection of Chairman and Vice Chairman** Each chairman and vice chairman shall be elected by the department membership from nominees submitted in writing by department members, or verbal nomination subject to approval of the MEC. or each chairman and vice chairman shall be appointed by the Chief of Staff after consultation with the MEC. If the MEC fails to approve the election of the chairman and vice chairman, the department shall hold another election.

C **Terms of Office** Department chairman and vice chairman shall serve a two (2) year term beginning on the first day of the Medical Staff term following his selection. The department chairman or elected department vice chairman may succeed himself. The department chairman or elected department vice chairman shall serve until his successor is chosen, unless he shall resign sooner or be removed from office. In the temporary or permanent absence of the department chairman, the vice chairman shall assume all duties, responsibilities, and authority of the chairman, and will become a member of the MEC. The vice chairman may be elected by the department membership or appointed by the Chief of Staff.

D **Removal of Department Chairman or Vice Chairman** Removal of a department chairman or vice chairman may be initiated by a two thirds (2/3) majority vote of department members eligible to vote and subject to approval of the MEC. The MEC or Governing Board may remove for cause as listed under Section 5B of Article IX of these Bylaws relating to removal of Medical Staff officers.

E **Responsibilities, Duties, and Authority of Department Chairman** Each chairman shall

1. account to the MEC for all professional and administrative activities within his department.

- 2 develop and implement in cooperation with the Chief of Staff and consistent with these Bylaws departmental mechanisms for performing the credentials review delineating clinical privileges and assigning staff classification, concurrent monitoring of practice performance that is objective and measurable include an occurrence screening program and the use of medical necessity and clinical management criteria quality management activities continuing medical education and utilization review,
- 3 transmit to the Credentials Committee the department's recommendation concerning appointment and reappointment, delineation of clinical privileges and corrective action with respect to practitioners in the department
- 4 maintain ongoing review of the professional performance of all Practitioners and any Specified Professional Personnel within the department contribute data to individual Practitioner's performance profiles, and report regularly to the Credentials Committee and MEC upon request and at the time of reappointment The report will include evidence of consideration of each Practitioner's health status in terms of the Practitioners ability to practice in the area in which privileges are sought
- 5 develop, implement, and enforce, in cooperation with the Chief of Staff and/or Vice Chief of Staff programs to perform the quality assessment and improvement and maintenance functions delegated to his service
- 6 serve as a member of the MEC, giving guidance on the overall medical policies of the Hospital and making specific recommendations and suggestions regarding his own department in order to promote quality patient care Within the department chairman shall implement actions taken by the MEC
- 7 enforce the Hospital and Medical Staff Bylaws Rules and Regulations, and policies, and the departmental rules and regulations, including, when appropriate the initiation of corrective action and investigative services and participate as consultants on an as- needed basis when his area is involved
- 8 actively encourage all department members to complete adequately and in a timely manner the medical records of their discharged patients (within the period required by these Bylaws rules and regulations and by any regulatory agency)
- 9 assign proctors to individuals who have been granted temporary privileges prior to staff membership approval or who are in provisional status as new appointed staff members or as otherwise requested by the MEC
- 10 cause departmental rules and regulations relating to standards of patient care

to be developed approved implemented and reviewed at least annually for any needed revision

- 11 cause all standing orders of Practitioners to be reviewed initially on change and periodically (e.g. annually) if the responsibility is not assigned to a standing committee of the Medical Staff (e.g. Pharmacy and Therapeutics Committee)
- 12 assist in the preparation of such annual reports including budgetary planning pertaining to the department as may be required by the MEC the Administrator or the Governing Body
- 13 assess and recommend to the Administrator off site sources for needed patient care services not provided by the department/service or the Hospital
- 14 determine whom, outside of the department members, the Chief of Staff, Administrator or his designee quality management coordinator and recording secretary, may attend department meetings,
- 15 perform such other duties commensurate with his office as may from time to time be reasonably requested of him by the Chief of Staff, the MEC, or Governing Body,
- 16 coordinate and integrate interdepartmental and intradepartmental services,
- 17 exercise general supervision over all clinical work performed through the service and
- 18 act as presiding officer at all service meetings and cause a permanent meeting report to be maintained and distributed as required

ARTICLE VI

COMMITTEES & FUNCTIONS

SECTION I - GENERAL CONSIDERATIONS

A **Standing and Special Committees** There shall be standing and special (ad hoc) committees of the Medical Staff. Unless stated otherwise in these Bylaws, the committees of this Article shall be standing committees of the Medical Staff. Special or ad hoc committees may be created by the MEC to perform specified tasks.

B **Appointment and Removal** Unless otherwise specified, the Chairman and members (except the MEC and its Chairman) of all committees shall be appointed for a two (2) year term and may be removed by the Chief of Staff after consultation with and approval of the MEC.

C **Minutes** Unless stated otherwise in these Bylaws, each committee shall submit a copy of its minutes to the MEC and shall maintain a permanent record of its proceedings including pertinent discussion and any conclusions, recommendations, and actions.

D **Participation of Non-Medical Staff Members** Persons who participate or attend committees or functions who are not Medical Staff members shall be selected by the Administrator with the concurrence of the committee Chairman or Chief of Staff. Non-medical staff members shall not be entitled to vote but may participate if invited in discussion.

E **Ex officio members** Ex officio committee members shall serve without vote.

F **Performance of Functions** Whenever these Bylaws require that a function be performed by

1. A Medical Staff committee but no committee has been specified, the MEC shall perform the function or designate a subcommittee to perform it.
2. The MEC, but a standing or special committee has been formed to perform the function, the committee so formed shall act in accordance with the authority delegated to it.

G **Vacancies** Unless stated otherwise in these Bylaws, vacancies on any committee shall be filled in the manner of original appointment to the committee. If an individual obtains membership by virtue of these Bylaws and is removed for cause, a successor may be selected by the MEC.

H **Medical Staff Committee Chairman** The chairman of each medical staff committee will change every two- (2) years. A physician may succeed himself or herself as chairman of any medical staff committee.

SECTION 2 - MEDICAL EXECUTIVE COMMITTEE (MEC)

A **Composition** The Medical Executive Committee shall be a standing committee of the Medical Staff. It shall consist of the officers of the staff: Chief of Staff, Vice Chief of Staff, and Secretary-treasurer. Chairman of all Medical Staff

Departments the most recent ex-chief of staff the Chairman of Credentials Committee the Chairman of the Med Surg PCU Committee one member selected at large from the Medical Staff by the Chief of Staff the Chief Medical Officer of the hospital who shall be an ex-officio member without vote and the Administrator of the hospital who shall be an ex-officio member without vote The Chief of Staff shall be Chairman of the committee Each voting member regardless of staff department, or other committee position held shall have only one (1) vote

B Responsibilities, Duties, and Authority The MEC shall

- 1 represent and act on behalf of the Medical Staff, subject to such limitation as may be imposed by these Bylaws,
- 2 make recommendations to the Governing Body on all matters relating to appointments, reappointments, clinical privileges, staff category and clinical department/service assignments, and corrective action When Specified Professional Personnel provide or are recommended to provide services in the Hospital the committee shall make recommendations to the Governing Body regarding their qualifications to provide those services and on the degree of supervision required,
- 3 receive and act upon reports and recommendations from Medical Staff committees, all clinical departments, and staff officers concerning performance improvement activities and the discharge of their delegated administrative responsibilities,
- 4 ensure, through evaluation by this committee or the Environment of Care Committee that each Medical Staff peer evaluation and performance assessment and improvement activity is performed effectively
- 5 coordinate the activities of, and policies adopted by, the staff departments/services, and committees,
- 6 fulfill the medical staffs' accountability to the Governing Body for the medical care rendered to patients in the Hospital,
- 7 initiate and pursue corrective action when warranted in accordance with these Bylaws,
- 8 take all reasonable steps to help provide for professional ethical conduct competence, and clinical performance on the part of all staff members
- 9 make recommendations to the Governing Body on medico- administrative and Hospital management matters as requested particularly as they relate to patient care through the Administrator and Chief of Staff

- 10 submit recommendations to the Governing Body for changes in the Medical Staff Bylaws, Rules and Regulations and other organizational documents pertaining to the Medical Staff
- 11 serve as a liaison to provide and promote effective relationships among the Medical Staff, Administration, and the Governing Body
- 12 participate in identifying community health needs, setting Hospital goals and implementing programs to meet those needs,
- 13 actively maintain effective Medical Staff participation in the hospital's occurrence screening program, and
- 14 promote in house Medical Staff continuing education activities that are relevant to the care and services provided in the hospital and, in particular, to the findings of Medical Staff peer evaluation and performance improvement activities

C **Meetings** The MEC shall meet as often as necessary to accomplish its functions but at least ten (10) times per year

SECTION 3 - CREDENTIALS COMMITTEE

A **Composition.** The Credentials Committee shall be a standing committee of the Medical Staff and shall consist of five (5) or more members of the active staff, with ex officio representation from administration who shall not vote. The physician members shall be representative of the major clinical departments. Whenever possible, when a physician is being reviewed, a peer representative, who is not a member of the committee, will participate for that part of the meeting. The Chairman of the committee shall be an active member of the Medical Staff appointed by the Chief of Staff.

B **Responsibilities, Duties and Authority** The committee shall

- 1 review and evaluate the qualifications of each applicant for initial appointment, reappointment or modification of appointment, and for clinical privileges
- 2 review each application prior to processing to determine if it is complete for processing and shall not process any application for membership or privileges that is incomplete
- 3 review and evaluate the qualifications of specified professional personnel to provide specific patient care services in the Hospital and to obtain and consider

the recommendations of the appropriate department,

4 obtain and consider the recommendations of the appropriate departments regarding initial appointment, reappointment, or modification of appointment and for clinical privileges

5 submit a report in accordance with these Bylaws to the MEC on the qualifications of each applicant for staff membership or clinical privileges and of each specified professional personnel to provide specific patient care services. Such report shall include recommendations for Medical Staff applicants as to appointment, staff category assignment, department/service affiliation and clinical privileges and for specified professional personnel the specific services to be performed. In either case, any special conditions will be recommended at the same time,

6 submit reports to the MEC on the status of pending applications including the specific reasons for any unusual delay in processing an application or request

7 monitor the number of patient contacts and the number of department and quarterly medical staff meetings of Practitioners in provisional status pending their final Medical Staff appointment,

8 provide that a separate credentials file is maintained for each staff member, each practitioner with clinical privileges, and each specified professional personnel, including reports from quality/performance assessment and improvement activities and of corrective actions of any degree

C **Meetings** The Credentials Committee shall meet as often as necessary to accomplish its functions

SECTION 4 - ENVIRONMENT OF CARE COMMITTEE

A **Composition** The Environment of Care Committee shall be a standing committee and shall consist of at least one active physician member from the medical staff, the Administrator or designee, the Chief Nursing Officer, the Quality Improvement Coordinator and the Risk Manager and other hospital staff as appointed by the administrator. Other individuals from either the Medical or Hospital staffs may participate as consultants on an as-needed basis.

B **Responsibilities, Duties, and Authority** The committee shall

1 review quality control reports from the various hospital departments to identify any trends and/or opportunities for improvement

- 2 receive, analyze and recommend action regarding any significant findings from quality control, safety or infection control reviews
- 3 review and approve the hospital plans for performance improvement, safety and infection control
- 4 receive and review safety reports including those related to emergency preparedness, provide input to effect positive change, review and approve safety policies,
- 5 receive, review and approve hospital infection control policies, issues and reports and provide input to effect improvement and positive changes,
- 6 perform at least an annual evaluation of the Environment of Care program to assure its comprehensiveness and effectiveness,
- 7 assure that an updated report is presented to the Governing Body annually
- 8 analyze the incidence and major causes of hospital acquired infections and make recommendations for improvement,
- 9 receive reports and monitor a preventive and corrective program designed to minimize infection hazards, including an employee health program,
- 10 institute appropriate control measures or studies if there is suspicion of a danger to patients or personnel. When the situation is considered to be urgent, the committee chairman or a physician member of the committee or the infection control practitioner may institute the control measure immediately and will be assisted by hospital personnel in doing so. The Chief of Staff and the Administrator shall be notified as soon as any urgent control measure is instituted and shall be consulted prior to the institution of any non-urgent measure. The attending practitioner shall be notified as soon as possible, however, when the patient's attending practitioner does not consider the measure necessary (e.g., the need to isolate a patient), the decision of the committee chairman or infection control practitioner in following established infection control policy, shall prevail.
- 11 review and approve cleaning agents to be used in the hospital and
- 12 determine when environmental cultures are required

C **Meetings** The Environment of Care Committee shall meet as often as necessary to accomplish its functions but at least (6) six times per year. The overall findings will be sent to MEC.

2 receive analyze and recommend action regarding any significant findings from quality control safety or infection control reviews

3 review and approve the hospital plans for performance improvement safety and infection control

4 receive and review safety reports including those related to emergency preparedness provide input to effect positive change review and approve safety policies,

5 receive review and approve hospital infection control policies issues and reports and provide input to effect improvement and positive changes,

6 perform at least an annual evaluation of the Environment of Care program to assure its comprehensiveness and effectiveness,

7 assure that an updated report is presented to the Governing Body annually,

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9 receive reports and monitor a preventive and corrective program designed to minimize infection hazards including an employee health program,

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11 review and approve cleaning agents to be used in the hospital and

12 determine when environmental cultures are required

C **Meetings** The Environment of Care Committee shall meet as often as necessary to accomplish its functions but at least (6) six times per year The overall findings will be sent to MEC

SECTION 5 - PHARMACY AND THERAPEUTICS COMMITTEE

A **Composition** The Pharmacy and Therapeutics Committee is a standing committee of the medical staff and shall consist of at least one physician from the active Medical Staff a pharmacist from the hospital's pharmacy service a representative from the laboratory infection control administration and from nursing services and when indicated a clinical dietitian. The physicians shall represent each Medical Staff department. The chairman shall be selected by the Chief of Staff.

B **Responsibilities, Duties & and Authority** The committee shall

1 evaluate the clinical usage of drugs (particularly high risk, problem-prone and investigative drugs) in the hospital, establishing priorities for specific drug or drug category reviews, and using measurable criteria in the review process. After any required peer review, the findings will be entered into the appropriate practitioner performance profiles,

2 establish and implement a well controlled or closed formulary to help control the use of drugs in the hospital. The committee will make recommendations to the MEC regarding any changes to the formulary. Requests for formulary changes from individual medical staff members must be submitted to the committee in writing and include the rationale for the change. The committee chairman will transmit the committee's action to the requesting Practitioner,

3 define and evaluate all significant untoward reactions to drugs. In addition, the committee shall strive for adequate reporting of actual or suspected untoward drug reactions, including the recommendation of periodic inservice training for nursing personnel and other appropriate hospital personnel,

4 define and evaluate all significant medication errors,

5 evaluate initially, when changes are made, and at least annually standing and routine orders containing medication orders,

6 assist in the formulation of and approval of all professional policies regarding the evaluation appraisal selection, procurement storage distribution use safety procedures and other matters relating to drug usage in the hospital

7 ensure the adequacy and centralization of intravenous mixtures total parenteral nutrition, and the mixture of chemotherapeutic agents,

8 make recommendations to the MEC on protocols proposed for the use of investigational or experimental and high-risk drugs and specific drug categories

for use in the hospital

9 review statistics and reports related to blood and blood product ordering handling dispensing, administering and monitoring the effects on patients and make recommendations as needed

10 maintain in conjunction with the P & T Committee an objective ongoing evaluation of the clinical use of all antibiotics used in the hospital whether the drugs are prescribed prophylactically empirically or therapeutically The committee shall recommend action for any required practice change to the MEC and shall follow-up through the Performance Improvement Committee to be sure the approved change has occurred The committee shall recommend objective and measurable criteria for use in all facets of antibiotic use evaluation,

11 evaluate clinical practice objectively for compliance with measurable criteria for the use of whole blood and each of its components administered in the hospital,

12 evaluate untoward transfusion reactions In addition the committee shall strive for adequate reporting of actual or suspected transfusion reactions including the recommendation of periodic in-service training for nursing personnel to identify such reactions,

13 maintain and evaluate blood use statistics in order to determine blood waste and recommend or take appropriate action,

14 encourage strongly the increased use of the type-and-screen vs type-and-crossmatch procedure, based on periodic (e g , annual) actual use statistics by practitioner departments/clinical specialties, and specific therapeutic interventions (e g , specific surgical procedures, etc),

15 the physician representatives will review blood and blood product usage Any isolated instances or patterns of inappropriate blood usage felt to be significant in the view of the Committee will be referred to the appropriate department for further review,

16 set priorities for any aspect of blood therapy evaluation and

17 Review and support activities to infection control including policy development surveillance prevention and control measures Data and trends related to infection control will be reviewed and processes for improvement of outcomes will be identified

C **Meetings** The Pharmacy and Therapeutics Committee shall meet as often as necessary to accomplish its function but at least four (4) times per year

SECTION 6 - OPERATING ROOM COMMITTEE

- A Composition** The Operating Room Committee shall be a standing committee and shall consist of active members of the Medical Staff from departments such as Anesthesia and Surgery specialties. In addition the committee shall have representation from the Administration Director of Surgical Services and other support departments as needed. The OR Committee shall have several subcommittees including but not limited to the following:

1 LASER COMMITTEE

a Composition The Laser Committee shall be a subcommittee of the OR Committee consisting of active Medical Staff from the surgery specialty, the Bio-Medical technician, the Director of Surgical Services and a representative from Hospital Administration.

b Responsibilities, Duties, and Authority The responsibilities, duties and authority of the Laser Committee shall be to:

- 1 monitor and trend laser usage and safety through the monitoring of quality indicators
- 2 make recommendations to the OR Committee policy and procedure development, continuing education, privilege/credential guidelines, and other quality of care issues and
- 3 report any concerns and/or laser needs to the OR Committee

c Meetings The Laser Committee shall meet as often as needed. The chairman of the Laser Committee shall be a member of the OR Committee appointed by the Chief of Staff, and serve as a liaison from the Medical Staff to Hospital Administration and report any issues to the OR Committee.

2 ENDOSCOPY COMMITTEE

a Composition The Endoscopy Committee shall be a subcommittee of the OR Committee consisting of active medical staff from both the Surgery and Medicine specialties, the Endoscopy nurse(s) and a representative from the Hospital Administration.

b Responsibilities, Duties, and Authority The responsibilities, duties and authority of the Endoscopy Committee shall be to:

- 1 monitor and trend endoscopy usage and safety
- 2 make recommendations to the OR Committee for policy and procedure development, continuing education privilege/credential guidelines and other quality of care issues and
- 3 report any concerns and or needs to the OR Committee

c **Meetings** The Endoscopy Committee shall meet as often as needed. The chairman of the Endoscopy Committee shall be a member of the OR Committee appointed by the Chief of Staff and serve as a liaison from the Medical Staff to Hospital Administration and report any issues to the OR Committee

3 **PAIN MANAGEMENT COMMITTEE**

a **Composition** The Pain Management Committee shall be a subcommittee of the OR Committee consisting of the active Medical Staff nursing representation from the Block Suite, the Director of Spine Services and a representative from Hospital Administration

b **Responsibilities, Duties, and Authority** The responsibilities duties and authority of the Pain Management Committee shall be to

- 1 monitor and trend block suite patient care and safety through monitoring of designated quality indicators,
- 2 make recommendations to the OR Committee for policy and procedure development, continuing education, privilege delineation, credentials guidelines, and other quality care issues,
- 3 report any concerns and / or Pain Management needs to the OR Committee

c **Meetings** The Pain Management Committee shall meet as often as needed. The chairman of the Pain Management Committee shall be a member of the OR Committee appointed by the Chief of Staff, and shall serve as a liaison from the Medical Staff to Hospital Administration and report any issues to the OR Committee

B **Responsibilities, Duties, and Authority** The responsibilities of the Operating Room (OR) Committee shall be to

- 1 review and monitor utilization of the operating room time including starting times operative times and efficient daily running of the operating room

schedule

2 develop policies concerning hours of the operating room operation including times that elective cases may be scheduled as well as hours which during the week that will be designated as emergency operative time

3 develop policies concerning the posting and scheduling of patients and efficient utilization of all available time and space in the operating room. Develop policies and procedures as deemed necessary from time to time to assure the most cooperative and efficient use of the operating room,

4 review Performance Improvement procedures,

5 make recommendations to ECRMC for obtaining new OR equipment, and review of OR design change,

6 assume other duties and responsibilities as would naturally fall under the direction of an OR Committee

C **Meetings** The OR Committee shall meet quarterly or as often as necessary to accomplish its functions

SECTION 7 – PERFORMANCE IMPROVEMENT COMMITTEE

A **Composition** The Performance Improvement Committee shall consist of at least one active member of the medical staff appointed by the Chief of Staff and shall serve as the Committee Chairperson. The other members of the PI Committee shall include the VPPCS, COO, Quality Management Coordinator, and four department directors selected annually by the CEO.

B **Responsibilities, Duties, Authority** The committee shall be responsible for performance improvement through

1 providing oversight to the implementation of the Hospital's plan for performance improvement,

2 reviewing and approving department performance improvement indicators, data to be collected and interventions

3 recommending and/or approving performance improvement teams for the purpose of process improvement

4 review and evaluation of and approving performance improvement data analysis and intervention

5 providing for the Medical Executive Committee and the Board of Directors an annual evaluation of the effectiveness of all aspects and components of the performance improvement process and recommendation for improvement and a projected plan for the following year

C **Meetings** The Performance Improvement Committee shall meet as often as needed to accomplish its functions but at least six (6) times a year

SECTION 8 - BYLAWS, RULES AND REGULATIONS COMMITTEE

A **Composition** The Bylaws, Rules and Regulations Committee is a standing committee of the medical staff and shall consist of three (3) or more physician members of the active staff including the Chief of Staff and the immediate past Chief of Staff. The Medical Staff Coordinator shall participate as an ex officio member without vote

B **Responsibilities, Duties, and Authority** The responsibilities, duties, and authority of the Bylaws, Rules and Regulations Committee shall be to

1 review at least annually the Medical Staff Bylaws, Rules and Regulations and recommend to the MEC and the Governing Body any changes deemed necessary for compliance with applicable laws and accreditation requirements and

2 ensure through ongoing review, that the Bylaws, Rules and Regulations reflect current practice and an efficient organization of the Medical Staff in performing its functions,

3 ask each clinical department to develop and implement rules and regulations to establish standards of patient care and ascertain that these rules and regulations are consistent with Medical Staff Bylaws, Rules and Regulations and with Hospital and Governing Body policies

C **Meetings** The Bylaws, Rules and Regulations Committee shall meet as often as necessary to accomplish its functions

SECTION 9 - MEDICAL RECORD/UTILIZATION REVIEW COMMITTEE

A **Composition** The Medical Record/Utilization Review Committee is a standing committee of the Medical Staff and shall consist of physicians from the active staff representing the major departments, a representative from administration and from

nursing services utilization review coordinator and discharge planner and the Health Information Services Director

B Responsibilities, Duties, and Authority The committee shall

1 review and evaluate medical records objectively using prescribed work sheets to assist in providing records that are adequate with regard to (a) continuity of care, (b) use in quality assessment and improvement activities (c) assisting in protecting the legal interest of the patient, the hospital, and the responsible practitioner, (d) clinical pertinence (particularly all significant changes in patient status) to be done by physicians (e) required documentation (f) patient/family involvement in the plan of care, (g) receipt and acknowledgment of patient/family instructions, (h) age specific information (particularly for infants and children), (i) pertinent psychosocial information, and (j) evidence of informed consent,

2 establish the format of the medical record in concert with the director of the Health Information Management department, and review and advise the Administrator and MEC regarding all forms to be used in the medical record,

3 review and recommend approval or not of all policies, rules, and regulations relating to medical records,

4 recommend any need for and the interval for microfilming medical records and participate in decisions for computerization of medical record data,

5 develop, or cause to be developed, and implement a record review system that, over a reasonable period of time, causes a representative sampling of the records of all practitioners to be evaluated for quality and clinical pertinence

6 furnish to medical staff and administration on a regular basis timely statistical data, the nature of which is to be determined through the information needs of the Hospital and Medical Staff,

7 comply with applicable requirements of the utilization review plan approved by the Medical Staff and Governing Body,

8 require documentation that utilization review is applied regardless of payment source,

9 require that focused reviews be emphasized and

10 determine whether under utilization and/or over utilization of practices has an adverse impact upon the quality of patient care and recommend appropriate corrective actions to be taken

B Meetings The Medical Record UR Committee shall meet as often as necessary

to accomplish its functions and clinical pertinence review

SECTION 10 - MEDICAL ETHICS COMMITTEE

A Composition The Medical Ethics Committee which may also be referred to as the Medical Ethics shall be a standing Medical Staff committee which shall have active Medical Staff members. It may include lay representatives, nurses, social workers, clergy, ethicists, and an attorney, the Administrator (or designee). Its membership shall represent a diversity of professions and shall include both men and women. A Medical Ethics member may not participate in the initial or continuing review of any project in which the member has a conflicting interest except to provide information as requested by the Medical Ethics Committee. The Medical Ethics Committee may, at its discretion, invite nonvoting individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the Medical Ethics Committee. The chairman shall be an experienced, Medical Staff member and shall assist in the appointment along with the Chief of Staff, of the remaining committee members.

B Meetings The Medical Ethics Committee shall meet as often as necessary to accomplish its functions at the call of the chairman. Except when an expedited review procedure is used, the Ethics Committee shall review proposed research at convened meetings at which a majority of the members of the Ethics Committee are present including at least one member whose primary concerns are in nonscientific areas. The Ethics Committee shall prepare and maintain adequate documentation of Ethics Committee activities and shall report to the MEC.

SECTION 11 - MEDICAL/SURGICAL/PCU (MED/SURG/PCU) COMMITTEE

A Composition The Med/Surg Committee shall be a standing committee of the Medical Staff and shall consist of at least one medical staff member of the active medical staff, the Director of Med/Surg and a Head Charge nurse. The Chairman of the Committee shall be a standing member of the Medical Executive Committee. The nursing staff will be ex-officio members and shall not vote. Other appropriate personnel can be appointed as deemed necessary by the Chairman of the Med/Surg Committee.

B Responsibilities, Duties, and Authority The committee shall be responsible for

- 1 enhancing the quality of care on the general Med/Surg floors,
- 2 assisting administration in planning programs of care for the continued growth of the Med/Surg unit
- 3 making recommendations for patient flow and interacting with the other clinical departments in matters that affect the operations of the Med Surg unit
- 4 identifying the patient care needs and promoting the attainment of patient

care goals

- 5 serving as a liaison between the nursing staff, medical staff, and administration, and
- 6 making recommendations to the Medical Executive Committee on any area of quality control issues or recommendations for the improvement in hospital services.

B Meetings The Med/Surg Committee shall meet as often as necessary to accomplish its function.

SECTION 12 – PATIENT SAFETY COMMITTEE

A Composition The Patient Safety Committee shall be a standing committee of the Medical Staff and shall consist of the Chief of Staff and an appointed active medical staff member as designated by the COS, the Patient Safety Officer. One of the physician members shall serve as Chairperson of the committee. The Committee shall call upon other physicians and staff members to participate in Committee meetings that relate to their department.

B Responsibilities, Duties, and Authority The committee shall be responsible for

- 1 Providing a systematic, coordinated and continuous approach to maintenance and improvement of patient safety,
- 2 developing a confidential system to track near misses, adverse events, sentinel events, patients, physician and staff,
- 3 assemble relevant patient safety data from internal and external sources
- 4 The assembled information will be relayed to the MEC and Board of Directors,
- 5 conduct proactive risk assessment of a high-risk process identified in the JCAHO Sentinel Event Alert or as identified by the Committee,
- 6 monitor and track Occurrence reports,
- 7 survey patients, family members, medical staff and other staff regarding their opinions, needs and perceptions of the risks to patients
- 8 notify patient and family when appropriate about outcomes of care including unanticipated outcomes and shall assure them that appropriate clinical measures are taken to respond to the unanticipated outcome.

C Meetings The Patient Safety shall meet quarterly or as often as necessary to accomplish its function.

SECTION 13 -PEER-REVIEW COMMITTEE

A Composition The Peer Review Committee is a standing committee of the Medical Staff and shall consist of the Chief of Staff or Designee to Chair the Committee, Chairman Department of Medicine or Designee, Chairman Department of Surgery or

Designee Chairman Department of OB GYN or Designee Chairman Department of Pediatrics or Designee Chairman Department of Family Medicine or Designee Member At-Large appointed by Chief of Staff and the Chief Medical Officer who is an ex officio adviser and nonvoting member

B Responsibilities, Duties, and Authority The committee shall

- 1 Conduct fair meaningful and comprehensive peer review by assessing data measuring physician performance with respect to the following (a) medical assessment and treatment of patients, (b) medication use and management (c) operative and other invasive procedures, (d) resuscitation and its outcomes and (e) the appropriateness of clinical practice patterns
- 2 Assess aspects of physician behavior as it relates to appropriate medical management of patients and staff relationships
- 3 Assess departures from the usual utilization practices

C Processes

- 1 Conduct individual case reviews where performance is questioned as a result of measurement and assessment activities. An initial screening review will be done by either the clinical department or the Chief Medical Officer. The body doing the initial screening review will be determined by the individual clinical department. Charts reviewed by the Chief Medical Officer which need further review will be referred to the appropriate clinical department. Charts deemed by the clinical department to need still further review will be referred to the Peer Review Committee. The Chief Medical Officer may do an independent screening review on any charts initially screened by a clinical department.
- 2 The clinical department may consult a specialty reviewer which is either inside or outside the hospital's Medical Staff if needed to conduct individual case reviews.
- 3 Provide for participation in the review process by the individual whose performances are being reviewed.
- 4 Collect and maintain individual practitioner data for tracking trends to enhance education, patient safety, and quality improvement.
- 5 Report composite data to MEC, Governing Board of the Hospital, and clinical departments as indicated.
- 6 Provide individual practitioner data to the Credentials Committee for use in the reappointment process.

7 Refer Appropriate Cases to the Clinical Department MEC Governing Board or other entities to consider disciplinary action

D Meetings

- 1 To be held monthly or as indicated by the need for prompt case review
- 2 Contingency meetings can be called at any time by the Chairman of the Peer Review Committee with sufficient notice to deal with individual problems that are time sensitive

ARTICLE XII
MEETINGS

SECTION 1 – QUARTERLY MEDICAL STAFF MEETINGS

A **Regular Meeting** Medical Staff meetings shall be held on a quarterly basis. The agenda shall include cumulative reports by staff officers and by committee and department chairman for the review and evaluation of the work done. Elections for staff office will be held at this meeting. The Chief of Staff shall preside at all general meetings of the Medical Staff.

B **Order of Business and Agenda** The order of business and agenda of the Quarterly Medical Staff meeting will be determined by the Chief of Staff.

C **Special Meeting** Special meeting of the Medical Staff may be called at any time by the Chief of Staff or at the written request of the Administrator, Governing Body, the MEC, or at least one-fourth (1/4) of the active staff members. The Chief of Staff shall call a special meeting within seven (7) days of his written request.

- 1 Written or printed notice stating the place, day and hour of any special meeting of the medical staff shall be delivered. Either personally or by mail to each member of the active staff not less than five (5) nor more than ten (10) days before the date of such meeting, by or at the direction of the Chief of Staff. If mailed, the notice of the meeting shall be deemed delivered when deposited postage prepaid in the United States mail addressed to each staff member at his address as it appears in the records of the Hospital. Notice may also be sent to members of other Medical Staff groups who have so requested. If a Medical Staff member is present at the time a specific meeting is called, this shall constitute a waiver of notice of such meeting, and
- 2 No business shall be transacted at any special meeting except that stated in the notice calling the meeting.

SECTION 2 – COMMITTEE AND DEPARTMENT MEETINGS

A Medical staff committees department and clinical services may by resolution provide the time for holding regular meetings and no notice other than such resolution shall then be required. Departments shall meet at least quarterly. Committees shall meet as required by these Bylaws.

B A special meeting of any committee or department may be called by or at the request of the chairman or chief thereof, by the Chief of Staff or by one third (1/3) of the group's current members. No business shall be transacted at any special meeting except that stated in the meeting notice.

C Notice of Meetings (Committee or Department)

- 1 Notice of regular meetings may be given orally or written.
- 2 For any special meeting or any regular meeting not held pursuant to resolution, written or oral notice stating the place, day and hour of the meeting shall be given to each member not less than five (5) days before the time such meeting. If mailed, the notice of the meeting shall be deemed delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the hospital, with postage prepaid.
- 3 The attendance of the Medical Staff member at the time a specific meeting is called, shall constitute a waiver of notice to such meeting.

SECTION 3 – QUORUM

A General Staff Meeting (Regular or Special, Committee Meetings or Departmental Meetings)

1 The presence of ten percent (10%) of the voting members of the Medical Staff at any regular or special meeting shall constitute a quorum for the purpose of transaction of any business including amendment to the Bylaws, Rules, and Regulations and the election of staff officers. A simple majority of those voting members who cast votes will be required to make decisions for the medical staff.

2 In the event that a quorum is not present at any regular or special meeting, those members present may meet as a sub-committee of the whole. Any action taken by those present acting as a sub-committee of the whole shall be referred for ratification purposes to the next regular or special meeting called for that purpose at which a quorum is present.

B Committee or Department Meeting

- 1 One half (1/2) of the voting members of a committee or department but not less than two (2) members shall constitute a quorum at any meeting

SECTION 4 – MANNER OF ACTION

A Except as otherwise specified in these Bylaws, the action of majority of the members present and voting at a meeting at which a quorum is present shall be the action of the group

B Action may be taken without a meeting of a committee or department by writing setting forth the action so taken and signed and dated by a majority of the members entitled to vote

SECTION 5 – MEETING MINUTES

Minutes of all meetings shall be prepared by the coordinator of the meeting and shall include a record of attendance and the vote taken on each matter. The minutes shall record a brief discussion of all problems discussed, indicating any recommendation made and forwarded, conclusions reached, and actions taken. The minutes shall be signed by the presiding officer, approved by the attendees, and forwarded to the MEC. A permanent file of the minutes of each meeting (and actions taken without an actual meeting) shall be maintained.

SECTION 6 – ATTENDANCE REQUIREMENT

A **Regular Attendance** Each member of the active staff shall be required to attend the following

- 1 At least fifty percent (50%) of the Quarterly Medical Staff meetings
- 2 Attendance at departmental meetings is determined by each department
Attendance at departmental meetings is required for a member of the medical staff when one of the member's cases is being reviewed or when the member is assigned to review cases of his peers

B **Absence from Meeting**

- 1 A member who is compelled to be absent from the required number of Quarterly Medical Staff meetings or attendance at required departmental meetings shall provide promptly in writing or verbally to the Medical Staff Coordinator the reason for such absence

- 2 Failure of an active member to attend the required number of Quarterly Medical Staff meetings or peer review assignments unless excused as described above for just cause shall automatically place the member on the provisional active staff for a period of one year
- 3 The meeting attendance record of each practitioner shall be maintained and made a part of the performance profile section of his credentials file

C Special Attendance Requirement

1 A practitioner whose patient's clinical course of treatment is scheduled for discussion at a meeting shall be so notified in writing by the Chairman or the Medical Staff Coordinator, at least ten (10) days prior to the meeting. The notification shall indicate the time and place of the meeting, a statement of the issue(s) involved, and whenever apparent or suspect deviation from standard clinical practice is involved, and the fact that the Practitioner's appearance is mandatory.

2 Failure of a practitioner to attend any meeting with respect to which he was given notice that his attendance was mandatory, shall unless excused by the MEC upon a showing of good cause, result in an automatic suspension of all or such portion of the practitioner's clinical privileges as the MEC may direct pursuant to Article VII of these Bylaws. Such suspension shall remain in effect until the matter is resolved by subsequent action of the MEC or of the Governing Body, if necessary, pursuant to Article VII. In all other cases if the practitioner shall make a timely request for postponement supported by an adequate excuse that his absence will be unavoidable, such presentation may be postponed by the Chief of Staff, or by the MEC if the Chief of Staff is involved, until not later than the next committee or department meeting. Otherwise the pertinent clinical information available shall be presented and discussed as scheduled.

SECTION 7 – NONVOTING EX - OFFICIO MEMBERS

Individuals serving under these Bylaws, as nonvoting ex officio members of a committee shall unless otherwise specified, have all other right and privileges of regular members except they shall not be counted in determining the existence of a quorum.

SECTION 8 – MEETING AS A COMMITTEE –OF-THE-WHOLE

Notwithstanding any other provision of these Bylaws, whenever the Medical staff or a department or committee meets it shall be considered to be meeting as a committee of the whole medical staff or department respectively.

SECTION 9 – CONDUCT OF MEETING

All meetings shall follow an acceptable form of parliamentary procedure such as Robert's Rules of Order in the conduct of meeting business

ARTICLE XIII

CONFIDENTIALITY/IMMUNITY FROM LIABILITY

SECTION 1 – CONFIDENTIALITY OF INFORMATION

A General Records and proceedings of all medical staff committees having the responsibility of the evaluation and improvement of quality of care and performance in this hospital and including information regarding any member or applicant to the medical staff or for clinical privileges or practice prerogatives, shall be confidential subject to release only in accordance with policies of the Medical Staff and privileged to the fullest extent permitted by law

B Agreement to maintain confidentially All individuals participating in or attending such committees or otherwise entitled to access such information shall keep all of the proceedings, minutes discussions and documents related to any peer review clinical performance or quality management matter confidential and subject to disclosure only in accordance with policies of the Medical Staff

C Breach of confidentiality Inasmuch as effective peer review, credentialing and quality/performance management activities must be based on free and candid discussions, any breach of confidentiality of the discussions deliberations or records of any medical staff meeting department or committee is outside appropriate standards of conduct for this medical staff and will be deemed disruptive to the operation of the hospital and as having an adverse impact on the quality of patient care Such breach or threatened breach shall subject the individual to disciplinary action under the Medical Staff Bylaws, Rules and Regulations and applicable hospital policies

DIn all matters relating to patients care and communications standards set forth by HIP AA shall be adhered to and enforced

SECTION 2 - PRIVILEGES/IMMUNITY

A Privileges Any act communication report recommendation or disclosure with respect to any applicant or member of the Medical Staff committee member or practice prerogatives performed or made for the purpose of assessing patient care or achieving and maintaining quality patient care in this or any other health care facility shall be privileged to the fullest extent permitted by law

B Application Such privileges shall extend to all individuals participating in the process of assessing patient care or achieving and maintaining quality patient care and practitioner performance including but not limited to members of the Medical Staff or Governing Body, Specified Professional Personnel the Administrator and designees and to third parties who supply information to any of the individuals or committees authorized to receive release or act upon such information For the purpose of this Article the term, "third parties" mean both individuals and organizations from which information has been requested and/or received by an authorized representative of a health care facility, its Governing Body, the Medical Staff or any committee or component thereof

C Immunity Immunity from civil liability for any act, communication report, recommendation or disclosure shall be upheld to the fullest extent permitted by law

SECTION 3 - RELEASES

All applicants and members of the medical staff shall execute a release of liability and of confidential information pursuant to these Bylaws

ARTICLE XIV

AMENDMENT AND ADOPTION OF BYLAWS

SECTION 1- MEDICAL STAFF RESPONSIBILITY

The Medical Staff (through its Bylaws Committee and the MEC) shall have the initial responsibility to formulate, adopt and recommend to the Governing Body Medical Staff Bylaws and amendments thereto which shall be effective when approved by the Governing Body Such responsibility shall be exercised in good faith and in a reasonable timely and responsible manner reflecting the interests of providing patient care of the generally recognized professional level of quality and efficiency and of maintaining a harmony of purpose and effort with the Governing Body and with the community Neither Body may unilaterally amend the Medical Staff Bylaws Written notification of Bylaw changes shall be made available to the Medical Staff and other Licensed

Independent Practitioner

SECTION 2- METHODOLOGY

Medical Staff Bylaws must be adopted, amended, or repealed by the following process:

- A. the affirmative vote of the majority of the Bylaws, Rules and Regulations Committee
- B. the affirmative vote of the MEC
- C. the affirmative vote of the Medical Staff members eligible to vote on this matter by written ballot or by action at a meeting at which a quorum is present, requiring a two-third vote, and
- D. the approval of the Governing Body, which shall not be unreasonably withheld

ARTICLE XV

RULES AND REGULATIONS

SECTION 1- MEDICAL STAFF RULES AND REGULATIONS

The Medical Staff shall adopt such rules and regulations as may be necessary to implement more specifically the general principles found within these Bylaws. The rules and regulations shall relate to the proper conduct of the Medical Staff organizational activities and will embody the specific standards and level of practice that are required of each medical staff member and other designated individuals who exercise clinical privileges or provide designated patient care services in the hospital. Such rules and regulations may be amended or repealed at any regular meeting of the Medical Executive Committee at which a quorum is present, by two-thirds (2/3) vote of the voting members present. Any such changes in the rules and regulations shall not become effective until approved by the Governing Body. Neither Body may unilaterally amend the Rules and Regulations. Written notification of Rules and Regulations changes shall be made available to the Medical Staff and other Licensed Independent Practitioners.

SECTION 2 - DEPARTMENTAL RULES AND REGULATIONS

Each department may establish through these Bylaws a set of rules and regulations which will become effective upon approval of the MEC and the Governing Body. Departmental rules and regulations shall be consistent with these Bylaws with the

Medical Staff Rules and Regulations and with established Hospital policies and will include standards of performance for department members

SECTION 3 - RELATIONSHIP TO BYLAWS

In the event there is a discrepancy between the Bylaws and any Rules and Regulations the Bylaws shall supersede the Rules and Regulations

ARTICLE XVI

HIPAA PRIVACY RULE COMPLIANCE

SECTION 1 - COMMITMENT TO PRIVACY RULE COMPLIANCE

The use and disclosure of health information is governed, in part by the Standards for Privacy of Individually Identifiable Health Information adopted by the U S Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time (the 'privacy Rule') Medical Staff members and Specified Professional Personnel authorized to provide services at the Hospital shall protect the privacy of patients' health information as required by the Privacy Rule other applicable law and the Hospital's privacy policies and procedures Further, the Medical Staff and Specified Professional Personnel are committed to protecting the privacy of patient health information in a manner that reasonably minimizes disruption to quality patient care

SECTION 2 - ORGANIZED HEALTH CARE ARRANGEMENT

The Privacy Rule permits multiple health care providers that are Covered Entities (as defined in the Privacy Rule) and provide health care in a clinically integrated care setting, such as the hospital setting to declare themselves an 'organized health care arrangement' (OHCA) Organized health care arrangement status generally permits its health care provider's participants to use and disclose health information for purposes of treatment payment and health care operations activities of the arrangement As such, it protects patient privacy while minimizing disruption to quality patient care Accordingly the Hospital has organized an organized health care arrangement to facilitate the appropriate sharing of health information in the Hospital between and among the Hospital its workforce members and business associates, Medical Staff members and Specified Professional Personnel authorized to provide services at the Hospital (the 'Hospital OHCA')

SECTION 3- AGREEMENT TO PARTICIPATE IN OHCA

By applying for an exercising clinical privileges at the Hospital each Medical Staff member and Specified Professional Personnel with service authorization agrees to participate in the Hospital OHCA

SECTION 4 - JOINT NOTICE OF PRIVACY PRACTICES

A The Privacy Rule requires a direct treatment provider who is a Covered Entity to deliver a notice of privacy practices to a patient no later than the provider's first date of service of the patient. Health care providers who participate in an organized health care arrangement may comply with this requirement by a joint notice. The implementation of a joint notice streamlines compliance with the Privacy Rule. Accordingly, with respect to Protected Health Information (as defined in the Privacy Rule) created or received by a Medical Staff member or an Specified Professional Personnel in connection with his or her provision of services in the Hospital, the Medical Staff member or Specified Professional Personnel provider agrees to abide by the terms of the joint Notice of Privacy Practices of the Hospital OHCA then in effect unless the Medical Staff member or Specified Professional Personnel provider has delivered a written notice to the Hospital specifying that he/she has opted out of the joint Notice of Privacy Practices. If a Medical Staff member or Specified Professional Personnel provider opts out, he/she shall reference the Hospital OHCA in their individual Notice of Privacy Practices.

B The Hospital may revise the Hospital OHCA's joint Notice of Privacy Practices in its reasonable discretion upon thirty days notice of a revision (with a copy of the revised joint notice) to the Medical Executive Committee (unless the compliance date of a law necessitates a shorter notice period). If the Medical Executive Committee does not object to the revised joint Notice of Privacy Practices before the expiration of the notice period, it shall become effective and binding upon Medical Staff members and Specified Professional Personnel providers with serve authorization upon expiration of the notice period.

SECTION 5 - CORRECTIVE ACTION

Whenever a Medical Staff member or Specified Professional Personnel provider with service authorization uses or discloses health information in a manner inconsistent with the Privacy Rule, other applicable law, the Hospital's privacy policies and procedures or the Hospital OHCA's joint Notice of Privacy Practices, such use or disclosure will be deemed disruptive to the operations of the Hospital and contrary to these Medical Staff

Bylaws Rules and Regulations and Hospital policies If the Medical Executive Committee determines that such an inconsistent use or disclosure has occurred it may undertake such corrective action as it deems appropriate in accordance with these Medical Staff Bylaws Rule and Regulations

These Medical Staff Bylaws were updated for printing on

CHIEF OF STAFF

DATE

PRESIDENT, CEO

DATE

CHAIRMAN OF THE BOARD

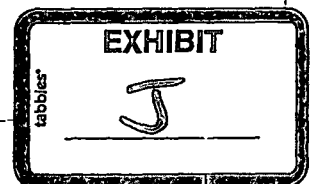
DATE

East Cooper Regional Medical Center

MEDICAL STAFF BYLAWS

Revised February 2007

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EAST COOPER REGIONAL MEDICAL CENTER
MEDICAL STAFF BYLAWS

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**EAST COOPER REGIONAL MEDICAL CENTER
A Tenet Health System Facility
MEDICAL STAFF BYLAWS**

PREAMBLE

East Cooper Regional Medical Center, a Tenet HealthSystem Facility, is a corporation organized under the laws of the state of South Carolina and its purpose is to serve as a general acute care hospital providing patient care, education and research

Recognizing that the Medical Staff is responsible for the quality of medical care in the Hospital and must accept and assume this responsibility, subject to the ultimate authority of the Hospital's Governing Body and that the best interests of the patient are better protected by concerted effort, the Practitioners of this Hospital are organized in conformity with these Bylaws and the Medical Staff Rules and Regulations. These Medical Staff Bylaws, Rules and Regulations create a framework within which medical staff members can act with a reasonable degree of freedom and confidence.

These Bylaws were prepared for compliance, and are to be construed in conformity with applicable hospital licensing laws, applicable accreditation guidelines and regulatory requirements, they do not constitute an express or implied contract between or among any individual, committee or entity, unless otherwise expressly determined by state law.

DEFINITIONS

The use of the male pronoun (he/his/him) throughout these Bylaws is applicable to either male or female.

- 1 **Administrator/Hospital President** the individual appointed by the Hospital to act on its behalf in the overall management of the Hospital
- 2 **Administrative Officer** a practitioner employed by the Hospital in a purely administrative capacity with no clinical duties or privileges and is subject to the regular personnel policies of the Hospital and to the terms of his contract or other conditions of employment, and need not be a member of the Medical Staff
- 3 **Chief of Staff** a member of the active Medical Staff who is elected in accordance with these Bylaws to serve as chief officer of the Medical Staff of this Hospital
- 4 **Clinical Privilege/Privileges** specified diagnostic and therapeutic services that may be exercised by authorized individuals on approval of the Governing Body

- 5 **Completed Application** an application, either for initial appointment or reappointment to the Medical Staff or for clinical privileges, that has been determined by the applicable Medical Staff department (s), Credentials Committee, Medical Executive Committee (MEC) and the Governing Body to meet the requirements of the Medical Staff Bylaws, Rules and Regulations
- 6 **Patient Contact** a patient contact is defined as any (1) inpatient admission, (2) outpatient admission requiring direct physician contact, (3) consultation or (4) direct emergency room contact
- 7 **Days** calendar days, unless otherwise noted
- 8 **Dentist** an individual, who has received a Doctor of Dental Surgery or a Doctor of Dental Medicine degree and has a current, unrestricted license to practice dentistry in this South Carolina Categorized as Specified Professional Personnel
- 9 **Department** a clinical division of the Medical Staff, grouping members in accordance with their specialty or major practice interest, as specified in these Bylaws
- 10 **Department Chairman** the member of the active Medical Staff who is duly selected in accordance with these Bylaws to serve as the head or director of a clinic department or service
- 11 **Ex Officio** service as a member of a body by virtue of an office or position held, and unless otherwise expressly provided and doesn't have voting rights
- 12 **Good Standing** the term "good standing" means a staff member whom, at the time the issue is raised, has met the attendance and committee participation and has the appropriate patient contacts requirements during the previous Medical Staff year, and has not received a suspension or restriction of membership or privileges in the previous twelve- (12) months
- 13 **Governing Body/Local Board** the local Governing Body of the Hospital, is the Board of Directors of East Cooper Regional Medical Center
- 14 **Hospital** East Cooper Regional Medical Center, A Tenet Healthcare System Facility
- 15 **Medical Executive Committee/(MEC)** the Medical Executive Committee of the Medical Staff, unless otherwise specified
- 16 **Medical Review Committee (MRC)** the committee appointed pursuant to these Bylaws for the purpose of evaluating the evidence and making findings in a Medical Staff hearing

- 17 **Medical Staff** the formal organization of all physicians, oral surgeons and podiatrists, who hold an unrestricted license in the state of South Carolina and who are privileged to provide patient care services at East Cooper Regional Medical Center within the scope of their licensure and approved clinical privileges
- 18 **Medical Staff Term/Year** two years
- 19 **Medico-Administrative Practitioner** The Medico Administrative Staff category shall consist of Practitioners who serve the hospital in an administrative capacity without consistent clinical responsibilities. Medico-Administrative Staff shall attain staff membership through the same procedure required for other Medical Staff categories. Their clinical privileges will be determined by the Credentials Committee and approved by the Medical Executive Committee on an individual basis when and if the need arises for clinical duties. They will not hold Medical Staff office nor have a vote on departmental or hospital-wide matters. They will not be responsible for Emergency Room call unless performing approved consistent clinical duties with appropriate on call coverage with other physicians on the Medical Staff. The right to Fair Hearing and Appeal process shall apply under these Bylaws only to clinical duties which are independent of the Practitioner's contract with the hospital.
- 20 **Member** a practitioner who has been granted and maintains Medical Staff membership and (except for honorary staff) clinical privileges and who is in good standing pursuant to these Bylaws
- 21 **Physician** an individual who holds a current, unrestricted license as a M D or D O in this state
- 22 **Podiatrist** an individual who has a doctor of podiatric medicine degree and a current, unrestricted license to practice podiatry in this state
- 23 **Practitioner** a physician as defined in these Bylaws with a current, unrestricted license issued by the state of South Carolina
- 24 **Service** a subdivision of either the Medical Staff or a clinical department, grouping members in accordance with their specialty or major practice interest, as specified in these Bylaws
- 25 **Specified Professional Personnel (SPP) a k a Allied Health Professional** individuals, other than those defined under "Practitioner," who provide direct patient care services in the Hospital under a defined degree of supervision, exercising judgment within the areas of documented professional competence and consistent with applicable law. These are individuals who are designated as SPP's by the Governing Body to be credentialed through the Medical Staff system. SPP's are not eligible for Medical Staff membership.

- 26 **Telemedicine** Telemedicine involves the use of electronic communication or other communication technologies to provide or support clinical care at a distance. Diagnosis and treatment of a patient may be performed via telemedicine link.
- 27 **Telemedicine Practitioner** Any licensed and appropriately credentialed practitioner who prescribes, renders a diagnosis or otherwise provides clinical treatment to a patient who has expressly applied for and been granted telemedicine privileges.

ARTICLE I

NAME

These are the Bylaws of the Medical Staff of East Cooper Regional Medical Center a Tenet Healthcare System Facility

ARTICLE II

PURPOSES AND RESPONSIBILITIES

SECTION I - PURPOSES OF THE MEDICAL STAFF

The purposes of the Medical Staff are to

- A provide an organized body through which the benefit of Medical Staff membership (mutual education, consultation, and professional support) may be obtained by each Medical Staff member and the obligations of Medical Staff membership may be fulfilled,
- B serve as the primary means for accountability to the Governing Body for the quality and appropriateness of the professional performance and ethical conduct of its members as well as of Specified Professional Personnel,
- C to strive for achievable quality patient care, efficiently delivered and maintained consistent with available resources, to the degree reasonably possible as determined by the state of the healing arts and resources locally available,
- D develop a structure, reflected in Medical Staff Bylaws, Rules and Regulations, policies, protocols, and other applicable documents, that adequately defines the responsibility and when appropriate the authority and accountability of each Medical Staff component, and provide a means through which the Medical Staff may provide recommendations to the hospital's policy making and planning process

SECTION 2 - RESPONSIBILITIES OF THE MEDICAL STAFF

The responsibilities of the Medical Staff are to account for the quality and appropriateness of patient care rendered by all Practitioners and Specified Professional Personnel authorized to provide patient care services in the Hospital by

- A processing credentials in a manner that matches verified qualifications, performance, and competence with clinical privileges for all Medical Staff applicants and members, and practice prerogatives for all Specified Professional Personnel,

B making recommendations to the Governing Body with respect to Medical Staff appointments, reappointments, staff category, provisional status, clinical privilege delineation, and as appropriate department, service and/or unit assignment and corrective actions,

C participating in the Hospital quality/performance improvement program by conducting objectively all required peer evaluation activities through Medical Staff and/or department/service review, specific (committee) monitoring processes, and a comprehensive occurrence screening program,

D providing an effective utilization review program for allocation of medical services based upon patient-specific determinations of individual medical needs,

E providing continuing education that is relevant to patient care provided in the Hospital as determined, to the degree reasonably possible, from the findings of quality/performance related activities,

F initiating and pursuing corrective action when indicated,

G enforcing the Medical Staff Bylaws, Rules and Regulations uniformly and consistently, and

H providing the Medical Staff Office a copy of their current State Medical license or Dental license, current State DEA and Federal DEA registration certificates and appropriate verification of malpractice insurance coverage annually

ARTICLE III

MEDICAL STAFF MEMBERSHIP

SECTION I - MEMBERSHIP AS A PRIVILEGE

A Membership on the Medical Staff of this Hospital and/or assignment of clinical privileges shall only be granted and maintained by those professionally qualified and currently competent practitioners who continuously meet the qualifications, standards, and requirements set forth in these Bylaws and the Rules and Regulations and policies of the Hospital. Appointment to and membership on the Medical Staff shall confer on the member only such clinical privileges which the Governing Body in accordance with these Bylaws has granted rights as

B No individual is automatically entitled to initial or continued membership on the Medical Staff or to exercise any clinical privilege in the Hospital merely because he is licensed to practice in this or any other state, or because he has previously been a member of this Medical Staff, or because he had, or now has membership or privileges at this or

another health care facility or another practice setting, or because he is a member of any professional organization

C Medical Staff membership does not create an employment or agency relationship between the Practitioner and the Hospital

D No physician shall admit or provide services to patients in the Hospital unless he is a member of the staff or has been granted temporary privileges in accordance with the procedures set forth in these Bylaws

SECTION 2 - GENERAL CRITERIA FOR MEMBERSHIP

Subject to exceptions provided by law or stated herein, Medical Staff membership and/or clinical privileges shall not be denied on the basis of sex, age, race, religion, creed, color, disability, or national origin, but shall be related to professional ability and judgment, relevant training and experience health status (subject to any necessary reasonable accommodation to the extent required by law), current competence, and to the Hospital's purposes, needs, and non-exclusive capabilities. When the determination is based on the Hospital's needs or its non-exclusive ability to provide the facilities, beds, and support staffing/services, consideration will be given, or as otherwise provided by law, to utilization patterns, and actual and planned allocations of physical, financial, and human resources, to general and specialized clinical and support services, and to the Hospital's specific goals and objectives as reflected in the Hospital's short and long range plans. It is recognized that some patient care services at the Hospital may be provided exclusively by a limited number of Practitioners selected by the Hospital, and who have been properly processed and granted Medical Staff membership and/or clinical privileges

SECTION 3 - QUALIFICATIONS AND OBLIGATIONS OF MEMBERSHIP OR PRIVILEGES

A **Qualification** In addition to the general criteria for membership, only physicians with a current, unrestricted license to practice in this state who can document their background, professional experience, worthy character, education, relevant training, judgment, and demonstrated current competence, adherence to the ethics of their profession, good reputation, health status (subject to any necessary reasonable accommodation to the extent required by law), the ability to work with others (staff members, members of other health care disciplines, Hospital management and employees, visitors, patients, and the community in general), and refrain from disruptive behavior which has or could interfere with patient care or the orderly operation of the Hospital, so as to demonstrate to the Medical Staff and Governing Body that any patient treated by them in the Hospital or in any of its facilities will be given care of the professional level of quality and efficiency as established by the Medical Staff and Hospital, shall be qualified for membership on the Medical Staff

B **Obligations** In addition to the other obligations listed in these Bylaws, each

applicant, by applying for or being granted membership or clinical privileges (temporary or otherwise), thereby agrees to

- 1 adhere to the generally recognized standards of professional ethics of his profession
- 2 not participate in fee splitting or "ghost" surgical or medical care
- 3 participate as required in peer evaluation activities
- 4 provide continuous care for his patients and delegate the responsibility for diagnosis or care of patients only to a member in good standing who has unrestricted clinical privileges to undertake that responsibility
- 5 obtain and document in the patient's medical record appropriate informed consent
- 6 abide by the Medical Staff Bylaws, Rules and Regulations, and applicable Hospital policies
- 7 complete adequately, and in a timely fashion, the medical and any other required records for all patients he admits or in any way provides care for in the Hospital. This will include timely completion of medical history and physical examinations for each patient admitted to the hospital
- 8 seek consultation whenever necessary
- 9 maintain the required amount of professional liability insurance in an amount and with a carrier approved by Tenet and the Governing Body and provide the hospital with a current certificate of insurance. The required coverage is \$1 million/\$3 million. The insurance must cover the types of privileges requested
- 10 reasonably assist the Hospital in fulfilling its uncompensated or partially compensated patient care obligations in the areas of professional competence and privileges
- 11 reasonably cooperate with the Hospital in its efforts to comply with accreditation, reimbursement, and legal or other regulatory requirements
- 12 supply requested information and appear for interviews with regard to membership or privileges
- 13 immediately notify the Administrator of the revocation or suspension of the applicant's professional license or the imposition of terms of probation or limitation of practice by any state licensing agency or the DEA, or of

any actions pending with regard to such adverse licensure activity, of the voluntary or involuntary loss of staff membership or clinical privileges at any health care institution, of the cancellation or restriction of professional liability coverage, of any adverse determination by a peer review organization or a third party payer reimbursement program concerning quality of care, of the commencement of a formal investigation or the filing of charges by the Department of Health and Human Services or any law enforcement agency or health regulatory agency of the United States or of any state, of the notice of intent to file or the filing of a claim alleging professional liability, or the filing of any criminal charges

- 14 maintain the confidentiality of all Medical Staff peer review matters, pursuant to these Bylaws
- 15 provide patients with care at the professional level of quality and efficiency as defined by the Medical Staff and Governing Body
- 16 discharge staff, department, committee and hospital functions for which he is responsible by staff category assignment, appointment, and election or otherwise
- 17 authorize the Hospital to consult with members of the Medical Staffs of other Hospitals with which the applicant has been associated and with others who may have information bearing on his competence, skill, character, ethical and other qualifications
- 18 consent to the Hospital's inspection of all records and documents that may be material to an evaluation of his professional qualifications for the clinical privileges he requests as well as his moral and ethical qualifications for staff membership
- 19 release from any liability, to the fullest extent permitted by law, all persons for their acts performed in connection with the investigation and evaluation of the applicant and his credentials
- 20 release from any liability, to the fullest extent permitted by law, all individuals and organizations who provide information regarding the applicant, including otherwise confidential information
- 21 consent to the disclosure to other health care entities, medical associations, licensing boards and other organizations any information regarding his professional or ethical standing that the hospital or medical staff may have, and release the medical staff and hospital from liability to the fullest extent permitted by law
- 22 comply with Medical Staff policies, rules and regulations

SECTION 4 -PARTICULAR QUALIFICATIONS

A Physicians An applicant for physician membership in the Medical Staff must hold an M D or D O degree issued by a medical or osteopathic school approved, at the time of issuance of such degree, by the State Board of Medical Examiners of the State of South Carolina and must also hold a valid, unrevoked and unsuspended certificate to practice medicine issued to him by the Board of Medical Examiners of the State of South Carolina. The clinical departments will establish specific qualifications for the granting of clinical privileges. Applicant must possess Board Certification recognized by the American Board of Medical Specialties (ABMS) within the specified time frame as determined by the applicant's respective board. If a specialty board does not specify a time frame for certification, the physician will have five (5) years from the time of completion of residency training to obtain specialty board certification. Physicians not only must obtain board certification by the ABMS, but they must maintain board certification in order to maintain medical staff membership. The requirement to maintain board certification will only apply to physicians appointed to the medical staff after February 1, 2004.

B Oral and Maxillofacial Surgeons An applicant for oral and maxillofacial surgeon membership in the Medical Staff must hold a doctor of dental medicine (DMD) degree or doctor of dental surgery (DDS) degree issued by a dental school approved, at the time of issuance of such degree, by the Board of Dental Examiners of South Carolina and must hold a valid, unrevoked and unsuspended certificate to practice dental medicine, as well as, a specialty certificate in oral and maxillofacial surgery, issued to him by the Board of Dental Examiners of South Carolina and must have successfully completed a post graduate program in oral and maxillofacial surgery accredited by a nationally recognized accredited body approved by the United States Department of Education. Applicant must possess Certification by the American Board of Oral and Maxillofacial Surgery (ABOMS) within the specified time frame as determined by the Board, or obtain Certification within (5) years from the time of completion of residency training. Oral and Maxillofacial Surgeons not only must obtain board certification by the ABOMS, but they must maintain board certification in order to maintain medical staff membership. The requirement to obtain and maintain ABOMS Board Certification will only apply to physicians appointed to the medical staff after February 1, 2007.

C Podiatrists An applicant for podiatric privileges in the medical staff must hold podiatric medicine degree (DPM) or equivalent degree issued by an approved podiatric school at the time of issuance. They must be approved by the State Board of Podiatry, hold a valid, unrevoked, unsuspended, certificate to practice podiatric medicine in the State of South Carolina. Applicant must possess Certification by the American Board of Podiatric Surgery (ABPS) within the specified time frame as determined by the Board, or obtain Certification within (5) years from the time of completion of residency training. Podiatrists not only must obtain board certification by the ABPS, but they must maintain board certification in order to maintain medical staff membership. The requirement to

obtain and maintain ABPS Board Certification will only apply to physicians appointed to the medical staff after February 1, 2007. The podiatrist would be responsible for the podiatric care of the patient, including the podiatric history and the physical examination as well as all appropriate elements of the patient's record. The podiatrist may write orders within the scope of his/her license, be consistent with the medical staff rules and regulations and in compliance with the hospital and medical staff bylaws.

D Specified Professional Personnel Specified Professional Personnel are not eligible for membership in the Medical Staff but may be granted appropriate practice privileges in the Hospital because they are duly licensed to practice in this or any state, or because they had or presently have, staff membership or privileges at another health care facility or in another practice setting.

SECTION 5 - REQUEST FOR MODIFICATION OF MEMBERSHIP STATUS OR PRIVILEGES

A staff member may, either in connection with reappointment or at any other time, request modification of his staff category, department assignment, or clinical privileges by submitting a written request/application to the Hospital President. Such request/application shall be processed as noted in Article VI, Section 5.

ARTICLE IV

CATEGORIES OF THE MEDICAL STAFF

SECTION I - MEDICAL STAFF

The Medical Staff shall be divided into the following categories: active, associate, courtesy, consultative and honorary.

SECTION 2 - ACTIVE STAFF

A Qualifications The active staff category shall consist of physicians, oral Surgeons and podiatrists who regularly admit, or personally provide services other than written consultation, to patients in the Hospital and who are located (primary or satellite office and temporary or permanent residence) within a reasonable distance and/or travel time to the Hospital in order to provide continuous care to their patients. Active staff members shall admit or provide the above-described services to at least 24 patient contacts per calendar year, and any less than this shall ordinarily be deemed a request for modification of membership status. Hospital-based Practitioners who do not admit patients may be members of the active Medical Staff if otherwise qualified. Active staff members assume the functions and responsibilities of membership including, when appropriate, emergency service care, disaster plan assignment, and consultation.

assignments. Members of the active staff shall be eligible to vote, hold staff and departmental office, serve on Medical Staff, departmental and Governing Body committees, and shall attend not less than the 50% of the Quarterly Medical Staff meetings. Departmental meeting attendance will be determined by each department. Attendance at departmental meetings is required for a member of the medical staff when one of the member's cases is being reviewed or when the member is assigned to review cases of his peers. Active staff members shall participate in the performance improvement activities required of the Medical Staff and shall serve, when qualified and required to do so, as proctors for other practitioners during any period of temporary privileges pending membership processing or during initial membership provisional status period. Active staff will be required to participate in the Emergency Room call schedule if their specialty has one. Active staff applicants will be on a provisional status for one year following Board approval. At that one-year anniversary date they will be re-evaluated to determine their status.

B Request for Provisional Status Change A physician can request in writing to the Medical Staff Office to be placed on a one-year probation when his Active status is in question. The Medical Staff Office will issue a letter stating the probationary period and the requirements. The requesting physician will read and sign the letter and return it back to the Medical Staff Office. The request will be forwarded to the Credentials Committee, Medical Executive Committee and the Board of Directors for final approval. If after one year the physician fails to meet the requirements set forth in the Bylaws for Active staff, he will be placed on Courtesy or Consulting staff until his next reappointment.

SECTION 3 - ASSOCIATE

A Qualifications The Associate staff category shall consist of practitioners who meet all the criteria for Active staff membership except the minimum required number of patient's contacts per year. These practitioners shall not have active privileges at any other hospital.

In order to allow adequate medical peer review of the smaller number of patient contacts by members of the Associate staff, all patient contacts will be reviewed by the department to which the practitioner is assigned. In addition, if the applicant desires privileges for surgical or invasive medical procedures he will be required to submit documentation of current clinical competence to the satisfaction of the appropriate Department Chairman and Credentials Committee. Members of the Associate staff must fulfill all requirements of the Active staff including, when appropriate, emergency service care, disaster plan assignment, and consultation assignments. They may serve on medical staff departmental and Governing Body committees and shall attend not less than 50% of the Quarterly Medical Staff meetings. Departmental meeting attendance will be determined by each department. Attendance at departmental meetings is required for a member of the medical staff when one of the member's cases is being reviewed or when the member is assigned to review cases of his peers. Members of the Associate staff shall be eligible to vote at departmental and assigned committee meetings only. They may not vote at Quarterly Medical Staff meetings. Associate staff will be required to participate in

the Emergency Room call schedule if their specialty has one Associate staff members shall participate in the performance improvement activities of the medical staff

If their number of patient s contacts should be 24 or more in any calendar year the Associate staff practitioner will be advanced to Active staff membership If the practitioner should attain Active staff privileges at any other hospital he will be placed on Courtesy staff

SECTION 4 - COURTESY STAFF

A Qualifications The Courtesy staff category shall consist of Practitioners who are located (primary or satellite office) within a reasonable distance and/or travel time to the Hospital to provide continuous care for their patients but who do not admit or provide services other than written consultation for more than twenty-four (24) patient contacts per calendar year Patient care services of more than the specified number of patients in a year by any member will require that the member be appointed to the active staff category Courtesy staff members shall be members of the active or associate active staff of another hospital in which their regular participation in performance improvement activities is documented and their performance evaluated

Courtesy staff membership shall provide satisfactory evidence to the Credentials Committee of such membership, participation, and evaluation Courtesy staff members are not eligible to vote on Medical Staff or departmental matters, or hold Medical Staff office They may serve as non-voting members of designated departmental and Hospital committees in which they participate, except for the Credentials Committee and the Medical Executive Committee They shall not be required to attend Quarterly Medical Staff meetings or serve on the emergency roster

SECTION 5 - CONSULTING STAFF

Qualifications The Consulting Medical Staff consists of physicians who do not admit patients to the hospital but who do desire privileges to provide consultative services to patients at the request of active or courtesy staff physicians Consulting staff generally provides expertise in a specialty or subspecialty that is not otherwise available through active or courtesy membership Consulting staff members are not eligible to admit patients, perform surgery, vote, or hold office They are not required to serve on committees or to take part in the emergency room call schedule Consulting staff members may render assistance in the operating room at the specific request of a surgeon who has admitting and operative privileges at East Cooper Regional Medical Center They are required to abide by the Bylaws, Rules and Regulations of the Medical Staff and Governing Body and applicable hospital policies

SECTION 6 - HONORARY STAFF

Qualifications The Honorary staff category shall consist of Practitioners who are not active in the Hospital or who are honored for ementus positions. These Practitioners may have retired from active practice and may no longer reside in the immediate community. They are not eligible to vote on Medical Staff matters, hold Medical Staff or departmental office, serve on committees, or admit or care for patients. They must discharge the basic responsibilities of all Medical Staff members, abide by all policies, Bylaws, Rules and Regulations and uphold the ethical principles of their profession. They are not required to have professional liability insurance or to attend Medical Staff or departmental meetings, but may do so if they wish.

SECTION 7 - LIMITATIONS

The prerogatives set forth under each staff category are general in nature and may be subject to limitations by special conditions attached to a Practitioner's staff membership, by other Sections of these Bylaws, and by other policies of the Hospital. The Board of Directors will have the prerogatives to waive and/or amend particular qualification only after due consideration and documentation of an individual's physical limitations.

SECTION 8 - WAIVER OF QUALIFICATIONS

Any qualifications may be waived at the discretion of the Board upon determination that such waiver will serve the best interests of the patients.

ARTICLE V

PROCEDURES FOR APPOINTMENT AND REAPPOINTMENT

SECTION 1 - CONDITIONS AND DURATION OF APPOINTMENT AND REAPPOINTMENT

Initial appointment and reappointments to the Medical Staff shall be made by the Governing Body upon a recommendation from the MEC, and shall be for a period up to, but not to exceed two (2) years. However, in the event of unusual delay or inappropriate recommendation on the part of the MEC, the Governing Body may act without or contrary to such recommendation on the basis of documented evidence of the applicant's or member's professional and ethical conduct. Prior to taking such action, however, the Governing Body shall notify the MEC of its intent and shall designate an action date prior to which the MEC may still fulfill its responsibility. Peer input shall be obtained and considered for all applicants for appointment and reappointment.

SECTION 2 - PROCEDURE FOR APPOINTMENT

A Application for Initial Appointment Each application for appointment to the Medical Staff shall be in writing, submitted on the prescribed form, and signed by the applicant. When an applicant is provided an application, he shall also be given access to a copy of these Bylaws, the Medical Staff and departmental Rules and Regulations, and applicable Hospital policies.

B Applicant's Responsibility The applicant shall have the burden of producing adequate information for a proper evaluation of his competence, character, skill, ethics, health status (subject to necessary reasonable accommodation to the extent required by law), ability to work with others, and other qualifications. Neither the Governing Body nor any Medical Staff committee shall have any obligation to review any application until the applicant completes it in all respects and submits all required information and supporting material. The applicant shall provide accurate, up to date information on the application. The applicant shall be responsible for resolving any doubts regarding the application and qualifications for membership and privileges requested. The application process must be completed within one (1) year from the time application was received by the Medical Staff Office. The applicant agrees to report immediately to the Administrator any change in the information that occurs after an application has been submitted. Any committee or its designee may request the applicant to appear for an interview with regard to the application. Failure to comply with any of these provisions, including failure to appear for any requested interview, may result in the application being deemed incomplete, or in the denial of membership or privileges, or may subject the practitioner to disciplinary action.

The information shall include, but not be limited to

- 1 identifying information
- 2 undergraduate education
- 3 postgraduate education and professional degrees (need source verification)
- 4 internship (need source verification)
- 5 residency/fellowship (need source verification)
- 6 all past and present Hospital and other health care entity affiliations (need source verification)
- 7 memberships in professional associations, societies, academies, colleges, and faculty/training appointments (need source verification)
- 8 specialty board certification status (need source verification)
- 9 state licensure with expiration date(s) (need source verification)

- 10 Drug Enforcement Administration (DEA) registration with expiration date (Both state and Federal DEA's)
- 11 professional references consisting of three (3) references two must be physicians, one in the same medical specialty as the applicant, and preferably one from an active ECRMC physician For applicants recently completing medical training the third reference will be the head of the clinical department where the applicant trained For applicants recently employed by a teaching or training hospital, the third reference must be from the head of that clinical department For applicants who have not recently been associated with a teaching center the third reference must be a physician familiar with the applicant's medical expertise All references must have recently worked with the applicant and directly observed his professional performance over a reasonable period of time They must be willing to provide reliable information regarding the applicant's current clinical ability, ethical character, and ability to work with others
- 12 previous practice data
- 13 continuing medical education for the past two years
- 14 bibliography of publications, speeches, and meetings attended, with dates
- 15 professional liability insurance, including carrier, amount and dates of coverage (need source verification) and past and present professional liability history
- 16 Responses to the following questions can and may be asked
 - (a) Has any professional license of yours, in any jurisdiction, or your DEA registration ever been denied, limited (either voluntarily or involuntarily), suspended, revoked, voluntarily or involuntarily surrendered or otherwise acted against or is any such action pending?
 - (b) Have your clinical privileges (including but not limited to temporary, locum tenens, admitting, consulting, and assisting) or membership at any health care facility ever been limited, suspended, reduced, denied, modified, revoked, not renewed, voluntarily or involuntarily relinquished or limited, or otherwise adversely acted upon, or is any such action pending?
 - (c) Have your clinical privileges or membership in any managed care organization, or medical or professional group (e g , HMO, PPO, IPA, etc) ever been (either voluntarily or involuntarily) limited, suspended, reduced, denied, modified, revoked, not renewed, voluntarily relinquished

or otherwise adversely acted upon, or is any such action pending?

(d) Have you ever been denied or voluntarily or involuntarily relinquished membership, or renewal thereof, or had your membership or affiliation revoked or otherwise acted against, or been subject to disciplinary action at any health care facility, medical group in any medical or professional group or organization, or is any such action pending?

(e) Have you ever been notified of an investigation or to appear before any licensing agency (State Board of Examiners, DEA, etc) for a hearing or complaint with regard to your professional license or DEA registration?

(f) Have you ever been convicted of a felony or misdemeanor (other than minor traffic offenses) or is any such action pending?

(g) Has any judgment or settlement been made against you in a professional liability case? If so, on a separate sheet, list the complete case name, the court in which the case was filed, the date of loss, the date you first received notice of the claim, the date of resolution, your insurance carrier and the amount of judgment or settlement paid on your behalf for each judgment or settlement

(h) Has any professional liability insurance claim been filed against you or have you reported any malpractice claim to your insurance carrier or have you received any letter of intent to sue?

(i) Are there any professional liability cases pending against you? If so, on a separate sheet, list the complete case name, court in which it was filed, date of loss, date you received notice of the claim, its current status, the name of your insurance carrier, and an explanation of the nature of the case

(j) Has any professional liability insurance carrier canceled, refused coverage, excluded specific procedures from your coverage, or has your insurance been rated up or has a surcharge been imposed by your insurance carrier or is any such action pending?

(k) Have you ever discontinued practice for any reason (other than for routine vacation or formal education/training) for one month or more?

(l) Have you ever been sanctioned, suspended, or otherwise restricted from participation in Medicare, Medicaid, or any government or private insurance plan?

The Medical Staff and Governing Body shall inquire, to the extent and in a manner permitted by law, into the physical and mental health status of the applicant so as to determine the practitioner's qualifications to render the privileges requested

- 17 a request for staff membership category and, if such exists, the department or clinical service assignment desired
- 18 clinical privileges desired
- 19 a specific signed consent for immunity and release from liability for all individuals involved in and performing the credentialing function
- 20 a small photo for identification purposes only
- 21 a list of medical staff physicians who have agreed to provide patient coverage in the absence of the applicant

C Submission of the Application The application shall be submitted through the Administrator to the Medical Staff Office for the purpose of assisting the Credentials Committee chairman, or designee, to have all information verified. The Hospital shall query the National Practitioner Data Bank (NPDB) and applicable state licensing board, if required, in compliance with existing laws and hospital policy, for all practitioners who are applying for privileges or membership. The applicant must immediately report to the Medical Staff Office any change in the information in the application that occurs after the application has been submitted.

D Significant Misrepresentation If an applicant supplies information in the application process that contains significant misrepresentations or omissions, this may be grounds for denial of the application, or if membership or privileges have been granted, for corrective action under these Bylaws.

E Incomplete Application - Further Information - Application Withdrawn From Processing Any committee or individual charged under these Bylaws with the responsibility of reviewing an application for appointment, reappointment, or new clinical privileges, may, upon review of the application, deem any such application incomplete. The fact that an application is deemed complete by the Medical Staff Office or a department or committee does not preclude the medical staff office or a committee or department which subsequently reviews the application from deeming it incomplete. If an application is deemed incomplete, it will not be processed. The individual or committee that deems an application incomplete shall request further documentation or clarification from the applicant. Such committee or individual requesting further documentation or clarification shall notify the applicant in writing and shall afford the applicant a set period of time to provide the requested information and clarification. Such Period of time shall be as deemed appropriate by the individual or committee requesting the information, but shall not exceed sixty (60) calendar days from receipt of the request to provide the requested information. Failure of an applicant to timely

produce all of the requested information, documentation and clarification shall result in the application being deemed incomplete and voluntarily withdrawn. Such action will not result in the filing of a report with the applicable state-licensing agency nor with the National Practitioner Data Bank. Any subsequent application submitted by this Practitioner shall be processed as an initial application under these Bylaws. Notwithstanding any other provision of these Bylaws, any Practitioner whose application is discontinued from processing pursuant to this section will not be entitled to the hearing and appeal rights under these Bylaws.

F Departmental Review Within sixty (60) days of receipt of the completed application, the Chairman of each department in which the applicant seeks privileges shall provide the Credentials Committee with a specific written or oral recommendation relating to staff category, clinical privileges, department affiliation, and any conditions, or recommend that the application be deferred for further consideration.

G Credential Committee Review Within sixty (60) days of receipt of the completed application and recommendation of the department(s), the Credentials Committee shall make a written recommendation to the MEC as to membership, and, if membership is recommended, as to staff category, privilege delineation, department/service assignment, and any conditions attached to the appointment.

H MEC Review and Recommendation At its next regular meeting after receipt of the recommendations of the Credentials Committee, the MEC shall submit its recommendation to the Governing Body relating to membership, and if appointment is recommended, to staff category, clinical privileges, and department affiliation and any special requirements or conditions. The recommendation shall be based on the review of all available information. The MEC may take action by recommending that the Governing Body either

- (a) defer making a recommendation,
- (b) appoint the applicant to a medical staff category in provisional status, clinical privileges, and department affiliation, or
- (c) reject the applicant's request for membership and/or privileges

- 1 The MEC may defer action on a complete application for a period not to exceed thirty (30) days except for good cause.
- 2 When the recommendation of the MEC is favorable to the applicant, the Administrator will forward it, together with all supporting documentation, to the Governing Body for consideration at its next scheduled meeting.
- 3 When the recommendation of the MEC is adverse to the applicant, the Administrator shall so inform the applicant within seven (7) working days, advising him of his hearing and appeal rights under these Bylaws.
- 4 Notice of an adverse recommendation shall be forwarded to the

Governing Body for its information, but shall not be acted upon until after the affected individual has exercised or waived the right to a hearing and appeal under these Bylaws

I Action by the Governing Body

- 1 Unless subject to the provisions of Hearing and Appellate Review Procedures of these Bylaws, the Governing Body or its duly authorized committee shall act on the matter at its next regular meeting following receipt of the recommendation of the MEC
 - (a) If the Governing Body adopts the recommendation of the MEC, it shall become the final action of the Hospital
 - (b) If the Governing Body does not adopt the recommendation of the MEC, the Governing Body may refer the matter to the MEC with instructions for further review and recommendation and a time frame for responding to the Governing Body. The MEC shall review the matter and shall forward its recommendation to the Governing Body. If the Governing Body adopts the recommendation of the MEC, it shall become the final action of the Hospital
 - (c) If the action of the Governing Body is adverse to the applicant, the Administrator shall send written notice to the applicant within seven (7) working days advising the applicant if he is entitled to the hearing and appeal rights under these Bylaws
 - (d) An adverse decision of the Governing Body shall not become final until the applicant has exercised or waived his hearing and appeal rights under these Bylaws. Except for corrective action taken pursuant to Article VII, Section 3, adverse action recommended by the MEC shall not take effect until the Governing Body has made its final decision. The fact that such adverse decision is not yet final shall not be deemed to confer membership or privileges when none existed before
- 2 At its next regular meeting, after all of the affected individual's hearing and appeal rights under these Bylaws have been exhausted or waived, the Governing Body shall take final action. All decisions to appoint shall include a delineation of clinical privileges, staff category, department affiliation and any applicable conditions and the applicant shall be so notified

Subject to any applicable provisions of the Fair Hearing and Appellate Review Procedures, notice of the Governing Body's final decision shall be given in writing through the Administrator to the applicant within seven (7) working days of the final decision. The Chief of Staff shall give notice to the MEC, the Credentials Committee, and the department chairman. In the event a hearing and/or appeal was held, Fair Hearing and Appellate Review Procedures Appeal to Governing Body, shall govern notice of the Governing

Body's final decision

J Provisional Status All initial appointments to any category of the Medical Staff shall be provisional for twelve (12) months. The care observed shall be relevant to the privileges granted. The purpose of observation is to determine the individual's eligibility for advancement from provisional status and for exercising the clinical privileges provisionally granted. The Chairman shall complete a provisional form with comments on the appointee's performance. Each provisional report will be evaluated when the provisional year is completed in order to track the physician's compliance with the requirements of the Medical Staff. A Practitioner may request an additional year on provision to meet the Active staff requirements. If after that one (1) year, the practitioner fails to meet the necessary requirements, he'll be assigned to the Courtesy or Consulting staff category and will not be able to apply to the Active staff for one (1) year. No member may be on provisional status for a total period longer than twenty-four (24) months. Unless excused for good cause by the MEC and Governing Body, a Practitioner's failure to complete the required number of Patient Contacts, Quarterly Medical Staff meetings or required peer review assignments shall be deemed voluntary relinquishment of Active staff privileges and membership, such affected practitioner shall not be entitled to the hearing and appeal rights under these Bylaws.

K. Previously Denied or Terminated Applicants Notwithstanding any other provision of these Bylaws, if an application is tendered by an applicant who has been previously denied membership and/or privileges, or who has had membership and/or privileges terminated, or whose prior application was deemed incomplete and withdrawn, and it appears that the application is based on substantially the same information as when previously denied, terminated, or deemed withdrawn, then the application shall be deemed insufficient by the Credentials Committee and returned to the applicant as unacceptable for processing. No such application shall be processed, and no right of hearing or appeal shall be available in connection with the return of such application. Applicant must then wait one calendar year before reapplying.

L Telemedicine Practitioner An appropriately credentialed practitioner who is responsible for the care of a patient via telemedicine link is subject to the credentialing and privileging process of the originating site that recommends the clinical services to be provided by the practitioner through a telemedicine link at their respective site.

SECTION 3 - THE REAPPOINTMENT PROCESS

A. Application At least ninety (90) days prior to a Practitioner's privileges expiring (based on a two year reappointment) the Medical Staff Office shall provide each member with an approved "Application for Reappointment" form which must be completed and returned within thirty (30) days to the Medical Staff Office for review. A late fee will be charged for the continued processing of the application past the 30-day deadline. Information to be available for review shall include at least objective evidence of the

individual's clinical competence based on peer review activities,

- 1 evidence of the individual's support of the Medical Staff and Hospital (e g , medical record deficiency/delinquency status, meeting attendance, committee service, satisfaction of minimum patient care requirements to maintain staff category, compliance with the Bylaws, Rules and Regulations, and applicable hospital policies),
- 2 any request or recommendation for changes in staff category, clinical privileges, or department assignment, citing the reasons and supporting information,
- 3 evidence of consideration of the staff member's health status (subject to necessary reasonable accommodation to the extent required by law),
- 4 information regarding any sanctions imposed by another health care facility, professional organization, or licensing authority,
- 5 malpractice claims experience since the last reappraisal, including at a minimum, final judgments and settlements against the applicant, identifying the case name, court, date of loss, date of disposition, amount paid in judgment or settlement and a description of the case,
- 6 evidence of current licensure and DEA registration,
- 7 evidence of professional liability coverage (carrier, type, policy number, amount, and expiration date) and any limitations,
- 8 information regarding previously successful or currently pending, challenges to any licensure or registration (DEA) or the voluntary or involuntarily relinquishment of such licensure or registration,
- 9 information regarding voluntary or involuntary termination of membership, or the voluntary or involuntary limitation, reduction, or loss of clinical privileges at another health care facility,
- 10 evidence of a query sent to the National Practitioner Data Bank, information regarding any pending criminal charges or criminal convictions,
- 11 As of January 1, 2000, All staff members are required to complete forty (40) CME credit hours every two-(2) years in Category I AMA approved credit within the staff member's medical specialty Any staff member who fails to meet this requirement shall be given six (6) months to complete the required CME hours He will be on Provisional staff until the hours are accomplished Failure to complete the required hours in six (6) months will result in loss of staff privileges, and

12 List of staff member's physician to cover patients in his absence

B Failure to Complete Application/Incomplete Application A Practitioner who fails to return the form or to supply all of the required information within thirty (30) days prior to the expiration of the current appointment period or respond in a timely manner to a request for information shall be deemed to have resigned his Medical Staff membership, effective as of the date of the expiration of his current appointment. A Practitioner who is deemed to have resigned under this section shall not be entitled to the hearing and appeal rights under these Bylaws.

C Applicant's Responsibility The applicant shall have the burden of producing adequate information for a proper evaluation of his current competence, character, skill, ethics, health status in terms of his ability to practice in the area in which privileges are sought (subject to necessary reasonable accommodation to the extent required by law) ability to work with others, and other qualifications. By applying for appointment or reappointment to the Medical Staff, or for clinical privileges, the Practitioner agrees to comply with the Medical Staff Bylaws, the Medical Staff and departmental Rules and Regulations, and applicable Hospital policies.

D Processing Delays The time periods specified are to guide the parties in accomplishing their tasks. If reappointment processing has not been completed by an appointment expiration date through no fault of the member, the member shall maintain his current membership status and privileges until such processing is completed, except to the extent that corrective action is taken. If the processing delay is attributable to the member's failure to provide required information, his membership shall terminate pursuant to Section 6 in this Article. Any extension of an appointment pursuant to this Section does not create a vested right in the member for continued appointment through the entire next cycle but only until such time as processing of the application is concluded.

E Department Review The Medical Staff Office shall forward to the department Chairman the reappointment application and all relevant information. The department Chairman shall render to the Credentials Committee within thirty (30) days of receipt, an individual specific written statement regarding the department member's reappointment and clinical privileges based on the above information and any other pertinent information available. The reason for any change shall be documented.

F Credentials Committee Review The Credentials Committee shall review all pertinent information and within thirty (30) days make its written recommendation to the MEC concerning the member's reappointment and clinical privilege delineation. The reason for any change of such recommendation shall be stated and documented. Action by the Governing Body shall be governed by Section 2 I of Article V of these Bylaws.

SECTION 4 - CLOSED-STAFF, EXCLUSIVE CONTRACTS

A Exclusive Contracts The Governing Body may determine as a matter of policy that certain Hospital clinical facilities may be used only on an exclusive basis in accordance with written contracts between the Hospital and qualified professionals. These may include, but are not limited to, emergency care services, anesthesiology services, radiology services, pathology and clinical laboratory services. Applications for initial appointment or for privileges related to those Hospital facilities and services specified in such contract(s) will not be accepted for processing unless submitted with confirmation from the Administrator that they are from applicants that have an existing or proposed contract with the Hospital.

B Contract Practitioners A Practitioner who is providing contract services pursuant to Section 4 A, must meet the same membership qualifications, must be processed for appointment, reappointment, and clinical privilege delineation in the same manner, and must fulfill all of the obligations for membership category and clinical privileges as any other applicant or member.

C Termination/Reduction of Privileges Practice at the Hospital is always contingent upon continued staff membership, and is also dependent on the clinical privileges granted. The right of a Practitioner who is providing contract services to practice at the Hospital is automatically terminated when his staff membership expires or is terminated. Similarly, his right to render services under the contract is automatically limited to the extent that his clinical privileges are reduced, restricted or terminated.¹

D Expiration/Termination of Contract The effect of expiration or other termination of a contract upon a Practitioner's staff membership and clinical privileges will be governed solely by the terms of the Practitioner's contract. If the contract is silent on the matter, then contract expiration or termination will not affect the Practitioner's staff membership or clinical privileges, except that the Practitioner may not thereafter exercise any clinical privileges for which the Hospital has made exclusive contractual arrangements with another Practitioner.

SECTION 5 - MEDICO-ADMINISTRATIVE PRACTITIONERS

Practitioners who have a contract with the Hospital, either full-time or part-time, in a Medico-Administrative position that includes staff clinical responsibilities or functions, must be members of the Medical Staff. In addition to any applicable terms of the contract, such Practitioners shall achieve staff membership and clinical privilege delineation through the same procedure as is required for other Medical Staff members. The right to the hearing and appeal procedures under these Bylaws shall apply if the Practitioner's clinical privileges, which are independent of the Practitioner's contract, are also terminated, removed, or suspended.

SECTION 6 - LEAVE OF ABSENCE FOR EDUCATIONAL, MEDICAL OR PERSONAL REASONS

A Request for Leave of Absence A member may request a voluntary leave of absence from the Medical Staff by submitting a written request to the Administrator whom will transmit this request to the Credentials Committee and the MEC. The request shall state the reason for the request and the specific time period that may not exceed the member's current term of appointment. The MEC and the Governing Body must approve all leaves. By requesting a leave of absence the member understands and agrees that he will be treated as an initial applicant for the purpose of evaluating his qualifications for reinstatement and he shall bear the burden of proof to demonstrate to the satisfaction of the MEC and the Governing Body that he is qualified for reinstatement. During the period of leave, the member's clinical privileges shall be inactive.

B Request for Reinstatement At least thirty (30) days prior to termination of leave, or at any earlier time, the member may request reinstatement of privileges by submitting a written notice to that effect to the Administrator, who will transmit this notice to the Credentials Committee and the MEC. The member must also submit a written summary, detailing his professional and patient care activities during the leave. The Credentials Committee shall evaluate the request and may deem it incomplete if any necessary information is not provided. The MEC on receipt of the recommendation of the Credentials Committee, may deem the request incomplete, may request further information from the member, may defer action on the request, or may make a recommendation to the Governing Body concerning the reinstatement of the member's privileges and any conditions that should be attached. Thereafter, the procedure provided in Article V, Section 2 shall apply.

C Failure to Request Reinstatement Failure without good cause to request reinstatement, to supply sufficient information for the request to be deemed complete, or failure to provide a summary of professional and other activities as above required shall constitute a voluntary resignation from the staff, effective immediately. The MEC shall in its sole discretion, and after giving the Practitioner an opportunity to address the MEC, determine whether good cause exists. Such voluntary resignation shall not entitle the Practitioner to the hearing and appeal rights under these Bylaws. A request for staff membership subsequently received from this Practitioner shall be treated and processed as an application for initial appointment.

D Routine Observation Requirement In the discretion of the MEC, reinstatement may be made subject to an observation requirement for a period of time during which the Practitioner's clinical performance is observed by one (1) or more designated Medical Staff members. Such routine observation shall not be considered disciplinary action and shall not entitle the practitioner to the hearing and appeal rights under these Bylaws.

E Request for Leave of Absence for Medical Reasons If a member of the medical staff is absent from his usual practice of medicine for greater than 30 days for medical reasons, a request for medical leave of absence must be submitted to the Chief of

Staff who will refer the request to the Credentials Committee and the MEC. The request must state the reason for the medical leave and the anticipated length of leave. The request must be approved by the MEC and the Governing Body. Upon return to active medical practice, the member must submit a letter from his physician to the Chief of Staff stating the member's physical and mental competence to return to hospital medical practice. The MEC and the Governing Board will approve the member's return to the medical staff. If a significant period of time elapses between the time the competency letter is received and the next meeting of the MEC, the administrator in collaboration with the Chief of Staff can grant reinstatement pending approval at the next scheduled meeting of the MEC and Governing Board.

SECTION 7 – IMPAIRED PHYSICIAN POLICY

For the purpose of these Bylaws the term impaired is hereby defined as any physical, mental or pharmacologically induced disability that interferes with a practitioner's ability to perform his medical or administrative duties. This policy is separate from any disciplinary action towards the practitioner for any reason other than impairment. If any individual working in the medical center has a reasonable suspicion that a practitioner appointed to the medical staff exhibits signs of physical and/or mental impairment the following steps should be taken:

The individual who suspects the Practitioner of being impaired must give a written report to the Chief Executive Officer (CEO) and Chief of Staff (COS). The individual making the reports does not need to have definitive proof of the impairment, but a factual report must be submitted to include a description of the actions or incident(s) that led to the belief that a Practitioner might be impaired. The CEO will forward any reports received to the COS, and the COS will forward any reports received to the CEO for information. Initial informal resolution may be attempted with the involvement of the COS and CEO, the individual making the report and the Practitioner. The Practitioner and the individual making the report may each meet separately with the COS and CEO in an attempt to resolve the issue. The name(s) of the individual(s) who filed the report will be kept confidential until such time as formal action is undertaken to address the incident or documented pattern of impairment. If after discussion of the incident(s) with the parties involved, the COS believes there is enough information to warrant an investigation, an investigation shall be conducted and a report of the findings rendered by an investigating committee consisting of one of the following:

- 1 The COS and appropriate Department Chairman
- 2 A sub-committee of the medical staff as appointed by the COS

The Practitioner will be notified in writing by the COS that an investigation will occur in connection with obtaining the facts of the investigation, the Practitioner shall have the opportunity for an interview with the investigating committee. At this meeting, the Practitioner will be informed of the nature of the matter(s) being investigated and shall be invited to discuss, explain, or refute the allegations.

The interview is considered part of the investigation of the facts and does not constitute a hearing. This interview is preliminary to the taking of any professional review action and the hearing procedural rules of the Fair Hearing and Appellate Review shall not apply to the interview. A written and/or audio tape recording of this interview shall be made. No video records will be made.

After the facts have been gathered and interview(s) conducted the committee will meet to take action on the results of the investigation. The committee's investigation report and recommendations will then be prepared.

If the investigation produces sufficient evidence that the Practitioner is impaired, the COS shall meet personally with that Practitioner or designate another appropriate individual to do so. The Practitioner shall be informed that the results of the investigation identified that the Practitioner suffers from an impairment that affects his clinical judgment and/or competence to provide quality patient care.

The Practitioner has the right to be informed of the substantive details of the specific incidents(s) in question. The name(s) of the individual(s) who filed the report will be kept confidential until such time as formal action is undertaken to address the incident or documented pattern of impairment.

A copy of the investigating committee's report and recommendations will be provided to the Practitioner, who will then be permitted to submit a response. If the Practitioner does not feel the report is a fair representation of the investigation, they may submit an addendum to be attached to the report.

The investigating committee will then submit its report and the Practitioner's response to the Medical Executive Committee (MEC). A copy of both documents will also be provided to the CEO.

Depending upon the severity of the problem and the nature of the impairment, the MEC may recommend one or more of the following actions:

1. Require the Practitioner to undertake a rehabilitation program as a condition of continued appointment and clinical privileges.
2. Impose appropriate restrictions on the Practitioner's clinical practice.
3. Immediately suspend the Practitioner's clinical privileges to the medical center until rehabilitation has been successfully accomplished.
4. Accept the Practitioner's voluntary relinquishment of clinical privileges.
5. Any other action which the MEC and/or the Board in consultation with the CEO, determines will best serve the interests of the Practitioner, medical staff, and/or medical center, and/or patients.

A report shall be made to all administrative bodies as required by law. The MEC shall seek the advice of the medical center's legal counsel to determine whether any conduct

must be reported to the law enforcement authorities or other government agencies, and what further steps must be taken

If an "adverse action" is recommended by the MEC with respect to the Practitioner's privileges, the physician is entitled to procedural rights defined in the Fair Hearing and Appellate Review section of the Medical Staff Bylaws

The original report and a description of the actions will be included in the Practitioner's peer review file. If the investigation reveals that there is no merit to the report, all copies of the report and all pertinent documents shall be removed from the practitioner's file and destroyed. If the investigation reveals that there may be some merit to the report, but not enough to warrant immediate action, the report shall be included in the peer review file. The Practitioner's activities and clinical privileges shall be monitored until it can be established whether there is an impairment problem.

The COS shall notify the individual in writing that filed the report and any action taken. The COS shall inform the CEO when the notification has taken place.

Throughout this process, all parties shall avoid speculation, conclusions, gossip, and any discussions of this matter to anyone not involved in the investigation and review process described in this policy. All reports and information gathered during the course of the investigation and review process will be treated by all parties as strictly confidential.

Rehabilitation

If a program of rehabilitation is necessary, the COS or designee shall assist the Practitioner in locating a suitable rehabilitation program. The MEC shall not reinstate a Practitioner until it is established to the Board's satisfaction, that the Practitioner has successfully completed a rehabilitation program approved in writing by the MEC.

The MEC must be provided with a letter from the Medical Director of the rehabilitation program where the Practitioner was treated. This letter must be submitted monthly and must state:

- 1 whether the Practitioner is participating in the program,
- 2 whether the Practitioner is in compliance with all the terms of the program,
- 3 whether the Practitioner attends program meetings regularly (if appropriate),
- 4 to what extent the Practitioner's behavior and conduct are monitored,
- 5 whether, in the opinion of the Medical Director of the rehabilitation program, the Practitioner is rehabilitated,
- 6 whether an after-care program has been recommended to the Practitioner and, if so, a description of the after-care program
- 7 whether, in the Medical Director's opinion, the Practitioner is capable of resuming medical practice and providing continuous, competent care to patients

The Practitioner must inform the MEC of the name, address and phone number of his primary care physician, and must authorize the physician to provide the MEC with information regarding the Practitioner's condition and treatment. The MEC has the right to require an opinion from other physician consultants of their choice. The MEC shall request the primary care physician to provide information regarding the precise nature of the Practitioner's condition and treatment as it related to the impairment.

Failure to comply with all of the above conditions may result in suspension or revocation of the Practitioner's medical staff privileges.

Reinstatement

If the MEC is satisfied that the Practitioner has successfully completed a rehabilitation program, the MEC may recommend to the Board consideration of the reinstatement of that Practitioner to the medical staff.

When considering an impaired Practitioner for reinstatement, the MEC and the Board must consider interests concerning the quality of patient care to be paramount. If all information received by the MEC indicates that a Practitioner is rehabilitated and capable of resuming patient care, the Board must take the following additional precautions when considering restoration of the clinical privileges:

The Practitioner must identify two physicians who are willing to certify, in writing, their willingness to assume responsibility for the care of the Practitioner's patients in the event the Practitioner is unable or unavailable to care for them. The MEC shall require the Practitioner to provide periodic reports from the Practitioner's primary care physician, for a period of time specified by the CEO and the COS, stating that the Practitioner is continuing treatment or therapy, as appropriate, and his ability to treat and care for patients in the medical center is not impaired.

The Department Chairman or a medical staff member appointed by the department chairman should monitor the Practitioner's exercise of clinical privileges in the medical center. The MEC shall determine the nature of the monitoring after reviewing all of the circumstances.

The Practitioner must agree to submit to an alcohol, blood, or other substance screening test appropriate to the impairment at the request of the COS, or designee, if there is reasonable suspicion that the Practitioner may be under the influence of drugs, alcohol or other substance.

Failure to comply with all the above conditions may result in suspension or revocation of the Practitioner's medical staff privileges.

All requests for information concerning the impaired Practitioner shall be forwarded to the COS for response.

SECTION 8 - RESIGNATION FROM THE MEDICAL STAFF

Any Practitioner who desires to resign from the Medical Staff must submit a letter of resignation, through the assigned department chairman, to the MEC and the Administrator. Such a Practitioner's subsequent application for Medical Staff membership or clinical privileges will not be processed if he has any unfulfilled obligations under these Bylaws or the Rules and Regulations, including, but not limited to, the need to complete delinquent medical records. Subsequent application for staff membership or clinical privileges will not be processed while outstanding obligations remain, and this status will be reported in response to any requests for references.

SECTION 9 - HOSPITAL EMPLOYEES

The Hospital may determine as a matter of policy that certain Practitioners may be employed in accordance with a written contract between the Hospital and the Practitioner. An employed Practitioner must meet the same membership qualifications, must be processed for appointment, reappointment, and clinical privilege delineation in the same manner, and must fulfill all of the obligations for membership category as any other member of the medical staff. Corrective action of an employed Practitioner shall be handled in accordance with the provisions of the Fair Hearing and Appellate Review Procedures, Exception to Hearing and Appeal Rights, Article VIII, Section 11g, termination of Hospital employed Practitioners.

ARTICLE VI

CLINICAL PRIVILEGES

SECTION 1 - EXERCISE OF PRIVILEGES

Every Practitioner providing direct clinical services at this Hospital, by virtue of membership or otherwise, shall, in connection with such practice and except as provided in Sections 3 and 4 below, be entitled to exercise only those privileges specifically granted to him by the Governing Body. The privileges must be within the scope of the license authorizing the Practitioner to practice in this state. Regardless of the privileges granted, each Practitioner must obtain consultation when necessary for the safety of his patients or when required by these Bylaws, the Medical Staff and departmental Rules and Regulations and other policies of the Medical Staff and the Hospital.

SECTION 2 - DELINEATION OF CLINICAL PRIVILEGES

A **Application** Clinical privileges may be granted only upon formal request on forms provided by the hospital with subsequent processing and approval. Telemedicine

practitioners must submit an application for telemedicine privileges. Every application for staff appointment and reappointment must contain a request for the specific clinical privileges desired by the applicant. A request by a Practitioner for a modification of privileges must be supported by documentation of additional training and/or experience supportive of the request.

B Basis for Privilege Determination Requests for clinical privileges shall be evaluated on the basis of the Practitioner's training, experience, education, demonstrated current competence, any required references, other relevant information, and to include an appraisal by the chairman of the department or by the chief of staff, and health status (subject to necessary reasonable accommodation to the extent required by law). In granting privileges, consideration must be given to objective information received from sources outside the Hospital, to the need for an adequate ongoing successful experience to maintain proficiency, to the Hospital's ability to support such patient care services, and to the objective findings of patient care evaluation and peer review activities. Peer input shall be obtained and considered in determining clinical privileges.

C Procedure All requests for clinical privileges shall be processed pursuant to the procedures outlined in Article III for Medical Staff membership.

D Special Conditions for Clinical Privileges Requests for practice privileges for Licensed Independent Practitioners shall be processed in the manner specified in the Specified Professional Personnel section of the Rules and Regulations, and shall be based on their training, experience, education, health status in terms of the applicant's ability to practice in the area in which privileges are sought, demonstrated current competence, and the need for their services in the hospital. Surgical procedures that each dentist and podiatrist may perform shall be under the overall supervision of the Chairman of Surgery. An adequate history and physical examination on all dental and podiatric patient admissions shall be performed and recorded in the medical record by a physician member of the Medical Staff, or, in some cases by a physician approved by the Medical Staff. The dentist or podiatrist shall be responsible for completing the part of the history and physical examination related to any dental or podiatric problem justifying the reason for admission. A physician member of the Medical Staff must be assigned the responsibility for the care of any medical problem present at the time of admission or that arises during hospitalization.

E Unavailable Clinical Privileges Notwithstanding any other provisions of these Bylaws to the extent that any requested clinical privilege is not available at the Hospital (whether because of exclusive contract, lack of facilities, policy decision of the governing body, or otherwise), the request shall be rejected without the necessity of processing pursuant to Section 2C above. Because such a rejection is unrelated to the applicant's qualifications, an applicant whose request is so rejected shall not be entitled to the hearing and appeal rights under these bylaws.

SECTION 3 - TEMPORARY PRIVILEGES

A Qualifications for Temporary Privileges Prior to temporary privileges being granted, the Medical Staff Office must receive all application requirements and primary verification. The application must have been approved by the Credentials Committee and be awaiting approval by the Medical Executive Committee and the Governing Board. By applying for temporary privileges all Practitioners agree to be bound by the Medical Staff Bylaws, Rules and Regulations, departmental rules and regulations and applicable Hospital policies.

B Authority to Grant Temporary Privileges/Condition

1 The Administrator or his designee, with the written concurrence of the Chairman of the applicable department or in his absence, the Chief of Staff, may grant temporary privileges under the circumstances noted below. In all cases, temporary privileges shall be granted for a specific period of time, not to exceed ninety (90) days. The practitioner will automatically lose his temporary privileges unless an extension is granted through a written request by the Practitioner to the Credentials Committee for a specific reason. Temporary privileges shall terminate automatically at the end of the ninety-(90) days or the specific period for which they were granted, without the hearing and appeal rights set forth in these bylaws. Special requirements of supervision and consultation may be imposed upon the granting of temporary privileges.

2 In all cases, if temporary privileges are granted prior to the Medical Staff and Governing Board's receipt and review of a report from the National Practitioner Data Bank (NPDB), the Practitioner agrees, as a condition of applying for or being granted temporary privileges, that such privileges are strictly conditional upon the receipt and review of a response from the NPDB deemed favorable by both the MEC and the Governing Body. In the event that a response is received which the MEC or the Governing Body believes warrants further investigation, and then the practitioner's conditional temporary privileges shall automatically expire and his application for temporary privileges shall be deemed incomplete. Irrespective of any other provision under these Bylaws, any Practitioner whose temporary privileges automatically expire under this provision shall not be entitled to the hearing and appeal rights under these Bylaws.

3 Temporary privileges may be granted for

(a) Care of a Specific Patient Temporary privileges may be granted to a Practitioner who is not an applicant for staff membership but whose services are required for the care of a specific patient who is not transportable and his required expertise is not available through the Medical Staff membership.

(b) Locum Tenens Temporary privileges may be granted to a qualified Practitioner serving as locum tenens for a member of the Medical Staff. Such privileges shall be limited based on the locum tenens Practitioner's individual training, experience, and qualifications. The locum tenens Practitioner will not be

granted privileges in excess of those granted to the Practitioner being temporarily replaced, unless the Medical Staff and the Governing Body grant an exception

(c) Pending Appointment to the Medical Staff In addition to the requirements noted in Section 3 A above, the applicant's professional degree must be verified (e g , M D , D O) as well as his current license, current DEA registration, any specialty training claimed, at least two (2) references relating positively to professional and ethical status, and documentation of the required professional liability insurance coverage Temporary privileges may be granted for no more than three (3) separate and successive thirty (30) day periods (a maximum period of ninety (90) days) at which time they automatically expire The Practitioner will automatically lose temporary privileges unless an extension has been granted by a written request from the Practitioner to the Credentials Committee for a specific reason The applicant shall be under the supervision of the Chairman of the department to which he will be assigned All of the care provided by the Practitioner shall be reviewed during this period The supervising Practitioner may impose special consultation requirements and reporting

(d) Organ/Tissue Harvesting Team Temporary privileges may be granted to Practitioners who need to attend the patient as part of their duties as a member of an Organ/Tissue Harvesting Team If a physician is registered by any certified organ procurement agency, they may have temporary privileges without submitting the usual required information as set forth in Article VI, Section 3A

(e) Participant in a Medical Review Committee In the rare situation where there are no qualified members of the Medical Staff to act as a member of a Medical Review Committee, temporary privileges may be granted to a qualified individual for the limited purpose of participating as a member of a Medical Review Committee as defined under the fair hearing and appellate review article of these Bylaws

(f) Participate as a Consultant on Peer Review Matters In those cases where a peer review committee or department deems it necessary to obtain a review of a practitioner's practice by an outside consultant who is not a member of the Medical Staff the outside consultant may be granted temporary privileges for the limited purpose of conducting the review, reporting to the peer review committee or department, and for testifying at a hearing or appeal with regard to that review

C Denial, Termination or Restriction of Temporary Privileges Temporary privileges, unless acted upon pursuant to other provisions of these bylaws, shall terminate automatically at the end of ninety (90) days or the specific period for which they were granted, without the hearing and appeal rights under these bylaws The Administrator, Chief of Staff or department Chairman or their designees may terminate or restrict temporary privileges in the event of the discovery of questionable qualifications/ability or false information provided by the Practitioner, or when the life or health of a patient

could be endangered by the treatment by that Practitioner or for similar reasons. No Practitioner is entitled to the hearing and appeal rights set forth in these Bylaws for the denial, nonrenewal, restriction or termination of temporary privileges based on the Practitioner's professional conduct or competence. In the event a Practitioner's temporary privileges are terminated or restricted, the Practitioner's patients then in the Hospital shall be assigned to another Practitioner by the department Chairman responsible for supervision or by the Chief of Staff. The wishes of the patient shall be considered, when feasible, in choosing a substitute practitioner.

SECTION 4 - EMERGENCY PRIVILEGES

A Privileges In an emergency, any Practitioner to the degree permitted by his license shall be permitted to do everything he deems reasonably necessary and appropriate to save the life or limb of a patient. The Administrator shall be notified promptly in such cases.

B Conclusion of Emergency When the emergency no longer exists, the practitioner must request the privileges necessary to continue to treat the patient if he so desires. In the event such privileges are denied or he does not desire to request privileges, the patient shall be assigned to an appropriate member of the Medical Staff.

C Definition of Emergency For the purpose of this Section, an "emergency" is defined as a condition in which serious harm would result to a patient or in which the life or limb of a patient is in immediate danger and any delay in administering treatment would add to that danger.

SECTION 5 - CHANGE IN MEMBERSHIP, PRIVILEGES OR STAFF CATEGORY

A staff member may, at any time, request a change of staff category or department affiliation by submitting a written notification to the Medical Staff Office. The Medical Staff Office will issue a letter requiring the physician to read and sign the letter stating the requirements of the provisional change in status. The request will be forwarded to the department Chairman, then to the Credentials Committee. The Credentials Committee will recommend to the MEC the request, and the MEC will forward their recommendation to the Board of Directors for final approval. After final approval, the medical staff office will notify the physician of the final decision. The Medical Staff Office will track the provisional change for one (1) year and the Credentials Committee will evaluate the physician at that time to determine if he meets the necessary requirements set forth by the requested status change. If a physician requests privileges addition/change/deletion, such application shall be processed in substantially the same manner as an initial appointment application. The physician must give supporting documentation of his additional training/experience. The physician's request will be forwarded to the department Chairman, Credentials Committee, MEC and the Board of Directors for approval.

ARTICLE VII

CORRECTIVE ACTIONS

SECTION I - ALTERNATIVES TO CORRECTIVE ACTION

Under certain circumstances, routine monitoring and education of a Practitioner in accordance with Departmental procedures as described in Article X, Section 2, may be an appropriate alternative to corrective action

SECTION 2 - CORRECTIVE ACTION

A Grounds/Initiation Whenever the conduct of any Medical Staff member ("affected Practitioner") is considered to be lower than the standards of the Medical Staff, or to be disruptive to the operations of the Hospital, or to constitute fraud or abuse, or to be detrimental to the quality of patient care at the Hospital, or to be detrimental to the Hospital's licensure or accreditation, or to be detrimental to Hospital or Medical Staff efforts to comply with any professional review organization, third-party payer (private or governmental), or utilization review requirements, or to be in violation of the Medical Staff Bylaws, rules and regulations, or policies of the Hospital, Medical Staff or any Department or committee thereof, or to be in violation of the ethics of their profession, or if any affected Practitioner is believed to have engaged in criminal conduct, corrective action may be requested against such Practitioner by the requesting party who may be any member of the Medical Staff or the Governing Body, or the Administrator. All requests for corrective action shall be in writing, shall be submitted to the MEC through its Chairman, and shall set forth the specific conduct constituting the basis for the request.

B Investigation The MEC, before taking action on the request, shall conduct such investigation as it deems necessary, which may, in its discretion, include informal interviews with the requesting party and the affected Practitioner (each out of the presence of the other), informal interviews with or reports from other persons, any required or requested departmental review, and chart reviews, if applicable. Neither the investigation nor any other activities of the MEC in acting upon a request for corrective action shall constitute a hearing, they shall be informal, and none of the hearing and appeal rights under these Bylaws shall apply.

C Time for Taking Action/Notice/Right to Hearing Within sixty (60) days after receipt by the MEC of a request for corrective action, or within such reasonable additional time as the MEC deems necessary, the MEC shall take action upon the request. Within five (5) days after taking action, the MEC shall give written notice to the affected Practitioner and the Governing Body stating which of the actions set forth in this Section the MEC has taken or recommended. If the action is of a type requiring notice as described Article VIII, Section 2, the notice shall comply with the applicable Sections of Article VIII. In no event shall the Practitioner be entitled to the rights under Article VIII.

when the only action of the MEC was to issue a letter of admonition or reprimand

D Possible Action The action of the MEC on a request for corrective action may be to (1) reject the request, (2) issue a letter of admonition or reprimand, (3) impose terms of probation or require proctoring, co-admitting, or consultation, (4) recommend reduction, suspension, proctoring, co-admitting, consultation, or revocation of clinical privileges, (5) recommend that an already imposed summary suspension of membership or clinical privileges be terminated, modified, or sustained, (6) recommend that the Practitioner's membership be suspended or revoked, or (7) take or recommend other actions deemed appropriate by the MEC

E Notice to Administrator The chairman of the MEC shall promptly notify the Administrator in writing of each request for corrective action received by the MEC and the date of its receipt, and shall keep the Administrator fully informed of all communications, meetings, and actions in connection with each request

F Governing Body Action At any time that it believes corrective action to be warranted, the Governing Body, or its designee, may initiate it. Before initiating such corrective action, the Governing Body, or its designee, shall consult with the Chief of Staff. Thereafter the Governing Body, or its designee, may direct the MEC to conduct an investigation or otherwise initiate corrective action. In the event the MEC fails to take action in response to a direction from the Governing Body, or its designee, the Governing Body, or its designee, may conduct an investigation or otherwise initiate corrective action proceedings. If applicable, such proceedings shall afford the affected Practitioner the hearing and appeal rights described in these Bylaws.

G Use of Membership/Privileges The affected Practitioner shall retain the use of his membership and privileges pending final action by the Governing Body unless such membership and/or privileges are otherwise suspended as provided in this Article.

SECTION 3 - SUMMARY SUSPENSION OR SUMMARY RESTRICTION

A Grounds/Authority All or any portion of a Practitioner's clinical privileges may be summarily suspended or restricted where the failure to take summary action may result in imminent danger to the health of any individual. The following persons are authorized by the Medical Staff to take summary action: the Chief of Staff, the Chairman of a clinical department, the MEC or the Administrator. Suspension or restriction pursuant to this paragraph shall be temporary and effective only until further action is taken by the MEC pursuant to Section 3. When no person or committee referenced above is available to impose a summary suspension or restrict clinical privileges, the Governing Body, or its designee, may take such action if a failure to do so would be likely to result in an imminent danger to the health of any individual.

B Effective Date/Notice A summary suspension or restriction shall become effective immediately upon imposition and the person or body imposing same shall promptly give written or verbal notice of the suspension or restriction to the suspended

Practitioner, stating by whom it was imposed and the reasons for same. The notice shall be deemed to have been given on the date on which it is either personally delivered or sent by certified mail to the suspended or restricted Practitioner, whichever occurs first. The notice, or a written confirmation of it, shall inform the suspended or restricted Practitioner (1) of his right to an informal interview upon his written request under Section 3C, and (2) if the summary suspension or restriction could be reportable to the National Practitioner Data Bank and to any state licensing agency, and (3) that unless the suspension or restriction is terminated when the MEC takes further action under Section 3D, the Practitioner will be entitled to the hearing and appeal rights under these Bylaws. In the event that the suspension or restriction is terminated when the MEC takes further action, the practitioner shall be entitled to a hearing and appeal under these Bylaws, however, the sole issue shall be whether there was probable cause for the summary suspension or restriction. A copy of the notice shall promptly be delivered to the Administrator, the MEC, and the Governing Body.

C Investigation The MEC, before taking further action, shall conduct such investigation as it deems necessary, which shall include at least one (1) meeting of the MEC, and may include an informal interview with the suspending party. An informal interview with the affected Practitioner (out of the presence of the suspending party, if other than the MEC) may be held if the affected practitioner delivers a request for an informal interview in writing within seven (7) days after notice of the suspension was given to him or if requested in writing by the MEC. The MEC's investigation may include chart reviews, if applicable, and informal interviews with or reports from other persons or relevant departments or committees. Neither the investigation nor any other activities of the MEC in taking its further action shall constitute a hearing; they shall be informal, and none of the hearing and appeal rights under these Bylaws shall apply.

D Further Action/Time Within fourteen (14) days after the date of the suspension or restriction, the MEC shall take further action with respect to the suspension, and may modify, continue for a definite or indefinite period, or terminate the summary suspension or restriction. Such further action shall remain in effect unless and until altered or terminated pursuant to other provisions of these Bylaws. If the MEC upholds a summary suspension or restriction, it shall also decide if the affected Practitioner's medical staff membership and clinical privileges should be terminated. The MEC shall promptly give written notice of its further action to the suspended Practitioner, the Administrator and the person or body who imposed the suspension or restriction (if other than the MEC).

E Rights to Hearing Following the decision of the MEC regarding further action, the provisions of Article VIII shall govern the hearing and appeal rights under these Bylaws.

F Alternate Patient Coverage Immediately upon the imposition of a summary suspension or restriction, the Chief of Staff or responsible departmental Chairman shall provide for alternate medical coverage by a member of the Medical Staff for the patients of the suspended Practitioner remaining in the Hospital at the time of such suspension, if the privileges to provide such coverage were suspended. The wishes of the patients shall

be considered in the selection of such alternate coverage

SECTION 4 - AUTOMATIC SUSPENSION, TERMINATION

The following shall result in the automatic suspension and possible termination of medical staff membership and/or clinical privileges and shall not entitle the affected Practitioner to the hearing and appeal rights specified in these Bylaws, unless otherwise expressly provided

A Medical Records/Suspension Practitioners must complete their patients' medical records within 30 days of each patient's discharge or within such time, as the Governing Body requires. Medical records that the Practitioner fails to complete within the required period will be considered delinquent. The Director of Health Information Services shall send a written notice to a Practitioner who has incomplete medical records near delinquent status. This notice may be sent by either personal delivery or by certified mail, return receipt requested, and a phone call to remind the Practitioner that his clinical privileges will be automatically suspended if such records are not completed. If the Practitioner completes the records within the time allotted, the Director of Health Information Services shall notify the Chief of Staff who shall immediately reinstate the Practitioner's clinical privileges. If the Practitioner does not complete the medical records within the time provided, then the Administrator shall automatically impose a temporary suspension of all privileges. Such suspension shall be effective as of the first day after the expiration of the prescribed time period and shall continue until the medical records in issue are satisfactorily completed. The suspension may be terminated by the joint action of the Administrator and the Chief of Staff if they, or their designees determine that failure to timely complete the records was justified (e.g., illness or other circumstances beyond the control of the affected Practitioner) or, upon the request of the suspended Practitioner, the Chief of Staff may temporarily lift the suspension only if the Chief of Staff, as the designee of the MEC, determines that an emergency exists in which the health and safety of any patient will be jeopardized by failure to allow the Practitioner to treat that patient. With the exception of emergency care for which only the Practitioner is qualified and available and the care of patients already hospitalized at the time of the suspension, such temporary suspension shall include all admitting and clinical privileges, as well as the scheduling of elective operations, assisting at elective operations, and deliveries. Unverified emergency admissions shall not be used to bypass such suspension. Failure to complete the medical records within sixty (60) days of suspension shall be deemed a voluntary resignation from the Medical Staff and the voluntary relinquishment of all clinical privileges. Practitioners whose clinical privileges are automatically suspended or who have been deemed to have voluntarily resigned from the staff pursuant to this Section shall not be entitled to the hearing and appeal rights under these Bylaws.

B Licensure Whenever a Practitioner's license to practice in this state is revoked, not renewed, restricted, suspended, voluntarily or involuntarily relinquished or made subject to any probationary provisions by the licensing agency, the Practitioner's staff membership and clinical privileges shall automatically terminate upon receipt by the

hospital of notice thereof. If a Practitioner's license to practice is made subject to probationary terms by the licensing agency, the Practitioner's privileges and membership shall automatically become subject to the terms of probation, subject to review by the MEC and approval by the Governing Body. Action automatically imposed under this Section does not entitle the practitioner to the hearing and appeal rights provided under Article VIII of these Bylaws.

C Drugs/Medication A temporary automatic suspension of a Practitioner's privileges to prescribe or obtain controlled substances or other medications at or through the hospital or any of its facilities shall be immediately imposed by the Administrator upon the receipt by the hospital of notice that such Practitioner's right or license to prescribe or obtain controlled substances or medications has been suspended, revoked or otherwise restricted by the applicable governmental agency. Such automatic suspension shall include only those controlled substances or medications suspended or revoked by the governmental agency and shall be effective until the governmental agency reinstates the Practitioner's right or license in question, unless the MEC determines otherwise and so notifies the affected Practitioner. If a Practitioner's right or license to prescribe or obtain controlled substances or medications is subject to an order of probation, the Practitioner's privileges to prescribe or obtain controlled substances or other medications at or through the hospital or any of its facilities shall automatically become subject to the terms of the probation effective upon and for at least the term of the probation. An affected Practitioner shall not be permitted to prescribe medications under the hospital's DEA number. Action imposed under this Section does not entitle the Practitioner to the hearing and appeal rights under these Bylaws.

D. Loss of Malpractice Insurance If a Practitioner fails to maintain professional liability insurance as required by the Governing Body, or fails to provide evidence of such coverage, the Practitioner's membership and clinical privileges, after written warning of delinquency, shall be automatically suspended and shall remain so suspended until the Practitioner provides evidence to the MEC that he has secured the required professional liability coverage. Failure to provide such evidence within sixty (60) days after the date the automatic suspension became effective shall be deemed a voluntary resignation from the Medical Staff. A Practitioner whose clinical privileges are automatically suspended or who has been deemed to have voluntarily resigned from the Medical Staff pursuant to this Section may request a meeting to discuss the matter informally with the MEC or its designee, but the practitioner shall not be entitled to the hearing and appeal rights under these Bylaws.

E Felony Conviction A Practitioner who has been convicted or pled "guilty" or "no contest" or its equivalent to a felony in any jurisdiction shall be automatically suspended. Such suspension shall become effective immediately upon such conviction or plea regardless of whether an appeal is filed. Such suspension shall remain in effect unless and until the matter is resolved by subsequent recommendation by the MEC and action by the Governing Body or through corrective action, if necessary.

F Quality/Performance Improvement and Peer Review Inquiries Practitioners

have an obligation to timely and satisfactorily respond to inquiries from Medical Staff committees and their designees on issues relating to the Practitioner's qualifications, character, behavior, ethics, health status in terms of the practitioners ability to practice in the area in which privileges are sought or have been granted, case management, and the Practitioner's compliance with the Bylaws, rules and regulations, and policies of the Medical Staff and Hospital Unless provided otherwise in these Bylaws, the Department or committee Chairman shall send a certified letter to the practitioner requesting a response within thirty (30) days If the Practitioner fails to timely respond, the Chief of Staff shall send a notice advising that failure to comply within seven (7) days shall result in an automatic suspension of membership and all privileges Such suspension shall continue until the inquiring person or body confirms that a satisfactory response has been received With the exception of emergency care which only the Practitioner is qualified and available to render and the care of patients already hospitalized at the time of the suspension, such suspension shall include all admitting and clinical privileges, as well as scheduling of elective operations, assisting in elective operations, and deliveries Unverified emergency admissions shall not be used to bypass such restriction Failure to satisfactorily comply within sixty (60) days of the date of the suspension shall be deemed a voluntary resignation and relinquishment of all privileges Action taken pursuant to this Section shall not entitle the affected Practitioner to the hearing and appeal rights of these Bylaws

G. Notice Unless otherwise specified in this Section, the Administrator shall immediately notify the affected Practitioner and the Chief of Staff in writing, either by personal delivery or certified mail, of any suspension or termination under this Section Such notice shall set forth the effective date and the reason for the suspension or termination By state law the State Board of Medical Examiners shall be notified in writing by the Administrator of the Hospital of any revocation, suspension, or limitation of a practitioners clinical privileges

H. Application to Medical Staff after Termination Unless reinstated by the MEC and the Governing Body, any Practitioner who is terminated from membership or who has clinical privileges terminated and who desires to be admitted to the Medical Staff or granted clinical privileges shall be required to apply for membership and privileges and such application shall be processed as for an initial applicant

SECTION 5 - OTHER INVESTIGATIONS

Notwithstanding anything in these Bylaws to the contrary, the MEC in its sole discretion may investigate any matter or any Practitioner brought to its attention by anyone and may take any action it deems appropriate, subject to review by the Governing Body Such investigation shall not be deemed a hearing and may be substantiated as described in Section 2B The MEC shall act with reasonable promptness and shall be given notice of any action thus taken or recommend within seven (7) days therefrom, to any affected Practitioner and the Administrator The Practitioner shall only have a right to request a hearing if the action or recommendation falls into one or more of the grounds for a

hearing specifically set forth in Article VIII, in such cases, the notice to the affected practitioner shall comply with the notice requirements of Article VIII

ARTICLE VIII

HEARING AND APPELLATE REVIEW PROCEDURES

SECTION I - GENERAL PROVISIONS, DEFINITIONS, SETTLEMENT

A **Duty to Exhaust Remedies** The purpose of this Article is to permit the Medical Staff and Hospital to resolve issues related to professional practice and qualifications for Medical Staff membership and clinical privileges fairly, expeditiously and with due regard for both the need to protect patients and the interest of Practitioners. Each applicant and member agrees to follow and complete the procedures set forth in this Article, including appellate procedures, before attempting to obtain judicial relief related to any issue or decision which may be subject to a hearing and appeal under this Article. The absence of an interlocutory appeal process (temporary/provisional process) for reviewing any alleged violation of the Bylaws or the affected Practitioner's fair procedure rights does not warrant judicial intervention.

B **For the purposes of this Article, the following definitions shall apply**

- 1 **Affected Practitioner** means the Medical Staff member or applicant for membership with respect to whom any of the actions specified in Section 2B below have been taken or recommended, and whose membership or privileges may be affected thereby.
- 3 **Body Whose Decision Prompted the Hearing**, means the person, committee, or body (which will generally be the MEC, that pursuant to these Bylaws, took the action or made the recommendation that resulted in a hearing being requested).
- 3 **Parties or Party** means, unless clearly indicated otherwise by particular context, collectively or individually, as the case may be the affected Practitioner, the MEC, and/or the body whose decision prompted the hearing (if other than the MEC).
- 4 **Notice** means a written communication delivered personally to the required addressee or sent by United States Postal Service, first-class postage prepaid, certified or registered mail return receipt requested, addressed to the required addressee at his address as it appears in the records of the Hospital. Copies shall be as effective as the original for the purpose of giving notice. Any such notice shall be deemed effective on the date it was first received or five (5) working days after it was mailed first-class postage prepaid,

whichever occurs first

C Settlements At any time following receipt of notice of a recommendation or action which would entitle a Practitioner to request a hearing under this Article, the Practitioner may ask the body whose decision prompted the hearing to discuss voluntary settlement or resolution of the matter. Upon such request and subject to the Practitioner's waiver of time requirements to allow such discussions to proceed, the MEC may authorize one or more of its members to conduct confidential discussions with the Practitioner, provided, the MEC shall not be obligated to conduct such discussions if it concludes the request is interposed primarily for delay or a settlement is not feasible. If the Practitioner and the body whose decision prompted the hearing reach a written agreement, which could settle the matter, the body whose decision prompted the hearing shall promptly notify the Administrator and the Governing Body. (Any such written settlement agreement should include an acknowledgment by the Practitioner that he voluntarily waives his hearing and appeal rights under these Bylaws, that the settlement is entered into voluntarily and that he will waive all claims relating in any way to the matter against all Medical Staff and Hospital personnel.)

SECTION 2 - THE HEARING PROCESS

A Notice of Adverse Action or Recommended Action/Request for Hearing

Whenever any of the actions constituting grounds for a hearing as set forth in Section 2B below has been taken or recommended, the person, committee, or body causing same to occur shall give notice to the affected Practitioner

The notice shall:

- 1 describe what action has been taken or recommended,
- 2 state the reasons for the action (a statement of charges will be provided in the event a hearing is properly requested),
- 3 advise the Practitioner of the right to request a hearing and, such request must be in writing and received by the Administrator within thirty(30) days after the affected practitioner's receipt of the Notice of Adverse Action or Recommendation,
- 4 contain a summary of the Practitioner's rights in the hearing,
- 5 state the action, if finally adopted, will be reported to the appropriate licensing entity and to the National Practitioner Data Bank (NPDB) as required by law

Whenever the MEC has given notice of action that constitutes grounds for a hearing as described in Section 2B below, the affected Practitioner shall have thirty (30) days following the date such notice was given within which to request a hearing. A request for

a hearing must be in writing and delivered to the Administrator within the applicable time period set forth above. Failure of the affected Practitioner to request a hearing within the time and in the manner set forth in this subsection shall be deemed an acceptance by the Practitioner of such action or recommendation and a waiver by such party of all hearing and appeal rights under these Bylaws. The matter shall thereupon be forwarded to the Governing Body for its final decision in accordance with Article VIII, Section 6F. The Administrator shall give notice to all parties of any such waiver and acceptance.

B Grounds for Hearing Except as otherwise provided in these Bylaws, the taking or recommending of any one or more of the following actions when based on the member's professional conduct or competence unless taken in compliance with a policy decision of the hospital (e.g., closing a department or service or physical plant changes), shall constitute grounds for a hearing pursuant to this Article:

- 1 denial of initial appointment to the Medical Staff,
- 2 denial of staff reappointment,
- 3 reduction or suspension of staff membership or clinical privileges for more than thirty (30) days
- 4 termination, revocation or reduction of staff, category
- 5 denial or termination of clinical privileges,
- 6 summary suspension of clinical privileges for more than thirty (30) days,
- 7 significant consultation or co-admitting requirements other than in compliance with the Medical Staff Bylaws, Rules and Regulations or departmental rules and regulations,
- 8 denial of requested advancement in staff category, and
- 9 denial of requested service affiliation

C Notice of Hearing

- 1 Upon receipt of a proper request for hearing, the Administrator shall deliver the request to the MEC, stating the date the Administrator received it, then
- 2 the MEC shall, within thirty (30) days after receipt by the Administrator of the request, schedule a date for a hearing, then
- 3 the MEC shall, not less than thirty (30) days prior to the date of the hearing, give notice to the parties of the time, place, and date thereof, and shall deliver a copy of these Bylaws and a Statement of Charges as provided in the

following paragraph, to the affected Practitioner. The date of commencement of the hearing shall not be less than thirty (30) days from the date of the notice of hearing nor more than sixty (60) days from the date of receipt of the request for a hearing by the Administrator, except when the request is received from a member who is under suspension, the hearing shall commence as soon as reasonably practicable, but not later than forty (40) days from the date of receipt by the Administrator of the request for hearing. In such instances, the notice of hearing shall be provided within a reasonable time prior to the date of commencement. The parties and the MRC shall cooperate with each other in scheduling additional hearing sessions, as necessary, to complete the process as soon as practicable.

D Statement of Charges As a part of, or together with, the Notice of Hearing referred to in the previous paragraph of these Bylaws, the MEC shall state the acts or omissions with which the affected Practitioner is charged including, if applicable, a list of chart numbers under question, if any, and the reasons for the action or recommendation. The Medical Staff representative at the hearing may make amendments to the statement of charges from time to time, but not later than the close of the case. Such amendments may delete, modify, or add to the acts, omissions, charts, or reasons specified in the original notice. Notice of each amendment shall be given to the affected Practitioner, the Hearing Officer, and each party. If the affected Practitioner promptly gives written request to the medical review hearing committee, he shall be entitled to a reasonable postponement of the hearing to prepare a response or defense to any such amendment that adds acts, omissions, charts, or reasons to the original notice. The medical review hearing committee shall give prompt notice to the parties of each such postponement.

E Medical Review Committee (MRC) or Arbitrator, Appointment, Removal, and Qualifications Promptly after a hearing has been properly requested, the Chief of Staff as a designee of the MEC or alternatively the MEC shall determine if the hearing shall be held before (1) an arbitrator or arbitrators selected by a process mutually acceptable to the Practitioner and the MEC, or (2) before a panel referred to as a MRC. Should the Chief of Staff as a designee of the MEC or alternatively the MEC determine that a medical review committee shall be used, he shall promptly appoint such a MRC and its Chairman to act as the peer review group in the hearing. The MRC shall consist of not less than three (3) nor more than seven (7) members, at least the majority of whom shall be physicians who shall be licensed to practice medicine but need not be members of the Medical Staff. When feasible, the MRC shall include at least one (1) individual practicing in the same specialty as the affected Practitioner. They may have knowledge of the matters to be heard, but each shall be willing to hear the matters objectively and without prejudgment. They shall not have acted as accusers, investigators, fact finders or initial decision makers in connection with the same matter, shall gain no direct financial benefit from the outcome, and shall not be in direct economic competition with the affected Practitioner.

F Hearing Officer/Chairman of MRC The Administrator may appoint a Hearing Officer to conduct the hearing. The hearing officer may be a member of the South

Carolina Bar and should be familiar with the law applicable to Hospital administrative proceedings

The Hearing Officer shall conduct the hearing impartially such that the proceeding will be, to the extent reasonably possible fair, efficient, and protective of the rights of all parties and witnesses. The Hearing Officer shall gain no direct financial benefit from the outcome of the hearing and shall not act as a prosecuting officer or advocate. The Hearing Officer shall act as advisor to the MRC as to procedural matters, including the drafting of its decision and report, but he shall not be entitled to vote. In the alternative, the Administrator, after consulting the MEC, may appoint a Medical Hearing Officer to conduct the hearing. The Medical Hearing Officer must be a member of the Medical Staff but may not be in direct economic competition with the affected Practitioner. He should be familiar with the applicable medical issues and with medical staff administrative proceedings. He shall conduct the hearing impartially such that the proceeding will be, to the extent reasonably possible, fair, efficient and protective of the rights of all parties and witnesses. He shall decide all procedural matters. All references to the "Hearing Officer" shall refer to the Medical Hearing Officer if one is appointed. If a Hearing Officer is not appointed, the Chairman of the MRC shall conduct the hearing and rule on procedural matters, and all references to the "Hearing Officer" shall be deemed to refer to the Chairman of the MRC or the arbitrator, as appropriate.

G Postponements and Extensions After the appointment of the MRC and before the commencement of the hearing, postponements beyond the times required by these Bylaws may be requested by any of the parties, and shall be granted upon agreement of the parties or by the arbitrator or presiding officer on a showing of good cause. The MRC shall promptly give notice to the parties of each such postponement.

H Medical Staff Representative. After a hearing has been properly requested, the Chief of Staff or alternatively the MEC shall promptly appoint a Medical Staff member ("Medical Staff Representative") to present the case on behalf of, and otherwise represent, the body whose decision prompted the hearing. The Chief of Staff or alternatively the MEC may, in its sole discretion, remove or replace the Medical Staff Representative at any time.

SECTION 3 - HEARING PROCEDURE

A General It shall be the duty of the Practitioner and the body whose decision prompted the hearing to exercise reasonable diligence in notifying the Hearing Officer of any pending or anticipated procedural irregularity or any objection to the hearing panel or to the Hearing Officer, as far in advance of the scheduled hearing as possible, in order that decisions concerning such matters may expeditiously be made. Objection to any such pre-hearing decisions shall be raised on the record at the hearing and when so raised shall be preserved for consideration at any appellate review hearing which thereafter might be requested.

B Witness List At the request of either party, the parties must exchange at least

ten (10) days before the hearing (1) lists of witnesses expected to testify at the hearing, and (2) copies of all documents expected to be introduced at the hearing. Failure of a party to produce these materials, or to update them, at least ten (10) days before the commencement of the hearing, shall constitute good cause for the Hearing Officer to grant a continuance, or to bar or otherwise limit the introduction of any documents not provided to the other party or testimony from witnesses not identified pursuant to this provision.

C Failure to Appear Failure of the affected Practitioner to appear at the hearing shall be deemed to constitute the affected Practitioner's voluntary acceptance of the recommendation or action and waiver of all hearing and appeal rights under these Bylaws, unless the MRC finds good cause for such failure, based upon written request by the affected Practitioner or his representative.

D Representation The hearings provided for in these Bylaws are for the purpose intra-professional resolution of matters bearing on conduct or professional competency. The physician involved has the right to representation by an attorney or other person of the physician's choice. Any request for legal representation shall be made at the time the hearing request is made. In no event shall legal counsel represent the body whose decision prompted the hearing if the affected Practitioner is not so represented. Any request for legal representation shall be made at the time the hearing request is made. In no event shall legal counsel represent the body whose decision prompted the hearing if the affected Practitioner is not so represented. Any party may obtain legal counsel at their expense for the purpose of preparing for the hearing.

E Record of the Hearing The MRC proceedings shall be taken and transcribed by a court reporter and a copy of the transcript of each session shall be available for purchase by either party. Each party shall be responsible for payment of all costs and charges associated with any transcript that it requests.

F Oath of Witness The MRC may, in its discretion, order all testimony at the hearing to be under oath administered by a person authorized to administer oaths.

G Organization and Conduct of Hearing Process Unless otherwise expressly provided in these Bylaws, the hearing shall be conducted as follows:

1. The parties shall have a reasonable opportunity to voir dire (examine) the MRC members and the Hearing Officer, and the right to challenge the appointment of any MRC member or the Hearing Officer. The Hearing Officer shall establish the procedure by which this right may be exercised, which may include requirements that voir dire (examine) questions be proposed in writing in advance of the hearing and that the questions be presented by the Hearing Officer. The Hearing Officer shall rule on any challenges in accordance with applicable legal principles defining standards of impartiality for hearing panels and Hearing Officers in proceedings of this type.

- 2 The Medical Staff representative shall present an opening statement summarizing the background of the matter, the notices given, any administrative decisions rendered to date, and, if he chooses, the salient general conclusions the representative expects to prove
- 3 The medical staff representative shall then present the facts upon which he is relying, by calling the witnesses and presenting the written evidence to support the case. He may call any person or opposing party, who is present, in support of the case
- 4 At the close of the Medical Staff representative's case, unless the MRC believes the action or recommendation being reviewed was clearly not supported by the medical staff representative's presentation (in which case the hearing may terminate by such a ruling at this point), the affected Practitioner or his representative shall make an opening statement and shall make a case representation of evidence and testimony. He may call any person or opposing party, who is present, in support of the case
- 5 Upon the close of the initial presentations of the opposing parties, each party shall be entitled to present evidence to rebut the presentation of the other, subject to reasonable limitations by the Hearing Officer as to order, time, relevance, and repetition
- 6 In the close of all presentations and evidentiary rebuttals, the parties shall be entitled, subject to reasonable limitation by the Hearing Officer, to submit a written statement and give closing statements and argument
- 7 Upon the close of all presentations, rebuttals, statements, and argument, the hearing Officer shall declare the hearing finally adjourned, and all persons other than the MRC and Hearing Officer shall thereupon leave the hearing. The MRC shall thereafter, at the convenience of its members but subject to the provisions of Section 4 below deliberate in order to reach its decision
- 8 Liberality may be exercised in accommodating the schedules of witnesses, MRC members, parties, and representatives, in allowing modification of required notices, in allowing recesses or extensions of time upon a reasonable showing of need, and in allowing changes in the order of the proceedings or the presentation of evidence. The decision of the Hearing Officer after consultation with the MRC regarding such matters shall be final, subject to later reconsideration for good cause only
- 9 No person shall disrupt any hearing. Any person in attendance (whether a party or any other person) who disrupts a hearing after being warned by the Hearing Officer to cease such disruption on penalty of indefinite exclusion, shall, at the direction of the Hearing Officer, leave the hearing. Unless

directed otherwise for good cause by the Hearing Officer, the hearing shall proceed in the absence of such excluded person. If such excluded person is the affected Practitioner or a witness, he shall have the right to submit to the MRC, not later than ten (10) days after such exclusion (unless extended by the Hearing Officer for good cause), a written affidavit of his testimony or other evidence, with copies thereof to the other parties.

- 10 Except as otherwise provided in these Bylaws and subject to reasonable restriction by the Hearing Officer, the following shall be permitted to attend the entire hearing in addition to the MRC, the Hearing Officer, court reporter, and parties, the Administrator or his designee, one (1) person designated by the Administrator (or designee), the Medical Staff Coordinator or assistant, one (1) key consultant for each party, and one (1) or more representatives of the entity that owns the hospital.

H Burden of Proof The affected Practitioner shall have the burden of proving, by clear and convincing evidence, that the action or recommendation of the body whose decision prompted the hearing, which is the subject matter of the hearing, is arbitrary, capricious or unreasonable.

I Admissible Evidence and General Procedure Except as otherwise provided in these Bylaws, the following rules shall apply in the hearing:

- 1 The general rule of evidence shall be that any relevant matter, whether written or oral, upon which responsible individuals would be expected to rely in the conduct of serious affairs, shall be admitted, regardless of its admissibility in a court of law. The MRC shall have the discretion to recognize any matters, either technical or scientific, including statistical data, relating to the issues under consideration, which is common knowledge in the general medical community and/or any medical specialty.
- 2 Parties or their representatives shall have the right to
 - (a) a reasonable opportunity to voir dire the MRC members and the hearing officer, and the right to challenge the impartiality of any MRC member or the Hearing Officer. The Hearing Officer shall rule upon such challenges,
 - (b) be provided with all information made available to the MRC,
 - (c) call and examine witnesses on relevant evidence and to cross-examine witnesses,
 - (d) introduce relevant documentary evidence,

- (e) present evidence that tends to impeach any witness on relevant matters, provided that, to prevent abuse of this right, the Hearing Officer may, in his discretion, require a prior offer of proof summarizing such evidence and may in his discretion reject such evidence if the party fails to submit such offer of proof or if the offer of proof reasonably justifies such rejection, and
- (f) submit a written statement at the close of the presentation of evidence

3 Evidence of relevant activities or practices at any location or facility shall be admissible unless the Hearing Officer upon a showing of good cause imposes limitations

4 The MRC may receive and consider any brief or memorandum presented by any party

5 Any relevant material contained in Medical Staff files regarding the affected practitioner is admissible, including but not limited to applications, references, and accompanying documents

SECTION 4 - DECISION AND REPORT OF MRC NOTICE

After adjournment of the final session of the hearing, the MRC shall begin its deliberations. Within thirty (30) days after closure of the deliberations of the MRC, the MRC shall render and deliver to the Administrator a written report and decision. The MRC may recommend that the Governing Body affirm, terminate or modify the action or recommendation that prompted the hearing. If the recommendation is to modify, the MRC must identify the modifications recommended. The decision and report shall be based on evidence produced at the hearing, including any recognized matters and reasonable inferences that may be drawn. The decision and report shall include findings of fact and conclusions articulating the connection between the evidence produced at the hearing and the decision reached. It shall include sufficient detail to enable the parties and the Governing Body to determine the basis for the MRC's decision on each issue contained in the statement of charges. It shall also contain a description of the appellate rights provided under these Bylaws. The Administrator, within five (5) working days after receiving the decision and report shall send a copy of them to the parties.

SECTION 5 - GOVERNING BODY ACTION AFTER MRC DECISION

The Governing Body shall take no action regarding the underlying matter or the decision and report of the MRC, until after the expiration of the time for requesting appellate review under Section 6, provided that if an appellate review is properly requested under Section 6, the Governing Body shall take no action except in compliance with the procedures and provisions of this Article. If an appellate review is not timely requested, the Governing Body shall make its final decision in accordance with Section 6.

SECTION 6 - APPEAL TO GOVERNING BODY

A Time for Requesting Appeal Within thirty (30) days after receipt of notice of the decision of the MRC either the affected Practitioner or the body whose decision prompted the hearing, may request an appellate review by the Governing Body. The request shall be in writing and must be received by the Administrator within the applicable time period set forth above. The Administrator shall immediately deliver copies of the request to the Governing Body and to the other parties. The request shall set forth the ground (s) for appeal as noted under Section 6C. If an appellate review is not requested as set forth in this paragraph, all parties shall be deemed to have waived all rights to appeal.

B Nature and Effect of Appellate Review The appellate review shall be by the Governing Body or a committee thereof and all references to the "Governing Body" shall include such committees. Appellate review shall consist of a review of the prior proceedings and decision in the matter being reviewed, an appellate review meeting, deliberations, review of any further recommendations, and a final decision. In its final decision the Governing Body may affirm, modify or reverse the decision of the MRC. No person or entity that participated in bringing the charges or in officially reviewing the matter shall participate in the appellate review process, even if such removal leaves the Governing Body with less than a quorum.

C Grounds for Appeal The grounds for appeal are limited to: substantial and prejudicial failure of the MRC or the MEC to comply with these Bylaws or to afford due process or a fair hearing, the action or recommendation that prompted the hearing, or any substantial part was arbitrary or capricious or the MRC's decision or any substantial part was clearly contrary to the weight of the evidence, the MRC's decision or any substantial part was clearly contrary to the weight of the evidence.

D Notice of Time, Date, Place of Appellate Review Meeting The Governing Body shall, within thirty (30) days after receipt by the Administrator of a timely request for appeal, schedule a date for an appellate review meeting. The Governing Body shall, not less than ten (10) days prior to the date of the appellate review meeting, give the parties written notice of the time, place, and date. The date thereof shall be not less than ten (10) days, nor more than sixty (60) days from the date of receipt by the Administrator of the request for appellate review, except that when a request for appellate review is from a member who is then under suspension, the appellate review meeting shall be held as soon as reasonably practicable but not later than forty (40) days from the date of receipt of the request. The chairman of the governing body for good cause may extend the date for the appellate review meeting.

E Appellate Review Proceedings The appellate review shall be conducted as follows:

1 The Governing Body shall limit its review to the record of the hearing before the MRC, the MRC decision and report, and any written briefs submitted by the parties. The Governing Body may, however, in its sole discretion, accept additional issues or oral or written evidence subject to the same rights of cross examination and rebuttal provided for MRC hearings. Such acceptance of additional issues or evidence may be based on the Governing Body's own motion, or upon the request of a party if, not less than seven (7) days prior to the appellate review meeting date, the party desiring to present such additional issues or evidence makes written request to the Governing Body to do so, specifying the nature and relevance of the issues or evidence, and gives notice of such request to all other parties. The Governing Body shall give notice of its decision in such matters to all parties as soon as reasonably possible.

2 The Governing Body may, in its sole discretion, appoint a Hearing Officer to conduct the appellate review meeting, rule on procedural matters, act as advisor to the governing body as to procedural matters, and without voting rights, participate in its deliberations and assist in the preparation of its decision.

3 Each party shall have the right to submit a written brief in support of his position on appeal, provided that copies of such brief shall be given to all other parties at such time as may be directed by the Governing Body.

4 The Governing Body, in its sole discretion, has the option to allow each party or party's representative to appear personally and make oral argument at the appellate review hearing, provided that such party shall make written application therefore to the Governing Body not less than seven (7) days prior to the date of the appellate review meeting. The Governing Body shall give notice of its response to such applications to all parties as soon as reasonably possible. If personal appearance is allowed, the affected Practitioner, if present, and all other parties and representatives present, shall answer any questions posed by any member of the Governing Body.

5 The Governing Body may, from time to time, adjourn and continue the appellate review meeting to another date or dates if it decides, in its sole discretion, that such action is necessary or desirable in order to conduct a fair and thorough appellate review in the matter. The Governing Body shall give notice to the parties of any such date and time, unless the parties were present when the Governing Body announced such date and time.

6 At the conclusion of the appellate review meeting, including oral argument, if held, the Governing Body shall, at a time convenient to itself, conduct deliberations outside the presence of the parties and their representatives, in order to determine whether to affirm, modify, or reverse the decision of the MRC.

7 The Governing Body shall, in its sole discretion, decide the order of procedures to be followed in the appellate review, as well as answers to questions not otherwise addressed in these Bylaws, to the end that the appellate review, including the appellate review meeting, shall be thorough, orderly, efficient, and fair

8 No person shall disrupt any appellate review proceeding Any person in attendance (whether a party or any other person) who disrupts an appellate review meeting after being warned by the Chairman of the Governing Body (or his designee or the hearing officer) to cease such disruption on penalty of indefinite exclusion, shall, at the direction of such chairman (or designee or the Hearing Officer), leave the meeting Unless directed otherwise for good cause by the Chairman (or designee or the Hearing Officer), the appellate review meeting shall proceed in the absence of such excluded person

F Final Decision/Effective Date The appellate review process shall conclude with the Governing Body's final decision in the matter, which shall be made in accordance with the following rules

1 Within thirty (30) days after either the waiver of appellate rights or the conclusion of the appellate review meeting, the Governing Body shall render its final decision, unless it refers the matter to the MRC for further review and recommendation The governing body, however, may exercise its independent judgment in determining whether the hearing procedures in these Bylaws were followed

2 If the Governing Body refers the matter to the MRC for further review and recommendation, such referral may include instructions such as that the MRC arrange for further hearings on specific issues The Governing Body shall give notice of such referral to the parties The MRC shall conduct such review in accordance with any such instructions, and shall deliver its written recommendation to the Governing Body within forty-five (45) days after the receipt of the referral from the Governing Body Within forty-five (45) days after receipt of such recommendation, the Governing Body shall render its final decision

The Governing Body's final decision shall be in writing and shall include a statement of the Governing Body's basis for its decision The decision shall be effective immediately and not subject to further hearing or appeal As soon as the final decision is effective, a copy of it shall be delivered to the affected Practitioner, the Administrator, and each party, in person or by certified mail

SECTION 7 - RIGHT TO ONLY ONE MRC HEARING AND APPELLATE REVIEW

No party shall be entitled to more than one (1) evidentiary hearing and one appellate

review on any matter that may be the subject of a MRC hearing or appeal

SECTION 8 - INFORMAL INTERVIEWS

Nothing in these Bylaws shall be deemed to prevent any committee, or person contemplating any action or recommendation set forth in Section 2B, from, at its sole discretion, inviting the affected Practitioner to participate in an informal discussion of the contemplated action or recommendation. Such discussion shall not be deemed to constitute a hearing under this Article.

SECTION 9 - RESIGNATION OR WITHDRAWAL OF APPLICATION

Notwithstanding any other provision of these Bylaws, whenever the affected Practitioner unconditionally (a) resigns from the Medical Staff, (b) resigns and relinquishes the privileges that are the subject matter of a hearing, (c) withdraws the application that is the subject matter of hearing, (d) amends an application or request with regard to the items that are the subject matter of the hearing, or (e) consents in writing to the action or recommendation that prompted the hearing, and there are no other issues before the hearing, all hearing and appellate review proceedings with respect to the Practitioner, his privileges or application, as the case may be, shall terminate as of the first day after such resignation, withdrawal, amendment, or consent. Once so terminated, the proceedings shall not be reopened except when ordered by the Governing Body, after receiving a written request from, or giving notice to, the affected Practitioner, and determining that good cause exists for such reopening.

SECTION 10-CONFIDENTIALITY

In addition to the provisions provided in Article XIII (Confidentiality/Immunity from Liability) of these Bylaws, all Medical Staff applicants and members, committee members and committee guests, peer review consultants, persons involved in any peer review activity at this hospital, as well as parties, participants, and attendees at a Medical Staff peer review hearing, shall keep all peer review investigations as well as all hearing and appellate review proceedings and the contents thereof confidential. No one shall disclose or release any information from or about the proceedings to any person or the public.

SECTION 11-EXCEPTIONS TO HEARING AND APPEAL RIGHTS

In addition to other exceptions set forth in these Bylaws, the hearing and appeal rights under these Bylaws are not applicable under the following circumstances:

A Closed Department/Exclusive Contracts The hearing and appeal rights under these Bylaws do not apply to a Practitioner whose application for Medical Staff membership and privileges was denied on the basis that the privileges he seeks are granted only pursuant to a closed staff or exclusive use policy.

B Medico-Administrative Practitioner The hearing and appeal rights under these Bylaws do not apply to those persons serving the hospital in a medico-administrative capacity. Termination of such persons' rights to practice in the hospital shall instead be governed by the terms of their individual contract with the hospital. However, the hearing and appeal rights of these Bylaws shall only apply to the extent that membership status or clinical privileges, which are independent of the Practitioner's contract, are also removed or suspended, unless the contract includes a specific provision establishing alternative procedural rights applicable to such decisions.

C Automatic Suspension or Termination of Privileges The hearing and appeal rights under these Bylaws are not granted if a member's Medical Staff membership or clinical privileges are automatically suspended or terminated in accordance with these Bylaws.

D Specified Professional Personnel Specified Professional Personnel are not entitled to the hearing and appeal rights under these Bylaws.

E Removal from Emergency Room Call Schedule Emergency Room call schedule participation is not a benefit or privilege or staff membership, but rather is an obligation. No hearing or appeal rights under these Bylaws are available for any action or recommendation affecting a Practitioner's emergency room call schedule obligation(s).

F Hospital Policy Decision The hearing and appeal rights of these Bylaws are not available if the hospital makes a policy decision (e.g., closing a department or service or physical plant changes) that adversely affects the staff membership or clinical privileges of any member or applicant.

G Termination of Hospital Employed Practitioner The privileges and staff membership of any Practitioner employed to the hospital shall be subject to termination in accordance with the terms of the Practitioner's contract. Such Practitioner shall not be entitled to the hearing and appeal rights under these Bylaws, except to the extent that the Practitioner's staff membership or privileges, which would otherwise exist independent of the contract, are to be limited or terminated, or unless otherwise provided in the Practitioner's contract.

ARTICLE IX

OFFICERS OF THE MEDICAL STAFF

SECTION I – OFFICERS Officers of the medical staff shall be the

- A Chief of Staff**
- B Vice Chief of Staff**
- C Immediate Past Chief of Staff**

D Secretary-Treasurer

SECTION 2 - QUALIFICATIONS

Officers must be members of the active staff at the time of their nomination and election. They must maintain their active status and remain in good professional and ethical standing during their term of office. Because of the peer responsibilities of their offices, the Chief of Staff and Vice Chief of Staff shall be physicians, with demonstrated competence in their fields of practice and ability to direct the medico-administrative aspects of medical staff activities. Officers must have demonstrated good interpersonal relationships with Medical Staff members and Hospital staff, and have indicated a willingness to accept the responsibilities of the office.

SECTION 3 - NOMINATION AND ELECTION OF OFFICERS

A Officers shall be elected for a two (2) year term by the active staff members at the final meeting of the designated medical staff term. Election shall be by oral vote or showing of hands unless written two (2) or more eligible voters request ballot. The candidate must be elected by a majority vote of the active staff members present at the meeting. When three (3) or more candidates are running and a majority is not obtained, the candidate with the least votes will be eliminated each time until a candidate receives a majority vote. Voting by proxy shall not be permitted.

B Nominations may be made in the following ways, provided that written consent to serve is obtained from the proposed nominee prior to placing the nominee's name into nomination.

- 1 By a nominating committee. The nominating committee shall consist of five (5) members of the active medical staff appointed by the Chief of Staff subject to approval of the MEC. The nominating committee shall convene at least thirty (30) days prior to the final meeting of the medical staff term and shall submit to the medical staff coordinator one (1) or more qualified nominees for each office at least thirty (30) days prior to the meeting. The nominees shall be for the offices of Chief of Staff, Vice Chief of Staff and Secretary-Treasurer.
- 2 By petition. Nominating by petition requires the signature of at least ten (10%) percent of the active staff members and must be filed with the medical staff coordinator at least ten (10) days prior to the final medical staff meeting. The Medical Staff shall be notified of these additional nominees at the time of this meeting.
- 3 From the floor. Nominating may be done from the floor at the time of the final meeting of the medical staff term.

SECTION 4 - TERM OF OFFICE/VACANCIES

A Term of Office Each officer shall serve a two-year term, beginning the first day of the Medical Staff term following their election. Each officer shall serve until the end of his term or until a successor is elected, unless he shall sooner resign or be removed from office.

B Vacancies in Office The Medical Staff MEC shall fill Vacancies in office during the Medical Staff term except for the Chief of Staff. If there is a vacancy in the office of Chief of Staff, the Vice Chief of Staff shall serve out the remaining term. A vacancy in the office of immediate past Chief of Staff will not be filled.

SECTION 5 - REMOVAL OF ELECTED OFFICERS FROM OFFICE

A Removal Removal of a medical staff officer may be initiated by a two-thirds (2/3) majority vote of the active Medical Staff. The Governing Body may remove any officer for cause as described in Section 5B, below.

B Grounds for Removal Each of the following conditions in itself constitutes cause for removal of a staff officer from office:

- 1 Revocation of professional license by the authorizing state agency,
- 2 Suspension from the Medical Staff,
- 3 Failure to perform the required duties of the office,
- 4 Failure to adhere to professional ethics,
- 5 Failure to comply with or support enforcement of the Hospital and
- 6 Medical Staff Bylaws, Rules and Regulations, and policies,
- 7 Failure to maintain adequate professional liability insurance, and
- 8 Failure to maintain active staff membership.

SECTION 6 - RESPONSIBILITIES, DUTIES, AND AUTHORITY OFFICERS

A Chief of Staff The responsibilities, duties, and authority of the Chief of Staff are to:

- 1 call, preside at, and determine the agenda of all general and special meetings of the Medical Staff,
- 2 serve as chairman of the MEC with tie-breaking vote prerogative only,

- 3 enforce medical staff Bylaws, rules and regulations and appropriate hospital rules and policies, implement sanctions when they are indicated, and enforce the medical staff's compliance with procedural safeguards in all instances in which corrective action has been requested or initiated against a Practitioner,
- 4 appoint the chairman and all Medical Staff members of Medical Staff standing and ad hoc committees, except the MEC, appoint the Medical Staff members of Hospital and Governing Body committees when these are not designated by position or by specific direction of the Governing Body,
- 5 represent the views, policies, concerns, needs, and grievances of the Medical Staff to the Governing Body and Administration, serve ex officio as a voting member of the Governing Body,
- 6 advise the Governing Body on the effectiveness of the quality/performance improvement program and the overall quality of patient care in the Hospital,
- 7 advise the Governing Body, Administration and the MEC on that impact on patient care and clinical services, including the need for new or modified programs/ services, for recruitment and training of professional and support staff personnel and for staffing patterns, and
- 8 serve as spokesman for the Medical Staff in its external professional and relations

B **Vice Chief of Staff** The responsibilities, duties, and authority of the Vice Chief of Staff are to

- 1 assume the responsibilities, duties, and authority of the Chief of Staff during the latter's absence whether the absence is temporary or permanent,
- 2 serve as an ex-officio voting member of the MEC, and
- 3 serve as chairman of the Performance Improvement Committee

C **Immediate Past Chief of Staff** The responsibilities, duties, and authority of the Immediate Past Chief of Staff are to

- 1 serve as an ex-officio voting member of the MEC,
- 2 advise the Chief of Staff and MEC on matters concerning the Medical Staff,

- 3 perform other functions at the request of the Chief of Staff, and
- 4 assume the responsibilities, duties, and authority of the Chief of Staff when both the latter and the Vice Chief of Staff are temporarily absent

D Secretary-Treasurer The responsibilities, duties, and authority of the Secretary Treasurer are to

- 1 serve as an ex-officio voting member of the MEC, assure the preparation and maintenance of accurate and complete minutes for all medical staff meetings on order of the Chief of Staff,
- 2 supervise any staff funds if any, and perform other such duties as ordinarily pertain to the Office of Secretary- Treasurer

In the temporary absence of the Chief of Staff, Vice Chief of Staff, and the immediate past Chief of Staff, the Secretary-Treasurer shall assume all the duties and have the authority of the Chief of Staff. In the event that all four officers are absent, the Executive Committee shall appoint an acting Chief of Staff who shall assume all the duties and have the authority of the Chief of Staff.

ARTICLE X

CLINICAL DEPARTMENTS

SECTION I – ORGANIZATION

A Structure Each department shall be organized as a separate part of the Medical Staff and shall have a chairman who shall be responsible for the overall supervision of the clinical work within his department and is selected and has the authority, duties, and specific responsibilities as specified in this Article. Each department shall have at least five (5) members including the chairman and the vice-chairman.

B Departments There shall be departments of Medicine, Surgery, Family Practice and OB/GYN/Pediatrics.

1 The Medical Department shall include any staff members in the following practice specialties: internal medicine, cardiology, pulmonology/critical care, dermatology, oncology, hematology, nephrology, neurology, emergency medicine, diagnostic internal medicine, radiology, gastroenterology, hematology/oncology, nuclear medicine, psychiatry, rheumatology, and infectious disease.

2 The Department of Surgery shall include any staff member in the

following practice specialties, vascular surgery, neurosurgery, orthopedic surgery, plastic surgery, urologic surgery, ophthalmology, otorhinolaryngology, maxillofacial surgery, general dentistry and all dental specialties, podiatry, pathology, physiatry, and anesthesiology, pediatric surgery, colon/rectal surgery, cardio-thoracic

3 The Family Practice Department shall consist of Family Practitioners only

4 The OB/GYN/Pediatrics Department shall include the following obstetricians and gynecologists and all pediatricians and sub-specialties of the above

C Changes in Departments When deemed appropriate for better organizational efficiency and improved patient care, the MEC, with the approval of the Governing Body, may create new, eliminate, subdivide, or combine clinical departments

D Clinical Services When clinical services are established, they shall be organized as a specialty subdivision within a department, shall be directly responsible to the department within which they function, and have a Chief of Service who is selected and has the authority duties, and responsibilities as specified in this Article Each service shall ordinarily have at least five (5) members

E Formation of Clinical Services A group of Practitioners of the same specialty that desire to become a clinical service must have a recommendation for such from the parent department to the MEC Denial of such a request by the department must be accompanied by the reason for the denial The MEC and Governing Body will then act on the request as follows

- 1 If the MEC approves a positive recommendation from the department, the committee recommendation is forwarded to the Governing Body
- 2 If MEC disagrees with a positive recommendation from the department, the issue can then be referred to the next general Medical Staff meeting The recommendation of the Medical Staff will then be forwarded to the Governing Body
- 3 If a negative recommendation from the department is supported by the MEC, the issue is considered closed
- 4 If the MEC reverses a negative decision from the department, the department may request that the issue be referred to the next general Medical Staff meeting The recommendation of the Medical Staff will then be forwarded to the Governing Body
- 4 All final approval rests with the Governing Body

SECTION 2 - PERFORMANCE ASSESSMENT AND IMPROVEMENT

A Responsibility It shall be the responsibility of the chairmen of the clinical departments and specialty services, working through departmental committees and with the assistance as appropriate of the standing committees, to design and implement effective programs

(1) to monitor and assess the quality of professional performance in each department and service, and

(2) to promote quality practice in each department and service by (a) providing education and counseling by the medical staff both to families of patients as well as to members of the hospital staff for general medical education and update, (b) issuing letters of instruction, admonition, warning or censure, as necessary, (c) requiring routine monitoring when deemed appropriate by the department or service, and (d) to participate as required in multi-disciplinary studies/systems

B Procedure

(1) Each department or service committee shall conduct regular patient care reviews and studies of performance and patient care outcomes within the department or service in conformity with a written quality management plan approved by the MEC and Governing Body

(2) In order to assist department or service members to conform their conduct or professional practice to the standards of the Medical Staff and Hospital, department or service chairmen may make informal comments or suggestions either orally or in writing. A summary of such statements will be kept in the member's credentials file. Such comments or suggestions shall be subject to the confidentiality requirements of all Medical Staff peer review information and may be issued with or without prior consultation with either the affected member or the department or service committee. Such comments or suggestions shall not constitute a restriction of privileges and shall not give rise to the hearing and appeal rights under these Bylaws. Such comments are eligible for peer review protection under state laws and statutes.

(3) Following discussion of identified concerns with a member, any department or service committee may authorize the chairman to issue a letter of instruction, admonition or warning to the member or to require the member to be subject to routine monitoring for such time as shall appear reasonable to the department or service. The term "routine monitoring" as used in this section shall mean review of a member's performance for which the member's only obligation is to provide reasonable notice of patient admissions, procedures or other patient care activity. All members of the Medical Staff, regardless of status, shall be subject to potential routine monitoring. The discussions of such actions with individual members shall be informal. Such actions shall not constitute a restriction of

privileges, shall not be considered to constitute corrective action and shall not give rise to the hearing and appeal rights under these Bylaws

(4) Written letters of instruction, admonition or warning or routine monitoring required pursuant to subparagraph three (3) above shall be reported to the MEC promptly after such actions are taken

SECTION 3 - ASSIGNMENT TO CLINICAL DEPARTMENTS

A **Assignment** Each member of the medical staff shall be assigned membership in one (1) clinical department, based on the bulk of the clinical services he provides. Members may, in addition, be granted clinical privileges in one (1) or more other departments

B **Meetings** Each member will be allowed to vote in only one (1) department and to represent only one (1) department on committees (including the MEC), and shall be responsible for attending the required number of meetings only in the department to which he is primarily assigned. However, each Practitioner is encouraged to attend meetings in all departments in which he exercises privileges and should keep himself informed of departmental activities, particularly as they relate to findings of patient care and performance evaluation activities

C **Rules and Regulations** The exercise of clinical privileges granted by the Governing Body or the performance of specified services within any department shall be subject to the rules and regulations of that department and the defined authority of the department chairman

SECTION 4 - FUNCTIONS OF CLINICAL DEPARTMENTS

The primary responsibility delegated to each department is to implement and conduct ongoing specific review and evaluation activities that contribute to the preservation and improvement of the quality, performance, effectiveness and efficiency of patient care provided through the department. To carry out this responsibility, each department either alone or in concert with other organizational components of the Medical Staff and of the Hospital, shall

A Objectively reviews, analyze, and evaluate the quality of care and performance provided through the department. In the interest of achieving quality patient care and performance, each department, through an established system, shall evaluate all clinical work performed under its jurisdiction, whether or not any particular Practitioner or other individual with clinical privileges whose work is subject to such evaluation is a member of the department. This must be done at least quarterly and must be based on objective, measurable standards of care/performance. All or part of such review may be carried out through clinical services or designated specialty groups, with periodic (at least quarterly) reporting of the interpreted findings to the appropriate medical staff department(s). Alternatively, a department as a whole may perform the required review and evaluation

functions The department may also elect to send the review to the Medical Staff Peer Review Committee

B Establish criteria for the granting of clinical privileges and, as appropriate, for the holding of office within the department

C Recommend to the Credentials Committee the specific clinical privileges that each staff member or Medical Staff applicant may exercise in the department and the specific services that each designated professional personnel may provide

D Establish such committees or other mechanisms as are necessary and desirable to maintain quality clinical performance

E Monitor its members' performance on a concurrent basis for

- 1 adherence to Medical Staff, Hospital, and departmental rules and regulations, and policies/procedures,
- 2 meeting requirements for alternate coverage and for obtaining consultation, adherence to sound principles of clinical practice,
- 3 appropriate invasive procedures and other patient care interventions,
- 4 unexpected clinical occurrences, including compliance with the Hospital Occurrence/Incident Screening Program (HOR), and
- 5 all relevant aspects of patient safety

F fulfill the responsibilities designated to the department as set forth in the quality/performance improvement plan

G receive and evaluate the compliance with medical necessity (admission and intervention) and clinical management criteria, the findings from use of occurrence screening criteria, reports of Medical Staff and other departmental committees, and compliance with the established patient care requirements (rules, regulations, policies, protocols) of the department and Medical Staff

H coordinate with nursing and ancillary clinical patient care services, and with other administrative support services, the patient care provided by the department's members

I conduct or participate in, and make recommendations regarding the need for continuing education programs, pertinent to state-of-the-art changes, and, in particular, to the findings of performance assessment and improvement activities

J maintain a permanent record of all department meetings/activities to include the discussion content as well as conclusions reached or actions taken or recommended

Copies of minutes should be transmitted to the Medical Executive Committee

SECTION 5 - DEPARTMENT CHAIRMAN AND VICE CHAIRMAN

A Qualifications Each chairman and vice chairman shall be a member of the active staff, qualified by training, experience and demonstrated ability for the position. Each shall have demonstrated professional ability in at least one (1) of the clinical areas covered by the department, shall meet all state regulatory requirements, and shall be willing, able, and eligible to discharge faithfully the functions of his office. The Department Director shall be certified by an appropriate specialty board or affirmatively establish comparable competence through the credentialing process.

B Selection of Chairman and Vice Chairman Each chairman and vice chairman shall be elected by the department membership from nominees submitted in writing by department members, or verbal nomination subject to approval of the MEC or each chairman and vice chairman shall be appointed by the Chief of Staff after consultation with the MEC. If the MEC fails to approve the election of the chairman and vice chairman, the department shall hold another election.

C Terms of Office Department chairman and vice chairman shall serve a two (2) year term beginning on the first day of the Medical Staff term following his selection. The department chairman or elected department vice chairman may succeed himself. The department chairman or elected department vice chairman shall serve until his successor is chosen, unless he shall resign sooner or be removed from office. In the temporary or permanent absence of the department chairman, the vice chairman shall assume all duties, responsibilities, and authority of the chairman, and will become a member of the MEC. The vice chairman may be elected by the department membership or appointed by the Chief of Staff.

D Removal of Department Chairman or Vice Chairman Removal of a department chairman or vice chairman may be initiated by a two-thirds (2/3) majority vote of department members eligible to vote, and subject to approval of the MEC. The MEC or Governing Board may remove for cause as listed under Section 5B of Article IX of these Bylaws, relating to removal of Medical Staff officers.

E Responsibilities, Duties, and Authority of Department Chairman Each chairman shall

- 1 account to the MEC for all professional and administrative activities within his department,
- 2 develop and implement in cooperation with the Chief of Staff and consistent with these Bylaws, departmental mechanisms for performing the credentials review, delineating clinical privileges, and assigning staff classification, concurrent monitoring of practice/performance that is objective and

measurable, include an occurrence screening program and the use of medical necessity and clinical management criteria, quality management activities, continuing medical education, and utilization review,

- 3 transmit to the Credentials Committee the department's recommendation concerning appointment and reappointment, delineation of clinical privileges, and corrective action with respect to practitioners in the department,
- 4 maintain ongoing review of the professional performance of all Practitioners and any Specified Professional Personnel within the department, contribute data to individual Practitioner's performance profiles, and report regularly to the Credentials Committee and MEC upon request and at the time of reappointment. The report will include evidence of consideration of each Practitioner's health status in terms of the Practitioner's ability to practice in the area in which privileges are sought,
- 5 develop, implement, and enforce, in cooperation with the Chief of Staff and/or Vice Chief of Staff, programs to perform the quality assessment and improvement and maintenance functions delegated to his service,
- 6 serve as a member of the MEC, giving guidance on the overall medical policies of the Hospital and making specific recommendations and suggestions regarding his own department in order to promote quality patient care. Within the department, chairman shall implement actions taken by the MEC,
- 7 enforce the Hospital and Medical Staff Bylaws, Rules and Regulations, and policies and the departmental rules and regulations including, when appropriate, the initiation of corrective action and investigative services and participate as consultants on an as-needed basis when his area is involved,
- 8 actively encourage all department members to complete adequately and in a timely manner the medical records of their discharged patients (within the period required by these Bylaws, rules and regulations and by any regulatory agency),
- 9 assign proctors to individuals who have been granted temporary privileges prior to staff membership approval or who are in provisional status as new appointed staff members or as otherwise requested by the MEC,
- 10 cause departmental rules and regulations relating to standards of patient care to be developed, approved, implemented, and reviewed at least annually for any needed revision,
- 11 cause all standing orders of Practitioners to be reviewed initially, on change, and periodically (e.g., annually), if the responsibility is not assigned to a

standing committee of the Medical Staff (e g , Pharmacy and Therapeutics Committee),

- 12 assist in the preparation of such annual reports, including budgetary planning, pertaining to the department as may be required by the MEC, the Administrator, or the Governing Body,
- 13 assess and recommend to the Administrator off-site sources for needed patient care services not provided by the department/service or the Hospital,
- 14 determine whom, outside of the department members, the Chief of Staff, Administrator or his designee, quality management coordinator, and recording secretary, may attend department meetings,
- 15 perform such other duties commensurate with his office as may from time to time be reasonably requested of him by the Chief of Staff, the MEC, or Governing Body,
- 16 coordinate and integrate interdepartmental and intradepartmental services,
- 17 exercise general supervision over all clinical work performed through the service, and
- 18 act as presiding officer at all service meetings and cause a permanent meeting report to be maintained and distributed as required

ARTICLE XI

COMMITTEES & FUNCTIONS

SECTION I - GENERAL CONSIDERATIONS

A Standing and Special Committees There shall be standing and special (ad hoc) committees of the Medical Staff Unless stated otherwise in these Bylaws, the committees of this Article shall be standing committees of the Medical Staff Special or ad hoc committees may be created by the MEC to perform specified tasks

B Appointment and Removal Unless otherwise specified, the Chairman and members (except the MEC and its Chairman) of all committees shall be appointed for a two (2) year term and may be removed by the Chief of Staff after consultation with and approval of the MEC

C Minutes Unless stated otherwise in these Bylaws, each committee shall submit a copy of its minutes to the MEC and shall maintain a permanent record of its proceedings, including pertinent discussion and any conclusions, recommendations, and actions

D Participation of Non-Medical Staff Members Persons who participate or attend committees or functions who are not Medical Staff members shall be selected by the Administrator with the concurrence of the committee Chairman or Chief of Staff. Non-medical staff members shall not be entitled to vote, but may participate if invited in discussion.

E Ex officio members Ex officio committee members shall serve without vote.

F Performance of Functions Whenever these Bylaws require that a function be performed by

- 1 A Medical Staff committee but no committee has been specified, the MEC shall perform the function or designate a subcommittee to perform it.
- 2 The MEC, but a standing or special committee has been formed to perform the function, the committee so formed shall act in accordance with the authority delegated to it.

G Vacancies Unless stated otherwise in these Bylaws, vacancies on any committee shall be filled in the manner of original appointment to the committee. If an individual obtains membership by virtue of these Bylaws and is removed for cause, a successor may be selected by the MEC.

H Medical Staff Committee Chairman The chairman of each medical staff committee will change every two- (2) years. A physician may succeed himself/herself as chairman of any medical staff committee.

SECTION 2 - MEDICAL EXECUTIVE COMMITTEE (MEC)

A Composition The Medical Executive Committee shall be a standing committee of the Medical Staff. It shall consist of the officers of the staff: Chief of Staff, Vice-Chief of Staff, and Secretary-treasurer, Chairman of all Medical Staff Departments, the most recent ex-chief of staff, the Chairman of Credentials Committee, the Chairman of the Med/Surg/PCU Committee, one member selected at large from the Medical Staff by the Chief of Staff, the Chief Medical Officer of the hospital who shall be an ex-officio member without vote, and the Administrator of the hospital who shall be an ex-officio member without vote. The Chief of Staff shall be Chairman of the committee. Each voting member, regardless of staff, department, or other committee position held shall have only one (1) vote.

B Responsibilities, Duties, and Authority The MEC shall

- 1 represent and act on behalf of the Medical Staff, subject to such limitation as may be imposed by these Bylaws,

- 2 make recommendations to the Governing Body on all matters relating to appointments, reappointments, clinical privileges, staff category and clinical department/service assignments, and corrective action. When Specified Professional Personnel provide or are recommended to provide services in the Hospital, the committee shall make recommendations to the Governing Body regarding their qualifications to provide those services and on the degree of supervision required,
- 3 receive and act upon reports and recommendations from Medical Staff committees, all clinical departments, and staff officers concerning performance improvement activities and the discharge of their delegated administrative responsibilities,
- 4 ensure, through evaluation by this committee or the Environment of Care Committee, that each Medical Staff peer evaluation and performance assessment and improvement activity is performed effectively,
- 5 coordinate the activities of, and policies adopted by, the staff, departments/services, and committees,
- 6 fulfill the medical staffs' accountability to the Governing Body for the medical care rendered to patients in the Hospital,
- 7 initiate and pursue corrective action, when warranted, in accordance with these Bylaws,
- 8 take all reasonable steps to help provide for professional ethical conduct, competence, and clinical performance on the part of all staff members,
- 9 make recommendations to the Governing Body on medico-administrative and Hospital management matters as requested, particularly as they relate to patient care, through the Administrator and Chief of Staff,
- 10 submit recommendations to the Governing Body for changes in the Medical Staff Bylaws, Rules and Regulations and other organizational documents pertaining to the Medical Staff,
- 11 serve as a liaison to provide and promote effective relationships among the Medical Staff, Administration, and the Governing Body,
- 12 participate in identifying community health needs, setting Hospital goals, and implementing programs to meet those needs,
- 13 actively maintain effective Medical Staff participation in the hospital's occurrence screening program, and

- 14 promote in house Medical Staff continuing education activities that are relevant to the care and services provided in the hospital and, in particular, to the findings of Medical Staff peer evaluation and performance improvement activities

- C Meetings The MEC shall meet as often as necessary to accomplish its functions, but at least ten (10) times per year

SECTION 3 - CREDENTIALS COMMITTEE

- A Composition The Credentials Committee shall be a standing committee of the Medical Staff and shall consist of five (5) or more members of the active staff, with ex officio representation from administration who shall not vote. The physician members shall be representative of the major clinical departments. Whenever possible, when a physician is being reviewed, a peer representative, who is not a member of the committee, will participate for that part of the meeting. The Chairman of the committee shall be an active member of the Medical Staff appointed by the Chief of Staff.

- B Responsibilities, Duties and Authority The committee shall

- 1 review and evaluate the qualifications of each applicant for initial appointment, reappointment, or modification of appointment, and for clinical privileges,
- 2 review each application prior to processing to determine if it is complete for processing and shall not process any application for membership or privileges that is incomplete,
- 3 review and evaluate the qualifications of specified professional personnel to provide specific patient care services in the Hospital and to obtain and consider the recommendations of the appropriate department,
- 4 obtain and consider the recommendations of the appropriate departments regarding initial appointment, reappointment, or modification of appointment and for clinical privileges,
- 5 submit a report, in accordance with these Bylaws, to the MEC on the qualifications of each applicant for staff membership or clinical privileges, and of each specified professional personnel, to provide specific patient care services. Such report shall include recommendations for Medical Staff applicants as to appointment, staff category assignment, department/service affiliation, and clinical privileges, and, for specified professional personnel the specific services to be performed. In either case, any special conditions will be recommended at the same time,

6 submit reports to the MEC on the status of pending applications, including the specific reasons for any unusual delay in processing an application or request,

7 monitor the number of patient contacts and the number of department and quarterly medial staff meetings of Practitioners in provisional status pending their final Medical Staff appointment,

8 provide that a separate credentials file is maintained for each staff member, each practitioner with clinical privileges, and each specified professional personnel, including reports from quality/performance assessment and improvement activities and of corrective actions of any degree

C Meetings The Credentials Committee shall meet as often as necessary to accomplish its functions

SECTION 4 - ENVIRONMENT OF CARE COMMITTEE

A Composition The Environment of Care Committee shall be a standing committee and shall consist of at least one active physician member from the medical staff, the Administrator or designee, the Chief Nursing Officer, the Quality Improvement Coordinator, and the Risk Manager, and other hospital staff as appointed by the administrator Other individuals from either the Medical or Hospital staffs may participate as consultants on an as-needed basis

B Responsibilities, Duties, and Authority The committee shall

1 review quality control reports from the various hospital departments to identify any trends and/or opportunities for improvement,

2 receive, analyze, and recommend action regarding any significant findings from quality control, safety or infection control reviews,

3 review and approve the hospital plans for performance improvement, safety and infection control,

4 receive and review safety reports including those related to emergency preparedness, provide input to effect positive change, review and approve safety policies,

5 receive, review and approve hospital infection control policies, issues and reports and provide input to effect improvement and positive changes,

6 perform at least an annual evaluation of the Environment of Care program to assure its comprehensiveness and effectiveness,

- 7 assure that an updated report is presented to the Governing Body annually,
- 8 analyze the incidence and major causes of hospital acquired infections and make recommendations for improvement,
- 9 receive reports and monitor a preventive and corrective program designed to minimize infection hazards, including an employee health program,
- 10 institute appropriate control measures or studies if there is suspicion of a danger to patients or personnel. When the situation is considered to be urgent, the committee chairman or a physician member of the committee or the infection control practitioner may institute the control measure immediately and will be assisted by hospital personnel in doing so. The Chief of Staff and the Administrator shall be notified as soon as any urgent control measure is instituted and shall be consulted prior to the institution of any non-urgent measure. The attending practitioner shall be notified as soon as possible, however, when the patient's attending practitioner does not consider the measure necessary (e.g., the need to isolate a patient), the decision of the committee chairman or infection control practitioner in following established infection control policy, shall prevail,
- 11 review and approve cleaning agents to be used in the hospital, and
- 12 determine when environmental cultures are required

- C **Meetings** The Environment of Care Committee shall meet as often as necessary to accomplish its functions, but at least (6) six times per year. The overall findings will be sent to MEC.

SECTION 5 - PHARMACY AND THERAPEUTICS COMMITTEE

- A **Composition** The Pharmacy and Therapeutics Committee is a standing committee of the medical staff and shall consist of at least one physician from the active Medical Staff, a pharmacist from the hospital's pharmacy service, a representative from the laboratory, infection control, administration and from nursing services and when indicated, a clinical dietitian. The physicians shall represent each Medical Staff department. The chairman shall be selected by the Chief of Staff.

- B **Responsibilities, Duties & and Authority** The committee shall

- 1 evaluate the clinical usage of drugs (particularly high risk, problem-prone and investigative drugs) in the hospital, establishing priorities for specific drug or drug category reviews, and using measurable criteria in the review process. After any required peer review, the findings will be entered into the appropriate practitioner performance profiles,

- 2 establish and implement a well controlled or closed formulary to help control the use of drugs in the hospital The committee will make recommendations to the MEC regarding any changes to the formulary Requests for formulary changes from individual medical staff members must be submitted to the committee in writing and include the rationale for the change The committee chairman will transmit the committee's action to the requesting Practitioner,
- 3 define and evaluate all significant untoward reactions to drugs In addition, the committee shall strive for adequate reporting of actual or suspected untoward drug reactions, including the recommendation of periodic inservice training for nursing personnel and other appropriate hospital personnel,
- 4 define and evaluate all significant medication errors,
- 5 evaluate initially, when changes are made, and at least annually, standing and routine orders containing medication orders,
- 6 assist in the formulation of and approval of all professional policies regarding the evaluation, appraisal, selection, procurement, storage, distribution, use, safety procedures, and other matters relating to drug usage in the hospital,
- 7 ensure the adequacy and centralization of intravenous mixtures, total parenteral nutrition, and the mixture of chemotherapeutic agents,
- 8 make recommendations to the MEC on protocols proposed for the use of investigational or experimental and, high-risk drugs and specific drug categories for use in the hospital,
- 9 review statistics and reports related to blood and blood product ordering, handling, dispensing, administering and monitoring the effects on patients and make recommendations as needed,
- 10 maintain in conjunction with the P & T Committee, an objective ongoing evaluation of the clinical use of all antibiotics used in the hospital, whether the drugs are prescribed prophylactically, empirically, or therapeutically The committee shall recommend action for any required practice change to the MEC and shall follow-up through the Performance Improvement Committee to be sure the approved change has occurred The committee shall recommend objective and measurable criteria for use in all facets of antibiotic use evaluation,
- 11 evaluate clinical practice objectively for compliance with measurable criteria for the use of whole blood and each of its components administered in the hospital,
- 12 evaluate untoward transfusion reactions In addition, the committee shall

strive for adequate reporting of actual or suspected transfusion reactions, including the recommendation of periodic in-service training for nursing personnel to identify such reactions,

13 maintain and evaluate blood use statistics in order to determine blood waste and recommend or take appropriate action,

14 encourage strongly the increased use of the type-and-screen vs type-and-crossmatch procedure, based on periodic (e g , annual) actual use statistics by practitioner, departments/clinical specialties, and specific therapeutic interventions (e g , specific surgical procedures, etc),

15 the physician representatives will review blood and blood product usage Any isolated instances or patterns of inappropriate blood usage felt to be significant in the view of the Committee will be referred to the appropriate department for further review,

16 set priorities for any aspect of blood therapy evaluation, and

17 Review and support activities to infection control including policy development, surveillance, prevention and control measures Data and trends related to infection control will be reviewed and processes for improvement of outcomes will be identified

C Meetings The Pharmacy and Therapeutics Committee shall meet as often as necessary to accomplish its function, but at least four (4) times per year

SECTION 6 - OPERATING ROOM COMMITTEE

A Composition The Operating Room Committee shall be a standing committee and shall consist of active members of the Medical Staff from departments such as Anesthesia and Surgery specialties In addition, the committee shall have representation from the Administration, Director of Surgical Services, and other support departments as needed The OR Committee shall have several subcommittees including, but not limited to the following

1 LASER COMMITTEE

a Composition The Laser Committee shall be a subcommittee of the OR Committee consisting of active Medical Staff from the surgery specialty, the Bio-Medical technician, the Director of Surgical Services and a representative from Hospital Administration

b Responsibilities, Duties, and Authority The responsibilities duties, and authority of the Laser Committee shall be to

- 1 monitor and trend laser usage and safety through the monitoring of quality indicators,
- 2 make recommendations to the OR Committee policy and procedure development, continuing education, privilege/credential guidelines, and other quality of care issues, and
- 3 report any concerns and/or laser needs to the OR Committee

c **Meetings** The Laser Committee shall meet as often as needed. The chairman of the Laser Committee shall be a member of the OR Committee appointed by the Chief of Staff, and serve as a liaison from the Medical Staff to Hospital Administration and report any issues to the OR Committee.

2 **ENDOSCOPY COMMITTEE**

a **Composition** The Endoscopy Committee shall be a subcommittee of the OR Committee consisting of active medical staff from both the Surgery and Medicine specialties, the Endoscopy nurse (s) and a representative from the Hospital Administration.

b **Responsibilities, Duties, and Authority** The responsibilities, duties and authority of the Endoscopy Committee shall be to

- 1 monitor and trend endoscopy usage and safety,
- 2 make recommendations to the OR Committee for policy and procedure development, continuing education, privilege/credential guidelines, and other quality of care issues, and
- 3 report any concerns and/or needs to the OR Committee

c **Meetings** The Endoscopy Committee shall meet as often as needed. The chairman of the Endoscopy Committee shall be a member of the OR Committee appointed by the Chief of Staff, and serve as a liaison from the Medical Staff to Hospital Administration and report any issues to the OR Committee.

3 **PAIN MANAGEMENT COMMITTEE**

a **Composition** The Pain Management Committee shall be a subcommittee of the OR Committee consisting of the active Medical Staff, nursing representation from the Block Suite, the Director of Spine

Services, and a representative from Hospital Administration

b Responsibilities, Duties, and Authority The responsibilities, duties, and authority of the Pain Management Committee shall be to

1 monitor and trend block suite patient care and safety through monitoring of designated quality indicators,

2 make recommendations to the OR Committee for policy and procedure development, continuing education, privilege delineation, credentials guidelines, and other quality care issues,

3 report any concerns and / or Pain Management needs to the OR Committee

c Meetings The Pain Management Committee shall meet as often as needed. The chairman of the Pain Management Committee shall be a member of the OR Committee appointed by the Chief of Staff, and shall serve as a liaison from the Medical Staff to Hospital Administration and report any issues to the OR Committee

B Responsibilities, Duties, and Authority The responsibilities of the Operating Room (OR) Committee shall be to

1 review and monitor utilization of the operating room time, including starting times, operative times, and efficient daily running of the operating room schedule,

2 develop policies concerning hours of the operating room operation including times that elective cases may be scheduled as well as hours which during the week that will be designated as emergency operative time,

3 develop policies concerning the posting and scheduling of patients and efficient utilization of all available time and space in the operating room. Develop policies and procedures as deemed necessary from time to time to assure the most cooperative and efficient use of the operating room,

4 review Performance Improvement procedures,

5 make recommendations to ECRMC for obtaining new OR equipment, and review of OR design change,

6 assume other duties and responsibilities as would naturally fall under the direction of an OR Committee

C Meetings The OR Committee shall meet quarterly or as often as necessary to

accomplish its functions

SECTION 7 – PERFORMANCE IMPROVEMENT COMMITTEE

A Composition The Performance Improvement Committee shall consist of at least one active member of the medical staff appointed by the Chief of Staff and shall serve as the Committee Chairperson. The other members of the PI Committee shall include the VPPCS, COO, Quality Management Coordinator, and four department directors selected annually by the CEO

B Responsibilities, Duties, Authority The committee shall be responsible for performance improvement through

- 1 providing oversight to the implementation of the Hospital's plan for performance improvement,
- 2 reviewing and approving department performance improvement indicators, data to be collected and interventions,
- 3 recommending and/or approving performance improvement teams for the purpose of process improvement,
- 4 review and evaluation of and approving performance improvement data analysis and intervention,
- 5 providing for the Medical Executive Committee and the Board of Directors an annual evaluation of the effectiveness of all aspects and components of the performance improvement process and recommendation for improvement and a projected plan for the following year

C Meetings The Performance Improvement Committee shall meet as often as needed to accomplish its functions, but at least six (6) times a year

SECTION 8 - BYLAWS, RULES AND REGULATIONS COMMITTEE

A Composition The Bylaws, Rules and Regulations Committee is a standing committee of the medical staff and shall consist of three (3) or more physician members of the active staff, including the Chief of Staff and the immediate past Chief of Staff. The Medical Staff Coordinator shall participate as an ex officio member without vote

B Responsibilities, Duties, and Authority The responsibilities, duties, and authority of the Bylaws, Rules and Regulations Committee shall be to

- 1 review at least annually the Medical Staff Bylaws, Rules and Regulations and recommend to the MEC and the Governing Body any changes deemed

necessary for compliance with applicable laws and accreditation requirements, and

2 ensure, through ongoing review, that the Bylaws, Rules and Regulations reflect current practice and an efficient organization of the Medical Staff in performing its functions,

3 ask each clinical department to develop and implement rules and regulations to establish standards of patient care and ascertain that these rules and regulations are consistent with Medical Staff Bylaws, Rules and Regulations and with Hospital and Governing Body policies

C Meetings The Bylaws, Rules and Regulations Committee shall meet as often as necessary to accomplish its functions

SECTION 9 - MEDICAL RECORD/UTILIZATION REVIEW COMMITTEE

A Composition The Medical Record/Utilization Review Committee is a standing committee of the Medical Staff and shall consist of physicians from the active staff representing the major departments, a representative from administration and from nursing services, utilization review coordinator and discharge planner, and the Health Information Services Director

B Responsibilities, Duties, and Authority The committee shall

1 review and evaluate medical records objectively, using prescribed work sheets, to assist in providing records that are adequate with regard to (a) continuity of care, (b) use in quality assessment and improvement activities, (c) assisting in protecting the legal interest of the patient, the hospital, and the responsible practitioner, (d) clinical pertinence (particularly all significant changes in patient status) to be done by physicians, (e) required documentation, (f) patient/family involvement in the plan of care, (g) receipt and acknowledgment of patient/family instructions, (h) age specific information (particularly for infants and children), (i) pertinent psychosocial information, and (j) evidence of informed consent,

2 establish the format of the medical record in concert with the director of the Health Information Management department, and review and advise the Administrator and MEC regarding all forms to be used in the medical record,

3 review and recommend approval or not, of all policies, rules, and regulations relating to medical records,

4 recommend any need for and the interval for microfilming medical records, and participate in decisions for computerization of medical record data,

5 develop, or cause to be developed, and implement a record review system that, over a reasonable period of time, causes a representative sampling of the records of all practitioners to be evaluated for quality and clinical pertinence,

6 furnish to medical staff and administration on a regular basis timely statistical data, the nature of which is to be determined through the information needs of the Hospital and Medical Staff,

7 comply with applicable requirements of the utilization review plan approved by the Medical Staff and Governing Body,

8 require documentation that utilization review is applied regardless of payment source,

9 require that focused reviews be emphasized, and

10 determine whether under utilization and/or over utilization of practices has an adverse impact upon the quality of patient care and recommend appropriate corrective actions to be taken

B Meetings The Medical Record/UR Committee shall meet as often as necessary to accomplish its functions and clinical pertinence review

SECTION 10 - MEDICAL ETHICS COMMITTEE

A Composition The Medical Ethics Committee, which may also be referred to as the Medical Ethics, shall be a standing Medical Staff committee which shall have active Medical Staff members. It may include lay representatives, nurses, social workers, clergy, ethicists, and an attorney, the Administrator (or designee). If membership shall represent a diversity of professions and shall include both men and women. A Medical Ethics member may not participate in the initial or continuing review of any project in which the member has a conflicting interest except to provide information as requested by the Medical Ethics Committee. The Medical Ethics Committee may, at its discretion, invite nonvoting individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the Medical Ethics Committee. The chairman shall be an experienced, Medical Staff member and shall assist in the appointment along with the Chief of Staff, of the remaining committee members.

B Meetings The Medical Ethics Committee shall meet as often as necessary to accomplish its functions at the call of the chairman. Except when an expedited review procedure is used, the Ethics Committee shall review proposed research at convened meetings at which a majority of the members of the Ethics Committee are present, including at least one member whose primary concerns are in nonscientific areas. The Ethics Committee shall prepare and maintain adequate documentation of Ethics Committee activities and shall report to the MEC.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No 2010-CP-10-3410

Dr Cynthia Holmes, M D

Appellant,

v

East Cooper Community Hospital, Inc ,
Tenet HealthSystem Medical, Inc ,

Respondents

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MA 26 2012

SC Court of Appeals

**PROOF OF SERVICE FOR
RECORD ON APPEAL AND CERTIFICATE OF COMPLIANCE**

I certify that I have served a copy of the Record on Appeal and certificate of compliance on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record for Respondents, at Lindsay Smith-Yancey, Chip McQueeney E D Pratt-Thomas POD 22247 Charleston, SC 29413



Chalmers C. Johnson
523 So G St, Apt 402
Tacoma, WA 98405
425 999 0900
Attorney for the Appellant

Date March 24, 2012

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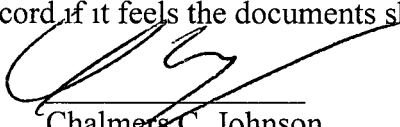
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SC Court of Appeals

COUNSEL'S CERTIFICATE OF COMPLIANCE
SCACR 210(g)

As Counsel for the Appellant, I certify that, the Record on Appeal contains all materials proposed to be included by the parties, and which comply with SCACR 210 and not any other material. The undersigned has not included documents which were proposed but did not comply with Rule 210, SCACR (were not presented to the lower court or tribunal). The parties have conferred regarding this exclusion and agreed that Respondent will bring a motion to supplement the record if it feels the documents should be included as part of the appeal.


Chalmers C Johnson
523 So G St , Apt 402
Tacoma, WA 98405
425 999 0900
Attorney for the Appellant