

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 22 2014

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. Supreme Court

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-001115

Kristin Joseph P.T., Thomas N. Joseph, M.D., and William G. McCarthy, M.D., Appellants,

v.

South Carolina Department of Labor, Licensing and Regulation, South Carolina
Board of Physical Therapy, Respondents,

and

South Carolina Chapter, American Physical Therapy Association, Joseph M.
McKowen, PT, Sabrina Queen Bridges, PTA, and Amalia W. Kirby, (PTA), Respondents.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Order Denying SC Department of Labor Licensing & Regulation's Motion to Dismiss As To Causes Of Action One Through Six And Granting Partial Summary Judgment As To Causes Of Action Seven Through Nine dated September 17, 2012 filed December 4, 2012,.
2. December 17, 2012 Motion to Reconsider
3. January 9, 2013 Order Denying Motion to Reconsider
4. May 2, 2013 Notice of Motion and Motion to Intervene by the South Carolina Chapter, American Physical Therapy Association, Joseph M. McKowen, P.T., Sabrina Queen Bridges, PTA, and Amalia W. Kirby, (PTA)
5. May 13, 2013 Appellants Proposed Answer


6. July 1, 2013 Consent Order filing Amended Declaratory Judgment / Complaint.
7. November 1, 2013 Plaintiffs' Motion for Summary Judgment (Kristin Joseph, P.T., Thomas N. Joseph, M.D. and William G. McCarthy, M.D.)
8. November 7, 2013 Notice of Motion and Motion for Summary Judgment by Defendant South Carolina Department of Labor Licensing & Regulation and South Carolina Board of Physical Therapy.
9. November 14, 2013 Defendant-Intervenors' Notice of Motion and Motion for Summary Judgment (SC Chapter, American Physical Therapy Association, Joseph M. McKowen, PT, Sabrina Queen Bridges, PTA and Amalia W. Kirby (PTA) Motion for Summary Judgment)
10. December 13, 2013 Memorandum in Support of Plaintiffs' Motion for Summary Judgment
11. December 13, 2013 Defendant-Intervenors' Memorandum in Support of Motion for Summary Judgment
12. December 13, 2013 SC Board of Physical Therapy's Memorandum in Support of Its' Motion for Summary Judgment
13. January 10, 2014 Defendant-Intervenors' Response in Support of Their Motion For Summary Judgment
14. January 10, 2014 SC Board of Physical Therapy's Response in Support of Its Motion for Summary Judgment
15. January 10, 2014 Plaintiff's Reply to Defendant-Intervenors' Motion for Summary Judgment
16. January 10, 2014 Plaintiffs' Reply to Defendant's Motion for Summary Judgment
17. April 22, 2014 Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment
18. May 8, 2014 Plaintiffs' Motion to Reconsider, Alter or Amend.
19. May 16, 2014 Defendant's Memorandum in Opposition to Plaintiffs' Motion to Reconsider, Alter or Amend
20. May 14, 2014 Order Denying Plaintiffs' Motion to Reconsider
21. Attachment A to Plaintiffs' Reply to Defendant-Intervenor's Motion for Summary Judgment, Medicare *Benefit Policy Manual, Chapter 15*, Part 220, 220.1.2, 220.3.D, and 1.3 Rev. December 13 and 30, 2013 (Medicare Policy Manual)
22. Ex. 1 to Memorandum in Support of Motion for Summary Judgment, 2011 Position Statement

23. Ex. 3 to Memorandum in Support of Motion for Summary Judgment, Carpenter Letter dated May 3, 2011
24. Ex. 4 to Memorandum in Support of Motion for Summary Judgment, Swygert Letter dated June 2, 2011
25. Ex. 5 to Memorandum in Support of Motion for Summary Judgment, PT Board Minutes dated July 14, 2011
26. Ex. 6 to Memorandum in Support of Motion for Summary Judgment, PT Board Minutes dated August 17, 2011
27. Ex. 7 to Memorandum in Support of Motion for Summary Judgment, PT Joseph PT License
28. Ex. 8 to Memorandum in Support of Motion for Summary Judgment, Curriculum Vitae of Kristin Joseph, P.T.
29. Ex. 10 to Memorandum in Support of Motion for Summary Judgment, Curriculum Vitae of Thomas N. Joseph, M.D.
30. Ex. 11, Tr. p. 9-13; 28-29; 42-45 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of Thomas N. Joseph, M.D. taken June 17, 2013
31. Ex. 12 to Memorandum in Support of Motion for Summary Judgment, Curriculum Vitae of William G. McCarthy, M.D.
32. Ex. 13, Tr. pp. 6-16; 21-22; 27-28 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of William G. McCarthy, M.D. taken June 17, 2013
33. Ex. 14, ¶ 2, ¶ 3 to Memorandum in Support of Motion for Summary Judgment, Affidavit of William G. McCarthy, M.D. dated December 5, 2013
34. Ex. 17, Tr. pp. 8; 26-27; 32-33; 38-45; 50; 88 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of Marilyn M. Swygert taken May 13, 2013
35. Ex. 18, Tr. pp. 10-11; 21-23; 30 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of E. Dargan Ervin, Jr., taken May 13, 2013
36. Ex. 19, Tr. pp. 14-15; 28-29; 84-85 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of Cynthia Witherspoon taken June 7, 2013
37. Ex. 20, Tr. Pp. 43-45 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of Roy Christopher Junkins taken May 1, 2013
38. Ex. 21, Tr. pp. 38-39; 61 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of James Price Stoker taken May 23, 2013

39. Ex. 22, Tr. pp. 8-9; 21 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of Joseph Mark McKowen taken June 14, 2013
40. Ex. 23 to Memorandum in Support of Motion for Summary Judgment, Affidavit of James Price Stoker.
41. Ex. 27 to Memorandum in Support of Motion for Summary Judgment, Exhibit No. 2 from Stoker Deposition
42. Ex. 29 to Memorandum in Support of Motion for Summary Judgment, Initial Carpenter Letter dated May 3, 2011
43. Ex. 30 to Memorandum in Support of Motion for Summary Judgment, May 3, 2011 Carpenter e-mails, 5:02 a.m. and 5:06 a.m.
44. Ex. 31 to Memorandum in Support of Motion for Summary Judgment, Board response, selected pages, to Plaintiffs' 1st Requests to Produce
45. Ex. 32 to Memorandum in Support of Motion for Summary Judgment, Board response to Plaintiffs' Fourth Set of Interrogatories
46. Ex. 34 to Memorandum in Support of Motion for Summary Judgment, Montieth P. Todd letter to M. Elizabeth Crum dated May 24, 2013
47. Ex. 35 to Memorandum in Support of Motion for Summary Judgment, Defendants' Response to Plaintiffs' Second Request to Admit
48. Ex. 36 to Memorandum in Support of Motion for Summary Judgment, SCDHHS Bulletin
49. Ex. 37, Tr. pp. 23-24; 27; 52; 67-68; 82-83; 88 to Memorandum in Support of Motion for Summary Judgment, Transcript of Deposition of John P. Stearns taken October 30, 2013
50. Ex. O to December 13, 2013 Defendant-Intervenors' Memorandum in Support of Its Motion for Summary Judgment, Excerpts from the May 1, 2013 Deposition of Darlene Pope pp. 10-11

[Signature Block to Follow]

Respectfully submitted,



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This 22nd Day of September, 2014

Columbia, South Carolina

Attorneys for Appellants

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IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
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G. Thomas Cooper, Jr., Circuit Court Judge

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Board of Physical Therapy, Respondents,

and

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McKowen, PT, Sabrina Queen Bridges, PTA, and Amalia W. Kirby, (PTA), Respondents.

CERTIFICATION

The below signed counsel certifies that the Designation of Matter to be Included in the
Record on Appeal contains no matter which is irrelevant to this appeal.



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This 22nd Day of September, 2014

Attorneys for Appellants

Columbia, South Carolina

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APPEAL FROM RICHLAND COUNTY
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Appeal From Richland County
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-001115

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William G. McCarthy, M.D., Appellants,

v.

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South Carolina Board of Physical Therapy, Respondents,

and

South Carolina Chapter, American Physical Therapy Association,
Joseph M. McKowen, PT, Sabrina Queen Bridges, PTA, and
Amalia W. Kirby, (PTA), Respondents.

CERTIFICATE OF SERVICE

I do hereby certify that I have this date served one (1) copy of Appellants' Reply to Respondents' Initial Brief and Designation of Matter upon the following counsel of record by United States Mail, First Class, postage prepaid, to the following addresses:

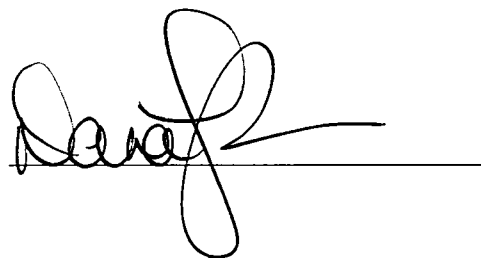
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A handwritten signature in black ink, appearing to read 'Darra', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

September 22, 2014
Columbia, South Carolina