STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Michael J. Baxley, Circuit Court Judge

Case No.: 2007-CP-10-1553

Jamesetta Washington, as Guardian ad Litem for
Jayden W., a minor..... Petitioner,

vs.

Edmund Rhett, Jr., M.D., Low Country Obstetrics and Gynecology, P.A.; Tenet South Carolina, Inc. d/b/a East Cooper Regional Medical Center and AMN Services, Inc. f/k/a Nurses RX, Inc.....Defendants,

Of Whom Edmund Rhett, Jr., M.D. is..... Respondent.

REPLY BRIEF OF PETITIONER

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QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS ERR IN AFFIRMING THE TRIAL COURT'S ADMISSION OF SPECULATIVE EXPERT OPINION TESTIMONY REGARDING POSSIBLE CAUSAL SIGNIFICANCE OF EITHER (A) POSSIBLE MATERNAL ALCOHOL ABUSE NOT IN EVIDENCE AND/OR (B) A THEORETICAL GENETICALLY TRANSMITTED CONNECTIVE TISSUE DISORDER WHICH MAY BECOME RECOGNIZED AND TESTABLE IN THE FUTURE?

II. DID THE COURT OF APPEALS ERR IN AFFIRMING THE TRIAL COURT'S JURY CHARGE REGARDING AN EMERGENCY EXCEPTION TO INFORMED CONSENT, WITHOUT ALSO INCLUDING A CHARGE ABOUT THE MATERIAL LIMITATIONS ON THAT EXCEPTION?

STATEMENT OF THE CASE

Petitioner hereby adopts and incorporates by reference the Statement of the Case as set forth in the Brief of Petitioner.

PETITIONER'S RESPONSE TO RESPONDENT'S STATEMENT OF THE FACTS

Petitioner objects to Respondent's Statement of the Facts to the extent it includes factual inaccuracies, contested factual matter, misstatements, and argument. Respondent has included several inaccurate and misleading factual assertions concerning numerous aspects of Jamesetta's pregnancy, labor and delivery.

Jamesetta Washington stated consistently at her physician appointments, deposition, and at trial that she stopped consuming alcohol the moment she suspected she might be pregnant. In the Statement of Facts, Respondent contends that during a prenatal visit in January 2002, Jamesetta stated she last used alcohol on November 1, 2001. ROA page 3227, cited by Respondent as authority, was a medical form dated 1/21/2002 which included the line "Chemicals that you have used during the past three months" and included the answer "Beer." (R. p. 3227). ROA page 3237, also cited to by Respondents, is a February 6, 2002 prenatal visit note which documents: "SH: history of: alcohol, first month of pregnancy -- none since." (R. p. 3237). Similarly, Jamesetta stated to Low Country Obstetrics and Gynecology that she stopped consuming alcohol on October 20, 2001. (R. p. 3033). Finally, at trial, Jamesetta stated she believed she was pregnant towards

the end of October, and she confirmed that she was in fact pregnant in November after taking a pregnancy test at the Health Department. (R. p. 974:16-21). Moreover, at trial Jamesetta stated that when she suspected she was pregnant, she completely stopped drinking. (R. p. 975:2-4 and 17-19). Respondent elicited no contradictory testimony during cross-examination, nor could he cite to any document or other evidence which even hinted at the possibility that Jamesetta consumed alcohol at any point in time beyond the first month of her pregnancy. Thus despite defense counsel's implication in its Statement of the Facts that Jamesetta's medical records cast doubt on when she stopped drinking, there was no such evidence available to be introduced at trial. (R. p. 235:19-23).

Respondent is correct that the videotape of the delivery is critically important evidence, but he misperceives its importance. The videotape depicts that Dr. Rhett quickly intervened with the vacuum, as he does over half of the time, after only eleven minutes of the second stage of delivery. (R. p. 408: 24- 410: 2, 561:12-16). The second stage starts only when the cervix is completely dilated, to ten centimeters. There is no pushing until the second stage. (R. p. 561:12-16). Respondent is incorrect about Jamesetta being unable to push, as she had only recently been instructed to push, and had not had sufficient time to get the feel for how to push. (R. p. 562:2-6). The videotape also proves the many untruths asserted by Dr. Rhett in his deposition. (R. p. 544:2-588:18; 645:25-647:5; 655:21-656:4; 658:3-23)

Respondent tries to dramatize the fluctuations in the heart rate of the child, but they were not particularly troubling, and there was no urgency to deliver this child. (R. 434:24-436:7; 501:1-502:25) Dr. Rhett did not "have to" use the vacuum, as he could have adjusted the mother's posture, given oxygen, stopped pitocin and allowed the labor to progress. (R. 428:21-429:4) However, as the videotape shows, he did use the vacuum, in accordance with his custom to do so in over half of his deliveries. (R. 539:20-543:10) In accordance with his custom, he did not discuss with Jamesetta his intent to use the vacuum, nor did he discuss with her the risks, benefits and alternatives to vacuum extraction. (R. 426:14-19; 429:19-430:9; 541:12-15; 481:4-482:12; 485:14-

22) In accordance with his custom, he did not make any chart entry of a medical indication for using a vacuum, nor did he even acknowledge having used a vacuum. (R. 574:24-575:11)

Both videotape evidence and Petitioner's expert testimony shows that Dr. Rhett applied the vacuum at a very high station, in the mid-pelvis, without a medical indication. (R. 425:17-426:10; 451:6-458:22; 502:16-25; 510:4-20) Testimony shows he did not understand the dangers of vacuum extraction generally, nor the increased dangers of doing so from the mid-pelvis (R. 471:12-22; 504:14-506:25; 518:20-521:10; 528:6-531:3; 653:5-23) Dr. Rhett chose an extra long vacuum cup, which permitted him to reach higher up the birth canal, despite the fact that the manufacturer of that device warns against using it when the baby is in the mid-pelvis. (R. 532:7-537:16; 3620) Testimony shows he used the vacuum device incorrectly, rocking and torquing it side to side and up and down, rather than applying traction force in an axial direction consistent with the baby's spine. (R. 458:22-460:22; 647:1-10) Such application creates asymmetrical forces on the baby's blood vessels in the head and brain, increasing the risk that vital blood vessels will rupture, causing brain bleeds, as they did here. (*Id.*)

The nuchal cord in this case is a red herring. It was a loose nuchal cord, easily lifted over the child's head. There was no need to doubly clamp and cut the cord, as would have been necessary if there were a dangerously tight nuchal cord, or a cord with a true knot. (R. 501:1-502:25). Had the loose nuchal cord caused any significant reduction in blood flow, the child's Apgar scores would have reflected that, and his cord blood would have revealed respiratory and metabolic acidosis. There was absolutely no such evidence. (R. 460:23-463:9; 468:24-469:6)

The list of purported birth defects is another red herring. According to Dr. Barbara Burton, Petitioner's genetics expert, Jayden had two birth defects. One was a coloboma, a developmental imperfection of the eye, which was mild, limited to one eye, and functionally insignificant. (R. 2505:12-2508:10). The other birth defect is an inguinal hernia, hydrocele and undescended testis, all of which are related and represent one single, fairly common defect. (R. 2508:11-2510:22) No

one who examined Jayden diagnosed any connective tissue disorder or scoliosis. Dr. Burton, who examined Jayden, ruled out those diagnoses, as well as hyperextensibility. (R. 2514:8-2515:19; 2515:20-2519:22) Those diagnoses were the product of the review of two photographs by Respondent's genetics expert, Dr. Aubrey Milunsky, based on such criteria as ear size, distance between nipples and a photograph of Jayden's back. (R. 2513:16-2514:7) Dr. Milunsky's diagnosis of hyperplastic transverse sinus in Jayden's brain reflects his erroneous interpretation of a differential diagnosis by a radiologist viewing images in the newborn period, who acknowledged it could in fact be the sequela of the brain bleeds. Dr. Burton confirmed the latter, which was further confirmed by its non-presence after the bleeding subsided. (R. 2513:16-2514:7) Nothing of record suggests that any one or more of these purported defects has any genetic association with brain bleeds. (R. 2511:1-24)

Although the experts disagreed whether an emergency required urgent delivery and whether there was time for a meaningful informed consent discussion after the purported emergency arose, Petitioner's experts testified that there was no emergency and that any purported emergency did not obviate the need for an informed consent discussion. Moreover, the proper time for an informed consent discussion is long before delivery, and long before the second stage of labor. That discussion should occur during a prenatal visit or, if the delivery attendant was not the prenatal doctor, in the labor room before the second stage begins.

Respondent tries to posture this delivery as though it was a highly unusual delivery where Dr. Rhett, despite his best intentions, was simply unable to have an informed consent discussion because a life or death emergency suddenly presented, which left him no time. That posturing is a ruse. In fact, Dr. Rhett delivers over half of his deliveries by vacuum extraction, a number that is around double or triple the rate of obstetricians who use vacuum frequently. Those other obstetricians have a high vacuum rate because they have a very low Caesarian Section rate. Typically, the lower the Caesarian Section rate, the higher the vacuum rate, and vice versa. Dr.

Rhett has a disproportionately high Caesarian Section rate (40%) and vacuum rate (over ½), which is highly unusual and shocked even Respondent's expert. (R. 539:20-543:10; 1799:10-1800:7) Moreover, Dr. Rhett has never had an informed consent discussion with a maternity patient and does not believe he should have to do so. (R. 481:4-482:12; 485:14-22) Dr. Rhett did not make any entry in Jamesetta's medical records of an emergency to justify a vacuum extraction in this case, and one may infer that the purported emergency was an after-the-fact trial strategy designed to defend against Dr. Rhett's routine use of vacuum extraction and routine choice not to discuss risks, benefits and alternatives with his patient. At any rate, the purported emergency does not excuse Dr. Rhett's choice not to have an informed consent discussion with Jamessetta before the emergency arose. Nor could Dr. Rhett ever conduct a proper informed consent discussion with a patient, because he lacked knowledge of the dangers of vacuum extraction. (R. 531:9-18)

ARGUMENTS

I. DR. MILUNSKY'S EXPERT OPINION TESTIMONY THAT JAYDEN'S BRAIN INJURY WAS POSSIBLY CAUSED BY EITHER (A) POSSIBLE MATERNAL ALCOHOL ABUSE NOT SHOWN BY THE EVIDENCE AND/OR (B) A GENETIC DISORDER THAT MAY IN THE FUTURE BECOME RECOGNIZED AND TESTABLE SHOULD NEVER HAVE BEEN HEARD BY THE JURY.

The testimony presented to the jury by Dr. Milunsky concerning both alcohol consumption and purported genetic disorders violated a number of evidentiary rules set forth by both the Legislature and Supreme Court of this State. This Reply addresses only those evidentiary rule violations which Respondent challenged in his Brief, and will not repeat arguments made in the Brief of Petitioner which went unchallenged.

In this case, the Respondent, with great creativity, sought to admit highly prejudicial and incompetent evidence which, if admitted, would be nearly impossible to later remove from the minds of the jurors. Through a world renowned geneticist, Respondent improperly offered testimony that Jayden's brain damage was not caused by any malpractice on the part of Dr. Rhett, but as a result of either (a) maternal alcohol consumption in quantities sufficient to cause birth

defects, despite a dearth of evidence to that effect, and/or (b) some yet-to-be-discovered connective tissue disorder, not yet recognized by the scientific community or capable of testing, which may have made this child more susceptible to brain bleeds.

Dr. Milunsky offered this testimony despite explicitly stating he could not say most probably that the mother's alcohol consumption had any effect on the child, and despite the fact that Dr. Milunsky had to assume, without any factual basis to support his assumptions, greater alcohol consumption than was reflected in the medical record and in Jamesetta's testimony. Dr. Milunsky offered his opinion that Jayden suffered from some yet-to-be-identified genetic disorder which may in the future become recognized and testable, despite acknowledging Jayden suffered from no known genetic disorder, despite the fact that Dr. Milunsky never even saw the child in person, and despite negative test results from the five genetics tests Dr. Milunsky recommended.[1] This speculative testimony was not helpful to the jury, was unreliable, violated the most probable requirement for medical causation testimony, violated South Carolina Supreme Court case precedent, and any purported probative value of this testimony was substantially outweighed by its prejudicial effect.

A. Dr. Milunsky inappropriately offered testimony that the Jamesetta may have consumed enough alcohol during her pregnancy to cause her unborn child's developmental delays.

Respondent contends that because Dr. Milunsky never explicitly stated that Jamesetta "abused alcohol," that no prejudice has been suffered. Petitioner disagrees.

Respondent defends the admission of unreliable and prejudicial evidence by arguing that Dr. Milunsky himself never uttered the phrase "alcohol abuse." However, the trial judge's own characterization of the defense's evidence shows just how defense counsel presented the evidence of alcohol consumption and how it intended the evidence to be understood. In denying Petitioner's motion to exclude reference to maternal alcohol consumption from the medical records, the trial

[1] (R. 2490:12 – 2505:10; 2512:2 – 2514:6).

judge stated:

> I will tell you now that the court will not exclude the record about the ***alcohol abuse as a major component of the defense's case.*** It's known science and ***even among lay people*** it's known that you don't ingest alcohol when you may be pregnant. (Emphasis added.)
> (R. 246:14-20).

The trial judge understood from defense counsel's presentation and discussion of this evidence that it was evidence of "alcohol abuse" and *"a major component of the defense's case."* This quotation from the judge illustrates precisely how defense counsel wished the evidence to be understood. Additionally, it illustrates the highly prejudicial nature of the evidence, in light of the fact that "lay people" might have a preconceived understanding of what impact alcohol has on a fetus. Finally, it illustrates the magnitude of the prejudicial impact this evidence had on the entirety of the trial. The trial judge presiding over this case characterized the evidence as evidence of "alcohol abuse" and as "a major component of the defense's case." How can it now be argued that this expert testimony did not impact the jury's deliberations, when the trial judge himself misconstrued the testimony as evidence of alcohol abuse?

Moreover, Dr. Milunsky did not need to say "alcohol abuse" as defense counsel phrased it into his questions. Defense counsel asked Dr. Milunsky: "Q. Looking back at the first trimester of the pregnancy ***and alcohol abuse,*** does this child have . . . (R. 1490:21-23). Dr. Milunsky never needed to use the phrase as defense counsel was happy to use the phrase for him.

Despite Respondent's mischaracterization of the evidence, it is important to note (1) there was no evidence whatsoever of alcohol "abuse," only modest alcohol consumption twice a week before Jamesetta suspected she was pregnant; (2) there was no question about the timing of when Jamesetta consumed alcohol, (3) the purported capacity of maternal alcohol ingestion to cause brain bleeds and brain damage is not within the realm of lay knowledge, (4) the testimony proffered was not scientifically reliable as applied to this case, and (5) the expert testimony utterly failed the "most probable" requirement for admission.

At trial, Dr. Milunsky continued to testify about the "potential relevance" of alcohol use which might have caused the child to suffer from incomplete fetal alcohol syndrome, which might be responsible for the Jayden's delayed development, even though by his own admission "this is all speculation." (R. 1491:18 to 1493:16).[2] Such testimony invited the jury to speculate that Jayden's brain damage was caused by his mother's excessive drinking, and not because of any malpractice committed by Dr. Rhett. There was no evidence to support this invitation. On cross, Dr. Milunsky stated that Jayden had some features "consistent with incomplete fetal alcohol syndrome; for which there is no proof." (R. 1501:1 –1502:3). However, eliciting these admissions does not un-ring the bell of allowing the jury to hear the evidence in the first place, especially where no curative instruction was given.

B. Respondent's criticism of Petitioner's argument that Dr. Milunsky could not ascribe even a one-in-a-million chance that maternal alcohol ingestion caused brain bleeds or brain damage is misplaced.

Respondent incorrectly characterizes one of Petitioner's arguments as an inability of Dr. Milunsky to assign a statistical number to the likelihood that alcohol use affected Jayden. To be clear, Petitioner does not argue that Dr. Milunsky's testimony was inadmissible simply because he could not assign a specific, precise probability to his testimony. One test for admissibility of expert causation testimony is whether the expert causation opinion satisfies the "most probably" test. The problem is that Dr. Milunsky concocted a multifactorial causation theory to try to circumvent the inadmissibility of his speculative causation opinions. His own admissions about the highly remote likelihood that any of his purported causal factors played a causal role (i.e., he cannot testify that there is even a one in a million chance that alcohol ingestion was causally significant) reveal the speculative nature, insincerity, and unreliability of his theory of multifactorial causation as a

[2] In Respondent's Brief, 6:3-6, Respondent now argues that Dr. Milunsky's speculation regarding alcohol abuse may also have been "potentially relevant" to "the child's inflammatory problems." Not only has no such argument been advanced before by Respondent, the record is believed to be devoid of evidence of any inflammatory problems.

purported most probable cause. The trial court should have precluded Dr. Milunsky's testimony as violative of this State's evidentiary requirements for admission of expert causation testimony.

As noted, Dr. Milunsky could not even state there was a one in a million chance that alcohol consumption caused the injuries sustained by Jayden. At one point, he intimated it was more likely one in ten thousand or one in a hundred thousand. (R. p. 232 l. 6 to 18). However, even one in ten thousand would still fall woefully short of being considered as having satisfied the "most probably" benchmark, which even Respondent acknowledges is required. In fact, Dr. Milunsky was asked this very question at his deposition:

> Q: I think what you are saying is you can't testify that more likely than not ingestion of alcohol caused any problem, but you're not giving me a direct answer to that, and I want to make sure.
>
> A: No, I cannot say that it's more probable than not.
>
> (R. p. 2799 line 23 to 2800 line 6).

At trial, Dr. Milunsky explained that he could not ascribe any mathematical probability, not even a one in a million chance, that maternal alcohol ingestion caused brain bleeds or brain damage. (R. p. 1502 lines 19 to 24). Indeed, the best Dr. Milunsky could do is state that alcohol use was "potentially relevant" and so "it sits there as an undefinable concern that may or may not have to do with one or more of these items." (R. p. 1580:2-7). In response to a question presented by Defense counsel about whether he could state to a medical degree of certainty, most probably, that alcohol had an impact in this case, Dr. Milunsky stated, "I think I've already stated that it is not possible to, uh, assign a risk to Jayden from the alcohol taken; since, to begin with, we don't know how much was taken and when precisely it was taken. So it remains an item of concern that it could be a contributing factor . . ." (R. p. 1494:17 to 1495:5). Finally, when asked if he was even fifty-one percent sure in his own causation opinion, he stated, "No, No. There is no way to assign a population (sic) or any other kind of risk with reference to alcohol here." (R. p. 1495:11-13).

Accordingly, Dr. Milunsky's highly prejudicial testimony that Jamesetta consumed alcohol in a sufficient quantity to cause her child's brain damage despite Dr. Milunsky's inability to ascribe even a one in a million chance that alcohol affected this child (let alone a fifty-one percent chance), should have been deemed inadmissible.

Under *State v. Council*, 335 S.C. 1, 20 515 S.E.2d 508, 518 (1999), "The trial court must examine the substance of the testimony to determine if it is reliable, regardless of whether the expert evidence is scientific, technical, or other specialized knowledge." Testimony that is based upon speculative assumptions of alcohol consumption beyond what is reflected in the record and that cannot be stated to have had even a one-in-a-million chance of causing injury is not reliable and does not assist the trier of fact. It merely invited the jury to speculate that it was the mother's excessive alcohol consumption caused injury to her child, and not the malpractice of Dr. Rhett. Moreover, this testimony violated the "most probable" requirement for expert causation testimony.

C. Dr. Milunsky's opinion that Jayden's purported connective tissue disorder possibly caused him to be more susceptible to brain bleeds was unreliable and speculative.

Respondent contends that a connective tissue disorder is a recognized condition, and Petitioner agrees with this statement. Respondent contends that even though Dr. Milunsky knew of no known connective tissue disorder currently recognized by the scientific community that he claims Jayden suffers from, it was appropriate for Dr. Milunsky to offer testimony that Jayden suffered from a yet-to-be-discovered connective tissue disorder, and that this connective tissue disorder may have made him more susceptible to brain bleeds. Petitioner disagrees with this statement.[3]

[3] Respondent notes that Dr. Milunsky's testimony which exposed the unreliable and speculative nature of his opinions was brought out on cross-examination and not admitted during direct. Petitioner is uncertain of what difference this makes. Moreover, the speculative and unreliable nature of Dr. Milunsky's opinions was discovered during his deposition, which served as the basis for Petitioner's numerous motions *in limine* to exclude said testimony. Before Respondent elicited the unreliable and speculative opinions from Dr. Milunsky at trial, Petitioner sought an opportunity to expose the inadmissibility of such opinions in *voir dire*, but the trial judge disallowed the *voir dire* promised on these issues when he deferred ruling on that part of Petitioner's motion *in limine*.

Dr. Milunsky first listed a number of deformities he purported Jayden suffered from[4], even though several can be caused by brain damage or brain bleeds, others have the nature of immaterial individual variations, and none were shown to be genetically associated with brain bleeds. (R.1481:8-11). He then proceeded to list abnormalities Jayden's mother suffered from, even though none of these were shared by Jayden. (R.1482:24-1484:10). Finally, Dr. Milunsky opined that Jayden inherited some unspecified and yet-to-be-identified connective tissue disorder which may have caused Jayden to be more susceptible to brain bleeds. He offered this testimony despite negative test results on each of the five genetics tests he recommended. (R. p. 2766-2783; R. 2494:8 to 2503:6; 2588-2595; 2490:12 to 2505:10; 2512:2 to 2525:14). He offered this testimony despite having never examined the child, and despite connective tissue disorder having been ruled out by the only geneticist who performed a physical and genetics examination. Moreover, he offered this testimony despite the fact that known connective tissue disorders have never been associated with brain bleeds at any age, except for brittle bone disease and some other extremely rare genetic syndrome, both of which he admitted Jayden does not have. (R. 1518:25 –1519:10, 1521:8 – 1522:10). Nevertheless he opined that in the future, there would be a test for the yet-to-be-discovered genetic syndrome Jayden purportedly suffers from, which would prove Jayden did in fact have such syndrome, and that this syndrome possibly made him more susceptible to brain bleeds. (R. 1504:23 –1508:7).

Dr. Milunsky could not identify any known disorder from which Jayden suffers. (R. 1510:18-21). "Q. Jayden doesn't match any known genetic syndrome, does he? A. That's exactly right." (R. p. 1506:24 to 1507:1). Even though he cannot test for it, or validate its existence among

[4] Those include coloboma, a developmental imperfection of the eye (Tr. 1559:15 – 1560:8); hyperextensibility, or loose joints (Tr. 1559:12); hypotonia, or reduced muscle tone (Tr. 1567:3-4); narrow blood vessels to the lung (Tr. 1559:25); alleged narrow blood vessel in the brain (Tr. 1559:24 -1560:9); undescended testis (Tr. 1562: 7-17); bilateral hydroceles, associated with undescended testis (Tr.1560:18-164:19); reduced platelet count (Tr. 1476:9-13); delayed myelination (Tr. 1567:20-1568:10); strabismus, or a condition of being cross-eyed (Tr. 1569:5-7); supposedly wide-spaced nipples (Tr. 1567:5); and supposedly prominent ears (Tr. 1568:15-16).

currently recognized genetic disorders, he claims to be certain Jayden has it based upon his say-so. (R. p. 1509:18 to 1510:21).

The first issue that makes Dr. Milunsky's testimony speculative and unreliable is that he claims Jayden suffers from some yet-to-be-discovered genetic abnormality, even though he admits Jayden matches no known and recognized connective tissue disorder, and test results from all genetics tests recommended by Dr. Milunsky came back with negative results. The second issue that makes Dr. Milunsky's opinion testimony speculative, unreliable, and incapable of satisfying the "most probably" standard for admission of expert causation testimony is that he could not say that Jayden's brain bleeds were proximately caused by this yet-to-be-discovered genetic condition. Dr. Milunsky agreed that known connective tissue disorders have never been associated with brain bleeds at any age, except for brittle bone disease and some other extremely rare genetic syndrome, both of which he admitted Jayden does not have. (R. 1518:25 –1519:10, 1521:8 – 1522:10). Such testimony about theoretical future genetics knowledge lacks probative value and any assumed, minimal relevance is greatly outweighed by its tendency to prejudice and confuse the jury. Accordingly, it was error for the trial court to permit the jury to hear this testimony.

There is no support for Dr. Milunsky's opinions in the record from publications or peer review, because such matters are based on sound science currently known, not predictions of what future knowledge may entail. There is nothing in the record to suggest this analytical method of predicting future knowledge has ever been applied previously; and even if it had been, it would be plain error to do so. There are no quality control measures disclosed in the record to ensure reliability of Dr. Milunsky's opinions, nor could there be, where only the future will reveal the correctness or incorrectness of Dr. Milunsky's predictions of future knowledge. There are no quality control measures that can evaluate meaningfully predictions of future knowledge. Nothing in the record establishes any consistency of Dr. Milunsky's approach with recognized scientific laws and procedures. How could Dr. Milunsky's theories and opinions about what may be known

to geneticists in the future be supported by current science and knowledge? By definition, predictions of future knowledge lack sufficient reliability to be applied in the present. Therefore, the fact that Dr. Milunsky's opinions rest on predictions of future genetics knowledge, unavailable to be judged and tested in the present, makes them inadmissible under both *Council* and *Jones*.

D. *Payton v. Kearse* precluded Dr. Milunsky's testimony.

Respondent argues Dr. Milunsky's testimony was admissible under *Payton v. Kearse*, 329 S.C. 51, 495 S.E.2d 205. (1998). Petitioner disagrees. *Payton v. Kearse* explained, "Before expert medical testimony is admissible on the question of causation between the plaintiff's injuries and the acts of the defendant, the testimony must satisfy the 'most probable' rule." *Id. Kearse* does not permit an expert to lump an inflammatory, speculative, and prejudicial theory that the mother might have consumed alcohol in quantities sufficient to cause brain damage because certain of the child's symptoms look consistent with incomplete alcohol syndrome with testimony that the child suffers from some yet-to-be-identified genetic disorder which may have made the child more susceptible to brain bleeds, and label the package as the "most probable" cause of the child's injury.

Dr. Milunsky could not state there was even a one-in-a-million chance that alcohol consumption caused brain bleeds in this case. He admitted he could not say alcohol consumption most probably caused any of this child's problems. (R. p. 2799:23 to 2800:6). He admitted that he could not describe or name any connective tissue disorder which has been identified and recognized by the scientific community from which this child suffers. (R.1504:23 to 1508:7; 1510:18-21). Yet somehow, Dr. Milunsky felt confident to state that these two factors combined and caused Jayden's brain damage. The only factor Dr. Milunsky was able to clearly identify as more than a possible cause of the brain bleeds was the use of the vacuum: "It's a factor. No question." (R. 1531:20).

In *Kearse*, the excluded expert "identified six of the medications taken by respondent as possibly causing tinnitus as a side effect." *Id.* at 61, 495 S.E.2d at 211. The Court then noted the

expert "conceded he could not state any of the medications most probably caused respondent's tinnitus." *Id.* This Court concluded that this testimony was properly excluded. This case makes clear that expert testimony that some factor "possibly" or "potentially" caused an injury, without more, is inadmissible. It does not stand for the proposition that multiple unrelated factors, each failing the most probable test, when aggregated, satisfy the "most probable" test for admission of expert witness causation testimony. That is especially true where, as here, the two theoretical causation factors are highly remote, unreliable and speculative; and where there has been no showing of any synergistic propensity of each to augment the other. That is, the whole is not greater than the sum of the parts, and the parts fall woefully short of an admissible causation theory.

Respondent's citation to case law denoting that a Defendant's negligence need not be the sole cause of injury, so long as it was at least a cause of the injury, is misplaced. *Sims v. Hall*, 357 S.C. 288, 289, 592 S.E.2d 315, 319 (Ct. App. 2003) explains how a jury is to consider the negligent acts of the defendant when the defendant's actions are at least one of the direct, concurring causes of the injury. However, it does not establish the evidentiary standard by which to determine the admissibility of expert causation testimony. In this case, the purported cause(s) of Jayden's brain damage not associated with Dr. Rhett's negligent actions were (a) alcohol consumption by the mother during her pregnancy in greater amounts than reflected in the evidence, which might have caused features consistent with incomplete fetal alcohol syndrome; and (b) a yet-to-be-discovered genetic abnormality not yet identified or recognized by the scientific community, which supposedly might have made the child more susceptible to brain bleeds and which was diagnosed by a geneticist who reviewed two photographs but never examined or even saw the child in person. *Sims v. Hall* does not set forth the standard of admissibility of expert testimony or causation testimony; it merely discusses how a jury should consider the Defendant's negligent actions among admissible concurring causes. Since *Sims* provides no guidance for how courts should make the

initial determination of whether expert causation testimony is admissible, Respondent's citation to this case is misplaced.

E. The trial court's admission of testimony concerning possible damage from prenatal maternal alcohol use violates precedent.

Respondent seeks to differentiate the facts of this case from *Johnson v. Horry County Solid Waste Authority,* 389 S.C. 528, 698 S.E.2d 835 (Ct. App. 2010) and *Kennedy v. Griffin,* 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2003). Respondent argues that because he offered Dr. Milunsky's expert testimony that "the Plaintiff's maternal alcohol use was a contributing cause to the child's problems," the facts of this case are distinguishable from *Johnson and Kennedy.*

Dr. Milunsky had to assume and speculate that the mother might have consumed alcohol in greater quantities and times than the record reflected in order to formulate his causation opinion that alcohol consumption potentially may have contributed to Jayden's injuries. Dr. Milunsky admits as much:

> Q: With regard to this child and his problems and developmental delays, how is that relevant?
>
> A: Well, it is potentially relevant in the sense that the prenatal record indicates alcohol use but does not indicate how much and precisely when. So it sits there as an undefinable concern that may or may not have to do with one or more of these items.
>
> . . .
>
> It is possible – that's all that I can say – that there was alcohol taken that wasn't so severe as to cause the entire syndrome, which by the way includes mental retardation, heart defects and other significant birth defects but was enough to cause troubles. But this is all speculation. We don't know. It sits there undefined. It's an item.
>
> (R. pp. 1491:24 to 1492:7; 1492:8-16).

This is precisely the type of prejudicial speculation of alcohol use that *Johnson* and *Kennedy* sought to preclude. Indeed, this case presents a stronger case for exclusion than even found in *Kennedy*. There is no evidence that Jamesetta consumed more than a modest amount of alcohol. (R. 1494:20-24). There is no evidence she consumed any alcohol later than the very

beginning of her pregnancy before she realized she was pregnant. (R. p. 974:16-21; 975:2-19; 3237, 3033). Tests after the delivery proved she had no drugs or alcohol in her system. (R. 3142). The speculation and theorizing about possible consumption of alcohol beyond what is actually reflected in the medical record in order to opine the mother's alcohol consumption during pregnancy may have caused some of Jayden's injuries is far less probative than the reasons set forth for the admission of evidence of alcohol and drug use set forth in either *Johnson* or *Kennedy*. Moreover, its prejudicial effect is at least as great as seen in these cases. Therefore, Dr. Milunsky's prejudicial causation testimony that Jayden's injuries were not caused by Dr. Rhett's negligence, but might instead have been caused by his mother consuming alcohol during pregnancy in sufficient quantities to cause incomplete fetal alcohol syndrome, despite evidence of record to the contrary, should not have been heard by the jury.

F. The presumption of Prejudice has not Been Rebutted.

Respondent contends that even though *S.C. State Hwy Dep't v. Graydon*, 246 S.C. 509, 144 S.E.2d 485 (1965) establishes a presumption of prejudice where incompetent evidence is admitted and the incompetent evidence has some probative value upon a material issue of fact, this presumption may be rebutted. Respondent then argues this presumption was rebutted in this case. Petitioner disagrees.

In *Johnson v. Broome*, 175 S.C. 385, 393, 179 S.E. 315, 318, (1935) this Court held, "The testimony given by the plaintiff which we have found to have been incompetent was of probative value, was upon a material issue, and is, therefore, presumed to have been prejudicial to the defendant." Such a presumption exists because of "the possibility that the verdict of the jury may have been influenced, to the prejudice of the complaining party, by the improperly admitted evidence." *Graydon*, 246 S.C. at 511, 144 S.E.2d 485. To overcome this legal presumption, the Court in *Templeton v. C. & W. C. Ry. Co.*, 117 S.C. 44, 51, 108 S.E. 363, 365 (1921) explained

that the following question must be answered, "Has the error been cured by the effort of the Circuit Judge to correct it?"

In this case, no effort was made to cure or correct the admission of improper testimony. Indeed, the incompetent evidence in question was determined *admissible.* Therefore, there is no valid argument that the presumption of prejudice was rebutted. The jury was allowed to consider evidence that the mother of a brain damage child consumed alcohol in sufficient quantity during her pregnancy to cause harm to her unborn baby, and therefore the brain damage was not caused by malpractice. The jury was allowed to consider evidence that this child suffered from a yet-to-be-determined genetic abnormality which caused the child's brain damage, and not the result of any malpractice. No curative instruction was given to the jury, no limiting instruction was given to the jury, and no other effort of any kind was made to undo the harm caused by allowing the jury to hear such inflammatory and prejudicial testimony. The defense verdict does not prove no prejudice; it was the product of prejudice.

G. A challenge to a jury charge on an issue never reached by the jury is different from a challenge to incompetent prejudicial evidence admitted and heard by the jury prior to deliberation.

Respondent again offers this Court an incomplete quote from *Stephens ex. Rel. Lillian C. v. CSX Transp., Inc.*, 400 S.C. 503, 735 S.E.2d 505 (Ct. App. 2012) to support his position without addressing the significance of the omitted language. Respondent cites to *Stephens ex. Rel. Lillian C. v. CSX Transp., Inc.*, 400 S.C. 503, 520, 735 S.E.2d 505, 514 (Ct. App. 2012) for the proposition that "it is not necessary that we address any ruling . . . unless it relates to breach of [the defendants'] duty of reasonable care." The language behind the ellipsis is of critical importance. The full quote reads, "[I]t is not necessary that we address any ruling ***on the jury charge*** . . . ." This is a critical distinction. Petitioner agrees that it would be exceedingly difficult to argue the jury was so prejudiced by the language of a jury charge unrelated to the standard of care that it affected the jury's ability to fairly deliberate whether the defendant breached the standard of care. An improper

jury instruction regarding a question *never reached*, as a matter of common sense, did not influence the deliberation of questions decided. Indeed, the court in *Stephens* acknowledged that the primary consideration is whether something has affected the jury's ability to fairly deliberate on those questions that were reached. The Court noted that it did not need to address alleged errors in certain jury charges "as those alleged errors could hardly have affected the jury's deliberations over whether CSX or DOT breached its duty of reasonable care, and could not possibly have prejudiced Stephens." *Id.* at 521, 735 S.E.2d at 514-15.

Stephens is an entirely different situation from a challenge to evidence that is improperly admitted, heard by the jury, and which tainted the entire proceeding. *Cooper*, *Graydon*, and *Templeton* which set forth the presumption of prejudice standard were concerned with the improper admission of evidence to the jury, not prejudice arising from a jury instruction never even reached by the jury. Accordingly, the court in *Stephens* would have had no reason to consider the principles set forth in *Cooper*, *Graydon*, or *Templeton* as *Stephens* did not involve the improper admission of evidence, but a challenge to jury instruction.

Similarly, Respondent continues to cite to other jury instruction cases without addressing Petitioner's arguments for why a challenge to a jury instruction on a question never reached is different from a challenge to incompetent and highly prejudicial evidence that is admitted and heard by the jury. *Laurens Tel. Co. v. Enterprise Bank*, 90 S.C. 50, 61 72 S.E. 878, 882 (1911) involved an error in *jury instruction* related to punitive damages where the jury did not reach this issue. *Livingstone v. Greater Washington Anesthesiology & Pain Consultants. P.C.*, 978 A.2d 852, 864 (Md. App. 2009) involved the trial court's refusal to give a "substantial factor" *jury instruction* on causation. *Id.* The Court determined that because the jury found no breach in the standard of

care, "appellants cannot show prejudice as a result of the trial court's refusal to give their requested *instruction . . . on causation.*" *Id.*[5]

These cases differ greatly from the current situation, where incompetent and unreliable evidence was admitted which improperly characterized the mother of a brain damaged child as an alcohol user or abuser who caused her own child's brain damage, or of the child as having some yet-to-be-determined genetic abnormality which might have made the child more susceptible to brain bleeds, and not because of any malpractice. Here, highly prejudicial evidence was heard by the jury and tainted the entire proceeding. Petitioner has not raised any issue regarding the instruction provided to the jury related to causation. Accordingly, those cases which considered whether the objecting party suffered prejudice by the trial court's failure to include or exclude certain jury charges pertaining to questions never reached by the jury are inapposite.

H. Petitioner did not "open the door" for opposing counsel to introduce incompetent, unreliable, speculative expert testimony unsupported by the record.

i. One does not open the door to the admission of incompetent evidence through the introduction of competent evidence.

Respondent pushes forward with his argument that Petitioner "opened the door" to allow Dr. Milunsky to offer his unreliable and unscientific opinions regarding alcohol use as a possible cause of Jayden's impairments, or his unreliable and unscientific opinions that Jayden has a yet-to-be-discovered genetic abnormality which might have made him more susceptible to brain bleeds. Respondent does not address the underlying issue. One cannot "open the door" to the admission of incompetent evidence, nor can one open the door to allow the judge to forego his role as gatekeeper of competent evidence.

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[5] Additionally, *Livingstone* is an opinion from a foreign jurisdiction with no precedential value. Respondent also cites to *Selh v. Moore-McCormack Lines, Inc.*, 362 F.2d 541, 542 (2nd Cir. 1966). However, Petitioner respectfully submits that this opinion from a foreign jurisdiction provides no useful analysis of issues currently before this Court. There is ample precedent from this state relevant to the issues at hand. Moreover, the Court in *Selh* did not, nor would it have any reason to, consider the relevant South Carolina cases including *Graydon*, *Cooper*, *Templeton*, or any of the South Carolina cases setting forth the requirements for admission of expert testimony in South Carolina.

Respondent essentially argues that if one party puts up an expert witness who offers qualified and reliable testimony, then, "in fairness," the opposing party has an absolute right to put up a refuting expert, without the trial judge performing any duties as gatekeeper to keep out unreliable and speculative opinions. Thankfully, this is simply untrue. There is no rule which states that because one party puts up a qualified and reliable expert, the other party is entitled to introduce any expert, even if said expert is unqualified or intends to offer reliable testimony.

Petitioner submitted competent expert testimony without challenge by Respondent that alcohol use in the very first trimester (in this case the first *month*) cannot cause the injuries Jayden suffered. Respondent argues that Petitioner's unchallenged introduction of competent evidence permitted him to introduce his own expert to offer speculative, unreliable, and incompetent testimony that this mother might have consumed alcohol in a greater quantity than reflected in the record; and, if so, this might have caused or contributed to Jayden's brain damage. Respondent similarly contends that reliable and unchallenged statements by Petitioner's expert that Jayden's brain damage was not caused by any genetic abnormality somehow permitted him to offer speculative, unreliable, and incompetent expert testimony that this child suffered from some yet-to-be-discovered genetic disorder and that this disorder may have made this child to some unknown degree more susceptible to brain bleeds, despite a dearth of supporting science or knowledge. This too, should not have been admitted.

Any proffered expert testimony must meet the standards for admissibility set forth in Rule 702, SCRE and explained in *State v. Jones*, 273 S.C. 723, 731, 259 S.E.2d 120, 124 (1979). The judge must exercise his role as gatekeeper as set forth in *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 174 (2010). This is true regardless of the purported reason for the expert testimony. Respondent fails to cite any case which stands for the proposition that a party may offer unreliable and incompetent expert testimony on a certain subject if the opposing party has offered reliable and admissible expert testimony.

Accordingly, a party cannot "open the door" to allow incompetent evidence that a child's brain damage was caused either by purported alcohol abuse or a genetic disorder yet-to-be-discovered by science, and not because of physician malpractice.

ii. Counsel's remarks in opening statement did not "open the door."

Petitioner sought to exclude Dr. Milunsky's unreliable testimony through a number of motions and objections. The court denied Petitioner's motion to exclude evidence concerning alcohol usage during the first month of pregnancy as referenced in the medical records, stating, "I will tell you now that the court will not exclude the record about the alcohol *abuse* as a major component of the defense's case. (R. p. 246 l. 14-17). The Court withheld ruling on Petitioner's motion *in limine* to keep out speculative expert testimony about the possible causal significance of possible prenatal alcohol consumption in excess of what is reflected by the evidence. (R. pp. 227 l. 19 to 228 l. 13; pp. 231 l. 10 to 235 l. 3; pp. 236 l. 23 to 245 l. 13). The judge denied Petitioner's motion to exclude Dr. Milunsky's genetics related testimony at that time. (R. p. 224 l. 14-20; p. 229 l. 13 to 230 l. 14).

Accordingly, the judge's rulings left the door open, despite Petitioner's efforts to close it. Once it became clear the evidence of alcohol "abuse" as the judge referred to it would come before the jury, Petitioner sought to address the lack of evidence of any such "abuse" or use at the outset. Doing so by no means "opened the door" to allow Respondent to submit incompetent, unreliable, and highly prejudicial expert testimony that this child's injuries were not caused by malpractice, but by the mother's consumption of alcohol during pregnancy in a quantity sufficient to cause brain damage to her child. The same is true for any comments made by Plaintiff's counsel during opening statement related to purported genetic disorders. Therefore, any discussion of genetics in opening statement or in Petitioner's case-in-chief did not open any doors to permit the introduction of testimony Jayden suffered from some yet-to-be discovered genetic abnormality which possibly made him more susceptible to brain bleeds.

II. THE JURY SHOULD HAVE NOT BEEN CHARGED REGARDING AN EMERGENCY EXCEPTION TO THE INFORMED CONSENT DOCTRINE, WITHOUT ALSO BEING CHARGED ABOUT MATERIAL LIMITATIONS ON THAT EXCEPTION.

The trial judge granted a partial directed verdict that the general consent form signed by Petitioner did not represent informed consent as a matter of law. (R. 2034:25-2035:5; 2035:25 – 2046:7). Of the general consent form, Respondent's own expert stated, "Well, I think this is a consent for service, for care. It is not specific to what he was faced with as far as what we would classify as informed consent . . . ." (R. 1893:20-23). Thus, Respondent's own expert testimony supports the trial court's decision.

Respondent correctly notes that Petitioner's experts denied the existence of an emergency, and that even in the presence of an emergency, there are still certain requirements to try to obtain informed consent from the patient. Petitioner requested that the jury be charged on these limitations and presented the charge from Judge Anderson's Requests to Charge on this issue. (R. p. 3666-3667). However, the court declined to charge the limitations on the emergency exception to informed consent. (R. 2236:25 – 2237:14) (61 Am. Jur, 2d "Physicians, Surgeons and Other Healers" § 157, 167, 176 (2002)). The omitted portions of the requested charge were necessary for a correct and fair charge on the law.

Petitioner again reiterates that she made no objection to the trial court's failure to provide the jury with the refusal of treatment or medical battery charge. Petitioner's challenge is to the failure to charge the jury regarding limitations of the emergency exception to informed consent. On this question, the Court of Appeals provided no analysis. The Court simply stated, "As to all other statements in the requested jury charge, we find the trial court's charge correctly and adequately covered those points of law." The exclusion of the second paragraph from Judge Anderson's charge created an impression that if an emergency existed at any time, it eliminated the need to obtain informed consent, even prior to the alleged emergency.

Respondent argues *Harvey v. Strickland*, 566 S.E.2d 529, 350 S.C. 303 (2002) addresses

claims for battery where medical treatment was refused due to religious beliefs. Respondent contends that because Petitioner did not refuse medical treatment, the language requested by Petitioner was not applicable. However, Respondent ignores the fact that although *Harvey v. Strickland* did involve a violation of informed consent involving a blood transfusion of a Jehovah's Witness, the case turned on issues of informed consent. Nowhere in *Harvey* does it limit itself to issues of informed consent in the context of religious beliefs. *Harvey* cited the well-established law that "South Carolina recognizes a medical malpractice cause of action stemming from a lack of informed consent." *Id.* (citing *Hook v. Rothstein*, 281 S.C. 541, 316 S.E.2d 690 (Ct. App. 1984)). *Hook* itself did not involve any issue of religious prohibition of medical treatment. The court in *Hook* determined whether an action for failure to obtain informed consent existed where a doctor failed to inform a patient of the risks associated with a particular medical procedure. *Hook,* 281 S.C. at 547, 316 S.E.2d at 695. Accordingly, Respondent's argument is without merit.

Respondent highlights the fact that the charge requested by Petitioner was found in a section of Judge Anderson's book titled, "Medical Malpractice-Right to be Free of Unwanted Medical Treatment." However, this title merely suggests the rationale behind the informed consent doctrine. As the Court in *Hook* explained, "The basis of the doctrine is the patient's right to exercise control over his or her own body by deciding intelligently for himself or herself whether or not to submit to the particular procedure." *Hook,* 281 S.C. at 547-48, 316 S.E.2d at 695. The historical development of the rule as summarized by the Court in *Harvey* explained it ensured the "right to be free of unwanted medical treatment," the "right to determine what shall be done to his own body," and that this right is "the very bedrock on which this country was founded." *Harvey* at 310, 566 S.E.2d at 533. Thus, the title of the section from which Petitioner cited her requested charge does not indicate that the charge is relevant only when treatment is refused or there is an action for battery. It is relevant in any case where informed consent was not sought, and the patient thereby experienced medical treatment without the opportunity to withhold consent after being informed

of the significant risks, benefits, and alternatives.

A trial court has the duty to give a requested instruction that correctly states the law applicable to the issues and the evidence. *Singletary v. South Carolina Dept. of Educ.*, 316 S.C. 153, 447 S. E. 2d 231, 93 Ed. Law Rep. 978 (Ct. App. 1994). Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error. *Koutsogiannis v. BB&T*, 365 S.C. 145, 149, 616 S.E.2d 425, 427-28 (2005). Since the jury was not provided with the requested charge, but with a charge that erroneously provided an unlimited emergency exception to informed consent, the jury was unable to properly deliberate on the standard of care, and Petitioner suffered prejudice as a result.

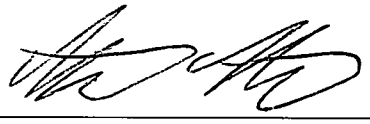
Moreover, even if the subject paragraph requested to be charged was technically deficient in any minor respect, which is denied, Petitioner also objected to the charge *as given*. The charge *as given* was erroneous and reversible because it was an incorrect statement of South Carolina law on a material issue. *See State v. Buckner,* 341 S.C. 241, 246-47, 534 S.E.2d 15, 18 (Ct. App. 2000) ("The trial judge is required to charge the current and correct law of South Carolina . . . . Where the charge contains both the correct and incorrect law, an appellate court must assume the jury followed the incorrect charge.") (Citations omitted).

CONCLUSION

This Court has placed great emphasis on the importance of the trial court's role as gatekeeper and the need for courts to exclude unreliable or incompetent evidence. *See e.g., Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010); *Graves v. CAS Med. Sys.*, 401 S.C. 63, 75, 735 S.E.2d 650, 656 (2012). Respondent contends his tactics escape review because the objected-to expert testimony was purportedly introduced as relevant to causation and not the standard of care. Petitioner respectfully requests this Court take this opportunity to reiterate that incompetent prejudicial testimony that is probative of a material fact is presumed to be prejudicial. *Graydon*, 246 S.C. at 511, 144 S.E.2d 485. Either party, plaintiff or defendant, who seeks to

introduce unreliable and speculative expert testimony should do so at its own peril. Accordingly, for the reasons stated, Petitioner respectfully requests this Court reverse the decision reached by the Court of Appeals and remand for a new trial.

GRAHAM LAW FIRM, P.A.



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November 13, 2014

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

The Honorable Michael J. Baxley, Circuit Court Judge

CASE NO.: 2007-CP-10-1553

Jamesetta Washington, as Guardian ad Litem for
Jayden W, a minor ..... Petitioner,

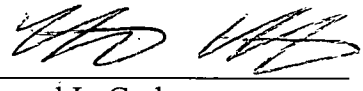
vs.

Edmund Rhett, Jr., M.D., Low Country Obstetrics and Gynecology, P.A.; Tenet South Carolina, Inc. d/b/a East Copper Regional Medical Center and AMN Services, Inc. f/k/a Nurses RX Inc ..... Defendants,

Of Whom Edmund Rhett, Jr. MD is ..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel for Petitioners certifies that this Reply Brief of Petitioner complies with Rule 211(b), SCACR.



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Of Whom Edmund Rhett, Jr. MD is..... Respondent.

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Petitioners, certifies that I have this 13th day of November 2014 served copies of the Reply Brief of Petitioner upon counsel for the Respondent by depositing them in the United States mail, first-class postage prepaid, addressed to:

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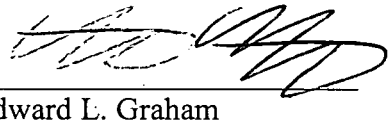

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November 13, 2014

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
1231 Gervais Street
Columbia, South Carolina 29201

RE: Jamesetta Washington, as Guardian ad Litem for Jayden W., a minor v. Edmund Rhett, Jr., M.D., Low Country Obstetrics and Gynecology, P.A.; Tenet South Carolina, Inc., d/b/a East Cooper Regional Medical Center and AMN Services, Inc. f/k/a Nurses RX Inc.

C/A No.: 2007-CP-10-1553
Appellate Case No.: 2014-000831

Dear Mr. Shearouse,

I am enclosing for filing the original and fifteen (15) copies of the Reply Brief of Petitioner Jamesetta Washington, as Guardian ad Litem for Jayden W., a minor, in the above referenced case. By copy of this letter, I am serving attorneys Robert H. Hood, Molly H. Craig, Chilton Grace Simmons, and Deborah H. Sheffield, *of counsel* with a copy of the same.

With kindest regards, I am,

Yours very truly,

J. Layton Ruffin

JLR/bh

cc: Robert H. Hood, Esquire
Molly H. Craig, Esquire
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Deborah H. Sheffield, *of counsel*

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