

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas

S.C. Supreme Court

G. Thomas Cooper, Jr., Presiding Judge

Appellate 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,.....Respondent,

and

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

**RESPONDENTS' RETURN TO
APPELLANTS' MOTION TO ARGUE AGAINST PRECEDENT**

Appellants have asked the Court to allow them to argue against precedent pursuant to Rule 217, SCACR. Obviously, the Court can entertain any arguments it wishes to hear. But, as set forth in Respondents' brief, Appellants have presented no reason why the Court should disregard *stare decisis* and reexamine its decision in *Sloan v. South Carolina Board of Physical Therapy Examiners*, 370 S.C. 452, 636 S.E.2d 598 (2006). See Resp'ts' Br. 11-14. That decision interpreting the Physical Therapy Practice

Act (the “PT Act”) was made – and made correctly – by the Court in 2006. *Id.* at 11-25. Appellants provide no basis for the assertion in their motion that this case presents the “first practical moment” for the Court to revisit *Sloan*. To the contrary, since the Court’s decision in *Sloan*, Appellants and their physician group allies have petitioned the Legislature to amend the PT Act’s ban on physical therapists receiving wages from referring physicians at issue in *Sloan*. *Id.* at 4, 9, 12. Those efforts failed. *Id.*

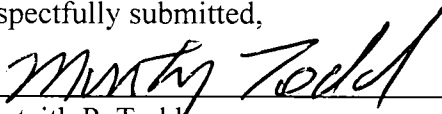
If the Legislature thought the Court’s interpretation of the PT Act in *Sloan* was wrong, it would have amended the statute. *See In re Layton*, 243 S.C. 421, 424, 134 S.E.2d 247, 248 (1964) (“*stare decisis* is especially applicable to decisions construing statutes because any desirable change may be readily accomplished by the legislature”); *Wehle v. S.C. Ret. Sys.*, 363 S.C. 394, 402, 611 S.E.2d 240, 244 (2005) (“*stare decisis* enjoys particular efficacy in the context of challenges concerning the construction of statutes and determination of legislative intent.”); *Scarborough v. Hodge*, 258 S.C. 229, 232, 187 S.E.2d 793, 794 (1972); Resp’ts’ Br. 11-14.

Respondents thus respectfully request that Appellants’ Motion to Argue against Precedent be denied. 1

1 Respondents again note that Appellants have failed to preserve an appeal of the December 4, 2012, order by which the Circuit Court rejected Appellants’ challenge to *Sloan*, because Appellants’ notice of appeal neither references nor attaches that December 4, 2012, order. *See* Resp’ts’ Br. 11-12, n.3.

Respectfully submitted,

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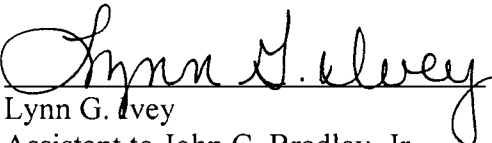
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Sabrina Queen Bridges, PTA, and Amalia W. Kirby, (PTA),.....Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents Return to Appellants' Motion to Argue Against Precedent on Appellants by depositing a copy of same in the United States Mail, postage prepaid, on November 25, 2014, addressed to attorneys of record as follows:

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November 25, 2014