

# The South Carolina Court of Appeals

Randall M. Green and Ann Green,  
Respondents/Appellants,

v.

Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D.,  
P.C., Appellants/Respondents.

Appellate Case No. 2014-000460

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## ORDER

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Respondents-Appellants have filed a motion to seal a covenant not to sue. Appellants-Respondents have filed a return indicating they do not object to the motion.

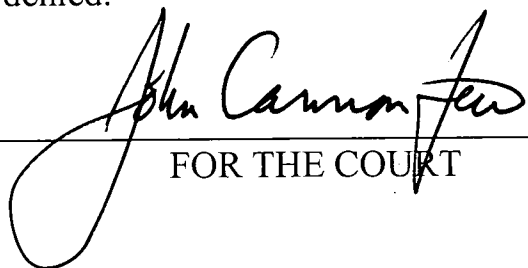
Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, we have the inherent power to control our own records. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). In *Ex parte Capital U-Drive-It*, the Supreme Court of South Carolina analyzed Rule 41.1(b), SCRCP, in deciding whether to seal or unseal a court record. 369 S.C. at 12, 630 S.E.2d at 470. Rule 41.1 requires a motion to seal to identify, with specificity, the documents or portions of documents for which sealing is considered necessary and to contain a non-confidential description of the documents. The Rule also requires the moving party to state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

- (1) ensuring the parties' right to a fair trial or hearing;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality of the proceeding;
- (4) the public or professional significance of the proceeding;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternatives other than sealing the

documents are not available to protect legitimate private interests; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

When ruling on a motion to seal, the Supreme Court of South Carolina has held the court may also consider the public interest in the proceeding; the private or public status of the litigants and case generally; whether release would enhance the public's understanding of an important historical event; whether the public already has access to information contained in the records; whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470.

After careful consideration, Appellants' motion to seal the covenant is denied. Respondents-Appellants concerns about prospective injury is not sufficient to overcome the strong presumption in favor of public access to court records. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 11, 630 S.E.2d at 470 ("Likewise, prospective injury to reputation, an inherent risk in almost every civil lawsuit, is generally insufficient to overcome the strong presumption in favor of public access to court records."). Further, the public already has access to the information because it is contained in the circuit court's order, which was not sealed. Thus, Respondents-Appellants' motion is denied.

  
FOR THE COURT

Columbia, South Carolina

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FILED  
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