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OF EXHIBITS TO RESPONDENTS' MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

Respondents herein list the following Exhibits to Respondents' Memorandum in Support of Motion to Dismiss Appeal:

Exhibit 1 – December 2, 2009 Order of SC Supreme Court; November 26, 2014 Order of Definite Suspension of SC Supreme Court

Exhibit 2 – April 13, 2010 Complaint

Exhibit 3 – July 26, 2011 Summary Judgment Order

Exhibit 4 – January 27, 2012 Order Awarding Sanctions

Exhibit 5 – March 1, 2012 and August 24, 2011 Appellant's Notices of Appeal

Exhibit 6 – SC Supreme Court Order March 26, 2014, and June 13, 2014, Remittitur

Exhibit 7 – July 7, 2014 Plaintiff's Motion to Withdraw Plaintiff's Motion to Dismiss Defendant's Counterclaims

Exhibit 8 – Transcript of October 27, 2014 hearing

Exhibit 9 – October 29, 2014 Form 4 Order

Exhibit 10 – December 3, 2014, *Pro Se* Notice of Appeal

Exhibit 11 – January 21, 2015 letter of Kitchings

Exhibit 12 – *Pro Se* Notice of Motion and Rule 59(e) SCRCF Motion

Exhibit 13 – December 3, 2014 Form 4 Order

Exhibit 14 – *Pro Se* Notice of Appeal dated January 14, 2015

Exhibit 15 – Affidavits of Smith-Yancey, Pratt-Thomas, Catapano and Dennis

Exhibit 16 – February 3, 2015, letters of Allen

Exhibit 17 – February 6, 2015, correspondence from Goldberg received by Court of Appeals February 9, 2015 and electronic communications between Goldberg and undersigned

RECEIVED
MAR 06 2015
SC Court of Appeals

The Supreme Court of South Carolina

05-CP-10-4357

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

RECEIVED

MAR 06 2015

SC Court of Appeals

ORDER

FILED
2009 DEC -3 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

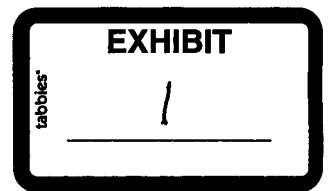
Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

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. Homes 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.

engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)


Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)

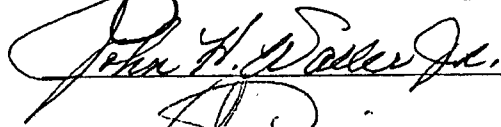
The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.

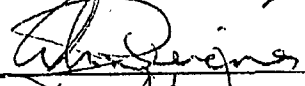
IT IS SO ORDERED.



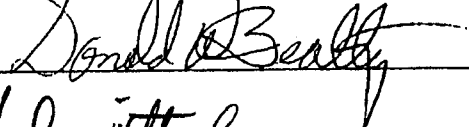
C. J.



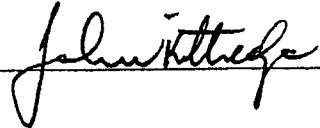
J.



J.



J.



J.

Columbia, South Carolina

December 2, 2009

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Cynthia E. Collie, Respondent.

Appellate Case No. 2014-000324

Opinion No. 27467

Heard October 7, 2014 – Filed November 26, 2014

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel and Deputy
Disciplinary Counsel Barbara M. Seymour, both of
Columbia, for the Office of Disciplinary Counsel.

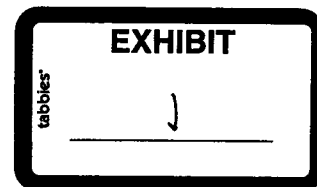
Chalmers Carey Johnson, of Port Orchard, Washington,
for Respondent.

PER CURIAM: In this attorney discipline matter, the Office of Disciplinary Counsel (ODC) filed formal charges with the Commission on Lawyer Conduct (the Commission) against Cynthia E. Collie¹ (Respondent) on July 2, 2012. On July 31, 2012, Respondent was served with a notice of filing of formal charges and formal charges by certified mail. After several extensions, Respondent's answer was due on February 25, 2013. Respondent failed to file an answer.

On February 28, 2013, an administrative panel of the Commission found Respondent to be in default for failing to respond to the formal charges. Thus, the Commission deemed the facts contained in the formal charges admitted,² and a

¹ In other litigation before this Court, Respondent has been referred to as "Cynthia Holmes."

² See Rule 24(a), RLDE, Rule 413, SCACR ("Failure to answer the formal charges shall constitute an admission of the allegations. On motion of disciplinary counsel, the administrative chair may issue a default order setting a hearing to determine the



hearing was held on August 13 and 14, 2013, before a hearing panel of the Commission (the Panel) for the sole purpose of considering mitigating and aggravating circumstances to determine a sanctions recommendation. Respondent appeared *pro se*. Following the hearing, the Panel recommended that Respondent be disbarred, as well as other conditions. Respondent took exception to the Panel's report and recommendation (the Report) by filing a brief. At the hearing before this Court, Respondent was represented by counsel. We decline to adopt the recommended sanction of disbarment, and instead impose a definite suspension of two years.

FACTUAL/PROCEDURAL BACKGROUND

As a consequence of Respondent's default, she is deemed to have admitted the following factual allegations set forth in the formal charges:

I. The 1999 Lawsuit

In March 1999, Respondent filed a lawsuit in the United States District Court for the District of South Carolina (the 1999 lawsuit) against Tenet HealthSystem Medical, Inc. (Tenet HealthSystem), and East Cooper Community Hospital, Inc. (East Cooper). Respondent was represented by attorneys Manton Grier and James Y. Becker of Sinkler & Boyd, P.A. The 1999 lawsuit related to credentialing decisions made by East Cooper regarding Respondent's privileges to practice medicine at East Cooper. Respondent's amended complaint listed twelve causes of action, two of which were based on federal law.

In April 2000, the district court granted the defendants' motion for summary judgment as to the federal causes of action and dismissed the remaining state law claims without prejudice. Respondent appealed the dismissal of the federal causes of action to the Fourth Circuit Court of Appeals, which affirmed the summary judgment. Respondent's petition for a writ of certiorari in the United States Supreme Court was denied.

II. The 2000 Lawsuit

In May 2000, Respondent filed a *pro se* lawsuit in the Court of Common Pleas in Charleston County (the 2000 lawsuit) against Tenet HealthSystem, East

appropriate sanction to recommend to the Supreme Court.").

Cooper, John Grady, M.D., Paul Yantis, M.D., William Cone, and Coastal Emergency Services, Inc. Ten of the causes of action brought against these defendants in the 2000 lawsuit were the same as those brought in the 1999 lawsuit. After filing the complaint, Respondent retained lawyers from a law firm located in Tennessee to represent her.

Respondent and the defendants resolved the 2000 lawsuit and placed a settlement agreement and general release on the record in October 2002 (the 2002 settlement agreement). Respondent subsequently refused to sign the 2002 settlement agreement, and the defendants filed a motion to compel the settlement. After a hearing in January 2003, the judge granted the motion to compel and ordered Respondent to sign the 2002 settlement agreement within seven days of the hearing. Respondent signed the 2002 settlement agreement on January 14, 2003.

The 2002 settlement agreement provided that Respondent would be reappointed to a consulting status at East Cooper for a term of two years, with the right to apply for a change in status in accordance with the bylaws of the hospital. Moreover, the parties agreed "to settle any and every claim which [Respondent] has asserted, might assert, or which [Respondent] may have against the [the defendants] in this case." The 2002 settlement agreement further provided that the parties

completely release each other and forever discharge each other from any and all claims, demands, obligations, causes of action, rights, damages, costs, losses of service, 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).

The circuit court signed an order of dismissal with prejudice in February 2003.

III. The 2005 Lawsuit

In October 2004, Respondent applied to East Cooper for a change in staff category from consulting status to associate active status, which includes privileges to perform surgery at East Cooper.

In November 2004, the hospital advised Respondent in writing that her application was incomplete and would not be forwarded to the credentialing committee for consideration unless she provided additional information on the application. Credentialing staff informed Respondent that without the necessary information, they would process her application as a request for reappointment to consulting status. Respondent did not submit the requested information. Thus, in December 2004, Respondent was reappointed to consulting status, and was not granted surgical privileges.

Thereafter, in December 2005, Respondent, represented by Chalmers Johnson, again filed a lawsuit (the 2005 lawsuit) in the Court of Common Pleas in Charleston County against Tenet HealthSystem, East Cooper, John Grady, M.D., and Paul Yantis, M.D.

In April 2006, Respondent filed an amended complaint. The causes of action in the amended complaint arose out of credentialing decisions that occurred in 2002 and 2004. Specifically, Respondent alleged that her reappointment to East Cooper's consulting staff in 2002 violated the hospital's by-laws and was the result of a conspiracy among the defendants. Respondent's causes of action concerning her 2004 appointment relied upon a statement allegedly made by one of the defendant doctors at a 1997 credentialing committee meeting.

In May 2007, the circuit court filed an order granting the defendants' motion for summary judgment stating that "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."

The defendants then filed a motion for sanctions against Respondent. The motion was stayed pending Respondent's appeal of the summary judgment to the court of appeals. In July 2008, the court of appeals dismissed Respondent's appeal of the summary judgment order. In June 2009, the circuit court issued a form order granting the motion for sanctions and assessing sanctions against Respondent in the amount of \$90,000. Respondent subsequently filed a motion for

reconsideration and a motion for relief from judgment. Both motions were denied.

In August 2009, the circuit court awarded sanctions in the amount of \$90,000 in a full written order to be paid to the defendants by Respondent for her frivolous initiation and continuation of the proceedings. Respondent filed a second motion for reconsideration, which was also denied.

Respondent then filed multiple notices of appeal in the court of appeals, all of which were dismissed. In its order issued in December 2009, the court of appeals stated that if Respondent "again attempts to pursue appeals of [the court's dismissal orders] she will be sanctioned."

Thereafter, Respondent filed multiple petitions for a writ of certiorari in this Court, all of which were denied. In an order issued in July 2010, the Court stated that it would "not accept for filing anything further in this case. Such action is necessitated by [Respondent's] long history of abusing the legal process at both the trial and appellate levels."

IV. The 2010 Lawsuit

In 2006 and 2008, Respondent again applied to East Cooper for a change in staff category from consulting status to associate active status. Her applications were denied. In 2010, Respondent, represented by Chalmers Johnson, filed another lawsuit (the 2010 lawsuit) in the Court of Common Pleas in Charleston County against Tenet HealthSystem and East Cooper. Respondent alleged that East Cooper's denial of her 2006 and 2008 applications for a change in status and privileges violated East Cooper's by-laws and breached the terms of the 2002 settlement agreement. Respondent essentially alleged the same breach of contract allegations as the 2005 lawsuit, in direct contradiction to the previous orders of dismissal and summary judgment and the orders of the court of appeals and this Court.

In July 2011, the circuit court granted the defendants' motion for summary judgment on the grounds that the 2010 lawsuit arose from the same process that was the basis for the previous lawsuits and that the court lacked jurisdiction to decide the matter. In February 2012, the circuit court granted the defendants' motion for sanctions, finding that Respondent engaged in a "pattern of filing abusive and frivolous litigation" and that prior sanction orders and injunctions from other judges had not deterred her conduct. The circuit court awarded the

defendants \$53,447.15. Further, the court enjoined Respondent from filing future lawsuits against the defendants or other agents or employees of the defendants, unless accompanied by a \$50,000 bond or letter of credit. Respondent appealed both the summary judgment and the sanctions orders.³

V. The 2002 Malpractice Lawsuit

In April 2002, Respondent filed a *pro se* complaint (the 2002 malpractice lawsuit) in the Court of Common Pleas of Charleston County against Manton Grier, James Y. Becker, and Sinkler & Boyd, P.A. Respondent alleged legal malpractice against the attorneys who had represented her in the 1999 Lawsuit against Tenet HealthSystem and East Cooper.⁴

Venue was transferred to Richland County on motion of the defendants. Respondent appealed both the order transferring venue and the court's denial of her motion for clarification of the order transferring venue to Richland County. Respondent invoked a wide array of appellate procedures, extending the interlocutory appeal of a change of venue for more than a year. Respondent moved for transfer of venue back to Charleston County, citing the convenience of numerous physicians who resided and worked in Charleston and who would be witnesses in her case-in-chief. Respondent frequently referred to fifty physicians whom she intended to call as witnesses. Virtually none of those witnesses testified at trial, and the one witness who did appear at trial testified regarding matters that were immaterial to Respondent's claims against her former lawyers.

While the appeal concerning venue was pending, Respondent filed numerous motions in Charleston County, which the court denied based upon lack of jurisdiction, as the case had been transferred to Richland County. Respondent appealed and, upon dismissal of the appeal, Respondent moved for rehearing and petitioned for a writ of certiorari from this Court. That round of appeals continued for nearly two years until October 2006.

³ The Court certified the appeal from the court of appeals, and the appeal was pending when ODC filed the formal charges. The Court has since affirmed the summary judgment and sanctions orders. See *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014).

⁴ Respondent also sued her Tennessee lawyers for malpractice. That suit was dismissed.

In April 2007, Respondent filed an amended complaint *pro se* in the Court of Common Pleas in Richland County naming as defendants Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., successor firm to Sinkler & Boyd, P.A. The case was transferred to the Court of Common Pleas in Charleston County pursuant to Respondent's change of venue motion.

Thereafter, Respondent filed numerous motions, including motions to "strike defendants' motion to quash"; a "request that defendants produce 'all documents'"; a "request that defendants supplement their response regarding Continuing Legal Education"; a "motion to compel regarding professional negligence actions"; a "motion to compel regarding defendants' insurance policy"; a "motion to compel with respect to legal articles, treatises, and like"; and a "motion to compel employment contracts." Respondent's motions were denied. Respondent filed a notice of appeal in the court of appeals appealing all of the orders denying her motions. Respondent then filed a Supplemental Notice of Appeal appealing additional orders the circuit court entered in March and July 2008. The court of appeals filed an order dismissing all of Respondent's appeals as interlocutory. Respondent then filed an "Amended Supplemental Notice of Appeal" appealing an order the circuit court filed in May 2008. That appeal was also dismissed. Respondent filed petitions for certiorari regarding both dismissals, which were denied. Respondent's petition for rehearing was also denied.

The case proceeded to trial on June 8, 2009. The circuit court granted a directed verdict in favor of all the malpractice defendants on all claims because the Respondent failed to present any evidence or expert testimony to establish the elements of her claims and on other grounds. The circuit court also dismissed the claims against the individual malpractice defendants because Respondent failed to file her lawsuit within the statute of limitations.

The malpractice defendants filed a motion for sanctions. Respondent then filed a motion to strike or dismiss the malpractice defendants' motion for sanctions, a motion for a new trial, a motion for reconsideration of the court's order denying Respondent's motion for continuance, and a motion for sanctions.

In November 2009, the circuit court denied all of the motions filed by Respondent and granted the malpractice defendants' motion for sanctions. The court awarded the malpractice defendants \$200,000 in sanctions against Respondent, finding that she had "filed a nonmeritorious and baseless lawsuit" and

that she "lacked any substantial evidence to support her claims[,] that [her] 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." The order also stated that Respondent "engaged in dilatory litigation tactics and appealed numerous interlocutory matters" which were "likewise frivolous and dilatory."

Respondent filed a notice of appeal in the court of appeals. In February 2010, the court of appeals dismissed the appeal.

In April 2010, Respondent hired Chalmers Johnson, who filed a notice of appearance and an amended notice of appeal, which appealed virtually every order issued in all Respondent's cases. The court of appeals dismissed that appeal in June 2011 for failure to file an initial brief and failure to communicate with the court. Respondent filed another appeal of the directed verdict and the sanctions order in the court of appeals. This Court certified the appeal.⁵

VI. Panel's Finding of Misconduct

Based on the above facts, the Panel found that Respondent committed misconduct as defined in Rule 7(a), RLDE, Rule 413, SCACR, by violating Rules 3.1, 3.2, 3.3(a), 3.4, and 8.4(e), Rule 407, SCACR, and that Respondent is subject to discipline pursuant to Rules 7(a)(1) and (5), RLDE, Rule 413, SCACR.

VII. Panel's Disciplinary Sanctions Recommendation

The Panel held a hearing on sanctions at which both parties presented evidence on August 13–14, 2013.

In considering the sanction recommendation, the Panel considered the following aggravating factors: (1) Respondent's multiple offenses and pattern of misconduct; (2) Respondent's failure to acknowledge the wrongfulness of her actions or express any remorse; (3) Respondent's indifference to her obligations to pay court-ordered sanctions; (4) Respondent's willful attempts to obstruct the

⁵ The appeal was pending at the time ODC filed the formal charges. The Court has since affirmed the circuit court. *See Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

disciplinary process; and (5) Respondent's false statements in connection with these disciplinary proceedings.

Furthermore, the Panel considered the following mitigating factors: (1) Respondent's cooperation in the disciplinary process; (2) Respondent's lack of disciplinary history; and (3) the fact that some of Respondent's pleadings and appeals were filed with the assistance of counsel. The Panel explicitly rejected the following mitigating circumstances propounded by Respondent: (1) lack of dishonest or selfish motive; and (2) that there were delays in the disciplinary proceedings that were prejudicial to Respondent.

Based on the foregoing, the Panel recommended that this Court disbar Respondent; order her to pay the costs of the disciplinary investigation and formal proceedings; and order her to pay restitution in the following amounts:

1. \$90,000 plus interest pursuant to the August 2009 sanctions order;
2. \$200,000 plus interest pursuant to the November 2009 sanctions order (pending affirmation of that sanctions order by the supreme court on appeal); and
3. \$53,447.15 plus interest pursuant to the February 2012 sanctions order (pending affirmation of that sanctions order by the supreme court on appeal).

DISCUSSION

I. Standard of Review

The sole authority to discipline attorneys and decide appropriate sanctions rests with this Court. *In re Welch*, 355 S.C. 93, 96, 584 S.E.2d 369, 370 (2003); *In re Thompson*, 343 S.C. 1, 10–11, 539 S.E.2d 396, 401 (2000). We are not bound by the Panel's recommendation and may make our own findings of fact and conclusions of law. *In re Hazzard*, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008). Nonetheless, the findings and conclusions of the Panel are entitled much respect and consideration. *Thompson*, 343 S.C. at 11, 539 S.E.2d at 401. Moreover, "[a] disciplinary violation must be proven by clear and convincing evidence." *In re Greene*, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006); *see also* Rule 8, RLDE, Rule 413, SCACR ("Charges of misconduct or incapacity shall be established by clear and convincing evidence, and the burden of proof of the charges shall be on

the disciplinary counsel.").

II. Misconduct

Because Respondent is deemed to have admitted the factual allegations against her, we adopt the Panel's recommendation as to the finding of misconduct. Thus, we find Respondent violated Rules 3.1, 3.2, 3.3(a), 3.4, and 8.4(e), Rule 407, SCACR, and that Respondent is subject to discipline pursuant to Rules 7(a)(1) and (5), RLDE, Rule 413, SCACR.

III. Exceptions

Respondent takes exception to the Panel's Report, claiming the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10 to -100 (2009) (the FCPSA), on which basis sanctions were assessed against Respondent in the underlying cases, is unconstitutional. ODC argues the Court should accept the Panel's recommendation because the investigation and formal proceedings were conducted in accordance with Rule 19, RLDE, Rule 413, SCACR.

We agree with ODC that the primary focus of Respondent's brief—the merits of the underlying sanctions awards pursuant to the FCPSA—is irrelevant to this disciplinary action. Respondent simply repeats her previous positions in the 1999, 2000, 2005, and 2010 lawsuits, but does not challenge any of the Panel's findings concerning aggravation or mitigation of the sanction. Therefore, Respondent's brief does not constitute an exception to the Panel's Report, and we deem Respondent to have accepted the findings of fact, conclusions of law, and recommendations contained therein. *See* Rule 27(a), RLDE, Rule 413, SCACR ("The failure of a party to file a brief taking exceptions to the report constitutes acceptance of the findings of fact, conclusions of law, and recommendations."); *In re Prendergast*, 390 S.C. 395, 396 n.2, 702 S.E.2d 364, 365 n.2 (2010).⁶

⁶ To the extent Respondent's brief accuses ODC of misconduct during the disciplinary process, not only do these contentions lack merit, but each of these arguments is conclusory. For example, Respondent accuses ODC of failing to provide her with notice; engaging in professional misconduct; prematurely filing formal charges because there had not yet been an adjudication on the merits; and failing to timely disclose the name of the Panel chair. The conclusory fashion in which these contentions are addressed in her brief constitutes abandonment of these issues. *See In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001)

IV. Sanctions

We find that the allegations of misconduct during the underlying litigation warrant Respondent's suspension from the practice of law. *See* Rule 7(b)(2), RLDE, Rule 413, SCACR.⁷

We further decline to adopt the Panel's recommendation regarding restitution, the sums of which are based on the various sanctions orders in the underlying litigation. We remind Respondent that she must comply with all of the court orders regarding sanctions. Additionally, we refer persons or parties seeking to separately enforce those court orders imposing monetary sanctions to the provisions of our laws concerning the enforcement of civil judgments. *See* Rule 69, SCRCPC; S.C. Code Ann. §§ 15-39-10 to -50 (Supp. 2013).

CONCLUSION

Based on the foregoing, we impose a definite suspension of two years pursuant to Rule 7(b)(2), RLDE, Rule 413, SCACR, and order Respondent to pay the costs of these proceedings. Within fifteen (15) days of the date of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30 of Rule 413, SCACR.

TWO YEAR DEFINITE SUSPENSION.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

(holding an issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory).

⁷ Respondent is currently under interim suspension for failing to register a valid e-mail address with the South Carolina Bar's Attorney Information System. *See In re Collie*, 406 S.C. 181, 749 S.E.2d 522 (2013).

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 DR. CYNTHIA HOLMES, M.D.,)
)
 Plaintiff,)
)
 Vs.)
)
 EAST COOPER COMMUNITY)
 HOSPITAL, INC., TENETHEALTH)
 SYSTEM MEDICAL, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 C.A. 10-CP-10. 3410

COMPLAINT
 (Jury Trial Requested)

BY _____
 JULIE J. ARNSTROM
 CLERK OF COURT
 2010 APR 26 AM 11:22

FILED

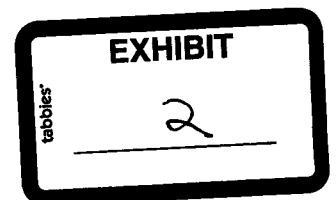
The Plaintiff, by and through her undersigned counsel, hereby makes the following claims and allegations:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
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 4:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

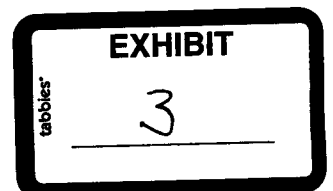
This action came before the undersigned on July 8, 2011, on Defendants' Motion for Summary Judgment. Counsel for Plaintiff and Defendants submitted Memoranda of Law, Affidavits, and oral argument, which have been considered by the Court and incorporated into the record. As explained more fully below, 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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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."

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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).

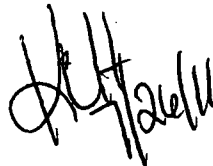
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I. This Court lacks subject matter jurisdiction to review the actions of private hospitals concerning medical staff privileges.

“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


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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


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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

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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

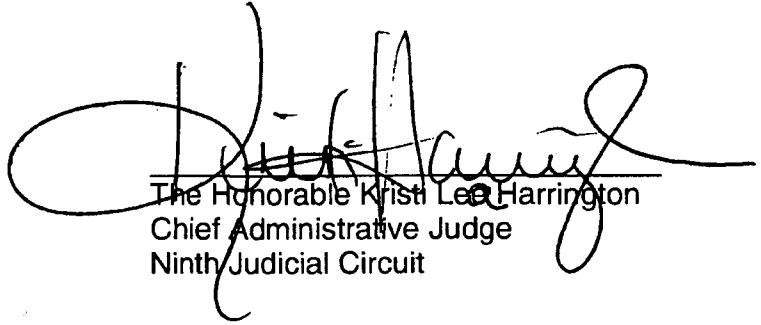
Finally, the Plaintiff's contentions that this Court has previously ruled on and agreed to accept subject matter jurisdiction of this controversy are without merit. Plaintiff argues the Court's previous denial of Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings based, in part, on 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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JH
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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)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
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.)

ORDER AWARDING SANCTIONS

2011 FEB -1 PH 4:31
FILED
BY J. J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on Defendants' motion pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, codified at section 15-36-10 of the South Carolina Code (hereinafter referred to as the "FCPSA" or "the Act"). A hearing on Defendants' motion was held on November 22, 2011. As indicated more fully below, this Court grants Defendants' motion, sanctions the Plaintiff pursuant to the Act, and awards judgment against Plaintiff in the amount of \$53,447.15 (Fifty-Three Thousand Four Hundred Forty-Seven and 15/100 Dollars) payable to Defendants for reimbursement of attorneys' fees and other expenses incurred in the defense of this action.

In addition, in light of the Plaintiff's long history of litigation against Defendants and others, the Court finds injunctive relief pursuant to section 15-36-10(G)(3) appropriate. Consequently, this Court hereby orders that any future litigation filed on behalf of the Plaintiff against the Defendants in any way premised upon the status of her medical staff membership, categorization, or privileges or her prior litigation with the Defendants shall be accompanied by a \$50,000.00 bond or letter of credit, paid in to the

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EXHIBIT	
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Clerk of Court, to be applied to Defendants' attorneys' fees and other litigation expenses in the event Defendants are the prevailing party and the Court finds them to be entitled to reimbursement of their attorneys' fees and other litigation expenses. If the Plaintiff fails to post such a bond or letter of credit, Defendants may present a certified copy of this Order to the Clerk of Court, upon which the Clerk shall summarily dismiss the action.

Factual/Procedural Background

The Plaintiff herein is a medical doctor specializing in the field of ophthalmology. Her current Complaint alleges causes of action for breach of contract and breach of the covenant of good faith and fair dealing concerning her medical staff privileges at Defendant East Cooper Community Hospital, Inc., which owns and operates East Cooper Medical Center (hereinafter referred to as the "Hospital").

This is the fourth lawsuit filed by the Plaintiff against Defendants arising out of her medical staff privileges at the Hospital. The Plaintiff's first lawsuit, Doe v. Tenet HealthSystem Medical, Inc., et al., Civil Action Number 2:99-0833-23, was filed in the United States District Court for the District of South Carolina, and Defendants were granted summary judgment. The Plaintiff's second lawsuit, Doe v. Tenet HealthSystem Medical, Inc., et al., Civil Action Number 2000-CP-10-1888, was filed in the Charleston County Court of Common Pleas. The parties resolved the second lawsuit through a Settlement Agreement and General Release in Full (the "Settlement Agreement") in 2002.

The Plaintiff's third lawsuit, Holmes v. East Cooper Community Hosp., Inc., et al., Civil Action Number 2005-CP-10-5113, was also filed in the Charleston County Court of

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Common Pleas. The Plaintiff's allegations in Paragraphs 31-36 of the Amended Complaint in Case Number 2005-CP-5113, stating an alleged cause of action for breach of a covenant of good faith and fair dealing, are almost identical to the allegations in Paragraphs 12-16 of the Plaintiff's Complaint in the present lawsuit.¹ In her third lawsuit, the Plaintiff contended, among other things, that the Defendants breached the Settlement Agreement in their consideration of her 2002 and 2004 applications for reappointment to the Hospital's medical staff, advancement in staff category, and surgical privileges. She made the same argument in the instant case with respect to her 2006 and 2008 applications.

Defendants were awarded summary judgment in the Plaintiff's third lawsuit, and Plaintiff was ultimately sanctioned pursuant to the Act. Defendants were awarded a \$90,000.00 judgment against Plaintiff. The Plaintiff's appeals of these orders were dismissed and remitted by the South Carolina Court of Appeals.

Plaintiff's allegations in the current lawsuit relate to her applications for reappointment to the Hospital's medical staff, advancement in staff category, and request for surgical privileges in 2006 and 2008. On July 29, 2011, this Court entered an order granting summary judgment to Defendants. On August 8, 2011, Defendants filed and served this motion.

Law/Analysis

I. The FCPSA Standard

¹ The Plaintiff's Amended Complaint in Case Number 2005-CP-10-5113 includes two separate paragraphs labeled 31 through 36. This Court is referring to the second such set of paragraphs therein.



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." 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 a party 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);

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- (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 attorneys' 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.

In Rutland v. Holler, Dennis, Corbett, Ormond & Garner, 371 S.C. 91, 98, 637 S.E.2d 316, 320 (Ct. App. 2006), the South Carolina Court of Appeals affirmed the circuit court's award of sanctions to the defendant, emphasizing that "Respondents were able to show that the primary purpose for which the proceedings were initiated 'was not that of securing the proper . . . adjudication of the civil proceedings.'" The Court recognized: "A review of the record reveals that the lawsuit at issue alleged causes of action for the same complaint as the previous lawsuits, *i.e.*, Rutland's dissatisfaction with Corbett and his law firm." Id. "In light of this unsuccessful procedural history, it is inconceivable that Rutland reasonably believed that his claims against Respondents were valid." Id.

II. Defendants are entitled to sanctions under the FCPSA for continuing to argue that this Court has jurisdiction to review the privileging decisions of a private, for-profit hospital.

The Plaintiff herein violated the Act by initiating and continuing this litigation despite this Court's lack of subject matter jurisdiction, despite a prior ruling against the



Plaintiff that this Court lacks subject matter jurisdiction, and despite being sanctioned for arguing that this Court has subject matter jurisdiction in a previous case based on the very same allegations.

The Plaintiff contends in this action, as she did in Case Number 2005-CP-10-5113, that rather than asking the Court to review the decisions made regarding her credentialing process, she seeks a determination of whether Defendants breached the Settlement Agreement in their consideration of her applications for advancement in staff category and surgical privileges. In the previous lawsuit, the Honorable R. Markley Dennis, Jr., not only granted summary judgment to Defendants on the basis that the circuit court lacked jurisdiction over such claims, but also sanctioned the Plaintiff for raising the argument.

"Generally speaking, subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." Metts v. Mims, 384 S.C. 491, 498, 682 S.E.2d 813, 817 (2009). "It 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." Wood v. Hilton Head Hosp., Inc., 292 S.C. 403, 405, 356 S.E.2d 841, 842 (1987). Thus, "the implementation of the regulations of a private hospital which are initiated to restrict a practitioner's practices are not subject to judicial review." Id.

As this Court recognized in its Order granting summary judgment to Defendants: "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

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Hospital and, as such, are not subject to judicial review." **Summ. J. Order filed 07/29/2011, p.5.**

As previously discussed, in the 2005 lawsuit, Judge Dennis granted summary judgment to Defendants. **Summ. J. Order filed 05/23/2007 in 2005-CP-10-5113.** In addressing the allegations set forth above relating to the Plaintiff's 2004 application, which are almost identical to the claims set forth in the current case relating to the Plaintiff's 2006 and 2008 applications, Judge Dennis held, in pertinent part:

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.

Summ. J. Order filed 05/23/2007 in 2005-CP-10-5113, p.4 (double emphasis added).

The present lawsuit restates the Plaintiff's allegations and arguments in her 2005 lawsuit. The Plaintiff alleges, as she did in 2005, that the Defendants breached the Settlement Agreement in reviewing her applications for medical staff privileges. **Compl.** In the 2005 lawsuit, Judge Dennis considered this argument and rejected it in two separate orders. In one of those orders, he sanctioned the Plaintiff for making the argument. With the Plaintiff being sanctioned in 2005 for making the argument, no reasonable attorney could contend that the argument is not frivolous in this action.



The Plaintiff contends that the present lawsuit was filed under a good faith argument for the extension of Lee v. Chesterfield Gen. Hosp., Inc., 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986). This argument has no merit. Initially, Judge Dennis considered and rejected this exact same argument in his order sanctioning the Plaintiff in the 2005 case:

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 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.

Sanctions Order filed 08/06/2009 in 2005-CP-10-5113, pp.15-16.

While the Plaintiff contends that this previous circuit court order is not binding precedent and that Judge Dennis's decision in this instance was incorrect, the Plaintiff ignores that, "[u]nder the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Carman v. S.C. Alcoholic Beverage Control Comm'n, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994). Plaintiff failed to offer any argument as to why Judge Dennis's decision does not



collaterally estop her in this action. Moreover, the Plaintiff's argument on this point emphasizes her intention to re-litigate the case she lost in 2005.

In addition, by its express terms, the Lee decision was limited to civil conspiracy claims and has no application to the actions alleged by the Plaintiff in this case. The Plaintiff cites no cases or authority from South Carolina or any other jurisdiction purporting to extend the Lee decision to her breach of contract claim asserted in this case. The Plaintiff also fails to distinguish the well-settled rule in South Carolina that the parties may not, by agreement or otherwise, consent to confer subject matter jurisdiction on the court. See Eldridge v. City of Greenwood, 331 S.C. 398, 408, 503 S.E.2d 191, 196 (Ct. App. 1998) ("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.").

Based on the ample case law on this issue, a reasonable attorney in the same circumstances would believe that under the facts herein, the 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.

III. Defendants are entitled to sanctions under the Act because the Plaintiff initiated and continued the present action despite the Defendants' compliance with the plain language of the Bylaws.

Even if this Court had subject matter jurisdiction to review the privileging decisions of the Hospital, there is absolutely no evidence that the Defendants failed to comply with the Settlement Agreement or the Medical Staff Bylaws in reviewing the Plaintiff's application.

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The Settlement Agreement provides, in pertinent part: "Dr. Holmes shall have the right to apply for a change in status in accordance with the Bylaws." **Settlement Agreement, pp.1-2.** The construction of a clear and unambiguous contract is a question of law for the court. Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987).

The record in this case shows that the Plaintiff failed to produce any evidence in support of her allegations that the subject Settlement Agreement was breached. Indeed, the affidavit of her expert witness failed to even mention the Settlement Agreement and only addressed whether the Hospital's Bylaws were followed. Defendants produced testimony from relevant committee and board members involved in the Plaintiff's credentialing process, who all testified that the Plaintiff's reappointments were conducted in compliance with the Bylaws.

Notwithstanding the foregoing, the Plaintiff failed to conduct *any* discovery on these allegations (or otherwise) until the eve of the summary judgment hearing, when she noticed and took the deposition of Janie Sinacore-Jaberg, the Hospital's former CEO. In the 2005 lawsuit, the circuit court looked to the Plaintiff's failure to conduct any discovery as supporting its award of sanctions: "[Plaintiff] failed to conduct any discovery, written or otherwise, on this or any other claim pled in her Complaint." **Sanctions Order, p.13.**

In this case, after the hearing on Defendants' motion for summary judgment was set, Plaintiff noticed and took the deposition of Sinacore-Jaberg. **Ex. 3 to Plt.'s Response to Defs.' Mot. for Sanctions.** While the Plaintiff points to Sinacore-Jaberg's deposition transcript to show that she conducted discovery in the present case, it is



telling that the Plaintiff did not cite to Sinacore-Jaberg's substantive testimony in either her response to Defendants' motion for summary judgment or her response to Defendants' motion for sanctions. Moreover, the Plaintiff's expert witness never even mentioned Sinacore-Jaberg's testimony in his affidavit, and Sinacore-Jaberg was never asked about the Settlement Agreement. Defendants never designated Sinacore-Jaberg as a witness or submitted an affidavit from her in support of their motions.

The Plaintiff produced absolutely no evidence that Defendants failed to comply with the Settlement Agreement or the Bylaws in considering her 2006 or 2008 reappointment applications. The lack of any factual basis for the Plaintiff's claim and the Plaintiff's failure to conduct substantive discovery relating to the Settlement Agreement also support sanctions against her.

IV. The factors in section 15-36-10(E) of the Act support an award of sanctions.

This Court has considered each of the factors in section 15-36-10(E) of the Act in determining whether the Plaintiff violated the Act. Neither the number of parties nor the complexity of the legal issues involved in this case appears to have confused the Plaintiff in any manner. It is the Plaintiff's continued refusal to consider applicable case law and prior court orders which caused her to file this frivolous lawsuit, not the complexity of the issues involved. If the Plaintiff had even cursorily reviewed her previous filings, prior Court orders, the Settlement Agreement, and the Bylaws prior to filing this lawsuit, it would have shown her the unreasonableness of her actions.

The Plaintiff has been in possession of or had access to the dispositive facts of this action—the 1999 federal suit complaint, the 2000 state court complaint, the Settlement Agreement, the 2005 filings, the prior Court orders, and the Bylaws—since

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before she filed this action. As the Court's records reflect, she also had roughly four (4) months to reconsider the filing of this lawsuit before she served it.

Factor five requires this Court to consider previous violations of this section in determining whether the Plaintiff violated the Act. This factor weighs strongly in favor of sanctions against the Plaintiff. Two separate circuit court judges have sanctioned the Plaintiff under the Act. In addition, the Supreme Court of South Carolina has emphasized the Plaintiff's vexatious litigation activities involving the Defendants in two separate orders. Judge Dennis in the instant case warned the Plaintiff that she might be sanctioned during a hearing on Defendants' motion to dismiss. Despite these sanctions and warnings, the Plaintiff has continued her litigation against the Defendants. This factor also strongly supports the injunctive relief provided herein.

With respect to the sixth factor, while the Plaintiff has asserted several procedural reasons as to why she believes she should not be sanctioned, the only substantive argument she offered was her apparent belief that the Lee decision supported this lawsuit. As previously discussed, the Plaintiff was placed on notice in her 2005 lawsuit that Lee afforded her no relief.

V. Pursuant to section 15-36-10(G)(1) of the South Carolina Code, Defendants are entitled to their attorneys' fees and other litigation expenses incurred in defending this lawsuit against the Plaintiff.

Section 15-36-10(G)(1) of the South Carolina Code provides that sanctions under the Act may include: "[A]n order for the party represented by an attorney . . . to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section." "Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage,

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parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding” Id.

In Glasscock v. Glasscock, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991), the Supreme Court of South Carolina set forth the six (6) factors a court should use in determining a reasonable attorney’s fee: “(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services.”

In support of their request for attorneys’ fees, Defendants submitted an affidavit setting forth the actual 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 \$53,447.15 (Fifty-Three Thousand Four Hundred Forty-Seven and 15/100ths Dollars).

In considering the factors set forth in Glasscock, the Court finds that 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 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 granting of summary judgment of the remaining claims and the successful prosecution of the present motion.

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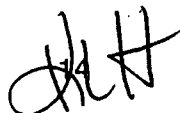
Based on the foregoing, I hereby order judgment entered in favor of Defendants against the Plaintiff in the amount of \$53,447.15 (Fifty-Three Thousand Four Hundred Forty-Seven and 15/100ths Dollars), with said judgment to be enrolled against the Plaintiff Cynthia Holmes, as well as against her alias, Cynthia Elaine Collie.

VI. Pursuant to section 15-36-10(G)(3) of the South Carolina Code, Defendants are entitled to injunctive relief.

Section 15-36-10(G)(3) of the South Carolina Code provides that sanctions may include "a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith." "The court has the discretion and the power to restrict a litigant who abuses the judicial system, and has authority to enjoin persons engaged in a manifest abuse of judicial process." 43A C.J.S. Injunctions § 96. "A court has both the duty and the power to protect the courts, citizens, and opposing parties from the abuse of a party who uses the judicial process not to vindicate his or her rights, but to harass and intimidate his or her adversaries by repeatedly filing groundless and vexatious claims against them." Id. "In order to preserve court resources, courts may place reasonable limits on the filings of litigants who abuse the judicial system, although such a sanction should be drawn narrowly." Id.

"A court's equity jurisdiction may properly be invoked to enjoin a multiplicity of successive suits at law by the same plaintiffs." 43A C.J.S. Injunctions § 99. "A party litigant who brings successive law suits involving the same issues against the same parties that are vexatious in nature may be enjoined from continuing such actions." Id.

"The power of the court to grant an injunction is in equity." Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "The court will reserve its equitable powers for situations when there is no adequate remedy at law."

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Id. "The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." Id. "In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case." Id.

In this case, the Defendants have made a detailed showing of the Plaintiff's pattern of filing abusive and frivolous litigation. The Plaintiff has filed several lawsuits against Defendants, as well as two separate lawsuits against her former attorneys, all arising from a medical privileging dispute which began in 1997.

It is also clear that the Defendants have no adequate remedy at law. Defendants have already been awarded their attorneys' fees and costs under the Act in the 2005 lawsuit, and this judgment had no impact on the Plaintiff's desire to file the current frivolous lawsuit. The Honorable Thomas L. Hughston, Jr., has also sanctioned the Plaintiff in another lawsuit, against her former attorneys, awarding those former attorneys \$200,000.00 in attorneys' fees and costs in an order filed on November 18, 2009. This Order had no impact on the Plaintiff's decision to file the present lawsuit, and the Plaintiff has shown that she is unwilling to be deterred by judgments against her. Simply put, the Defendants have no other avenue of relief short of an injunction.

This Court also notes that Judge Hughston and the Supreme Court of South Carolina have already enjoined the Plaintiff from filing lawsuits in South Carolina courts without a licensed attorney signing on her behalf. These injunctions also provided no relief to Defendants.

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This Court hereby enjoins the Plaintiff, or anyone on her behalf, filing a lawsuit against East Cooper Community Hospital, Inc.; Tenet HealthSystem Medical, Inc.; or their directors, officers, agents, servants, employees, attorneys, or related entities without such filing being accompanied by a bond or letter of credit, paid into the Clerk of Court at the time of filing, in the amount of \$50,000.00. Such bond or letter of credit will be applied to pay the attorneys' fees and other litigation expenses of any of the foregoing if they are the prevailing party in the action and if they are entitled to such attorneys' fees and other litigation expenses through the imposition of sanctions or otherwise. Furthermore, if the Plaintiff, or anyone on her behalf, files a lawsuit without such a bond or letter of credit, the Defendants may present a certified copy of this Order to the Clerk of Court and, upon presentation, the action should be summarily dismissed by the Clerk.

This Court has carefully considered this relief in an attempt to issue an injunction which is no more comprehensive than required by the facts of this case and the long history of the Plaintiff's litigation activities. The Plaintiff has been sanctioned or warned multiple times by multiple courts. She has been given every opportunity to conform her conduct to the standards of a reasonable attorney.

VII. Plaintiff's procedural arguments for denying Defendants' motion are without merit.

Most of the Plaintiff's arguments for denying the Plaintiff's motion are procedural in nature. This Court rejects these arguments for the following reasons:

1. Plaintiff contends the pending appeal of this Court's summary judgment order warrants a stay of this motion. In Hudson v. Hudson, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986), the Supreme Court of South Carolina held that a notice of appeal



does not deprive the circuit court of jurisdiction to consider a timely post-trial motion, which includes a motion for sanctions under the Act.

2. Plaintiff contends that Defendants failed to comply with Rule 59(g), SCRPC, which requires a party to provide a copy of a motion to alter or amend to the judge within ten (10) days after the filing of the motion. In Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002), the South Carolina Court of Appeals held that Rule 59(g) does not affect the timeliness of a post-trial motion, nor does it impact the circuit court's jurisdiction.

3. Plaintiff contends that Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997), compels this Court to deny the Defendants' motion. In Hanahan, the Supreme Court of South Carolina recognized: "Other courts . . . hold that a party who survives pre-trial motions to dismiss and for summary judgment are not subject to sanctions after a trial on the surviving claims." Id. at 157, 485 S.E.2d at 912. "The theory behind these cases is that if a case is submitted to the jury, it cannot be deemed frivolous." Id. Hanahan has no applicability to the facts of the case because this case was not submitted to the jury, and the Plaintiff did not survive pre-trial motions to dismiss or for summary judgment. While the Plaintiff points to the consideration by Judge Dennis of a previous motion to dismiss in this matter as supporting a finding that she survived a pre-trial motion, Judge Dennis clearly stated at the hearing of that motion that he deemed the motion premature and was not ruling on its merits. He never denied the motion. The motion was renewed after a sufficient time to conduct discovery, and summary judgment was entered against the Plaintiff.

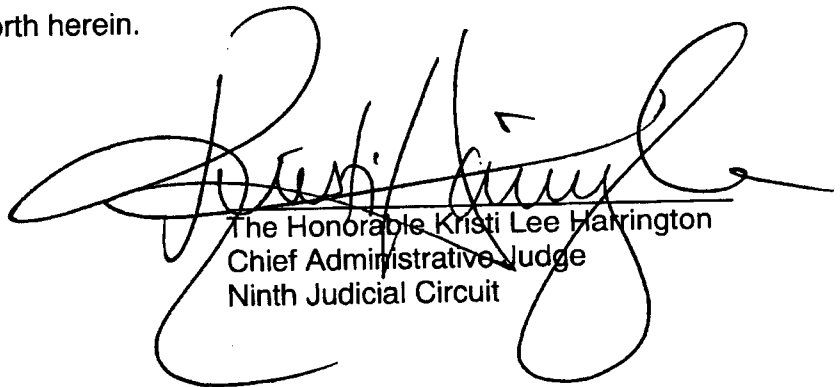


Conclusion

Defendants have shown that this lawsuit was a renewal of the Plaintiff's 2005 lawsuit against them. The allegations and arguments were the same, and the Plaintiff fails to explain how they are different.

The Plaintiff has shown a long history of ignoring plain facts, clear legal precedent, and previous warnings and sanctions of other Courts.

Under the circumstances, this Court hereby sanctions the Plaintiff pursuant to the Act, awards Defendants their requested attorneys' fees and other litigation expenses, and enjoins the Plaintiff from filing further lawsuits against the Defendants without a bond or letter of credit as set forth herein.



The Honorable Kristi Lee Harrington
Chief Administrative Judge
Ninth Judicial Circuit

January 27, 2012
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lee Harrington, Circuit Court Judge

Case No. 2010-CP-10-3410

Dr. Cynthia Holmes, M.D.

Appellant,

v.

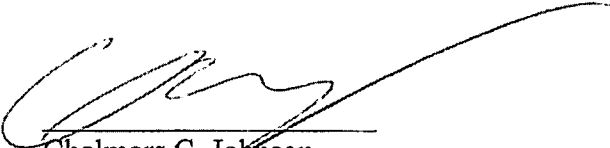
East Cooper Community Hospital, Inc.;
Tenet HealthSystem Medical, Inc.,

Respondents.

NOTICE OF APPEAL

The Appellant appeals the Order of Judge Kristi Lee Harrington Filed February 1, 2012. Plaintiff received notice of the order by mail from the Court on February 6, 2012. A copy of the Order under appeal is attached.

Dated: March 1, 2012



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Counsel of Record for Respondents:
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Charleston, SC 29413

EXHIBIT

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lee Harrington, Circuit Court Judge

Case No. 2010-CP-10-3410

Dr. Cynthia Holmes, M.D.

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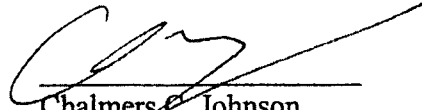
East Cooper Community Hospital, Inc.;
Tenet HealthSystem Medical, Inc.,

Respondents.

NOTICE OF APPEAL

The Appellant appeals the Order of Judge Kristi Lee Harrington entered Filed July 29, 2011. A copy of the Order under appeal is attached.

Dated: August 24, 2011



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Counsel of Record for Respondents:
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Charleston, SC 29413

EXHIBIT

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**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Dr. Cynthia Holmes, M.D., Appellant,

v.

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

Appellate Case No. 2011-198092;
Appellate Case No. 2012-209666

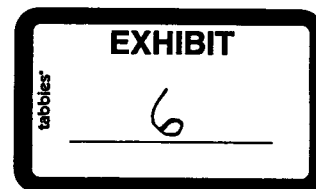
Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Opinion No. 27370
Heard March 19, 2013 – Filed March 26, 2014

AFFIRMED

Chalmers Carey Johnson, of Tacoma, Washington, for
Appellant.

Erskine Douglas Pratt-Thomas, Lindsay Kathryn Smith-
Yancey, and Daniel Simmons McQueeney, Jr., all of
Pratt-Thomas Walker, PA, of Charleston, for
Respondents.



CHIEF JUSTICE TOAL: In this consolidated appeal, Dr. Cynthia Holmes, M.D. (Appellant) asks this Court to reverse the circuit court's decisions granting summary judgment in favor of East Cooper Community Hospital, Incorporated, and Tenet HealthSystem Medical, Incorporated (collectively, Respondents), and sanctioning her pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, section 15-36-10 of the South Carolina Code (the FCPSA). We affirm the circuit court's grant of summary judgment in favor of Respondents and the award of sanctions against Appellant.

FACTS/PROCEDURAL BACKGROUND

Respondent East Cooper Community Hospital, Incorporated, is a subsidiary of Respondent Tenet HealthSystem Medical, Incorporated, and owns, operates and does business as East Cooper Medical Center (the Hospital), a private hospital in Mount Pleasant, South Carolina. Appellant is a doctor, who currently practices ophthalmology in Sullivan's Island, South Carolina, and was previously a member of the consulting medical staff of the Hospital.¹ During the relevant time period, Appellant was a member of the Hospital's medical consulting staff, appointed in two-year increments. In October 2006, Appellant submitted a reappointment application seeking advancement in medical staff category and clinical privileges to perform surgery on the eye. The Hospital's credentialing committee found Appellant unqualified for the level of privileges she requested. Appellant received administrative review of this decision, and was ultimately reappointed as consulting medical staff for another two-year term. In October 2008, Appellant submitted another reappointment application requesting advancement. This time, the Hospital determined that Appellant's application was incomplete and requested she voluntarily resign from the medical staff without appellate rights under the medical staff bylaws. The current appeal stems from these privileging decisions.

By way of background, this case represents the fourth lawsuit filed by Appellant against Respondents regarding credentialing decisions.² In each case,

¹ Appellant is also a licensed attorney and member of the South Carolina Bar.

² Appellant has also brought two legal malpractice claims against the attorneys who represented her in the first two lawsuits.

Appellant has alleged breach of contract and breach of the covenant of good faith and fair dealing arising out of Respondents' alleged mishandling of Appellant's medical staff privileging applications. Appellant filed her first lawsuit against Respondents in federal court in 1999, alleging violations of the Sherman Anti-Trust Act, 15 U.S.C. §§ 1, et seq. (2004), and pendant state law claims, including *inter alia*, claims for wrongful termination of hospital privileges, breach of contract, breach of contract accompanied by a fraudulent act, civil conspiracy, and unfair trade practices. That lawsuit ended when the district court granted summary judgment in favor of Respondents on the federal claim, and dismissed the remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3) (providing a court may decline to exercise supplemental jurisdiction over state law claims in cases where the district court has dismissed all claims over which it has original jurisdiction).³

On May 16, 2000, Appellant again challenged the Hospital's credentialing decisions, this time in circuit court. On January 20, 2003, the parties executed a settlement agreement in the second lawsuit (the Settlement Agreement). The Settlement Agreement provided, in part, that Appellant be reappointed to the consulting medical staff position from 2002 until 2004 with "the right to apply for a change in status in accordance with the Bylaws."

In 2005, Appellant filed a third lawsuit against Respondents alleging, *inter alia*, that Respondents breached the Settlement Agreement and the covenant of good faith and fair dealing in reviewing Appellant's applications for medical staff privileges in 2002 and 2004. More specifically, Appellant alleged that she and Respondents were parties to a contractual agreement "the terms of which are set forth in the Medical Staff Bylaws, Rules and Regulations, and related documents."

The circuit court ultimately granted summary judgment in favor of Respondents in the 2005 lawsuit on May 23, 2007. In addressing the allegations relating to Appellant's 2004 application, Circuit Court Judge R. Markley Dennis, Jr., stated, in pertinent part:

The [Appellant's] Amended Complaint seeks judicial determination of

³ Appellant filed a pro se appeal from the district court's decision in the United States Court of Appeals for the Fourth Circuit, which was dismissed on November 17, 2000. She subsequently sought a writ of certiorari from the United States Supreme Court, which was denied on October 1, 2001.

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 [Appellant's] claims all arise out of the peer review process at [the Hospital] and, as such, are not subject to judicial review. The Court does not have jurisdiction to determine these issues and [Appellant] 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.

Judge Dennis explained further:

[Appellant] 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 [Appellant's] interpretation of the *Lee* decision as applicable to the matter herein. In *Lee* the Court confirmed the decision reached in *Gowen* [sic]⁴ but found subject matter jurisdiction where [Appellant] 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 [Appellant]. *Lee*[, 289 S.C.] at 10. Here [Appellant] 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 [the] *Strauss*,⁵ *Gowen* [sic], and *Wood*⁶ decisions sought to prevent.⁷

⁴ *Gowan v. St. Francis Comty. Hosp.*, 275 S.C. 203, 268 S.E.2d 580 (1980).

⁵ *Strauss v. Marlboro Cnty. Gen. Hosp.*, 185 S.C. 425, 194 S.E. 65 (1937).

⁶ *Wood v. Hilton Head Hosp., Inc.*, 292 S.C. 403, 405, 356 S.E.2d 841, 842 (1987).

⁷ Appellant appealed this order to the court of appeals on three separate occasions, and the court of appeals dismissed and remitted the case each time.

In a subsequent order, dated August 6, 2009, sanctioning Appellant pursuant to the FCPSA, Judge Dennis stated:

Despite clear case law to the contrary, [Appellant] 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. [Appellant's] claims all arose out of the peer review process and, under South Carolina law, are not subject to judicial review, and [Appellant] presented no evidence or reason to persuade the Court to depart from this longstanding principle.

On April 26, 2010, Appellant filed her complaint in the instant action,⁸ alleging Respondents breached their contract and covenant of good faith and fair dealing by "attempting (successfully to date) to block [Appellant] 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." As a result, Appellant submitted that she "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 . . . and continuing presently." Appellant sought review of the specific decisions of the Hospital to deny her application for surgical privileges in 2006 and to reject her 2008 application as incomplete.

On September 17, 2010, Respondents filed an answer and counterclaims for abuse of process and malicious prosecution. As part of their Answer, Respondents also moved for sanctions under the FCPSA.

On September 24, 2010, Respondents moved for judgment on the pleadings pursuant to 12(c), SCRCP.⁹ In their motion, Respondents argued that, based on the

⁸ Appellant is represented in this litigation by the same counsel who represented her in the 2005 litigation.

⁹ Rule 12(c), SCRCP, provides:

pleadings, the circuit court lacked jurisdiction to consider Appellant's claims. A hearing was convened before Judge Dennis to hear arguments on Respondents' motion on December 16, 2010. At the hearing, Judge Dennis orally denied the motion on the basis that it would be more appropriately considered as a motion for summary judgment:

I think the safest for everybody, for review purposes is to have this matter resolved not on a [m]otion on the pleadings but on a [m]otion for summary judgment. I just am not—I understand the jurisdictional issue. There are matters, though, that I—I really would have to rely on certain things outside of the context of the pleadings.

In denying the motion, Judge Dennis not only warned Appellant's counsel against engaging in frivolous proceedings, but took care to reiterate he was not making any ruling with respect to the merits of Respondents' claims that the circuit court lacked subject matter jurisdiction:

I don't quarrel with anything you've [Respondents' counsel] said. I would remind everybody—I don't have to, we have very competent lawyers involved in this, but if this is another effort that really is nothing more than—could be considered frivolous, though I am not making that finding now, and I would not hesitate, nor am I sure any other judge would hesitate to impose sanctions.

So I—I just remind everybody what we're doing here because I think it has to be looked at in a real sense. I think that the [sic] there are things, [Appellant's counsel],—no disrespect to you, sir, but—I understand what you say sounds like that might be creative lawyering, too, by using semantics—and I don't think that it is there. That's not

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

for me to judge today.

I agree with you that it would be a mistake to grant this on the basis of the pleadings. So that's the reason that I am denying it—not anything about the merits.

Respondents filed a motion to reconsider pursuant to Rule 59(e), SCRCF. Judge Dennis held a hearing on this motion on March 8, 2011, and orally denied the motion. On March 9, 2011, Judge Dennis denied this motion in a form order.

On June 6, 2011, Respondents filed a motion for summary judgment on several grounds, including that the circuit court lacked subject matter jurisdiction to review the medical staff privileging decisions of a private hospital. A hearing was convened on July 8, 2011, before the Honorable Kristi Lee Harrington. By order dated July 29, 2011, Judge Harrington entered summary judgment in favor of Respondents (the Summary Judgment Order). In the Summary Judgment Order, Judge Harrington found that the circuit court lacked subject matter jurisdiction to review the Hospital's privileging decisions with respect to Appellant.

On August 8, 2011, Respondents filed a motion for sanctions under the FCPSA, arguing, *inter alia*, that the circuit court should sanction Appellant for "seeking adjudication of claims over which this Court does not have jurisdiction" and "raising issues which have been previously adjudicated against [Appellant] and in [Respondents'] favor."

On August 24, 2011, Appellant appealed the Summary Judgment Order. Appellant also filed a response to Respondents' motion for sanctions in the circuit court, arguing that the circuit court could not grant sanctions against her where the court had previously denied Respondents' motion to dismiss; that she was competently represented by counsel, and therefore, immune from sanctions; and that Respondents' motion was premature because of the pending appeal of the Summary Judgment Order.

On November 22, 2011, Judge Harrington heard arguments concerning Respondents' motion for sanctions. During the hearing, Appellant argued that the FCPSA unconstitutionally holds pro se litigants to a reasonable attorney standard and deprives litigants of due process by requiring the circuit court to report any violation of the FCPSA directly to this Court. No other constitutional issues were raised by Appellant during this hearing.

By order dated February 1, 2012, Judge Harrington awarded sanctions against Appellant for violating the FCPSA (the Sanctions Order) by "initiating and continuing this litigation despite this Court's lack of subject matter jurisdiction, despite a prior ruling against [Appellant] that this Court lacks subject matter jurisdiction, and despite being sanctioned for arguing that this Court has subject matter jurisdiction in a previous case based on the very same allegations." Judge Harrington further found that Appellant violated the FCPSA by initiating and continuing "the present action despite [Respondents'] compliance with the plain language of [the Hospital's] Bylaws." Judge Harrington also noted:

While [Appellant] contends that this previous circuit court order is not binding precedent and that Judge Dennis's decision in this instance was incorrect, [Appellant] ignores that "[u]nder the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Carman v. S.C. Alcoholic Beverage Control Comm'n*, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994). [Appellant] failed to offer any argument as to why Judge Dennis's decision does not collaterally estop her in this action. Moreover, [Appellant's] argument on this point emphasizes her willingness to re-litigate the case she lost in 2005.

Therefore, Judge Harrington ordered Appellant to pay Respondents' attorneys' fees and other costs associated with this action in the amount of \$53,447.15 and enjoined Appellant from any future filings against Respondents absent the posting of a bond to pay Respondents' attorneys' fees and costs in the event Respondents prevail in future litigation and upon a showing that Respondents would be entitled to such fees and costs.¹⁰

On February 21, 2012, Appellant filed a motion to reconsider the Sanctions Order.¹¹ Appellant appealed the Sanctions Order on March 6, 2012. On March 7,

¹⁰ Noticeably, the Sanctions Order did not address any constitutional arguments made by Appellant.

¹¹ In her motion to reconsider, Appellant sought a ruling on her prior constitutional

2012, Judge Harrington denied Appellant's motion to reconsider the Sanctions Order. On March 21, 2012, Appellant filed an amended notice of appeal of the Sanctions Order after the circuit court denied her motion to reconsider.

On May 24, 2012, this Court certified these cases for review pursuant to Rule 204(b), SCACR, and consolidated Appellant's two appeals for purposes of briefing and oral argument.

ISSUES

- I. Whether the circuit court erred in awarding sanctions against Appellant?
- II. Whether the FCPSA is unconstitutional?

ANALYSIS

I. Successive "Motions to Dismiss"

Appellant argues that because the hospital failed to prevail on its first and second "motions to dismiss" for lack of subject matter jurisdiction before Judge Dennis, South Carolina law prohibits a finding of frivolity where the case was ultimately dismissed on a third, identical "motion to dismiss" before a different judge, Judge Harrington. On the other hand, Respondents contend that the circuit court's ruling with respect to Respondents' motion for judgment on the pleadings and summary judgment motion does not preclude sanctions under the FCPSA.

First, we find that Appellant mischaracterizes the nature of Respondents' motions. The characterization of Respondents' motions as "motions to dismiss" contradicts the Record. Initially, Respondents submitted a motion for judgment on the pleadings to Judge Dennis, followed not by a second "motion to dismiss," but a subsequent motion to reconsider the denial of that motion. In discussing the motion for judgment on the pleadings, Judge Dennis explicitly stated that he was not denying the motion on the merits, finding instead that summary judgment would be the proper avenue to consider Respondents' arguments. Therefore,

argument that the "reasonable attorney" standard in the FCPSA violates due process. However, for the first time, Appellant argued that the FCPSA inhibits free speech.

Respondents filed a motion for summary judgment, which Judge Harrington ultimately granted in their favor. This was not a third motion to dismiss, as Appellant claims.

Appellant's attempt to characterize these motions as successive "motions to dismiss" is a veiled effort to make the facts of this case conform to those in *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997), as Appellant relies on *Hanahan* for the proposition that sanctions were inappropriate based on the posture of her case. In that case, the Court, acting under a prior version of the FCPSA, reversed the award of sanctions after the sanctioned party prevailed on a summary judgment motion, but lost the case after a full trial on the merits. *Id.* at 158, 485 S.E.2d at 913. The Court adopted the rationale "that a party who survives pre-trial motions to dismiss and for summary judgment are not subject to sanctions after a trial on the surviving claims," stating that "[t]he theory behind these cases is that if a case is submitted to the jury, it cannot be deemed frivolous." *Id.* at 157, 485 S.E.2d at 912 (citation omitted). Thus, by claiming that she survived successive motions to dismiss, Appellant attempts to utilize *Hanahan* to avoid sanctions.

However, the present case is distinguishable from *Hanahan* in that, here, Appellant did not "survive" a pre-trial motion to dismiss or for summary judgment and never made it to a trial on the merits. Rather, Judge Dennis expressly deferred a decision on the merits until such motion was in the proper procedural posture. Therefore, because Judge Harrington granted Respondents' motion for summary judgment and Appellant's case was never tried on the merits, Appellant is not immune from sanctions under *Hanahan's* rationale.

Nevertheless, *Hanahan* was decided in 1997 under a prior version of the FCPSA. At that time, the FCSPA provided:

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 the fees and costs.

S.C. Code Ann. § 15–36–10 (2005). Under the prior version of the Act, the party seeking sanctions bore the burden of proving:

(1) the other party has procured, initiated, continued, or defended the civil proceedings against him;

(2) the proceedings were terminated in his favor;

(3) the primary purpose for which the proceedings were procured, initiated, continued, or defended was not that of securing the proper discovery, joinder of parties, or adjudication of the civil proceedings;

(4) the aggrieved person has incurred attorney's fees and court costs; and

(5) the amount of the fees and costs set forth in item (4).

Id. § 15-36-40.

In 2005, the General Assembly substantially amended section 15-36-10, and repealed sections 15-36-20 through -50. *See* Act No. 27, 2005 S.C. Acts 114, § 5 (effective July 1, 2005) (revising § 15-36-10); Act No. 27, 2005 S.C. Acts 121, § 12 (effective March 21, 2005) (repealing §§ 15-36-20 through -50). Section 15-36-10 now reads, in pertinent part:

At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.

S.C. Code Ann. § 15-36-10(C)(1) (Supp. 2012).

Under the plain terms of this new section of the FCPSA, *Hanahan's* reasoning as to the disposition of pre-trial motions no longer applies. *See Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) ("When the language of a

statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.") (citation omitted). Rather, sanctions may be awarded under section 15-36-10 regardless of whether or not the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence that the party should be sanctioned under the terms of the FCPSA. S.C. Code Ann. § 15-36-10(C).

Here, Appellant lost at the summary judgment stage. Therefore, while the circuit court erred in relying on *Hanahan*, the circuit court did not err in assessing sanctions pursuant to the FCPSA at that point.

II. Merits of Appellant's Case under Existing Law

However, Appellant further argues that her position on subject matter jurisdiction is supported by existing law, and therefore, the circuit court erred in finding that she frivolously pursued her claims. *See* S.C. Code Ann. § 15-36-10(J) (stating the provisions of the FCPSA "shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law."). On the other hand, Respondents argue that the circuit court acted within its discretion in finding that a reasonable attorney under the same circumstances would believe that under the facts, Appellant's claim was unwarranted under existing law, and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law.

Appellant's argument concerning sanctions hinges on the validity of the Summary Judgment Order. In this respect, Appellant argues that sanctions were not warranted under the FCPSA where summary judgment was inappropriate as a matter of law and fact. Of course, Respondents argue that summary judgment was appropriate as a matter of law.¹²

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C.

¹² We note that in the proceedings below, the parties stipulated that the matters under consideration were matters of law for the court.

356, 361, 563 S.E.2d 331, 333 (2002) ("An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." (citation omitted)). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law" and "should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 (citations omitted). As in the trial court, "[o]n appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Id.* (citing *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976)). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Nevertheless, "when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997) (citation omitted).

Appellant contends that her subject matter jurisdiction argument is based on a good faith or reasonable extension of the court of appeals' decision in *Lee v. Chesterfield General Hospital, Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986).

We agree with Respondents that Appellant made this exact legal argument in the 2005 litigation before Judge Dennis and has provided no reason why her argument is any different in this case, aside from the dates of the credentialing decisions. In fact, at the hearing on sanctions, Appellant's counsel indicated that he wanted another "bite of the apple," as he aimed to obtain a ruling by an appellate court that Judge Dennis's interpretation of *Lee* was wrong, and Appellant's interpretation was indeed correct.¹³ In granting summary judgment to

¹³ At the sanctions hearing, Appellant's counsel argued:

Your order was issued on your interpretation [in the present lawsuit] and Judge Dennis's interpretation [in the 2005 lawsuit] of the *Lee* case. And while I fully respect that the Court has the authority to interpret these cases and issue an order, the only other order in existence that supports Your Honor's order is Judge Dennis's [order in the 2005 lawsuit], which is a circuit court order and not an appellate

Respondents, Judge Harrington found that "at least two prior orders entered by [Judge Dennis] 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."

We affirm the grant of summary judgment in favor of Respondents on the basis that Appellant is collaterally estopped from bringing this suit.

opinion. And we're in the Court of Appeals now for me to challenge that order, which is the proper way to do it.

....

In fact, attorneys are allowed to even go against existing appellate opinion if they have a good-faith argument against it. In this case I wasn't going against appellate law. I felt that Judge Dennis was incorrect, and you felt that I was incorrect, and now we are in the Court of Appeals. That's the way the system is supposed to work. It's not a frivolous lawsuit.

....

The second sanctions order [issued by Judge Dennis in the 2005 case] I'm very well aware of. And I was aware of that when I took this case which is why I did the research, I talked to other lawyers in the community to see what they thought.

And the question was, was Judge Dennis right about *Lee versus Chesterfield*. The consensus that I got was that he wasn't right about *Lee versus Chesterfield*. I don't think he was right about *Lee versus Chesterfield*.

And it does me no good to say that to anybody except to you and then to the [a]ppellate [c]ourt, which is exactly where I'm going. The case was very specifically tailored for that purpose . . . was either I'm going to convince a judge this time that I'm right about *Lee versus Chesterfield*, or I'm going to convince an appellate panel on the Supreme Court that I'm right about *Lee versus Chesterfield*, or I'm just dead wrong and everybody is going to tell me so all the way up.

"Under the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Carman*, 317 S.C. at 6, 451 S.E.2d at 386 (citing *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991)). "The estoppel of a judgment does not extend to matters not expressly adjudicated, and which can be inferred only by argument or construction from the judgment, except where they are necessary and inevitable inferences in the sense that the judgment could not have been rendered as it was without deciding such points." *Id.* (citing *Dunlap & Dunlap v. Zimmerman*, 188 S.C. 322, 199 S.E. 296 (1938)).

Judge Dennis rejected Appellant's *Lee* argument in the 2005 lawsuit:

[Appellant] 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 [Appellant's] interpretation of the *Lee* decision as applicable to the matter herein. In *Lee* the Court confirmed the decision reached in *Gowen* [sic] but found subject matter jurisdiction where [Appellant] 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 [Appellant]. *Lee*[, 289 S.C.] at 10. Here [Appellant] 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 [the] *Strauss*, *Gowen* [sic], and *Wood* decisions sought to prevent.

Because Judge Dennis issued a final ruling on whether Respondents breached the Settlement Agreement with respect to privileging decisions made in 2002 and 2004 based on the *Lee v. Chesterfield* decision, Appellant is estopped from bringing the exact legal arguments against Respondents with respect to the 2006 and 2008 credentialing decisions.

Nevertheless, Appellant's argument that existing law supports her claim fails on the merits. Appellant argues that her attorney was concerned with the dismissal for lack of subject matter jurisdiction in the 2005 case, so he specifically limited the claims in this case to fall within the ambit of the *Lee* holding, "which he read as

restricting the immunity granted to private hospitals from suits requesting a due process review, rather than other types of common law claims." Therefore, Appellant contends that her claims are specifically tailored to the Settlement Agreement, and not the Hospital's by-laws. At the hearing before Judge Harrington on Respondents' summary judgment motion, Respondents again argued that the circuit court lacked jurisdiction to hear this claim under *Gowan v. St. Francis Community Hospital*, 275 S.C. 203, 268 S.E.2d 580 (1980) and its progeny. On the other hand, Appellant again argued that the facts alleged in Appellant's complaint were indistinguishable from those in *Lee*. Judge Harrington ruled in favor of Respondents, finding that *Lee* was inapplicable to this case, and stating Appellant's "claims all arise out of the peer review process at the Hospital and, as such, are not subject to judicial review."

In *Lee*, a licensed and certified physician's assistant, Lee, and a licensed physician, Newson, had been granted staff privileges to perform procedures by Chesterfield General Hospital (the hospital) for several years. *Lee*, 289 S.C. at 8, 344 S.E.2d at 380. In October 1982, Lee reapplied for privileges to perform a host of medical procedures at the hospital. *Id.* In January 1983, the hospital approved privileges to perform some of these procedures, but not all of them. *Id.* In February 1983, the hospital's board of trustees again limited Lee's privileges. *Id.* at 7, 344 S.E.2d at 381. In their complaints, Lee and Newson alleged that the hospital administrator, the hospital and other members of the medical staff conspired "'to dominate the practice of medicine by licensed physicians in Chesterfield County' and 'to restrain and eliminate, for their own financial advantage and professional enhancement, the element of fair competition' in the practice of medicine in Chesterfield County." *Id.* at 9, 344 S.E.2d at 381. As a result, Lee and Newson alleged that they had suffered damages, including mental anguish, loss of professional reputation, and loss of trade. *Id.*

Citing *Gowan*, the court of appeals restated the general rule¹⁴ with respect to

¹⁴ In *Wood*, this Court explained:

It 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. This Court adopted the majority rule many years ago in the case of *Strauss v. Marlboro County General Hospital*, 185 S.C. 425, 194 S.E. 65 (1937). In the recent decision of *Gowan v. St. Francis Community*

challenging hospital staff privileging decisions:

We agree that a private hospital is free, in the absence of controlling legislation or regulatory provisions, to decide the nature and extent of medical practice permitted to persons it grants staff privileges. Ordinarily, such decisions involve matters of expert medical judgment not subject to judicial review.

Id. Moreover, the court reiterated that "[a] medical professional has no right, simply because he is licensed by state authority[,] to claim unrestricted staff privileges in a hospital." *Id.* Nevertheless, that court found:

These principles are not dispositive of the present cases, however. In ruling on the demurrers, the circuit court did not conduct a judicial review of internal hospital rules. The question to be decided is not whether the rules are valid or reasonable or medically sound, but whether the rules were imposed in furtherance of a conspiracy, the primary purpose of which was to injure the plaintiffs. If the complaints, liberally construed, allege such a conspiracy, it is irrelevant that the Hospital has the legal right to restrict staff privileges and that its rules are not subject to judicial review.

Id. at 9–10, 344 S.E.2d at 381.

Appellant now contends that the *Lee* decision does not stand for the proposition that a party must make a claim for civil conspiracy to avoid dismissal for lack of subject matter jurisdiction to review a hospital's staff decisions. Therefore, she contends that the Summary Judgment Order is erroneous as a matter of law because it "circumvents the clear ruling of the *Lee* Court by interpreting the

Hospital, 275 S.C. 203, 268 S.E.2d 580 (1980), *cert. denied*, 449 U.S. 1062 (1980), we affirmed our view that the implementation of the regulations of a private hospital which are initiated to restrict a practitioner's practices are not subject to judicial review. We stated that we would not "depart from the longstanding principle that such action [by the hospital] is not subject to judicial review." *Gowan*, 275 S.C. at 204, 268 S.E.2d at 581 (citations omitted).

292 S.C. at 405, 356 S.E.2d at 842.

opinion as meant only to apply to cases in which the [p]laintiff has alleged civil conspiracy."

While we agree with the gravamen of Appellant's argument that *Lee* might not be limited to claims of civil conspiracy, the import of *Lee* is that any claim involving staffing decisions made by a private hospital must require review beyond the internal procedures, e.g. bylaws, of a private hospital, to fall within an exception to the general rule that courts will not delve into a hospital's internal affairs with regard to credentialing or other staffing decisions. Here, despite her attempt to characterize her claims as a challenge to the Settlement Agreement, in our view, Appellant's lawsuit constitutes another attempt on her part to get at the heart of the hospital's internal procedures and staffing decisions. At its core, Appellant's lawsuit challenges staff decisions made after the Hospital complied with the express terms of the Settlement Agreement. No review of the Hospital's decisions can be had here without reviewing the Hospital's 2006 and 2008 privileging decisions and its by-laws.¹⁵

¹⁵ Even Appellant's complaint proclaims that Respondents breached a duty to Appellant "by attempting (successfully to date) to block [Appellant] 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.*" (Emphasis added). Likewise, during a later hearing, Appellant characterized the arguments contained in her complaint as follows:

[Respondents] claim[] that a settlement agreement executed by the parties which required that [Appellant] be reappointed to the consulting staff in 2002 precludes [Appellant] from suing in this case because she was, actually, reappointed to the consulting staff in 2002. [Respondents] misinterpret[] the complaint, which should be clear on its face. [Appellant] 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 [Respondents] explain[] in [their] own brief, was that [Appellant] would have the right to apply for a change in status pursuant to the by-laws. *It is the denial of [Appellant's] right to apply for a change in status pursuant to the by-laws which is the basis of her claims in this case.*

(Emphasis added).

Therefore, because Appellant again attempts to challenge the internal decision-making process of the Hospital with respect to staff credentials, which has been already adjudicated as clearly improper under our jurisprudence, Appellant's lawsuit lacked merit from the outset. Accordingly, we affirm the circuit court's grant of summary judgment to Respondents. Moreover, we find that Respondents were justified in seeking sanctions against Appellant here because there was clearly no "good faith argument for an extension, modification, or reversal of the existing law," especially in light of Judge Dennis's prior ruling in the 2005 lawsuit. *See* S.C. Code Ann. § 15-36-10(J).

III. Timing

Despite obvious preservation issues,¹⁶ Appellant argues that to allow the circuit court to determine whether a claim is frivolous on a motion for sanctions under the FCPSA while the order dismissing the case is under appeal creates a conflict with the South Carolina Appellate Court Rules, and causes unnecessary litigation. Appellant contends that this conflict may be resolved by requiring circuit courts confronted with this situation to stay their consideration of frivolity until after the resolution of the appeal of the underlying dispositive judgment. To the contrary, Respondents contend that the circuit court acted within its discretion by hearing Respondents' motion for sanctions after Appellant filed her notice of appeal. We agree.

Motions made pursuant to the FCPSA are post-trial motions. *See* S.C. Code Ann. 15-36-10(C)(1) (Supp. 2012) ("At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous."). As such, a party has ten days after the filing of a court order to file a motion pursuant to the FCPSA. *See In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004) (referring to motions made under the

¹⁶ Appellant failed to raise the conflict she proposes between the South Carolina Appellate Court Rules and the FCPSA before the circuit court in either her brief opposing sanctions, at the hearing, in her proposed order, or in her motion to reconsider. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.").

FCPSA as "post-trial motions for sanctions" and finding that the general ten-day limitation for post-trial motions applies to motion made pursuant to the FCPSA); *Pitman v. Republic Leasing Co.*, 351 S.C. 429, 432–33, 570 S.E.2d 187, 189–90 (Ct. App. 2002) ("Absent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."); *Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm)*, 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct. App. 2006) ("[B]ecause a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCF, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment." (alteration in original)).¹⁷

Nevertheless, Appellant contends that the requirement that a motion pursuant to the FCPSA be made within ten days of a final judgment conflicts with Rule 241(a), SCACR, which provides:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Appellant argues that the circuit court should have awarded sanctions prior to the outcome on appeal of the order upon which the sanctions were based, or the Summary Judgment Order. However, this Court has held that the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion. *See, e.g., Hudson v. Hudson*, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986). For example, in *Hudson*, the order appealed was filed on March 18, 1986, and a notice of appeal was filed on March 24, 1986. *Id.* On March 27,

¹⁷ Appellant concedes in her brief that 10 days is the appropriate time to file a motion for sanctions.

1986, timely post-trial motions were made pursuant to Rule 59(e), SCRPC. *Id.* at 215–16, 349 S.E.2d at 341. Holding "that the service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions," *id.* at 216, 349 S.E.2d at 341, the Court ordered the notice of appeal to be dismissed without prejudice as prematurely filed, *id.* at 216, 349 S.E.2d at 341–42 ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions. A second filing fee will not be collected from a party who previously appealed." (footnote omitted)). This way, all ancillary matters can be timely heard, and appealed, if necessary, in an efficient and wholesale manner, and not, as Appellant suggests, in a piecemeal fashion.

Accordingly, Appellant's contention that the FCPSA and the South Carolina Appellate Court Rules contain conflicting terms lacks merit, and the circuit court acted properly and well within its jurisdiction in hearing Respondents' sanctions motion, even though Appellant already had filed a Notice of Appeal in this case.

IV. The Constitutionality of the FCPSA

Appellant argues that the FCPSA is unconstitutional. Respondents contend that Appellant's "everything-but-the-kitchen-sink" approach must fail her because she did not preserve her arguments for review in the circuit court and because her arguments lack merit.

We agree with Respondents that Appellant did not preserve most of her constitutional arguments for review. Appellant never argued the following to the circuit court: (1) that the FCPSA is redundant to a claim for abuse of process or a request for sanctions under Rule 11, SCRPC; (2) that the FCPSA deprives litigants of their rights to a jury trial; or (3) that the FCPSA violates the prohibition against double jeopardy. Finally, Appellant raised her argument that the FCPSA constitutes an unconstitutional inhibition on free speech for the first time in her motion to reconsider the Sanctions Order. Therefore, we will not consider the merits of those arguments.

With respect to her due process argument, despite Respondents' assertion to the contrary, Appellant did argue this issue to the circuit court and again raised it in

her motion for reconsideration of the Sanctions Order. Appellant argues that the FCPSA denies litigants procedural due process because "the *pro se* litigant or non-attorney party is held to a standard of expertise which the layperson and affected party do not possess." Respondents contend that Appellant lacks standing to bring this argument, and regardless, the FCPSA provides constitutionally adequate procedural due process.

We agree with Respondent that Appellant lacks standing to bring this argument because she is a licensed attorney in good standing with the South Carolina Bar. In addition, Appellant has been represented in this action by a licensed attorney. As such, Appellant cannot test the constitutionality of the statute from the standpoint of a *pro se* litigant or non-attorney party. *See United States v. Raines*, 362 U.S. 17, 21 (1960) ("[O]ne to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." (citations omitted)).

V. Sanctions

Appellant also argues that she should not be subject to sanctions because she was competently represented by counsel in these proceedings, and section 15-36-10's "reasonable attorney" standard has been met, precluding a finding of frivolity.

Under the FCPSA,

An attorney or *pro se* litigant participating in a civil or administrative action or defense may be sanctioned for:

- (a) filing a frivolous pleading, motion, or document if:
 - (i) the person has not read the frivolous pleading, motion, or document;
 - (ii) 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;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

S.C. Code Ann. § 15-36-10(A)(4)(a)–(c) (Supp. 2012).

To begin with, Appellant argues that she cannot be sanctioned under the FCPSA because she was represented by competent counsel in these proceedings. Under the prior iteration of the FCPSA, section 15-36-20 provided that "[a]ny person who takes part in the procurement, initiation, continuation, or defense of civil proceedings must be considered to have acted to secure a proper purpose . . . if he reasonably believes in the existence of the facts upon which his claim is based and . . . (2) relies upon the advice of counsel, sought in good faith and given after full disclosure of all facts within his knowledge and information which may be relevant to the cause of action" *See* S.C. Code Ann. § 15-36-20 (2005). There is no corresponding provision in the amended version of the FCPSA. *See* S.C. Code Ann. § 15-36-10 (Supp. 2012). However, the new version of the FCPSA repeatedly speaks in terms of sanctioning a "party" in addition to an

attorney or pro se litigant. *See, e.g.*, S.C. Code Ann. § 15-36-10(C)(1) (stating "[a]n attorney, party, or pro se litigant shall be sanctioned . . ."). Thus, we must presume that the legislature intended for a *party*, even a party represented by counsel, to be sanctionable under the FCPSA.¹⁸ *See Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 157, 135 S.E.2d 841, 844 (1964) ("It will be presumed that the Legislature in adopting an amendment to a statute intended to make some change in the existing law.").

Appellant further contends that sanctions were unwarranted here.

Under the FCPSA:

(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

¹⁸ The dissent would not award sanctions against Appellant alone. We disagree. We call attention to the circumstances of this particular case. In December 2009, this Court ordered all clerks of court to refuse filings from Appellant, unless she was represented by a licensed attorney (other than herself), due to her vexatious and meritless filings. *See Doe v. Duncan*, S.C. Sup. Ct. Order dated Dec. 2, 2009 (Appellate Case No. 2009-115446). Consequently, counsel graciously agreed to represent Appellant. However, Appellant drove this lawsuit (and many others) with the knowledge that she did not have a claim. As an attorney, she is familiar with the law and understands the court system, yet has continuously pursued frivolous proceedings. Thus, counsel, merely assisting her in filing papers with the court, should not also be penalized under these facts.

(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.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

S.C. Code Ann. § 15-36-10(C)(1)–(2). The sanctioning court is entitled to consider the following in awarding sanctions:

- (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.

S.C. Code Ann. § 15-36-10(E)(1)–(7). Moreover, "[i]n determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section." S.C. Code Ann. § 15-36-10(F).

Nevertheless, Appellant argues that she should not be subject to sanctions under section 15-36-10(J), which provides the FCPSA "shall not apply where an

attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law."

Here, the circuit court sanctioned Appellant because she continued the lawsuit despite a prior ruling that the court lacked subject matter jurisdiction, despite previously receiving sanctions for arguing that the court lacked jurisdiction based on the exact same allegations, and despite Respondents' compliance with the plain language of the Hospital's by-laws.

Because "the decision whether to impose sanctions under the FCPSA is a decision for the judge, not the jury, it sounds in equity rather than at law." *Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003) (refusing to adopt the more deferential "abuse of discretion" federal standard of review in assessing decisions to impose sanctions under the FCPSA). Therefore, an appellate court must review the findings of fact with respect to the decision to grant sanctions under the FCPSA by "taking its own view of the evidence." *Id.* (citing S.C. Const. art. V, § 5); *see also* S.C. Code Ann. § 14-3-320 (Supp. 2012). However, "[t]he 'abuse of discretion' standard . . . does . . . play a role in the appellate review of a sanctions award." *Father*, 353 S.C. at 261, 578 S.E.2d at 14. For example, "where the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (citation omitted); *Se. Site Prep, L.L.C. v. Atl. Coast Builders & Contractors, L.L.C.*, 394 S.C. 97, 104, 713 S.E.2d 650, 654 (Ct. App. 2011). "An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions." *Father*, 353 S.C. at 261, 578 S.E.2d at 14.

In our view, Judge Harrington was warranted in ordering sanctions in this case, especially because Appellant, a licensed attorney, made identical legal arguments in the 2005 litigation and did not prevail on the merits. Appellant has continuously and repeatedly challenged the Hospital's credentialing decisions without any legal basis to do so, and in the process, has cost the Hospital untold amounts of time and resources in defending these claims. Therefore, we further find that Judge Harrington was warranted in enjoining Appellant from filing any future claims in the circuit court without first posting bond.

Accordingly, we affirm the award of sanctions under the FCPSA.

CONCLUSION

Based on the foregoing, both the Summary Judgment Order and the Sanctions Order are

AFFIRMED.

BEATTY, KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in part and dissenting in part in a separate opinion.

JUSTICE PLEICONES: We consolidated appeals from a 2011 order granting respondents summary judgment and from a 2012 order sanctioning the appellant pursuant to the Frivolous Civil Proceedings Sanctions Act (FCPSA).¹⁹ I would affirm the summary judgment order but reverse the sanctions order.

Appellant is represented in this case by a well-respected member of the bar.²⁰ The sanctions were imposed on appellant as a party based upon a number of findings by the trial judge. As explained below, I do not find that any of the bases relied upon by the circuit court support the imposition of sanctions on appellant.

The FCPSA allows for sanctions at two different points in litigation. First, the statute provides that an attorney or pro se litigant who signs a pleading certifies that a reasonable attorney in the same circumstances would believe that under the facts his claim may be warranted by a good faith extension of the law, is not intended to harass the other party, and is not brought for any improper purpose. S.C. Code Ann. § 15-36-10(A)(1) (Supp. 2012). A violation of subsection (A) may result in the lawyer or pro se litigant being sanctioned.

The second point at which the FCPSA provides for sanctions is set forth in § 15-36-10(C). Section (C) provides that after a verdict, a directed verdict, or a judgment non obstante veredicto has been entered a party,²¹ an attorney, or a pro se litigant may be sanctioned if that individual "engaged in advancing a frivolous claim or defense." While subsection (A) is concerned with frivolous filings, subsection (C) permits sanctions only where it is

¹⁹ S.C. Code Ann. §§ 15-36-10 et seq. (Supp. 2012).

²⁰As explained *infra* I interpret the FCSPA differently than does the majority and conclude that no sanction is appropriate against appellant who is merely a party in this case. The interpretation the Court adopts today will apply to every request for sanctions under the FCSPA, and I do not believe that we can create a special rule because a litigant is also an attorney even if that individual has a history with the court system.

²¹ I do not agree with the majority that the FCPSA "repeatedly speaks in terms of sanctioning a "party" in addition to an attorney or pro se litigant."

determined, after factual findings are made, that a frivolous claim or defense was advanced. I would not find those circumstances present here.

In my view, subsection (C) permits the party herself to be sanctioned only where the evidence adduced at the trial, or submitted at summary judgment, reveals factual misrepresentations or omissions on the part of that party, not previously known to her attorney, which establish that the party's position in the litigation is frivolous. If the attorney learns of these facts but allows the claim or defense to continue, then she too is subject to sanctions under (C). Where the sanction rests upon facts known to both the lawyer and the party at the time the suit is brought, I would hold no sanction against the party alone is permissible under subsection (C).²² Similarly, I would not read subsection (C) to authorize sanctions upon a party because her attorney's argument against legal precedent was deemed not to have been made in good faith or because the trial judge finds no substantive discovery was undertaken.

The order finds the present lawsuit restates allegations made and denied in a 2005 action. It concludes that had appellant "even cursorily reviewed her previous filings, prior Court orders, the Settlement Agreement, and the Bylaws *prior to filing this lawsuit*, it would have shown her the unreasonableness of her actions." (emphasis supplied). The order goes on to state that appellant "was in possession of or had access to the dispositive facts- the 1999 federal suit complaint, the 2009 state court complaint, the Settlement Agreement, the 2005 filings, the prior Court orders, and the Bylaws- since before she filed this action." I would hold that because this ground rests on public facts known to both appellant and her attorney at the time the suit was brought, and because it punishes appellant for bringing the suit, that if a sanction were to be imposed under the FCPSA for this conduct, it must be imposed under subsection (A) on the lawyer who signed the pleadings. A member of the bar reviewed these facts and determined that he could bring the suit without running afoul of the FCPSA or Rule 11, SCRCF. Under these circumstances, no FCSPA sanction should be imposed on the party under §15-36-10(C). The order also sanctions appellant for contending

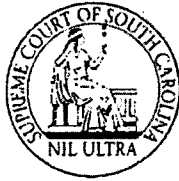
²² For purposes of my analysis, it matters not that appellant is also an attorney. She chose not to represent herself but employed an attorney who brought this suit with full knowledge of the prior proceedings and history of the parties, and was sanctioned solely in her capacity as a party.

that the Settlement Agreement had been breached and then failing to produce evidence of any breach, and for failing to conduct any quasi-substantive discovery "until the eve of the summary judgment hearing. . . ." Again, these alleged delicts should be laid at the feet of the attorney and not the party.

Finally, the judge appears to have read *Lee v. Chesterfield Gen. Hosp. Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986) as limited to civil conspiracy claims, and to have concluded on that basis that no reasonable attorney would have argued for its extension to these facts.²³ I would not hold appellant liable for failing to anticipate that the legal argument for distinguishing the *Lee* case would be deemed not to have been made in good faith, nor would I uphold a sanction that rests, in part, on the trial judge's limited reading of the holding in *Lee*. In my view, the conclusion that it was not reasonable to argue for *Lee's* extension addresses the attorney's conduct and not the client's, and therefore I would hold it is insufficient to form the basis for sanctioning a party under subsection (C).

For the reasons given above, I would affirm the grant of summary judgment but reverse the sanction award.

²³ The majority agrees with appellant that "*Lee* might not be [so]limited. . . ."



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 13, 2014

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

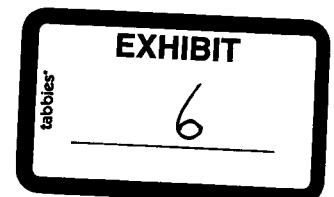
Re: Cynthia Holmes v. East Cooper Community Hospital
Lower Court Case No. 2010-CP-10-03410
Appellate Case No. 2011-198092 and 2012-209666

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK



cc:

Lindsay Kathryn Smith-Yancey, Esquire
Chalmers Carey Johnson, Esquire
Erskine Douglas Pratt-Thomas, Esquire
Daniel Simmons McQueeney, Jr., Esquire

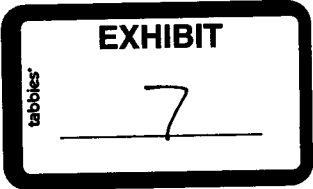
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	C.A. 2010-CP-10-3410
)	
DR. CYNTHIA HOLMES, M.D.,)	
)	
Plaintiff,)	
)	
Vs.	)	PLAINTIFF'S MOTION TO WITHDRAW
	)	PLAINTIFF'S MOTIONS TO DISMISS
EAST COOPER COMMUNITY	)	DEFENDANT'S COUNTERCLAIMS
HOSPITAL, INC.; TENET)	
HEALTHSYSTEM MEDICAL,)	
INC.)	
)	
Defendant.)	

2014 JUN 16 7 AM 8:43
 CLERK OF COURT
 10-3410

The Plaintiff hereby withdraws her motions to dismiss Defendant's Counterclaims in this matter.

Plaintiff filed a motion in this case on 10-18-2010, asking the Court to dismiss two of Defendant's counterclaims. One counterclaim was brought under the S.C. Frivolous Proceedings Sanctions Act. The second was a claim for malicious prosecution. The Court the issued an Order granting Defendant's motion for summary judgment, which was filed later, but has never resolved the Plaintiff's motions. Plaintiff appealed the Order granting Defendants' motion for summary judgment, and after post-trial motions as to sanctions, this case has been within the jurisdiction of the S.C. Court of Appeals and the S.C. Supreme Court until recently. Remittitur was sent to the Circuit Court on June 16, 2014.

As jurisdiction is now once again with the Circuit Court for Charleston County, the Plaintiff believes it is appropriate to address remaining claims and issues in this case,

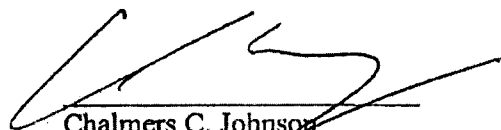


which were left open during the appeal. Plaintiff wishes to withdraw her motions to dismiss the Defendant's counterclaims.

**CONCLUSION
NOTICE OF CHANGE IN ADDRESS
AND REQUEST FOR NOTICE OF A HEARING DATE**

Although the Court granted the Defendant's motion for summary judgment on Plaintiff's claims in 2011, it never ruled on Plaintiff's motions regarding the two of the counterclaims. There are still counterclaims and motions pending before the Circuit Court which need to be resolved. Plaintiff respectfully requests that the Court grant her motion to withdraw her previous motions to dismiss.

Plaintiff's counsel resides in Washington State. He has recently changed his address, and would request that the Court take notice of the new mailing address below. If the Court feels that a hearing is necessary in order to resolve the matters raised in this motion, Plaintiff would like her counsel to appear in person. The undersigned, therefore, would respectfully request that the Court give at least 30 days prior notice of the date of any hearing on this matter, so that Mr. Johnson can have time to make schedule and travel arrangements.



Chalmers C. Johnson
1029 Bay Street, Apt 11
Port Orchard, WA 98366
(425) 999-0900
chalmersjohnson@gmail.com
Attorney for the Plaintiff

July 7, 2014

1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF CHARLESTON) Case No. 2010-CP-10-3410
)
 3 _____)
)
 4 DR. CYNTHIA HOLMES, M.D.,)
)
 5 Plaintiff,)
)
 6 vs.) Transcript of Record
)
 7 EAST COOPER COMMUNITY)
)
 8 HOSPITAL, INC., ET AL,)
)
 9 Defendant.)
)
) DATE: October 27, 2014

10 B E F O R E:

11 THE HONORABLE R. MARKLEY DENNIS, JR.

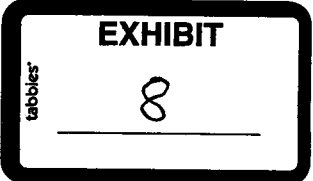
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13 A P P E A R A N C E:

14 CHALMERS CAREY JOHNSON
For the Plaintiff

15 LINDSAY K. SMITH-YANCEY
For the Defendant

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Karen V. Andersen, RMR, CRR
Circuit Court Reporter



1 THE COURT: Cynthia Holmes vs. East Cooper Community
2 Hospital.

3 Identify yourselves and the parties you are
4 representing.

5 MR. JOHNSON: My name is Chalmers Johnson from Port
6 Orchard, Washington, and I'm representing Dr. Cynthia
7 Holmes.

8 MS. YANCEY: I'm Lindsey Smith-Yancey, representing
9 the defendants, East Cooper Community Hospital and
10 Tenethealth System Medical, Inc.

11 THE COURT: Thank you very much. I appreciate it.
12 I've reviewed the submissions as well. So this is
13 your motion, Mr. Johnson, to withdraw, as I understand it,
14 your motion to dismiss.

15 MR. JOHNSON: Yes, Your Honor. I guess about three
16 years ago, we filed a motion to dismiss and counterclaim.
17 This case has been --

18 THE COURT: Excuse me for interrupting you, but I
19 need to ask you a question, because I've read it. This is a
20 matter that was appealed where the judge, Judge Harrington I
21 think, granted summary judgment on the claim.

22 MR. JOHNSON: Correct, on Dr. Holmes's claim against
23 the hospital, correct.

24 THE COURT: And how is there any motion that's
25 pending since it's been decided?

1 MR. JOHNSON: Your Honor, the hospital brought three
2 counterclaims against Dr. Holmes. And we moved to dismiss
3 three of the two counterclaims on grounds that I think are no
4 longer applicable. The motion was never responded to by
5 Judge Harrington. So I feel like it's open. Now that we've
6 got a remitter, I'm trying to clean up the record.

7 THE COURT: Well, and I appreciate that, but it
8 would appear to me that we are talking about the action
9 itself. There was a judgment rendered and an appeal taken to
10 provide action.

11 MR. JOHNSON: Correct, Your Honor.

12 THE COURT: Let me hear. What's left?

13 MS. YANCEY: Your Honor, that -- you are stating
14 exactly the hospital's position. This motion was filed --
15 the motion to dismiss was filed in October of 2010. It was
16 heard by Judge Harrington in July of 2011.

17 Subsequent to that hearing, summary judgment was
18 granted to the defendants, at which time we then proceeded
19 with our request for attorney's fees and costs, everything we
20 were seeking in the counterclaims by way of a motion for
21 sanctions. And Judge Harrington granted our motion and
22 awarded us everything we were requesting in our
23 counterclaims.

24 THE COURT: So there really -- those issues were
25 resolved by Judge Harrington in her decision and basically

1 sanctioning --

2 MS. YANCEY: That's correct. And not only was the
3 summary judgment order appealed through the Court of Appeals
4 and the Supreme Court, but the sanctions order was as well.

5 So it's our position that this case has been finally
6 adjudicated and there are no pending claims here for the
7 Court to decide on today.

8 THE COURT: Okay. Mr. Johnson?

9 MR. JOHNSON: Your Honor, I just don't have any
10 order saying that the counterclaims were ever dismissed, and
11 I'm just trying to defend my client.

12 THE COURT: Well, I appreciate that. I think it
13 goes really without an order when everything is resolved.
14 It's basically -- it's been done. It's moot at this point as
15 far as the Court is concerned. So I don't think there's any
16 motion to be heard. Thank you.

17 MS. YANCEY: Thank you, Your Honor.

18 THE COURT: So there is no motion.

19 MR. JOHNSON: Thank you.

20 THE COURT: Okay. Thank you very much. I
21 appreciate that. Good to see you again.

22 MR. JOHNSON: Good to see you too, Judge.

23 THE COURT: We will just do a form order that says
24 no viable motion pending. I don't know of any other -- we've
25 got to do something to dismiss it.

1 MS. YANCEY: Okay. Thank you.

2 THE COURT: Thank you. But there's no motion to
3 dismiss because there's nothing to dismiss. Thank you.

4 (End of transcript.)

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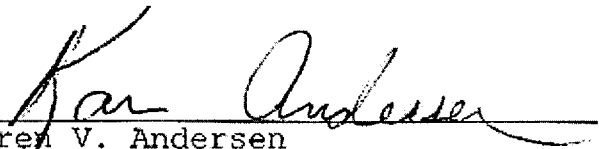
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 20th day of February, 2015, at Charleston, Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

FILED

Dr. Cynthia Holmes, MD

East Cooper Community HOspital Inc., et al

2014 NOV -3 PM 1: 14

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	JULIE L ARMSTRONG CLERK OF COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
	BY _____	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- 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 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: Plaintiff's Motion to Withdraw the Motion to Dismiss, filed on 7/07/2014, is not a viable motion; No viable motions pending in this resolved case.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

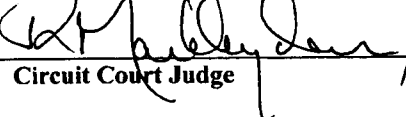
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

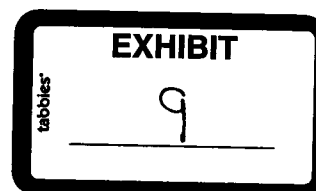

 Circuit Court Judge

2060

Judge Code

10/29/2014

Date



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-3410

C. Holmes, M.D.

Appellant,

v.

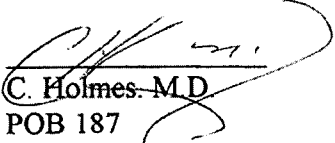
East Cooper Community Hospital, Inc.; and
Tenet HealthSystem Medical, Inc.,

Respondents.

NOTICE OF APPEAL

The Appellant timely appeals the order of the Honorable R. Markley Dennis, Jr.,
entered November 3, 2014.

Dated December 3, 2014.


C. Holmes, M.D.
POB 187
SI, SC 29482
843.883.3010

EXHIBIT

10

tabbles®



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 21, 2015

C. Holmes, M.D.
PO Box 187
Sullivans Island SC 29482

Re: C. Holmes, M.D. v. East Cooper Comm. Hosp.
Appellate Case No. 2014-002772

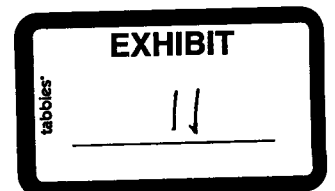
Dear Dr. Holmes:

This Court received your notice of appeal dated December 3, 2014. Pursuant to the Supreme Court's December 2, 2009 order directing the clerks of court in this state to refuse to accept filings from you related in any way to the revocation of your medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, we are returning your filings to you.

Very truly yours,


CLERK

cc: Erskine Douglas Pratt-Thomas, Esquire



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 10-CP-10-3410
Dr. Cynthia Holmes, M.D.,)	
)	
)	
Plaintiff,	)	NOTICE OF MOTION
	)	AND
-vs-	)	RULE 59(e), SCRCP, MOTION
)	
)	
)	
East Cooper Community)	
Hospital, Inc., and Tenet)	
HealthSystem Medical, Inc.,)	
)	
)	
)	
Defendants.)	

FILED
 2014 NOV 19 AM 9:41
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

TO: E.D. Pratt-Thomas, Attorney for the Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order to alter or amend the order entered November 3, 2014. Specifically, that order is based on error of law and material fact, including but not limited to, the case of *Wells Fargo Bank, NA, v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (S.C. App., 2012), which provides as follows: "A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it. *Skinner v. Skinner*, 257 S.C. 544, 549-50, 186 S.E.2d

EXHIBIT

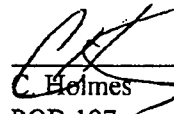
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 12

523, 526 (1972)." This Motion is based on statutory and case law. This Motion will be supported by the pleadings, affidavits submitted in support of the motion, other evidence admitted at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests this Court alter or amend the order entered November 3, 2014.

Respectfully submitted,

Dated November 15, 2014.


C. Holmes
POB 187
SI, SC 29482-0187
843.883.3010

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-3410

Dr. Cynthia Holmes, M.D.

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- 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 LOWER COURT, TRIBUNAL, 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: Plaintiff's Rule 59(e) Motion, filed on 11/19/2014, is improper; Judge Dennis declines any request for reconsideration of the order entered 11/3/2014 due to the status of this case as closed and in accordance with the Supreme Court's order dated 12/2/2009.

2014 DEC -9 3:55 PM
 JUDGE DENNIS
 CIRCUIT COURT
 CHARLESTON, SC

FILED

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

EXHIBIT
 13

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Roy Denny
 Circuit Court Judge

2060
 Judge Code

12/3/2014
 Date

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-3410

C. Holmes, M.D.

Appellant,

v.

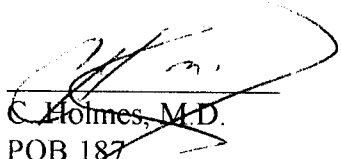
East Cooper Community Hospital, Inc.; and
Tenet HealthSystem Medical, Inc.,

Respondents.

NOTICE OF APPEAL

The Appellant timely appeals the order of the Honorable R. Markley Dennis, Jr.,
entered December 9, 2014.

Dated January 14, 2015.


C. Holmes, M.D.
POB 187
SI, SC 29482
843.883.3010

EXHIBIT

14

tabbles®

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-3410

C. Holmes, M.D.

Petitioner,

v.

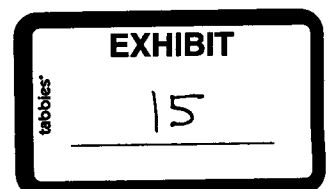
East Cooper Community Hospital, Inc.
and Tenet HealthSystem Medical, Inc.

Respondents.

AFFIDAVIT OF LINDSAY K. SMITH-YANCEY, ESQUIRE

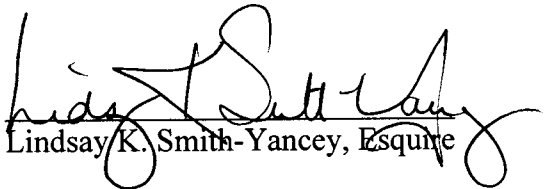
The Affiant, Lindsay K. Smith-Yancey, Esquire, having been duly sworn, testifies as follows:

1. I am over eighteen years of age and competent to make this affidavit. I am an attorney in good standing with the South Carolina Bar and have been licensed to practice law in this State since 1995. I am a shareholder in the law firm Pratt-Thomas Walker, P.A.
2. My law partner, E. Douglas Pratt-Thomas, Esq., and I represent Respondents. Daniel "Chip" McQueeney was previously employed by Pratt-Thomas Walker, P.A., and during



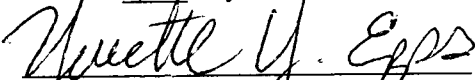
said previous employment Mr. McQueeney represented Respondents along with Mr. Pratt-Thomas and me.

3. On February 5, 2015, I received a copy of correspondence sent in this matter from V. Claire Allen, Deputy Clerk of the SC Court of Appeals. Ms. Allen's letter was addressed to Charles Goldberg, Esq., and referenced a notice of appeal Mr. Goldberg had filed on behalf of Appellant.
4. After receiving Ms. Allen's correspondence, I obtained a copy of the notice of appeal from the Court of Appeals' online filing system and observed it to be dated January 14, 2015, and to have been received by the Court of Appeals on January 30, 2015.
5. Ms. Allen's correspondence was the first notice I received of the notice of appeal filed by Mr. Goldberg in this matter. I have never been served with Mr. Goldberg's notice of appeal as attorney of record for Respondents.


Lindsay K. Smith-Yancey, Esquire

Sworn to and subscribed before me:

On this 4th day of March, 2015


Notary Public for South Carolina
Commission Expires: 3/12/17

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-3410

C. Holmes, M.D.

Petitioner,

v.

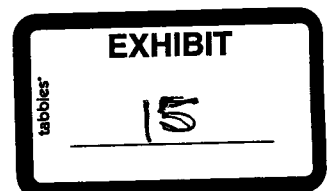
East Cooper Community Hospital, Inc.
and Tenet HealthSystem Medical, Inc.

Respondents.

AFFIDAVIT OF E. DOUGLAS PRATT-THOMAS, ESQUIRE


The Affiant, E. Douglas Pratt-Thomas, Esquire, having been duly sworn, testifies as follows:

1. I am over eighteen years of age and competent to make this affidavit. I am an attorney in good standing with the South Carolina Bar and have been licensed to practice law in this State since 1976. I am a shareholder in the law firm Pratt-Thomas Walker, P.A.
2. My law partner, Lindsay K. Smith-Yancey, Esq., and I represent Respondents. Daniel "Chip" McQueeney was previously employed by Pratt-Thomas Walker, P.A., and during



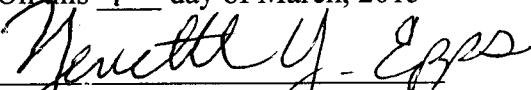
said previous employment Mr. McQueeney represented Respondents along with Ms. Smith-Yancey and me.

3. On February 5, 2015, I received a copy of correspondence in this matter sent from V. Claire Allen, Deputy Clerk of the SC Court of Appeals. Ms. Allen's letter was addressed to Charles Goldberg, Esq., and referenced a notice of appeal Mr. Goldberg had filed on behalf of Appellant.
4. Ms. Allen's correspondence was the first notice I received of the notice of appeal filed by Mr. Goldberg in this matter. I have never been served with Mr. Goldberg's notice of appeal as attorney of record for Respondents.


E. Douglas Pratt-Thomas, Esquire

Sworn to and subscribed before me:

On this 4th day of March, 2015


Notary Public for South Carolina
Commission Expires: 3/12/17

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-3410

C. Holmes, M.D.

Petitioner,

v.

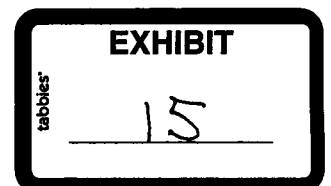
East Cooper Community Hospital, Inc.
and Tenet HealthSystem Medical, Inc.

Respondents.

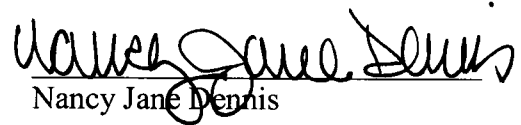
AFFIDAVIT OF NANCY JANE DENNIS

The Affiant, Nancy Jane Dennis, having been duly sworn, testifies as follows:

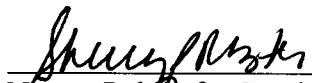
1. I am over eighteen years of age and competent to make this affidavit. I have been employed as a paralegal for over 36 years and with Pratt-Thomas Walker, P.A., for over 34 years.
2. Prior to his departure from Pratt-Thomas, Walker, P.A., in September of 2014, I provided paralegal assistance to Daniel "Chip" McQueeney, Esq. I am informed and believe that prior to his departure Mr. McQueeney, along with Lindsay K. Smith-Yancey, Esq., and E. Douglas Pratt-Thomas, Esq., represented Respondents in this matter.



3. Since Mr. McQueeney's departure, I have processed all mail, communications and documents directed to him and received at the address of Pratt-Thomas Walker, P.A.
4. I have recently been made aware of a notice of appeal filed in this matter by Charles Goldberg, Esq. I have no knowledge or record of having ever received this notice on behalf of Mr. McQueeney or otherwise.


Nancy Jane Dennis

Sworn to and subscribed before me:
On this 4 day of March, 2015



Notary Public for South Carolina
Commission Expires: Aug. 21, 2016

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-3410

C. Holmes, M.D.

Petitioner,

v.

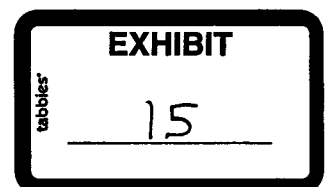
East Cooper Community Hospital, Inc.
and Tenet HealthSystem Medical, Inc.

Respondents.

AFFIDAVIT OF DOLORES M. CATAPANO

The Affiant, Dolores M. Catapano, having been duly sworn, testifies as follows:

1. I am over eighteen years of age and competent to make this affidavit. I have been employed as a paralegal for over 22 years. I am currently employed by Pratt-Thomas Walker, P.A., as paralegal to Lindsay K. Smith-Yancey, Esq., and E. Douglas Pratt-Thomas, Esq.
2. As part of my job responsibilities I open and process all business mail, facsimile transmissions, and hand delivered documents directed to the attention of Ms. Smith-Yancey and Mr. Pratt-Thomas. Also, I am the paralegal assigned to the case herein and



have provided paralegal support thereon for approximately one and a half years. As paralegal for this case, I scan and save all mail, filings, pleadings, and documents received in this case to an electronic directory.

3. I have recently been made aware of a notice of appeal filed by Charles Goldberg, Esq., in this matter. I have no knowledge or record of having ever received this notice on behalf of Ms. Smith-Yancey, Mr. Pratt-Thomas, Daniel "Chip" McQueeney, Esq., or otherwise.

Dolores M. Catapano
Dolores M. Catapano

Sworn to and subscribed before me:

On this 4th day of March, 2015

Yvette Y. Egge
Notary Public for South Carolina
Commission Expires: 3/12/17



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 03, 2015

Mr. Charles S. Goldberg, Esquire
61 Broad St.
Charleston SC 29401

Re: Dr. Cynthia Holmes v. East Cooper
Appellate Case No. 2015-000187

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

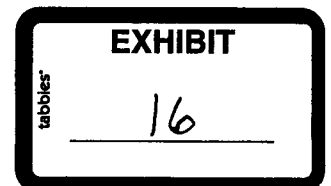
- The notice of appeal fails to include a statement of when you received written notice of entry of the order.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Erskine Douglas Pratt-Thomas, Esquire
Lindsay K Smith-Yancey, Esquire





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 03, 2015

Mr. Charles S. Goldberg, Esquire
61 Broad St.
Charleston SC 29401

Re: Dr. Cynthia Holmes v. East Cooper
Appellate Case No. 2015-000187

Dear Counsel:

Upon reviewing your transcript request, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document does not show that a copy of this correspondence was provided to the opposing counsel.
- The document is not signed.

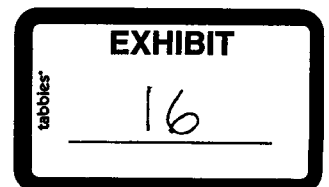
Very truly yours,

V. Claire Allen, Deputy

CLERK

cc:

Erskine Douglas Pratt-Thomas, Esquire
Lindsay K Smith-Yancey, Esquire



74992

DAVID T PEARLMAN
J KEVIN HOLMES
THOMAS M WHITE
DALE E VAN SLAMBROOK
MALCOLM M CROSLAND, JR
STEVEN E GOLDBERG
KEVIN B SMITH
MICHAEL J JORDAN
BENJAMIN AKERY

CHARLES S GOLDBERG LLC, OF COUNSEL

HUGO M SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)

THE STEINBERG

L A W F I R M
L L P

61 Broad Street, P O Box 9
Charleston, South Carolina 29402-0009
Telephone (843) 720-2800
Fax (843) 722-1190
www.steinberglawfirm.com

NORTH AREA OFFICE
118 GOOSE CREEK BLVD, SOUTH
P O BOX 1028
GOOSE CREEK SC 29445
TELEPHONE (843) 572-0700
FAX (843) 572-1871

DOWNTOWN ANNEX
111 CHURCH STREET
P O BOX 9
CHARLESTON, SC 29402 0009
TELEPHONE (843) 720-2800
DIRECT DIAL (843) 266-1701
FAX (843) 266-1700

SUMMERVILLE OFFICE
1520 OLD TROLLEY RD, SUITE B
SUMMERVILLE, SC 29485
TELEPHONE (843) 871-6522
FAX (843) 871-8565

February 6, 2015

The South Carolina Court of Appeals
attn ELLA
PO Box 11629
Columbia, SC 29211

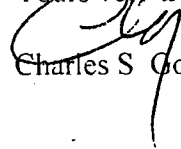
Re Dr Cynthia Holmes v. East Cooper
Appellate Case No 2015-000187

Dear Ella:

I am enclosing my check for \$2.25 for copies you are going to fax to me per our conversation of this morning I appreciate your courtesies and understanding

I indicated to you that Dr. Holmes has been able to communicate with her attorney who will undertake the appellate process You should receive correspondence from him before the 13th. Dr Holmes is aware that I will not be processing this appeal

Yours very truly,


Charles S Goldberg

CSG:ms
enclosure

RECEIVED

FEB 09 2015

SC Court of Appeals

EXHIBIT
tabbles
17

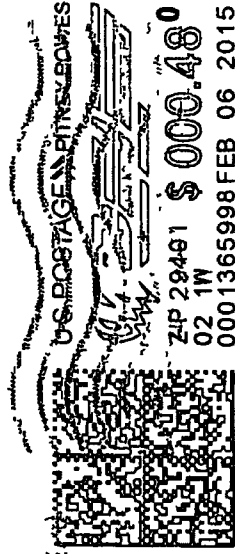


61 Broad Street | PO Box 9 | Charleston, SC | 29402

RECEIVED
FEB 09 2015
SC Court of Appeals

The South Carolina Court of Appeals
attn EJLA
PO Box 11629
Columbia, SC 29211

COLLECTIONS



ZIP 29491 \$ 000.48⁰
02 1W
0001365998 FEB 06 2015



29211+1629

Lindsay Smith-Yancey

From: Charles Goldberg <cgoldberg@steinberglawfirm.com>
Sent: Thursday, February 12, 2015 10:46 AM
To: Lindsay Smith-Yancey
Subject: RE: Message from "RNP002673790D1E"

Believe me when I say I know nothing about this case and am in the dark on appellate work. I suggest you contact Chalmers with questions about the case. If there is a procedural question, I suggest you contact Kevin Holmes.

-----Original Message-----

From: Lindsay Smith-Yancey [mailto:lsy@p-tw.com]
Sent: Thursday, February 12, 2015 10:00 AM
To: cgoldberg@steinberglawfirm.com
Cc: Dolores Catapano
Subject: FW: Message from "RNP002673790D1E"

Thank you Charles. I have a couple of questions.

Our firm has no record of receiving anything from your office on this matter prior to your email today. Will you please confirm that the attached is the only correspondence your office has sent our firm on this matter?

The only Notice of Appeal we've received in this case is the one Dr. Holmes attempted to file pro se. Did you or anyone from your firm file another one on her behalf or re-file her original Notice after co-signing it?

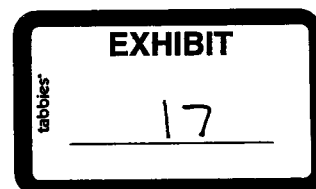
There is a letter requesting the transcript of the record on appeal among the documents attached to your email. The letter is signed by Dr. Holmes and not dated. While the letter purports to be cc'ed to me, Douglas Pratt-Thomas and Chip McQueeney, we have no record of ever receiving a copy of this letter.

I see there has been a Substitution of Counsel substituting Mr. Johnson for you moving forward, but it is not dated. Would you please let me know the effective date of this purported substitution? I say "purported" because Mr. Johnson has represented Dr. Holmes throughout this matter. Was there ever a Substitution of Counsel filed allowing you or your firm to substitute for Mr. Johnson?

Any assistance you can give to help me piece this together would be gratefully appreciated.

Lindsay

Lindsay K. Smith-Yancey
Pratt-Thomas Walker, P.A.
16 Charlotte St.
P.O. Drawer 22247 (29413)
Charleston, SC 29403
Main: (843) 727-2200
Direct: (843) 727-2211
Fax: (843) 727-2231
Email: lsy@p-tw.com



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-----Original Message-----

From: Charles Goldberg [mailto:cgoldberg@steinberglawfirm.com]
Sent: Thursday, February 12, 2015 9:33 AM
To: Lindsay Smith-Yancey
Subject: FW: Message from "RNP002673790D1E"

-----Original Message-----

From: Kevin Holmes [mailto:kholmes@steinberglawfirm.com]
Sent: Thursday, February 12, 2015 9:30 AM
To: Charles Goldberg
Subject: Message from "RNP002673790D1E"

This E-mail was sent from "RNP002673790D1E" (MP C5503).

Scan Date: 02.12.2015 09:29:45 (-0500)
Queries to: lsidbury@steinberglawfirm.com