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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

The Honorable Larry B. Hyman, Jr.  
Circuit Court Judge

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C.A. No.: 2013-CP-22-0817  
Ct. App. No.: 2015-000674

Elizabeth Ribelin,

Respondent,

v.

Waccamaw Chiropractic & Wellness  
Center, LLC and Jeff Evans,

Appellants.

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**APPELLANTS' RETURN TO RESPONDENT'S  
MOTION TO DISMISS APPEAL AND BRIEF IN OPPOSITION**

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(843) 545-9544  
Counsel for Respondent

## I. INTRODUCTION

This return and brief in opposition is submitted pursuant to SCACR Rule 240(e) in reply to the Respondent's Motion to Dismiss Appeal filed on or about May 18, 2015.

In her Motion, Respondent contends that the Trial Court has entered an interlocutory order denying Appellants' Motion to Dismiss based on failure to comply with the Notice of Intent statute under South Carolina law. Thus, Respondent argues that this interlocutory order is not subject to appeal and this Appeal should be dismissed. As discussed *infra*, Appellants submit that the Trial Court's order was a final order ending the underlying Notice of Intent action that is subject to immediate appeal.

## II. ARGUMENT AND CITATION OF AUTHORITY

### A. THE TRIAL COURT'S ORDER SHOULD BE CONSIDERED A FINAL DETERMINATION OF THE NOTICE OF INTENT ACTION AND THEREFORE IMMEDIATELY APPEALABLE

"Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23 (2004). An Order was entered by the Trial Court on February 9, 2014 denying Appellants' Motion to Dismiss the Notice of Intent. Appellants timely filed a Notice of Appeal, which was received by the Court of Appeals on March 18, 2015. The right to appeal is vested from any final judgment, appealable order or decision. Rule 201, SCACR.

South Carolina Legislature enacted as part of the Medical Malpractice Reform Act Section 15-79-125 requiring that a plaintiff file a Notice of Intent to File Suit prior to the filing of any civil medical malpractice action. granted by the court. The Notice of Intent to File Suit is filed with the trial court and maintains a separate civil action

number. Following the conclusion of the Notice of Intent phase, a Summons and Complaint may be filed and a new civil action number will be given by the court.

Respondent argues that there is no appellate jurisdiction under Section 14-3-330 of the South Carolina Code. Respondent further states that our Courts have held that interlocutory orders are not immediately appealable because the issues can be raised again at a later stage in the proceeding. See McClendon v. SC Highways and Dept. of Transportation, 436 S.E.2d 539 (1994). This appeal is directly related to the underlying Notice of Intent action. Respondent's failure to comply with the statutory requirements of the Notice of Intent phase are only ripe for adjudication during or immediately at the conclusion of the Notice of Intent action. The issues surrounding Respondent's failure to mediate within the statutory time frame were raised and ruled on by the trial court in Appellants' Motion to Dismiss the Notice of Intent. Following this, the Parties participated in the mandatory mediation. A Notice of Impasse was filed by the mediator, and the Notice of Intent action was finally closed by the Court. Thereafter, Respondent filed a Complaint under a new civil action number and thereby fully ended the Notice of Intent action. As such, Appellants right to appeal any issues raised during the Notice of Intent must be appealed at this stage.

S.C. Code Ann. § 14-3-330(2)(a) states that the Supreme Court shall review upon appeal "[A]n Order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action..." Any order entered by the trial court at the conclusion of the Notice of Intent action determines the action; therefore, issues and arguments arising during this stage must be appealed at the conclusion of the Notice of Intent action.

Denying the appeal at this stage precludes Appellants from appealing these issues because the subsequent Summons and Complaint will continue as a separate and distinct civil action.

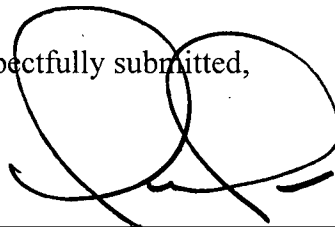
The entire basis of this appeal stems from Respondent's delay of eleven months after filing the Notice of Intent before participating in mediation. The statute defines a clear timeline in which mediation is to be held. Appellants were previously precluded from appealing Respondent's violation of the statute because no order had been entered by the Trial Court. A Trial Court order has now been entered, and Appellants now seek to bring this appeal for Respondent's clear and unequivocal violation of the statutory timeline provisions. Dismissing the appeal at this juncture creates a never event for the Appellants in that an appeal of issues and arguments occurring in the Notice of Intent action is only ripe at this time.

### **III. CONCLUSION**

This appeal arises directly from the trial court's order ending the underlying Notice of Intent action in this matter. Pursuant to the South Carolina Appellate Court Rules, appeals may be taken at the conclusion of final judgments. Wherefore, because Appellants are precluded from appealing the issues and arguments which occurred during the Notice of Intent action under the subsequent medical malpractice action, they are ripe for appeal and Respondent's motion to dismiss the appeal should be DENIED.

*[signature to follow]*

Respectfully submitted,



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May 28, 2015

Counsel for Appellants

IN THE STATE OF SOUTH CAROLINA  
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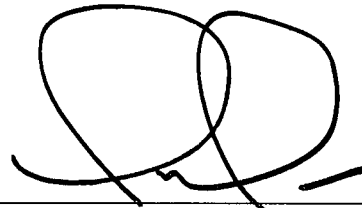
Waccamaw Chiropractic & Wellness  
Center, LLC and Jeff Evans,

Appellants.

**PROOF OF SERVICE**

I certify that on this 28th day of May, 2015, a copy of the foregoing Appellants' Return to Respondent's Motion to Dismiss Appeal and Brief in Opposition was served on counsel of record by mailing a copy, properly addressed with sufficient postage affixed thereto as follows:

Robert W. Maring, Esq.  
Maring & Moody  
P.O. Box 478  
Georgetown, SC 29440



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May 28, 2015

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May 28, 2015

VIA FEDEX

The Honorable Jenny Abbott Kitchings  
Clerk of Court, SC Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

RECEIVED  
JUN 01 2015  
SC Court of Appeals

Re: Elizabeth Ribelin v. Waccamaw Chiropractic & Wellness Center, LLC, and Jeff  
Evans, DC  
Case No.: 2015-000674

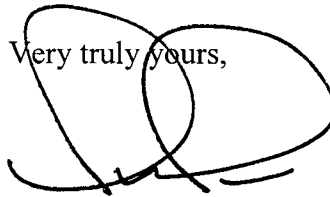
Dear Ms. Kitchings:

Enclosed please find the original and six (6) copy of the Appellants' Return to Respondent's Motion to Dismiss Appeal and Brief in Opposition, along with a Proof of Service, in the above-referenced matter.

Please acknowledge receipt of these documents by stamping the enclosed copy of this letter and returning it to me in the envelope provided. By copy of this letter, I am this day serving a copy of these enclosed documents on Robert W. Maring, Attorney for Respondent.

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact our office.

Very truly yours,



Jack G. Gresh

JGG/sea

Enclosures as stated.

cc: Robert W. Maring, Esq., counsel for Plaintiff/Respondent

From: (843) 720-3497  
Jack Gresh

Origin ID: CHSA



40 Calhoun Street  
Suite 550  
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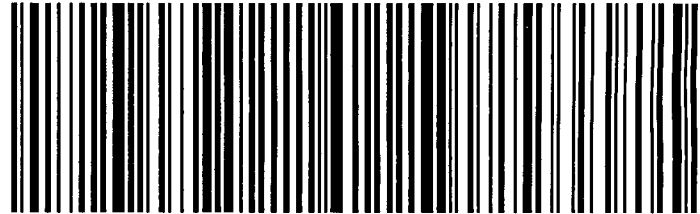
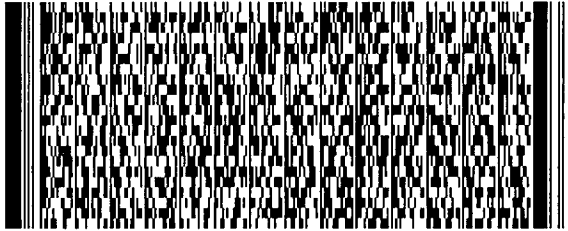
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