

RECEIVED

JUL 14 2015

SC Court of Appeals

IN THE STATE COURT OF APPEALS FOR THE STATE OF SOUTH CAROLINA

LARRY D. OUTLER;  
Plaintiff;

v.

Civil Suit No. 2014-CP-21-1923

JAMES YARNAL, et al.;  
Defendants;

\* \* \* \* \*

Motion To Give Notice To Appeal Common Pleas Court

Comes now Plaintiff, Larry D. Outler, in his Propria Persona in Pro-se representation, prayerfully petitioning this honourable Appeals Court and giving Notice of Appeal of the Twelfth Judicial Circuit Court of Common Pleas decision.

Plaintiff petitions this Appeals Court for receipt of any appellate forms, if such are required for Court submission.

Plaintiff will reserve his petition to this Appellate Court to file a Memorandum in Support of Plaintiff's claims.

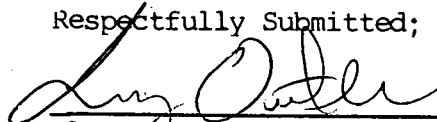
Plaintiff also petitions this Court to permit Plaintiff to correctly present his Civil Suit before this Appeals Court. Plaintiff believes this Court has jurisdictional authority to hear this case. Plaintiff does not have access to State Rules and Statutes. The knowledge of the particular Statutes or Rules would assist Plaintiff in his adherence to the specific law this Appellate Court requires in its cases brought before it.

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Plaintiff prays this Appellate Court docket this case for a jury trial within the confines of State Statutes and Rules.

Plaintiff sincerely thanks this Court for its consideration and attention to this matter.

Respectfully Submitted;

  
Larry D. Outler  
Date: 6/21/15

Motion To Comply With This Court's Dictates

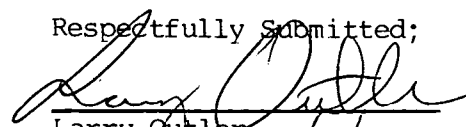
Comes now Plaintiff, Larry Outler, in his Propria Persona in Pro-se representation, to prayerfully comply with this Court's dictates and relative to this Court's time requirements. Plaintiff has been unable to retrieve a supplemental (6)-month Trulincs printout at this time. To comply with with time limitations, these forms are being sent now with the lower Court's Order.

Plaintiff still petitions for a jury trial in conjunction with Plaintiff's Seventh Amendment right to seek redress for injuries sustained due to the fault of the Defendants.

Plaintiff does not have current access to the filing fee, therefore, the Informa Pauperis form is submitted. Plaintiff will follow these forms filing with a copy of his Trulincs printout that should reach this Court within (3) days of your receipt of these forms.

Plaintiff sincerely thanks this Court for this consideration in Plaintiff's attempt to follow this Court's Orders.

Respectfully Submitted;

  
Larry Outler  
Date: 7/8/15

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CERTIFICATE OF SERVICE

SC Court of Appeals

I, LARRY OUTLER, hereby certify that on JULY 9, 2015, I  
[name] [date]

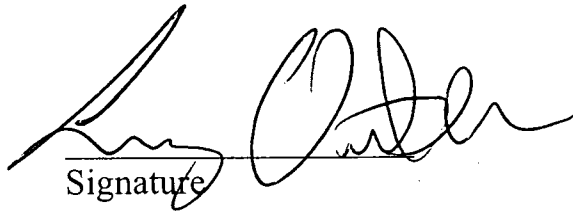
served copies of MOTION TO COMPLY  
[name of document]

on the following parties by way of FIRST CLASS U.S.P.S:  
[U.S. mail, UPS, overnight mail, email, fax, courier, etc.]

[List name and address of each attorney\party served]

SOUTH CAROLINA COURT OF APPEALS  
POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA [29211]

JULY 9, 2015  
Date

  
Signature

DUE TO LACK OF ACCESS TO PHOTOCOPIER, LAW MATERIALS,  
AND TYPEWRITER, PETITIONER (PLAINTIFF) WAS DELAYED IN  
DEPENDANT'S MAILING UNTIL JULY 10, 2015. FIRST CLASS POSTAGE PAID  
U.S.P.S.

AIKEN BRIDGES ATTORNEYS AT LAW  
P.O. DRAWER 1931  
FLORENCE, SOUTH CAROLINA [29503]

(Rev 10/03)

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RECEIVED

STATE OF SOUTH CAROLINA JUL 14 2015  
COUNTY OF FLORENCE SC Court of Appeals

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-21-1923

Larry D. Outler, Fed. No. 71590-083,  
Plaintiff,  
vs.  
James Yarnal, et al.  
Defendant.

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

Plaintiff's Attorney: Larry D. Outler, Pro se, Bar No. _____ Address: Federal Correctional Complex P. O. Box 1000, Petersburg, VA 23804 Phone: _____ Fax _____ E-mail:  Other: _____	Defendant's Attorney: J. Boone Aiken, III, Bar No. 307 Address: P. O. Drawer 1931 Florence, SC 29503 Phone: 843.669.8787 Fax 843.664.0097 E-mail: jba@aikenbridges.com Other: _____
--	---

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: \_\_\_\_\_  
Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES/ NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*[Handwritten Signature]*  
Signature of Attorney for  Plaintiff /  Defendant

May 20, 2015  
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ \_\_\_\_\_
- EXEMPT: (check reason)
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCP)
  - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_
  - Other: \_\_\_\_\_

JUDGE'S SECTION

<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____  Date: _____
--	-------------------------------------

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )  
  
Larry D. Outler, Fed. No. 71590-083, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
James Yarnal, Mark Barnard, and )  
Ramesh A. Bharadwaj, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT  
C/A NO.: 2014-CP-21-1923

**ORDER**

THIS MATTER comes before me on Notice of Motion and Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6), *South Carolina Rules of Civil Procedure*, entered by James Yarnal, M.D., Mark Barnard, M.D., and Ramesh A. Bharadwaj, M.D.

This matter was called for hearing on Monday, April 6, 2015, with due notice to the Plaintiff, Larry D. Outler, and the Defendant physicians, through counsel. J. Boone Aiken, III, of the law firm of AIKEN BRIDGES, of the Florence County Bar was present representing all Defendants. Mr. Outler participated in the hearing via telephone conference which had been arranged through the Florence County Clerk of Court's office.

The *pro se* Plaintiff, Larry D. Outler, filed a Motion to File Suit in Civil Court with accompanying "Discussion of Facts," Summons and Complaint on July 11, 2014.

On August 29, 2014, the Defendants through counsel entered a Notice of Motion and Motion to Dismiss.

On September 9, 2014, the Plaintiff filed a Motion to Petition for an Extension of Time in which to file a response and on October 27, 2014, the Plaintiff filed a Motion in Response to Defendants' Motion to Dismiss.

The position of the Defendants is, first, the Plaintiff seems to be alleging an action for medical malpractice and as such the Plaintiff has failed to comply with the pre-litigation requirements for a medical malpractice action. *South Carolina Code. Ann.* § 15-36-100 and §15-79-125 require the Plaintiff to file a Notice of Intent to File Suit as a prerequisite to filing the action, along with an affidavit of an expert witness who meets certain statutory requirements. The Defendants argued for a dismissal pursuant to Rule 12(b)(1), lack of jurisdiction over the person, and Rule 12(b)(6), *SCRCP*, for failure to state facts sufficient to constitute a cause of action. The Plaintiff failed to file a Notice of Intent to File Suit and an expert affidavit as required by the referenced statutes.

Second, in addition to apparently presenting a case of alleged medical malpractice, the Plaintiff has further attempted to state a cause of action against the Defendant physicians, alleging that the Defendant physicians intentionally disclosed protected and confidential medical information concerning a medical condition suffered by Plaintiff to person(s) not authorized by law to receive such information. The Defendant physicians have specifically denied any and all such allegations and have also argued that subject matter jurisdiction is lacking with this Court as the Health Insurance Portability and Accountability Act ("HIPAA") does not contain any express language conferring any rights upon a specific class of individuals if privacy regulations are violated.

The Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, 110 Stat. 1936 (1996) codified primarily in Titles 18, 26 and 42 of the United States Code, serves as the basis for the development of privacy regulations and generally provides for confidentiality of medical records. As set forth in Alexander v. Sandoval, 532 U.S. 275, 286, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001), "private rights of action to enforce federal law must be created by Congress." The Fifth Circuit Court of Appeals stated in Banks v. Dallas Hous. Auth., 271 F.3d 605, 608 (5<sup>th</sup> Cir. 2001), "HIPAA has no express provision creating a private cause of action and therefore we must determine if such is implied within the statute," and this Court concluded that there is no private cause of action under HIPAA.

Every district court that has considered whether Congress intended for private enforcement of HIPAA has concluded that the statute does not support a private right of action, Agee v. United States, 72 Fed.Cl. 284 (2006); Walker v. Gerald, No. 05-6649, 2006 WL1997635 (E.D.La. June 27, 2006); Poli v. Mountain Valleys Health Ctrs., Inc., No. 2:05-2015-GEB-KJM, 2006 WL 83378 (E.D.Cal. Jan.11, 2006); Cassidy v. Nicolo, No. 03-CV-6603-CJS, 2005 WL 3334523 (W.D.N.Y. Dec. 7, 2005); Johnson v. Quander, 370 F.Supp.2d 79 (D.D.C. 2005); Univ. of Colo. Hosp., 340 F.Supp.2d 1142 (D.Colo.2004); \*572 O'Donnell v. Blue Cross Blue Shield of Wyo., 173 F.Supp.2d 1176 (D.Wyo.2001); Means v. Ind. Life & Accident Ins. Co., 963 F.Supp. 1131 (M.D.Ala. 1997); Wright v. Combined Ins. Co. of Am., 959 F.Supp. 356 (N.D. Miss. 1997).

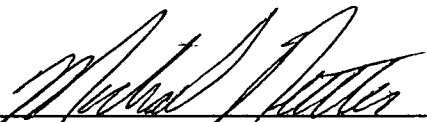
While HIPAA does provide both civil and criminal penalties for improper disclosures of medical information, the enforcement of the statute belongs to the

Secretary of Health and Human Services, Alexander v. Sandoval, 532 U.S. 275, 286, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001).

In response to the arguments of the Defendant physicians, Mr. Outler was allowed to read his entire ten-page Motion in response to Defendants' Notice of Motion and Motion to Dismiss.

After having carefully considered this matter, the Court concludes that the Motion to Dismiss entered by the Defendant physicians should be granted. Because HIPAA does not give rise to a private cause of action, no subject matter jurisdiction exists with regard to this case. Further, this matter must be dismissed as the *pro se* Plaintiff failed to follow the pre-litigation requirements for a medical malpractice action as set forth in *S.C. Code Ann.* § 15-36-100 and §15-79-125.

**IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is granted.**

  
\_\_\_\_\_  
Michael G. Nettles, Chief Administrative  
Judge of the Twelfth Judicial Circuit

Date: 5-19-, 2015

Florence, South Carolina

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### Motion and Affidavit for Permission to Appeal In Forma Pauperis

Appeal No. 2015-001391  
District Court or Agency No. 2014-CP-21-1923

v.

Affidavit in Support of Motion	Instructions
<p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p>
<p>Signed: <u><i>Larry Oeller</i></u></p>	<p>Date: <u>7/8/15</u></p>

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>150.<sup>00</sup></u>	<u>N/A</u>	\$ <u>150.<sup>00</sup></u>	<u>N/A</u>
Self-employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>

Child support	\$ <u>A</u>	\$ <u>N/A</u>	\$ <u>↓</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>↓</u>	\$ <u>↓</u>	\$ <u>↓</u>	\$ <u>↓</u>
Disability (such as social security insurance payments)	\$ <u>0</u>	\$ <u>↓</u>	\$ <u>0</u>	\$ <u>↓</u>
Unemployment payments	\$ <u>↓</u>	\$ <u>↓</u>	\$ <u>↓</u>	\$ <u>↓</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>↓</u>	\$ <u>0</u>	\$ <u>↓</u>
Other (specify):	\$ <u>↓</u>	\$ <u>A</u>	\$ <u>↓</u>	\$ <u>A</u>
Total monthly income:	\$ <u>150.00</u>	\$ <u>N/A</u>	\$ <u>↓</u>	\$ <u>N/A</u>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>UNICOR</u>	<u>F.C.C.</u>	<u>7/14</u>	<u>150.00</u>
	<u>PETERSBURG</u>	<u>PRESENT</u>	

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>N/A</u>	<u>N/A</u>		

4. How much cash do you and your spouse have? \$ \_\_\_\_\_

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
<u>N/A</u>		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

N/A

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)
N/A	N/A	Make & year: /
		Model: /
		Registration #: /
Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: /	/	/
Model: N/A		
Registration #: /		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	/	/

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A	/	/

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0	\$ N/A
Are real-estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0	\$ N/A
Home maintenance (repairs and upkeep)	\$ 0	\$ N/A
Food	\$ 40.00	\$ N/A
Clothing	\$ 10.00	\$ N/A

Laundry and dry-cleaning	\$ 10.00	\$ <del>N</del>
Medical and dental expenses	\$ 0	\$ <del>N</del>
Transportation (not including motor vehicle payments)	\$ 8	\$ <del>A</del>
Recreation, entertainment, newspapers, magazines, etc.	\$ 15.00	\$ <del>A</del>
Insurance (not deducted from wages or included in Mortgage payments)	\$ 0	\$ <del>N</del>
Homeowner's or renter's	\$ 0	\$ <del>N</del>
Life	\$ 0	\$ <del>N</del>
Health	\$ 0	\$ <del>N</del>
Motor Vehicle	\$ 0	\$ <del>N</del>
Other: _____	\$ 0	\$ <del>N</del>
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	\$ 0	\$ <del>N</del>
Installment payments		
Motor Vehicle	\$ 0	\$ <del>N</del>
Credit card (name): _____	\$ 0	\$ <del>N</del>
Department Store (name): _____	\$ 0	\$ <del>N</del>
Other: <u>TRUCK RENTALS</u>	\$ 20.00	\$ <del>N</del>
Alimony, maintenance, and support paid to others	\$ 0	\$ <del>N</del>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ <del>N</del>
Other (specify): _____	\$ 0	\$ <del>N</del>
<b>Total monthly expenses:</b>	\$ 55.00	\$ <del>N</del>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?  
 Yes  No If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form?  Yes  No

If yes, how much? \$ \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes  No

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

N/A