

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

Case No. 2013-CP-42-2404

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SC Court of Appeals

Lisa McKaughan, Individually and as the
Personal Representative of the Estate of William Farr, Appellant,

v.

Upstate Lung and Critical Care Specialists, P.C. and
Sau-Yin Wan, M.D., Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This is a medical malpractice case. The Appellant Lisa McKaughan, as the Personal Representative of the Estate of William Farr, brought suit against Sau-Yin Wan, M.D. and her employer, Upstate Lung and Critical Care Specialists, P.C. The Appellant alleges that Dr. Wan deviated from the standard of care by failing to timely diagnose lung cancer on an x-ray of William Farr in January 2010, which allegedly caused his death in June 2012.

The Appellant filed a Notice of Intent to File Suit alleging medical malpractice on December 12, 2012. After the Notice of Intent process completed and ended in an impasse, the Appellant filed the Complaint on June 3, 2013, after which the Respondents timely filed their Answer denying liability. (R. 3-27).

By way of further factual background, the Appellant's decedent, William Farr, was referred to Dr. Sau-Yin Wan, who is a board-certified pulmonologist, by Farr's hematologist/oncologist, Dr. Sarah Vidito, on January 5, 2010, to get his lungs checked as a part of Dr. Vidito's continuous treatment for erythrocytosis, a condition of elevated red blood cells resulting from his life-long smoking abuse. (R. 364-365, 456, 853). Dr. Wan evaluated Farr on January 11, 2010 at her office, performed a physical exam, ordered and performed a pulmonary function test and a chest x-ray with two views (AP and lateral). (R. 853-855). She diagnosed Farr as having mild hypoxemia, dyspnea (respiratory insufficiency) and chronic

obstructive pulmonary disease (COPD) as a result of his life-long smoking abuse. (R. 855). She noted that the x-rays showed "hyperinflation" (due to COPD) and "no infiltrate." She also noted that the plan was for "SMOKING CESSATION!" and provided a prescription for Chantix to assist with this plan. (R. 855). She noted that he should return to the clinic in six months. Farr, however, did not follow up with Dr. Wan. (R. 463-464, 855).

On October 6, 2010, William Farr was seen by his family physician, Dr. Ronald Littlefield, for a routine checkup for "multiple medical problems" including increased shortness of breath and chest pain. Dr. Littlefield ordered a stress test, echocardiogram and a chest x-ray, among other tests, for evaluating his complaints. (R. 861-865). The chest x-ray interpretation on October 7, 2010 by Dr. Raul Ceballos, Jr., a radiologist, stated as follows: "No hilar or mediastinal adenopathy or mass lesions evident ... confluent patchy and streaky radiopacities in the anterior segment of the right upper lobe. ... While this may be chronic in nature, early or evolving pneumonitis cannot be excluded ... In addition, the possibility of an underlying occult pulmonary mass cannot be totally excluded." (R. 868). As a result of this x-ray, CT and PET scans were ordered, which did not clearly show cancer and which were ultimately inconclusive. (R. 883-892). Nonetheless, Farr sought surgical exploration for possible right lung cancer on December 2, 2010, by Dr. Christophe Nguyen, an oncological surgeon in Spartanburg.

As noted in the December 2, 2010 operative report of Dr. Nguyen and as a result of the surgical pathology report of Dr. David Wren, a pathologist, lung cancer (papillary predominant adenocarcinoma) was found and entirely removed. In addition, as part of the procedure, the lymph nodes were removed, all of which were negative for lymphatic spread or metastasis. The surgical margins were also clear, evidencing no spread of cancer. The first line of Dr. Nguyen's dictated operative note states: "No evidence of metastatic disease." (R. 941).

As a result of William Farr's decision to obtain a second opinion on whether or not to receive adjuvant chemotherapy, the surgical pathology slides were reviewed a few months later in February 2011, by Dr. Masha Bilie and Dr. Paul Eberts, both pathologists at the Medical University of South Carolina (MUSC). Dr. Bilie and Dr. Eberts made the same findings as those of Dr. Wren in Spartanburg: the lymph nodes were negative for cancer, the surgical margins were clear, and the cancer type was "adenocarcinoma, papillary predominant histological subtype." (R. 1003). The MUSC pathology report confirmed Dr. Wren's pathological and Dr. Nguyen's surgical determinations that all of Mr. Farr's lung cancer was removed and that there was no metastasis. (R. 1003).

During the next fourteen months, William Farr continued to smoke against medical advice. His oncologist, Dr. Sharmila Mehta, noted in his May 10, 2011 visit, for example, that "[u]nfortunately, the patient continues to smoke and I have once again expressed to him the greatest factor of his cancer coming back is

because he continues to smoke on a regular basis. ... He continues to refuse formal smoking cessation." (R. 1025).

In addition, during those fourteen months, Farr was seen and evaluated periodically by various treating physicians for follow-up care. Eventually there became a clinical suspicion of a possible recurrence but with respect to Farr's left lung. As a result, Dr. Nguyen resected a portion of Farr's left lung on April 17, 2012. (R. 1097-1098). The surgical specimens were reviewed by Dr. Rosanna Lapham, a pathologist, who issued her surgical pathology report on April 20, 2012 and concluded that the left lung was "adenocarcinoma, lipidic predominant and with acinar pattern ... within the random sections of the lung parenchyma there are multiple minute foci of lipidic *in situ* adenocarcinoma." (R. 1099). This left lung cancer was of a different histological subtype than the right lung cancer, and the left lung cancer had *in situ* components, which reflected that this left lung cancer originated in the left lung and did not spread from the right lung. Thus, as the Respondents contend, this left lung cancer was unrelated to Farr's right lung cancer, which was completely removed about one and a half years earlier.

William Farr died soon thereafter in June 2012. The Respondents contend that death resulted from his chronic pulmonary issues caused by smoking all of his life against medical advice, even until the very month of his death, as noted in his medical records.

In her lawsuit, the Appellant alleges that Dr. Wan misdiagnosed Farr's chest x-ray of January 11, 2010, by failing to detect his right lung cancer. Even though the right lung cancer was completely removed surgically and that it did not spread by any of the known mechanisms of metastasis, the Appellant alleges that the right lung cancer spread by way of an "endobronchial" or "aerogenic" spread theory. The Appellant's "aerogenic" theory basically suggests that lung cancer can spread by "breathing." The Respondents contend that that theory has no proven basis whatsoever in the pathology literature and is not recognized as an accepted pathological mode of metastasis.

The case was tried beginning on July 27, 2015, by Circuit Court Judge J. Mark Hayes, II and a jury. On July 29, 2015, at the close of the Appellant's case-in-chief, the Respondents moved for a directed verdict on two grounds. Judge Hayes denied the directed verdict motion on the standard of care issue. However, after arguments by counsel for both parties, Judge Hayes granted a directed verdict on the proximate cause issue. As part of that ruling, Judge Hayes also conducted a Rule 702 review of the expert testimony of Dr. Willard Milby, who was the Appellant's pathology expert witness. Judge Hayes found unreliable under Rule 702 Dr. Milby's opinion that the cancer in William Farr's right lung spread to his left lung by an "endobronchial" or "aerogenic" mechanism.

The Appellant subsequently filed a timely appeal. No Rule 59(e) motion, however, was filed.

ARGUMENTS

The Appellant contends that Circuit Judge J. Mark Hayes, II erred in directing a verdict in favor of the Respondents because she had presented at least a scintilla of evidence to show that Dr. Wan's alleged failure to diagnose proximately caused the death of William Farr. The Appellant further contends that Judge Hayes erred in finding that the causation testimony of Dr. Willard Milby, the Appellant's causation expert, was unreliable under a Rule 702 analysis. The two issues are interrelated. The Respondents submit that Judge Hayes did not abuse his discretion in concluding that Dr. Milby's opinions were unreliable, and therefore, given the absence of any evidence demonstrating how the cancer from Farr's right lung traveled to the left lung, there was not sufficient evidence to establish causation, and as a result, the directed verdict was correctly entered.

I. The Circuit Court was correct in excluding as unreliable Dr. Willard Milby's opinion that the cancer in William Farr's right lung spread to his left lung by an "endobrochial" or "aerogenic" mechanism.

The critical issue on appeal is the trial court's ruling with respect to the causation theory offered by Dr. Willard Milby, the Appellant's pathologist expert on whom she relied to establish proximate causation. Dr. Milby offered the opinion that the cancer in Farr's right lung spread to his left lung. The Appellant's experts,

including Dr. Milby, agreed that the Respondents have no liability without proving that the cancer in Farr's right lung did in fact spread to his left lung, as opposed to the left lung cancer being a new primary cancer that developed.

Dr. Milby testified that there are three mechanisms by which cancer typically metastasizes: (1) through the lymphatic system, (2) through the bloodstream (i.e., "hemotogenous spread"), or (3) by direct extension. (R. 512, 559). Dr. Milby, however, also opined that there is a fourth mechanism specifically for lung cancer, whereby the cancer spreads by an "endobrochial" or "aerogenic" mechanism, meaning that the spread is by "normal breathing to other parts of the lung." (R. 512, 560). It is this latter mechanism that Dr. Milby contends explains the spread of the cancer from Farr's right lung to his left lung. That "endobrochial" or "breathing" theory was the subject of Judge Hayes' Rule 702 analysis for reliability of the underlying science.

"The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill experience, training, or education may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. The South Carolina Supreme Court has recognized that "expert testimony receives additional scrutiny relative to other evidentiary decisions." *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169, 175 (2010). In fulfilling

its "gatekeeping" duties, a trial court is required to make "three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony." *Id.* "All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009).

The Supreme Court has stressed that "[r]eliability is a central feature of Rule 702 admissibility." *Id.* The Court has explained as follows:

[T]he trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, whether the evidence is scientific or nonscientific. In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. The familiar evidentiary mantra that a challenge to evidence goes to "weight, not admissibility" may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.

White, 676 S.E.2d at 689. As the Supreme Court stated in *White*, the case of *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), is the leading case that addresses "the gatekeeping role of the trial court with regard to expert testimony under Rule 702, as well as the standard reliability factors for scientific evidence." 676 S.E.2d at 688. In evaluating the reliability of scientific expert testimony, the Court considers factors which include: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in

the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Council*, 515 S.E.2d at 517.

The standard of review for application of these so-called *Council* reliability factors is an abuse of discretion standard. *Council*, 515 S.E.2d at 517. *See also*, *State v. White*, 382 S.C. 265, 676 S.E.2d 684, 686 (2009) ("[a] trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion"). "An abuse of discretion occurs when the circuit court's rulings either lack evidentiary support or are controlled by an error of law." *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 735 S.E.2d 650, 655 (2012).

In fulfilling his gatekeeping role under Rule 702, Judge Hayes made the determination that Dr. Milby's reliance on the "endobrochial" or "breathing" theory was unreliable. Judge Hayes explained that *Council* and Rule 702 required him to reject Dr. Milby's testimony because "if I didn't, then I would be allowing a view of medicine that I believe has been established as being unreliable to allow this jury to then engage in improper speculation in applying that theory on how this cancer got from one side to the other, and I believe that that is Plaintiff's burden is to establish how it got from one side to the other." (R. 619). Judge Hayes did not abuse his discretion in so ruling. An analysis of the *Council* factors supports that ruling.

A. The publication and peer review of the technique

The first factor to consider when determining reliability under *Council* is the "publication and peer review of the technique." *Council*, 515 S.E.2d at 517. If a technique or scientific mechanism had some indicia of reliability, there would be some specific pathology literature or peer review publication to support it. In this case, there is no specific evidence-based pathology literature or proven peer review evidence supporting Dr. Milby's opinion that William Farr's lung cancer spread from his right lung to his left lung by the "breathing" theory. At best, Dr. Milby showed that there is brief mention in a pulmonary textbook and another article, both of which consisted of short, generalized statements, but even that literature did not include any references to studies that support the theory nor applied the theory to actual patients.

In his analysis under *Council*, Judge Hayes did acknowledge that Dr. Milby identified literature *mentioning* his theory. (R. 618). However, most importantly, Judge Hayes focused on evidence that the theory had been *proven* in specific patients. Under cross-examination, Dr. Milby conceded that the textbooks that he cited did not include any references to any case studies or research that supported or proved the theory. (R. 563-568). Specifically, defense counsel questioned Dr. Milby as to whether the literature addressed the types of lung cancer that Farr actually had. Counsel asked whether the literature contained case studies "to prove that lung cancer, papillary predominant, can move from the right lung to the left

lung and grow a different pattern, lepidic pattern, in a contralateral opposite lung." (R. 564-565). Dr. Milby conceded that "[i]t doesn't appear there's any reference to papillary carcinomas in here." (R. 565). As to the Dale and Hammar textbook, Dr. Milby likewise conceded that the article addressed lepidic cancer and not papillary cancer. (R. 569-570). Ultimately, Dr. Milby agreed that there is no literature or research that support the application of the "breathing" theory under the facts presented:

Q. Can you show me any medical literature that there's a case study, there's a report, a conclusion by any medical doctors, pathologist, or otherwise that has proven your theory where a papillary predominant cancer of the lung can break off a cell, float around through the airway, and lodge in the left lung and grow cancer of a different pattern, sir? Is there any literature anywhere you can tell me that's been proven in this patient?

A. Well, what I'm saying, in this patient, is the lepidic pattern that breaks off and that's what's growing. It says predominate lepidic on the left.

Q. Did you understand my question?

A. I understand your question. I don't know that there is any documentation.

Q. Right. You don't know there's any literature, medical literature out there that's proven your theory in any patient, in any study, in all the 135 years this theory's been kicked around.

A. I –

Q. True?

A. Well, I'm not aware of them.

(R. 573-574).

Significantly, Dr. Milby provided no specific literature describing evidence-based studies or any other research that *actually proved* the viability of his theory under any circumstances, let alone involving the differing patterns of cancer present in Farr's two lungs. Judge Hayes placed great weight on Dr. Milby's concession. (R. 618-619). He concluded that Dr. Milby provided no evidence that the "breathing" theory had "actually been applied," and as a result, "[t]hat makes it difficult for me not to grant this motion for directed verdict." (R. 618-619).

B. Prior application of the method to the type of evidence involved in the case

The second factor to consider when determining reliability under *Council* is the "prior application of the method to the type of evidence involved in the case." *Council*, 515 S.E.2d at 517. As discussed above, this was the key factor in Judge Hayes' analysis. Dr. Milby was unable to cite to any case studies or research showing that the "breathing" theory of lung cancer metastasis had been applied and proven. In other words, there is no proven support, either in the pathology literature or by other experts, to form the basis for Dr. Milby's "breathing" theory of metastasis. More specifically, Dr. Milby was unable to show that the method or process of "breathing" had been tested pathologically to prove that papillary-

predominant adenocarcinoma of the right lung can metastasize by "breathing" into lipidic-predominant adenocarcinoma of the left lung.

In addition, Dr. Milby did not identify any studies or other proven evidence in the pathology literature even describing a method for testing such a theory. Based on this record, the theory has not been tested, and as a result, there is no method by which Dr. Milby can validly prove or support that theory in this case.

C. The quality control procedures used to ensure reliability

The third factor to consider when determining reliability under *Council* is the "quality control procedures used to ensure reliability." *Council*, 515 S.E.2d at 517. Because there have been no pathology publications, peer review literature or prior applications of any scientific method to specifically test and support (through evidence-based medicine) the "breathing" theory of metastasis, there necessarily follows that no quality control procedures have been used to ensure reliability of such a theory. To the contrary, there is much evidence-based literature and knowledge supporting the fact that cancer can spread through the blood, the lymphatics or direct extension, but there is none with respect to the "breathing" theory of metastasis. Dr. Milby did not identify any quality control procedures that would support his conclusion that the cancer spread from the right lung to the left lung by the "breathing" theory of metastasis.

Moreover, Dr. Milby did agree on cross-examination that a person who continues to smoke can form a new primary lung cancer in his left lung after the

right lung cancer was totally resected. (R. 550). However, Dr. Milby did not provide any objective explanation for the rejection of that alternative cause. In *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 735 S.E.2d 650 (2012), the Supreme Court explained that "when an expert cannot offer an explanation for the rejection of a possible alternative cause, the expert's testimony is not sufficiently reliable." 735 S.E.2d at 656. The Court held that "an expert relying on differential diagnosis must provide a reasonable, objective explanation for the rejection of possible alternative causes in order for the opinion to be admissible under Rule 702." *Id.* The Court determined that "this objectivity requirement is consistent with the quality control element of *Council*." *Id.* In the present case, Dr. Milby offered his opinion on the "breathing" theory of metastasis but did not provide a reasonable, objective explanation rejecting the alternative theory that the lung cancer in the left lung was a new primary cancer and not related to the right lung cancer that had been totally resected. Dr. Milby acknowledged that metastasis did not occur by the three recognized mechanisms of lymphatic spread, hematogenous (blood-borne) spread, and direct extension into other tissues or surrounding structures. Yet, he then adopts the "breathing" theory without rejecting any other causes, including the possibility that the cancer in the left lung did not metastasize from the right lung. Moreover, he adopted the "breathing" theory without there being any objective evidence to support it.

In sum, the "quality control" factor weighs in favor of concluding that Dr. Milby's causation opinion premised on the "breathing" theory of metastasis was not reliable.

D. The consistency of the method with recognized scientific laws and procedures

The fourth factor to consider when determining reliability under *Council* is the "consistency of the method with recognized scientific laws and procedures." *Council*, 515 S.E.2d at 517. Because there have been no methods identified by Dr. Milby to test or pathologically determine the "breathing" theory of the spread of cancer, there have been no consistent methods, scientific laws or procedures diagnostic of such a theory. Therefore, it necessarily follows that this *Council* factor has not been satisfied for purposes of providing a basis for the reliability of Dr. Milby's "breathing" theory of metastasis.

In sum, Judge Hayes did not abuse his discretion in concluding that Dr. Milby's opinion on causation was not reliable. Dr. Milby's theory that Mr. Farr's right lung cancer metastasized to his left lung by "breathing" is not supported by the reliability factors under *Council*, and was properly excluded by Judge Hayes in fulfilling his "gatekeeper" role under Rule 702. At best, the Appellant argues that Judge Hayes could have determined within his discretion that the evidence of the "breathing" theory was reliable; however, the Appellant has not shown an abuse of discretion or error of law was committed by Judge Hayes in reaching the decision

that he did. The standard of review requires that great deference be given to the trial judge's evidentiary rulings. *See, State v. Torres*, 390 S.C. 618, 703 S.E.2d 226, 230 (2010) ("[t]he appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court").

II. The Circuit Court was correct in granting a directed verdict on the issue of proximate cause.

The Appellant also argues that, even without the causation testimony offered by Dr. Willard Milby that Judge Hayes found to be unreliable, there was still sufficient evidence in the record to allow the case to be presented to the jury. In making this argument, the Appellant relies on the expert testimony of Dr. Barry Singer, the Appellant's oncology expert.

Nonetheless, during the arguments on the directed verdict motion, Judge Hayes stated that the Appellant "got that burden of proof of establishing what – some way how that cancer got from one lung to the other. ... I'm not convinced that it's enough for a doctor to come in and look at the end result and say okay, this cancer's the same as the other cancer, ... it metastasized and not say well how it did." (R. 607). Judge Hayes was concerned with "allow[ing] the jury to speculate as to how it got from one lung to the other." (R. 607). Later, in his ruling on the directed verdict motion, Judge Hayes explained that "the Plaintiff has to explain to

the jury medically how that transfer happened" and that "the fact that the cancer showed up on the other side [i.e., in the left lung] is the same kind of cancer I just don't think is enough." (R. 617). Thus, Judge Hayes found an absence of evidence explaining the "theory of medicine" to be applied. (R. 617).

The Appellant calls this a "red herring" and denies that she was required to prove the "mechanism of spread." However, that is not the case. Here, there were alternative theories for the origin of the cancer in the left lung, and the Appellant readily concedes that, if the cancer in the left lung was unrelated to the right lung cancer and was indeed a new primary cancer, then the Respondents have no liability. Thus, as Judge Hayes correctly concluded, the Appellant had the burden of proving the origin of the cancer and how the cancer got from the right lung to the left lung.

The only witness who attempted to present a metastatic theory was Dr. Milby, but as discussed at length above, his testimony in that regard was properly excluded as unreliable. Thus, there was no competent, reliable evidence explaining how the cancer spread from the right lung to the left lung. Instead, once Dr. Milby's opinion on the "breathing" theory was excluded, the only expert testimony that remained were the conclusory opinions offered by Dr. Singer. Dr. Singer, however, was never asked and did not offer any opinion as to the mechanism by which the cancer allegedly spread or metastasized from the right lung to the left lung. Instead, Dr. Singer only offered the conclusory opinion that

William Farr died of "metastatic lung cancer." (R. 214, 279). To repeat, Dr. Singer never offered an opinion as to how the cancer spread from one lung to the other. Likewise, the death certificate showing the cause of death as "metastatic lung cancer" is similarly insufficient to provide competent proof of causation.

Without competent, reliable evidence providing the jury with the mechanism by which the cancer spread from the right lung to the left lung, the Appellant did not satisfy her burden of proof on the causation issue. South Carolina law requires a plaintiff in a medical malpractice case to "show that the defendants' departure from such generally recognized practices and procedures was the proximate cause of the plaintiff's alleged injuries and damages." *David v. McLeod Regional Medical Center*, 367 S.C. 242, 626 S.E.2d 1, 4 (2006). "[T]he expert testimony as to proximate cause must provide a *significant causal link* between the alleged negligence and the injuries suffered, rather than a tenuous and hypothetical connection." *Martasin v. Hilton Head Health System, L.P.*, 364 S.C. 430, 613 S.E.2d 795, 800 (Ct. App. 2005). (Emphasis added). Without evidence as to how the spread from one lung to the other occurred, the Appellant did not show a "significant causal link." Instead, as Judge Hayes commented, the jury was left to speculate as to how the cancer spread from the right lung to the left lung. (R. 619). In short, the evidence in the record was insufficient to satisfy the requirement for the Appellant to present competent, reliable evidence of a "significant causal link"

between the alleged breach of the standard of care and Farr's death.¹ For that reason, Judge Hayes was correct in granting a directed verdict on the issue of causation, and that ruling should be affirmed.

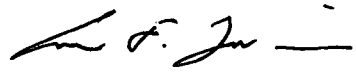
¹ In *Jones v. Sun Publishing Co., Inc.*, 278 S.C. 12, 292 S.E.2d 23 (1982), the South Carolina Supreme Court has explained: "South Carolina adheres to the 'scintilla of evidence' rule which requires submission of an issue to a jury whenever there is competent and relevant evidence tending to establish the issue in the mind of a reasonable juror. The rule does not authorize submission of speculative, theoretical or hypothetical views nor does it permit a verdict to stand upon surmise, conjecture or speculation." 292 S.E.2d at 27.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents respectfully request that this Court affirm the directed verdict entered by Circuit Court Judge J. Mark Hayes, II.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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SC Court of Appeals

The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

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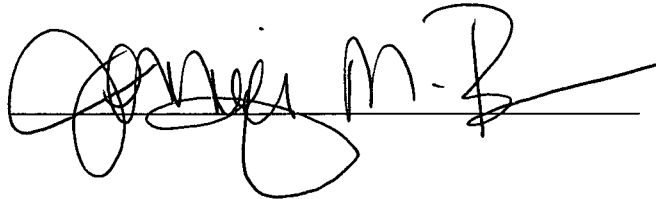
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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents, does hereby certify that service of the **Brief of Respondents** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 22nd day of April 2016:

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A handwritten signature in black ink, appearing to read "William A. McKinnon", written over a horizontal line.

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April 22, 2016

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APR 23 2016
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SC Court of Appeals

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Lisa McKaughan, Individually and as the Personal Representative of the Estate of William Farr v. Upstate Lung and Critical Care Specialists, P.C.; and Sau-Yin Wan, M.D.
Appellate Case Number: 2015-001828
Civil Action Number: 2013-CP-42-2404
Our File Number: 359.9771

Dear Ms. Kitchings:

Please find enclosed for filing the original and fifteen copies of the **Brief of Respondents** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: William A. McKinnon, Esquire (w/ Enclosure)
Jordan C. Calloway, Esquire (w/ Enclosure)
Ashby W. Davis, Esquire (w/ Enclosure)
David L. Williford, II, Esquire (w/ Enclosure)