



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
S. Jackson Kimball, Special Circuit Court Judge

RECEIVED

JUL 13 2013

SC Court of Appeals

Case No. 2014-CP-46-0508

Patricia A. Craig, Appellant,

v.

E. Earl Jenkins, Jr., M.D. also known as
Everett Earl Jenkins, Jr., M.D.,
Amisub of South Carolina, Inc. d/b/a
Piedmont Medical Center, and
York Pathology Associates, LLC, Respondents.

**MOTION TO STRIKE MATERIALS
DESIGNATED BY APPELLANT FOR INCLUSION
IN THE RECORD ON APPEAL**

The Respondents move this Court pursuant to Rules 209(b) and 210(c), SCACR,
for an order directing that the following documents be excluded from the Record on
Appeal when it is prepared by the Appellant following submission of initial briefs:


- (1) Deposition of Patricia Craig
- (2) Plaintiff's Discovery Requests and Defendants' Responses
- (3) Medical records for Patricia Craig, with the exception of the following four documents:
 - (a) Fine Needle Aspiration Report (2 pages), found as Exhibit 4 of Kovacs Deposition
 - (b) Dr. Jones' Report-Pathologic Diagnosis (2 pages), found as Exhibit 2 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment
 - (c) Intraoperative Pathology Report a/k/a Surgical Pathology Report (3 pages), found as Exhibit 5 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment
 - (d) Dr. Jones' Operative Report (3 pages), found as Exhibit 5 of Kovacs Deposition and Exhibit 6 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment

These documents, which are not included in the lower court record and were not otherwise submitted to the lower court judge, have been improperly designated by the Appellant for inclusion in the Record on Appeal.

The Respondents' motion is addressed in greater detail in the supporting memorandum filed herewith. In addition, the motion is supported by the Affidavit of Ryan J. Patane filed herewith.

The Respondents request that all deadlines be held in abeyance until this motion is decided.


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York Pathology Associates, LLC, Respondents.

**MEMORANDUM IN SUPPORT OF
RESPONDENTS' MOTION TO STRIKE MATERIALS
DESIGNATED BY APPELLANT FOR INCLUSION
IN THE RECORD ON APPEAL**

This is an appeal by the Appellant challenging a lower court order granting summary judgment to the Respondents in this medical malpractice action. As required by Rule 209, SCACR, the Appellant filed an Amended Designation of

Matter to be Included in the Record on Appeal, together with her Amended Initial Brief on May 12, 2016.

After a careful review of the lower court's file and the transcript of the motion hearing,¹ the Respondents submit that the following deposition transcript and other matters that have been designated by the Appellant are *not* filed in the lower court record nor were presented to Judge S. Jackson Kimball at the motion hearing held on August 13, 2015:

- (1) Deposition of Patricia Craig
- (2) Plaintiff's Discovery Requests and Defendants' Responses
- (3) Medical records for Patricia Craig, with the exception of the following four records:
 - (a) Fine Needle Aspiration Report (2 pages), found as Exhibit 4 of Kovacs Deposition
 - (b) Dr. Jones' Report-Pathologic Diagnosis (2 pages), found as Exhibit 2 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment
 - (c) Intraoperative Pathology Report a/k/a Surgical Pathology Report (3 pages), found as Exhibit 5 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment
 - (d) Dr. Jones' Operative Report (3 pages), found as Exhibit 5 of Kovacs Deposition and Exhibit 6 of Defendants York

¹ At the request of the undersigned, Ryan J. Patane, a law clerk with the law firm of Davidson and Lindemann, P.A., personally reviewed the contents of the record in the lower court, as contained in file number 2014-CP-46-0508, to determine what documents were contained in the lower court record. That information is included in his affidavit filed in support of this motion.

and Jenkins' Memorandum in Support of Summary
Judgment

Rule 209(b), SCACR, provides that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c), SCACR, then provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal."

The above identified deposition transcript and other materials, which were never presented to nor considered by the lower court, should not be included in the Record on Appeal. As attested to in the Patane Affidavit filed herewith, the lower court's file does not include the deposition transcript for Patricia Craig, which should therefore be excluded from the Record on Appeal. Likewise, no written discovery requests served by the Appellant nor any responses thereto as served by the Respondents were ever presented to Judge Kimball at the hearing or filed in the lower court record. As a result, the designation of "Plaintiff's Discovery Requests and Defendants' Responses" should be stricken from the Appellants' Amended Designation and such documents should be excluded from the Record on Appeal. Finally, the Appellant includes a generic, non-specific designation of "Medical records of Patricia Craig" in her Amended Designation. While it is unclear what medical records were intended to be designated by the Appellant, the lower court record only contains the four medical records (consisting of ten pages total) as

identified above and in the Patane Affidavit. The Respondents submit that any other "medical records" should be excluded from the Record on Appeal.

In sum, the Respondents request that this Court issue an order directing that the deposition transcript of Patricia Craig, the Plaintiff's Discovery Requests and Defendants' Responses, and any "medical records" (with the exception of the four records that are in the lower court record) be excluded from the Record on Appeal when it is prepared by the Appellant following submission of initial briefs.

Respectfully submitted,

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AFFIDAVIT OF RYAN J. PATANE

PERSONALLY APPEARED BEFORE ME, RYAN J. PATANE, who being
duly sworn, deposes and states as follows:

1. I am a law clerk with the law firm of Davidson & Lindemann, P.A., which represents the Respondents E. Earl Jenkins, Jr., M.D and York Pathology Associates, LLC in the above captioned appeal.

2. I was requested by Andrew F. Lindemann to review the record in the lower court, as contained in Civil Action Number 2014-CP-46-0508 to determine what documents were contained in the lower court's record.

3. I traveled to the York County Clerk of Court's Office in York, South Carolina and personally examined all of the documents, filings and other materials contained in Civil Action Number 2014-CP-46-0508.

4. I specifically looked for each of the documents designated by counsel for the Appellant Patricia A. Craig in her Amended Designation of Matter to be Included in the Record on Appeal served May 12, 2016. Based on my examination of the lower court's file, I can attest to the following:

- (a) The lower court's file does not include the deposition transcript for Patricia Craig. The only deposition transcripts in the file were for Dr. Christopher T. Jones and for Dr. Gabor Kovacs.
- (b) The lower court's file does not include any discovery requests served by the Plaintiff nor any responses thereto served by the Defendants.

5. I can further attest that the only medical records that are included in the lower court's file are as follows:

- (a) Fine Needle Aspiration Report (2 pages), found as Exhibit 4 of Kovacs Deposition

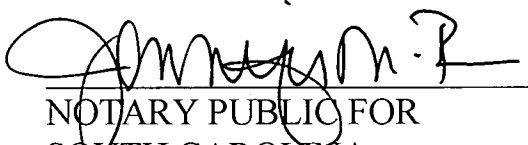
- (b) Dr. Jones' Report-Pathologic Diagnosis (2 pages), found as Exhibit 2 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment
- (c) Intraoperative Pathology Report a/k/a Surgical Pathology Report (3 pages), found as Exhibit 5 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment .
- (d) Dr. Jones' Operative Report (3 pages), found as Exhibit 5 of Kovacs Deposition and Exhibit 6 of Defendants York and Jenkins' Memorandum in Support of Summary Judgment

FURTHER, AFFIANT SAYETH NOT.



RYAN J. PATANE

SWORN TO BEFORE ME THIS 13th
DAY OF JULY 2016.



(SEAL)
NOTARY PUBLIC FOR
SOUTH CAROLINA

COMMISSION EXPIRES: 1-13-2020

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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents E. Earl Jenkins, Jr., M.D. and York Pathology Associates, LLC, does hereby certify that service of the below listed documents in the above-captioned matter 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 13th day of July 2016:

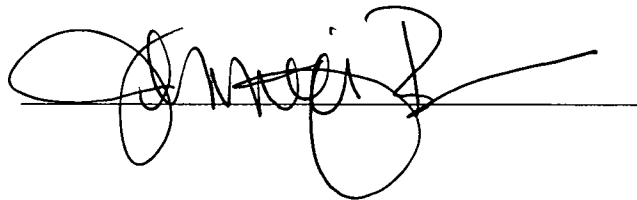
- 1. Motion to Strike Materials Designated by Appellant for Inclusion in the Record on Appeal**

2. **Memorandum in Support of Respondents' Motion to Strike Materials Designated by Appellant for Inclusion in the Record on Appeal**
3. **Affidavit of Ryan J. Pantane**

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A handwritten signature in black ink, appearing to read "Ryan J. Pantane", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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July 13, 2016

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Hand Delivered

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

JUL 13 2016

SC Court of Appeals

RE: Patricia A. Craig v. E. Earl Jenkins, Jr., MD also known as Everett Earl Jenkins, Jr., MD, Amisubub of South Carolina, Inc. d/b/a Piedmont Medical Center, and York Pathology Associates, LLC
Appellate Case Number: 2015-002174
Civil Action Number: 2014-CP-46-0508
Claim Numbers: CB137729M and CB137730M
Our File Number: 22.9851

Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies each of the below listed documents with regard to the above referenced matter.

- 1. Motion to Strike Materials Designated by Appellant for Inclusion in the Record on Appeal**
- 2. Memorandum in Support of Respondents' Motion to Strike Materials Designated by Appellant for Inclusion in the Record on Appeal**
- 3. Affidavit of Ryan J. Pantane**

Please file the originals and return a clocked-in copy of each document to me by way of my courier. I have also enclosed my firm's \$25.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

The Honorable Jenny Abbott Kitchings
July 13, 2016
Page Two

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: (w/ Enclosures)

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