

PIERCE, HERNS, SLOAN & WILSON, LLC

ATTORNEYS AND COUNSELORS AT LAW

THE BLAKE HOUSE • 321 EAST BAY STREET  
CHARLESTON, SOUTH CAROLINA 29401

POST OFFICE BOX 22437  
CHARLESTON, SOUTH CAROLINA 29413

(843) 722-7733  
(843) 722-7732 FAX  
www.phswlaw.com

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JUN 20 2016

SC Court of Appeals

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BENJAMIN C. SMOOT, II

CARL E. PIERCE, II  
LOUIS P. HERNS  
ALLAN P. SLOAN, III \*♦  
JOSEPH C. WILSON, IV †  
JAMES G. KENNEDY  
WILLIAM P. EARLY  
SONALY K. HENDRICKS †

\* MEMBER SC & FL BAR  
♦ CERTIFIED SC CIRCUIT  
COURT MEDIATOR  
† MEMBER SC, FL & GA BAR  
‡ SPECIAL COUNSEL

Direct Dial: (843) 725-7716  
E-mail: willearly@phswlaw.com

June 16, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: Clair Craver Johnson, Appellant v. Medical University of South Carolina,  
Respondent  
AND  
Clair Craver Johnson, Appellant v. John Roberts, M.D., Respondent  
Appellate Case No.: 2015-001463  
Our File Number: D2286.00

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, please accept this letter in response to Appellant's correspondence submitting the recent case of Marshall v. Dodds, Op. No. 5403 (S.C. Ct. App. Filed May 4, 2016) as supplemental authority. Contrary to Appellant's assertion, Marshall is not pertinent to the issues on review in the above-referenced appeal and should not be considered by the Court. The holding in Marshall is limited to medical malpractice actions alleging a misdiagnosis. Id. at \*4 ("[W]e hold that when a plaintiff alleges a misdiagnosis or failure to diagnose a condition within a six-year period . . . the statute of repose does not bar the cause of action merely because the physician previously misdiagnosed the condition outside the repose period"). Misdiagnosis is not at issue in the present appeal. Rather, the present case concerns allegations of malpractice stemming from a continuous course of treatment for bipolar disorder. In fact, the bipolar diagnosis in the instant case is not even challenged by the Appellant. Consequently, the Marshall Court's analysis rejecting the "first misdiagnosis rule" is applicable only to malpractice actions arising out of misdiagnosis and has no bearing on the determination of the trigger for the statute of repose in a negligent treatment case such as the instant appeal. Moreover, the Marshall opinion concludes its analysis by reaffirming our state's rejection of the continuous treatment rule, stating:

[W]e are not suggesting that the statute of repose is tolled until the termination of a physician's course of treatment. To the contrary, we hold the statute begins to run

at the time of a medical professional's alleged negligent act or omission for which the plaintiff seeks to impose liability without regard to when the course of treatment ended.

Id. at \*6. Thus, because Marshall is limited to cases involving misdiagnosis, it is not a pertinent and significant authority on the issues presently before this Court and should not be considered as such under Rule 208(b)(7), SCACR.

By copy hereof, I am serving same upon all counsel of record via U.S. Mail and email.

With kind regards,

Sincerely,



William P. Early  
*Attorney for Respondent MUSC*

WPE/kbf

cc: D. Cravens Ravenel, Esquire  
James Edward Scott, IV, Esquire  
Donald Jay Davis, Jr., Esquire  
Stephen L. Brown, Esquire  
Russell G. Hines, Esquire

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POST OFFICE BOX 22437

CHARLESTON, SOUTH CAROLINA 29413



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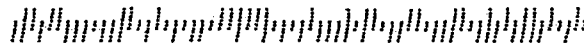
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