

2 of 2

C. HOLMES, M.D.

P.O. Box 187
Sullivan's Island, SC 29482
843.883.3010

The Honorable Jenny A. Kitchings
SCCOA
1220 Senate St.
Columbia, SC 29201

RECEIVED

Re: Holmes v. Becker et al
No. 2017-000266

MAR 08 2017

SC Court of Appeals

Dear Jenny:

Thank you for your kind letter dated February 23rd. We are timely responding to the request for clarification regarding the enclosed copy of the order on appeal. As noted in the attached copy of the 2017 order on appeal and as demonstrated in your own office, *Pro Se* Defendants' pattern and practice is to skulk around clerk's offices attempting impermissible ex parte contacts with staff regarding December 2, 2009, order in an unrelated case which Defendants know was superseded on appeal. Thank you for bringing transparency to untrustworthy Defendants' actions designed to escape the merits while evading judicial review and capable of repetition as documented herein.

First, the Court of Appeals has such jurisdiction as the General Assembly

- 3) I have been certified as an expert in state courts on these matters.
- 4) In providing this affidavit, I affirm that, to the best of my knowledge, I am not related to any party to this action. I am informed and believe that I do not know any of the parties to this action.
- 5) My expert opinion follows and in rendering this opinion, I have relied on a large number of documents supplied to me by Dr. Holmes, consisting of the East Cooper Community Hospital (ECCH) Medical Staff Bylaws, as well as a large number of credentialing and privileging documents of Dr. Holmes, from approximately 1994 to 2009.
- 6) The *Joint Commission* is an organization which accredits hospitals based on national quality of care standards. My understanding is that at all times pertinent to the matter herein, ECCH is and has been accredited by the *Joint Commission*.
- 7) As part of those standards, the *Joint Commission* requires hospitals to have bylaws and, as part of those bylaws, to provide fair hearing rights to physicians. Those standards are national and local standards.
- 8) Based on review of Dr. Holmes' credentialing file, the reappointment applications, the ECCH Medical Staff Bylaws, and a letter from Janie Sinacore-Jaberg to Dr. Holmes on December 19, 2008, it is my expert opinion that Dr. Holme's 2008 application for re-appointment and change in medical staff status in was not properly responded to by ECCH.

Article VI, Section 5, of the ECCH Medical Staff Bylaws ("Change in

Membership, Privileges or Staff Category”), states:

A staff member may, at any time, request a change of staff category (from consulting staff to associate or other staff category as in this case) by submitting a written notification to the Medical Staff Office. The Medical Staff Office will issue a letter requiring the physician to read and sign the letter stating the requirements of the provisional change in status. The request will be forwarded to the Department Chairman, then to the Credentials Committee. The Credentials Committee will recommend to the MEC the request, and the MEC will forward their recommendation to the Board of Directors for final approval. After final approval, the medical staff office will notify the physician of the final decision. The Medical Staff Office will track the provisional change for one (1) year and the Credentials Committee will evaluate the physician at that time to determine if he meets the necessary requirements set forth by the requested status change. (Emphasis supplied.)

Article V, Section 3, of the ECCH Medical Staff Bylaws (“Reappointment Process”) lays out 12 requirements for reappointment to the medical staff. Notably in this section it is stated:

[The application for reappointment will be delivered to the applicant and] must be completed and returned within 30 days to the Medical Staff Office for review. A late fee will be charged for the continued processing of the application past the 30 day deadline.

Article IV, Section 3, of the ECCH Medical Staff Bylaws (“Associate”) lays out

the qualifications for the Associate status: *[the candidate must meet all the criteria for active staff membership] except the minimum required number of admissions, procedures, or patient contact per year or preceding 12-month period.*" (emphasis added)

9) Pursuant to the ECCH Medical Staff bylaw provisions quoted above, and on the attached *Joint Commission* flow sheet, it is my opinion that Dr. Holmes requests for change in staff category would and should have been granted. This is based upon (1) Dr. Holmes clearly submitted "a written notification to the Medical Staff Office," (see attached Medical Staff Reappointment Application); (2) Dr. Holmes provided information relevant to the requirements of licensure, training, education, and health status. In addition, Dr. Holmes received the highest ratings from peers for skill, competence, and quality of care; (3) Dr. Holmes maintains that she submitted the reappointment application within the required time frame; however even if she did not, the Bylaws impose only a "late fee," not a denial of privileges; (4) If Dr. Holmes application for change in status to Associate had been approved, the Bylaws are clear that she is exempt from "required number of admissions, procedures, or patient contact per year or preceding 12-month period."

10) Both the ECCH Medical Staff Bylaws, and *Joint Commission* Standards mandate a fair hearing process when adverse credentialing decisions are made by the medical staff and hospital Governing Board. Based upon my review of Dr. Holmes' credentialing files, and the ECCH Medical Staff Bylaws, it is my opinion that Dr. Holmes was denied fair hearing rights as explicitly required by these bylaws and by the *Joint Commission* standards.

Under Article VIII, Section 2B, of the ECCH Medical Staff Bylaws the grounds

for fair hearing are specified as follows:

B. Grounds for Hearing:

Except as otherwise provided in these Bylaws, the taking or recommending of any one or more of the following actions when based on the member's professional conduct or competence, unless taken in compliance with a policy decision of the hospital (e.g., closing a department or service or physical plant changes), shall constitute grounds for a hearing pursuant to this Article:

- 1. denial of initial appointment to the medical staff;*
- 2. denial of staff reappointment;*
- 3. reduction or suspension of staff membership or clinical privileges for more than 30 days;*
- 4. termination, revocation, or reduction of staff category;*
- 5. denial or termination of clinical privileges;*
- 6. summary suspension of clinical privileges for more than thirty (30) days;*
- 7. significant consultation or co-admitting requirements other than in compliance with the Medical Staff Bylaws, Rules and Regulations or departmental rules and regulations;*
- 8. denial of requested advancement in staff category;*
- 9. denial of requested service affiliation.*

(emphasis added)

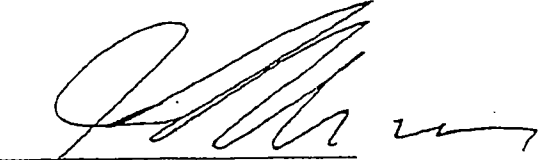
11) Privileges have value to a physician. A denial of privileges may lead to loss of income and/or adverse effects on professional standing and reputation.

12) In view of Dr. Holmes request for change in staff category not being processed properly and fairly by ECCH in terms of the applicable ECCH Medical Staff Bylaw provisions, Dr. Holmes was denied the opportunity for a change in status. Denial of access to the process under the plain language of the bylaws for requesting change in

staff category and denial of the right to participate in that process causes harm to any
physician's practice, reputation, and ability to earn a livelihood.

13) Further, by denying Dr. Holmes fair hearing rights, per the applicable provisions
of the ECCH Medical Staff Bylaw, ECCH prevented Dr. Holmes from her due process
rights, mandated by both the Joint Commission, and the ECCG Medical Staff Bylaws.

FURTHER THE AFFIANT SAITH NOT.


John Shershow, M.D.

Subscribed and sworn to before me,

Notary Public, this 5 day

of July, 2011.


NOTARY PUBLIC

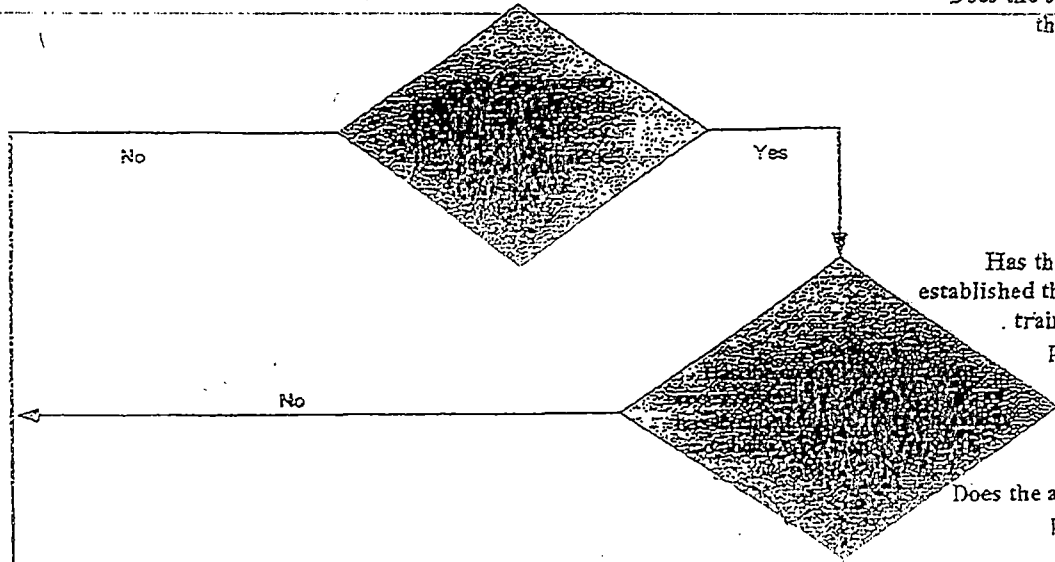
My commission expires: April 18 2015

SEALED

HELEN PAULINO
Notary Public - State of New York
No. 01PA6229073
Qualified In Queens County
My Commission Expires April 18, 2015

Process for Privileging and Reprivileging

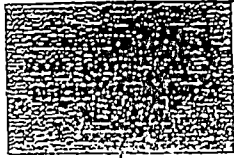
Does the organization have or plan to have the resources necessary to support the privilege?



Has the credential verification process established that the applicant has the licensure, training, education, and ability to perform the privilege?

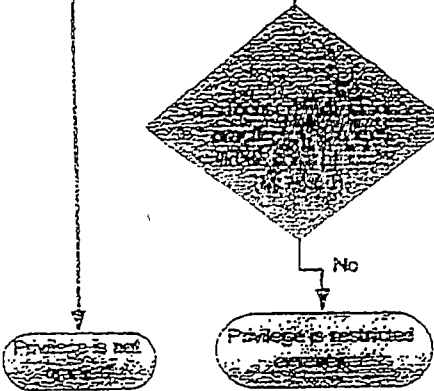
Does the applicant currently perform the privilege sought at the organization?

Grant privilege with focused practice evaluation..



Does data collected through the ongoing professional practice evaluation validate competency?

Initiate focused professional practice evaluation.



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SC Court of Appeals

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JShershow@gmail.com

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CURRICULUM VITAE

JOHN C. SHERSHOW, M.D.

Professional Experience:

- *JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS (JCAHO) (1989-2003)*
Surveyor and Senior Teaching Faculty, for the preeminent hospital and ambulatory care accreditation organization in the United States
- *PERFORMANCE IMPROVEMENT COMPANY, INC (1996 – present)*
Founder and President of this national hospital and healthcare consulting firm. Primary activities are consulting, lecturing, and providing educational courses to hospitals, ambulatory centers, and other healthcare organizations, on healthcare quality, peer review, performance measurement, medical staff credentialing, and preparation for JCAHO and other regulatory inspections. In addition, provides expert testimony on medical litigation.
- *PRIVATE PRACTICE, JOHN C. SHERSHOW, MD, PC (2010 – present)*
Private medical practice in Manhattan, New York City
- *PRESIDENT, URGENT CARE OF WYOMING, INC (2003 – present)*
Owner of an urgent care clinic in Wyoming
- *THE JOURNAL OF URGENT CARE MEDICINE (2006 – 2008)*
On the editorial board of this medical journal
- *CHECKUPS, USA, INC (2006 – 2007)*

Chief Operating Officer and Medical Director of a company developing primary care clinics for retail environments.

- *URGENT CARE ASSOCIATION OF AMERICA* (2005-06)
Director of Accreditation of the national urgent care organization
- *NORTHWEST COVENANT MEDICAL CENTER* (1995-1996)
Medical Director of a major New Jersey hospital
- *DOWNSTATE MEDICAL CENTER* (1992-1995)
Associate Dean and Associate Provost of New York State's largest medical school
- *KINGS COUNTY HOSPITAL CENTER* (1992-1995)
Medical Director of one of the largest hospitals in the United States
- *JOHN C. SHERSHOW, M.D. AND ASSOCIATES, INC.* (1977-1989)
Founder and President of one of the largest private medical groups in Massachusetts
- *ARBOUR HOSPITAL* (1978-1989)
Attending staff at one of Boston's leading private hospitals; President of the Medical Staff 1985-1989.
- *HARVARD MEDICAL SCHOOL* (1970-2000)
On the teaching faculty in numerous capacities
- *MASSACHUSETTS GENERAL HOSPITAL* (1970-2000)
Served in various capacities, including Inpatient Director (1973-77) and on the teaching faculty (1970-2000) for this internationally known hospital
- *US ARMY RESEARCH INSTITUTE OF ENVIRONMENTAL MEDICINE* (1970-1973)
A senior medical corps officer at one of the nation's largest military environmental research organizations

Academic Appointments:

- Clinical Instructor, *Harvard Medical School* (1970-2000)
- Assistant Professor, *Downstate Medical School* (1992-1995)

Education:

- Residency, *Yale University* (1969-1970)
- Residency, *University of Southern California* (1967-1969)
- Rotating Internship, *Los Angeles County Hospital* (1966-1967)
- M.D. *University of Southern California* (1966)
- B.A. (Magna cum Laude), *Harvard College* (1962)

Certification and Licensure:

- *National Board of Medical Examiners* (1967)
- Board Certified, *American Board of Psychiatry and Neurology* (1972)
- Past Licensure: California, Massachusetts, New Hampshire
- Current Licensure: New York, New Jersey

Memberships:

- Distinguished Fellow, *American Psychiatric Association*

Publications:

- 2 Books and numerous articles (detailed list available upon request)

STATE OF SOUTH CAROLINA

)IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) NINTH JUDICIAL CIRCUIT

) CASE NO.: 07-CP-10-1444

J. Doe(CHolmes),

)

)

)

)

Plaintiff,

)

CERTIFICATE OF SERVICE

-vs-

)

)

Manton Grier, James Y.

)

Becker, and Haynsworth

)

Sinkler Boyd, P.A., as

)

successor to Sinkler &

)

Boyd, P.A.

)

)

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Defendants.

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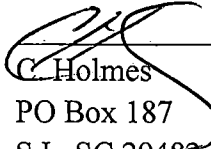
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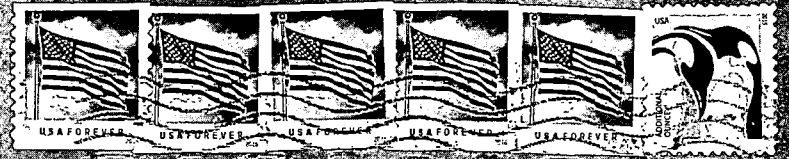
SC Court of Appeals

I hereby certify that a copy of the foregoing was served on this date on defendants' counsel of record via USPS, postage pre-paid:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated 3/6/17


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