THE STATE OF SOUTH CAROLINA
Supreme Court of South Carolina

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
MAR 21 2018
S.C. SUPREME COURT

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington,.....~~Appellant,~~ Petitioner

V.

Trident Medical Center, LLC.....Respondent.

APPENDIX

March 22, 2018

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NOV 28 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington,----------Appellant,

V.

Trident Medical Center,----------Respondent.

RECORD ON APPEAL

November 28, 2016

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Order of Febuary 5, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-5000

JIM WASHINGTON,

Plaintiff,

v.

TRIDENT MEDICAL CENTER,

Defendant.

ORDER

FILED
2016 FEB -5 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on the Motion to Dismiss filed by the Defendant Trident Medical Center, LLC. A hearing was held on January 7, 2016. The Plaintiff, Jim Washington, appeared *pro se*. William H. Harkins, Jr. appeared on behalf of the Defendant Trident Medical Center, LLC.

Memoranda of law were submitted by all parties and incorporated into the record, and oral arguments were entertained by the Court. After having reviewed the pleadings and having considered arguments and legal memoranda of the parties, the Court hereby **GRANTS** Defendant's Motion to Dismiss on the grounds that (1) Plaintiff failed to file a Notice of Intent to File Suit as a prerequisite to filing a medical malpractice action pursuant to S.C. Code § 15-79-125(A); (2) Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B); (3) This medical malpractice action did qualify for the "common knowledge" exception to an expert witness affidavit pursuant to S.C. Code § 15-36-100(C)(2) ; and (4) Plaintiff was not subject to protections afforded by the "safe harbor" provisions of § 15-36-100(C)(1).

RMOJ/1

FACTS

The Plaintiff filed a Summons and "Complaint" on September 11, 2015 alleging medical negligence arising out of medical treatment rendered to Mr. Washington at Trident Medical Center between September 23-26, 2012. Plaintiff wholly failed to file a Notice of Intent to File Suit as required by S.C. Code § 15-79-125(A). Further, Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B). There was no allegation by Plaintiff that time constraints prevented him from filing the required expert witness affidavit. *See* S.C. Code § 15-36-100(C)(1). Further, the determination of the merits of this medical malpractice action against Trident Medical Center exceed the bounds of common knowledge such that that exception to the need for an expert witness affidavit is inapplicable. S.C. Code § 15-36-100(C)(2).

Defendant Trident Medical Center filed a Motion to Dismiss Plaintiff's Summons and Complaint based on his failure to file a Notice of Intent to File Suit and an expert witness affidavit supporting his claims of medical negligence.

STANDARD OF DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct.App. 2004), *aff'd*, 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.App. 2007).

RMOA 2

PROCEDURAL REQUIREMENTS FOR MEDICAL MALPRACTICE ACTIONS

This is a medical malpractice action and therefore is governed by the procedural requirements set forth in S.C. Code §§ 15-79-125 and 15-36-100. Section 15-79-125 controls the portion of the process that commences with the filing of the Notice of Intent to File Suit and ends with the pre-litigation mediation. If the parties are unable to resolve their dispute through pre-litigation mediation, section 15-36-100 guides the parties through the process of filing the Summons and Complaint. In the instant case, Plaintiff failed to comply with the filing requirements of S.C. Code §§ 15-79-125 and 15-36-100.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code § 15-79-125 establishes the pre-litigation requirements for medical malpractice actions. Section 15-79-125(A) provides in pertinent part as follows: "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100." *Id.* Here, Plaintiff failed to file a Notice of Intent to File Suit. Plaintiff also did not file an expert witness affidavit in support of his claims of medical negligence. § 15-79-125(A). The Court finds this deficiency and failure to fail both a Notice of Intent to File Suit and an expert affidavit sufficient to dismiss this action.

The Court recognizes that 15-79-125 incorporates the expert witness affidavit requirements of 15-36-100. However, Section § 15-36-100(C)(1) provides an exception to the affidavit requirement when the applicable statute of limitations will expire within ten (10) days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert

RMOff's

affidavit could not be prepared. Section § 15-36-100(C)(1) allows the plaintiff forty-five (45) days to supplement the complaint with an expert affidavit.

In the instant action, the Court finds the Plaintiff failed to satisfy the pre-litigation requirements of § 15-79-125. The Court further finds that the "safe harbor" provisions of § 15-36-100(C)(1) are inapplicable. The Plaintiff filed a Summons and Complaint on September 11, 2015 alleging medical negligence arising out of medical treatment Mr. Washington received at Trident Medical Center between September 23-26, 2012. Accordingly, the applicable 3-year statute of limitations would not have expired within ten (10) days of filing. Further, Plaintiff did not allege in any of his pleadings that an expert witness affidavit could not be prepared due to time constraints. S.C. Code § 15-36-100(C)(1).

At the hearing regarding the instant Motion to Dismiss on January 7, 2016, Plaintiff did not produce or tender an expert witness affidavit for the Court's consideration, and he did not move the Court orally or in briefing for an extension of time to file an expert affidavit. Pursuant to the safe harbor provisions of Section § 15-36-100(C)(1), Plaintiff has forty-five (45) days or longer "as the court determines justice requires" to supplement his filing with an expert affidavit. *Id.*

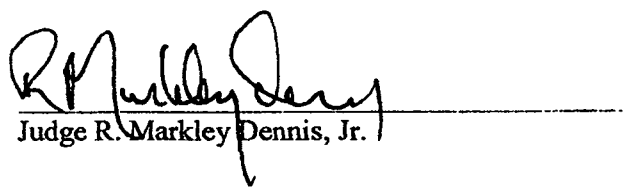
Assuming the safe harbor provisions are applicable here, the 45 days to supplement with an expert affidavit have expired since Plaintiff's filing date of September 11, 2015. Plaintiff has not moved the Court for an extension of time to file an expert affidavit, and the Court finds no good cause to allow additional time past the 45-day safe harbor to allow Plaintiff to supplement with an expert affidavit. Further, the Court finds no merit in Plaintiff's argument that his verified "Complaint" will suffice in lieu of an expert witness affidavit.

RMD 8/4

Section § 15-36-100(C)(2) provides an additional exception to the affidavit requirement when the allegation of negligence in the complaint involves subject matter "that lies within the ambit of common knowledge and experience." *Id.* Based upon the Summons and Complaint filed by the Plaintiff herein, the Court finds that the Plaintiff's allegations of medical negligence are outside the realm of common knowledge and experience. The amount, dosage, administration, and choice of anticoagulation medication to help prevent future blood clots are all issues requiring special learning and expert testimony and the determination of the merits herein exceeds the bounds of common knowledge.

Plaintiff alleges medical negligence arising out of medical treatment he received at Trident Medical Center between September 23-26, 2012. Medical malpractice actions are subject to a three-year statute of limitations. The Court finds that there are no allegations by Plaintiff herein that would trigger the "discovery rule" and nothing in the pleadings filed by Plaintiff which would otherwise toll the statute of limitations. Accordingly, the three-year statute of limitations on Plaintiff's medical malpractice claims has expired.

Now, therefore, based on the foregoing it is **ORDERED** that Defendant's Motion to Dismiss be **GRANTED** and this action be **DISMISSED** with prejudice



Judge R. Markley Dennis, Jr.

January 27, 2016
Charleston, South Carolina

RMD 8/5

Order of January 14, 2016

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-5000

FILED

2016 JAN 14 AM 11:08

JULIE J. ARMSTRONG
CLERK OF COURT

Jim Washington
PLAINTIFF(S)

Trident Medical Center
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss, filed on 10/1615, is GRANTED; Formal order to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | 2060 **Judge Code** | 1/7/16 **Date**

For Clerk of Court Office Use Only

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
By
DEPUTY CLERK

Complaint

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Jim Washington
Plaintiff(s)

vs.

Trident Medical Center
Defendant(s)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION COVERSHEET

2015 -CP- 10 -5000

(Please Print)
Submitted By: Jim Washington
Address: 204 Signet Drive
Eutawville, S.C. 29048

SC Bar #:
Telephone #: (803)490-4655
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

- [x] **JURY TRIAL** demanded in complaint. [ ] **NON-JURY TRIAL** demanded in complaint.
- [ ] This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [x] This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- [ ] Constructions (100)
- [ ] Debt Collection (110)
- [ ] Employment (120)
- [ ] General (130)
- [ ] Breach of Contract (140)
- [ ] Other (199)

Torts - Professional Malpractice
- [ ] Dental Malpractice (200)
- [ ] Legal Malpractice (210)
- [x] Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____

- [ ] Notice/ File Med Mal (230)
- [ ] Other (299)

Torts – Personal Injury
- [ ] Assault/Slander/Libel (300)
- [ ] Conversion (310)
- [ ] Motor Vehicle Accident (320)
- [ ] Premises Liability (330)
- [ ] Products Liability (340)
- [ ] Personal Injury (350)
- [ ] Wrongful Death (360)
- [ ] Other (399)

Real Property
- [ ] Claim & Delivery (400)
- [ ] Condemnation (410)
- [ ] Foreclosure (420)
- [ ] Mechanic's Lien (430)
- [ ] Partition (440)
- [ ] Possession (450)
- [ ] Building Code Violation (460)
- [ ] Other (499)

Inmate Petitions
- [ ] PCR (500)
- [ ] Mandamus (520)
- [ ] Habeas Corpus (530)
- [ ] Other (599)

Administrative Law/Relief
- [ ] Reinstate Drv License (800)
- [ ] Judicial Review (810)
- [ ] Relief (820)
- [ ] Permanent Injunction (830)
- [ ] Forfeiture-Petition (840)
- [ ] Forfeiture-Consent Order (850)
- [ ] Other (899)

Judgments/Settlements
- [ ] Death Settlement (700)
- [ ] Foreign Judgment (710)
- [ ] Magistrate's Judgment (720)
- [ ] Minor Settlement (730)
- [ ] Transcript of Judgment (740)
- [ ] Lis Pendens (750)
- [ ] Transfer of Structured Settlement Payment Rights Application (760)
- [ ] Confession of Judgment (770)
- [ ] Petition for Workers Compensation Settlement Approval (780)
- [ ] Other (799)

Appeals
- [ ] Arbitration (900)
- [ ] Magistrate-Civil (910)
- [ ] Magistrate-Criminal (920)
- [ ] Municipal (930)
- [ ] Probate Court (940)
- [ ] SCDOT (950)
- [ ] Worker's Comp (960)
- [ ] Zoning Board (970)
- [ ] Public Service Commission (990)
- [ ] Employment Security Commission (991)
- [ ] Other (999)

Special/Complex /Other
- [ ] Environmental (600)
- [ ] Automobile Arb. (610)
- [ ] Medical (620)
- [ ] Other (699)
- [ ] Sexual Predator (510)
- [ ] Pharmaceuticals (630)
- [ ] Unfair Trade Practices (640)
- [ ] Foreign Subpoenas (650)
- [ ] Motion to Quash Subpoena in Out-of-County Action (660)

Submitting Party Signature: Jim Washington **Date:** 9/11/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2015-CP-10-5000

Jury Trial Requested

Jim Washington,

Plaintiff,

vs.

Trident Medical Center

Defendant.

SUMMONS

(MEDICAL MALPRACTICE)

2015 SEP 11 AM 10: 21

TO: DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his home, 209 Signet Drive, Eutawville, South Carolina 29048, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the Complaint, and judgment by default will be entered against you.

Jim Washington
Jim Washington
Attorney for Plaintiff, Pro Se
209 Signet Drive
Eutawville, S.C. 29048

Eutawville, South Carolina
September 11, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2015-CP-10-5000

Jim Washington,
Plaintiff,
vs.
Trident Medical Center,
Defendant.

Jury Trial Requested

COMPLAINT

(Medical Malpractive) File Under S.C. §§ 15-79-125(A), 15-79-125(E)(2) and 15-36-100 (Common Knowledge).

The Plaintiff, above name, complaining of the Defendant herein, would respectfully show unto this Honorable Court: (1) Plaintiff is a citizen and resident of Orangeburg County, State of S.C. (2) That Defendant is privately own Corporation of the State of S.C. maintaining offices, agents and servants in Charleston, S.C. for business.

I. FACTUAL BASIS FOR CLAIM

This is claim for medical malpractice which occurred on September 23-26, 2012 at Trident Medical Center in North Charleston, South Carolina. It is claimed that on said date 9/23/2012 while at home, Plaintiff, Washington suffered stroke like symptoms of right side weakness of his hand and leg. Plaintiff, was taken to Trident Medical Center (herein after Trident) on 9/23/2012 by private car to Trident emergency room seeking treatment and services. After arrival at Trident defendant Trident undertook to diagnose and treat plaintiff condition. See Trident Medical Return Records (Exhibits- 1 thru 2 Lab/EKG),(Exhibit-4 section entitled Progress and Procedure) and (Clinical Impression- Exhibit-4 thru 5), and (Exhibit-6 thru 7 entitle sections History of present illness and assessment / Plan). Trident Radiologist on the above stated date performed a CT scan on Plaintiff head and found no hemorrhage or any abnormalities. The Radiologist found a small acute stroke. The treating Physician, Dr. T. Bothelo, a hospital specialist, on 9/23/2012 prescribed for secondary stroke prevention treatment, Plavix and Beta Blocker, to treat abnormal heart EKG diagnosis and CKMB elevation. See TRIDENTMED.CTR.RETURN Records (Exhibits- 6thru 7 Lab/ Assessment/Plan). The treating Physician Dr. T. Bothelo, then consult Cardiology to do Trident routine custom Transthoracic Echocardiogram Procedure of Plaintiff heart to rule in or rule possible cardiac source of embolism. The Cardiologist conducted the Transthoracic Echocardiogram Procedure of Plaintiff heart 9/24/2012. His impression was there was NO ECHOCARDIOGRAPHIC EVIDENCE FOR CARDIAC SOURCE OF EMBOLISM. See HCA TRIDENT MEDICAL CENTER- Return Record (Exhibit-12-13); See also HCA TRIDENT MEDICAL CENTER-Return Record(Exhibit- 6thru7 section Assessment/ Plan). On or about 9/24/2012 the consulting/ treating Physician Dr. Julio Rentas-Reyes, changed plaintiff medication from Plavix to Aspirin 325 mg for Secondary stroke prevention. Plaintiff remains on the Aspirin 325mg until date of discharge on 9/26/2012. See HCA TRIDENT MEDICAL CENTER- Rerun Records (Exhibit- 8 thru 9 section Discharge Instructional (Exhibit page 6). On 9/24/2012 the treating physician Dr. T. Bothelo, after having

the Cardiologist conduct Transthoracic Echocardiogram procedure of Plaintiff heart had the Radiologist conduct the MRI /MRA diagnostic procedure of Plaintiff brain. The Radiologist conducting the MRI was Dr. Aron D. Rosenthal. His finding was: Multi focal patchy restricted diffusion is present within the right parietal lobe and posterior left frontal lobe which appears to involve the cortex and subcortical white matter This extends into the left centrum semiovale. There is minimal associated edama with this abnormality. No significant mass effect is present. There is no associated intracranial hemorrhage. Postcontrast imaging demonstrates serpentine enhancement within the abnormality. The Radiologist impression was: Acute infarct... semiovale as detailed above. See HCA TRIDENT MEDICAL CENTER-Return Records (Exhibit 6 thru 7 Assessment/ Plan) and HCA TRIDENT MEDICAL CENTER-Return Records (Exhibit-16 thru 17). Trident, did not diagnose the source of Plaintiff injuries on MRI then nor during work up during CT scan. See FAMILY HEALTH CTR.-Return Records (Exhibits-6 thru 8-History, Hospital Course and Final Diagnose). Dr. Greene, inter Trident negligent treat and Diagnose then.

On 9/30/2012, Plaintiff, Washington had a second embolic stroke 4(four) days after being discharge from Trident. On 9/30/2012 Plaintiff was taken by automobile to The Regional Medical Center (hereinafter TRMC) complainting of similar right side weakness he has when admitted to admitted to Trident a few days prior. Plaintiff was admitted to TRMC emergency room for diagnosis and treatment of stroke like symptoms of right side weakness and numbness. Plaintiff was discharged from TRMC on 10/1/2012 and readmitted on 10/3/2012. On 10/1/2012 TRMC Radiologist conducted an MRI diagnostic procedure of Plaintiff brain. The Radiologist Impression of MRI was: Multiple small foci of restricted diffusion in the high left parietal cortical hemorrhage of uncertain chronicity. Given the multifocality the appearance is suggestive of an embolic phenomenon. Additional areas of chronicischemic changes are seen in the left occipital lobe. Because of the finding the treating Physician/ Hospitalist, Dr. M.K Greene, on 10/1/2012 called plaintiff at home instructing him of the likely source of his CVA was cardioembolic and that he needed to come back to the hospital to be placed on anticoagulation. Of note Dr. M.K. Greene, further noted that TRMC did receive documentation from Trident which showed a small acute stroke,but no evidence of a cardioembolic source on MRI then or during his work- up. Dr. M.K.Greene, assessment and Plan on 10/3/2012 noted: A 58 year old, African American male presenting with brain embolic CVA with brain infarction. (1).Embolic CVA with brain infarction. The patient is placed in Telemetry. Neurology has been consulted. I did order a heparin drip per Neurology protocol for anticoagulation given the possibility of embolic CVA (Transition to Coumadin relying on National Institute of Health Protocol) treat with heparin stop at 2.0 INR range continue Coumadin (monitor) follow-up will most likely prevents blood to clot which most likely prevents embolism). See Regional MED.CTR.-O'BURG/ CALHOUN- Return Records (Exhibit- 1 thru 5) VERIFIED COMPLAINT TREATED AS AFFIDAVITOF DR. Sarah Anne Ludington, a Hospitalist at TRMC; see TRMC hospital records (Exhibit- 1 thru 2, Exhibits- 31 thru 33, Exhibits- 42 thru 44, Exhibits- 47-71, Exhibits- 94

thru 121; See FAMILY HEALTH CENTERS INC-RETURN- RECORDS (Exhibits- 1 thru5 and Exhibits-6 thru 9); See Disability Determination Explanation (Exhibits- 1 thru 10.)

II.

STANDARD OF CARE

Plaintiff, Jim Washington claim is that based on Dr. M. K. Greene, opinion as a Hospitalist at TRMC, that Defendant TRIDENT was negligent and it can reasonably be inferred breach the standard of cart that generally accepted/recognized effective treatment by Hospitalist, when treatment of possible embolism is a possibility. Dr. M. K. Greene opinion is that when embolism is a possibility the standard of care generally accepted/recognized under the circumstance as a Hospitalist is immediate treatment if heparin an anticoagulate on suspect, per Neurology protocol. Plaintiff INR target range was 2.0 for Heparin treatment per Neurology protocol and to transition patient treatment to Coumadin another anticoagulant which should be monitored on discharged from the hospital to maintain the target INR therapeutic range relying on information from the National Institute of Health protocol which would most likely prevent the blood from clotting and likely prevent embolism and strokes. Plaintiff claims that Dr. Sarah Anne Ludington, a hospitalist at TRMC, verified complaint treated as an Affidavit of merit; opinion supports Der. M. K. Greene opinion on Plaintiff claim on the standard of care was breach by TRIDENT, by its negligent treatment for possible embolism. The Defendant treatment of Plavix and Aspirin 325 mg fell below the standard of care of a Hospitalist, Neurology protocol/and reckless used to save money according to custom. SEE REGIONAL MEDICAL CTR-OBUR/CALHOUN-RETURN RECORDS)(Exhibit-3 thru 4 Hospital Course and Discharge Plan) VERIFIED COMPLAINT TREATED AS ADDIDAVIT OF Dr. Sarah Anne Ludington, a Hospitalist at TRMC; See also TRMC hospital records (exhibit-1 thru 2, Exhibit- 31 thru 33, Exhibit 42 thru 44, Exhibits 47 thru 70, Exhibits 71 thru 75, Exhibit 94 thru 95, and Exhibits 96 thru 121); FAMILY HEALTH CENTER INCE-RETURN RECORDS (Exhibits-6 thru 8 History/Hospital Course/Final Discharge Diagnosis), Exhibits-1 thru 3 Subjective, Exhibits-4 thru 5 Assessment/Plan, and Exhibit-9). See Trident Med. Ctr-Return Record (Exhibits-7 Assessment and Plan: Patient will be placed on Plavix.: Allergic to Aspirin) / See (Exhibit-32 page 33 (Aspirin least costly and most common help prevent blood clot and reduce stroke risk)).

III.

PROXIMATE CAUSE

Plaintiff, Jim Washington, claim is that it can reasonable be inferred that Defendant, was reckless, breach of the standard of care was more likely than not proximate cause his injury,

permanent severe disability, impairment and pain which more likely than not, per Neurology protocol Heparin would immediately prevented. Dr. M. K. Greene, relying on Radiologist MRI finding and impression, which states: after reading the MRI last night, the radiologist call Dr. Khokhar and informed Dr. Khokhar that the patient had multiple foci of restricted diffusion in the left parietal lobe with evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. Given the multifocality it was suggested that the acute cerebrovascular accident was due to a cardioembolic Phenomenon. In addition there were additional areas of chronicisachemic change in the left occipital lobe. Dr.M. K. Greene, the admitting physician had discharge the Plaintiff on the prior from the hospital on 10/1/12. On 10/2/12, Dr. M. K. Green, noted in the record: Today I called the patient at home instructing of the likely source of his CVA was cardioembolic and that he needed to come back to the hospital regarding the need for possible anticoagulation given the possibility of embolic stroke. Dr. M.K. Greene, further noted; we did received documentation from Trident which showed a small acute stroke but no evidence of a cardioembolic source on MRI then or during work-ùp. In the assessment and plan section he noted: Embolic CVA with infarction. The patient is placed in telemetry. Neurology has been consulted. I did order a Heparin dripper Neurology protocol for anticoagulation given the possibility of embolic CVA. Plaintiff, claims Trident knew embolism was a possibility when the hospitalist, Dr. Tina Bothelo, consulted the cardiologist on 9/23/2012 to do the Transthoracic Echocardiogram Procedure to rule in or out cardioembolism as a source but negligent fail to treat heparin per neurology protocol. Plaintiff, claims that while Dr. M.K. Greene, a hospitalist at TRMC, did not explicitly stated in his opinion that Trident negligent treatment was the proximate care of Plaintiff injury, it can reasonably be inferred from, Dr. M.K. Greene opinion. See Trident Med. Ctr - Return Records (Exhibit - 16 Findings and Impression - Multi Foci). Dr. Greene infer fail to Diagnose and treat Ebolism. Therefore, it can reasonably inferred that but for the defendant Trident negligent treatment for the possibility of cardioembolism, Plaintiff injury, permanent severe disability impairment and pain most likely would not occur or most likely would have been prevented. According to the detailed discussion of Neurologist, Dr. M.I. Alhatou, with Plaintiff at TRMC," Heparin is immediately effective within 4 hours, Coumadin takes (3) to four(4) days to be effective per neurology protocol, and that heparin would be start first day of treatment to get immediate effect to reach target INR range within 4 days, when starting with a high loading heparin and coumadin doses, per neurology protocol then stop heparin at 2.0 INR target range ", Therefore, Plaintiff claims it can reasonably be inferred from, Dr. M.K. Greene, opinion Trident negligence in treatment for possible cardiocembolism breached the standard of care and more likely than not the proximate cause of Plaintiff injury, permanent severe impairments and pain, which cause was foreseeable. Reasonable inference Trident consulted cardiology for possible embolism is shown by Trident, Hospitalist consulting the cardiologist to do Trident routine custom Transthoracic Echocardiogram Procedure to rule out possible embolism as a cardiac source for

Plaintiff stroke, and the cardiologist impression: there is no echocardiographic evidence of embolism of a cardiac source. The likelihood a clot existed on 10/23/12 can reasonably infer and reasonably foreseeable from, Dr. Charles T. Staples, decision not to administer TPA clot busting Thrombolysis drug because the time of Patient arrival, Stroke symptoms was well greater than the 3(three) hours cut-off time medically recommend to used to dissolve an already existing clot. See Trident Return Records (Exhibits-1thru 5 PROGRESS AND PROCEDURES/CLINICAL IMPRESSION). (Same). See Trident Return Records (Exhibit-32 Pages 10thru 11). (Same). Therefore Plaintiff Claims, it was foreseeable as Hospitalist on 10/23/12 that a Patient with symptoms arrived to late to admister TPA, with EKG Abnormalities, with Cardioembolism as a possibility for the CVA, that her Neurologist would more likely than not cause injury by not immediately treating with Heparin per Neurology protocol to stop the clot from growing into an embolism under similar circumstances and like condition. See Trident (Exhibit-22 No Anticoagulation Discharge Instru...). See Family Health Center- Return Record (Exhibits- 6 thru 8 History/ Hospital Course/ Final Discharge Diagnosis- I called Patient at home instructing him he need to come to hospital to be put on Anticoagulation... the likely source of injury is cardioembolic... because of the multifocality .. old cortical hemorrhage of uncertain chronicity.), Exhibuts-1 thru3, Exhibits 4 thru and 9(INR and Pain). See TRMC Hospital Records- (Exhibits- 47 thru 51- I will stop heparin at 2 INR... Neurologist agree TEE Prove a cardiac Source). Exhibits- 52 thru 70, exhibits- 113 thru 118 (TEE prove a cardiac source. Intra Atrial Thrombi), Exhibits- 70 thru 75 (Heparin will be stopped when INR reaches 2.... I will now stop heparin since INR has now reach 2...Neurological Strength 5/5 except right foot 2+/5), Exhibits- 94 thru 95 (History/ Assessment/ Plan)cardioembolism is the likely source of his injury. Because of these findings I called the patient at home requesting to come back to the hospital for possible anticoagulation given the possibility of embolic CVA. Neurology has been consulted. I did order a heparin drip per neurology protocol given the possibility of embolic CVA).Exhibits-97 thru 99 (Neurologist detail discussion to plaintiff of heparin effectiveness immediately...Coumadin takes 3 to 4 days . will probably be in hospital approx.. a week... Treat with Heparin until INR reaches 2),Exhibits – 100 thru 110 (Infer immediate effect start heparin 10/3/2012 Transition to Coumadin on 10/4/2012 Discontinue heparin subcutaneous. Start Heparin drip per Neurology Protocol at high loading with high loading dose of Coumadin, decrease hours to increase Coumadin doses,, INR times 4 (four) days, stop heparin for 3(three) hours to increase INR level then make adjustment with doses for 4 (four) days to reach to target INR level of 2.0 in 4 (four) days, stop heparin at 2 0 INR maintain INR 2.0 range with Coumadin with follow-up monitoring after discharge). See Regional Medical Center- O'Burg/ Calhoun- Return Records(Verified Complaint Treated as affidavit of Dr. Sarah Anne Ludington- (Exhibits- 1thru 5 opinion supports Plaintiff theory on the standard of care issue has merits and support Dr. M.K. Greene opinion on the standard of care issue). See Disability Explanation- Exhibit-7 (ROM Limitation due to pain, Impairment Diagnosis/ Severity- Severe), Exhibit-5 symptoms and credibility and Pain, Exhibits- 8thru 10 (Assessment of individual ability to perform past relevant work/ Application of

WHEREFORE, Plaintiff Prays for judgment against the Defendants for his actual and consequential damages, for punitive damages, for costs including attorney's fees and for such other and further relief as this court may deem just and equitable.

Jim Washington

Jim Washington
Attorney for Plaintiff, Pro se
209 Signet Dr.
Eutawville, S.C. 29048
(803) 496-4655

Eutawville, South Carolina
September 11, 2015.

Answer

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Jim Washington	)	CASE NO.
☐ Plaintiff	)	2015-CP-10-5000
	)	
v.	)	MOTION AND ORDER INFORMATION
	)	FORM AND COVER SHEET
Trident Medical Center	)	
☒ Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Jim Washington, Pro Se, Bar No.	David H. Batten, Bar No. 74531
Address:	Address:
209 Signet Drive	Batten Lee PLLC
Eutawville, SC 29048	4141 Parklake Avenue, Suite 350
phone: fax:	Raleigh, NC 27612
e-mail: other:	phone: 919-439-2221 fax: 919-780-5382
	e-mail: dbatten@battenlee.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.

Signature of Attorney for ☐Plaintiff / ☒Defendant — October 14, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ 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	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE
☐ Other:	CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

SCCA/233 (11-03)

☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-5000

JIM WASHINGTON,

Plaintiff,

v.

TRIDENT MEDICAL CENTER,

Defendant.

MOTION TO DISMISS

TO: Jim Washington
209 Signet Drive
Eutawville, SC 29048
VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

You will please take notice that the Defendant Trident Medical Center (correct corporate name "Trident Medical Center, LLC")(hereinafter "Trident"), by and through its undersigned counsel, respectfully moves the Court to dismiss the above-referenced action pursuant to S.C. Code Ann. §§ 15-79-125, 15-36-100, as well as Rules 12(b)(1), 12(b)(6), and 12(c) of the South Carolina Rules of Civil Procedure.

The basis of said motion is that the Plaintiff in this alleged medical malpractice action failed to file a Notice of Intent to File Suit ("NOI") and an accompanying expert witness affidavit. By statute and by case law, such an omission by the Plaintiff and failure to file an NOI requires dismissal of the present action as well as the accompanying documents. This matter should also be dismissed because the Plaintiff has failed to support a claim upon which relief can be granted and the requisite statute of limitations has expired.

FILED
2015 OCT 16 PM 12: 04
JULIE J. ARMSTRONG
CLERK OF COURT
BY

WHEREFORE, for the reasons stated above and in any Memoranda of Law in Support of this Motion, Defendant Trident Medical Center, LLC respectfully moves the Court for entry of an Order dismissing this action with prejudice, for costs expended herein including attorney's fees, and for any further relief which the Court deems appropriate.

This 14th day of October, 2015.

BATTEN LEE PLLC

By: _____

David H. Batten (SC Bar No. 74531)
Randolph L. Lee (SC Bar No. 74532)
William H. Harkins, Jr. (SC Bar No. 77651)
Attorneys for Defendant
4141 Parklake Avenue, Suite 350
Raleigh, NC 27612
(919) 439-2221
(919) 780-5382 (fax)

2015-CP-10-5000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED,** properly addressed as follows:

Jim Washington
209 Signet Drive
Eutawville, SC 29048

This 14th day of October, 2015.

BATTEN LEE PLLC

By: _____

David H. Batten (SC Bar No. 74531)
Randolph L. Lee (SC Bar No. 74532)
William H. Harkins, Jr. (SC Bar No. 77651)
Attorneys for Defendant
4141 Parklake Avenue, Suite 350
Raleigh, NC 27612
(919) 439-222
(919) 780-5382 (fax)

FILED
2015 OCT 16 PM 12:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

4812-6410-4489, v. 1

Request sent to: HCA TRIDENT MEDICAL CENTER

REJIM WASHINGTON
Ref No N00485

Trident Medical Records- Tr. P. 3line 1-p. 7 line 12; p. 7 line 13-p. 8 line 4

RETURN RECORDS BY FAX TO SCDDS AT (866) 827-7369

PAYMENT INSTRUCTIONS (For Records/Reports only)
Complete the information below. We do not accept personalized invoices.

AUTHORIZATION – RETURN THIS COMPLETED AND SIGNED FOR PAYMENT. TO ENSURE PAYMENT, THIS COMPLETED AND SIGNED FORM MUST BE PLACED ON TOP OF THE MEDICAL EVIDENCE.

- We pay $25.00 for a copy of treatment records. Out of state facilities are paid according to the fee schedule in that state
- **Payee Name and Address.**

Health Port

Amount: $25.00

11-27-12
Authorized Signature **(Required)**

IF RETURNING BY MAIL FOLLOW DIRECTIONS BELOW

MAIL INSTRUCTIONS
Insert this page into the window envelope with the address showing. THIS PAGE MUST BE ON TOP OF YOUR REPORT.
- Mail report to address in box at right
- If you are sending reports on more than one person in the same envelope, place this page for each individual on top of his/her records.

SSA
586 SCDDS CHARLESTON
P.O. BOX 8705
LONDON, KY 40742-8705

Mail Box

- We cannot honor a bill presented more than 45 days after the close of our fiscal year which ends September 30.

THIS PAGE MUST BE ON TOP OF YOUR REPORT.

RQTC:0080281002N00485 SITE:586 DP:5
SSN:********* DOCTYPE:0001 RF:D CS:d53F

TMF326
Claim No.: N00485
FAXH (2/12)
DMA. Y

Invoice No: 0080281002
SCEIS No: 7000047759

Release of Information

D58475
73348228

DISABILITY DETERMINATION SERVICES

SOUTH CAROLINA VOCATIONAL REHABILITATION DEPARTMENT

Providing quality disability determination services to South Carolinians in a responsive, timely and cost effective manner.

Barbara G. Hollis, Commissioner

SCVRD

Charleston Regional Office • P.O. Box 190029 • North Charleston, SC 29419 • (843) 953-0300
Toll-free (800) 868-0100 • Medical Information Fax: (866) 827-7369

November 26, 2012

HCA TRIDENT MEDICAL CENTER
ATTN: MEDICAL RECORDS
9330 MEDICAL PLAZA DRIVE
CHARLESTON SC 29406

RECEIVED NOV 27 2012

RE: JIM WASHINGTON

AKA: WASHINGTON, JIMMIE
ADD: [illegible] SIGNET DRIVE
EUTAWVILLE SC 29048
Ref. No: N00485
DOB:

This patient has applied for disability benefits under the Social Security Act. We need the following information.

Treatment Records 09/01/2011 TO PRESENT

Admission/discharge summaries.

X-rays.

Emergency room records

Out-patient treatment records

See attached page for instructions on returning your report to the DDS. We pay $25.00 for a copy of treatment records. Out of State requests will be compensated according to that state's established fee schedule. **If payment is required** please sign on the line for "Provider's Signature" page and include that page as the TOP document with your report, with this letter underneath. ***You may fax your records using the 2D Bar Code Coversheet to our toll free medical fax number.*** Thank you

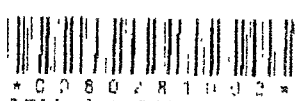
Sincerely,

Teresa Miller

Teresa Miller, Disability Examiner

PLEASE INCLUDE THIS LETTER AS PAGE 2 OF YOUR REPORT.

ENCLOSURE: Release
326/TMI



IDN: 0080281002

Claim No: N00485
L3 (8/12, mdp)
DMA: Y

DUUC4519282

9 B 12 tell

WHOSE Records to be Disclosed
NAME (First, Middle, Last): Jim Washington
SSN:
mm/dd/yy: 3

Form Approved OMB No. 0960-0623

AUTHORIZATION TO DISCLOSE INFORMATION TO THE SOCIAL SECURITY ADMINISTRATION (SSA)

** PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW **

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):

OF WHAT *All my medical records; also education records and other information related to my ability to perform tasks. This includes specific permission to release:*

1. All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) *including* and *not limited to:*
   - Psychological, psychiatric or other mental impairment(s) (excludes "psychotherapy notes" as defined in 45 CFR 164.501)
   - Drug abuse, alcoholism, or other substance abuse
   - Sickle cell anemia
   - Records which may indicate the presence of a communicable or noncommunicable disease, and tests for or records of HIV/AIDS
   - Gene-related impairments (including genetic test results)
2. Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
3. Copies of educational tests or evaluations, including Individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
4. Information created within 12 months after the date this authorization is signed, as well as past information.

FROM WHOM

- All medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SSA
- Employers, insurance companies, workers' compensation programs
- Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY SSA/DDS (as needed) Additional information to identify the subject (e.g., other names used), the specific source, or the material to be disclosed:

HCA TRIDENT MEDICAL CENTER
9330 MEDICAL PLAZA DRIVE
CHARLESTON SC 29406

From 09/01/11 to present

TO WHOM The Social Security Administration and to the State agency authorized to process my case (usually called "disability determination services"), including contract copy services, and doctors or other professionals consulted during the process. [Also, for international claims, to the U.S. Department of State Foreign Service Post]

PURPOSE Determining my eligibility for benefits, including looking at the combined effect of any impairments that by themselves would not meet SSA's definition of disability; and whether I can manage such benefits

☐ Determining whether I am capable of managing benefits ONLY (check only if this applies)

EXPIRES WHEN This authorization is good for 12 months from the date signed (below my signature)

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances in which this information may be redisclosed to other parties (see page 2 for details)
- I may write to SSA and my sources to revoke this authorization at any time (see page 2 for details)
- SSA will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of material to be disclosed.
- I have read both pages of this form and agree to the disclosures above from the types of sources listed.

PLEASE SIGN USING BLUE OR BLACK INK ONLY

INDIVIDUAL authorizing disclosure

SIGN ▶

Date Signed: 10/25/12

Street Address

Phone Number (with area code)

City

State

ZIP

IF not signed by subject of disclosure, specify basis for authority to sign
☐ Parent of minor ☐ Guardian ☐ Other personal representative (explain)

(Parent/guardian/personal representative sign here if two signatures required by State law) ▶

WITNESS *I know the person signing this form or am satisfied of this person's identity:*

SIGN ▶ Megan Kit Henning CRT

Phone Number (or Address): FD594

IF needed, second witness sign here (e.g., if signed with "X" above)
SIGN ▶

Phone Number (or Address)

The general and special authorization to disclose was developed to comply with the provisions regarding disclosure of medical, educational and other information under P.L. 104-191 ("HIPAA"), 45 CFR parts 160 and 164, 42 U.S. Code section 290dd-2; 42 CFR part 2, 38 U.S. Code section 7332; 38 CFR 1.475, 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 99 and 300; and State law

Form SSA-827 (4-2000) et (04-2000) Use 2-2000 and Later Editions Until Supply is Exhausted

Page 1 of 2

Explanation of Form SSA-827, "Authorization to Disclose Information to the Social Security Administration (SSA)"

We need your written authorization to help get the information required to process your claim and to determine your capability of managing benefits. Laws and regulations require that sources of personal information have a signed authorization before releasing it to us. Also, laws require specific authorization for the release of information about certain conditions and from educational sources.

You can provide this authorization by signing a form SSA-827. Federal law permits sources with information about you to release that information if you sign a single authorization to release all your information from all your possible sources. We will make copies of it for each source. A covered entity (that is, a source of medical information about you) may not condition treatment, payment, enrollment, or eligibility for benefits on whether you sign this authorization form. A few States, and some individual sources of information, require that the authorization specifically name the source that you authorize to release personal information. In those cases, we may ask you to sign one authorization for each source and we may contact you again if we need you to sign more authorizations.

You have the right to revoke this authorization at any time except to the extent a source of information has already relied on it to take an action. To revoke, send a written statement to any Social Security Office. If you do, also send a copy directly to any of your sources that you no longer wish to disclose information about you. SSA can tell you if we identified any sources you didn't tell us about. SSA may use information disclosed prior to revocation to decide your claim.

It is SSA's policy to provide service to people with limited English proficiency in their native language or preferred mode of communication consistent with Executive Order 13166 (August 11, 2000) and the Individuals with Disabilities Education Act. SSA makes every reasonable effort to ensure that the information in the SSA-827 is provided to you in your native or preferred language.

IMPORTANT INFORMATION, INCLUDING NOTICE REQUIRED BY THE PRIVACY ACT

All personal information collected by SSA is protected by the Privacy Act of 1974. Once medical information is disclosed to SSA, it is no longer protected by the health information privacy provisions of 45 CFR part 164 (mandated by the Health Insurance Portability and Accountability Act (HIPAA)). SSA retains personal information in strict adherence to the retention schedules established and maintained in conjunction with the National Archives and Records Administration. At the end of a record's useful life cycle, it is destroyed in accordance with the privacy provisions, as specified in 36 CFR part 1228.

SSA is authorized to collect the information on form SSA-827 by sections 205(a), 223(d)(5)(A), 1614(a)(3)(H)(i), 1631(d)(1) and 1631 (e)(1)(A) of the Social Security Act. We use the information obtained with this form to determine your eligibility, or continuing eligibility, for benefits, and your ability to manage any benefits received. This use usually includes review of the information by the State agency processing your case and quality control people in SSA. In some cases, your information may also be reviewed by SSA personnel that process your appeal of a decision, or by investigators to resolve allegations of fraud or abuse, and may be used in any related administrative, civil, or criminal proceedings.

Signing this form is voluntary, but failing to sign it, or revoking it before we receive necessary information, could prevent an accurate or timely decision on your claim, and could result in denial or loss of benefits. Although the information we obtain with this form is almost never used for any purpose other than those stated above, the information may be disclosed by SSA without your consent if authorized by Federal laws such as the Privacy Act and the Social Security Act. For example, SSA may disclose information:

1. To enable a third party (e.g., consulting physicians) or other government agency to assist SSA to establish rights to Social Security benefits and/or coverage.
2. Pursuant to law authorizing the release of information from Social Security records (e.g., to the Inspector General, to Federal or State benefit agencies or auditors, or to the Department of Veterans Affairs(VA)).
3. For statistical research and audit activities necessary to ensure the integrity and improvement of the Social Security programs (e.g., to the Bureau of the Census and private concerns under contract with SSA).

SSA will not redisclose without proper prior written consent information: (1) relating to alcohol and/or drug abuse as covered in 42 CFR part 2, or (2) from educational records for a minor obtained under 34 CFR part 99 (Family Educational Rights and Privacy Act (FERPA)), or (3) regarding mental health, developmental disability, AIDS or HIV.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about possible reasons why information you provide us may be used or given out are available upon request from any Social Security Office.

PAPERWORK REDUCTION ACT

This information collection meets the requirements of 44 U.S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 10 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING IN THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE. The office is listed under U. S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213.** You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.

HealthPort
P.O. Box 409822
Atlanta, GA 30384-9822
Fed Tax ID 58-2659941
(770) 754-6000

HealthPort INVOICE

Invoice #: 0118842159
Date: 11/28/2012
Customer #: 1142617

Ship to
TERESA MILLER
DISABILITY DETERMINATIONS
PO BOX 190022
NORTH CHARLESTON, SC 29419

Bill to
TERESA MILLER
DISABILITY DETERMINATIONS
PO BOX 190022
NORTH CHARLESTON, SC 29419

Records from
HCA TRIDENT KMC
9430 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29405

Requested By: DISABILITY DETERMINATION
Patient Name: WASHINGTON JIM

TDN NUMBER: 0050201002
SSN: 240[illegible]2542

Description	Quantity	Unit Price	Amount
Basic Fee			25.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	21	0.00	0.00
Subtotal			25.00
Sales Tax			0.00
Invoice Total			25.00
Balance Due			25.00

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 25.00 (USD)

HealthPort
P.O. Box 409822
Atlanta, GA 30384-9822
Fed Tax ID 58-2659941
(770) 754-6000

Invoice # 0118842159

Check # _____

Payment Amount $_____

Please return stub with payment.

Please include invoice number on check
To pay invoice online please go to www.HealthPortPay.com or call (770) 754-6000.
Email questions to Collections@healthport.com

TRIDENT MEDICAL CENTER
EMERGENCY DEPARTMENT
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

NAME: WASHINGTON,JIM
UNIT #: D000584739
ACCOUNT#: D00040519282

ER PHYSICIAN: BOTTI

Clinical Report - Physicians/Mid Levels
Trident Medical Center
Emergency Department
9330 Medical Plaza Drive, Charleston, SC 29406 843-797-[illegible]
09/07/2010 11:5[illegible]

Patient: WASHINGTON, JIM
[illegible] MIDDLE DR, [illegible], SC [illegible]
MRN: D00[illegible] Acct#: D00040519282
Sex: M DOB: [illegible] Age: [illegible]

Arrived: By private vehicle. Ambulatory [illegible].

HISTORY OF PRESENT ILLNESS
WEAKNESS. This started today but is intermittent by [illegible] and is still present. It has been constant. He has had weakness of the right arm (mild), right hand (mild), right leg (moderate) and right foot (moderate). No right facial weakness, left facial weakness, left arm weakness, left hand weakness or left leg weakness. No loss of sensation. The patient has no numbness. The patient has had difficulty walking. No impaired speech or swallowing or recent falls.

At the maximum deficit described as moderate. When seen in the E.D., deficit described as moderate. No dizziness, altered mental status, seizure or headache.

Usually is alert and oriented X3 and has normal mobility.

Similar symptom previously: None.

Recent medical care: Not recently seen/assessed.

REVIEW OF SYSTEMS
No fever, headache, head injury, chest pain or difficulty breathing. No cough, sore throat, abdominal pain, nausea or diarrhea. No black stools, difficulty with urination, skin rash, vomiting or bloody stools. No back pain, urinary incontinence or neck pain. Neg saddle anesth. All systems otherwise negative, except as recorded above.

PAST HISTORY
Hypertension. No history of stroke.

SOCIAL HISTORY

Patient Name: WASHINGTON,JIM Account #: D00040519282

Nonsmoker. No alcohol use during u.e.

ADDITIONAL NOTES
The nursing notes have been reviewed.

PHYSICAL EXAM
Appearance: Alert. No acute distress.
Vital Signs: Have been reviewed.
Head: Head atraumatic.
Eyes: Pupils equal, round and reactive to light.
ENT: Normal ENT inspection. Airway intact. Tympani normal.
Neck: Normal inspection. Neck supple. No meningeal signs or carotid bruit.
CVS: Normal heart rate and rhythm. Heart sounds normal. Pulses normal.
Respiratory: No respiratory distress. Breath sounds normal.
Abdomen: Soft and nontender. No organomegaly.
Back: Normal inspection.
Skin: Skin warm and dry. Normal skin color. No rash. Normal skin turgor.
Extremities: Extremities exhibit normal ROM. No lower extremity edema.
Neuro: Alert. Oriented x 3. Mood/affect normal. Speech normal. The patient has had weakness of the right arm (mild), right hand (mild), right leg (moderate) and right foot (moderate). No right facial weakness, left facial weakness, left arm weakness, left hand weakness or left leg weakness. No left foot weakness. Sensory deficit present. Altered sensation to light touch on the right leg. No altered sensation to light touch on the right side of the face or cross in right arm. Reflexes normal. No facial droop, weakness or numbness or dilated pupil. No EOM weakness or palsy, ptosis, visual field deficit or uvular deviation. No tongue deviation, difficulty swallowing, trapezius weakness or sternocleidomastoid weakness or finger-nose test abnormality on the right or left. Mild right and posterior drift.

LABS, X-RAYS, AND ECG
ECG: Normal sinus rhythm. Left atrial enlargement. Normal QRS complex. Normal axis. Non specific ST segment / T wave abnormalities. The study has been interpreted contemporaneously by me. The study has been independently viewed by me
Chest X-ray: No acute disease. The films were interpreted by the radiologist.
CT Head: No acute changes. The study was interpreted by the radiologist.
Laboratory Tests: Laboratory tests have been ordered, with results reviewed and considered in the medical decision making process. 0213:UR:RC002498: (COLL: 08/23/2012 15:37) / MsgRcvd 08/23/2012 15:54: Final results

Laboratory Test	Value
GLUCOSE BY MONITORING DEVICE	101

0213:UR:0004500: (COLL: 08/13/2012 16:40) / MsgRcvd 08/13/2012 16:22: No results available

Laboratory Test	Value
SODIUM	137
POTASSIUM	5.6
CHLORIDE	109
CARBON DIOXIDE	24

Patient Name: WASHINGTON,JIM Account #: D00040519232

Exhibit-2

26

SODIUM	135
BLOOD UREA NITROGEN	8
CREATININE	0.3
GLOMERULAR FILTRATION BY MDRD	> 60
EST CRCL/COCKCROFT-GAULT/IBW	95.0
EST CRCL/COCKCROFT-GAULT/ABW	107.3
TOTAL PROTEIN	
ALBUMIN	
CALCIUM	9.4
TOTAL BILIRUBIN	2.2
SGOT/AST	
SGPT/ALT	
ALKALINE PHOSPHATASE TOTAL	85
TROPONIN I	< 0.4
OPERATING ROOM [illegible]	324
CPKMB	
ALCOHOL (ETHANOL) BLOOD	< 10

[illegible]:ER:[illegible] (COLL: 02/23/2012 15:40) Rec'd: 02/23/2012 16:21
Final results

Laboratory Test	Value
UA COLOR	yellow
UA APPEARANCE	CLEAR
UA GLUCOSE	NEGATIVE
UA BILIRUBIN DIPSTICK	NEGATIVE
UA KETONE DIPSTICK	NEGATIVE
UA SPECIFIC GRAVITY	1.010
UA BLOOD DIPSTICK	TRACE
UA PH DIPSTICK	5.5
UA PROTEIN DIPSTICK	NEGATIVE
UA UROBILINOGEN DIPSTICK	<2.0
UA NITRITE DIPSTICK	NEGATIVE
UA LEUKOCYTE ESTERASE DIPSTICK	NEGATIVE
UA RBC	0-2
UA WBC	0-2
UA SQUAMOUS EPITHELIAL CELLS	0
UA BACTERIA	RARE
UA MUCUS	RARE
UR COCAINE	NONE DET
UR CANNABINOID (THC)	NONE DET
UR AMPHETAMINE	NONE DET
UR BARBITURATE	NONE DET
UR BENZODIAZEPINE	NONE DET
UR OPIATES	NONE DET
UR PHENCYCLIDINE (PCP)	NONE DET

[illegible]:TP:[illegible] (COLL: 02/23/2012 15:40) Rec'd: 02/23/2012 16:00
Final results

Laboratory Test	Value
PROTHROMBIN TIME	12.2
INR	1.03
PARTIAL THROMBOPLASTIN TIME	

Patient Name: WASHINGTON,JIM Account #: D00040512232

Final results

Laboratory Test	Value
WHITE BLOOD CELL	11.3
RED BLOOD CELL	5.[illegible]
HEMOGLOBIN	15.5
HEMATOCRIT	46.[illegible]
MEAN CELL VOLUME	88.4
MEAN CELL HGB	30.4
MEAN CELL HGB CONCENTRATION	34.1
RED CELL DISTRIBUTION WIDTH	14.2
PLATELET COUNT	499
MEAN PLATELET VOLUME	6.7
GRANULOCYTES %	82.1
LYMPHOCYTE %	11.0
MONOCYTE %	6.9
EOSINOPHIL %	0.2
BASOPHIL %	0.1
GRANULOCYTE #	9.40
LYMPHOCYTE #	1.3
MONOCYTE #	0.80
EOSINOPHIL #	0.0
BASOPHIL #	0.0

DIAGNOSIS AND TREATMENTS
Inclusion Criteria for Thrombolysis: Inclusion criteria has been reviewed and have failed to be met. Exclusion Criteria: Client exclusion criteria have been reviewed.
Exclusion Criteria for Thrombolysis: Exclusion criteria have been reviewed and are present.

Course in Later Probable new CVA w/ RT sided weakness; no tear/back pain to suggest aorta path; not tpa candidate due to duration; hrs; ok at head, RS, lung, ecg;
[illegible]
[illegible]: w/u neg; pt seating comfortably in bed; no change to exam; [illegible] further evaluation: no [illegible]
[illegible]/ich/men/[illegible]/chf/acs/ms/pe/dis/gtn/tmp/abw/gn/pericoronin/go path/pan/nep/asa/[illegible]/sep/bac/sig illness/alim..

Discharge case with on call health care provider, (BOTELLO call returned 10/01. Reviewed test results and need for additional work-up. Agree upon treatment plan. Health care provider will see patient in hospital. Patient/family counseled.

Disposition: admitted. Condition: stable.

CLINICAL IMPRESSION
Cerebrovascular accident. TPA was not administered because the time patient was last known well was greater than 3 hours prior to arrival.
Hypertension. Clinical picture does not suggest meningitis, encephalitis,

Patient Name: WASHINGTON,JOHN Account #: L00040513282

Exhibit-4

epidural hematoma, subdural hematoma or subarachnoid hemorrhage. Clinical picture does not suggest intracranial hemorrhage or mass, brain abscess or brain stem compression.

(Electronically signed by STAPLES, CHARLES I, MD 09/23/2012 17:24)

Any laboratory data incorporated in this document has been entered by the emergency physician and may have been summarized or otherwise modified. The original full report is available in Meditech. Please refer to PCI for the definitive site information.

Clinical Report - Nurses
Trident Medical Center
Emergency Department
9330 Medical Plaza Drive, Charleston, SC 29406 (843-797-4000)
09/23/2012 14:35

Patient: WASHINGTON, JOHN
203 SINKET DR, DUTANVILLE, SC 29448
MRN: 000 [illegible] Acct#: D0000[illegible]
Sex: M DOB: 11/11/1953 Age: 59y

Exhibit-5

TRIDENT MEDICAL CENTER
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

NAME: WASHINGTON,JIM
UNIT #: D000584759
Physician: TINA BOTELHO
Report Name: HISTORY AND PHYSICAL

ROOM #: D.613-A
ACCT #: D00040519282

Pt Location: D.T6FL

DATE OF ADMISSION: 09/23/2012

REASON FOR ADMISSION: CVA, right eye incomplete hemiparesis, uncontrolled hypertension, hyperglycemia, and leukocytosis.

HISTORY OF PRESENT ILLNESS: This is the 58-year-old black male with history of hypertension and smoking who actually quit smoking a couple years ago who has also been noncompliant with his and hypertensive therapy. The patient presents after waking this morning with weakness in his right leg and right arm. Symptoms have been stable throughout the day have not worsened or resolved. The patient denies any associated symptoms. No double vision, difficulty swallowing, or incontinence. He has no chest pain or shortness of breath. No cardiac history.

REVIEW OF SYSTEMS: 12-point review of systems otherwise entirely negative.

PAST MEDICAL HISTORY: Hypertension and tobacco abuse.

SOCIAL HISTORY: The patient lives in St. Matthew's and goes to the family health center there. He admits to drinking excessive alcohol and reports having quit smoking a few years ago.

FAMILY HISTORY: The patient does not know of any early coronary disease, diabetes or other significant medical history within first degree relatives.

ALLERGIES: ASPIRIN. REACTION IS NOT SPECIFIED.

MEDICATIONS: The patient reports to be on atenolol 50 mg as presumed daily and Lopressor 100 mg presumed daily. Nitroglycerin 0.4 mg sublingual q. 5 minutes p.r.n. for chest pain, although of note, the patient cannot recall last he saw a physician or when he took his medications last.

PHYSICAL EXAMINATION: VITAL SIGNS: On exam temperature is 98, pulses 64, respiratory rate 16, blood pressure 170s to 190 systolic and 80s to 90s diastolic. O2 sats 97% on room air.
HEENT: Normocephalic, atraumatic. Pupils equally round and reactive to light. Extraocular muscles intact. Oral mucosa clear. No lesions or thrush.
NECK: Supple. No lymphadenopathy or thyromegaly.
CARDIOVASCULAR: Distant heart sounds. Regular rate and rhythm. No appreciable murmurs, gallops or rubs. No JVD. There is no edema.
EXTREMITIES: Peripheral pulse 1 to 2+ bilaterally and symmetrical.
PULMONARY: Normal breathing.
LUNGS: Clear to auscultation bilaterally. There are no wheezes, rales or rhonchi.

Patient Name: WASHINGTON,JIM Account #: D00040519282

Exhibit-6

ABDOMEN: Normal bowel sounds, nontender, nondistended. No hepatosplenomegaly.
MUSCULOSKELETAL: The patient has full range of motion of the left side. Normal muscle strength and tone on the right. He has strength approximately 5/5 with flexion of the right upper extremity. Strength with flexion, extension with extension of the right upper extremity is diminished at 3 to 4/5 and right lower extremity 3 to 4/5 with both extension and flexion.
NEUROLOGIC: The patient is alert and oriented x3. Grossly normal motor sensory function. Cranial nerves II through XII are intact except as noted per the musculoskeletal exam. Of note, the patient was asked to ambulate as they were attempting to transfer him to his room and thought that he may be too unstable on his feet at this time. Coordination appears normal by rapid alternating movements.

LABS AND STUDIES: CT of the head shows no acute process. A CBC white count 11. 5, hemoglobin of 16.5, hematocrit 48, platelet count 452, 82 polys. Glucose is 135, AST 54, CK-MB was slightly elevated at 8.5. The troponin is negative first set.

Urinalysis trace blood, rare mucus. EKG shows sinus rhythm, rate is approximately 70 beats per minute. Voltage criteria for LVH and there is T-wave inversion in the lateral precordial leads.

ASSESSMENT/PLAN:
1. CVA right hemiparesis incomplete. The patient will be placed on Plavix as he has an allergy to aspirin. We will need to determine what his allergy actually is. Blood pressure control per stroke protocol. Ultrasound carotid repeat CT 24 to 48 hours versus MRI/MRA of the brain and Neurology to be consulted.
2. Elevated CK-MB with abnormal EKG. Cardiology is consulted, start statin therapy. Check lipids in the morning, telemetry and continue serial CIPs q.8 h. for a total of three sets. The patient will be started on Plavix and beta blocker
3. Uncontrolled hypertension management per stroke protocol.
4. Hyperglycemia. No history of diabetes, polydipsia, polyuria unexplained weight loss, blurred vision, A1c is pending, evaluate and treat per sliding scale insulin, Accu-Cheks q.a.c. and h.s. hospital protocol.
5. Leukocytosis. Chest x-ray has not been in the ER cultures, urine and blood.
6. DVT prophylaxis. SCDs.

TB/MedQ
DD: 09/23/2012 06:35 PM
DT: 09/23/2012 07:21 PM
Job #: 893978/531563686
Authenticated by Tina Botelho, MD On 10/04/2012 11:13:51 AM

Electronically Signed by TINA BOTELHO on 10/04/12 at 1215

Patient Name: WASHINGTON,JIM Account #: D00040519282

Exhibit-7

TRIDENT MEDICAL CENTER
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

NAME: WASHINGTON,JIM
UNIT #: D000584759
Physician: VEERAL LAL
Report Name: DISCHARGE SUMMARY

ROOM #: D.613-A
ACCT #: D00040519282

Pt Location: D.T6FL

DATE OF ADMISSION: 09/23/2012 DATE OF DISCHARGE: 09/26/2012

PRIMARY CARE PHYSICIAN: None.

CONSULTATION: Julio Rentas-Reyes, M.D.

DISCHARGE DIAGNOSES:
1. Acute cerebrovascular accident, left frontoparietal area.
2. Uncontrolled accelerated hypertension.
3. Tobacco abuse.

DISCHARGE MEDICATIONS:
1. Aspirin 325 mg p.o. daily.
2. Amlodipine 10 mg p.o. daily.
3 Pravastatin 20 mg p.o. h.s.
4. Nicotine patch 14 mg daily for 6 weeks, then 7 mg daily 2 weeks.

PROCEDURES PERFORMED:
1. MRI with MRA of the brain that was suggestive of acute frontoparietal ischemic stroke.
2. Carotid artery duplex that was suggestive of mild bilateral carotid artery stenosis.
3. Echocardiogram that was suggestive of preserved left ventricular function with no major valvular abnormalities. No source of any thrombus.
4. Lipid profile with a cholesterol of 162, triglyceride of 79.

BRIEF HISTORY OF PRESENT ILLNESS: The patient was admitted with right-sided weakness. Please review H and P dictated by Dr. Tina Botelho on September 23.

HOSPITAL COURSE: During the hospital stay, the patient was placed in the Stroke Unit with serial neuro checks. The patient's right-sided weakness was slightly improving every day. Blood pressure was controlled as per stroke protocol. The patient was initially was placed on Plavix, Lipitor, and DVT prophylaxis. The patient's weakness was improving, PT/OT was started, had extensive workup, the results as mentioned in the procedure list. The patient is ambulating when assisted with PT, using his right hand to eat and drink. Vitals were fairly stable with no objective finding on physical exam, except power was 4/5 on the right side. So the patient needs to have aggressive physical therapy down the road and a followup appointment with clinic will be arranged before the patient will go home with medications.

VL/MedQ
DD: 09/26/2012 10:36 AM
DT: 09/26/2012 11:03 AM

Patient Name: WASHINGTON,JIM Account #: D00040519282

Job #: 902834/531958003
Authenticated by Veeral Lal On 09/30/2012 03:18:56 PM

Electronically Signed by VEERAL LAL on 09/30/12 at 1620

Patient Name: WASHINGTON,JIM Account #: D00040519282

EKG Report
Trident Special Testing
9330 Medical Plaza Dr
Charleston, SC 29406

Patient: WASHINGTON,JIM
Unit #: D000584759

Service Date: 09/23/12
Service Time: 1539

Test Reason :
Blood Pressure : ***/*** mmHG
Vent. Rate : 068 BPM Atrial Rate : 068 BPM
P-R Int : 156 ms QRS Dur : 086 ms
QT Int : 406 ms P-R-T Axes : 051 -16 070 degrees
QTc Int : 431 ms

Normal sinus rhythm
Possible Left atrial enlargement
Nonspecific ST and T wave abnormality
t wave inversion v4-v6;

Referred By: SELF REFERRED Overread By: CHARLES STAPLES MD

Electronically Signed by CHARLES T STAPLES on 09/24/12 at 1111

Patient Name: WASHINGTON,JIM Account #: D00040519282

EKG Report
Trident Special Testing
9330 Medical Plaza Dr
Charleston, SC 29406

Patient: WASHINGTON,JIM
Unit #: D000584759

Service Date: 09/25/12
Service Time: 0652

Test Reason :
Blood Pressure : ***/*** mmHG
Vent. Rate : 049 BPM Atrial Rate : 049 BPM
P-R Int : 146 ms QRS Dur : 088 ms
QT Int : 450 ms P-R-T Axes : 036 005 030 degrees
QTc Int : 406 ms

Marked sinus bradycardia
Minimal voltage criteria for LVH, may be normal variant
ST and T wave abnormality, consider anterolateral ischemia
Abnormal ECG
When compared with ECG of 23-SEP-2012 15:39,
Nonspecific T wave abnormality now evident in Inferior leads

Referred By: TINA BOTELHO Overread By: MARK COKER MD

Electronically Signed by MARK A COKER on 09/25/12 at 1049

Patient Name: WASHINGTON,JIM Account #: D00040519282

TRIDENT MEDICAL CENTER
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

NAME: WASHINGTON,JIM
UNIT #: D000584759
Report Name: Echocardiogram

ROOM #: D.613-A
ACCT #: D00040519282
Pt Loc: D.T6FL

Trident Medical Center
9330 Medical Plaza Drive
Charleston, SC 29406
(843)847-7000

Transthoracic Echocardiogram
2D, M-mode, Doppler, and Color Doppler

Name: JIM WASHINGTON
URN: D695001
Study date: 24-Sep-2012
BP: 115/ 72
Heart rate: 59 bpm
DOB: [redacted]
Age: 58 years
Gender: Male
Height: 65 in
Weight: 228 lb
BSA: 2.09 m

Sonographer: Caitlin Gillmann, RCS
Reading Group: Trident Cardiology
Reading Physician: Chris Kennedy, MD

INDICATIONS: Cerebrovascular accident.

HISTORY: PRIOR HISTORY: Risk factors: hypertension.

PROCEDURE: The procedure was performed in the echo lab. This was a routine study. The transthoracic approach was used. The study included complete 2D imaging, M-mode, complete spectral Doppler, and color Doppler. The ordering physician was Dr. Botelho. Image quality was adequate.

SYSTEM MEASUREMENT TABLES

2D
LA Diam: 3.8 cm
EF(Teich): 76.2 %
IVSd: 1.1 cm
LVIDd: 5.3 cm
LVIDs: 2.9 cm
LVPWd: 1.1 cm

MM
AV Cusp: 2 cm
Ao Diam: 3.2 cm

Patient Name: WASHINGTON,JIM Account #: D00040519282

Exhibit - 12

LEFT VENTRICLE: Size was normal. Systolic function was normal. There were no regional wall motion abnormalities. Wall thickness was normal.

AORTIC VALVE: The valve was trileaflet. Leaflets exhibited normal thickness and normal cuspal separation. DOPPLER: There was no stenosis. There was no significant regurgitation.

AORTA: The root exhibited normal size.

MITRAL VALVE: Valve structure was normal. There was normal leaflet separation. DOPPLER: There was no evidence for stenosis. There was trivial regurgitation.

LEFT ATRIUM: Size was normal.

RIGHT VENTRICLE: The size was normal. Systolic function was normal. Wall thickness was normal.

PULMONIC VALVE: Not well visualized. DOPPLER: There was mild regurgitation.

PULMONARY ARTERY: The size was normal.

TRICUSPID VALVE: The valve structure was normal. There was normal leaflet separation. DOPPLER: There was no evidence for tricuspid stenosis. There was trivial regurgitation.

RIGHT ATRIUM: Size was normal.

PERICARDIUM: There was no pericardial effusion. The pericardium was normal in appearance.

IMPRESSIONS:
There was no echocardiographic evidence for a cardiac source of embolism.

SUMMARY:

- Left ventricle: Systolic function was normal. There were no regional wall motion abnormalities.

Prepared and signed by

Chris Kennedy, MD
Signed 24-Sep-2012 10:55:00

Patient Name: WASHINGTON,JIM Account #: D00040519282

Exhibit-13

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX #: 843-847-4563

Name: WASHINGTON,JIM
Phys: STAPLES,CHARLES T
DOB: 10/14/1953 Age: 58 Sex: M
Acct· D00040519282 Loc: D TED
Exam Date: 09/23/2012 Status: REG ER
Radiology No
Unit No: D000584759

EXAMS:
003080737 PORTABLE CHEST

EXAM REASON :
HTN; CHF

HISTORY
Shortness of breath

Comparison None.

Findings The heart is not not enlarged and the pulmonary vasculature is within normal limits. There are no acute infiltrates or pleural effusions

Impression No acute cardiopulmonary disease

** Electronically Signed by M D Mark L Greenslit **
** on 09/23/2012 at 1630 **
Reported and signed by Mark L Greenslit, M.D

CC· CHARLES T STAPLES

Dictated Date/Time 09/23/2012 (1630)
Technologist TAMMY N JOHNSON

Transcribed Date/Time 09/23/2012 (1630)
Prepared By PHY GREMA
Electronic Signature Date/Time 09/23/2012 (1630)
Orig Print D/T: S 09/23/2012 (1635)
BATCH NO N/A

PAGE 1 Signed Report

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE # 843-847-4900
FAX #. 843-847-4563

Name. WASHINGTON,JIM
Phys. STAPLES,CHARLES T
DOB· 10/14/1953 Age. 58 Sex. M
Acct D00040519282 Loc D TED
Exam Date: 09/23/2012 Status· REG ER
Radiology No·
Unit No. D000584759

EXAMS	EXAM REASON
003080743 CT HEAD WITHOUT CONTRAST	RT SIDED WKNESS; ICH

HISTORY·
Right-sided weakness

COMPARISON·
None.

TECHNIQUE:
Axial CT images of the brain were obtained without intravenous contrast using a slice thickness of 5 mm.

FINDINGS
The images show the ventricles to be normal in size and configuration without evidence of displacement No intraparenchymal or abnormal extra-axial fluid collections are seen. No areas of hemorrhage, infarction or mass effect are identified.

No significant inflammatory changes are demonstrated in the paranasal sinuses

IMPRESSION
NO ACUTE INTRACRANIAL ABNORMALITY

** Electronically Signed by M D Mark L Greenslit **
** on 09/23/2012 at 1601 **
Reported and signed by: Mark L Greenslit, M D.

CC. CHARLES T STAPLES

Dictated Date/Time. 09/23/2012 (1601)
Technologist: KATIE M OLIVER

Transcribed Date/Time: 09/23/2012 (1601)
Prepared By PHY.GREMA
Electronic Signature Date/Time 09/23/2012 (1601)
Orig Print D/T· S 09/23/2012 (1605)
BATCH NO: N/A

Exhibit-15

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE # 843-847-4900
FAX #: 843-847-4563

Name: WASHINGTON,JIM
Phys: BOTELHO,TINA
DOB· 10/14/1953 Age. 58 Sex. M
Acct: D00040519282 Loc D 613 A
Exam Date. 09/24/2012 Status. ADM IN
Radiology No.
Unit No· D000584759

EXAMS·
003080818 MRI BRAIN W/WO CONTRAST

EXAM REASON .

HISTORY
Right-sided weakness

COMPARISON:
Head CT from September 23, 2012

TECHNIQUE
Multiplanar multi-sequence MR imaging of the brain was performed before and after the uneventful intravenous administration of 20 mL of Magnevist contrast

FINDINGS
Multi focal patchy restricted diffusion is present within the right parietal lobe and posterior left frontal lobe which appears to involve the cortex and subcortical white matter. This extends into the left centrum semiovale There is minimal associated edema with this abnormality. No significant mass effect is present There is no associated intracranial hemorrhage Postcontrast imaging demonstrates serpentine enhancement within the abnormality.

The ventricles are normal in size and position. No midline shift or mass effect. No mass lesions. The posterior fossa and brainstem are unremarkable. Normal flow voids are present The orbits are unremarkable The paranasal sinuses and mastoid air cells are clear

IMPRESSION·
Acute infarct within the posterior left frontal lobe, left parietal lobe, and left centrum semiovale as detailed above.

** Electronically Signed by M.D. Aron D. Rosenthal **
** on 09/24/2012 at 1333 **
Reported and signed by. Aron D Rosenthal, M.D.

Exhibit-16

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX # 843-847-4563

Name: WASHINGTON,JIM
Phys: BOTELHO,TINA
DOB. 10/14/1953 Age 58 Sex: M
Acct. D00040519282 Loc: D 613 A
Exam Date. 09/24/2012 Status. ADM IN
Radiology No.
Unit No· D000584759

EXAMS
003080818 MRI BRAIN W/WO CONTRAST
<Continued>

EXAM REASON .

CC TINA BOTELHO

Dictated Date/Time. 09/24/2012 (1333)
Technologist SUSAN R. WHITE, R T.
Transcribed Date/Time 09/24/2012 (1333)
Prepared By PHY.ROSAR1
Electronic Signature Date/Time 09/24/2012 (1333)
Orig Print D/T S 09/24/2012 (1337)
BATCH NO N/A

PAGE 2 Signed Report

Exhibit-17

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #. 843-847-4900
FAX #: 843-847-4563

Name. WASHINGTON,JIM
Phys: BOTELHO,TINA
DOB: 10/14/1953 Age: 58 Sex: M
Acct: D00040519282 Loc: D 613 A
Exam Date: 09/24/2012 Status: ADM IN
Radiology No.
Unit No: D000584759

EXAMS
003080819 MRA HD W/O CONT

EXAM REASON.:

HISTORY:
Right-sided weakness

COMPARISON:
None

TECHNIQUE·
Multiplanar multi-sequence MR imaging of the head was performed using 2-D time-of-flight imaging Maximum intensity projection rotational images were also provided

FINDINGS
The internal carotid arteries are normal bilaterally. The anterior, middle, and posterior cerebral arteries are normal The basilar artery and visualized portions of the distal vertebral arteries are normal

IMPRESSION
Normal MRA of the head.

** Electronically Signed by M D. Aron D. Rosenthal **
** on 09/24/2012 at 1334 **
Reported and signed by· Aron D Rosenthal, M.D.

CC. TINA BOTELHO

Dictated Date/Time 09/24/2012 (1334)
Technologist SUSAN R. WHITE, R T

Transcribed Date/Time: 09/24/2012 (1334)
Prepared By PHY ROSAR1
Electronic Signature Date/Time 09/24/2012 (1334)
Orig Print D/T: S 09/24/2012 (1339)
BATCH NO. N/A

PAGE 1 Signed Report

Exhibit-18

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX #: 843-847-4563

Name: WASHINGTON,JIM
Phys: BOTELHO,TINA
DOB· 10/14/1953 Age· 58 Sex: M
Acct: D00040519282 Loc: D 613 A
Exam Date: 09/24/2012 Status. ADM IN
Radiology No.
Unit No: D000584759

EXAMS	EXAM REASON
003080821 CAROTID ARTERY DUPLEX BIL	STROKE

<Continued>

** Electronically Signed by M D. Joseph M Mullaney **
** on 09/24/2012 at 1252 **
Reported and signed by. Joseph M. Mullaney, M.D

CC. TINA BOTELHO

Dictated Date/Time 09/24/2012 (1252)
Technologist JACQUELINE EVANS RDMS
Transcribed Date/Time 09/24/2012 (1252)
Prepared By PHY.MULJO
Electronic Signature Date/Time. 09/24/2012 (1252)
Orig Print D/T S 09/24/2012 (1257)
BATCH NO N/A

PAGE 2 Signed Report

Exhibit- 2D

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX #: 843-847-4563

Name WASHINGTON,JIM
Phys: BOTELHO,TINA
DOB. 10/14/1953 Age: 58 Sex: M
Acct: D00040519282 Loc. D 613 A
Exam Date. 09/24/2012 Status: ADM IN
Radiology No
Unit No: D000584759

EXAMS. EXAM REASON.
003080821 CAROTID ARTERY DUPLEX BIL STROKE

HISTORY
Cerebrovascular accident, left side numbness

Duplex evaluation of the carotid and vertebral arteries was performed

Findings

There is calcific plaque of the carotid bifurcations The vertebral arteries are patent with antegrade flow.

Peak velocities in centimeters per second are as follows

Right

CCA 81

ECA 110

ICA 84

ICA diastolic 29

Vertebral 33

IC/CC ratio 1 0

Left

CCA 69

ECA 66

ICA 86

ICA diastolic 25

Vertebral 56

IC/CC ratio 1 2

Impression·

1 Patent vertebral arteries with antegrade flow
2 Bilateral less than 50% internal carotid artery stenoses.

Measurements were obtained using NASCET type criteria

Exhibit-19

DISCHARGE INSTRUCTIONS 09/26/12 1231 KD

DISCHARGE ASSESSMENT/INSTRUCTIONS

Type of Discharge instructions: REGULAR
Date of Discharge: 09/26/12 Discharge To: HOME
Time of Discharge: 1231 Mode of Discharge: PRIVATE Accompanied at Discharge: FAMILY
LOC: ALERT Bowel Elim Pattern: WNL Dysuria: N
Oriented To: X3 Last BM: 09/23/12 Dysuria Type:

Self Care Status: PART ASST Fever: N Pain: N Pain controlled: Skin Impaired: N
Tele box retrieved/returned: Y
Diet- LOW SALT LOW CHOLESTEROL Pt to monitor weight post discharge? Y
COMMENTS:
:

* with:
Phone: Follow-Up Appointment:
* Call for an Appointmentwith: UNDEFINED Undefined Provider
Phone: . Follow-Up Appointment:
Health Agency Referral:
Discharge Comment:FAMILY HEALTH CENTER IN ST. MATTHEWS OR ORANGEBURG FOLLOW UP 3WEEKS

=========INSTRUCTIONS=========

Dressing, Treatment, Special Equipment
:
.

Activity (Special Limitations)
: AS TOLERATED
.
.

Notify MD if you Experience the Following Symptoms
: CALL YOUR MD WITH ANY QUESTIONS OR CONCERNS
:

<Special Instructions>
:
:
:

IV/INT Removed: YES Foley removed/voided prior to discharge: N/A
Medications Ordered to be Taken at Home: Y

Is patient being discharged on:

Anticoagulation instructions to pt/family: N
Patient educated on follow up monitoring for warfarin after discharge: N
Prescriptions to Pt/Family: Med Instructions to Pt/Family? Y
RX Comment: X2
PT or caregiver instructed/counseled drug, food interactions Y
Patient instructed to pick up home medications from pharmacy N/A

Medication list has been reviewed with PT or caregiver.

 Exhibit-22

DISCHARGE INSTRUCTIONS 09/26/12 1231 KDB

They have been instructed to discard their old list and update any records with all medication providers or retail pharmacies: Y
Print Suicide Risk Education: N
Home Management Plan completed and given to patient/parent/guardian
Infectious Disease Status: None

===PRINTED EDUCATION===
PATIENT INFO BOOK/EDUCATION given to PT/Sig Other/Next Care Provider on admission/during stay regarding Stroke/TIA education to include EMS activation, modifiable risk factors, and warning signs and symptoms Heart Failure instructions to include diet, activity, symptoms worsening, and weight monitoring. Other education to include Medications, Follow-up Appts, Food/Drug Interactions, Smoking Cessation, Fall Prevention, Pain Mgmt/PCA Education, Prevention of Infection.
Booklet/Education Received: Y

Pt educated on risk factors for Stroke: Y
Pt educated on warning signs of Stroke: Y
Patient educated on need for follow up/monitoring after discharge: Y
Patient educated on medication(s) after discharge: Y
Patient educated on compliance with discharge instructions: Y
Patient educated on dietary needs after discharge: Y
Patient educated on adverse drug reactions: Y
How to Activate EMS: Y

GUIDELINES FOR HEALTHY LIVING

Smoking:
-No Smoking/No tobacco products/Avoid exposure to second hand smoke.
-Surgeon General's Warning: Quitting smoking now greatly reduces serious risk to your health.
-South Carolina Tobacco Quitline-Quit for Keeps: 1-800-QUITNOW (1-800-784-8669).

Obesity/Weight Monitoring:
-Obesity greatly increases your risk of illness.
-A healthy diet, regular physical exercise and weight monitoring are

important for maintaining a healthy lifestyle.

*Call Your Doctor Immediately If You Experience the Following Heart Failure Symptoms
Weight gain of 3-5 pounds in 1-2 days; increased swelling of hands, feet, ankles, or stomach; sudden onset of shortness of breath while lying flat in bed; dry hacking cough; or using more than two pillows on a regular basis.
Call 911 if you think that you are having a Heart Attack
Or if you experience any of the following symptoms: uncomfortable pressure, fullness or pain in the chest, back, shoulder, arm, neck, or jaw areas; shortness of breath; sweating or nausea (sick to stomach)

Stroke: Stroke Modifiable Risk Factors
-Monitor your blood pressure; if it is high, make sure you are treated.
-Find out if you have atrial fibrillation (an irregular heartbeat that allows blood to pool in the heart and cause blood clots).
-Stop smoking
-Check your cholesterol levels and make sure bad cholesterol is controlled.
-Manage your Diabetes (good control of blood sugar levels).
-Exercise often.
-Eat foods low in sodium (salt) and saturated/trans fats.
-Monitor circulation problems with the help of your doctor.

*If you have questions regarding your blood glucose levels or managing diabetes, please contact the Diabetes Education Program at 843-847-5000.

Immunizations:
*If you received the Pneumococcal or Influenza Vaccine during this hospital stay, be sure to review the Vaccine Information Statement given to you on admission.

-Influenza (Flu) is a serious respiratory disease caused by a virus, which spreads from person to person through coughing or sneezing. For most people, it lasts only a few days, but some may need to be hospitalized. Influenza kills about 36,000 people each year in the United States, mostly among the elderly.
-Influenza vaccination is recommended yearly from October to March.
-Pneumococcal disease is a serious disease, which kills more people in the United States each year than all other vaccine-preventable diseases combined.
-Pneumococcal vaccine can be given any time during the year and can be given concurrently with all other vaccines, including the influenza vaccine. The vaccine is usually given once in a lifetime; however, some people need 2 doses.
TALK WITH YOUR PRIMARY CARE PHYSICIAN ABOUT WHETHER THE FLU OR PNEUMOCOCCAL VACCINE IS RECOMMENDED FOR YOU

Exhibit-24

DISCHARGE INSTRUCTIONS 09/26/12 1231 KD

Special Instructions/ Type of procedure: Stroke/TIA
DISCHARGE FINANCIAL STATUS STOP BY CASHIER/SVC DEPT
Sent Home with all Bedside Belongings: Y Did patient have sedation in the last 24hrs?
Adult (>18y) smoking counseling done? Y Printed Instructions Given: Y
Smoking status for patients 13 years old or older: Former smoker
I have received all personal belongings/safe valuables/meds
I have received a copy and understand the above instructions
Signature/Responsible Party: _____
Signature of RN/LPN: KATRINA B. LPN
Signature of RN/LPN as 2nd verifier of Meds: JAMIE H RN
Did patient request electronic discharge instructions? N
Patient email address:
Was patient provided information to access their electronic instructions:
External device method:
Wound VAC Date Initiated: Therapy Mode: Pressure(mm): DC:

Location 1 Type. Stage: Resolved:
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage: TX/Comment:
Drng Amt:
W. Color:
W. Odor:
Dressing:

Location 2 Type: Stage: Resolved:
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage: TX/Comment:
Drng Amt:
W. Color:
W. Odor.
Dressing:

Location 3 Type: Stage: Resolved:
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage: TX/Comment:
Drng Amt:
W. Color:
W Odor:
Dressing:

Location 4 Type: Stage: Resolved.
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage: TX/Comment:
Drng Amt:
W Color:
W. Odor:
Dressing:

Exhibit-25

DISCHARGE INSTRUCTIONS 09/26/12 1231 KI

Location 5 Type: Stage: Resolved.
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage: TX/Comment:
Drng Amt:
W. Color:
W. Odor:
Dressing:

Location 6 Type: Stage: Resolved:
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage: TX/Comment:
Drng Amt:
W. Color:
W. Odor:
Dressing:

Location 7 Type: Stage: Resolved.
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage· TX/Comment:
Drng Amt:
W. Color:
W. Odor:
Dressing:

Location 8 Type: Stage: Resolved:
Measured: Length (cm) Width (cm) Depth (cm)
Remeasure:
Drainage: TX/Comment:
Drng Amt:
W. Color:
W. Odor:
Dressing:

Patient or caregiver refuses to receive pneumococcal vaccine:
Patient or caregiver refuses to receive influenza vaccine:

Vaccine status:
Influenza vaccination status-
Pneumococcal vaccination status-

Estimated pneumococcal vaccine admin date:
Estimated influenza vaccine admin date:

Patient or caregiver refuses to receive Pneumoccocal Vaccine:
Patient or caregiver refuses to receive Influenza Vaccine:

Exhibit-26

DISCHARGE INSTRUCTIONS 09/26/12 1231 KD

Home Medications:
amLODIPine BESYLATE (NORVASC) 10 MG
10 MG PO DAILY
Last Taken: 09/26/12
ASPIRIN (ASPIRIN) 325 MG
325 MG PO DAILY
Last Taken: 09/26/12
NICOTINE (NICODERM CQ) 1 EACH
14 MG TRANSDERM DAILY
Last Taken: UNKNOWN Dose: UNKNOWN
PRAVASTATIN SODIUM (PRAVASTATIN SODIUM) 20 MG
20 MG PO DAILY
Last Taken: UNKNOWN Dose: UNKNOWN

Monogram Initials		Name	Nurse Type
KDB	DNUR.KXG02	BRADWELL,KATRINA D	LPN

Exhibit-27

Trident Health System
Stroke/TIA Discharge Instructions
WASHINGTON, JIM

Stroke warning signs and symptoms may include but are not limited to:

* Sudden numbness or weakness of the face, arm or leg, especially one one side of the body
* Sudden confusion, trouble speaking or understanding
* Sudden trouble seeing in one or both eyes
* Sudden severe headache with no known cause
* Sudden trouble walking, dizziness, loss of balance or coordination

What is a Stroke?

A stroke occurs when the blood supply to a blood vessel in the brain is blocked or a blood vessel breaks causing brain cells in the blood vessel area to die Brain cells do not regenerate The problems experienced after a stroke (like the inability to move one side of the body like before numbness on one side of the body, speech or visual problems are usually the result of brain cells that have died due to stroke People who have had one stroke are at risk of having another stroke It is important that you work to prevent stroke

What is a TIA (Mini Stroke)

Transient Ischemic Attacks (TIA) are brief episodes of stoke-like symptoms that last from a few minutes to 24 hours TIAs don't cause permanent disability but they can be serious warnings of an impending stroke

What to do if you are having symptoms: Activation of the Emergency Medical System (EMS)

Not all warning signs occur in every stroke Do not ignore signs of a stroke even if they go away!

* Check the time When did the first warning sign or symptom start? You or the person with you will be asked this important question later This is very important because if given within hours of the start of the symptoms, a clot-busting drug can reduce long-term disability for the most common type of stroke

* If you have one or more stroke symptoms that last more than a few minutes, do not delay! **Immediately call 9-1-1** or the Emergency Medical System (EMS) number so an ambulance can quickly be sent for you **DO NOT DRIVE YOURSELF!**

* If you are with someone who may be having stroke symptoms, immediately call 9-1-1 or EMS Expect the person to resist going to the hospital Remember Time Lost is Brain Lost

* When communicating with EMS or the hospital be sure to use the word 'STROKE'

Personal Risk Factors for Stroke/TIA may include, but are not limited to:

* Risk Factors that cannot change
  * Age > 55 - stroke risk doubles each decade after 55
  * Heredity (Direct relatives with history of stroke)
  * Prior stroke, TIA, Heart Attack, Carotid Artery Disease or Peripheral Artery Disease
  * Gender - males have a greater risk than females

* Risk factors that can be changed, treated or controlled

✓ **HIGH BLOOD PRESSURE** - High blood pressure or hypertension is the number one cause of stroke High blood pressure can damage small blood vessels of the brain High blood pressure is the most important controllable risk factor for stroke Many people believe the effective treatment of high blood pressure is a key reason for the recent significant decrease in the death rates for stroke

✓ **SMOKING** - Tobacco use in any form, especially cigarette smoking is very bad for your health The nicotine and carbon monoxide in cigarette smoke damage the heart and blood vessels in many ways The use of birth control pills combined with cigarette smoking greatly increases the risk of stroke in women

____ **DIABETES** - Diabetes is a risk factor for stroke Many people with diabetes also have high blood pressure, high cholesterol and are overweight Diabetes causes disease of the small blood vessels in the brain and can increase the risk of stroke

____ **CAROTID OR OTHER ARTERY DISEASE** - The carotid arteries in your neck supply blood to your brain A carotid artery narrowed by fatty deposits from atherosclerosis (plaque build up in the artery walls) may become blocked by a blood clot Carotid Artery Disease is also called Carotid Artery Stenosis Peripheral Artery Disease is the narrowing of blood vessels carrying blood to arm and leg muscles, also caused by fatty build up of plaque in the artery walls People with Peripheral Artery Disease have a higher risk of Carotid Artery Disease, which increases the risk of stroke Causes of Carotid Artery Disease are high blood pressure, diabetes, a diet high in fat, high cholesterol and smoking

____ **ATRIAL FIBRILLATION** - This heart rhythm disorder increases the risk of stroke The heart's upper chambers quiver instead of beating regularly, which can allow the blood to pool and clot If a clot breaks off, enters the blood stream and lodges in an artery leading to the brain, a stroke results

____ **OTHER HEART DISEASE** - People with coronary heart disease or heart failure have a higher risk of stroke than those with hearts that work normally Dilated cardiomyopathy (enlarged heart), heart valve disease and some types of heart defects, present from birth, also increase the risk of stroke

____ **SICKLE CELL DISEASE** (Sickle Cell Anemia) - This is a genetic disorder that mainly affects African-American and Hispanic people Sickle-shaped red blood cells are not as able to carry oxygen to the body tissues and organs These cells also tend to stick to blood vessel walls, which can block arteries to the brain and cause a stroke

Trident Health System
Stroke/TIA Discharge Instructions
WASHINGTON,JIM

_____ HIGH BLOOD CHOLESTEROL - People with high cholesterol have an increased risk of stroke High blood cholesterol can be reduced by eating healthy (avoid fried, fatty foods) and exercising routinely High cholesterol may also require medication

_____ POOR DIET - Diets high in saturated fat, trans fat and cholesterol can raise blood cholesterol levels Diets high in sodium (salt) can contribute to increased blood pressure Diets with excess calories can contribute to obesity A diet containing five or more servings of fruits and vegetables per day may reduce the risk of stroke

_____ OBESITY & PHYSICAL INACTIVITY - Being inactive, obese or both can increase your risk of high blood pressure, high blood cholesterol, diabetes, heart disease and stroke Take a brisk walk, take the stairs and do whatever you can to make your life more active Try to get at least 30 minutes of moderate physical activity five days a week, or 20 minutes of vigorous physical activity three days a week, with your physician's approval

I HAVE RECEIVED EDUCATION ON MY PERSONAL MODIFIABLE RISK FACTORS AND LIFESTYLE CHANGES

Activity (Special Limitations)
AS TOLERATED
Notify MD if you Experience the following symptoms
CALL YOUR MD WITH ANY QUESTIONS OR CONCERNS

FOLLOW UP APPOINTMENTS
Call for an Appointment with Undefined Provider
Phone Follow-Up Appointment FETTER CLINIC 3 WEEKS
Call for an Appointment with Undefined Provider
Phone Follow-Up Appointment

******GUIDELINES FOR HEALTHY LIVING******

Smoking:
- No smoking/No tobacco products/Avoid exposure to second hand smoke
- Surgeon General's Warning Quitting smoking now greatly reduces serious risk to your health
- South Carolina Tobacco Quitline - Quit for Keeps 1-800-QUITNOW (1-800-784-8669)

Obesity/Weight Monitoring:
- Obesity greatly increases your risk of illness
- A healthy diet, regular physical exercise and weight monitoring are important for maintaining a healthy lifestyle
- You may be retaining fluid if you have a history of heart failure or if you experience any of the following symptoms weight gain of 3-5 pounds in 1-2 days, increased swelling of your hands or feet or sudden onset of shortness of breath while lying flat in bed
  PLEASE CALL YOUR DOCTOR AS SOON AS YOU NOTICE ANY OF THESE SYMPTOMS DO NOT WAIT UNTIL YOUR NEXT OFFICE VISIT

Immunizations:
- Influenza (Flu) is a serious respiratory disease caused by a virus which spreads from person to person through coughing or sneezing For most people it lasts only a few days, but some may need to be hospitalized Influenza kills about 36,000 people each year in the United States, mostly among the elderly
- Influenza vaccination is recommended yearly from October to March
- Pneumococcal disease is a serious disease which kills more people in the United States each year than all other vaccine-preventable diseases combined
- Pneumococcal vaccine can be given any time during the year and can be given concurrently with all other vaccines, including the influenza vaccine The vaccine is usually given once in a lifetime, however, some people may need two doses
  TALK WITH YOUR PRIMARY CARE PHYSICIAN ABOUT WHETHER THE FLU OR PNEUMOCOCCAL VACCINE IS RECOMMENDED FOR YOU!

I have received all personal belongings
I have received a copy and understand the above instructions

Patient/Responsible Party Signature	Nurse/Physician Signature	Date/Time

********** CHART COPY **********

Exhibit-29

Run Date/Time
09/26/12 1237

TRIDENT HEALTH SYSTEM
Discharge - Patient Med List

Printed By
DNUR KXG02

Height. 165.10 cm (65 inches)

WASHINGTON,JIM

Acct# D00040519282
MR# D000584759

ALLERGIES: aspirin
ADRS: *** No ADR's Entered ***

Discharge Medications

GENERIC NAME (TRADE NAME) DOSE	ROUTE	FREQUENCY	QTY/DAYS	LAST DOSE DATE/TIME
Updated Home Medication List				
AMLODIPINE BESYLATE (TRADE NAME: NORVASC) 10 MG	ORAL (by mouth)	DAILY		09/26/12
ASPIRIN (TRADE NAME: ASPIRIN) 325 MG	ORAL (by mouth)	DAILY		09/26/12
NICOTINE (TRADE NAME: NICODERM CQ) 14 MG LAST TAKEN DOSE: UNKNOWN RX Cmt: FOR FOUR WEEKS	TRANSDERMAL	DAILY		
PRAVASTATIN SODIUM (TRADE NAME: PRAVASTATIN SODIUM) 20 MG LAST TAKEN DOSE: UNKNOWN	ORAL (by mouth)	DAILY		

*** Your hospital doctor wants you to take the drugs on this list when you go ***
*** home. If you take any drugs that are not on this list, Call and tell your ***
*** doctor. Throw away all old drug lists and give this new list to your ***
*** doctors and your pharmacy. ***

WASHINGTON,JIM

Acct# D00040519282 DOB: 10/14/53 Age: 58 Sex: M LOC. D 613-A
MR# D000584759 Adm/Svc: 09/23/12 Attend MD: BOTELHO,TINA (843)718-2856

Patient Signature Date/Time

PINS

Exhibit-30

D00040519282A

PROMISED: 11:3
02-01-20
Scripts.

WA
02/01/2013

#5555 Ph 803.854-2824

WASHINGTON,JIMMIE

Date 02/01/2013 DA
Rx: 1047044 0

ASPIRIN EC 325 MG TABLET
1 TABLET BY ORAL ROUTE 1 TIME PER DAY

INS $0.00

NDC 00536-3313-01 Days Supply 30 refills 0 Qty:30 EA
Prscbr: ANNA BRUNSON PRICE
TP 229.70
AUTH# 3890403872

PAY: $1.89
SIMPLE SAVINGS CARD

CVS/pharmacy

The Pharmacy Team has information to share with you, please read below.

Message Center
Please verify your preferred contact number with your pharmacy staff

310 OLD HIGHWAY 6, P O BOX 411 #5555 Ph 803.854 2824
SANTEE, SC
29142

www.cvs.com

WASHINGTON,JIMMIE
209 SINGNET DR
EUTAWVILLE, SC 290460000
Ph 000 000 0000

02/01/2013
Prscbr ANNA BRUNSON PRICE
Refills: 0

IF YOU HAVE ANY QUESTIONS ABOUT YOUR MEDICATIO
PLEASE CONTACT YOUR PHARMACIST
David P Shuler Jr,RPh.

ASPIRIN EC 325 MG TABLET

1 TABLET BY ORAL ROUTE 1 TIME PER DAY

This is an ORANGE, ROUND shaped TABLET imprinted with T on the front

ASPIRIN ORAL (AS-pir in)
COMMON BRAND NAME(S):
Easprin, Ecotrin, Empirin

USES:
Aspirin is used to reduce fever and relieve mild to moderate pain from conditions such as muscle aches, toothaches, common cold, and headaches It may also be used to reduce pain and swelling in conditions such as arthritis. Aspirin is known as a salicylate and a nonsteroidal anti inflammatory drug (NSAID) It works by blocking a certain natural substance in your body to reduce pain and swelling Consult your doctor before treating a child younger than 12 years Your doctor may direct you to take a low dose of aspirin to prevent blood clots This effect reduces the risk of stroke and heart attac you have recently had surgery on clogged arteries (such as bypass surgery, carotid endarterectomy, coronary stent), your doctor may direct you to use aspirin in low doses as a "blood thinner" to prevent blood clots

HOW TO USE:
If you are taking this medication for self treatment, follow all directions on the product package If you are uncertain about any of the information, consult your doctor or pharmacist If your doctor has directed you to take this medication, take it exactly as prescribed. Take this medication by mouth Drink a full glass of water (8 ounces/240 milliliters) with it unless your doctor tells you otherwise. Do he down for at least 10 minutes after you have taken this drug If stomach upset occurs while you are taking this medication, you may take it with food or milk. Swallow enteric coated tablets whole D not crush or chew enteric coated tablets Doing so can increase stomach upset Do not crush or chew extended release tablets or capsules Doing so can release all of the drug at once, increasing the risk of side effects Also, do not split extended release tablets unless they have a score line and your doctor or pharmacist tells you to do so Swallow the whole or split tablet without crushing or chewing. The dosage and length of treatment are based on your medical condition and response to treatment. Read the product label to find recommendations on how many tablets you can take in a 24 hour period and how long you may self-treat before seeking medical advice Do not take more medication or take it for longer than recommended unless directed by your doctor Consult your doctor or pharmacist if you have any questions If you are taking this medication for self-treatment of headache, seek immediate medical attention if you also have slurred speech, weakness on one side of the body, or sudden vision changes Before using this drug, consult a doctor or pharmacist if you have headaches caused by head injury, coughing, or bending, or if you have a headache with persistent/severe vomiting, fever, and stiff neck. If you are taking this medication as needed (not on a regular schedule), remember that pain medications work best if they are used as the first signs of pain occur. If you wait until the pain has worsened, the medicine may not work as well. Aspirin with a special coating (enteric coating) or slow release may take longer to stop pain because it is absorbe more slowly Ask your doctor or pharmacist to help select the best type of aspirin for you You should not take this medication for self-treatment of pain for longer than 10 days You should not use this drug to self treat a fever that lasts longer than 3 days. In these cases, consult a doctor because you may have a more serious condition Tell your doctor promptly if you develop ringing in the ears or difficulty hearing If your condition persists or worsens (such as new or unusual symptoms, redness/swelling of the painful area, pain/fever that does not go away or gets worse) or if you think you may have a serious medical problem, tell your doctor promptly.

SIDE EFFECTS:
Upset stomach and heartburn may occur If either of these effects persist or worsen, tell your doctor or pharmacist promptly If your doctor has directed you to use this medication, remember that he o she has judged that the benefit to you is greater than the risk of side effects. Many people using this medication do not have serious side effects. Tell your doctor immediately if any of these unlikely bu serious side effects occur easy bruising/bleeding, difficulty hearing, ringing in the ears, change in the amount of urine, persistent or severe nausea/vomiting, unexplained tiredness, dizziness, dark urine, yellowing eyes/skin. This drug may rarely cause serious bleeding from the stomach/intestine or other areas of the body. If you notice any of the following rare but very serious side effects, seek immediate medical attention: black/tarry stools, persistent or severe stomach/abdominal pain, vomit that looks like coffee grounds, slurred speech, weakness on one side of the body, sudden vision changes or severe headache A very serious allergic reaction to this drug is rare However, seek immediate medical attention if you notice any symptoms of a serious allergic reaction, including rash, itching/swelling (especially of the face/tongue/throat), severe dizziness, trouble breathing This is not a complete list of possible side effects. If you notice other effects not listed above, contact your doc or pharmacist In the US - Call your doctor for medical advice about side effects You may report side effects to FDA at 1 800 FDA 1088 In Canada Call your doctor for medical advice about side effects You may report side effects to Health Canada at 1 866 234 2345.

PRECAUTIONS:
Before taking aspirin, tell your doctor or pharmacist if you are allergic to it, or to other salicylates (such as choline salicylate), or to other pain relievers or fever reducers (NSAIDs such as ibuprofen, naproxen); or if you have any other allergies This product may contain inactive ingredients, which can cause allergic reactions or other problems. Talk to your pharmacist for more details. This medication should not be used if you have certain medical conditions Before using this medicine, consult your doctor or pharmacist if you have bleeding/blood clotting disorders (such as hemophilia, vitamin K deficiency, low platelet count). If you have any of the following health problems, consult your doctor or pharmacist before using this medication: kidney disease, liver disease, diabetes, stomac problems (such as ulcers, heartburn, stomach pain), aspirin sensitive asthma (a history of worsening breathing with runny/stuffy nose after taking aspirin or other NSAIDs), growths in the nose (nasal polyps), gout, certain enzyme deficiencies (pyruvate kinase or G6PD deficiency) This medicine may cause stomach bleeding. Daily use of alcohol and tobacco, especially when combined with this product, may increase your risk for this side effect. Limit alcoholic beverages, and stop smoking. Check with your doctor or pharmacist for more information. Before having surgery, tell your doctor or

Exhibit-31

Continued on reverse side.

dentist that you are taking this medication. Children and teenagers should not take aspirin if they have chickenpox, flu, or any undiagnosed illness or if they have recently received a vaccine In these cases, taking aspirin increases the risk of Reye's syndrome, a rare but serious illness Tell your doctor promptly if you see changes in behavior with nausea and vomiting This may be an early sign of Reye's syndrome. Older adults may be more sensitive to the side effects of this drug, especially stomach ulcers Aspirin is not recommended for use during pregnancy Consult your doctor before using this medication if you are or think you may be pregnant. Tell your doctor immediately if you become pregnant while taking this medication Do not use this medication during the last 3 months of pregnancy because of possible harm to the unborn baby or problems during delivery Aspirin passes into breast milk and may harm the nursing infant. Breast-feeding while using this drug is not recommended Consult your doctor before breast feeding

DRUG INTERACTIONS:

If you are taking this product under your doctor's direction, your doctor or pharmacist may already be aware of possible drug interactions and may be monitoring you for them. Before you start taking this medication for self treatment, consult your doctor or pharmacist if you are also using any prescription and nonprescription medications Do not start, stop, or change the dosage of any medicine before checking with your doctor or pharmacist first This drug should not be used with the following medication because very serious interactions may occur mifepristone If you are currently using any of these medications, tell your doctor or pharmacist before starting aspirin. Before using this product, consult your doctor if you have recently received certain live vaccines (such as varicella vaccine, live flu vaccine). Before using this medication, tell your doctor or pharmacist of all prescription and nonprescription products you may use, especially of: acetazolamide, "blood thinners" (such as warfarin, heparin), corticosteroids (such as prednisone), methotrexate, pemetrexed, valproic acid, herbal medications such as ginkgo biloba Check all prescription and nonprescription medicine labels carefully since many medications contain pain relievers/fever reducers known as NSAIDs (non steroidal anti inflammatory drugs such as ibuprofen, ketorolac, naproxen) To prevent an overdose of aspirin, read the labels carefully before taking other pain relievers or cold products to make sure they do not contain aspirin. Ask your pharmacist about using these products safely. Daily use of NSAIDs (such as ibuprofen) may decrease aspirin's ability to prevent heart attack/stroke If you are taking low dose aspirin for prevention of heart attack/stroke, consult your doctor or pharmacist for more details and to discuss other possible treatments (such as acetaminophen) for your pain/fever This medication may interfere with certain laboratory tests (including certain urine sugar tests), possibly causing false test results Make sure laboratory personnel and all your doctors know you are taking this medication This document does not contain all possible interactions Therefore, before using this product, tell your doctor or pharmacist of all the products you use Keep a list of all your medications with you, and share the list with your doctor and pharmacist

OVERDOSE:

If overdose is suspected, contact your local poison control center or emergency room immediately US residents can call the US National Poison Hotline at 1 800-222-1222 Canada residents can call a provincial poison control center. Symptoms of overdose may include. burning pain in the throat/stomach, confusion, mental/mood changes, fainting, weakness, ringing in the ears, fever, rapid breathing, change in the amount of urine, seizures, loss of consciousness.

NOTES:

If you use this medication regularly or at high doses, laboratory and/or medical tests (such as liver and kidney function tests, blood count, salicylate level) may be performed to monitor your progress or check for side effects Consult your doctor for more details There are many different aspirin products. Some have special coatings and some are long acting Ask your doctor or pharmacist to recommend the best product for you.

MISSED DOSE:

If your doctor directs you to take this drug on a regular schedule (not just "as needed") and you miss a dose, take it as soon as you remember If it is near the time of the next dose, skip the missed dose and resume your usual dosing schedule. Do not double the dose to catch up.

STORAGE:

Store at room temperature between 59 86 degrees F (15 30 degrees C) away from moisture and light. Do not store above 104 degrees F (40 degrees C) Different brands of this medication may have different storage needs Check the product package for instructions on how to store your brand, or ask your pharmacist Do not store in the bathroom. Do not use any aspirin product that has a strong vinegar like smell. Keep all medications away from children and pets Do not flush medications down the toilet or pour them into a drain unless instructed to do so. Properly discard this product when it is expired or no longer needed Consult your pharmacist or local waste disposal company for more details about how to safely discard your product.

Information last revised June 2012. Copyright(c) 2012 First Databank, Inc.

Exhibit-32

1 THE COURT: All right, sir, you are Jim Washington?
2 MR. WASHINGTON: Jim Washington.
3 THE COURT: All right. Thank you, sir. And you
4 are ---
5 MR. HARKINS: Good afternoon, Your Honor.
6 THE COURT: And you are?
7 MR. HARKINS: I am Will Harkins, Your Honor, ---
8 THE COURT: Thank you, Mr. Harkins.
9 MR. HARKINS: --- for the defendant. Yes, sir.
10 THE COURT: Okay. You have a motion to dismiss?
11 MR. HARKINS: I do, Your Honor. May I proceed?
12 THE COURT: You may, sir.
13 MR. HARKINS: Yes, sir. Your Honor, this is a 12(b)(6)
14 motion to dismiss, Your Honor, regarding Mr. Washington's
15 complaint which was filed September 11th of last year. It
16 is a medical malpractice case, Your Honor.
17 THE COURT: Yes, sir.
18 MR. HARKINS: From what I can glean from the actual
19 complaint itself I have a vague understanding of what I
20 believe the allegations to be, and they sort of globally
21 involve allegations of a wrong dosage or administration of
22 anticoagulants to prevent blood clots, my global
23 understanding of the medical malpractice nature of the case.
24 In any event, Your Honor, Mr. Washington failed to file
25 a notice of intent ---

1 THE COURT: Yes.
2 MR. HARKINS: --- under 15-79-125. He also has not
3 produced an expert witness affidavit. Again, from what I
4 can understand from the pleadings that have been filed, Mr.
5 Washington has asked the court to do two things as I
6 understand it.
7 One is he wants to sort of bypass the expert witness
8 affidavit requirement and classify this case as a common
9 knowledge exception to that. And I think I have explained
10 the anticoagulation issue.
11 THE COURT: Well, I have reviewed the complaint. It is
12 not a common knowledge situation. That is clear from my
13 reading of it, and I would so find.
14 MR. WASHINGTON: Can I speak, Your Honor?
15 THE COURT: I will be happy to hear from you, but it is
16 not a common knowledge. I have read your complaint.
17 MR. WASHINGTON: No, what I am raising is that based
18 upon the doctor treating -- doctor at the Regional Medical
19 Center based upon what he said breaching the standard of
20 care it is a matter that the jury can infer ---
21 THE COURT: Yeah, I appreciate that. But you know what
22 the problem you have is twofold. Number one, you can't get
23 to the jury first until you get your action properly filed.
24 And in this case you have to -- because it is not a common
25 knowledge you -- in order to proceed you have to have an

1 expert -- aside from the other issues of -- basically
2 there's a procedure outlined in the statute and questionable
3 as to whether that is dismissible or not, but clearly it
4 requires an affidavit to be contemporaneously filed.
5 MR. WASHINGTON: And I filed an affidavit ---
6 THE COURT: Well, you haven't filed an affidavit
7 from -- you have a competent expert?
8 MR. WASHINGTON: From the doctor's statement I am
9 using ---
10 THE COURT: No, sir.
11 MR. WASHINGTON: Based upon Dawkins versus Fields,
12 South Carolina Supreme Court case law, it says that a
13 verified complaint is sufficient as an affidavit.
14 THE COURT: Okay, yeah, but that may be sufficient as
15 an affidavit for the purpose -- some purposes; but it is not
16 sufficient for an affidavit in a medical malpractice case.
17 MR. WASHINGTON: Well, the Supreme Court didn't
18 specify ---
19 THE COURT: Well, that is fine. And you can -- you can
20 argue that to the Supreme Court again and maybe they will
21 change their mind.
22 The motion is granted. Thank you, sir.
23 MR. HARKINS: Thank you, Your Honor. Would you
24 like ---
25 THE COURT: Your case is over. Now you -- now the

1 next step is you can take that to Columbia and they will --
2 and if you want to -- and maybe you can expand some law. I
3 appreciate it.
4 MR. HARKINS: Would you like me to ---
5 MR. WASHINGTON: So I -- what I am saying is ---
6 THE COURT: Sir, I heard what you are saying. You
7 filed everything you are saying right now, because I have
8 read it.
9 MR. WASHINGTON: I filed a notice of intent also.
10 THE COURT: That is fine. But you didn't comply with
11 the statute. You don't have an expert witness, sir. It is
12 that simple.
13 MR. WASHINGTON: I am trying to explain that now so if
14 I ---
15 THE COURT: Well, you just told me that you are using
16 it as a verified complaint based on the doctor himself.
17 MR. WASHINGTON: I am saying based upon his statement.
18 What I am saying is when I filed a complaint I filed it
19 under 15-79-125(A). That is on the face of the complaint.
20 And I ----
21 THE COURT: I hear you. I understand. That is what --
22 you are reading from what I just read from. That is before
23 the Supreme Court. Now I am granting the motion. Thank
24 you, sir.
25 MR. HARKINS: Thank you, Your Honor.

1 THE COURT: If you will prepare an appropriate order.
2 MR. HARKINS: I will be glad to. Yes, sir.
3 MR. WASHINGTON: Can I make an exception to that, Your
4 Honor?
5 THE COURT: Sure. You can file an appeal from it. You
6 will get a copy of it. Thank you, sir. You don't need to
7 except from it. Okay. Thank you, sir.
8 MR. HARKINS: Thank you, sir.
9 THE COURT: Good luck with the Supreme Court, sir. I
10 am looking forward -- I appreciate any expansion of the law
11 in that regard. I really do. And I wish you great success
12 in that endeavor.
13 MR. WASHINGTON: What about the other issues I
14 raised -- I filed a memorandum ---
15 THE COURT: The memorandum is nothing more than your
16 opposition to a -- it is stiled and captioned as a motion in
17 opposition to the motion to dismiss. That is what -- that
18 is what ---
19 MR. WASHINGTON: I also asked for to ask for a motion
20 to amend my complaint.
21 THE COURT: Well, that is fine. Your motion is denied
22 because I granted -- I granted the motion to dismiss. Thank
23 you, sir.
24 MR. WASHINGTON: So I mean you are ruling separately on
25 all the issues that I raised?

1 THE COURT: I am ruling that the action wasn't properly
2 commenced, sir. And that ends the action. It is over,
3 okay. Now you can get -- if you get an appeal and they send
4 it back you get to start again. Thank you, sir.
5 (WHEREUPON, the hearing concluded.)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-5000

JIM WASHINGTON,

Plaintiff,

v.

TRIDENT MEDICAL CENTER,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

FILED
2016 JAN -5 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: Jim Washington
209 Signet Drive
Eutawville, SC 29048
VIA FEDEX

NOW COMES the Defendant Trident Medical Center (correct corporate name "Trident Medical Center, LLC")(hereinafter "Defendant" or "Trident") and submits this Memorandum of Law in support of its Motion to Dismiss.

PROCEDURAL BACKGROUND

In this matter, the *pro se* Plaintiff Jim Washington filed a pleading styled as a "Complaint" on September 11, 2015 alleging medical negligence against Trident. *See* Summons and Complaint, attached hereto as Exhibit "A." Plaintiff's Civil Coversheet indicated, among other things, that this matter was filed as a medical malpractice action. *Id.* The Civil Coversheet was signed and dated by Plaintiff. *Id.* Both the Summons and Complaint were styled as "medical malpractice" pleadings, and Plaintiff indicated that these documents were being filed pursuant to S.C. Code §§ 15-79-125 and 15-36-100. *Id.*

Plaintiff's "Complaint" alleges that Plaintiff received medical treatment at Trident Medical Center between September 23-26, 2012 and that various health care providers were negligent in their respective treatment of Plaintiff. *See* Complaint, Exhibit "A." Plaintiff filed his "Complaint" on September 11, 2015, twelve (12) days before the three-year statute of limitations expired. *Id.*

Plaintiff never issued or filed the required pre-suit Notice of Intent to File Suit ("NOI") pursuant to S.C. Code § 15-79-125(A) and has yet to submit an affidavit from any qualified expert witness willing to testify that Trident breached any applicable standard of care. *Id.* Instead of filing the required expert affidavit, Plaintiff submitted to the Court as follows: "Verified Complaint Treated As a Affidavit of Expert Witness §§ 15-79-125(A) and 15-36-100." Trident submits that the pleadings filed by Plaintiff herein are defective for the total absence of the statutorily-required NOI and expert witness affidavit as a prerequisite to filing the instant medical malpractice action.

MEDICAL BACKGROUND

According to Plaintiff's "Complaint" herein, he alleges that on September 23, 2012 he suffered "stroke like symptoms" while at his home and was taken by private car to Trident for treatment. Physical exam revealed right-sided weakness, and various testing was performed at Trident, including carotid ultrasound and echocardiogram. Plaintiff was discharged from Trident on September 26, 2012 in stable condition with instructions and prescriptions for anticoagulation therapy in an effort prevent future blood clots.

Following discharge from Trident, it appears that Plaintiff first sought treatment on September 30, 2012 at The Regional Medical Center ("TRMC") in Orangeburg, South Carolina. By way of history, Plaintiff self-reported that upon discharge from Trident "he did not take

medications as prescribed . . . because he did not get them right away." *See* Exhibit "A." On his first day of admission at TRMC, Plaintiff wanted to leave that facility but was convinced to stay to undergo a brain MRI. *Id.* Plaintiff was discharged from TRMC the following day on October 1, 2012 prior to receiving the results of the brain MRI. *Id.* Plaintiff reported that he did not want to return to TRMC to begin anticoagulation therapy and discuss the results of the brain MRI because "today is not a good day as he had errands to do. *Id.*

It appears that two days later, Plaintiff again presented to TRMC for admission and monitoring. Plaintiff was treated at TRMC for hypertension, stroke, and thrombus, and he was ultimately discharged from TRMC in stable condition on October 8, 2012. *Id.* He was instructed to follow up with his primary physician in 1-2 weeks. *Id.* It does not appear that Plaintiff received any further treatment at Trident following the September 23-26, 2012 admission, and his allegations of medical malpractice against Trident appear to be limited to that time period.

DISCUSSION

1. Plaintiff's failure to file a Notice of Intent and an expert affidavit should result in the dismissal of the lawsuit.

As part of the Tort Reform Act of 2005, the Legislature enacted S.C. Code § 15-79-125. This statute states that prior to initiating a civil action alleging personal injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness. S.C. Code § 15-79-125(A). S.C. Code § 15-36-100 mandates that in any action involving professional negligence, "the plaintiff must file [an] affidavit of an expert witness which must specify at least one action or omission claimed to exist and the factual basis for each claim." S.C. Code § 15-36-100(B).

Plaintiff has failed to comply with mandatory statutory pre-suit requirements. He did not file an NOI, he did not submit an expert affidavit, and he did not initiate a pre-suit mediation. Instead, he simply filed a pleading styled a "Complaint" and issued Summons. This failure and defect contravenes the purpose of the Tort Reform Act, which in part was intended to discourage frivolous and unsupported claims. Further, by failing to file an NOI and not qualifying for any safe harbor provisions of the Tort Reform Act, Plaintiff's three-year statute of limitations has now expired.

Pursuant to express statutory pre-suit requirements regarding the filing of a medical malpractice action, Plaintiff must first file an NOI with a supporting expert witness affidavit. S.C. Code § 15-79-125(A). Thereafter, the parties engage in discovery. S.C. Code § 15-79-125(B). Within 90-120 days from service of the NOI, the parties are required to participate in a mediation conference. S.C. Code § 15-79-125(C). If mediation is not successful, the Plaintiff may then initiate a civil action by filing a Summons and Complaint. S.C. Code § 15-79-125(E). Plaintiff has blatantly disregarded the statutory requirements imposed on professional negligence actions. Accordingly, the failure to file a NOI in a lawsuit alleging medical malpractice requires dismissal of the present action.

2. Plaintiff's failure to file a Notice of Intent did not result in a tolling of the statute of limitations.

Plaintiff herein did not file a Notice of Intent at all, much less an allegedly defective NOI without an expert affidavit. *See* Ranucci I and II. There can be no argument by Plaintiff that he should be entitled to the benefit of the safe-harbor provisions of S.C. Code § 15-36-100(C)(1) when he took no steps whatsoever to follow the Tort Reform Act of 2005 and file a NOI prior to filing suit:

> The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, **within ten days of the date of filing** and, because of the time constraints, **the plaintiff alleges that an affidavit of an expert could not be prepared.** In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit.

§ 15-36-100(C)(1) (emphasis added). Plaintiff filed the present "Complaint" on September 11, 2015 regarding alleged medical malpractice that occurred on September 23-26, 2015. Thus, Plaintiff's statute of limitations would have run twelve (12) days after filing. Further, nowhere in Plaintiff's "Complaint" did he allege that an expert affidavit could not be timely prepared due to time constraints. *See* Exhibit "A." Accordingly, Plaintiff does not satisfy either of the preconditions of the safe harbor provision even assuming, *arguendo*, that safe harbor was applicable in the absence of an NOI.

Indeed, one needs to look no further than the statute itself to see that Plaintiff is not entitled to the benefit of tolling the statute of limitations where the plain language states: "Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations." S.C. Code § 15-79-125(A). Even assuming, *arguendo*, that Plaintiff did file an NOI with a statement to the effect that "time constraints" prevented him from filing a contemporaneous expert affidavit, the 45-day safe harbor provision has long since expired. To date, Plaintiff still has not filed an NOI or a supporting expert affidavit. Where there has been no filing of a NOI whatsoever, there can be no tolling of the statute of limitations and no safe harbor protection.

Our courts have consistently held with regard to the statute of limitations:

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitation is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another

> purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (internal citations and quotations omitted). Plaintiff has slept on his rights, and Trident is entitled to dismissal of this action for failure to follow and blatant disregard of the proper pre-suit filing requirements.

3. Plaintiff's allegation that anti-coagulation therapy to prevent blood clots qualifies for the "common knowledge" exception is without merit.

In this admitted medical malpractice action, Plaintiff has alleged that he was inappropriately treated with anticoagulants at Trident Medical Center between September 23-26, 2015. *See* Exhibit "A." As noted above, Plaintiff did not file an NOI. In addition, Plaintiff to date has neither filed an expert witness affidavit supporting his allegations of medical negligence nor sought refuge in the safe harbor provisions allowing additional time to file the required affidavit. Instead, Plaintiff has argued that anticoagulation therapy and protocols are "subject matter that lies within the ambit of common knowledge and experience" such that no expert testimony is needed. § 15-36-100(C)(2).

This argument is without merit and should not be considered by the Court. The amount, dosage, administration, and choice of anticoagulation medication to help prevent future blood clots are all issues requiring special learning and expert testimony.

CONCLUSION

The South Carolina Tort Reform Act and Notice of Intent requirement were intended to aid in keeping frivolous lawsuits out of the court system. Statutes governing professional negligence require the filing of a Notice of Intent to File Suit and other pre-suit procedural requirements prior to filing the Complaint because it helps keep meritless complaints from being litigated. Plaintiff's "Complaint" failed to comply with either of these gatekeeping requirements

15 - 5000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, **VIA FEDEX** properly addressed as follows:

FILED
2016 JAN -5 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Jim Washington
209 Signet Drive
Eutawville, SC 29048

This 4th day of January, 2016.

BATTEN LEE PLLC

By: _____

David H. Batten (SC Bar No. 74531)
Randolph L. Lee (SC Bar No. 74532)
William H. Harkins, Jr. (SC Bar No. 77651)
Attorneys for Defendant
4141 Parklake Avenue, Suite 350
Raleigh, NC 27612
(919) 439-222
(919) 780-5382 (fax)

4845-0693-5337, v. 1

EXHIBIT A

Verified Complaint Treated As A Affidavit of Expert Witness §§ S.C. 15-79-125(A) and 15-36-100

THIS PAGE MUST BE ON TOP OF YOUR REPORT

p1.66633

DISABILITY DETERMINATION SERVICES

SOUTH CAROLINA VOCATIONAL REHABILITATION DEPARTMENT

Providing quality disability determination services to South Carolinians in a responsive, timely and cost-effective manner.

Barham G. Hollis, Commissioner

Charleston Regional Office ▪ P.O. Box 190029 ▪ North Charleston, SC 29419 ▪ (843) 953-0300
Toll-free: (800) 868-0100 ▪ Medical Information Fax: (866) 827-7369

November 26, 2012

FAMILY HEALTH CENTERS INC
3310 MAGNOLIA STREET
ORANGEBURG SC 29116

ATTN MEDICAL RECORDS

RE: JIM WASHINGTON
AKA: WASHINGTON, JIMMIE
ADD: 209 SIGNET DRIVE
EUTAWVILLE SC 29048
Ref. No: N00485
DOB: [redacted]

Your patient has applied for disability benefits under the Social Security Act. We need the following information.

Treatment Records: 09/01/11 TO PRESENT

PLEASE SEND US COPIES OF YOUR RECORDS OR A NARRATIVE describing the HISTORY, OBJECTIVE FINDINGS, SEVERITY, ONSET, AND DURATION of impairment. For adults note the individual's ability to perform work-related physical and mental activities. For children note the child's functional abilities in learning, motor functioning, communicating and socializing, performing self-care activities, and attending and completing tasks, and include the cumulative effects of treatment and therapy

We pay S C. physicians $15.00 for a copy of treatment records or for a narrative submitted through our teledictation system or prepared in a physician's office Out of state physicians are paid according to the fee schedule effective in that state. **Do not complete payment instructions unless records/reports are sent with this request.**

Is your patient capable of handling monthly benefits in his/her own best interest? _____ *YES* _____ *NO*

Physician's Signature _____

If a consultative examination is necessary, are you willing to perform the examination (including history, examination, and written report)? Yes ____ *No* ____

See the attached page for instructions on returning your report to the DDS. **If you request payment for your records/reports,** please sign on the line for "Provider's Signature" on the attached page and include that page as the TOP document with your report, with this letter underneath. ***You may fax your records using the 2D Bar Code Coversheet to our toll free medical fax number.***

Family Health Centers, Inc.
Received in Medical Records
By: _____
On: NOV 28 2012
Attn: _____

Sincerely,

Teresa Miller

Teresa Miller, Disability Examiner

PLEASE INCLUDE THIS LETTER AS PAGE 2 OF YOUR REPORT

ENC: Release
TMI/326

Claim No. N00485
L1 (2/07) DMA Y

TDN. 0080280913

WHOSE Records to be Disclosed. Form Approved OMB No. 0960-0623
NAME (First, Middle, Last) Dina Washington
SSN
Birthday (mm/dd/yy) 10/14/1953

AUTHORIZATION TO DISCLOSE INFORMATION TO THE SOCIAL SECURITY ADMINISTRATION (SSA)

** PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW **

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):

OF WHAT *All my medical records; also education records and other information related to my ability to perform tasks. This includes specific permission to release:*

1. All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) *including*, and not limited to:
   - Psychological, psychiatric or other mental impairment(s) (excludes "psychotherapy notes" as defined in 45 CFR 164.501)
   - Drug abuse, alcoholism, or other substance abuse
   - Sickle cell anemia
   - Records which may indicate the presence of a communicable or noncommunicable disease; and tests for or records of HIV/AIDS
   - Gene-related impairments (including genetic test results)
2. Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
3. Copies of educational tests or evaluations, including Individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
4. Information created within 12 months after the date this authorization is signed, as well as past information.

FROM WHOM

- All medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SSA
- Employers, insurance companies, workers' compensation programs
- Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY SSA/DDS (as needed) Additional information to identify the subject (e.g., other names used), the specific source, or the material to be disclosed:

FAMILY HEALTH CENTERS INC
3310 MAGNOLIA STREET
ORANGEBURG SC 29116

From 09/01/11 to present

TO WHOM The Social Security Administration and to the State agency authorized to process my case (usually called "disability determination services"), including contract copy services, and doctors or other professionals consulted during the process. [Also, for international claims, to the U.S. Department of State Foreign Service Post.]

PURPOSE Determining my eligibility for benefits, including looking at the combined effect of any impairments that by themselves would not meet SSA's definition of disability; and whether I can manage such benefits.

☐ Determining whether I am capable of managing benefits ONLY (check only if this applies)

EXPIRES WHEN This authorization is good for 12 months from the date signed (below my signature).

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances in which this information may be redisclosed to other parties (see page 2 for details).
- I may write to SSA and my sources to revoke this authorization at any time (see page 2 for details).
- SSA will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of material to be disclosed.
- I have read both pages of this form and agree to the disclosures above from the types of sources listed.

PLEASE SIGN USING BLUE OR BLACK INK ONLY

INDIVIDUAL authorizing disclosure

SIGN ▶ [signature]

Date Signed 10/25/12

Phone Number (with area code)

IF not signed by subject of disclosure, specify basis for authority to sign
☐ Parent of minor ☐ Guardian ☐ Other personal representative (explain)

(Parent/guardian/personal representative sign here if two signatures required by State law) ▶

Street Address

City | State | ZIP

WITNESS *I know the person signing this form or am satisfied of this person's identity:*

SIGN ▶ Megan Ku Henning CRT

Phone Number (or Address) F0594

IF needed, second witness sign here (e.g., if signed with "X" above)
SIGN ▶

Phone Number (or Address)

This general and special authorization to disclose was developed to comply with the provisions regarding disclosure of medical, educational, and other information under P.L. 104-191 ("HIPAA"); 45 CFR parts 160 and 164; 42 U.S. Code section 290dd-2; 42 CFR part 2; 38 U.S. Code section 7332; 38 CFR 1.475; 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 99 and 300; and State law.

Form SSA-827 (4-2009) el (04-2009) Use 2-2003 and Later Editions Until Supply is Exhausted

Explanation of Form SSA-827,
"Authorization to Disclose Information to the Social Security Administration (SSA)"

We need your written authorization to help get the information required to process your claim, and to determine your capability of managing benefits. Laws and regulations require that sources of personal information have a signed authorization before releasing it to us. Also, laws require specific authorization for the release of information about certain conditions and from educational sources.

You can provide this authorization by signing a form SSA-827 Federal law permits sources with information about you to release that information if you sign a single authorization to release all your information from all your possible sources. We will make copies of it for each source. A covered entity (that is, a source of medical information about you) may not condition treatment, payment, enrollment, or eligibility for benefits on whether you sign this authorization form. A few States, and some individual sources of information, require that the authorization specifically name the source that you authorize to release personal information. In those cases, we may ask you to sign one authorization for each source and we may contact you again if we need you to sign more authorizations.

You have the right to revoke this authorization at any time, except to the extent a source of information has already relied on it to take an action. To revoke, send a written statement to any Social Security Office If you do, also send a copy directly to any of your sources that you no longer wish to disclose information about you; SSA can tell you if we identified any sources you didn't tell us about. SSA may use information disclosed prior to revocation to decide your claim.

It is SSA's policy to provide service to people with limited English proficiency in their native language or preferred mode of communication consistent with Executive Order 13166 (August 11, 2000) and the Individuals with Disabilities Education Act. SSA makes every reasonable effort to ensure that the information in the SSA-827 is provided to you in your native or preferred language.

IMPORTANT INFORMATION, INCLUDING NOTICE REQUIRED BY THE PRIVACY ACT

All personal information collected by SSA is protected by the Privacy Act of 1974. Once medical information is disclosed to SSA, it is no longer protected by the health information privacy provisions of 45 CFR part 164 (mandated by the Health Insurance Portability and Accountability Act (HIPAA)). SSA retains personal information in strict adherence to the retention schedules established and maintained in conjunction with the National Archives and Records Administration. At the end of a record's useful life cycle, it is destroyed in accordance with the privacy provisions, as specified in 36 CFR part 1228

SSA is authorized to collect the information on form SSA-827 by sections 205(a), 223(d)(5)(A), 1614(a)(3)(H)(i), 1631(d)(1) and 1631 (e)(1)(A) of the Social Security Act. We use the information obtained with this form to determine your eligibility, or continuing eligibility, for benefits, and your ability to manage any benefits received. This use usually includes review of the information by the State agency processing your case and quality control people in SSA. In some cases, your information may also be reviewed by SSA personnel that process your appeal of a decision, or by investigators to resolve allegations of fraud or abuse, and may be used in any related administrative, civil, or criminal proceedings.

Signing this form is voluntary, but failing to sign it, or revoking it before we receive necessary information, could prevent an accurate or timely decision on your claim, and could result in denial or loss of benefits. Although the information we obtain with this form is almost never used for any purpose other than those stated above, the information may be disclosed by SSA without your consent if authorized by Federal laws such as the Privacy Act and the Social Security Act. For example, SSA may disclose information:

1. To enable a third party (e.g., consulting physicians) or other government agency to assist SSA to establish rights to Social Security benefits and/or coverage;
2. Pursuant to law authorizing the release of information from Social Security records (e.g., to the Inspector General, to Federal or State benefit agencies or auditors, or to the Department of Veterans Affairs(VA));
3. For statistical research and audit activities necessary to ensure the integrity and improvement of the Social Security programs (e.g., to the Bureau of the Census and private concerns under contract with SSA).

SSA will not redisclose without proper prior written consent information: (1) relating to alcohol and/or drug abuse as covered in 42 CFR part 2, or (2) from educational records for a minor obtained under 34 CFR part 99 (Family Educational Rights and Privacy Act (FERPA)), or (3) regarding mental health, developmental disability, AIDS or HIV.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about possible reasons why information you provide us may be used or given out are available upon request from any Social Security Office.

PAPERWORK REDUCTION ACT

This information collection meets the requirements of 44 U.S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 10 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING IN THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE. The office is listed under U. S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213.** You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.

JIMMIE WASHINGTON, Gender: M, DOB: 10/14/1953, Encounter Date and Time: 11/0 10:05AM, Examiner: Anna Price, MD

Chief complaint

The Chief Complaint is: Lab result, refill on medicine - Fort Hampton Mc

History of present illness

JIMMIE WASHINGTON is a 59 year old male. Sourced patient information was patient

Visit location: Place of Care, Overnocture Family Health Center

CHIEF: Lab result, refill on medicine

Current medication

Aspirin 325 mg tablet take 1 tablet (325 mg) by oral route once daily.

Amlodipine 10 mg tablet take 1 tablet (10 mg) by oral route once daily

Lovastatin 20 mg tablet take 1 tablet (20 mg) by oral route once daily

Vitamin D 5 mg tablet take 1 tablet (5 mg) by oral route once daily

Past medical/surgical history

Reported:

Medications: Chronic anticoagulant use.

Subjective

59 year old male here for f/u of PT/INR. Has been taking warfarin 5 mg po qd. PT/INR is 2.0 (1.0 will equal to 2.0).

Had a recent CVA and was placed on warfarin. Also needs refills on his other meds.

Physical findings

Vital Signs*

Vital Sign/Measurement	Value	Date
RR	20 per min	11/02/2012
PR	55 bpm	11/02/2012
Blood pressure	155/32 mmHg *	11/02/2012
Pain level (0-10)	0	11/02/2012
Weight	178 lbs	11/02/2012
Body mass index	24.8 kg/m.2	11/02/2012
Height	71 in	11/02/2012

* Temperature was 97.6 11/02/2012 10:05AM

Standard Measurements:

* Body surface area was two 11/02/2012 10:07:00AM * Patient was not observed to be obese.

General Appearance:

* Alert * Oriented to time, place, and person * Well developed * In no acute distress

Chest:

* Normal

Lungs:

* Normal *Respiration rhythm and depth was normal * Clear to auscultation.

Cardiovascular:

* System normal.

Heart Rate And Rhythm: * Normal.

Heart Sounds: * Normal

Murmurs: * No murmurs were heard.

Arterial Pulses: * Equal bilaterally and normal

Edema: * Not present

Tests

Exhibit-1

[illegible] WASHINGTON [illegible]

Ordered/ Performed	Test Name	Result	Units	Range
10/22/2012	Prothrombin (PT)			
10/22/2012				
	INR	[illegible]		0.8-1.2

Reference interval is for non-anticoagulated patients. Suggested INR therapeutic range for Vitamin antagonist therapy: Standard Dose (moderate intensity therapeutic range) 2.0 - 3.0 Higher intensity therapy 2.5 - 3.5

Prothrombin time	[illegible]	sec	[illegible]

END OF RESULTS [illegible]

Assessment

- Atrial embolism
- Cerebral infarction with cerebral infarction

Allergies and Adverse Reactions

Aspirin: Identified: Unknown

Counseling/Education

- Return to the clinic if condition worsens or new symptoms arise

Plan

- Office postponed for prothrombin time
- [illegible]dipine 10 mg tablet: take 1 tablet by oral route 1 time per day for pressure. Dispense: 30 tab(s). Re RENEWED BY ANNA PRICE
- Warfarin 5 mg tablet: take 1 tablet (5 mg) by oral route once daily. Dispense: 30 tab(s). Refill: 3. RENEW ANNA PRICE
- warfarin 1 mg tablet: take 2 tablets by Oral route 1 time per day. Take 1 tablet 1 time a day with 5 mg tab 6 mg a day beginning 11/2/12. Dispense: 60 tablet(s). Refill: 3
- aspirin buffered 325 mg tablet: 1 Tablet by Oral route 1 time per day. Dispense: 30 tablet(s). Refill: 3
- pravastatin 20 mg tablet: take 1 tablet (20 mg) by oral route once daily. Dispense: 30 tablet(s). Refill: 3 RENEWED BY ANNA PRICE
- Follow-up for re-examination - PRN
- Follow-up for re-examination: 1 weeks PT/INR

Increase warfarin to 6 mg po qd and repeat labs in 1 week. Given refills on meds. F/U in Adult Medicine

Notes

Documented by: Anna Price, M.D.

Exhibit-2

JIMMIE WASHINGTON, Gender: M, DOB: 10/14/1953, Encounter Date and Time: 10/23/2 10:42AM, Examiner: Calvin Jackson, MD

Chief complaint

The Chief Complaint is: Pt is here to have his coumadin checked. A Fever: no

History of present illness

JIMMIE WASHINGTON is a 59 year old male. Source of patient information was patient

Visit location: Urgent Care, Orangeburg Family Health Center

PAIN LOCATION: right leg stiffness and right hand and arm

DURATION: intermittent

INTERFERES WITH ACTIVITY

INTERFERES WITH SLEEP

Pt seen for f/u following hospitalization for CVA. Pt states that he was started on coumadin. Pt states that he ne his blood. Pt denies any sx at this time

Current medication

- warfarin 5 mg tablet: take 1 tablet (5 mg) by oral route once daily
- pravastatin 20 mg tablet: take 1 tablet (20 mg) by oral route once daily
- aspirin 325 mg tablet: take 1 tablet (325 mg) by oral route once daily
- amlodipine 10 mg tablet: take 1 tablet (10 mg) by oral route once daily

Personal history

Behavioral: No coffee consumption. Daily tea consumption and daily cola consumption. No chocolate consumpti not a current smoker, not a former smoker, and not chewing nicotine containing substances.

Alcohol: Not using alcohol

Drug Use: Not using drugs

Habits: Not exercising regularly

Home Environment: Lives with parents. The living environment is secure and supportive, no domestic violence, a does not create fear of other occupants. Native language English. The racial background is black and the cu background is African American.

Marital: Single

Review of systems

Systemic: No fever and no recent weight change.

Head: No headache.

Eyes: No vision problems and no eye pain.

Otolaryngeal: No hearing loss and no sore throat. No oral cavity symptoms

Cardiovascular: No chest pain or discomfort, no palpitations, and no intermittent leg claudication.

Pulmonary: No dyspnea, no orthopnea, and no wheezing

Gastrointestinal: No dysphagia, no heartburn, no nausea, no vomiting, no hematemesis, no abdominal pain, no change in stool color. No diarrhoea and no constipation

Genitourinary: No increase in urinary frequency. No dysuria.

Endocrine: No polydipsia and no hot flashes

Hematologic: No easy bleeding and no tendency for easy bruising

Musculoskeletal: No foot symptoms, no arthralgias, no soft tissue swelling, and no localized joint swelling

Neurological: No lightheadedness, no memory lapses or loss, and no sensory disturbances.

Psychological: Not thinking about suicide

Skin: No skin lesions.

Hematologic Disorder: No anemia

Past Medical: No thyroid disease.

Medical/Surgical History

Vital Signs/Measurements	Value	Date
HR	70 per min	10/23/2012
RR	60 bpm	10/23/2012
Blood pressure	140/70 mmHg	10/23/2012
Pain level (0-10)	4	10/23/2012
Weight	176 lbs	10/23/2012
Body mass index	24.6 kg/m2	10/23/2012
Height	71 in	10/23/2012

* Temperature was 97.8 10/23/2012 10:42:00AM

Standard Measurements:

* Body surface area was five 10/23/2012 10:42:00AM * Patient was not observed to be obese

General Appearance:

* General appearance: * Alert * Oriented to time, place and person * Well developed * Well developed * Acute distress: * In no acute distress

Neck:

Tenderness: * Neck demonstrated no abnormalities in tenderness.

Thyroid: * Showed no abnormalities.

Eyes:

General/bilateral:

Extraocular Movements: Normal

Ears:

General/bilateral:

External Auditory Canal: * External auditory canals normal

Tympanic Membrane: * Normal

Hearing: * No hearing abnormalities

Pharynx:

* Normal

Lungs:

* Respiration rhythm and depth was normal * Chest was normal to percussion * Clear to auscultation.

Cardiovascular:

Heart Rate And Rhythm: * Normal

Heart Sounds: * Normal

Murmurs: * No murmurs were heard.

Arterial Pulses: * Equal bilaterally and normal

Edema: * Not present.

Abdomen:

Auscultation: * Abdominal auscultation revealed no abnormalities

Percussion: * Abdominal percussion was normal.

Palpation: * Abdominal palpation revealed no abnormalities

Neurological:

Speech: Normal.

Sensation: * No sensory exam abnormalities were noted.

Reflexes: * Normal

Psychiatric:

Mood: Euthymic

Skin:

* General appearance was normal * No skin lesions

Assessment

- Cerebral thrombosis
- Ischemic embolic stroke
- Arterial embolism

[illegible]

- Order postponed for prothrombin time
- Prothrombin time

will check PT/INR F/U in Adult Med Lyons

Notes:

Documented by Calvin Jackson, MD

Exhibit-E

The Regional Medical Center
3000 St. Matthews Road
Orangeburg, SC 29115

DISCHARGE SUMMARY

PATIENT: Washington, Jimmie ROOM #: 3E 33451
MEDICAL RECORD #: 0000104270
DATE OF BIRTH:
ADMISSION #: 1000602689
DICT PHYSICIAN: M.K. Greene, M.D.
ADMIT PHYSICIAN: B.S. Khokhar, M.D.
ADMITTED: 09/30/2012
DISCHARGED: 10/01/2012

DD: 10/02/2012 DT: 4:22 P TD: 10/05/2012 TT: 11:44 A

Regional Medical Center
Orangeburg, South Carolina

DISCHARGE SUMMARY

PRIMARY CARE PHYSICIAN: Family Health Center in St. Matthews.

Please see Dr. Khokhar's history and physical for full details regarding the admission history and physical.

HISTORY OF PRESENT ILLNESS: Briefly, the patient is a 58 year-old African American male who presented to the Regional Medical Center emergency room with a one day history of right-sided weakness. The patient reports that he work up and noticed that the right side of his body was difficult to move. He reports that his symptoms were similar to a stroke he had 1-1/2 weeks prior to admission when he was discharged from Trident Hospital with the diagnosis of CVA three days prior. The patient reported that he did not take medications as prescribed after discharge because he did not get them right away.

LABORATORY AND IMAGING DATA: On admission head CT showed no acute process. Creatinine 0.8, glucose 129, white blood cell count 10.5, hemoglobin 16.

HOSPITAL COURSE:

1. Acute cerebrovascular accident with brain infarction. The patient was admitted to telemetry on hospital day #1 which was the day of discharge. I was called by the nurse around 10 a.m. stating that the patient wanted to go home. I convinced the patient to stay for the MRI of his

Exhibit-6
COPY TO: St. Matthews FHC Center

brain which he did undergo but the patient did not want to stay for the results and therefore I obliged the patient and discharged him to home. I informed the patient that I would follow-up the results of the MRI. After reading the MRI last night, the radiologist called Dr. Khokhar and informed Dr. Khokhar that the patient had multiple foci of restricted diffusion in the left parietal lobe with evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. Given the multifocality it was suggested that the acute cerebrovascular accident was due to a cardioembolic phenomenon. In addition there were additional areas of chronic ischemic changes in the left occipital lobe. Today, I called the patient at home instructing him of the likely source of his CVA was cardioembolic and that he needed to come back to the hospital to be placed on anticoagulation. The patient reported to me that today is not a good day as he had errands to do. He states that he was willing to come back tomorrow for anticoagulation. Of note we did received documentation from Trident which showed a small acute stroke but no evidence of a cardioembolic source on MRI then or during his work-up.

2. Hypertension.

3. Dyslipidemia.

4. Nicotine dependence. The patient reported that he quit smoking with the stroke approximately 1-1/2 weeks ago.

FINAL DISCHARGE DIAGNOSIS:

1. Acute cerebrovascular accident with brain infarction likely cardioembolic source.
2. Hypertension.
3. Dyslipidemia.
4. History of nicotine abuse.
5. Old cortical hemorrhage of uncertain chronicity.

Exhibit-7

DISCHARGE SUMMARY

PATIENT: Washington, Jimmie
MEDICAL RECORD #: 0000104270
ADMISSION #: 1000602689
PHYSICIAN: B.S. Khokhar, M.D.

M.K. Greene, M.D.

000516286:cd

cc: St. Matthews FHC Center
M.K. Greene, M.D.

Exhibit-8

PRINTED BY: OS92361 DATE 10/11/2012

PATIENT: Washington, Jimmie ROOM #:
MEDICAL RECORD #: 0000104270
ADMISSION #: 1000605553
DATE OF BIRTH:
DICT PHYSICIAN: M.K. Greene, M.D.
ADMITTED: 10/03/2012

DD: 10/03/2012 DT: 5:34 P TD: 10/03/2012 TT: 5:48 P

Regional Medical Center
Orangeburg, South Carolina

HISTORY AND PHYSICAL EXAMINATION

PRIMARY CARE PHYSICIAN: Family Health Center - St. Matthews

HISTORY OF PRESENT ILLNESS: The patient is a 58-year-old, African American male that I discharged on 10/01/2012. The patient presented to the Regional Medical Center emergency room the day before with right-sided symptoms consistent with an acute stroke. The patient actually presented to Trident about a week and a half ago with similar symptoms where he was admitted. He had a workup which showed a small stroke. Carotid Dopplers and echocardiogram were normal. On 10/01/2012 before the patient got his MRI of the brain he wanted to leave. As I got a call by the patient's nurse, Hillary, at 10:00, I convinced the patient to stay for the MRI. After the MRI was done, the patient wanted to leave even though the results were not back as his symptoms had resolved and I reluctantly agreed to let the patient go.

The next day I reviewed the MRI results which showed multiple small foci of restricted diffusion in the high left parietal lobe and evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. It was noted that given the multifocality the appearance was suggestive of an embolic phenomenon. In addition, there were areas of chronic ischemic changes in the left occipital lobe. Because of these findings, I called the patient at home yesterday requesting him to come back to the hospital regarding the need for possible anticoagulation given the possibility of embolic stroke. The patient reported that he had a lot of business to take care of and that he would come back today. Again, I called the patient at home today and he obliged and came back to the hospital for admission.

REVIEW OF SYSTEMS: The patient reports that he still has some right lower extremity residual weakness. Otherwise, review of systems is negative.

PAST MEDICAL HISTORY: Hypertension, recent CVA as above, hypercholesterolemia.

ALLERGIES: NO KNOWN DRUG ALLERGIES.

MEDICATIONS:
1. Aspirin 325 milligrams daily.
2. Norvasc 10 milligrams daily.
3. Pravastatin 20 milligrams at bedtime.

Exhibit-94

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: The patient reports he quit smoking after his most recent stroke. There is no history of alcohol or illicit drug use.

PHYSICAL EXAMINATION:

GENERAL APPEARANCE: In general, the patient is awake, alert, conversant, in no apparent distress, sitting up on the edge of the bed.

VITAL SIGNS: Temperature 36.4, heart rate 54, respiratory rate 20, blood pressure 137/74. Oxygen saturation 99% on room air.

HEENT: Normocephalic, atraumatic. Sclerae are anicteric. Oropharynx is clear with moist mucous membranes.
Neck: No lymphadenopathy, no JVD, no thyromegaly, no carotid bruits.
Lungs: Clear to auscultation bilaterally. There is no increased work of breathing.
Cardiovascular exam: Normal S1 and S2 without murmurs, rubs or gallops.
Abdomen: Thin, soft, nontender, nondistended. There are normoactive bowel sounds.
Extremities: No edema.

ASSESSMENT AND PLAN: A 58-year-old, African American male presenting with embolic CVA with brain infarction.

1. Embolic CVA with brain infarction. The patient is placed in telemetry. Neurology has been consulted. I did order a Heparin drip per Neurology protocol for anticoagulation given the possibility of embolic CVA. In addition, the patient is being continued on his statin. Neuro checks every four hours. PT/OT. Further recommendations to follow.
2. Hypertension.
3. Dyslipidemia.
4. Recent tobacco cessation.

M.K. Greene, M.D.

000516661:ab

cc: M.K. Greene, M.D.

Exhibit-95

PRINTED BY: OS92361 DATE: 10/11/2012

The Regional Medical Center
of Orangeburg & Calhoun Counties

Washington, Jimmie
DOB: 10/14/1953 58 Y M
DOS:
ATT: Greene, Michael K
FIN: 1000605553 Rm: 3303
MRN: 0000104270

CONSULTATION REQUEST

PHYSICIAN SECTION

Physician to be consulted: Alhautou

Routine (less than 24 hours) - Attending Physician must contact consulting physician if CCH section not completed

***Stat** (less than 2 hours) - Attending Physician **must** contact consulting physician

Reason for Consultation Request:

Comprehensive Clinical History *(CCH)*: (required for routine consultations and if not complete, requesting physician must contact consultant) embolic CVA

Date: 10/3/12 Time: 1433 Attending Physician: Dr. Greene

NURSING SECTION

Consultation Request Initiated: (Date/Time) 10/3/12 1433

Yellow copy to Medical Records for placement in attending physicians box: (Date/Time) 10/3/12 1433

Old Records Called For _____ (Date/Time) _____ Old Records Received _____ (Date/Time) _____

☒ **Routine Consult: Physician notified:** (Date/Time) 10/3/12 1433

☐ **Message left with** _____: (Date/Time) _____

☐ ***Stat Consult:** Consulting physician contacted by requesting physician

Consultant keyed into Care Manager: (Date/Time) 10/3/12 1433

Nursing Staff: _____

CONSULTATION REPORT

Report dictated: (Date: _____ Time: _____ Job #: _____)

Date/Time: _____ Consulting Physician _____

Pink copy for physician's use

CR

Exhibit-96

Revised 9/05
410238

PRINTED BY: OS92361 DATE 10/11/2012

PATIENT: Washington, Jimmie
MEDICAL RECORD #: 0000104270
ADMIT PHYSICIAN: M K. Greene, M.D.
DATE OF BIRTH:
DD: 10/03/2012 DT: 3:58 P

ROOM #:
ADMISSION #: 1000605553
DICT PHYS: M.I. Alhatou, M.D.
ADMITTED: 10/03/2012
TD: 10/04/2012 TT: 5:46 A

Regional Medical Center
Orangeburg, South Carolina

NEUROLOGY CONSULTATION REPORT

HISTORY: Mr. Washington is a 58 year old African-American male with a history of hypertension, stroke, and dyslipidemia. The patient was not on any antiplatelets in the past since he thought he was allergic to aspirin. A week prior to his admission to the hospital and actually on 09/23/12 he was admitted at Trident Medical Center. At that time he presented with right arm and leg weakness. His MRI of the brain showed multifocal patches _____ diffusion consistent with acute strokes in the posterior left frontal and left parietal lobe as well as the left centrum semiovale. It was reported that the patient's carotid ultrasound showed mild atherosclerotic disease and that his echo didn't show a source of thrombus. The patient was discharged on aspirin 325 milligrams every day, Amlodipine, Pravastatin 20 milligrams every h.s., and nicotine. The patient said that it took him two to three days to take his medications since his discharge and he thinks he started taking his medications on 09/29/12. The patient presented to the emergency room on 09/30/12 with right arm and leg weakness. The next day he felt much better. He didn't wait for the results of the MRI and he left. When the MRI was read the patient was called and he agreed to be admitted again to the hospital. The patient feels much better except he feels numb and weakness in his right foot. He denies visual field cut or language difficulties. No loss of consciousness or seizure activities. No illicit drug use. No chest pain, palpitations, shortness of breath.

REVIEW OF SYSTEMS: Negative for fever, chills, weight loss, eye pain, ear pain, decreased vision, chest pain, palpitations, wheezing, shortness of breath, nausea, vomiting, hematuria, urinary retention, recurrent infection, recurrent deep venous thrombosis, bruising or recurrent bleeds. Negative for seizure, depression, illicit drug use, suicidal or homicidal ideation.

PAST MEDICAL HISTORY: As above.

SOCIAL HISTORY: Positive for tobacco but he said he quit recently after his stroke. He denies alcohol or illicit drugs.

FAMILY HISTORY: Negative for miscarriage or stroke at young age.

PHYSICAL EXAMINATION
Vital Signs: Blood pressure 146/87, pulse 63, temperature 36.2.

HEENT: Head normocephalic.
Neck: Supple. No bruit.
Chest: Clear. No wheezing.
Heart: Regular. No murmur or gallop.

Exhibit-97

Neurological: He is awake, alert and oriented times three. Language examination - he is able to name, repeat and comprehend. Cranial nerve examination II-XII intact. Strength 5/5 in the upper and lower extremities except right foot dorsiflexion and plantar flexion is 2+/5. Sensation symmetric except for decreased sensation in the right foot. Reflexes 1+/4 in the upper and lower extremities. Intact cortical sensation including simultaneous stimulation and stereognosis. Downgoing toes bilaterally. Normal finger-to-nose. The patient is able to ambulate with mild unsteadiness.

LABS: I did review the patient's labs. There are multiple small acute strokes in the left frontal and parietal, cortical and subcortical area as well as centrum semiovale. These can be related to border zone ischemia versus embolic strokes. There is a small area of low attenuation on FLAIR and T2 _____ and T3 gradient echo which is probably related to turning cortical vein. This is less likely to represent hemorrhage.

I did review the patient's MRA of the brain which is unremarkable.

ASSESSMENT AND PLAN: This is a 58 year old male with a history of hypertension, hypercholesterolemia, and tobacco abuse who had an episode of right arm and leg weakness at Trident Hospital. He was discharged on aspirin, a blood pressure medication and a statin, however he didn't take his medications due to financial reasons. He had another episode of weakness on the right side. His MRI showed multiple acute strokes in the left frontal and parietal lobe involving the cortical and subcortical area as well as the centrum semiovale.

1. Multiple acute left hemispheric strokes. These can be cardioembolic or related to border zone ischemia. His transthoracic echo at Trident Hospital didn't show thrombus. His carotid ultrasound also didn't show a source. I would like to do an MRA of the neck with contrast and also do a TEE study. The patient denies a history of deep vein thrombosis. There is no family history of a stroke at young age or miscarriage. I will get a fasting lipid profile and I will check homocystine, protein C, protein S and lupus anticoagulants. I will use aspirin 325 milligrams every day. Pravastatin 20 milligrams every h.s. pending fasting lipid profile. I recommend good control of patient's blood pressure. Definitely the patient is not a TPA candidate. Stroke education. Neuro checks.
2. Abnormal MRI. I did review the patient's MRI. There is no evidence of hemorrhage. The abnormal signals represent the cortical vein.
3. Tobacco abuse. The patient hasn't smoked in the last week since his first stroke.
4. DVT prophylaxis.
5. GI prophylaxis with Pepcid 20 milligrams every day since the patient reports nausea with aspirin before which is not related to allergy, but probably to GI irritation.

Diagnosis, prognosis, and plan were discussed with the patient in detail. _____ was spent reviewing the patient's images, old records and answering patient's questions.

Exhibit-98

PRINTED BY: OS92361 DATE 10/11/2012

M.I. Alhatou, M.D.

000516628:cr

cc: M.I. Alhatou, M.D.

Exhibit - gg

FAMILY HEALTH CENTERS, INC 3310 MAGNOLIA ST, ORANGEBURG, SC 291151466	Requistion # 456503

Date Collected	Date Received	Time Received	Time
	10/24/2012	9:40 am	9:23 am

Patient Name	Gender	DOB	Age
WASHINGTON, JIMMIE	M		59 Yrs

Patient ID	Patient Address	Patient Telephone
66933	209 SIGNET DRIVE, EUTAWVILLE, SC 29048	(H) (803) 496-4655 (W)

Physician ID/UPIN/NPI	Physician Name
54 1740398338	CALVIN JACKSON, MD

Test — Result Comments

Components	Result	Flag	Units	Reference Interval	Lab
Protime (PT)					
INR	1.9	H		0.8-1.2	BN
Reference interval is for non-anticoagulated patients. Suggested INR therapeutic range for Vitamin K antagonist therapy: Standard Dose (moderate intensity therapeutic range): 2.0 - 3.0 Higher intensity therapeutic range 2.5 - 3.5					
Prothrombin Time	20.0	H	sec	9.1-12.0	BN

Request sent to: REGIONAL MEDICAL RESOURCE AUDIT — RE: JIM WASHINGTON
Ref. No. N0045

"Verified Complaint treated As A Affidavit OF Expert Witness §§ S.C. 15-79-125(A) and 15-36-100

[illegible] (866) 827-7[illegible]

S.C. Code Statutes 15-79-125 (A) Notice of Intent / 15-36-100 Affidavit of Expert Witness of Dr. Sarah Anne Ludington-Tr. P. 3 line 1-p. 7 line 12; p. 7 line 13-p. 8 line 4

PAYMENT INSTRUCTIONS (For Records/Reports only)

Complete the information below. We do not accept personalized invoices

[illegible] RETURN THIS COMPLETED AND SIGNED FOR PAYMENT [illegible] PERSONAL, THIS COMPLETED AND SIGNED FORM [illegible] PRODUCTION [illegible] OF THE MEDICAL EVIDENCE.

* [illegible] copy of financial records. Odd or sale [illegible] are paid [illegible] schedule in the [illegible]

* [illegible] and Address.

[illegible] Account Billed (Check one)

[illegible]

Authorized signature (Required)

[illegible] BELOW

MAIL INSTRUCTIONS

Insert our page into the window envelope and the cable [illegible] THIS PAGE MUST [illegible]

* [illegible]
* [illegible] more than one person in the same envelope, place the [illegible] each individual on top of his/her records

* We cannot honor a bill presented more than 60 days after the close of our fiscal year ended, September 30

THIS PAGE MUST BE ON TOP OF YOUR REPORT.

[illegible]

[illegible]
Client No: 800285
[illegible]
[illegible]

Invoice No: 00802809-2
[illegible] No: 7000[illegible]

DISABILITY DETERMINATION SERVICES
SOUTH CAROLINA VOCATIONAL REHABILITATION DEPARTMENT
Providing quality disability determination services to South Carolinians in a responsive, timely and cost-effective manner
Barbara G. Dolby, Commissioner
Charleston Regional Office ■ P.O. Box 196179 ■ North Charleston, SC 29419 ■ (843) 953-0300
Toll free (800) 868-0100 ■ Medical Information Fax (866) 827-7369
SCVRD

10427
1000619584

November 26, 2012

REGIONAL MED CTR-ORBURG/CALHOU
Attention: Medical Records-INPT
3000 ST MATTHEWS ROAD
ORANGEBURG SC 29115

RE: JIM WASHINGTON

AKA: WASHINGTON, JIMMIE
ADD: 209 SIGNET DRIVE
ELLAWVILLE SC 29048
Ref. No: N00485
DOB:

This patient has applied for disability benefits under the Social Security Act. We need the following information:

Treatment Records: 09/01/2011 TO PRESENT

Admission/discharge summaries.

X-rays.

Emergency room records

Out-patient treatment records

See attached page for instructions on returning your report to the DDS. We pay $25.00 for a copy of treatment records. Out of State requests will be compensated according to that state's established fee schedule. **If payment is required** please sign on the line for "Provider's Signature" page and include that page as the TOP document with your report, with this letter underneath. ***You may fax your records using the 2D Bar Code Coversheet to our toll free medical fax number.*** Thank you.

Sincerely,

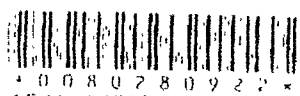
Teresa Miller

Teresa Miller, Disability Examiner

PLEASE INCLUDE THIS LETTER AS PAGE 2 OF YOUR REPORT.

ENCLOSURE: Release
326/TMI

Claim No. N00485
T3 (8/12, mdp)
DMA: Y


0080280922
DDN: 0080280922

NOV 28 2012

WHOSE Records to be Disclosed Form Approved OMB No. 0960-0623

NAME (First, Middle, Last) Jim Washington

SSN

Birthday (mm/dd/yy) 10/14/1953

1000619584

AUTHORIZATION TO DISCLOSE INFORMATION TO THE SOCIAL SECURITY ADMINISTRATION (SSA)

**** PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW ****

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):

OF WHAT *All my medical records; also education records and other information related to my ability to perform tasks. This includes specific permission to release:*

1. All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) *including*, and *not limited to*:
   - Psychological, psychiatric or other mental impairment(s) (excludes "psychotherapy notes" as defined in 45 CFR 164.501)
   - Drug abuse, alcoholism, or other substance abuse
   - Sickle cell anemia
   - Records which may indicate the presence of a communicable or noncommunicable disease; and tests for or records of HIV/AIDS
   - Gene-related impairments (including genetic test results)
2. Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
3. Copies of educational tests or evaluations, including Individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
4. Information created within 12 months after the date this authorization is signed, as well as past information.

FROM WHOM

- All medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SSA
- Employers, insurance companies, workers' compensation programs
- Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY SSA/DDS (as needed) Additional information to identify the subject (e.g., other names used), the specific source, or the material to be disclosed:

REGIONAL MED CTR-O'BURG/CALHOU
3000 ST MATTHEWS ROAD
ORANGEBURG SC 29115

From 09/01/11 to present

TO WHOM The Social Security Administration and to the State agency authorized to process my case (usually called "disability determination services"), including contract copy services, and doctors or other professionals consulted during the process. [Also, for international claims, to the U.S. Department of State Foreign Service Post.]

PURPOSE Determining my eligibility for benefits, including looking at the combined effect of any impairments that by themselves would not meet SSA's definition of disability; and whether I can manage such benefits.

☐ Determining whether I am capable of managing benefits ONLY (check only if this applies)

EXPIRES WHEN This authorization is good for 12 months from the date signed (below my signature).

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances in which this information may be redisclosed to other parties (see page 2 for details).
- I may write to SSA and my sources to revoke this authorization at any time (see page 2 for details).
- SSA will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of material to be disclosed.
- I have read both pages of this form and agree to the disclosures above from the types of sources listed.

PLEASE SIGN USING BLUE OR BLACK INK ONLY

INDIVIDUAL authorizing disclosure

SIGN ▶ [signature]

Date Signed 10/25/12

Phone Number (with area code)

Street Address

City

State

ZIP

IF not signed by subject of disclosure, specify basis for authority to sign

☐ Parent of minor ☐ Guardian ☐ Other personal representative (explain)

(Parent/guardian/personal representative sign here if two signatures required by State law) ▶

WITNESS *I know the person signing this form or am satisfied of this person's identity:*

SIGN ▶ Megan Kii Henning CRT

Phone Number (or Address) F0594

IF needed, second witness sign here (e.g., if signed with "X" above) SIGN ▶

Phone Number (or Address)

This general and special authorization to disclose was developed to comply with the provisions regarding disclosure of medical, educational, and other information under P.L. 104-191 ("HIPAA"); 45 CFR parts 160 and 164; 42 U.S. Code section 290dd-2; 42 CFR part 2; 38 U.S. Code section 7332; 38 CFR 1.475; 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 99 and 300; and State law.

Form SSA-827 (4-2009) el (04-2009) Use 2-2003 and Later Editions Until Supply is Exhausted

* Final Report *

* Final Report *

Discharge Summary

Patient: **Washington, Jimmie** **MRN: 0000104270** **FIN 1000605553**
Age: **58 years** Sex: **Male** DOB: (/)
Associate Diagnoses: **None**
Author: **Ludington MD, Sarah Anne**

Admitting Physician: Michael Green
Discharging Physician: Sarah Ludington

Date of Admission: 10/3/2012
Date of Discharge: 10/8/2012

Diagnosis on Admission:
1.) Cardioembolic stroke
2.) HTN
3.) HLD

Diagnosis on Discharge:
1.) Cardioembolic Stroke
2.) Intra-atrial thrombus
3.) HLD

Results Review

WBC		7.0	(OCT 06)	7.5	(OCT 03)			
Hgb		15.4	(OCT 06)	16.2	(OCT 03)			
Hct		43.0	(OCT 06)	43.3	(OCT 03)			
Plt		H 404	(OCT 07)	376	(OCT 06)	348	(OCT 04)	H 407
(OCT 03)								
Na		137	(OCT 06)	139	(OCT 04)			
K	4.2	(OCT 06)	4.2	(OCT 04)				
Cl	103	(OCT 06)	105	(OCT 04)				
Cr	0.9	(OCT 06)	0.9	(OCT 04)				
BUN		17	(OCT 06)	15	(OCT 04)			

Result type:	Discharge Summary-Physician
Result date:	08 October 2012 7:46 EDT
Result status:	Auth (Verified)
Result title:	Discharge Summary
Performed by:	Ludington MD, Sarah Anne on 08 October 2012 7:49 EDT
Verified by:	Ludington MD, Sarah Anne on 08 October 2012 12:19 EDT
Encounter info:	1000605553, RMC, Inpatient, 10/03/2012 - 10/08/2012

Exhibit-1

* Final Report *

Glucose	98	(OCT 06)	93	(OCT 04)				
Ca	9.2	(OCT 06)	L 9.0	(OCT 04)				
Pt (OCT 04)	18.9	(OCT 07)	14.7	(OCT 06)	12.9	(OCT 05)	13.4	
INR (OCT 04)	H 1.75	(OCT 07)	H 1.44	(OCT 06)	1.20	(OCT 05)	1.25	

PTT H 39.1
(OCT 07) H 61.9 (OCT 06) H 74.3
(OCT 06) H 38.7 (OCT 06)

INR 2 on 10/8

MRI:
IMPRESSION:
1. Multiple small foci of restricted diffusion in the high left parietal lobe with evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. Given the multifocality the appearance is suggestive of an embolic phenomenon. Additional areas of chronic ischemic changes are seen in the left occipital lobe.
2. Normal circle of Willis MRA.

Physical Examination
VS/Measurements

Vitals Signs (last 24 hrs)	Last Charted		Minimum		Maximum	
Temp	35.6	(OCT 08 00:26)	35.6	(OCT 08 00:26)	L 35.5	(OCT 07 11:11)
Heart Rate	L 58	(OCT 08 00:26)	L 52	(OCT 07 11:11)	68	(OCT 07 15:44)
Resp Rate	20	(OCT 07 15:44)	20	(OCT 07 11:11)	20	(OCT 07 11:11)
SBP	H 145	(OCT 08 00:26)	127	(OCT 07 19:05)	H 145	(OCT 08 00:26)
DBP	75	(OCT 08 00:26)	64	(OCT 07 19:05)	75	(OCT 08 00:26)

Result type: Discharge Summary-Physician
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Encounter info: 1000605553, RMC, Inpatient, 10/03/2012 - 10/08/2012

Exhibit-2

* Final Report *

SpO2 100 (OCT 08 00:26) 98 (OCT 07 11:11) 100 (OCT 06 00:26)

General Alert and oriented, No acute distress
Eye Pupils are equal, round and reactive to light
HEENT Normocephalic
Neck Supple, Non tender, No carotid bruit
Respiratory Lungs are clear to auscultation, Respirations are non labored, Symmetrical chest wall expansion
Cardiovascular Normal rate, Regular rhythm, No murmur, Good pulses equal in all extremities.
Gastrointestinal Soft, Non tender, Non distended, Normal bowel sounds, No organomegaly
Musculoskeletal
Normal range of motion, Normal strength, No swelling
Neurologic Alert, Oriented, Normal deep tendon reflexes
Psychiatric Appropriate mood & affect.

Hospital Course

HPI (as taken from H&P)
HISTORY OF PRESENT ILLNESS: The patient is a 58-year old, African American male that I discharged on 10/01/2012. The patient presented to the Regional Medical Center emergency room the day before with right sided symptoms consistent with an acute stroke. The patient actually presented to Trident about a week and a half ago with similar symptoms where he was admitted. He had a workup which showed a small stroke. Carotid Dopplers and echocardiogram were normal. On 10/01/2012 before the patient got his MRI of the brain he wanted to leave. As I got a call by the patient's nurse, Hillary, at 10:00, I convinced the patient to stay for the MRI. After the MRI was done, the patient wanted to leave even though the results were not back as his symptoms had resolved and I reluctantly agreed to let the patient go.

The next day I reviewed the MRI results which showed multiple small foci of restricted diffusion in the high left parietal lobe and evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. It was noted that given the multifocality the appearance was suggestive of an embolic phenomenon. In addition, there were areas of chronic ischemic changes in the left occipital lobe. Because of these

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Encounter info:	1000605553, RMC, Inpatient, 10/03/2012 - 10/08/2012

Exhibit-3

findings, I called the patient at home yesterday requesting him to come back to the hospital regarding the need for possible anticoagulation given the possibility of embolic stroke. The patient reported that he had a lot of business to take care of and that he would come back today. Again, I called the patient at home today and he obliged and came back to the hospital for admission.

REVIEW OF SYSTEMS: The patient reports that he still has some right lower extremity residual weakness. Otherwise, review of systems is negative.

PAST MEDICAL HISTORY: Hypertension, recent CVA as above, hypercholesterolemia

Hospital Course:
Patient admitted and atrial thrombus detected on TEE. Was placed on heparin gtt to transition to coumadin

Discharge Plan
Condition on DC: stable
Activity: as tolerated
Follow Up: INR in 2 days with adjustments made by PCP; needs follow up with PCP in 1-2 weeks

Discharge Medications:
amlodipine 10mg Daily
ASA 81mg Daily
Pravastatin 20mg Daily
Warfarin 5mg Daily

Sarah Ludington MD

Completed Action List:
* Perform by Ludington MD, Sarah Anne on 08 October 2012 7:49 EDT
* Modify by Ludington MD, Sarah Anne on 08 October 2012 9:33 EDT
* Modify by Ludington MD, Sarah Anne on 08 October 2012 12:10 EDT
* Sign by Ludington MD, Sarah Anne on 08 October 2012 12:19 EDT
* VERIFY by Ludington MD, Sarah Anne on 08 October 2012 12:19 EDT

Result type:	Discharge Summary-Physician
Result date:	08 October 2012 7:46 EDT
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Appellant Memorandum of Law-S.C. Statutes 15-79-125(A) Notice of Intent and 15-36-100 Expert Witness Affidavit, Tr. P. 3 line 1-p. 8 line 4; Amendment of Complaint / Damages relief claims, Tr. P. 7 line 13-p. 8 line 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEA
COUNTY OF CHARLESTON	)	NINETH JUDICIAL CIRCUIT
JIM WASHINGTON,	)	CASE NO. 2015-CP-10-5000
Plaintiff,	)	
v.	)	MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS
TRIDIENT MEDICAL CENTER, LLC	)	
Defendant.	)	
	)	

2016 JAN -4 PM 1:10

'O'

Plaintiff, Jim Washington, respectfully move this honorable court to deny Defendant Trident Medical Center (correct Corporate name "Trident Medical Center, LLC") (hereinafter "Trident") MOTION TO DISMISS civil action No. 2015-CP-10-5000, pursuant to S C. Code Ann. Statutes 15-79-125 and 15-36-100 and to grant plaintiff relief to civil action No 2015-CP-10-5000 medical malpractice claim, and to grant Plaintiff leave to file as an amended Complaint to allege a second theory of recovery alleged on pages four through six - Opposition To motion To Dismiss. Spence v. Spencer, 628 S.E.2d 864 (2006) (citing Foman v. Davis, 371 U.S. 178 (1962) and Scally v. Dodge, 347 S.E.2d 504 (1986)) and compel both parties to Mediation. §15-79-125(F).

FACTUAL / PROCEDURAL HISTORY

I. The basis of said Memorandum In Opposition — is that plaintiff filed this action under S.C. ss15-79-125(A) for Notice of Intent and §15-79-125(E)(2) on 9/11/15 due to time Constraint ADR mediation would not be completed or determined if impasse exist or end mediation due to the statute of limitation was due to expire on 9/23-26/15 therefore f iled Summons and Complaint Plaintiff, also filed on same above date his first set of Interrogatories, Request for Production, Request for Mediation, signed all documents (including the cover sheet), name Trident as adverse party, contained a short and plain statement of the facts showing plaintiff entitled to relief, served on all name defendants in accordance with the service rules for Summons and Complaint outline in South Carolina rules of Civil Procedure and filed 2 verified Complaint under S.C. §15-36-100 (C) Common knowledge treated as an affidavit of merit specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on available evidence at the time of filing the affidavit. Defendant seeks dismissal of this action, under all the above circumstances and Under SCRCP Rule 12(b)(1), 12(b)(6) and 12(C). Under the facts and circumstances of this action which involves important questions of novel impression. A decision which could have far reaching effect to the parties and future litigant and justice requires these questions should not be decided on demurrer. Springfield v. Williams Plumbing Supply Co., 195 S.E.2d 184 (1967) (same); Kennedy v. Henderson, 346 S.E.2d 826 (1986) (Allege Industry standard is informal) See Dawkins v. Fields, 580 S.E.2d 433 (2003) ("South Carolina Supreme Court agreeing with Court of Appeals' well-supported conclusion that a verified Complaint is an acceptable substitute for an affidavit); Gruzin v. S.C. State Plasterers, 723 S.E.2d 197 (2010) (allow mediation under stay provision of statute after suit is filed legislative intent).

DISCUSSION

Therefore, dismissal of this action is unwarranted and mediation needs to conducted because the above compliance to statutory requirements as filed by plaintiff as above stated and done, and South Carolina Supreme Court Case laws Ranucci v. Crain, 763 S.E,2d 189(2014), Brouwer v. Sisters of Charity, 763 S.E.2d 200 (2014), Wilkerson v. East Cooper Community Hospital, 763 S.E.2d 426(2014), Grier v. Amisub of S.C., Inc., 725 S.E 2d 693(2012) and Ross v. Waccamaw Community Hospital, 744 S.E. 2d 547(2013) relying these same statues and the subsections as applied to facts and issues under the same or similar circumstances as plaintiff involved in his action, granted relief on the above issues allowing filing the Notice of Intent and Summons and Complaint on the same day in one action, allowed affidavit under the Common Knowledge Exception, tolling the statute of limitation because all conditions were met even though mediation had not been begun and or completed at the time of filing the Medical Malpractice Civil Action, but allowing for mediation after suit is filed. The S.C. Supreme Court held that to allow the above steps and procedure was consistent with the legislature intent under these statutes and harmonizes its goals. See Grazia v. S.C. State Plastering, 703 S.E.2d 197(2010)(some-and controlling precedent and the above precedents) and to not do so create an absurd result and that the Circuit Court retained jurisdiction over the subject matter. The S.C. Supreme further found dismissal of the Complaint was not appropriate under these circumstances as plaintiff, but consider technical noncompliance with these statutes should be adjudicated on the merit by trial by jury. Finally, the S.C. Supreme Court held that the Notice of Intent and Summons and Complaint were timely and proper tolling all statutes of limitations. Plaintiff, also move this honorable court to take Judicial Notice that the Defendant by and through his counsel made admission that the action also had accompanying documents. These documents are two (2) verified complaints to be treated as an affidavit of merit by an expert witness to support the common knowledge exception under S.C. §15-36-100 (C)(2). Therefore, under S.C. §15-36-100 (D) which provides no basis for a statute of limitation defense for defendant motion to dismiss. The other accompanying documents are to the Interrogatories and Request for Production. Therefore, S C. § 15-79-125(A) and S.C. §15-36-100 Filing of the Notice of Intent tolls all applicable statute of limitations in plaintiff civil action No. 2015-CP-10-5000. The Clerk of Court filed the Expert Witness Affidavit of Plaintiff separately as an exhibit rather than together with the complaint erroneously but such technical noncompliance is not ground for dismiss. Wilkerson v. East Cooper Community Hospital citing Ross and Grier and citing Fisher v. Pelstring, 817 S.E.2d 741, 807 n. 8 (D. S. C. 2011)(same). Finally, Defendant Prayer for relief to dismiss of the above stated documents should also be denied because they are admissible, relevant and material to all issues defendant are seeking relief thereof which is disputed by plaintiff. Lancaster v. Sweat, 121 S.E.2d 444(1961)(same); Kline v. City of Columbia, 1995 S.E.2d 597(1967)(In the final analysis WND is the correct depends on the legislative intent of the statute. Decision of the question could prove of grave important to the parties and future litigant and for refusal of court to strike should not be decided on demurrer but trial on the merits); Elledge v. Richland/Lexington School, 579 S.E.2d 789(2002)(Evidence of Industry standard is admissible and Relevant); Moultrie v. Musc, 311 S.E.2d 750(1984)(same); Dawkins v. Fields, 586 S.E.2d 433(2003)(S.C. Supreme Court agreed verified Complaint acceptable affidavit substitute

The basis of said Memorandum in opposition to Motion to Dismiss civil action under South Carolina Rules of Civil Procedure—Rules 12(b)(1), 12 (b)(6), and 12(c) is:

(a) The court has Subject Matter Jurisdiction because plaintiff filed the Notice of Intent, Requested for Mediation under Alternative Dispute Resolution rules on the [illegible] of Intent and Summons and Complaint, filed the affidavit

of expert witness, Interrogatories and Request for Production, name all defendants adverse party, the affidavits by the expert witnesses specifying at least one negligent act or omission on breach the standard of care which also included proximate cause , served all defendant(s) and signed all documents. Dismissal should be denied. See South Carolina Statutes applicable §§ 15-79-125 (A) and (E)(2) and 15-36-100 (C) and (d) and Case Laws, Timms v Green, 427 S.E.2d 642 (Supreme Court)(1993); Woodard v. Wesvaco Corporation, 433 S.E. 2d890 (S.C. APP Ct.)(1993); Duncan v. Provident Mutual Life Ins. Co , 427 S E. 2d 657 (S,C Supreme Ct.) (1993); Baird v Charleston County, 511 S E 2d69 (S , C. Supreme Ct)(1999) (arguing statutory condition precedent and held that doctors are not required to follow the procedures set forth in section 15-77-20 to institute this action); Wilkerson v. East Cooper Community Hospital, Inc.,763 S E.2d 426(2014) (citing Ross v. Waccamaw Community Hospital, 404 S C 56, 744 S.E 2d 547(2013)(concluding failure to timely complete the pre-litigation mediation process as required by section 15-79-100 does not divest the trial court of subject matter jurisdiction . The circuit court erred in granting respondents motion to dismiss as Wilkerson complaint was timely and sufficient to properly initiate a civil action for medical malpractice). Based on plaintiff compliance with the above statutory requirement and the above cited case laws holding, support plaintiff basis to deny defendant, Trident Motion to Dismiss for its Rule 12(b)(1) ground for Subject Matter Jurisdiction. Therefore. defendant motion should be denied accordingly. Ross v. Waccamaw Community Hopsital 404 S.C. 56, 744 S.E. 2d 547 (2013) (same); Rickerson v. Karl, Court of Appeals (S.C. App Ct.-2015)(same); Dawkins v. Fields, 590 S.E. 2d 433 (2003)(S.C. Supreme Court agree a verified Complaint is acceptable substitute for an affidavit); Bell v. Monsanto Corp, 579 S.E. 2d 329 (2003)(Affirm striking statute of limitation as a defense, Court retains subject matter jurisdiction).

b) Plaintiff, pleading in complaint alleged sufficient fact to support a reasonable deductible inference in the pleading in light most favorable to plaintiff, would entitle him to relief on the theory of his case: that on 9/23/12 defendant, Trident voluntary undertaken to diagnose and treat plaintiff. See complaint, pages one (1) through three (3) factual basis for claim, breach the standard See complaint; page three (3) "Standard of Care". Plaintiff, theory of his case under South Carolina Supreme Court Landmark case, King v Williams, 276 S.C 478(1981), 279 S.E. 2d 618 and S.C. § 15-32-210 subsections (8, 9, 11 and 5 damages), is that defendant, Trident breached the national standard of care. Trident employees and/or agents on 9/23/2012 as a reasonable prudent hospitalist. was supposed to immediately start plaintiff on Anticoagulation treatment of Heparin then transition to Coumadin according to Neurology protocol for the prevention of possible embolism and discharge plaintiff to his primary health provider for follow-up care with Coumadin These treatments and procedures are the general recognized and accepted treatment/procedure national standard of care for possible embolism. Trident breach this standard of care A complaint should be liberally construed and any inferences reasonable deductible that is relevant to plaintiff theory must be construed in plaintiff favor. Upon the allege facts in the

(3)

Complaint reasonable deductible inference in Plaintiff favor is sufficient to state a cause of action under S.C. 15-32-210 subsection(3,5,7) and the holdings of King v. Williams, supra and Doe v. American Red Cross Blood Services, 377 S.E.2d 323 (1989) (Professional standard), and S.C. § 15-32-220 subsection(C)(10). Plaintiff, sufficienty pled sufficient facts to overrule Trident demurrer under SCRCP-Rule 12(b)(6) motion. Under the holdings of Chilton v. City of Columbia, 147 S.E.2d 642 (1966) and Kennedy v. Henderson, 346 S.E.2d 526 (1986), Plaintiff plead facts which can reasonably inferred breach the neurology industry standard of care to prevent embolism which caused him injury and damages, stated a cause of action entitled to damages. Plaintiff, second theory of pleading was that Trident knowingly, recklessly intent to initially start plaintiff on the treatment of aspirin but delayed this treatment until it decided what his allergic reaction to aspirin. Then recklessly changed from Plavix to aspirin 325mg on or about 9/24/2012 until 9/26/2012 upon discharge and afterwards with reckless intent to harm plaintiff by using this treatment in an excessive doses, not Heparin and Coumadin with follow-up care instruction for accept/recog. treatment upon discharge, knowing his condition had become critical worsened, recklessly took no corrective action before discharge intentionally to breach the independent duty it voluntarily undertook to prevent harm, did cause plaintiff injury and damages. See complaint – pages one (1) through three (3) factual basis for claim and standard of care) and proximate caused his injury and permanent impairment damages. See complaint – pages three (3) through five (5) and page six (6) pray for relief of judgement and damages Plaintiff, based upon the above facts, pleaded in the complaint allege sufficient fact to support a reason a reasonable inference in light most favorable to plaintiff, that would entitle him to relief under, Russell v. City of Columbia 406 S.E.2d 338 (1991) (Duty) and Taylor v. Medenica, 479 S.E. 2d35-S.C Supreme County (1996) (Punitive damages); Crowley v. Bob Jones University, 234 S.E.2d 874 (1977) (Error to grant demurrer for intentional tort, Allow to plead ultimate facts, pleading in answer) Stiles v. Onorato, 457 S.E.2d 601 (1995) (Interference having outside role as attorney breach independent duty of care); Brown v. Finger, 124 S.E.2d 781 (1962) (Cause of action for loss of income and other damages); and S.C. § 15-32-220(E) and § 15-32-530(C)(2) (Punitive damages awards). Brouwers v. Sisters of Charity, 763 S.E.2d 206 (2014) (Knowing allergic exposure); Wright v. Colleton County School District, 391 S.E.2d 564 (1990) (Permit recovery for loss under statute, also find separate loss recovery under statute amount of Damage); Parks v. Palmetto Hardwood, Inc., 739 S.E.2d 831 (2013) (Defining severe permanent brain damage impairment under statute compensable as legislative intent), and Crisp v. South Carolina, 738 S.E.2d 332 (2013) (Same); and Bergstrom v. Palmetto Health Alliance, 596 S.E.2d 42 (2004) (We conclude the Circuit court erred in dismissing this action when the facts and inferences therefrom as set forth in the complaint are viewed in the light most favorable to petitioners. If hospital recklessly or intentionally made repeated and coercive efforts to separate a mother from newborn infant, that might well constitute conduct that would be found utterly intolerable in a civilized community. Such conduct could conceivably could cause severe emotional distress). Plaintiff, alleges that based upon the above facts in the pleading under the theory of recovery inferences statutes cited above for damages relief and case laws above relied on sufficiently state a claim entitles him to damage relief. The basis of said Memorandum in Opposition to motion to dismiss Civil Action under South Carolina Rule of Civil Procedure – Rule 12(C) is:

(a) Plaintiff contends the pleadings allege facts sufficient to state a cause of action for which the plaintiff would be entitled to relief. Plaintiff contend there is issue of material fact in the pleading to show casual connection that his injury of Cardio embolism occurred on 9/24/2012 at Trident and the Radiologist did not 'then' or 'on work-up' diagnose the multifocal restriction diffusions in his brain as suggesting evident of hemorrhage or Cardio embolism source. Plaintiff, pleading contends the doctors at TRMC did diagnose the multifocal restrictive diffusion suggest a cardiac source of embolism, hemorrhage. See Amsi v. Haughin, 2009 NY Slip Op 30550(U) (Supreme Court of New York) (2009) (Experts testimony on MRI diagnoses of cardiac embolism showing multi focal raising issue of fact and court denying motion), Carson v. CSX Transportation, Inc., 734 S.E.2d 148 (S.C. Sup. Ct. - 2012) (allow appellant to cite unpublish opinion supporting issue),

which was an obvious phenomenon as said was the likely source of his injury, inferring Trident breach Standard of care because the standard required a Radiologist to do a differential diagnose to rule in Cardio embolism as the likely source. Anisi v. Husain, supra (multifocal-Emboli); McCarty v. Kendall Co., 120 S.E. 2d 860 (1961) (citing Glover v. Columbia Hospital, 114 S.E. 2d 565 further held it was factual issue on the doctors testimony on most probably cause, preexisting); Muhr v. Grantham, 262 P. 2d 490 Fn. 2 (An infarct is an area of coagulation necrosis resulting obstruction by a thrombus or embolus). Plaintiff further contents there is a material issue of fact in the pleading that the treating hospitalist and consultant on 4/25/12 knew embolism was a possibility when the routine custom Echocardiogram was performed on 4/24/12 stating no source of embolism that on 9/23/2012 through 9/26/2012 breach the standard of care to treat for possible embolism which can be inferred. Plaintiff Plead that the hospitalist initially intent . . . to treat him with aspirin but knew plaintiff was allergic. See complaint – page three (3) standard of care and that on 9/24/2012 treated him with 325mg and continued this treatment until discharge without instructions on anticoagulation (complaint – page one (1) and five(5)). Kennedy v. Henderson, 346 S.E. 2d 516 (1986) (Can be inferred breach the Industry Standard, entitle to protection to prevent); Therefore, Trident-Rule 12(c) motion must be denied because there is material issue of fact raised by the complaint which if resolve in plaintiff favor would entitle him to judgement. Kennedy v. Henderson, supra (can be infered breach industry standard);

(b) In King v. Williams, 276 S.E. 2d 478(1981), the S.C. Supreme Court adopted a national standard of care. This standard required Trident to treat plaintiff according to neurology protocol as a hospitalist with Heparin on 9/23/2012 transition to Coumadin until the INR is 2.0, discharge with Coumadin on follow-up. Plavix, aspirin are local customs at Trident. See complaint page three (3). Under King v. Williams, supra local custom is one factor not the only factor merit consideration to the standard of care. Other factor is the type of injury and medical available facility. Trident, voluntarily undertook to diagnose and treat plaintiff. Therefore, Trident had a duty to use due care after it knew Plaintiff condition worsen to take corrective action. See complaint – page three (3). Russell v. City of Columbia, 406 S.E. 2d 338 (1991) (voluntary undertaken assume a duty to use due care) Plaintiff, pleaded material of issue of facts is well pleaded to good cause of action entitling to relief, because the pleading shows by 'expert witness statement affidavit' under the common knowledge exception, S.C. § 15-36-100(C) that Trident acts and omission in treating breach the standard proximately causing plaintiff injury and permanent damages. See complaint – pages three (3) through six (6) proximate cause. Brown v. Sandwood Development Corp., 253 S.E. 2d 514 (1979) (These loss alleged directly and proximately cause by negligences, overrule demurrer on novel question, interest of justice – trial on merit for the parties and future litigants). There is a material issue of fact Trident fail its duty to use due care once it knew plaintiff condition required corrective measures to prevent harm it voluntarily undertook.

(c) A judgement on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgement. Plaintiff pleaded a good cause of action, raises issue of facts under holding of, King v. Williams, supra and McMillian v. Durant, 439 S.E. 2d 829 (1993) (citing cases from other jurisdiction on issue of duty of care) and Russell v. City of Columbia, supra which under a liberal construction of the pleading with inference in his favor of facts which would entitle him to judgement. Russell v City of Columbia, 406 S.E. 2d 338(1991) (relying and citing cases therein). A liberal construction of the pleading and inferences of fact and law indicates that to grant of judgement on the pleadings stand as a bar to substantial justice between the parties. Therefore Trident 'Motion' should be denied for judgment on the pleading. Russell v. City of Columbia, supra Crowley v. Bob Jones University 234 S.E. 2d 879 (1977) and Rosenthal v. Unarco Industries, Inc., 247 S.E. 2d 638(1982) (place and date of injury).

Second Theory: On the basis of the facts in the pleading in the complaint it would be a bar to substantial justice between the parties to grant judgment on the pleading to Trident, as the moving party has the burden of showing the absence of a material issue of fact that plaintiff, injury, severe disability occurred on 9/24/12 at Trident due to undiagnosed embolism proximate cause by breach of the standard of care in treatment, which continued up until 9/26/12 upon discharge when Trident failed to instruct Plaintiff of need for follow-up anticoagulation treatment at Plaintiff Primary Care Health Facility, but recklessly with intent to harm plaintiff, continue him on an excessive doses of aspirin 325 mg. even after, Trident had knowledge plaintiff condition had change or abnormally worsen, but took no corrective action to prevent what it voluntary undertook to do. These material issues of fact must be viewed in light most favorable to the (non-moving) opposing party. Trident, here has not carried its burden of its failure to foreclose the probability that there is a material issue of fact, Plaintiff injury occurred on 9/24/12 at Trident due to Trident acts and omissions in its duty of care which continued up until discharge. Russell v. City of Columbia, 406 S.E.2d 338 (1991) (Issue of fact) Duty of Care; Hanselmann v. McCardle, 242 S.E.2d 421 (1978) (Scope of Immunity Properly deny demurrer); Phillips v. U.S., 508 F. Supp. 544) (Scope of immunity should not by demurrer), and that this acts and omission of Trident also involve material issue of facts was done recklessly, with intent to harm Plaintiff. Anderson Vs. Liberty Lobby, Inc., 477 U.S.242 (U.S.Supreme Court - 1986) (relying on New York Times Co. V. Sullivan, 376 U.S.254, 279-280 (1964) (Actual Malice, reckless by Clear and Convincing Evidentiary Standard of Proof); Bergstrom v. Palmetto Health Alliance, 546 S.E.2d 42 (2004) (Court Error in dismiss Action in light of facts and inferences favorable to Petitioner. If Hospital recklessly or intentionally made repeated threats... could cause severe pain); Taylor Vs. Medenica, 479S.E. 2d 35 (1996) (clear convincing reckless intent to injury), Crowley Vs. Bob Jones university 234 S.E. 2d 879 (1977) (reckless intent to harm) and Rosenthat Vs. Unarco Industries, Inc. 247 S.E. 2d 638 (1982) (Place and date of injury). A liberal construction of the pleading and inferences of facts and law indicates that a grant of judgment on the pleadings stands as a bar to substantial justice between the parties. Therefore, Trident motion for judgment on the pleadings should be denied. Russell Vs. City of Columbia, 406 S. E. 2d 338 (1991); Hanselmann v. McCardle, 242 S.E.2d 421 (1978) (Scope of Immunity Not Proper on Demurrer) because there are issues of fact raised by the complaint which, if resolved in favor of Plaintiff, would entitle him to judgment. Brown Vs. United Insurance Company of America, 268 S.C. 254, 233 S.E. 2d 298 (1977). Wooten Vs. Standard Life and Cas. Co., 122 S.E. 2d 637 (1961) (same). Finally, because there are issue of facts and law that the statute of limitation has not expired on plaintiff cause of action because he complied with the requirements of S.C. 15-79-125(A) and (B) (2) and S.C. 15-36-100 'Notice of intent', 'Expert Witness Affidavit' Verified Complaint, which is acceptable substitute for affidavit and admissible, relevant and tolling the Statute of Limitation, therefore this court retains subject matter jurisdiction to control mandatory mediation proceeding as cited by controlling S.C. Supreme Court case laws (see opposition to motion to dismiss - section 1(one) and 2(two)), raised in his opposition to Motion To Dismiss which, if resolved in favor of plaintiff, would entitle to judgment. Trident Motion for Judgment on the pleading should be denied. Wooten vs. Standard Life and Cas. Co., 122 S. E. 2d 637 (1961) (same), Moriarty v. Garden Sanctuary Church, 534 S.E. 2d 672 (2000) (Discussion - citing cases holding issue of fact because conflicting testimony upon the statute of limitation it becomes an issue for the jury to decide); Baird v. Charleston County, 511 S.E. 2d 69 (1999) (Statutory condition precedent - holding Doctor not required to follow procedure in the statute section to institute this action) and; Kline v. City of Columbia, supra, overruling Demurrer to strike statute (Legislative Intent); Dawkins v. Fields, 580 S.E. 2d 433 (2003) (Verified Complaint acceptable substitute as an affidavit and is admissible); Grazia v. S.C. State Plastering, supra (Error to strike); Bell v. Monsanto Corp., 579 S.E. 2d 325 (2003) (Affirming striking statute Limitation defense); Elledge v. Richland/Lexington, supra (Evidence of Industry Standard is admissible on issue Duty of Care); Moultrie v. MUSC, supra (Same).

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Title 15 - Civil Remedies and Procedures

CHAPTER 32

Noneconomic Damage Awards

ARTICLE 1

[Reserved]

ARTICLE 3

Noneconomic Damage Awards

SECTION 15-32-200. Citation of article

This article may be cited as the "South Carolina Noneconomic Damage Awards Act of 2005"

HISTORY 2005 Act No 32, Section 2, eff July 1, 2005, for causes of action arising after that date

SECTION 15-32-210. Definitions

As used in this article, unless the context clearly requires otherwise

(1) "Ambulatory surgical facility" means a licensed, distinct, freestanding, self-contained entity that is organized, administered, equipped, and operated exclusively for the purpose of performing surgical procedures or related care, treatment, procedures, and/or services, by licensed health care providers, for which patients are scheduled to arrive, receive surgery or related care, treatment, procedures, and/or services, and be discharged on the same day This term does not include abortion clinics

(2) "Claimant" means the person suffering personal injury

(3) "Economic damages" means pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses

(4) "Health care institution" means an ambulatory surgical facility, a hospital, an institutional general infirmary, a nursing home, and a renal dialysis facility

(5) "Health care provider" means a physician, surgeon, osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor, optometrist, podiatrist, or similar category of licensed health care provider, including a health care practice, association, partnership, or other legal entity.

(6) "Hospital" means a licensed facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment, and care of such persons over a period exceeding twenty-four hours and provides medical and surgical care of acute illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina This term includes a hospital that provides specialized service for one type of care, such as tuberculosis, maternity, or orthopedics

(7) "Institutional general infirmary" means a licensed facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents, or inmates with illness, injury, or infirmity for a period exceeding twenty-four hours for the diagnosis, treatment, and care of such persons and which provides medical, surgical, and professional nursing care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina.

(8) "Medical malpractice" means doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances.

(9) "Noneconomic damages" means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and any other theory of damages including, but not limited to, fear of loss, illness, or injury

(10) "Nursing home" means a licensed facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty-four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing skilled nursing services for persons who are not in need of hospital care. This term does not include assisted living, independent living, or community residential care facilities that do not provide skilled nursing services

(11) "Personal injury" means injuries to the person including, but not limited to, bodily injuries, mental distress or suffering, loss of wages, loss of services, loss of

consortium, wrongful death, survival, and other noneconomic damages and actual economic damages

(12) "Personal injury action" means an action for personal injury, including a wrongful death action pursuant to Sections 15-51-10 through 15-51-60 and a survival action pursuant to Section 15-5-90

(13) "Renal dialysis facility" means an outpatient facility which offers staff assisted dialysis or training and supported services for self-dialysis to end-stage renal disease patients

(14) "Skilled nursing services" means services that

(a) are ordered by a physician,

(b) require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists, and

(c) are furnished directly by, or under the supervision of such personnel

HISTORY 2005 Act No 32, Section 2, eff July 1, 2005, for causes of action arising after that date

SECTION 15-32-220. Noneconomic damages limit, exceptions, annual adjustment based on Consumer Price Index

(A) In an action on a medical malpractice claim when final judgment is rendered against a single health care provider, the limit of civil liability for noneconomic damages of the health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, regardless of the number of separate causes of action on which the claim is based, except as provided in subsection (E)

(B) In an action on a medical malpractice claim when final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, regardless of the number of separate causes of action on which the claim is based, except as provided in subsection (E)

(C) In an action on a medical malpractice claim when final judgment is rendered against more than one health care institution, or more than one health care provider, or any combination thereof, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant, except as provided in subsection (E)

(D)(1) The provisions of this section do not limit the amount of compensation for economic damages suffered by each claimant in a medical malpractice claim

(2) The provisions of this section do not limit the amount of punitive damages in cases where the plaintiff is able to prove an entitlement to an award of punitive damages as required by law

(E) The limitations for noneconomic damages rendered against any health care provider or health care institution do not apply if the jury or court determines that the defendant was grossly negligent, wilful, wanton, or reckless, and such conduct was the proximate cause of the claimant's noneconomic damages, or if the defendant has engaged in fraud or misrepresentation related to the claim, or if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the claimant

(F) At the end of each calendar year, the Revenue and Fiscal Affairs Office, Board of Economic Advisors must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December 31 of the previous year, and the limitation on compensation for noneconomic damages pursuant to subsection (A), (B), or (C) must be increased or decreased accordingly As soon as practicable after this adjustment is calculated, the Director of the Revenue and Fiscal Affairs Office shall submit the revised limitation on compensation to the State Register for publication pursuant to Section 1-23-40(2), and the revised limitation becomes effective upon publication in the State Register For purposes of this subsection, "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics

HISTORY 2005 Act No 32, Section 2, eff July 1, 2005, for causes of action arising after that date, 2005 Act No 144, Section 1, eff July 1, 2005, applicable to causes of action arising thereafter

SECTION 15-32-230. Emergency medical and obstetrical care exceptions

(A) In an action involving a medical malpractice claim arising out of care rendered in a genuine emergency situation involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, no physician may be held liable unless it is proven that the physician was grossly negligent

(B) In an action involving a medical malpractice claim arising out of obstetrical care rendered by a physician on an emergency basis when there is no previous doctor/patient relationship between the physician or a member of his practice with a patient or the patient has not received prenatal care, such physician is not liable unless it is proven such physician is grossly negligent

(C) The limitation on physician liability established by subsections (A) and (B) shall only apply if the patient is not medically stable and

(1) in immediate threat of death; or

(2) in immediate threat of serious bodily injury

Further, the limitation on physician liability established by subsections (A) and (B) shall only apply to care rendered prior to the patient's discharge from the emergency department or obstetrical or surgical suite.

HISTORY 2005 Act No 32, Section 2, eff July 1, 2005, for causes of action arising after that date

SECTION 15-32-240. Rights under other acts

The provisions of this article do not affect any right, privilege, or provision of the South Carolina Tort Claims Act pursuant to Chapter 78, Title 15 or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56, Title 33

HISTORY 2005 Act No 32, Section 2, eff July 1, 2005, for causes of action arising after that date

ARTICLE 5

Punitive Damages

SECTION 15-32-510. Claims for punitive damages must be prayed for in complaint, amount shall not be specifically plead

(A) A claim for punitive damages must be specifically prayed for in the complaint

(B) The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action

HISTORY. 2011 Act No 52, Section 2, eff January 1, 2012

SECTION 15-32-520. Bifurcated trials, clear and convincing evidence standard, factors for liability determination, review of jury determination; multiple defendants

(A) All actions tried before a jury involving punitive damages, if requested by any defendant against whom punitive damages are sought, must be conducted in a bifurcated

manner before the same jury

(B) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory or nominal damages Evidence relevant only to the issues of punitive damages is not admissible at this stage

(C) Punitive damages may be considered if compensatory or nominal damages have been awarded in the first stage of the trial

(D) Punitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant's wilful, wanton, or reckless conduct

(E) In the second stage of a bifurcated trial, the jury shall determine if a defendant is liable for punitive damages and, if determined to be liable, the amount of punitive damages In determining the amount of punitive damages, the jury may consider all relevant evidence, including, but not limited to

(1) the defendant's degree of culpability,

(2) the severity of the harm caused by the defendant,

(3) the extent to which the plaintiff's own conduct contributed to the harm,

(4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant,

(5) the existence of similar past conduct,

(6) the profitability of the conduct to the defendant,

(7) the defendant's ability to pay,

(8) the likelihood the award will deter the defendant or others from like conduct,

(9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff,

(10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and

(11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff

(F) If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice

(G) In an action with multiple defendants, a punitive damages award must be specific to each defendant, and each defendant is liable only for the amount of the award made against that defendant

HISTORY 2011 Act No 52, Section 2, eff January 1, 2012

SECTION 15-32-530. Awards not to exceed certain limits, Revenue and Fiscal Affairs Office to calculate adjustments to maximum awards, publication in State Register

(A) Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars

(B) The limitation provided in subsection (A) may not be disclosed to the jury If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A), the trial court should first determine whether

(1) the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions on behalf of the defendant, or

(2) the defendant's actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff's damages,

If the trial court determines that either item (1) or (2) apply, then punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars and, if necessary, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by this subsection If the trial court determines that neither item (1) or (2) apply, then the award of punitive damages shall be subject to the maximum amount provided by subsection (A) and the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by subsection (A)

(C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages

(1) at the time of injury the defendant had an intent to harm and determines that the defendant's conduct did in fact harm the claimant, or

(2) the defendant has pled guilty to or been convicted of a felony arising out of the same act or course of conduct complained of by the plaintiff and that act or course of conduct is a proximate cause of the plaintiff's damages, or

(3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired

(D) At the end of each calendar year, the Revenue and Fiscal Affairs Office must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December thirty-one of the previous year, and the maximum amount recoverable for punitive damages pursuant to subsection (A) must be increased or decreased accordingly As soon as practicable after this adjustment is calculated, the Executive Director of the Revenue and Fiscal Affairs Office shall submit the revised maximum amount recoverable for punitive damages to the State Register for publication, pursuant to Section 1-23-40(2), and the revised maximum amount recoverable for punitive damages becomes effective upon publication in the State Register. For purposes of this subsection, "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics

HISTORY 2011 Act No 52, Section 2, eff January 1, 2012

SECTION 15-32-540. Applicability of article

The provisions of this article do not affect any right, privilege, or provision of the South Carolina Tort Claims Act pursuant to Chapter 78, Title 15 or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56, Title 33

HISTORY 2011 Act No 52, Section 2, eff January 1, 2012

WHEREFORE, for the reasons stated above in this Memoranda of Law in Support of this Motion, Plaintiff Jim Washington, Pro Se respectfully moves the Court for entry of an Order Denying dismissal of this action, for costs expended herein including compensatory and Punitive Damages under the statute applicable cited therein and subsections mentioned in this action for relief as they apply to the case laws cited and any other case laws to the facts and laws, and for fees, and for any further relief which the Court deems appropriate. Plaintiff, also seeks leave of this Court to grant leave to file an amended complaint to allege a second theory of recovery and to compel both parties to participate in mediation under S.C. 15-79-125 and with Extension of Ti

This 7th day of Jan., 2016.

By: Jim Washington

Jim Washington, Pro Se
209 Signet Drive
Eutawville, S.C. 29048
(803)496-4655

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**, properly addressed as follows:

David H. Batten
Attorney for Defendant
4141 Parklake Avenue, Suite 350
Raleigh, N.C. 27612

This 7th day of Jan., 2016.

2016 JAN -4 AM 11:19

By: Jim Washington, Pro Se
Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
(803) 496-4655

Appellant Opposition To Motion To Dismiss (Take Judicial Notice) of S. C. Code Statute 15-79-125 (A) Notice of Intent / pleading documents Interrogatory and Request For Production,15-36-100 Expert Affidavit standard of care-Tr. P. 3 line 1-p. 8 line 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEA
COUNTY OF CHARLESTON	)	NINETH JUDICIAL CIRCUIT
JIM WASHINGTON,	)	CASE NO 2015-CP-10-5000
Plaintiff,	)	
v	)	
TRIDIENT MEDICAL CENTER, LLC	)	OPPOSITION TO MOTION TO DISMISS
Defendant.	)	
----------	)	

2015 NOV 12 AM 10: 28

TO

Plaintiff, Jim Washington, respectfully move this honorable court to deny Defendant Trident Medical Center (correct Corporate name "Trident Medical Center, LLC") (hereinafter "Trident") MOTION TO DISMISS civil action No. 2015-CP-10-5000, pursuant to S C Code Ann. Statutes 15-79-125 and 15-36-100 and to grant plaintiff relief to civil action No 2015-CP-10-5000 medical malpractice claim

I The basis of said opposition to motion to dismiss is that plaintiff filed this action under S.C. ss15-79-125(A) for Notice of Intent and §15-79-125(E)(2) on 9/11/15 due to the statute of limitation was due to expire on 9/23-26/15 therefore f iled Summons and Complaint. Plaintiff,also filed on same above date his first set of Interrogatories, Request for Production, Request for Mediation, signed all documents (including the cover sheet), name Trident as adverse party, contained a short and plain statement of the facts showing plaintiff entitled to relief, served on all name defendants in accordance with the service rules for Summons and Complaint outline in South Carolina rules of Civil Procedure and filed 2 verified Complaint under S.C. §15-36-100 (C) Common knowledge treated as an affidavit of merit specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on available evidence at the time of filing the affidavit, and both parties had already engaged in disclosure requirement under the business record exception or discover rules during his disability determination proceeding on this claim with Social Security Administration on the issue of disability permanent impairment Therefore, based on

the above compliance to statutory requirements as filed by plaintiff as above stated and done, and South Carolina Supreme Court Case laws Ranucci v Crain, 763 S.E,2d 189(2014), Brouwer v Sisters of Charity, 763 S E.2d 200 (2014), Wilkerson v. East Cooper Community Hospital, 763 S E.2d 426(2014), Grier v Amisub of S C , Inc , 725 S.E.2d 693(2012) and Ross v. Waccamaw Community Hospital, 744 S E ,2d 547(2013) relying these same statues and the subsections as applied to facts and issues under the same or similar circumstances as plaintiff involved in his action, granted relief on the above issues allowing filing the Notice of Intent and Summons and Complaint on the same day in one action allowed affidavit under the Common Knowledge Exception, tolling the statute of limitation because all conditions were met even though mediation had not been begun and or completed at the time of filing the Medical Malpractice Civil Action, but allowing for mediation after suit is filed The S C Supreme Court held that to allow the above steps and procedure was consistent with the legislature intent under these statutes and harmonizes its goals and to not do so create an absurd result and that the Circuit Court retained jurisdiction over the subject matter. The S C. Supreme further found dismissal of the Complaint was not appropriate under these circumstances as plaintiff, but consider technical noncompliance with these statutes should be adjudicated on the merit by trial by jury Finally, the S.C. Supreme Court held that the Notice of Intent and Summons and Complaint were timely and proper tolling all statutes of limitations. Plaintiff, also move this honorable court to take Judicial Notice that the Defendant by and through his counsel made admission that the action also had accompanying documents. These documents are two (2) verified complaints to be treated as an affidavit of merit by an expert witness to support the common knowledge exception under S.C. §15-36-100 (C)(2). Therefore, under S C. §15-36-100 (D) which provides no basis for a statute of limitation defense for defendant motion to dismiss The other accompanying documents are to the Interrogatories and Request for Production Therefore, S C § 15-79-125(A) and S.C. §15-36-100 Filing of the Notice of Intent tolls an applicable statute of limitations in plaintiff civil action No. 2015-CP-10-5000 The Clerk of Court filed the Expert Witness Affidavit of Plaintiff separately as an exhibit rather than together with the complaint erroneously but such technical noncompliance is not ground for dismiss Wilkerson v. East Cooper Community Hospital citing Ross and Grier and citing Fisher v. Pelstring, 817 S.E.2d 794, 807 n. 8 (S. C. 2011) (same).

II. The basis of said opposition to Motion to Dismiss plaintiff civil action under South Carolina Rules of Civil Procedure—Rules 12(b)(1), 12 (b)(6), and 12(c) is:

(a) The court has Subject Matter Jurisdiction because plaintiff filed the Notice of Intent, Requested for Mediation under Alternative Dispute Resolution rules on the Cover Sheet of Notice of Intent and Summons and Complaint, filed the affidavit

of expert witness, Interrogatories and Request for Production, name all defendants adverse party, the affidavits by the expert witnesses specifying at least one negligent act or omission on breach the standard of care which also included proximate Cause , served all defendant(s) and signed all documents Dismissal Should be deny South Carolina Statutes applicable §§ 15-79-125 (A) and (E)(2) and 15-36-100 (C) and (d) and Case Laws, Timms v Green, 427 S E 2d 642 (Supreme Court)(1993), Woodard v Wesvaco Corporation, 433 S E 2d890 (S.C APP Ct.)(1993), Duncan v. Provident Mutual Life Ins Co., 427 S E 2d 657 (S,C Supreme Ct) (1993), Baird v Charleston County, 511 S E. 2d69 (S , C Supreme Ct)(1999) (arguing statutory condition precedent and held that doctors are not required to follow the procedures set forth in section 15-77-20 to institute this action), Wilkerson v East Cooper Community Hospital, Inc ,763 S.E 2d 426(2014) (citing Ross v Waccamaw Community Hospital, 404 S C 56, 744 S E 2d 547(2013)(concluding failure to timely complete the pre-litigation mediation process as required by section 15-79-100 does not divest the trial court of subject matter jurisdiction . The circuit court erred in granting respondents motion to dismiss as Wilkerson complaint was timely and sufficient to properly initiate a civil action for medical malpractice). Based on plaintiff compliance with the above statutory requirement and the above cited case laws holding, support plaintiff basis to deny defendant, Trident Motion to Dismiss for its Rule 12(b)(1) ground for Subject Matter Jurisdiction Therefore, defendant motion should be denied accordingly Ross v Waccamaw Community Hopsital 404 S.C 56, 744 S E 2d 547 (2013) (same).

(b) Plaintiff, pleading in complaint alleged sufficient fact to support a reasonable deductible inference in the pleading in light most favorable to plaintiff, would entitle him to relief on the theory of his case that on 9/23/12 defendant, Trident voluntary undertaken to diagnose and treat plaintiff See complaint, pages one (1) through three (3) factual basis for claim, breach the standard. See complaint, page three (3) "Standard of Care" Plaintiff, theory of his case under South Carolina Supreme Court Landmark case, King v Williams, 276 S C 478(1981), 279 S E. 2d 618 and McMillan v Durant, 436 S E 2d 829 (1993), is that defendant, Trident breached the national standard of care, Trident employees and/or agents on 9/23/2012 as a reasonable prudent hospitalist, was supposed to immediately start plaintiff on Anticoagulation treatment of Heparin then transition to Coumadin according to Neurology protocol for the prevention of possible embolism and discharge plaintiff to his primary health provider for follow-up care with Coumadin These treatments and procedures are the general recognized and accepted treatment/procedure national standard of care for possible embolism Trident breach this standard of care See Phillips v United States, 566 F Supp 1-

Dist Court, D. South Carolina (1981) (applying the King v Williams, standard of care in its conclusion of law, concluding plaintiff have met their burden of proof in showing that the failure of the staff at the NRMC to provide adequate genetic counseling and prenatal testing in light Mrs. Phillips' positive family history of Down's Syndrome and their failure to refer the child to Pediatric Cardiologist at the first sign of congestive heart failure constituted deviations from the applicable standard of care and proximately caused some elements of damages) See Thomas v. Ellis, 329 Mass. 93(1952). Plaintiff, second theory of pleading was that Trident knowingly, recklessly intent to initially start plaintiff on the treatment of aspirin but delayed this treatment until it decided what his allergic reaction to aspirin Then recklessly changed from Plavix to aspirin 325mg on or about 9/24/2012 until 9/26/2012 upon discharge and afterwards with reckless intent to harm plaintiff by using this treatment in an excessive doses not Heparin and Coumadin with follow-up care instruction for this needed treatment upon discharge, knowing his condition had become critical worsened, fell below standard of care (see complaint – pages one (1) through three (3) factual basis for claim and standard of care) and proximate caused his injury and permanent impairment damages See complaint – pages three (3) through five (5) and page six (6) pray for relief of judgement and damages Plaintiff, based upon the above facts, pleaded in the complaint allege sufficient fact to support a reason a reasonable inference in light most favorable to plaintiff, that would entitle him to relief under King v Williams, 276 S E 2d 478(1981) and Taylor v Medenica, 479 S E 2d35-S C Supreme County (1996) (Punitive damages) See Brown v. Sandwood Development Corp., 253 S E 2d 514 (1979), Bergstom v Palmetto Health Alliance, 596 S E 2d 42 (2004), Rydee v Morris, 675 S.E 2d 431 (2004) and Everett v White, 140 S E 2d582(1965) (same) Therefore, defendant, Trident 'Motion to Dismiss' under Rule 12(b)(6) should be denied Brown v Sandwood Development Corp., Bergstrom v Palmetto Health Alliance, Rydde v Morris and Everette v White (All cases cited above included therein)

III The basis of said opposition to 'Motion of Dismiss' Plaintiff Civil Action under South Carolina Rule of Civil Procedure – Rule 12(C) is:

(a) Plaintiff contends the pleadings allege facts sufficient to state a cause of action for which the plaintiff would be entitled to relief. Plaintiff contend there is issue of material fact in the pleading to show cause of action that his injury of Cardio embolism occurred on 9/24/2012 at Trident and the Radiologist did not 'then' or on work-up diagnose the multifocal restriction diffusions in his brain as suggesting evident of Cardio embolism source Plaintiff, pleading contends the doctors at TRMC did diagnose the multifocal restrictive diffusion suggest a cardiac source of embolism, old hemmorhage
See Anisf v. Hussain 2009 NY Slip Op 30550(U) (Supreme Court of New York)(2009) (Experts Testimony on MRI diagnoses of Cardiac embolism showing multi focal raising issue of fact and Court denying motion), Carson v. CSX Transportation, Inc. 734 S.E.2d 148 (S.C. Sup. Ct. 2012) (allow appellant to cite unpublish opinion supporting issue),

which was an obvious phenomenon as said was the likely source of his injury, inferring Trident breach Standard of care because the standard required a Radiologist to do a differential diagnose to rule in Cardio embolism as the likely source. Anisi v. Husain, supra (Multifocal-emboli). See complaint – pages one (1) through three (3) factual basis for claim Plaintiff further contends there is material issue of fact in the pleading that the treating hospitalist and consultant on 9/23/2012 through 9/26/2012 breach the stand of care to treat for possible embolism with reckless intent to cause harm. Plead that the hospitalist initially intent recklessly to treat him with aspirin but know plaintiff was allergic. See complaint – page three (3) stand of care and that on 9/24/2012 treated him with 325mg and continued this treatment until discharge without instructions on anticoagulation (complaint – page one (1) and five(5)). See Crowley v. Bob Jones University, 234 S.E. 2d 879(1977) (same) is controlling that here is material issue of fact raised by the complaint which if resolve in plaintiff favor would entitle him to judgement. Miller v. City of Camden, 494 S.E.2d 813(1997)(Same).

(b) In King v. Williams, 276 S E. 2d 478(1981), the S.C. Supreme Court adopted a national standard of care. This standard required Trident to treat plaintiff according to neurology protocol as a hospitalist with Heparin on 9/23/2012 transition to Coumadin until the INR is 2 0, discharge with Coumadin on follow-up. Plavix, aspirin are local customs at Trident. See complaint page three (3) Under King v. Williams, supra local custom is one factor not the only factor merit consideration to the stand of care. Other factor is the type of injury and medical available facility. Trident, voluntarily undertook to diagnose and treat plaintiff. See complaint – page three (3). Russell v. City of Columbia, 406 S.E. 2d 338 (1991) (voluntary undertaken assume a duty to use due care). Plaintiff, pleaded material of issue of facts is well pleaded to good cause of action entitling to relief, because the pleading shows by 'expert witness statement affidavit' under the common knowledge exception, S.C § 15-36-100(C) that Trident acts and omission in treating breach the standard proximately causing plaintiff injury and permanent damages. See complaint – pages three (3) through six (6) proximate cause and prayer for relief and pages one(1) through three (3) (factual basis for claim and standard of care). Trident did not employ these other factors under King v. William

(c) A judgement on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgement Plaintiff pleaded a good cause of action, raises issue of facts under holding of, King v Williams, supra by expert testimony and the common knowledge exception in King v. Williams, supra which would entitle him to judgement Russell v. City of Columbia, 406 S E 2d 338(1991) (relying and citing cases therein) A liberal construction of the pleading and inferences of fact and law indicates that to grant of judgement on the pleadings stand as a bar to substantial justice between the parties. Therefore Trident 'Motion' should be denied for judgment on the pleading Russell v City of Columbia, supra Crowley v. Bob Jones University 234 S.E 2d 879 (1977) and Rosenthal v. Unarco Industries, Inc., 247 S.E. 2d 638(1982) (place and date of injury)

On the basis of the record in the pleading in the complaint it would be a bar to substantial justice between the parties to grant judgment on the pleading to, Trident, as the moving party, has the burden of showing the absence of a material issue of fact that plaintiff, injury, severe disability occurred on 9/24/12 at Trident due to undiagnosed embolism proximate cause by breach of duty, standard of care in treatment, which continued up until 9/26/12 upon discharge when Trident failed to instruct Plaintiff of need for follow-up anticoagulation treatment at Plaintiff Primary Care Health Facility, but recklessly with intent to harm plaintiff, continue him on an excessive doses of aspirin 325 mg. even after, Trident had knowledge plaintiff condition had change or abnormally worsen, but took no corrective action to Prevent Clots and a second Stroke. These material issues of fact must be viewed in light most favorable to the (non-moving) opposing party. Trident, here has not carried its burden of its failure to foreclose the probability that there is a material issue of fact, Plaintiff injury occurred on 9/24/12 at Trident due to Trident acts and omissions which continued up until discharge. Morris v. Mooney, 343 S.E.2d 442 (1986), Miller v. City of Camden, 494 S.E.2d 813 (1997) (Same), and that this acts and omission of Trident also involve material issue of facts was done recklessly, with intent to harm Plaintiff. Anderson Vs. Liberty Lobby, Inc., 477 U.S.242 (U.S.Supreme Court - 1986) (relying on New York Times Co. V. Sullivan, 376 U.S.254, 279-280 (1964) (Actual Malice, reckless by Clear and Convincing Evidentiary Standard of Proof), French v. Hawaii Pizza Hut, Inc., 99 P.3d 1046 (2004) (Issue of material fact of severe permanent disability), Taylor Vs. Medenica, 479S.E. 2d 35 (1996) (clear convincing reckless intent to injury), Crowley Vs. Bob Jones university 234 S.E. 2d 879 (1977) (reckless intent to harm) and Rosenthat Vs. Unarco Industries, Inc. 247 S.E. 2d 638 (1982) (Place and date of injury). A liberal construction of the pleading and inferences of facts and law indicates that a grant of judgment on the pleadings stands as a bar to substantial justice between the parties. Therefore, Trident motion for judgment on the pleadings should be denied, Russell Vs. City of Columbia, 406 S. E. 2d 338 (1991), Manning Vs. Dial, 271 S.C. 79, 245 S.E. 2d 120 (1979), because there are issues of fact raised by the complaint which, if resolved in favor of Plaintiff, would entitle him to judgment. Brown Vs. United Insurance Company of America, 268 S.C. 254, 233 S.E. 2d 298 (1977). Wooten Vs. Standard Life and Cas. Co., 122 S.E. 2d 637 (1961) (same). Finally, because there are issue of facts and law that the statute of limitation has not expired on plaintiff cause of action because he complied with the requirements of S.C. 15-79-125(A) and (B) (2) and S.C. 15-36-100 'Notice of intent', 'Expert Witness Affidavit - Common Knowledge Exception' and tolling the Statute of Limitation, therefore this court retains subject matter jurisdiction to control mandatory mediation proceeding as cited by controlling S.C. Supreme Court case laws (see opposition to motion to dismiss - section 1(one) and 2(two)), raised in his opposition to Motion To Dismiss which, if resolved in favor of plaintiff, would entitle to judgment. Trident Motion for Judgment on the pleading should be denied. Wooten vs. Standard Life and Cas. Co., 122 S. E. 2d 637 (1961) (same), Moriarty v. Garden Sanctuary Church, 534 S.E. 2d 672 (2000) (Discussion - Citing Cases holding issue of fact because Conflicting testimony upon the statute of limitation it becomes an issue for the jury to decide), Baird v. Charleston County, 511 S.E. 2d 69 (1999) (Statutory Condition Precedent - holding Doctor not required to follow procedure in the statute section to institute this action) and Dandy v. Amer- [illegible] (Same)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Jim Washington,

Plaintiff,

vs.

Trident Medical Center,

Defendant.

Case No.
2015-CP-10-5000

INTERROGATORIES

2015 SEP 11 AM 10:22

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Plaintiff, by and through his undersigned attorney, hereby propounds the following interrogatories to the Defendant, to be answered fully and in writing within thirty (30) days after service hereof:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each

policy.

4. List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of this case.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Jim Washington

Eutawville, South Carolina
September 11, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015 SEP 11 AM 10:22

Jim Washington,)
Plaintiff,)
vs.)
Trident Medical Center,)
Defendant.)

Case No.
2015-CP-10-5000

REQUEST FOR PRODUCTION

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Plaintiff above-named, by and through his undersigned attorney, requests the Defendant above-named, respond in writing within thirty (30) days to the following requests for production of documents and to permit Plaintiff to inspect and copy each of the following documents or categories of documents.

1. Any and all statements, whether written or recorded, taken in connection with the above referenced action.

2. Any and all documents, photographs, diagrams, memoranda, sketches, notes, correspondence, drafts, written material of any kind, videotapes, audiotapes or any other medium which relate to the claims set forth in the Complaint.

3. Any document not already requested that is in the possession of the Defendant that is relevant to the issues raised in the Complaint or that which will be offered into evidence at

trial in this case.

Jim Washington
Jim Washington
Attorney for the Plaintiff/Pro-Se
204 Signet Drive
Eutawville, S.C. 29048
(803) 496-4655

Columbia, South Carolina
September 11, 2015.

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Jim Washington,
Plaintiff,

vs.

Trident Medical Center,
Defendant.

Case No.
2015-CP-10-5000

CERTIFICATE OF SERVICE

2015 SEP 11 AM 10: 22

I, Jim Washington, Plaintiff do, hereby certify that on this 11 day of September, 2015, have served Plaintiff's **Interrogatories** and **Request for Production** upon the following by depositing same in the United States Mail, postage paid addressed to: Todd Gallati – Director/CEO
Trident Medical Center
9330 Medical Plaza Drive - First Fl.
North Charleston, S.C. 29406

Jim Washington
Jim Washington

WHEREFORE, for the reasons stated above and in any Memoranda of Law in Support of this Motion, Plaintiff Jim Washington, Pro se, respectfully moves the Court for entry of an Order Denying dismissal of this action, for costs expended herein including fees, and for any further relief which the Court deems appropriate.

This 12th day of Nov, 2015.

By: Jim Washington

Jim Washington, Pro se
209 Signet Drive
Eutawville, S.C. 29048
(803)496-4655

RECEIVED
OCT 17 2016
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**, properly addressed as follows:

FILED
2015 NOV 12 AM 10: 28
JULIA ANN ARMSTRONG
CLERK OF COURT

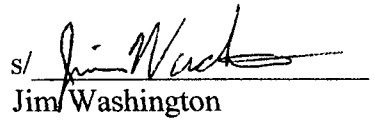
David H. Batten
Attorney for Defendant
4141 Parklane Avenue
Raleigh, N.C. 27612

This 12th day of Nov., 2015.

By: Jim Washington, Pro Se
Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
(803)496-4655

The undersigned hereby certifies that the Record on Appeal contains all material Proposed to be included by any of the parties and not any other material.

November 28, 2016

s/ 

Jim Washington
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Eutawville, S.C. 29048
(803) 496-4655
Appellant / Pro Se

RECEIVED
NOV 28 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington,.....Appellant,
V.
Trident Medical Center,.....Respondent.

CERTIFICATE OF SERVICE

November 28, 2016

The undersigned hereby certifies that on this date November 28, 2016 a certificate of Service was served to respondent's counsels of record, C. Mitchell Brown of Nelson, Mullins, Riley & Scarborough LLP, 1320 Main Street 17th Floor, Columbia, S.C. 29201 (803) 799-2000 and David H. Batten, Esquire, 4141 Parklake Avenue, Suite 350 Raleigh, N.C. 27612, (919) 439-2221, by depositing same in a postage wrapper in a post Office under the exclusive custody of the U.S. Postal Service, **VIA CERTIFIED MAIL RETURN RECEIPT,** that appellant filed with this court the required fifteen copies of The Record on Appeal.

S/ Jim Washington

Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
(803) 496-4655
Appellant / Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2016-000495

Jim Washington,---------- Appellant,

V.

Trident Medical Center, ---------- Respondent.

INITIAL BRIEF OF APPELLANT

JIM WASHINGTON
209 SIGNET DRIVE
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Appellant, Pro Se

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STATEMENT OF THE ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR APPELLANT DID NOT FILE A NOTICE OF INTENT PRIOR TO FILING THE COMPLAINT THEREFORE DISMISSAL OF THE MEDICAL MALPRACTICE ACTION WAS REQUIRED ?

II. DID THE TRIAL COURT ERR APPELLANT DID NOT FILED A QUALIFIED EXPERT WITNESS AFFIDAVIT PRIOR TO FILING THE COMPLAINT THEREFORE DISMISSAL OF THE ACTION WAS REQUIRED ?

III. DID THE TRIAL COURT ERR DENYING APPELLANT MOTION TO ALLOW AMENDMENT OF THE COMPLAINT AND THAT ISSUES IN THE MEMORANDUM OF LAW WERE INADMISSIBLE AND IRRELEVANT ?

STATEMENT OF THE CASE

On September 23, 2012 appellant had right-side weakness at home. He was Taken to Trident for diagnosis and treatment for his right-side weaknesses. He was Admitted at the emergency room. Trident voluntarily undertaken to diagnose and treat Appellant for his right-side weaknesses. Various test was perform to diagnose to source Of these symptoms. On work-up Trident evidence showed a small stoke and MRI showed Multi foci restrictive diffusion in the left parietal lobe but no evidence of a cardiac source Shown then. Appellant was treated with aspirin 325mg for secondary stroke prevent and Discharge on 9/26/12. On 9/30/12 appellant had a second symptoms with right-side Weaknesses. HE was admitted at TRMC on 9/30/12 and on 10/1/12 MRI results showed Evidence of a cardio embolic source for his stroke. The evidence showed Trident's Negligence in diagnosis and treatment.

Appellant filed a Notice of Intent with supporting expert affidavits and complaint on 9/11/15 under S.C. Code Statutes 15-79-125(A), 15-36-100, and 15-79-125(E)(2).

FACT

Respondent's counsel, William H. Harkins, Jr., moved the court with a SCRCP Rule 12(b)(6) to dismiss the complaint. Respondent basis for dismissal was that appellant Had not complied with **S.C. Code Statutes 15-79-125(A) pre-suit Notice of Intent and 15-36-100 Expert Witness Affidavit requirements prior to filing the Medical Malpractice complaint**. The other ground for dismissal was that the claim of negligent Treatment of anticoagulation therapy was not a common knowledge factual issue but Required specialized expert witness affidavit. Judge, Dennis agreed with respondent and dismiss on all of above grounds. Transcript, p. 3, Line 1-p. 8, Line 4. Appellant, had ask The Court's permission to speak, objecting to respondent grounds for dismissal and the Court's ruling because the statutes pleadings should be given effect as a whole not separately or isolation, and therefore he complied with S.C. Code Statutes 15-79-125(A) **Notice of Intent and Expert Affidavit, using the Verified Complaint Treated As An Affidavit 15-36-100 cited both statues on the complaint and on the affidavit. Judge Dennis ruled that appellant filed the pleadings just as appellant said he did, but not Follow the procedures. Judge Dennis, ruled appellant could not use the Doctors' Opinions as Expert Witness Affidavit to meet the statute compliance, and that it was Questionable whether or not to dismiss. Respondent's counsel had <u>conceded in his Memorandum of Law</u> that appellant did filed pleadings under S.C. Code Statutes 15-79-125(A) Notice of Intent and 15-36-100 Expert Witness Affidavit, but conclude It was defective for pleading Notice of Intent and Expert Witness Affidavit. Transcript, p. 3, Line 1-p. 8, Line4; Respondent Memorandum of Law, p. 1 Through p. 2, para. 2, Line 8; Appellant Complaint, p. 1 caption filed under statutes**

15-79-125(A) Notice of Intent and 15-79-125(E)(2) Complaint and 15-36-100 Expert Witness common knowledge; Appellant Expert Witness Affidavit, p. 1 caption Pleadings under S.C. Code Statutes 15-79-125(A) Notice of Intent and 15-36-100 Expert Witness Affidavit.

The Expert Witness Affidavits met the requirements to specify at least one negligent act or omission. The affidavits specified by noting "we receive documents From Trident which showed a small acute stroke, but no evidence of a cardio embolic Source on MRI then or during work-up". Trident's MRI showed multi-foci and TRMC MRI showed multi-foci which specifically noted " given the multifocality suggest a cardio embolic source". The Regional Medical Center, expert witness affidavit Specifically noted that because embolism is a **possibility** I ordered a Heparin Drip, Neurology has been consulted to be treated per Neurology Protocol and noted to see Patient history. The history notes indicates patient **had a MRI at Trident and was treat And discharged with a prescription for aspirin 325mg.** Since the standard of care **.showed the same mutifocal as Trident MRI, this affidavit evident infer embolism of Cardiac source was a possibility at Trident and negligent diagnose and treatment.** Therefore, the trial Judge err this was not admissible nor a common knowledge issue. Err Was prejudice. Verified Complaint Treated As Affidavit of An Expert-Dr. Ludington, p. 1-5; Affidavit of Dr. M. K. Greene, p. 1, Discharge Summary -p. 3. Also p. 94, History of Present Illness, Line 1-p. 95, ASSESSMENT AND PLAN, Lines, !-8; Complaint, p. 2, Factual Basis For Claim, Lines, 2-13, also Complaint, p. 2, Factual Basis For Claim, Line, 14-p. 3, Line 2; Transcript, p. 3 Line 1-p. 8 Line 4. The affidavit also met the statute requirement meaning and qualification of an expert

Witness under **S.C. Code Statute 15-36-100(A) and subsections (1) and (2)(a) or (b).** Subsection(A) states: **As used in this section , "expert witness" means an expert who Qualified as to the acceptable conduct of the professional whose conduct is at issue And who: (1) is licensed by an appropriate regulatory agency to practice his or her Profession in the location in which the expert practices or teaches; and**

(2)(a) is board certified by a national or international association or academy which Administers written and oral examinations for certification in the area of practice Or specialty about which the opinion on the standard of care is offered; or

(b) has actual professional knowledge and experience in the area of practice or Specialty in which the opinion is to be given as the result of having been regularly Engaged in. Dr. M. K. Greene, as a Hospitalist has actual professional knowledge and Experience and regularly engages in making decision on the acceptable standard of care Treatment based on a Radiologist diagnosis of possible embolism of a cardiac source. Dr M.K. Greene opinion is that when embolism is a possibility the standard of care is to Order a Heparin Drip, consult Neurology, treat per Neurology Protocol.

Dr. Greene, was familiar with the history of the case from the initial admission, diagnosis And treatment evidence findings based on the MRI and work-up documents received From Trident. As a Hospitalist, Dr. Greene, had experience and knowledge review MRI Results to determine the proper treatment. And knowledge and experience in reviewing The radiologist evidence finding that specifically suggest prior hemorrhage chronic and multi focal suggest a cardiac source of embolism, and Trident MRI multifoci showed no Evidence of a cardiac source on MRI then or on work-up, **is a negligent act or omission.**

Therefore, there is no **defect** in the expert qualification under S.C. Statute 15-36-100.

Dr. Sarah Anne Ludington, as a, Hospitalist at TRMC was authorized by TRMC on October 8, 2012 on the date of patient's discharge to investigate the reason for admission, History of case, assessment and plan and discharge summary. Dr. Ludington, as an expert And based on both Trident and TRMC medical records verified that the patient was Admitted and discharged from Trident prior to admission to TRMC with a diagnose on Work-up which showed a small stroke CVA and was treated with and discharged on Aspirin 325 mg., statin, and hypertension medication. Dr. Ludington, affidavit state upon Admission at TRMC patient had an MRI of the brain which was diagnosed as cardioemb-Olic stroke, that intra-atrial thrombus was detected on TEE, was placed on heparin to Transition to coumadin. Dr. Ludington discharge plan was condition stable, follow-up, INR in 2 days with adjustments made by primary care physician; needs follow up with Primary care physician in 1-2 weeks. Discharge medications are amlodipine, ASA 81mg, Pravastatin and wafarin. Thus Dr. Ludington was qualified as a Hospitalist expert to give An opinion on issue of standard of care **upon discharging** a patient with possible cardio-Embolism which is treatment of coumadin with follow-up INR in 2 days with PCP Primary care physician in 1-2 weeks adjustments made by PCP and condition stable Prior to discharge. Dr. Ludington, affidavit specifically stated " The Next day I reviewed the MRI results which showed multiple small foci of restricted Diffusion in the high left parietal lobe and evidence of hemosiderin deposition suggesting **Prior cortical hemorrhage of uncertain chronicity.** It was noted that **given the Multifocality the appearance was suggestive of an embolic phenomenon**. In addition, **There were area of chronic ischemic changes in the left occipital lobe"** . Appellant,

Verified Complaint Treated As An Affidavit of An Expert Witness of Dr. Sarah Anne Ludington, p. 3, History of Present Illness, para. 2, lines 1-6; p. 4, Discharge Plan, lines, 1-3; p. 4, Discharge Medications, Lines 1-4; Complaint, p. 1, Factual Basis For Claim, Line 1-p. 3, Standard of Care, Lines 1-25. Thus, under S.C. Code Statute 15-36-100 (A) And subsections (1), (2)(a) and (b), Appellant's Verified Complaint Treated As An Affidavit of An Expert Witness of, Dr. Sarah Anne Ludington, satisfied the statute Requirements as expert witness qualification as a Hospitalist to give an opinion on the Generally recognize and accepted treatment for cardio embolism and Trident's **Negligence discharge.** Therefore, there is no defective affidavit under S.C. Statutes **15-36-100 as part of the complaint 15-79-125 (E)(2), nor a defective 15-79-125 (A) Notice of Intent and Expert Witness Affidavit.** Transcript, p. 3, Line 1-p. 8 Line 4; Respondent's Memorandum of Law, Procedural Background, p. 1, Line 1-p. 2, para. 2, Line 1-8; Appellant's November, 12, 2015 Opposition To Motion To Dismiss, p. 1, Section 1, Line 1-p. 2, Lines 1-34; Apellant's Memorandum of Law, p. 1 Line 1-p. 4, Line 10; Order Granting Dismissal of Action, dated January 27, 2016, p. 1-6.

At the January 7, 2016 hearing, appellant sought amendment of the complaint to Conform to the evidence and cure any alleged defect in the affidavit requirements under S.C. Code Statute 15-36-100(B). S.C. CODE Statute 15-36-100(B) states: **Except as Provided in Section 15-79-125, in an action for damages alleging professional Negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility Alleged to be liable based upon the action or inaction of a health care professional**

Licensed by the State of South Carolina and listed in subsection (G), the plaintiff Must file as part of the complaint an affidavit of an expert witness which must Specify at least one negligent act or omission claimed to exist and the factual basis For each claim based on the available evidence at the of filing of the affidavit. Id.

S.C. Code Statute 15-36-100(E) states: If a plaintiff files an affidavit which is Allegedly defective, and the defendant to whom it pertains alleges, with specificity, By motion to dismiss filed contemporaneously with it's initial responsive pleading, That the affidavit is defective, the plaintiff's complaint is subject to dismissal for Failure to state a claim, except that the plaintiff may cure the alleged defect by Amendment within thirty days of service of the motion alleging that the affidavit is Defective. The trial court may, in the exercise of it's discretion, extend the time for Filing an amendment or response to the motion, or both, as the trial court Determines justice requires. The filing of a motion to dismiss pursuant to this Section shall alter the period for filing an answer to the complaint in accordance With rule 12(a), South Caroline Rules of Civil Procedure. Id.

Appellant, had initially amended the pleadings on November 12, 2015 which was Styled as Opposition To Motion To Dismiss, which was within 30 (thirty) days of Respondent's October 14, 2015 Motion To Dismiss the complaint. Appellant had amend The pleading to state a second theory of recovery which cured any alleged defects in the Pleadings of complaint and affidavit under S.C. Rule of Civil Procedure, Rule 15 (a) Amendments, and 15 (b) Amendments To Conform To The Evidence and under S.C. Code Statute 15-36-100 (E). Id. Appellant, second theory of recovery was **" that Trident knowingly, recklessly intent to initially start plaintiff on the treatment of**

Aspirin but delayed this treatment until it decided what his allergic reaction to Aspirin. Then recklessly changed from Plavix to Aspirin 325mg on or about 9/24/12 Until 9/26/12 upon discharge and afterwards with reckless intent to harm plaintiff By using this treatment in an excessive doses not Heparin and Coumadin with no Follow-up care instruction for this needed treatment upon discharge, knowing his Condition had become critical worsen, fell below the standard of care" . Appellant, Also raised this second theory of recovery in his Memorandum of Law In Support Of Opposition To Motion To Dismiss. Opposition To Motion To Dismiss, p. 4, section II, Lines 8-29: Appellant's, Memorandum of Law In Support of Opposition To Motion to Dismiss. P. 4, Lines 10-41.

The facts and evidence in the affidavits as it conforms to evidence to the amended Second theory of recovery is: **Trident Medical Center-Return Medical Records, Which is incorporated by reference in the complaint shows:** On 9/23/12 patient was Admitted to Trident, with right-side weakness with stroke like symptoms where Trident Voluntary undertaken to diagnose patient to determine the cause of symptoms and to Treat the condition with due care. On 9/23/12 Trident perform various diagnostic test.for A work-up. An EKG of the heart showed abnormalities. A CT scan of the head allegedly Showed no abnormality and no hemorrhage and no acute process and the clinical Impression was a new Cerebrovascular accidentt which was allege to be a small stroke Of the brain. The test results were reviewed and determine a need for additional work-up Which was discussed with on call health provider, Dr. T. Botelho. They agreed on a Treatment plan. Dr. Botelho, Assessment / Plan, stated: **CVA right hemi paresis**

Incomplete. The patient will be place on Plavix as he has an allergy to aspirin. We Will need to determine what his allergy actually is. Blood pressure control per Stroke protocol. Ultrasound carotid repeat CT 24 to 48 hours verses MRI / MRA Of the brain and Neurology to be consulted. Elevated CK-MB with abnormal EKG. Cardiology is consulted, start statin therapy. Check lipids in the morning, telemetry And continue serial CIPs. The patient will be started on Plavix and beta blocker.

On or about 9/24/12, Dr. Julio Rentas-Reyes allegedly determined patient was Probably not allergic to aspirin so he changed patient treatment from Plavix to aspirin 325 mg for treatment for secondary stroke prevention. Dr. Reyes-Rentas, who was **a Part of the decision making process to determine the treatment plan for the patient Condition, knew or should have known Plavix is a blood thinner and prescribed as a Blood thinner for the patient care and that aspirin 325 mg as shown by the package Insert from the manufacturer warn that aspirin 325 mg is not the recommended as a Blood thinner and physician may want to prescribe a lower doses of aspirin to Prevent blood clots which reduces the risk of a stroke.** Therefore, the about evident Shows Trident was reckless in treatment to prevent embolism, clots or second stroke.

On 9/24/12 Trident performed an Echocardiogram of patient heart which allegedly Was normal and showed no evidence of embolism of a cardiac source. A few hours later Trident performed an MRI of the patient's brain. The results showed: **Multi focal patchy Restricted diffusion is present within the right parietal lobe and posterior left Frontal lobe which appears to involve the cortex and subcortical white matter. This extends into the left centrum semiovale. There is minimal associated edema With this abnormality. No significant mass effect is present. There is no associated**

Intracranial hemorrhage. Postcontrast imaging demonstrates serpentine Enhancement within the abnormality.

Impression: Acute infarct within the posterior left frontal lobe, left parietal lobe, And left centrum semiovale as detailed above.

On 9/25/12 Trident perform another EKG on patient. The results stated **Marked Sinus bradycardia. Minimal voltage criteria for LVH, may be a normal variant. ST And T wave abnormality, consider anterolateral ischemia. Abnormal EKG when Compared with EKG of 9/23/12. Nonspecific T wave abnormality now evident in Inferior leads.** Trident **9/26/12 discharged summary and instruction-No anticoagula-Tion.** Appellant, second theory of recovery is that evidence from the MRI and the above EKG showed his condition had become abnormally worsen in the brain and heart since Admission on 9/23/12. And that above evidence showed Trident knowledge and aware That the aspirin 325 mg treatment was not adequate to thin the blood to maintain blood Flow to the heart and brain. And that Trident, knowingly, recklessly with intent to Harm patient, continue to treat him with the aspirin 325mg excessive doses until Discharge and gave upon discharge a prescription for aspirin 325 mg without treatment or instruction for a need for anticoagulation treatment with PCP. Trident voluntarily Undertaken to treat to prevent a second stroke, embolism, allergic treatment of aspirin. . Therefore, the above evidence shows Trident knowing, recklessly with intent to Cause harm, which did cause harm of a second stroke, cardiac embolism, hemorrhage, .and severe brain impairments. Therefore, the trial Judge rulings were error. There. Is no defect in the amended pleading to conform to evidence requirements under S.C.

Rule of Civil Procedure-Rule 15(a) and(b), and cure any defective affidavit requirement Allowed under S.C. Code Statute 15-36-100(B) and 15-36-100(E). The trial Judge Denied the amendment and rule that appellant Memorandum of Law in Opposition was Irrelevant, immaterial and inadmissible. Therefore, based upon the above factual Evidence, S.C. Rule of Civil Procedure and S.C. Code Statute 15-36-100(B) and (E) there Is no factual or legal grounds in the record to support for the trial Judge ruling denial of Amendment of the pleading in complaint and deny admission of the affidavit. Appellant, Opposition To Motion To Dismiss, p. 4, section II, Lines 8-29: Appellant, Memorandum Of Law In Opposition To Motion To Dismiss, p. 4. Lines 10-41: Transcript, p. 7, Lines 13-p. 8, Line 4 and p. 3, Lines 1-p. 8, Line 4: Respondent Memorandum of Law, p.1, Procedural Background, Line 1-p. 2, para. 2, Lines 1-8.Verified Complaint Treated AS An Affidavit of Expert Witness-of Dr. Sarah Anne Ludington, p. 3, History of Present Illness, Line1-p. 4, Discharge Medications, Lines 1-5: Complaint, p. 1, Factual Basis For Claim, Line 1-p. 3 Standard of Care, Lines 1-25. S.C. Rule Civil Procedure-Rule 15(a) Amendments states: **A party may amend his pleading once as a matter of course at Any time before or within 30 days after a responsive pleading is served or, if the Pleading is one to which no responsive pleading is required and the action has not Been placed upon the trial roster, he may so amend it at any time within 30 days After it is served. Otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given When justice so requires and does not prejudice any other party.**

S.C. Rule of Civil Procedure-Rule 15(b) Amendments To Conform To The Evidence, states: **When issues not raised by pleadings are tried by express or implied**

Consent of the parties, they shall be treated in all respects as if they had been raised In the pleadings. Such amendment of the pleadings as may be necessary to cause Them to conform to the evidence and to raise these issues may be made upon motion Of any party at any time, even after judgment; but failure to so amend does not Affect the result of the trial of these issues. If evidence is objected to at the trial on The ground that it is not within the issues made by the pleadings, the court may Allow the pleadings to be amended and shall do so freely when presentation of the Merits of the action subserved thereby and the objecting party fail to satisfy the Court that admission of such evidence would prejudice him in maintaining his Action or defense upon the merits.

ARGUMENTS

I. DID APPELLANT COMPLY AND MEET THE STATUTORY REQUIREMENTS IN FILING THE NOTICE OF INTENT AND COMPLAINT AT THE SAME TIME BY FILING UNDER S.C. CODE STATUTES 15-79-125(A)AND 15-79-125(E)(2)?

STANDARD OF REVIEW

"On appeal from dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies The same standard of review as the trial court." Rydde v. Morris, 381 S.C. 643, 646,675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a

Light most favorable to the nonmovant and determine if the facts alleged and the infer-Ences reasonably deducible from the pleadings would entitle the plaintiff to relief on any Theory of the case." Id. The motion will not be sustained if the facts alleged and the Inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on Any theory of the case. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997). The question to Be considered is whether, in light most favorable to the plaintiff, the pleadings articulate Any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987. The Complaint should not be dismissed merely because the court doubts the plaintiff will Prevail in the action. Id.

DISCUSSION

On September 23-26, 2012 appellant was diagnose and treated by respondent Trident For stroke like symptoms. On September 30, 2012 appellant had second episode of stroke Like symptoms at home after discharge from Trident on Semptember 26, 2012. Apprllant Was admitted to TRMC on Semtember 30, 2012. On October 1, 2012 TRMC MRI Results showed appellant injury was cardio embolism. It was also determined that Appellant injury was likely cause by Trident negligent diagnosis and treatment. On September 11, 2015 appellant filed a NOTICE OF INTENT and COMPLAINT against Respondent 12(twelve) days prior to the 3 (three) years statute of limitation. Appellant, specifically invoked S.C. Code Statute 15-79-79(E)(2) because the 3(three) Years limitation was due to expire in 12(twelve) days and under S.C. Code Statute 15-3-545(A) which is mandatory states "in any action to recover damages for injury to

The person arising out of any medical treament must be commenced within three years From the date of treatment or omission." S.C: Code Statute 15-79-125 States: **Notice of Intent to File Suit as prerequisite to filing action; subpoena of medical records; Depositions; mandatory preiitigation mediation;initiating action;ADR participation.** Under S.C. Code Statute 15-79-125(C) it states: Within ninety days and no later than one Hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall Participate in a mediation conference unless an extension for no more than sixty days is Granted based upon a finding of good cause. S.C. Code Statute 15-79-125 section(E) States: **If the matter cannot be resolved through mediation, the plaintiff may initiate The civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed:**

(1) within sixty days after the mediator determines that the mediation is not viable, That an impasse exists, or that the mediation should end; or

(2) prior to expiration of the statute of limitation, whichever is later.

With all of the above statutory schemes in mind and applicable to appellant Circumstances or reasons in initiating both S.C. Code Statutes 15-79-125(A) Notice Of Intent and 15-79-125(E)(2) filing Summons and Complaint prior to the expiration of The statute of limitation, **whichever is later, conditions were met to invoke** the above 2 (two) statutes and file the notice of intent and summons and complaint together as one. For all of the above statutes to be in compliance, appellant had to file the notice of intent As a prerequisite to filing an action and must participate in mediation conference within Ninty days but no later than one hundred twenty days with an extension of sixty

Days as a prerequisite to filing the presuit. However, he then had to wait sixty days after It was determine an impasse exist, that mediation not viable or mediation should end; Or file the notice of intent and properly invoke S.C. Code Statute 15-79-125(E)(2) and File the summons and complaint all together as one because of the later condition. Prior To the expiration of the 3(three) years statute of limitation had been met and was the Later effect in 12(twelve) days. Clearly on the face of S.C. Code 15-79-125(E)(2) Was applicable to appellant, but the 2(two) statutes must be read together to give effect To legislative intent when a presuit notice of intent is prerequisite and mediation has not Yet begun but the statute of limitation is about to expire which is the later circumstance. Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014)(quoting Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459(2007) "The cardinal rule of statutory interpretation is to Ascertain and effectuate the intention of the Legislature." "When a statute's terms are Clear and unambiguous on their face, there is no room for statutory construction and a Court must apply the statute according to it's literal meaning." Id. In interpreting a statute , "[w]ords must be given their plain and ordinary meaning without resort to subtle or Forced construction to limit or expand the statute's operation." Id. At 499, 640 S.E.2d at 459. Futher, "the statute must be read as a whole and sections which are a part of the Same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. V. Jasper Cnty., 368 S.C. 388, 629 S.E.2d 624, 629(2009)(citing TNS Mills, Inc. v. South Carolina Dept. of Revenue, 331 S.C. 611, 503 S.E.2d 471(1998) ; Grazia v. S.C. State Plastering, 390 S.C. 562, 703 S.E.2d 197(2010)(Harmonization of The Right to cure Act's stay Provision and Notice Requirements " It is clear to this court That these two provisions are at odds, as the language used in section 40-59-840 appears

To require mandatory compliance with the Act's notice provisions prior to filing an Action, while section 40-59-830 provides a contractor / subcontractor with a means of Staying an action that is filed without first complying with the same notice provision.") Grazia, also cites Trimble V. Itz, 898 S.W.2d 370, 373-74(Tex. App. 1995(considering Similar notice provisions included in statutes requiring pre-litigation notice and Concluding that the purpose of the statute is better served by abeyance than dismissal). Trimble v. Itz, actually considered similar notice provision in medical malpractice action. See also Kukral v. Mekras, 679 So. 2d 278-Fla: Supreme Court (1996)(citing Hospital Corp. v. Lindberg, 571 So.2d 446(Fla. 1990)(Pre-Suit Notice of Intent and Complaint Filed at the same time prior to the expiration of the statute of limitation). Therfore, under S.C. Code Statutes 15-79-125(A) Notice of Intent and 15-79-125(E)(2) Complaint prior To expiration of the statute of limitation must be read together to give effect to the Legislative intent. Futhermore, to not do so would create and absurb result because the Statute of limitation would still expire and appellant would be forever barred from filing A Complaint which would render S.C. Code Statute 15-79-125(E)(2) meaningless, yet Appellant complied with the pre-litigation requirements and timely initiated this action. Wilkinson v. East Cooper Community Hospital, 410 S.C. 163, 763 S.E.2d 426(2014) (citing S.C. Code Statute 15-79-125(E) for the proposition that the notice of intent and Complaint were timely initiated). Therefore, appellant request this court for an extension Of Wilkinson in it's application of S.C. Code Statutes 15-79-125(E) to 15-79-125((E)(2).

Finally, appellant was in compliance with S.C. CODE Statute 15-79-125(A) Notice of Intent requirements, which states: **Prior to filing or initiating a civil action**

Alleging injury or death as a result of medical malpractice , the plaintiff shall Contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert Witness, subject to the affidavit requirements established in Section 15-36-100, in a County in which venue would be proper for filing or initiating the civil action. The Notice must name all adverse parties as defendants, must contain a short and plain Statement of the facts showing that the party filing filing the notice is entitled to Relief, must be signed by the plaintiff or his attorney, and must include any Standard interoggatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filling the Notice of Intent tolls all applicable statute Of limitations.

On September 11, 2015 appellant filed under S.C. Code Statutes 15-79-125(A), 15-79-125(E)(2) and 15-36-100 Common Knowledge on the face of the complaint citing These statutes for pleadings notice of intent, complaint filed prior to the expiration of the Statute of limitation and expert witness affidavit. Appellant also cited S.C. Code Statutes 15-79-125(A) and 15-36-100 on the face of the notice/claim/disclosure authorized to be Used as filing, pleading and initiating the notice of intent and the expert affidavits. The Notice provision of Notice of Intent and Affidavit on page 4(four) states **the information In the documents could be used in any related civil proceedings**. Therefore, appellant Was using this notice provision and affidavit as part of the related medical issues for Pleadings S.C. Code Statutes 15-79-125(A) Notice of Intent and 15-36-100 as the Affidavits of Expert Witnesses specifying two acts or omissions claiming to exist and the Factual basis for each claims based on the available evidence at the time of filing the Affidavit. Appellant signed the notice / claim on page 3(three) and cited S.C. Code

Statutes !5-79-125(A) and 15-36-100 on the face of the notice of intent and expert Witnesses affidavits. Appellant signed the notice of intent on page 3(three) and included The required standard interrogatories filing under S.C. Rules of Civil Procedures Rule 33 And 34 Request for Production. Respondent, Trident was Name as adverse party, contain The plain and short statement showing appellant entitled to relief by incorporating by Reference the affidavit factual basis for claim into the complaint pleadings for damages Relief and signed the request for damages relief. Finally, appellant attached the Notice of Intent pleadings and Affidavits together with the notice of intent and affidavits captioned Filed under these statutes on the face of the complaint but the clerk of court erroneously Filed notice of intent and affidavits separately as an exhibit from another proceeding. Complaint, p. 1, caption filed under S.C. Code Statutes 15-79-125(A), 15-79-125(E)(2) And 15-36-100; Notice of Intent and Expert Witnesses, Caption citing S.C. Code Statutes 15-79-125(A) and 15-36-100-Caption styled as Verified Complaint Treated As An Expert Witness Affidavit; Complaint, p. 1, Factual Basis For Claim, p. 1, Line 1-3 Standard of Care, Lines 1-25.

Therefore, based on all of the above pleadings filed under S.C. Code Statute 15-79-125(A) Notice of Intent, appellant complied with statutory requirement even if the Clerk of court filed the notice of intent / affidavit documents separately from the Complaint caption filed pleadings under S.C. Code Statutes 15-79-125(A) and 15-36-100 As separate documents from a different proceeding with different case number. This Does not convert appellant prelitigation notice of intent claim and litigation claim filed Under S.C. Code Statute 15-79-125(E)(2) into two cases requiring two notice of intent

And two expert affidavits. The assignment of prelitigation pleadings and litigation Pleadings filed separately as if from a different proceeding is of no consequence Because they both comprise a single medical malpractice claim. Wilkinson v. East Cooper Community Hospital,Inc., 410 S.C. 163, 763 S. E.2d 426 (2014)(quoting Fisher v. Perlstring, 817 F. Supp.2d 791, 807 n. 8 (D.S.C. 2011)(analyzing procedures for initiating medical malpractice claims and stating "[s]ection 15-79-125 Also does not include any language indicating that the case number under which a Notice of Intent is served on a defendant must be the same as the case number assigned To the complaint served on that defendant if a civil action is ultimately initiated").

Therefore, the trial judge ruling was error of law that appellant did not follow the Procedure under S.C. Code Statute 15-79-125(A) prior to filing his medical malpractice Action. Wilkinson v. East Cooper Community Hospital, Inc., 410 S.C. 163, 763 S.E.2d 426 (2014)(Based on the foregoing , we hold the circuit court erred in granting Respondents' motions to dismiss as Wilkinson's Complaint was timely and sufficient to Properly initiate a civil action for medical malpractice). S.C. Code Statutes 15-79-125(A), 15-79-125 (E)(2); Baird v. City of Charleston, 333 S.C. 519, 511 S.E.2d 69(1999)(same).

ARGUMENTS

II. DID THE TRIAL JUDGE ERR TO DISMISS BECAUSE APPELLANT FAIL TO FILE AN ADMISSIBLE QUALIFIED EXPERT WITNESS AFFIDAVIT WHEN IT IS QUESTIONABLE APPELLANT WILL PREVAIL?

DISCUSSION

S.C. Code Statute 15-36-100 states: Complaint in actions for damages alleging Professional negligence; contemporaneous affidavit of expert specifying negligent act or Omission.

(A) **As used in this section, "expert witness" means an expert who is qualified as to The acceptable conduct of the professional whose conduct is at issue and who:**

(1) is licensed by an appropriate regulatory agency to practice his or her profession in the Location in which the expert practices or teaches ; and

(2)(a) is board certified by a national or international association or academy which Administers written and oral examinations for certification in the area of practice or Specialty about which the opinion on the standard of care is offered; or

(b) has actual professional knowledge and experience in the area of practice or specialty In which the opinion is to be given as a result of having been regularly engaged in:

(B) Except as provided in Section 15-79-125, in an action for damages alleging Professional negligence against a professional licensed by or registered with the state of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint An affidavit of an expert witness which must specify at least one negligent act or Omission claim to exist and the factual basis for each claim based on the available Evidence at the time of filing of the affidavit.

Appellant, on September 11, 2015 filed in the court of common pleas, filed under S.C. Code Statutes 15-79-125(A) Notice of Inent, 15-79-125(E)(2) Complaint prior to the Expiration of the statute of limitation, and 15-36-100 Affidavits of Expert Witnesses, Claims for damage relief for medical malpractice based on respondent negligence in Diagnosis and treament of him for cardio embolism. Respondent, Trident filed motion

Seeking dismissal of medical malpractice action and dismissal of affidavits on the ground The affidavit documents were defective not meeting S.C. Code Statutes 15-79-125(A) And 15-36-100 requirements to be qualified as expert witness affidavits. Respondent, Stated the affidavits did not contain an opinion on the standard of care which was Breached by Trident, therefore was not admissible as evidence and subject to dismissal. Respondent, also stated that the type, amount and doses of anticoagulation treatment Required specialized professional knowledge from and expert witness and not a common Knowledge issue. Complaint, p. 1, Factual Basis For Claim-p. 3, Standard of Care, Line 1-25; Respondent's Memoradum of Law, p. 2, Procedural Background, para. 2, Lines 1-8.

On January 7, 2016, the hearing on the motion for dismissal was held. Respondent, Trident raised the same above grounds for dismissal. The trial Judge, agreed With respondent on all of the grounds for dismissal. Appellant, raised objection to Respondent's grounds for dismissal and to the trial Judge conclusion that the affidavits Were not qualified as affidavits of expert witnesses, inadmissible as evident and not a Common knowledge issue for a jury. The trial Judge ruled that it was questionable Whether or not to dismiss the action and that appellant could not use the doctors opinion As an affidavit, that treatment of anticoagulation was not a common knowledge issue and Appellant, Memorandum of Law was irrelevant, immaterial and inadmissible evidence. The trial Judge, granted respondent motion to dismiss the action and affidavits and notice Of intent. Transcript, p. 3, Line 1-p. 8, Lines 1-4.; Appellant's Memorandum of Law, p. 3, section(b), Lines 1-p. 4, Lines 1-41.

The expert witness affidavit of, Hospitalist, M.K. Greene, met the requirements

Of an affidavit under S.C. Code Statutes 15-79-125(A) and 15-36-100(B) by specifying At least one negligent act or omission claim to exist and the factual basis for the claim Basis for the claim based on the available evidence at the time of filing the affidavit. The Affidavit specified by noting "We receive documentation from Trident which showed a Small acute stroke, but no evidence of a cardio embolic source on MRI then or on Work-up". Trident's MRI showed multi-foci and TRMC showed muli-foci which Specifically noted " Given the multi focality suggest a cardio embolic phenomenon". TRMC, expert witness affidavit specifically noted " because embolism is a possibility I Ordered a Heparin Drip, Neurology has been consulted to be treated per Neurology Protocol " and noted to see patient history. The history notes indicates **patient had a MRI at Trident and was treated with aspirin 325 mg, hypertension medication and Statin and given a prescription for refill of the same medication.** Appellant, claim for Relief is that given the affidavit shows that the diagnostic standard of care of a radiologist On MRI is a diagnosis of " multi focality suggest a cardia source of embolism" and Since both Trident MRI and TRMC MRI showed the same multi foci results, therefore, There is a **reasonable deducible inference embolism of a cardiac source was a Possibility at Trident**. Therefore, the affidavit specify one act or omission claim to exist And the factual basis for the claim of negligent in not diagnosing embolism on MRI. Likewise, since embolism was a possibility at Trident and a, Hospitalist standard of care Is to " Order a Heparin Drip, consult Neurology, and treat per Neurology Protocol". And Since, embolism of a cardiac source was a possibility at Trident and affidavit specifically Noted " see patient history for detail reason for admission" and the history note specified " patient treated with and discharged on aspirin 325 mg and given a prescription for

A refill of the same medication. Therefore, the affidavit met the requirements under S.C. Code Statutes 15-79-125(A) and 15-36-100(B) specifying at least two negligent Act or omission and factual basis for each claim based on the available evidence at the Time of filing, of negligent not to suggest embolism of a cardiac source " given the multi Foci" and treat. Verified Complaint Treated As An Affidavit of An Expert Witness, of Dr. M.K. Greene, p. Exhibit 6,Primary Care Physician, Line 1-Exhibit 8; Exhibit 94, History of Present Illness, Line 1-Exhibit 95, Assessment And Plan, Lines 1-11.

The Affidavit of Dr. M.K. Greene, also met the meaning and qualification Requirements under S.C. Code Statute 15-36-100(A) and subsections(1) and(2)(a) or(b) For an expert witness. Dr. M.K. Greene, as a Hospitalist has actual professional Knowledge, experience and regularly engages in making decisions on the standard Of care for treatment on a Radiologist diagnosis of possible embolism of a cardiac source. Dr. M.K. Greene, opinion is that when " embolism is a possibility the standard of care is To order a Heparin Drip, consult Neurology, treat per Neurology Protocol". Dr. Greene, Was familiar with the history of the case from Trident MRI which showed " acute CVA Stroke with multi foci brain infraction which did not show evidence of the source ". Therefore, the affidavit show, Dr. Greene, had experience and knowledge to review MRI Results to determine the proper treatment. And knowledge and experience in reviewing A radiologist acts or omission to form an opinion on the standard of care of a prudent Radiologist under the same condition. Dr. Greene, specifically stated "of note we did Received documenation from Trident which showed a small acute stroke but no evidence Of a cardio embolic source on MRI then or on work-up" "Acute CVA with brain infarct

Likely cardio embolic source". Therefore Affidavit met the meaning and qualification as An affidavit of a qualified expert. Expert Witness Affidavit of Dr. Greene, Ex.6,8,94,95.

The affidavit of, Dr. Sarah Anne Ludington, met the requirements under S.C. Code Statutes 15-79-125(A) and 15-36-100(B) which require that the affidavit must Specify at least one negligent act or omission claimed to exist and the factual basis for Each claim based on the available evidence at the time of filing of the affidavit. Dr. Sarah Anne Ludington, as a Hospitalist, affidavit specifically stated " The patient Actually presented to Trident about a week and a half ago with similar symptoms where He was admitted. He had a work-up which showed a small stroke. The patient is a 58 Year old male that I discharged on 10/1/12 . On 10/1/12 before the patient got his MRI of The brain he wanted to leave. As I got a call by the patient's nurse, I convinced the Patient to stay for the MRI". " The next day I reviewed the MRI results which Showed multiple small foci of restricted diffusion in the high left parietal lobe and Evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain Chronicity". It was **noted** "given the multi focality the appearance was suggestive of an Embolic phenomenon". "In addition, there were areas of chronic ischemic changes in left Occipital lobe". **" Because of these findings, I called the patient at home yesterday Requesting him to come back to the hospital regarding the need for possible Anticoagulation given the possibility of embolic stroke"**. Dr. Ludington's, affidavit Specifically noted TRMC, Hospital Course was "Patient admitted and atrial thrombus Detected on TEE. Was placed on heparin gtt to transition to coumadin" and Discharge Plan, standard of care, required " Follow Up INR in 2 days with adjustments made By Primary Care Physician, needs follow up with PCP in 1-2 weeks" with Discharge

Medication of Warfarin 5mg, with adjustments made by PCP in 2 days for INR, According to Neurology Protocol. Therefore, Dr. Ludington affidavit met the requirement Under S.C. Code Statutes 15-79-125(A) and 15-36-100 specifying at least one negligent Act or omission claimed to exist and the factual basis for each claim based on the avail-Able evidence at the time of filing of the affidavit of Trident's neligent act or omission. According to Neurology Protocol, the discharge plan standard of care required as a Hospitalist under similar circumstances and like condition is to follow this generally Recognized and accepted practice and procedure for follow up treatment after discharge.

Likewise, Dr. Ludington, affidavit also met the meaning and qualifications as an Expert Witness Affidavit under S.C. Code Statutes 15-36-100(A)(1) and (2)(a)or (b). Dr. Ludington, as a Hospitalist was authorized by TRMC to investigate the patient's Reasons for admission, history of present illness, hospital course of action in respond and To make assessments and plans for needed folow up care after discharge from TRMC. Dr. Ludington, has knowledge and experience making assessments and plans for a patient Follow up care after discharge as an active part of her practice that she regularly engages In at TRMC for stroke patients to give an opinion on the standard of care after discharge. Dr. Ludington, as a Hospitalist at TRMC, has experience and knowledge of type needed For anticoagulion treatment of coumadin(warfarin) and INR effect, the timing needed to Make adjustments and the amount needed on discharge to prevent future clots and stroke.

Therefore, Dr. Greene and Dr. Ludington's, affidavits in combination established The standard of care and the negligent acts and omissions of Trident in the diagnosis and Treatments during the MRI and during and after discharge on the issue of duty of care.

The trial court ruled the doctors statements could not be used as qualifying experts. And also ruled anticoagulation treatment is not a common knowledge issue. Transcript, p. 3, Line 1-p. 8, Line 4.

The qualification of a witness as an expert and admissibility of his Testimony are matters largely within discretion of the trial judge. Creed v. City of Columbia, 310 S.C. 342, 345, 426 S.E.2d 785, 786 (1993). Similarly, the admission or Exclusion of evidence in general is within the trial court's decision will not be disturbed On appeal absent an abuse of discretion. Pike v. S.C. Dept of Transp.,343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000); Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596,598 (1987); Means v. Gates, 348 S.C. 161, 558 S.E.2d 921, 923(Ct. App. 2001). An abuse of discretion occurs when the ruling is based on an error of law or a Factual conclusion that is without evidentiary support. Carlyle v. Tuomey Hosp., 305 S.C. 187, 193 ,407 S.E.2d 630, 633 (1991); Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E. 565, 566 (1987). To warrant reversal based on the admission or exclusion of evidence , The appellant must prove both error of the ruling and the resulting prejudice, that is, that There is is a reasonable probability the jury's verdict was influenced by the challenged Evidence or lack thereof. Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); Timmons v, S.C. Tricentennial Comm., 254 S.C. 378, 405, 175 S.E.2d 805, 819 (1970); Powell v. Temple, 250 S.C. 149, 160, 156 S.E.2d 759, 764(1967).

The evidence in, Dr. Greene's affidavit established "embolism of a cardiac Source was a possibility" at Trident but that Trident "did not show evidence of cardio Embolic source on MRI, then or on work up, but showed a small stroke" therefore

Trident was negligent in diagnosis "given the multi focality" radiologist standard of care Is suggestive of cardio embolic source. Bowie v. Hearn, 294 S.C. 344, 345, 364 S.E.2d 469, 470(1988)(Petitioner expert testified that a caesarean section requires a series of Incisions through various layers of the mother's abdomen. He stated the proper procedure Is to make a tiny initial incision in each layer and then lift the edges of that incision and Make it larger and deeper. According to the testimony, use of this standard technique Will not result in injury to the baby. Respondent testified that when he reach the uterus, He made three or four "swipes" with a scalpel in order to reach the uterine wall. Petitioner's expert testimony was evidence that respondent's action deviated from the Recognized and generally accepted caesarean procedure); Gooding v. St. Francis Xavier, 326 S.C. 248, 487 S.E.2d 596 (1997)(Sorenson never testified that Dr. Hood used Gooding's teeth as a fulcrum during intubation. Because Gooding presented no evidence That Dr. Hood did not conform to the accepted standard of care , he failed to establish That Dr. Hood was negligent); King v. Williams, 276 S.C. 478, 279 S.E.2d 618 (1981).

The evidence in Dr. Greene's affidavit also establishes that Trident was Negligent in treatment. Since the standard of care of a radiologist diagnosis is "given The multi focality is suggestive of a cardio embolic source" and requires a Hospitalist To "consult Neurology, order a Heparin Drip and treat per Neurology Protocol when Embolism is a possibility". Dr. Greene's affidavit noted " after reviewing the MRI results I called the patient at home and told him the likely source of his CVA is cardio embolic. And that he needed to come back to the hospital to be admitted for possible Anticoagulation treatment". Dr. Greene, further noted "patient admitted to Telemetry. I Did order a Heparin Drip given embolism is a possibility. Neurology has been consulted

To treat per Neurology Protocol" which is a Hospitalist standard of care treatment when Embolism is a possibility. Therefore, since Dr. Greene's affidavit established embolism Was a "possibility" during the period the patient was still admitted and under Trident Medical care it also establishes Trident negligent treatment of aspirin 325mg, by not Treating nor discharging patient with anticoagulation when the "likely source of his cerebra vascular accident with brain infarction was cardio embolism with old cortical Hemorrhage of uncertain chronicity". King v. Williams, 276 S.C. 478, 279 S.E.2d 618 (1981)(Based upon his reading of the x-rays, as well as the report of the radiologist, Dr. Williams diagnosed and treated the injury as a severe ankle sprain. King was released In early March and allowed to walk on the foot using a walking cast. When it was Removed in late March, the foot remained swollen and blue. Dr. Williams considered This condition to be normal and continued the same treatment. On appeal, Dr. Williams Challenges the admission into evidence of (1) the testimony of Dr. Rein, and (2) Purported X-rays of King's foot, and contends that without this evidence there was Insufficient competent evidence from which a jury could find any negligence on his part. Affirmance of the verdict is not dependent upon expert testimony. Even without Dr. Rein's testimony, the jury reasonably could have inferred that King's injury was Proximately cause by negligence of Dr. Williams. King suffered a foot injury. Dr. Williams X-rayed the ankle region only, and diagnosed a "severe sprain." While the Initial examination and diagnosis was arguably not negligent, the subsequent events Clearly infers a failure to use proper skills. Despite persistent pain and swelling, he failed To X-ray areas of the foot other than the ankle for almost eight months. Furthermore, he

Failed to consult a specialist until almost a year later in spite of abnormal developments, Such as, failure to timely heal, fallen arch and demineralization. Dr. Williams fail to Consult the specialist either before or after the appointment. Dr. Williams admitted that King followed the prescribed medication. The law is well-established that expert Testimony is not required where the common knowledge or experience of a laymen is Capable of inferring lack of proper care and also the required casual link. We think the Jury was justified under these circumstances in finding actionable negligence by Dr. Williams even absent expert testimony). Affidavit of Dr. Greene, p. 1- exhibit 95.

Therefore, based on the above evidence in Dr. Greene's affidavit and case Laws cited and relied upon which shows error of the trial court's ruling which requires Reversal of its order for exclusion of the affidavits of, Drs. Greene and Ludington. Since Dr. Ludington affidavit, verified Dr. Greene this was not harmless error, but rather critical Evidence on the issues of standard of care, common knowledge and duty of care.

Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189 (2014)(As to Dr. Crain's Assertions regarding defects in the authorship and content of Dr. Boortz-Marx's Affidavit , we find this is not an appropriate ground to affirm the circuit court's order Because the affidavit is facially sufficient given it is sworn and identifies a potentially Meritorious medical malpractice claim. Moreover, there is no factual basis in the record To challenge either the expert's qualifications or content of the affidavit)(Cf. Poch v. Bayshore Concrete Prods., Inc., 405 S.C. 359, 378 n. 13 , 747 S.E.2d 757, 767 n. 13 (2013)(declining to reject affidavit presented as proof of worker's compensation Insurance as there was "no basis for which for which to reject the affidavit as it is by its Very nature a sworn statement intended as documentary evidence in a legal proceeding");

Fields v. Regional Medical Center Orangeburg, 363 S. C. 19, 609 S.E.2d 506 n. 9 (2005) (quoting Elledge v. Richland/ Lexington School Dist. Five, 352 S.C. 179, 185-89, 573 S.E.2d 789, 792-95 (2002)(finding prejudicial error in exclusion of industry safety Standards for playground equipment because such standards would have helped establish The necessary standard of care, would have provided important support and enhancement Of opinion testimony of expert witnesses, and would not have been cumulative to experts Testimony) also quoting Seen v. J.S. Weeks Co., 255 S.C. 585, 591, 180 S.E.2d 336, 338 (1971)(finding prejudicial error) and also quoting Sellers v. Public Sav. Life Ins. Co., 255 S.C. 251, 256, 178 S.E.2d 241, 243(1970)(finding prejudicial error); Means v. Gates, 348 S.C. 161, 558 S.E.2d 921(Ct. App.)(2001)(finding exclusion of the evidence was not Harmless error as there was no equivalent testimony presented to this effect).

ARGUMENTS

III. DID THE TRIAL COURT ERR IN DENYING LEAVE TO AMENDMENT OF THE COMPLAINT TO STATE A SECOND THEORY OF RECOVERY?

DISCUSSION

Dismissal of a case "without prejudice" means a plaintiff may reassert her complaint By curing defects that led to the dismissal. In contrast, a dismissal of a complaint "with Prejudice" is intended to bar relitigation of the same claim. Collins v. Sigmon, 299 S.C. 464,467, 385 S>E.2d 835, 837 (1989).

Dismissal of a complaint does not bar a subsequent action brought before the expiration Of the statute of limitations if the dismissal is based merely on insufficiency of the

Complaint. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Hennegan v. Atlantic Coast Line R. Co., 211 S.C. 357, 45 S.E.2d 331 (1947). Dismissal of a case precludes Relitigation only on matters actually decided in the dismissal. Scaly, 289 S.C. at 544, 347 S.E.2d at 505(dismissal for improper joiner and lack of capacity to sue precludes only Those issues).

When a complaint is dismissed under Rule 12 (b)(6) for failure to state facts sufficient to Constitute a cause of action, the dismissal is generally is without prejudice. The plaintiff In most cases should be given an opportunity to file and serve an amended complaint. See Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L.Ed.2d 222 (1962)(rules of civil Procedure should be liberally construed to do substantial justice and lower court erred in Denying motion to amend complaint where amendment would have stated alternative Theory of recovery).

When a plaintiff is not given the opportunity to file an serve an amended complaint, but is Left with no choice but appeal after dismissal of her case with prejudice, an appellate Court which affirms the dismissal may modify the lower court's order to find the Dismissal is without prejudice. When the statute of limitations has expired, the appellate Court may in its discretion impose a reasonable period of time in which to amend the Complaint. An appellant court should follow this procedure when the plaintiff presents Additional factual allegations or a different theory of recovery which, taken as true in a Well-pleaded complaint, may state a claim upon with relief may be granted. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006).

Applying these principles in the present case the appellant has presented additional

Factual allegations or a different theory of recovery in his opposition to motion to Dismiss and in his Memorandum of Law in opposition to respondent's motion to dismiss Which may give rise to a cause of action which relief maybe granted against Trident. Therefore, the lower court order was in error and should not be affirmed. The trial judge Denied appellant motion for leave to amendment of the complaint to state a second theory With supporting factual allegations that Trident "**knowingly, recklessly intent to Initially start plaintiff on the treatment of aspirin but delayed this Treatment until it decided what his allergic reaction to aspirin. Then recklessly Changed from Plavix to Aspirin 325mg on or about 9/24/12 until discharge and Afterwards with reckless intent to harm plaintiff by using this treatment in an Excessive dosages, but not treating him with the generally recognized and accepted Treatment of Heparin and Coumadin with discharge instruction for follow up with Plaintiff primary care physician for this needed treatment upon discharge, knowing His condition had become critical worsen with possible embolism of a cardic source Took no correct action** ". Transcript, p.3, Line 1-p. 8, Line 4. Wilkinson v. East Cooper Community Hospital,Inc.. 410 S.C. 163, 763 S.E.2d 426 (2014)(In view of Our decision, it is unnecessary to address Wilkinson's remaining argument that she Should be permitted to supplement her complaint with an expert affidavit based on Spence); Cf. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006)(However owner 2 Has failed to present any additional factual allegations or a different thory of recovery Which may give rise to a cause of action upon which relief may be granted). Appellant Memorandum of Law,p. 3, section(b), Line 1-p.4, Line 41.

The error of the lower court was not harmless but critical evidence on the issues

Duty of care that Trident voluntarily undertook. Therefore the allegation in -amendment Complaint were relevant to the issues of standard of care and duty of care which involved Different element of a negligent claim of action and therefore not cumulative which was Prejudicial requires reversal of the trial court order. Elledge v. Richland/Lexington School District Five, 352 S.C. 179, 573 S.E.2d 789 (2002)(In addition, we note that the Bulk of the experts' testimony went to the element of breach of duty whereas the specific Evidence of industry standards was intended to establish the applicable duty of care. Since the evidence at issue went to a different element on the the negligent cause of Action--duty verses breach--clearly the evidence cannot be cumulative. Accordingly we Hold the trial court's error in excluding this evidence prejudiced respondents' case).

The court must determine, as a matter of law, whether the law recognizes a Particular duty. If there is no duty, then the defendant is entitled to judgment as a matter Of law. Madison Ex Rel. Bryant v. Babcock Center, 370 S.C. 42, 634 S.E.2d 275(2006).

Under South Carolina common law , there is no general duty to control the conduct of Another or to warn a third person or potential victim of danger. There are five exceptions To this rule: (1) where the defendant has a special relationship with the victim; (2) where Where the defendant has a special relationship to the injurer; (3) where the defendant Voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates The risk; and (5) where a statute imposes a duty on the defendant. Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002)(listing cases and Authority supporting each proposition). An affirmative legal duty may be created by Statute , a contractual relationship, status, property interest, or some special circumstan-

Ces. Jensen v. Anderson County Dept. of Social Services, 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991). Moreover, it has long been the law that one who assumes to act, even Though under no obligation to do so, thereby becomes obligated to act with due care. Sherer v. James, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (19860.

"One who undertakes, gratuitously or for consideration, to render services to another Which he should recognize as necessary for the protection of the other's person or thing, Is subject to liability to the other for physical harm resulting from his failure to exercise Reasonable care to perform his undertaking, if(a) his failure to exercise such care Increases the risk of such, or (b) the harm is suffered because of the other 's reliance Upon the undertaking." Restatement of Torts statute 323(1965). In addition, "[o]ne who, Being under no duty to do so, takes charge of another who is helpless adequately to aid or Protect himself is subject to liability to the other for any bodily harm caused to him by (a) The failure of the actor to exercise reasonable care to secure the safety of the other while Within the actor's charge , or (b) the actor's discontinuing his aid or protection, if by so Doing leaves he leaves the other in a worse position than when the actor took charge of Him." Restatement of (Second) of Torts statute 324.

The present case falls within all of the exceptions specified in Faile, as well as within the Circumstances outlined in Restatement(Second) of Torts statute 323-324.

The evidence in affidavit shows "*embolism of a cardiac source was a possibility*" while Appellant was still at Trident but Trident "did not show a source on MRI then or on work Up" and that Trident had voluntarily undertaken to diagnose and treat him to prevent

Embolism of a cardiac source or a second stroke using the Echocardiogram on 9/24/12, But found no source of embolism of a cardiac source. That following the Echocardiogram An MRI was performed a few hour later which showed "multi foci restrictive in the left Parietal lobe". Based on a radiologist standard of care "given the multi focality" suggest Appearance of a cardiac embolic phenomenon. Trident radiologist was negligent and "did not show a source of cardio embolism then on MRI or on work up". However, Trident did "specifically noted Neurology to be consulted". This is a Hospitalist Standard of care when " embolism is a possibility" to treat with anticoagulation Heparin And do further testing to rule out a cardiac source for a CVA stroke, and to transition a Patient to coumadin with follow up instruction on discharge to patient Primary Care Physician for adjustment for INR. The evidence in Trident medical record which is Incorporated into the complaint shows Trident Hospitalist on 9/23/12 did voluntarily Undertaken to determine "what patient allergic reaction to aspirin actually is, start Treatment with Plavix, consult Cardiology to do routine customary echocardiogram to Rule out embolism of a cardiac source, the results allegedly were normal, Trident Change patient treatment from Plavix to Aspirin 325mg for secondary stroke prevention On or about 9/24/12, MRI on 9/24/12 showed multi foci restricted diffusion but did not Show a source of cardio embolism then, on 9/25/12 a second EKG showed that EKG was Abnormal compared to 9/23/12 EKG with recommendation to consider ante lateral Ischemia and marked bradycardia, Trident took no recommended corrective action to rule Out ante lateral ischemia or further testing to rule out cardio embolism,nor change Treatment from aspirin to Heparin, nor give instruction or discharge with coumadin". Complaint, p. 1, Factual Basis For Claim, Line 1-p. 3, Standard of Care, Line 1-25.

Appellant Memorandum of Law, p. 3, section(b), Line 1-p. 4, Line 42.

Therefore, based upon five exceptions specified under Faile as well as within The circumstances outlined in Restatement (Second) of Torts statutes 323-324, and the Factual circumstances of this case, Trident clearly had duty on 9/24/12 to "show a source Of cardio embolism on MRI so that Neurology could be consulted for further testing to Rule out embolism as a possibility" and on 9/25/12 based on the second EKG results also Had a duty to follow up the recommended testing by taking corrective action prior to Discharge to rule out a cardiac source and consult Neurology, order a Heparin Drip and Transition to coumadin with discharge instruction to patient Primary Care Physician as a Reasonable prudent Hospitalist under similar circumstances and like condition, all of Which Trident voluntarily undertaken to use due care because the patient had special Needs to treat. Russell v. City of Columbia, 305 S.C. 86, 406 S.E. 338 (1991)(same); Bryant v. Babcock Center, 370 S.C. 42, 634 S.E.2d 275 (2006)(We reverse the circuit Court and hold that Babcock Center and its employee have a common law duty to Exercise reasonable care in supervising and providing care and treament to appellant, a Mentally retarded client with disabilities and special needs. Department also owes a Common law duty to Appellant and statutory exceptions to waiver of immunity which Department asserts are inapplicable. We decline to identifiy particular sources or Standards of care which may be relevant in defining the nature and extent of Respondents' duty under common law or statutes, as well as whether they breached their Duty. Such issues may be explored by the parties and court on remand of this case. We Hold that whether the breach of duty proximately cause Appellant's injuries is a question

Of fact for the jury. Finally, we hold that allegations relating to Department's alleged Negligence in connection with Appellant's initial evaluation and admission are not Time-barred); Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991).

Therefore, based on the above holdings in Babcock and Russell, the trial court's order should be reversed.

CONCLUSION

Based on holdings of Wilkinson and S.C. Code Statutes 15-79-125(A) and 15-79-125(E)(2), appellant timely and sufficient filed his NOI and Complaint to comply With the statutory requirement. Therefore, the NOI tolls all applicable statutes of Limitations. The affidavits met the statutory requirements under S.C. Code 15-36-100 Meaning and qualifications to qualify as expert witness affidavits. And the content and Authorship are not appropriate grounds to affirm the circuit court ruling nor respondent Challenges. Furthermore, the circuit court's ruling was prejudicial requiring reversal. Finally, the circuit court's order denying amendment of complaint is erroneous and Should be reversed and also modified with a reasonable time allowed to amend the Complaint.

Respectfully submitted,

May 30, 2016

s / ----------

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

.....

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

.....

Case No. 2016-000495

.....

Jim Washington,.....Appellant,

V.

Trident Medical Center, ...Respondet.

.....

PROOF OF SERVICE

.....

I certify that I have serve the Appellant's Initial Brief on Trident Medical Center,. By depositing a copy of it in the United States Mail, Postage prepaid, on May. 31st., 2016 Addressed to it's attorneys of record, Nelson Mulluns Riley & Scarborough LLP, 1320 Main Sreet / 17th Floor / Columbia, S.C. 29201, Tel. (803) 799-2000,and David H. Batten, Esquire, 4141 Parklake Avenue, Suite 350, Raleigh, N.C. 27612, Tel. (919) 439-2221.

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Case No. 2016-000495

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Jim Washington,..... Appellant,

V.

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DESIGNATION OF MATTER TO BE INCLUDED ON THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

1. Copies of S.C. Code Statute 15-79-125 (A)
2. Copies of S.C. Code Statute 15-79-125 (E)(2)
3. Copies of S.C. Code Statute 15-36-100
4. Affidavit of Dr. M.K. Greene-Medical Records
5. Affidavit of Dr. Sarah Anne Ludington-Medical Records
6. Complaint
7. Appellant oppostion to motion to dismiss
8. Appellant Memorandum of Law
9. Respondent Trident Medical Records
10. Respondent Memorandum of Law
11. Trial Transript
12. Trial Court, final order granting dismissal of action

I certify that this designation contains no matter which is irrelevant to the appeal.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS Jr., Circuit Court Judge

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Jim Washington, ...Appellant,

V.

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PROOF OF SERVICE

I certify that I have served the Designation of Matter to be Included on the Record On Appeal on Trident Medical Center, by depositing a copy of it in the United States Mail, Postage prepaid, on May. 31st, 2016 addressed to it's attorney of record, Nelson Mullins Riley & Scarborough LLP, 1329 Main Street/ 17th Floor / Columbia, S.C. 29201/ Tel. 803- 799- 2000, and David H. Batten, Esquire, 4141 Parklake Avenue, Suite 350, Raleigh, N.C. 27612, Tel. 919-439-2221.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. R. Markley [illegible] Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington ..... Appellant,

v.

Trident Medical Center, LLC ..... Respondent.

Notice of Appeal

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Statement of Issues on Appeal

I. The circuit court correctly dismissed the complaint because Washington failed to file a pre-litigation Notice of Intent to File Suit prior to filing his complaint.

II. The circuit court also correctly dismissed the complaint because Washington did not comply with the pre-litigation affidavit requirements.

III. This Court should also affirm because Washington failed to initiate the required pre-suit mediation.

Statement of the Case and Facts[1]

In this medical malpractice action, Appellant Jim Washington ("Washington") appeals the order granting the motion to dismiss of Respondent Trident Medical Center, LLC ("Trident") based on Washington's failure to comply with the pre-suit requirements mandated by Sections 15-79-125 and 15-36-100 of the South Carolina Code. {Order granting Motion to Dismiss, R. pp. 1-5}. Washington filed a complaint alleging medical malpractice against Trident pursuant to Sections 15-79-125 and 15-36-100. {Complaint dated September 11, 2015, R. pp. 9-14}. Trident moved to dismiss the complaint because Washington (1) failed to file the pre-suit Notice of Intent to File Suit ("Notice of Intent") required by Section 15-7-125(A) and (2) did not submit an expert witness affidavit to testify that Trident violated any applicable standard of care. {Motion to Dismiss, R. pp. 17-19}.

After a hearing, the circuit court granted the motion to dismiss and noted that a formal order would follow. {Form 4 Order. R p. 6}. Washington filed a motion to reconsider the Form 4 order. Thereafter, the circuit court confirmed dismissal of the complaint because Washington failed to comply with the pre-suit requirements necessary to maintain a medical malpractice action. {Order granting Motion to Dismiss, R. pp. 1-5}. The circuit court dismissed the action because Washington did not file a Notice of Intent prior to filing the complaint and

[1] Trident combines the statement of the case and statement of the facts for ease of reference and to eliminate repetition in this appeal from the granting of a motion to dismiss the complaint.

because he did not submit the required expert affidavit. {Order granting Motion to Dismiss, R. pp. 1-5}. This appeal followed.[2]

Standard of Review

The appellate court applies the same standard of review as the circuit court in reviewing the dismissal of an action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Doe v. Marion, 373 S.C. 390. 395, 645 S.E.2d 245, 247 (2007). "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Cole Vision Corp. v. Hobbs, 394 S.C. 144, 149, 714 S.E.2d 537, 539 (2011).

Argument

By initiating a medical malpractice action prior to filing a Notice of Intent to File Suit and an expert affidavit, Washington failed to comply with the mandatory pre-suit requirements imposed by Section 15-79-125(A). Thus. the circuit court properly granted Trident's motion to dismiss.

Section 15-79-125 of the South Carolina Code, titled in pertinent part as "Notice of Intent to File Suit as prerequisite to filing action . . ." controls the requirements necessary prior to the initiation of a medical malpractice action and provides:

> **Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice,** the plaintiff **shall** contemporaneously **file a Notice of Intent to File Suit and an affidavit of an expert witness,** subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action.

[2] Any facts or statements in this brief are taken from the allegations of the complaint for purposes of the appeal of the granting of Trident's motion to dismiss. As such, such usage should not be construed as an admission by Trident of the veracity of those allegations.

> The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

S.C. Code Ann. § 15-79-125(A) (emphasis added). This plain and unambiguous language requires the filing of (1) a Notice of Intent to File Suit and (2) an affidavit of an expert witness and imposes a temporal limitation that requires the filing of those items "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice." Id.; see also Gordon v. Phillips Utils., Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005) (holding that the cardinal rule of statutory interpretation is to determine the intent of the legislature above all else); Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (holding that words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to expand the statute's operation).

As set forth in sections I and II, infra, Washington failed to comply with either of these mandatory pre-litigation obligations in this action. Rather, Washington filed and served a complaint and issued a summons to Trident. Thus, the circuit court properly dismissed the complaint. State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000) (recognizing that it is beyond a court's "power to effect a change in the statutes enacted by the Legislature"). This Court should affirm.

I. The circuit court correctly dismissed the complaint because Washington failed to file a pre-litigation Notice of Intent to File Suit prior to filing his complaint.

In his brief, Washington claims that by pleading Section 15-79-125(A) in his medical malpractice complaint he complied with the pre-suit requirements to maintain such an action. {App. Br. p. 16 ("[A]ppellant filed under S.C. Code Statutes 15-79-125(A) . . . citing these statutes for pleading notice of intent . . . ."). Such an argument lacks merit.

The Notice of Intent to File Suit must be filed prior to the filing of a medical malpractice complaint. S.C. Code Ann. § 15-79-125(A) (requiring that "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit . . . ."). Our Supreme Court has agreed that the plain language of Section 15-79-125(A) imposes mandatory pre-suit requirements that must be met prior to the initiation of a medical malpractice complaint. The court has recognized that:

> [S]ection 15-79-125 governs the **pre-litigation** requirements for medical malpractice cases. Specifically, section 15-79-125 requires a plaintiff, **prior to filing or initiating a medical malpractice claim**, to contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness.

Ranucci v. Crain, 409 S.C. 493, 502, 763 S.E.2d 189, 193-94 (2014) (emphasis added). "The filing and service of these two documents . . . are **prerequisites to** 'filing or initiating a civil action [alleging] medical malpractice.'" Ranucci, 409 S.C. at 510, 763 S.E.2d at 197 (Pleicones, C.J., concurring) (emphasis added, alteration in original).

Therefore, a plaintiff must file a Notice of Intent to File Suit prior to the initiation of a medical malpractice complaint as required by Section 15-79-125(A). Washington failed to adhere to this mandatory rule. The fact that Washington cited Section 15-79-125(A) in the

complaint does not absolve the failure to file the Notice of Intent **prior** to the filing of the complaint.[3] Thus, the circuit court correctly dismissed the complaint because Washington did not comply with the mandatory pre-suit Notice of Intent requirements. This Court should affirm.

II. The circuit court also correctly dismissed the complaint because Washington did not comply with the pre-litigation affidavit requirements.

Washington likewise failed to file an expert witness affidavit prior to filing the complaint. The statutory scheme created by the legislature requires the filing of an "affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100 . . ." prior to the filing of a medical malpractice complaint. S.C. Code Ann. § 15-79-125(A) ("Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100"). That expert affidavit must "specify at least one action or omission claimed to exist and the factual basis for each claim." S.C. Code Ann. § 15-36-100(B).

---

[3] Subsection C requires the parties, after filing and service of the Notice of Intent, to participate in pre-complaint mediation. S.C. Code. Ann. § 15-79-125(C). Only after the service of the Notice of Intent and an unsuccessful mediation may a plaintiff initiate a civil action by filing and service of a complaint for medical malpractice. S.C. Code Ann. § 15-79-125(E) ("If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure"). Subsection E would be rendered superfluous if a party could file the Notice of Intent at the same time as the complaint, as argued by Washington. Courts should seek a construction of a statute that gives meaning to every word of a statute rather than one that renders a portion meaningless. See, e.g., CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous"); Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999) (stating that courts should "avoid a construction that would read a provision out of a statute").

Washington did not file any expert affidavit specifying at least one negligent act or omission by Trident prior to filing his complaint. Thus, the circuit court correctly dismissed the complaint on that basis as well. See Ranucci, 409 S.C. at 502, 763 S.E.2d at 193-94 (holding that section 15-79-125 requires a plaintiff, **prior to filing or initiating a medical malpractice claim**, to contemporaneously file a Notice of Intent to File Suit and **an affidavit of an expert witness**") (emphasis added).

Moreover, Washington was not entitled to the Section 15-36-100(C)(1) exception from the pre-litigation affidavit requirement. A plaintiff can delay the filing of the affidavit if the Notice of Intent to File Suit would be filed "within ten days of the date" of the expiration of the statute of limitations. S.C. Code Ann. 15-36-100(C)(1). In such a case, a plaintiff must allege that "because of the time constraints" imposed by the statute of limitations "that an affidavit of an expert could not be prepared . . ." Id. If both the temporal and pleading requirements are met, then the plaintiff "has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit." Id.

Washington did not meet the requirements for this exception to apply for four reasons. First, Washington failed to file any Notice of Intent to File Suit as required by Section 15-79-125(A). Second, Washington filed the complaint on September 11, 2015, alleging medical malpractice occurring between September 23-26, 2012. Thus, the filing occurred prior to the ten-day exception window in the statute. Third, Washington failed to plead "that an affidavit of an expert could not be prepared" because of the time constraints imposed by the statute of limitations as required by Section 15-36-100(C). Fourth, even if the exception applied,

Washington did not supplement his pleading with an expert affidavit within forty-five (45) days. As a result, the exception did not apply, and the circuit court correctly dismissed the complaint.

Washington further claimed that he was exempt from the expert affidavit requirement because his allegations fell within the "common knowledge" exception of Section 15-36-100(C)(2). {Trans. p. 4, R. p. 57}. This argument lacks merit. The complaint set forth allegations related to anticoagulation medication, amount and dosage of same, protocols related to the administration of such medication, blood clot prevention by use of specialized medicine, and protocols for treatment of patients presenting with possible stroke symptoms. {Complaint, R. pp. 11-13}. Each claim requires special knowledge because medical care and treatment is not within knowledge of ordinary persons. See Dawkins v. Union Hosp. Dist., 408 S.C. 71, 177, 758 S.E.2d 501, 504 (2014) (recognizing the accepted principle that "because medical knowledge is generally outside of a juror's common knowledge, the requisite expert testimony assists the jury in making a more accurate determination of fault regarding whether a physician's negligence in rendering medical care proximately caused the patient's injury"). Thus, the common knowledge exception does not apply.

Washington also alleges that he submitted expert affidavits from Dr. Greene and Dr. Ludington. {App. Br. p. 24}. Washington is incorrect for several reasons. First, Drs. Green and Ludington were the treating physicians when Washington presented to Trident; however, Drs. Green and Ludington were not experts retained by Washington to render expert opinions on the treatment and standard of care provided by Trident or the physicians. {Complaint Exhibits, R. pp. 70-96}. Second, the materials attached to the complaint constitute Drs. Green and Ludington's respective observations, treatment notes, diagnoses, medical records, and physician records of Washington's care at Trident. {Complaint Exhibits, R. pp. 70-96}. Those

documents do not set forth any expert opinion as to the standard of care or deviation therefrom by Drs. Green and Ludington. {Id., R. pp. 70-96}. Third, Drs. Green and Ludington's respective treatment records are not affidavits because the treatment records were not sworn to or affirmed before a notary or other officer allowed by law. See 1 S.C. Jur. Affidavits § 3 ("The only general requirements as to form are that the affidavit be reduced to writing and that it show, on its face, that it was sworn to, or affirmed before, an officer prescribed by law").[4]

III. This Court should also affirm because Washington failed to initiate the required pre-suit mediation.

Even if Washington's complaint could be construed as a Notice of Intent to File Suit and as containing the required expert affidavit, the complaint also warranted dismissal because Washington failed to conduct mandatory pre-suit mediation in this matter. Section 15-79-125 provides that:

> Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon a finding of good cause.

---

[4] In his brief, Washington appears to argue that his verification of his complaint acts to convert the medical records from Trident into expert affidavits. {App. Br. p. 2 ("The Expert Witness Affidavits met the requirements . . ." and citing Washington's "Verified Complaint Treat as Affidavit of An Expert – Dr. Ludington p. 1-5; Affidavit of Dr. M.K. Greene")}. The fact that Washington purported to verify his complaint does not alter this result. While a verified complaint can be construed as an affidavit of the person verifying the complaint, our law does not support a finding that a verification by one person can convert a statement from another person to an affidavit of that other person. Thus, the trial court properly rejected Washington's unsupported argument to the contrary. {Trans. p. 5, R. p. 58}. This Court should do likewise. See D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 548–49, 730 S.E.2d 340, 350–51 (Ct. App. 2012) (holding an appellant abandoned an issue by failing to cite any law or authority in support of the argument and making only conclusory arguments).

S.C. Code Ann. § 15-79-125(C). Washington did not participate in a mediation conference within the deadline imposed by the statute. Thus, this Court can affirm the dismissal of the complaint on that basis alone. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal").

Conclusion

Based on the foregoing, this Court should affirm the order granting Trident's motion to dismiss.

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November 2, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington, ... Appellant.

v.

Trident Medical Center, LLC. ... . Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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v.

Trident Medical Center, LLC, ... Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Trident Medical Center, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **Final Brief of Respondent**

Counsel Served: Mr. Jim Washington
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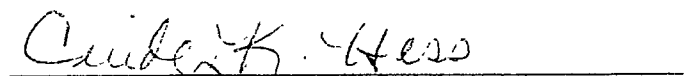

Cindy K. Hess
Sr. Administrative Assistant

November 2, 2016

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Jim Washington, ... Appellant.

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Respondent's Designation of Matter to be Included in the Record on Appeal

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Pursuant to Rule 209, SCACR, Respondent designates the following material for inclusion in the record on appeal.

ORDERS:

1. Form 4 Order dated January 7, 2016;
2. Order granting Motion to Dismiss dated January 27, 2016;

PLEADINGS:

3. Complaint dated September 11, 2015;

TRANSCRIPTS:

4. Transcript of Hearing dated January 7, 2016;

MISCELLANEOUS/OTHER:

5. Motion to Dismiss dated October 14, 2015;
6. Motion to Reconsider dated January 27, 2016; and

7. Notice of Appeal dated March 4, 2016.

Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter which is irrelevant to the appeal.

Respectfully submitted,

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August 1, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington, ... Appellant.

v.

Trident Medical Center, LLC, ... Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Trident Medical Center, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **Respondent's Designation of Matter to be Included in the Record on Appeal**

Counsel Served: Mr. Jim Washington
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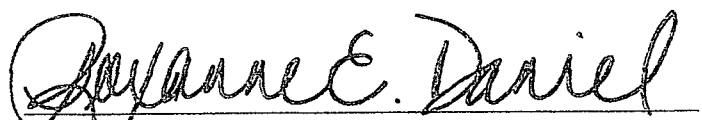

Roxanne E. Daniel
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August 1, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington,.....Appellant,

V.

Trident Medical Center, ...Respondent.

FINAL BRIEF IN REPLY OF APPELLANT

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November 28, 2016

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Statement of Issues on Appeal

I. **The circuit court erred in it's order ruling that Washington fail to file a pre-litigation Notice of Intent prior to filing the complaint.**

II. **The circuit court also erred to dismissal of the complaint because Washington Did not comply with the pre-litigation affidavit requirements prior to filing the complaint.**

III. **This court should not affirm on the additional sustaining ground that Washington failed to initiate the required presuit mediation.**

Statement of the Case and Facts

In this medical malpractice action, Appellant Jim Washington (" Washington") Appeals the order granting the motion to dismiss of Respondent Trident Medical Center, LLC (" Trident") based on the circuit errors that Washington failure to comply with the Pre-suit requirements mandated by Sections 15-79-125 and 15-36-100 and ruling from The bench denial amendment of the complaint. { Rpp. 1-5; Tr., p. 3, line 1-p. 8, line 4,

Rpp.56-61}. Trident move to dismiss the complaint because Washington (1) failed to File the presuit Notice of Intent to file suit required by Section 15-79-125(A) of the South Carolina Code and (2) failed to file an expert witness affidavit that Trident violated any Applicable standard of care as required by S.C. Statute Code 15-36-100 and (3) The Notice of Intent and Expert Witness Affidavit filed under these same statutes **pleadings Were defective.** { Rpp. 15-19 ; Rpp. 62 Proc. Backgd., line 1-P.63 line 13; Rpp. 63-68; Respondent proposed order and Order granting Motion to Dismiss, Rpp. 1--5; App. Initial Brief, p. 1, line 1-p. 2, line 4 }.

After a hearing, the circuit court granted the motion to dismiss. Thereafter, the Circuit court filed a formal order confirming dismissal of the complaint. The circuit court Erroneously relied on the facts and conclusions in respondent's memorandam of law and Proposed order citing case laws as authority for the propostion that Washington failed to State sufficient facts to constitute a cause of action in the pleadings filed with the court. Therefore, the circuit court according to citation of authority the action was subject to Dismiss for pleadings were defective for pleadings under S.C. Statutes 15-79-125(A) NOI and 15-36-100. Order, Rpp.1-6; Rpp. 15-19 ; Rpp. 56-61 and Tr.,p. 3-8; Rpp. 62-63..

Washington filed a Notice of Appeal. { Notice of Appeal, R.____}.

Standard of Review

The appellate court applies the same standard of review as the circuit court in Reviewing the dismissal of an action pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure. Wilkinson v. East Cooper Community Hospital, Inc., 410 S.C. 163, 763 S.E.2d 426 (2014). That standard requires the court to construe the complaint in A light most favorable to the nonmoving and determine if the facts alleged and the Inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on Any theory of the case. Rydde v. Morris, 381 S.C. 643,646, 675 S.E.2d 431, 433 (2009). The question is whether, in the light most favorable to the plaintiff and with every doubt Resolved in his behalf, the complaint states any valid claim for relief. Cole Vision Corp. v. Hobbs, 394 S.C. 144, 149, 714 S.E.2d 539 (2011)(same).

Argument

Respondent is incorrect that appellant did not comply with the mandatory pre-suit Notice of Intent under S.C. Statute Code 15-79-125(A). The construction of the medical Malpractice statute by respondent has by consistently rejected by the S.C. Supreme Court To dismiss cases on technical noncompliance grounds. The S.C. Supreme Court has Interpreted sections 15-79-125(A) and 15-36-100 and has stated **"As evident from our From decisions in Grier and Ross, this Court has sought to interpret sections 15-79-125(A) and 15-36-100 in a manner that effectuates the intent of the general Assembly to establish a unique two-step procedure that filters out frivolous claims But permit's the filing of potentially meritorious claims. Because the pre-litigation**

Filtering out process is not meant as an impassible boundary that denies a claimant Access to the courts, we have attempted to "avoid dismissal of cases on technical Grounds and to allow adjudication on the merits."" Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014)(citing Ross, 404 S.C. at 65, 744 S.E.2d at 551); Wilkinson v. East Cooper Comm. Hosp., 410 S.C. 163, 763 S.E.2d 426(2014)(same).

Washington, on October 25, 2012 file a claim with the Social Security Adminis-Tration for a determination of his entitlement to disability benefits. On the documents Provided by that agengy to Washington is a notice and disclosure provision section which Explain the necessity of Washington's signature to disclose all medical information from Health Care Providers to agency for a determination of Washington's medical impairments. The notice provision of these documents states " the information provided to that Agengy concerning Washington condition may be used in any related civil proceeding". Washington and that agengy both signed these documents on October 25, 2012. Rp.72. The documents provided by Washington's Health Care Providers to that agency relates to Same medical issues in this medical malpractice action. Wilkinson, supra. Rpp.70-96.

Therefore, on September 11, 2015 appellant relying on the notice of intent Allowing the information in any related proceeding to be used from the signed October 25, 2012 documents disclosing the related treatments and diagnosis claim for disability, Incorporated by reference S.C. Statute Code 15-79-125(A) Notice of Intent and 15-36-100 Expert Witness Affidavit to the caption of these documents to comply with pre-liti-Gation Notice of Intent and Expert Witness Affidavit requirements and incorparated by Reference these statutes to the complaint litigation pleadings on September 11, 2015.

Respondent challenge thus is without merit to affirm. {Rpp. 70-96; App. Fi. Br.,p.15-18}.

Thus, Washington complied with pre-litigation 15-79-125(A) Notice of Intent Requirements, but the clerk of court filed the prelitigation Notice of Intent as an exhibit From a separate case. But the assignment of a different cases numbers to the pre-litiga-Tion pleadings and the litigation pleadings is of no consequence because they both Comprise a single medical malpractice claim. Wilkinson v. East Cooper Comm. Hosp., 410 S.C. 163,173, 763 S.E.2d 426(2014)(quoting Fisher v. Pelstring,817 F. Supp. 2d 791, 807 n.8 (D.S.C. 2011)(analyzing procedures for initiating medical malpractice claims and Stating "[s]ection 15-79-125 also does not include any language indicating that the case Number under which a Notice of Intent is served on a defendant must be the same as the Case number assigned to the complaint served on a defendant if a civil action is ultimate-Ly initiated")).Rpp.69-96. Therefore, based upon Wilkinson, this court should not affirm.

Likewise, respondent's contention that filing of the Notice of Intent and the Complaint at the same time would render statute 15-79-125 (E) superfluous is without Merit and not sufficient ground to affirm the circuit court's order to dismiss. Respondent Interpretation of the medical malpractice statute 15-79-125 (A) Notice of Intent as an Absolute bar to filing of the pre-litigation Notice of Intent and litigation complaint at the Same time has been rejected in Brouwer v. Sisters of Charity Provident Hospitals, 408 S.C. 514, 763 S.E.2d 200 (2014). In Brouwer the S.C. Supreme Court held that the Notice of Intent was sufficient to satisfy the pre-litigation requirements of 15-79-125(A), And that the lawsuit remain viable as the statute of limitation has been tolled during the Pendency of appeal. Id. {Respondent Initial Brief, p. 6 fn. 3}. Therefore, the circuit court Order should not be affirmed because like Brouwer, appellant filed the Notice of Intent

And the complaint at the same time prior to expiration of the statute of limitation.

I. The circuit court erred in it's order ruling that Washington did not file a Pre-litigation notice of intent prior to filing the complaint.

As argued earlier in Appellant Reply Brief, the pre-litigation mandates of 15-79-125 (A) Notice of Intent has been complied with. And as also stated earlier, the S.C. Supreme Court has consistently interpreted 15-79-125(A) and 15-36-100 in a Manner that effectuates the intent of the General Assembly to establish a unique two-step Procedure that filter out frivolous claims but permit's the filing of potentially meritorious Claims. Because the pre-litigation filtering process is not meant as an impassible Boundary that denies a claimaint access to the courts, it has attempted to "avoid dismissal Of cases on technical grounds and to allow adjudication on the merits". Ranucci v. Crain, 409 S.C. 493, 763 S. E.2d 189 (2014)(quoting Grier and Ross); Wilkinson v. East Cooper Comm.Hosp., 410 S.C. 163, 763 S.E. 2d 426 (2014)(quoting Grier and Ross).

A copy of a document which is an exhibit to a pleading is a part of the plead-Ing . Rule 10(c), SCRCP. Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 (2009)(Same). Furthermore, because the pre-litigation pleading in the Social Security Admin-Istration documents were signed on October 25, 2012 but filed separately from the compl-Aint litigation pleading on September 11, 2015 is of no consequence because they compr-Ise a single medical malpractice claim. Wilkinson v. East Cooper Comm. Hosp., 410 S. C. 163, 763 S.E.2d 426 (2014)(same)(quoting Fisher v. Perlstring, 817 F. Supp.2d 791, 807n.8(D.S.C.2011)(analyzing procedures for initiating medical malpractice claims under 15-79-125(A) stating that statute does not include language that the case number in the Notice of Intent and the complaint has to be the same if civil action is ultimately initiated)

); Wilkinson,supra(we hold circuit court erred, complaint was timely and sufficient). Id.

Therefore, because Wilkinson is controlling authority based on the facts and Circumstances in this action, the circuit court's order is in error that Washington fail to Comply with 15-79-125(A) pre-litigation Notice of Intent. Likewise, dismissal was not Warranted. Therefore, respondent's argument stating otherwise is incorrect and not a Complete and accurate detail of the argument raised in appellate Initial Brief and this Court should not affirm. {Rpp. 21-23; Resp. In. Br.. p. 3-6; Rp.98}. Higgins v. Medical University of S.C., 326 S.C. 592, 486 S.E.2d 269 (1997)(This is not to say that circuit Orders cannot be summitted to a trial judge as one would submit a memorandum of law On a particular issue, but judges may not accept the facts found therein as proof for sum-Mary judgment,nor may they expressly rely on the order as authority for any proposition).

Likewise, Respondent argument that 15-79-125(E) would be superfluous if a party Could file the Notice of Intent at the same time of the complaint as argue by Washington Lacks merit. {Respodent Initial Brief, p. 6 fn.3). However, in construing these two seem-Ingly conflicting portions of the same Act, the respondent and the circuit court does not Appear to have utilized the same basic precepts of statutory construction, namely Harmonization. Grazia v. S.C. State Plastering, 390 S.C. 562, 703 S.E.2d 197(2010) (However in construing these two seemingly conflicting portions of the same Act the Circuit court does not appear to have utilized the same basic precepts of statutory cons-Truction, namely harmonization). 15-79-125(A) Notice of Intent and 15-79-125(E)(2) Complaint filing at the same time can be harmonized by staying the medical malpractice Action and cure any defect in the procedures by participating in mediation mandated

Under 15-79-125(F) after the complaint is filed. The words in **15-79-125(E)(2) must not Be used to limit the statute operation of section (F)**. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877(2011)(quoting Sloan v. Hardee, 371 S.C. 495,498, 640 S.E.2d 457, 459(2007)(we must give the words found in the statute their Plain and ordinary meaning without resort to subtle or forced construction to limit or Expand the statute's operation). {App. Final BR.,p. 11-18; Rpp. 97-98; Rpp. 21-23}.

Therefore, this court should not affirm the circuit court to limit the statute. Id.

II. The circuit court also erred to dismissal of the complaint because Washington Did not comply with the prelitigation affidavit requirements prior to filing the complaint.

The circuit court ruled that Washington could not used the treating physicians From The Regional Medical Center(TRMC) statements in his medical records as quali-Fying Expert Witnesses Affidavit statutory requirements. { Rpp. 1-5; Rpp. 56-61 }.

The S.C. Supreme Court in Ranucci v. Crain,409 S.C. 493, 763 S.E.2d 189(2014) Has rejected the circuit court's interpretation of medical malpractice statutes by stating: **Because there are no words of limitation surrounding the reference to section 15-36-100, we expressly hold that section 15-79-125(A)'s reference to the "affidavit Requirements established in Section 15-36-100" constitutes an adoption of all provi-Sions of section 15-36-100. Id.**

The circuit court order is therefore in error since the two TRMC treating physic-Ians in Washington medical records (1) met requirements in provision 100-36-100 (A) Meaning of expert witness, and (2) met the qualification as to the acceptable conduct for Treatment of possible embolism of a cardiac source (3) met the qualification of the accep-

Table conduct for diagnosis of possible embolism of a cardiac source (4) met 15-36-100 (A)(1), (2) and or (3) qualifications about which the opinion on the standard of care is Offered that **"given the multi-focality the appearance was suggestive of an embolic Phenomenon" and "Because of these findings, I called the patient at Home yesterday requesting him to come back to the hospital regarding the need for Possible anticoagulation given the possibility of embolic stroke"** by stating **" Trident did not show evidence of an embolic source on MRI then".**{ Rp. 70; Rpp. 79-83}.

Respondent, challenges the two TRMC treating physician statemens from TRMC Medical records as defective not set forth any expert opinion as to the standard of care or Deviation therefrom by Drs. Greene and Ludington. {Respondent Initial Brief, p. 8-9}. However, respondent's facts to affirm are incorrect because (1) Drs. Greene and Ludin-Gton are the treating physicians from TRMC from September 30, 2012 -October 8, 2012 After discharge from respondent Trident negligent diagnosis and treatment on September 23-26, 2012. Therefore, Drs. Greene and Ludington's negligent conduct are not at issue But, rather Trident's Drs. Bothelo, Rosenthal, Rios, and other employees from Trident Whose negligent treatment of **Plavix and Aspirin 325mg for the possibility of Embolism of a cardiac source** as stated in TRMC physician's statements are at issue.

In other word Trident conduct deviated from the very standard of care as required for Diagnosis and treatment as generally recognized and accepted by Hospitalist and Radiologist under the same or similar circumstances as TRMC physicians Drs. Greene And Ludington. Implicit in Dr. Greene's notes, treatment records, medical records Of Washington care from Trident that the injury of **possible embolism** occurred at Trident but was not diagnosed there nor treated with **anticoagulation Heparin and**

coumadin on discharge under the same or similar circumstances was a deviation from the Standard of care. King v. Williams, 276 S.C. 478, 279 S.E.2d 618(1981)(allowing to Testify to a national standard of care and standard of care is the same throughout the Country, that he generally familiar with it, and that Dr. Williams failed to meet this Standard of care in diagnosis and treatment); Stallings v. Ratliff, 292 S.C., 356 S.E.2d 414(1987)(The issue of breach of duty does not turn on a ritual incantation of certain Magic words by an expert witness. In this case, Brill testified , and Radliff himself admit-Ted, there was a duty to disclose the risk of a perforated esophagus before obtaining Consent. Implicit, in this testimony was the reasonable inference that failure to make the Disclosure is a breach of the standard of care); Dozier v. Clayton County Hosp. Auth., 206 Ga. App. 62, 424 S.E.2d 632(1992)(quoting Gadd v. Wilson & Co. &c.,262 Ga. 234 (416 S.E.2d 285)(although affidavit did not expressly ascribe the alleged negligence to Appellee, the requirement that the alleged negligence had to be linked to appellee was Substantially met as appellee was the only defendant and therefore was implicitly the Party to whom negligence was being attributed; when viewed from this prospective, no Question of frivolity of claim exists): Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189 (2014)(As to Dr. Crain's assertions regarding defects in the authorship and content of Dr. Boortz-Marx's affidavit, we find this is not an appropriate ground to affirm the circuit Court's order because the affidavit is facially sufficient given it is sworn and identifies a Potentially meritorious medical malpractice claim. Moreover, there is no factual basis in The record to challenge either the expert's qualifications or the content of the affidavit); Cf. Poch v. Bayshore Concrete Prods. /S.C., Inc., 405 S.C. 359, 378 n. 13, 747 S.E.2d

757, 767 n. 13(2013)(declining to reject affidavit presented as proof of worker's comp. Insurance as there was " no basis for which to reject the affidavit as it is by its very nature A sworn statement intended as documentary evidence in a legal proceeding"). { App. Final Br., p. 20-25; App. Fi. Reply Br. P. 8-15; Rpp. 70-96}.

Furthermore, Dr. Greene's statement that **" of note we did received document-Ation from Trident which showed a small acute stroke but no evidence of a cardio embolic source on MRI then or during work-up"** implicitly stated the negligent Act or omission of Trident to not diagnose the multi foci as embolism of a cardiac source On MRI then at Trident but found under same or similar circumstances at TRMC, was the Generally recognized and accepted practices in the radiology profession. King v. Will-Iams, 276 S.C. 478, 279 S.E.2d 618(1981)(The degree of care which must be observed Is, of course, that of an average, competent practitioner acting in the same or similar cir-Cumstances); Doe v. Amer. Red Cross Blood Services, 297 S.C. 430, 377 S.E.2d 323 (1989)(We now hold that in a professional negligent cause of action, the standard of care That the plaintiff must prove is that the professional failed to conform to the generally Recognized and accepted practices in his profession); Dozier v. Clayton County Hosp. Auth., 206 Ga. App. 62, 424 S.E.2d 632(1992)(quoting Gadd v. Wilson & Co. & c, 262 Ga. 234(416 S.E.2d 285(although affidavit did not expressly ascribe the alleged negli-Gence to appellee, the requirement that alleged negligence had to be linked to appellee Was substantially met as appellee was the only defendant and therefore was implicitly The party to whom negligence was being attributed, when viewed from this prospect-Ive, no question of frivolity of claim exists); Stallings v. Radliff, supra, (same). { App. Final Brief, p. 2-4 and 20-23; Rpp. 70-96; Rpp. 99 (b), line 1-p. 100, line 10}.

(2) Dr. Ludington, from TRMC was authorized to investigate

The reason for Washington's admission, hospital course of care and plans for long term Treatment after discharge from TRMC to his Primary Health Care Provider(PCP) as Required by Hospitalist for adjustments to INR as needed to prevent future clots and Strokes. Trident, had undertaken to diagnose and treat Wahington to prevent embolism, Clots and future strokes.{Rpp. 9-11;Rpp.31-40; App. In. Br., p.20-25}. However, Trident Fail to take corrective action to prevent a second stroke, embolism or future clots even After Trident knew Washington's condition had change or worsen since admission.up Until discharge, by failing to treat with anticoagulation nor warn Washington of the need To seek immediate treatment with his PCP upon discharge for anticoagution to meet a Hospitalist standard of care. {Rpp. 31-45; Rpp. 56-61;Rpp. 70-96; App. Fi. Br. P. 20-28}.

Dr. Ludington, from TRMC, incorporate by reference Dr. Greene's statements That " Washington was dischanged from Trident prior to admission to TRMC. The next Day I reviewed the MRI results which showed multiple small foci of restricted diffusion. It was noted that given the multi focality the appearance was suggestive of an embolic Phenomenon. Because of these findings, **I called the patient at home yesterday reque-Sting him to come back to the hospital regarding the need for possible anticoagulat-Ion given the possibility of embolic stroke"** . Therefore, since Trident implicitly stated It was treating and diagnose for prevention of embolism, future clots and stroke prior to Discharge, and Dr. Ludington's statement is that the standard of care upon discharge for Future clots and stroke prevention is anticoagulation treatment with adjustment of INR With PCP. Implicit in Dr. Greene statement which is verified by Ludington is that Trid-

Ent breached the standard of care in it's treatment of aspirin for a cardio embolic stroke and not take corrective action upon discharge to treat and give instruction for need to seek Immediate treatment of anticoagulation was negligent. {App. Fi.Br., P. 20-28; Rpp. 31 -32; Tr., p. 4, Rp.57; Rpp. 70-96}. Stallings v. Radliff, 292 S.C. 349, 356 S.E.2d 414 (1987)(implicit in this testimony was the reasonable inference that a failure to make the Disclosure is a breach of the standard of care required in the circumstances); Mousseau v. Schwartz, 756 N.W.2d 345, 2008 S D 86(2008)(citing cases from South Carolina and Other jurisdictions whereby the doctors testimony in effect under various circumstances Gave an expert opinion on the standard of care even though not expressly stated); Ranuc-Ci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014)(As to Dr. Crain's assertions regarding Defects in the authorship and content of Dr. Boortz-Marx's affidavit , we find this is not An appropriate ground to affirm the circuit court's order because the affidavit is facially Sufficient given it is sworn and identifies a potentially meritorious medical malpractice Claim. Moreover, there is no factual basis in the record to challenge either the expert's Qualifications or the content of the affidavit); Dozier v. Clayton County Hosp. Auth., 206 Ga. App. 62, 424 S.E.2d 632(1992)(quoting Gadd v. Wilson & Co.&c., 262 Ga. 234(416 S.E.2d 285(although affidavit did not expressly ascribe the alleged negligent to appellee, The requirement that the alleged negligence had to be linked to appellee was substantially Met as appellee was the only defendant and therefore was implicitly the party to whom Negligence was being attributed; when viewed from this prospective, no question of friv-Olity of claim exists); Galik v. Clara Maase Med., 771 A.2d 1141,167 N.J. 341(2001).

Therefore, based upon the above facts and citation of authority, this court should Not affirm the circuit court's order to dismiss for failure to file an expert witness affida-

Vit to satisfy the requirements of 15-36-100 since the statute requirements were met.

(3) Finally, this court should not affirm because the two affidavits are facially sufficient Given they were sworn, witness and signed on October 25, 2012 before the Social Secur-Ity Administration authorize agent attesting to identity of Washington and TRMC on 10/8/12 verifying the medical records information relating to medical disability impair-Ments, treatments and diagnostic findings met the statute requirement. Galik, Supra citing Mayfield v. Comm. Med. Assoc., 762 A.2d 237, 239-240, 335 N.J. Super. 198(2000)(Af-Firm denial motion to dismiss affidavit no anticoagulation coumadin refill).{Rpp. 70-96}.

This method of sworn attestation, verification and authentication is an alterna-Tive method used by the Social Security Adm. and TRMC to meet state statutory laws for Notary purposes in any administrative or legal proceeding. Thus, respondent's argument Challenging the sufficiency of the documents for affidavit purposes as lacking sworn or Attestation before a notary or an officer prescribed by law is not an appropriate ground To affirm the circuit court's order. Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014) (same)(quoting Poch v. Bayshore Concrete Prods. /S.C., Inc., 405 S.C. 359, 378 n. 13, 747 S.E.2d 757, 767 n. 13 (2013)(declining to reject affidavit presented as proof of Worker's compensation insurance as there was " no basis for which to reject the affida-Vit as it is by very nature a sworn statement intented as documentary evidence in a legal Proceeding"); S.C. Ins. Co. v. Barlow, 301 S.C. 502, 392 S.E.2d 795(1990)(declining to Interpret statute requiring to submit affidavit so narrowly to defeat the very purpose of The statute. The failure of the department to have the signature of its officer notarized

On Form FR-9 cannot we hold, defeat the clear intent of the statute. To hold otherwise, Would amount to a sacrifice of substance over form); Apsey v. Memorial Hospital, 730 N.W.2d 695, 477 Mich. 120(2007)(The final sentence must be read in light of what Precedes it. The second sentence of MCL 565.268 indicates that the URAA is an Additional or alternative method of proving notarial acts). Affirm is not appropriate.

III. This court should not affirm the circuit court's order on the additional sustaining ground that Washington failed to initiate the required presuit Mediation.

First, it would have been a futile act to continue to urge the clerk of court To file for mediation with ADR before the circuit court decide the Notice of Intent and Expert Witness Affidavit issue. On September 11, 2015 Washington, in the docketing Information section to the cover sheet of complaint/NOI section check the box stating **This case is subject to Mediation pursuant to this court ADR rules**. However, the Clerk of court never issue Washington the standard form required notice that the case was Subject to mandatory presuit mediation pursuant to 15-79-125. Further, the cerk of court Did not supply the form where the clerk could write in name of a primary and secondary Mediator. {Rpp. 7-9; Rpp. 70-96}. A few days after filing the above named documents Washington, called the circuit court and spoke to the clerk responsible for scheduling Mediation. Washington, requested that both parties be scheduled for mediation. The Clerk told Washington that he had not filed a NOI pursuant to 15-79-125 yet for mediat-Ion. Wasington, then told the clerk that he had filed a NOI and the complaint together. The clerk stated that this was an issue Washington would probably have to agrue to The circuit court judge and also stated Washington would have to wait approximately 180 days for the mediation to occur. Following, this failed mediation attempt, both parties

Continued filing response, motion in opposition to dismiss, Memorandum of Law on These issues. On January 7, 2016 a hearing was held. The circuit court granted Trident Motion to Dismiss. { Rpp. 1-5 }.

This court should not affirm dismissal of the action on this ground for failure to Mediation within 120 days because if the circuit court had denied Trident's motion to Dismiss on January 7, 2016 the case could have proceeded and mediation before the 120 Days deadline, which was 4 more days remaining. Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014)(same); Rickerson v. Karl, 412 S.C. 215, 770 S.E.2d 767(2015)(same).

Conclusion

Based on the foregoing, this court should not affirm the order granting Trident Motion to dismiss.

Respectfully submitted,

S / Jim Washington

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November 28, 2016

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NOV 28 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington,.....Appellant,

V.

Trident Medical Center, LLC.....Respondent.

PROOF OF SERVICE

I certify that I have serve the **Appellant Final Brief In Reply** on Trident Medical Center, LLC, by depositing a copy of it in the United States Mail, Postage prepaid, on this November 28, 2016 addressed to it's attorneys of record, Nelson, Mullins, Riley & Scarborough LLC, 1320 Main Street/ 17th Floor/ Columbia, S.C. 29201, Tel. (803) 799-2000 and David H. Batten, Esquire, 4141 Parklake Avenue, Suite 350, Raleigh, N.C. 27612, Tel. (919) 439-2221.

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November 28, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington,.....Appellant,

V.

Trident Medical Center, LLC.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule

211 (b), SCACR.

S/

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December 5, 2016

THE STATE OF SOUTH CAROLINA

RECEIVED
JAN 25 2018
SC Court of Appeals

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Appellate Case No. 2016-000495
Unpublished Opinion No. 2018-UP-006

Jim Washington,.....Appellant,

V.

Trident Medical Center,LLC.....Respondent.

MOTION FOR REHEARING WITH
MOTION FOR WRIT OF CERTIORARI

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TO; Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

You will please take notice that the Appellant, Jim Washington, respectfully move this Court For a Motion for Rehearing, and Motion For Writ of Certiorari to S.C. Supreme Court the above-reference appeal pursuant to SCACR Rule 221 and 242(b)(3) and in accordance with SCACR Rule 240.

The basis of said motion is that this court overlooked and misapprehend the Appellant's claim for relief in the pleadings and supporting documents attached to complaint and incorporated by reference therein, and included in the record on appeal which support his claim for relief that the pre suit notice of intent (NOI) under S.C. Code Statute 15-79-125(A) and expert witness affidavit exception pursuant to S.C. Code Statute 15-36-100(C)(2) and S.C. Code Statute 15-36-100 (B) were applicably because the attached expert witness document to the complaint shows the pre suit NOI timely filed on 10/25/12 prior to the action being filed on 9/11/15 and refilled or amended NOI on 9/11/15 attached and incorporated by reference to the complaint. By statutes and case laws the above mentioned constitutes compliance with S.C. Code Statute 15-79-125 (A) pre suit requirements and the requisite statute of limitation is therefore tolled. Therefore, appellant's claim for relief should be granted and this court's order affirming dismissal and the circuit court's order should be reversed on the aboved mentioned basis.

WHEREFORE, for the reasons stated above and in any Memorandum of Law in Support of this Motion, Appellant respectfully move this court for entry of and Order reversing the Order affirming dismissal of this action and to compel ADR mediation, and I, also hereby respectfully move this court in this motion under SCRAP 242(b)(3) to grant a Writ of Certiorari to the S.C. Supreme Court to decide whether this courts order to affirm the circuit courts order dismissal of the action conflicts with Wilkinson, 410 S.C. 163, 763 S.E.2d 426(2014) and Ranucci, II, 409 S.C. 493, 763 S.E.2d 189(2014) to this action and for any further relief which this Court deem appropriate.

This 25th day of January, 2018.

S/ Jim Washington

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Appellant/ Pro Se

CERTICFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED,** properly addressed as follows:

C. Mitchell Brown, Esquire
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Attorneys for Respondent

RECEIVED
JAN 25 2018
SC Court of Appeals

This 25th day of January, 2018.

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RECEIVED
JAN 25 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Appellate Case No. 2016-00495
Unpublished Opinion No. 2018-UP-006

Jim Washington,----------Appellant,
V.
Trident Medical Center, LLC----------Respondent.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR REHEARING WITH MOTION FOR WRIT OF CERTIORARI

TO : Jenny Abbott Kitchings,
South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

NOW COMES the Appellant and submits this Mrmorandum of Law In Support of this Motion For Rehearing With Motion For Writ of Certiorari. SCACR Rules 221,242(b)(3) and 240.

ISSUES ON MOTION FOR REHEARING WITH
MOTION FOR WRIT OF CERTIORARI

I. DID THE COURT AFFIRMING DISMISSAL OF THIS ACTION BECAUSE APPELLANT DID NOT FILE A PRESUIT NOTICE OF INTENT AND EXPERT WITNESS AFFIDAVIT PRIOR TO FILING THE ACTION UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE CONFLICTS WITH WILKINSON AND RANUCCI II FOR TECHNICAL NONCOMPLIANCE OF THESE STATUTES?

Statement of the Case

In this medical malpractice action, Appellant Jim Washington ("Washington") files A Motion For Rehearing With Motion For Writ of Certiorari affirming the order motion To dismiss of Respondent Trident Medical Center, LLC ("Trident") based on Washington Failure to comply with the presuit requirements mandated by Sections 15-79-125 and 15-36-100 of the South Carolina Code. {Order affirming motion to dismiss, dated 1/10/18 Unpublished Opinion No. 2018-UP-006, Appellate Case No. 2016-000495}. On 10/25/12, Appellant filed a Notice of Intent with the Disability Administration to author-Izing to give , Respondent Notice of Intent of same related claim in this action filed on 9/11/15, { Rpp. 9-11, Rpp. 20-23, Rpp. 62-63, Rpp. 70-73, Rpp. 90-91} which is attached To the Expert Witness Affidavit incorporated by reference into the complaint. { Rpp. 7-11, Rpp. 20-55, Rpp.30-55, Rpp.56-61, Rpp. 62-63, Rpp. 79-84, Rpp. 90-95}. Appellant, filed a complaint on 9/11/12 alleging medical malpractice and reckless against Respondent pursuant 15-79-125 and 15-36-100. { Rpp. 7-11}. Respondent moved to dismiss the complaint contending appellant failed to filed the presuit NOI required by Section 15-79-125(A) and did not submit an expert witness affidavit to testify that Respondent violated any applicable standard of care. {Rpp. 17-19}.

At the hearing for motion to dismiss appellant contend he did file the presuit NOI And Expert Witness Affidavit. { Rpp.56-61}. The circuit court granted the motion to Dismiss. {Rpp. 1-5, Rpp. 56-61}. Appellant filed motion to reconsider. Thereafter, Appellant filed appeal. {Notice of Appeal, R.____}. The court affirmed order of Dismissal. {R., Unpublished Opinion No. 2018-UP-006 filed 1/10/18.

DISCUSSION

In this matter, the pro se Appellant, Jim Washington on September 23, 2012 was admitted to Trident Medical Center, " corporate name Trident, LLC" hereinafter Respondent for service and treatment for rightside weakness of stroke like symptoms. Appellant, made respondent aware during admission that he was allergic to aspirin. Respondent noted this in appellant medical records and ran several diagnostic test procedures to determined the source of appellant right side weakness and also decided appellant would be treated with plavix (a blood thinner for secondary stroke prevention) rather than with aspirin but that respondent needed to determined what was the cause of his allergies. { Rpp. 30-31}. Aspirin can be used as a blood thinner to prevent clots which is one factor that cause stroke when used in a lower doses). {Rpp. 54-55, Rpp.95}. Therefore, a reasonably deducible inference can be drawn that aspirin treatment for secondary stroke prevent in a 325mg doses is useless and likely increases the risk of a clot, strokes and embolism. {Rpp. 54-55, Rp. 95}. Brouwer v. Sisters of Charity Providence Hospitals, 409 S.C. 514, 522, 763 S.E.2d 200 (2014)(We find the substance of Brouwer's allegation , that the negligent exposure of a patient to latex with a known allergy can result in an allergic reaction in that patient , is a matter within the common knowledge or experience so that no special learning is needed to evaluate Respondent's conduct at the pre-litigation stage) (quoting Green v. Lilliewood, 272 S.C. 186, 249, S.E.2d 910 (1978)(holding tubal litigation rendering intrauterine device and other birth control device useless constitutes a matter of common knowledge). On 9/24/12 thur 9/26/12 respondent changed appellant treatment from plavik to aspirin 325mg. {Rpp. 9-

11, Rpp.20-23, Rp. 32}. On 9/24/12 respondent ordered a test procedure suspecting cardio embolism as a possibly source of appellant's right side weeknesses. Respondent test procedures stated no source of embolism was found and that the test was normal.{Rpp. 9-11, Rp. 31, Rpp. 36-37}. A few hours later an MRI procedure of the head showed multi foci restrictive diffusion and acute infarct.{ Rpp. 9-11,Rpp.40-41}. Multi foci restrictive diffusion shown on MRI of the brain suggests' evidence cardio embolism is the likely source of the stroke. {Rpp. 70-72, Rpp. 79-83, Rpp. 90-95}. When cardio embolism is a possibility, the generally recognize and accepted standard of care requires a treating physician Hospitalist, to order a Anticoagulation Heparin Drip, consult Neurology to rule out embolism and to treat according to Neurology protocol, then discharge on coumadin with follow up instruction to PCP for adjustments within 2 days to Family Health and(TRMC) where he was treated for a second stroke after discharged from respondent facility. { Rpp. 30-45, Rpp.54-55, Rpp. 70-73, Rpp. 79-84, Rpp. 90-95}. Rosario v. U.S., 824 F. Supp. 268, 281-Dist. Court, D. Mass. (1993)(For these reasons Dr. Vanna concluded that Mr. Rosario should not have been placed on the anticoagulation medication when he was admitted to the V A. This Court finds this conclusion unworthy of credence. Other evidence adduced at trial revealed that Heparin is a common and widely used drug in patients where a stroke is suspected . In addition to preventing harmful blood clotting, Heparin is used to deter ongoing or future strokes in patients who demonstrate stroke-like symptoms. This court finds Heparin was appropriate under the circumstances when doctors reasonably believed he was suffering from a possible stroke); [An " infarct" is "an area of coagulation necrosis in a tissue...resulting from obstruction of local circulation by a thrombus[(blood clot)] or embolus [(foreign

particle circulating in the blood)]." WEBSTERS THIRD NEW INTERNATIONAL DICTIONARY 1157 (2002); A known cause of a strokes is "formation of an embolus or thrombus that occludes an artery." TABER'S CYCLOPEDIC MEDICAL DICTIONARY 1847 (18th ed. 1997). Id. "Appellant, pleading in the complaint with the supporting documents attached and incorporated by reference alleged that Respondent failure to follow the above procedures that is generally recognized and accepted in the profession was a breach of the standard of care and reckless disregard of right of right to reasonable care" . { Rpp.9-11, Rpp. 20-23, Rpp. 30-45, Rpp. 54-55, Rpp. 56-61, Rpp. 70-73, Rpp. 79-84, R.pp. 90- 95}. King v. Williams, 276 S.C. 478, 481-484, 279 S.E.2d 618 (!981)(adopting a national standard of care and finding local custom is but one factor to consider, however other factor merit in consideration in deciding breach the standard of care); Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35(1996)(conscious useless test, conscious fail to take additional test and to warn); Doe v. American Red Cross Blood Services, 279 S.C. 430, 435, 377 S.E.2d 323(1989)(We now hold that in a professional negligence cause of action , the standard of care that the plaintiff must prove is that the professional failed to conform to the generally recognized and accepted practices in his profession). Therefore, a reasonable deducible inference can be drawn which taken as true as you must under SCRCP Rule 12 (b)(6) motion that respondent failure to follow the above procedures for secondary clots, strokes and embolism from 9/23/12 thru. 9/26/12 was a breach of the standard of care and reckless, stated a claim which relief can be granted . {Rpp. 9-11, Rpp. 20-23, Rpp. 30-45, Rpp. 54-55, Rpp. 56-61, Rp.67, Rpp. 70-72, Rpp. 79-84, Rpp. 90- 95, Appellant Final Brief In Reply, pp. 8-15}. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8(1987)(We cannot agree with the lower court's

view that appellant's amended complaint fails to allege facts sufficient to a cause of action); King v. Williams, 276 S.C. 478, 481-484, 279 S.E.2d 618 (1981);Cf. Armstrong v. Weiland, 267 S.C. 12, 15-16, 225 S.E.2d 851(1976(defendant was told that Mr. Armstrong was taking coumadin an anticoagulant, for his heart condition, but he gave no indication of any possible adverse effects from taking the two drugs. He was given a refill presription for ten days and permitted to return home. About three days later his condition worsened. He was readmitted to the hospital emergency room for testing. On cross examination he admitted that he was in a serious accident in 1968 which cause injuries. The trial judge granted the motion for a nonsuit solely because the plaintiff fail to produce evidence from which proximate cause can be inferred. On cross examination , plaintiff medical expert testified he was not aware of any instances reported in pharmacology or excepted medical doctor literature where the drugs had any adverse reaction with coumadin whatsoever. Doctor reply no. We find no error in the lower court granting the nonsuit and the order granting the nonsuit is affirmed). Id.

This court and the circuit court overlooked and misapprehended appellant's claim for relief in construction and interpreting S.C. Code Statutes 15-79-125 (A) NOI and S.C. Code Statute 15-36-100 in its decision to affirm the circuit court order to dismiss appellant's action for failure to file the statutory mandate presuit Notice of Intent and Expert Witness Affidavit prior to filing the complaint. However, this court overlooked and misapprehend the facts and pleadings in the complaint with supporting documents attached and incorporated by reference which shows that appellant did filed the statutory mandated presuit Notice of Intent and Expert Witness Affidavit before he filed the

complaint on 9/11/15. The presuit NOI documents authorized, signed and dated by appellant on 10/25/12 with the Disability Administrative Agency to give respondent Notice of Intent of the claim are attached and incorporated by reference to the medical malpractice action filed on 9/11/15 with the circuit court under S.C. Code Statutes 15-79-125 (A) and S.C. Code Statute 15-36-100 are based on the same related claim in this action cause by respondent negligence beginning from Admission on 9/23/12 until Discharge on 9/26/12 based on the medical services and treatments received at respondent's facility as it relates to the Notice of Intent and Expert Witness Affidavit date of filing on 10/25/12. Respondent received the same Notice of Intent. { Rpp. 7-11,Rpp. 20-23, Rpp. 30-45, Rpp. 56-61, Rpp. 62-63, Rpp. 70-73, Rpp. 79-84, Rpp. 90-95, Rpp. 108-111 }. This is a **technical noncompliance** interpretation of the statutes for this court to hold that the presuit Notice of Intent and Expert Witness Affidavit were not filed before appellant filed the complaint on 9/11/15. The S.C. Supreme Court has consistently held in it's decisions to permit medical malpractice cases to proceed on the merits rather than to affirm unwarranted dismissal based on technical noncompliance with the medical malpractice statutes. Wilkinson v. East Cooper Community Hospital, 410 S.C. 163,172-174, 763 S.E.2d 426 (2014)(quoting Ross v. Waccamaw Cmty. Hosp., 404 S.C. 56, 744 S.E.2d 547(2013) and Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 725 S.E.2d 6939(2012)(holding that the prelitigation expert affidavit, which is filed pursuant to section 15-79-125, must specify at least one negligent act or omission and the factual basis for each claim, but does not to include an opinion as to proximate cause)). Furthermore, Wilkinson,Supra is controlling authority to the issue in Appellant's presuit NOI filed on 10/25/12 in this different related proceeding prior to ultimately filing the

action on 9/11/15. {Rpp. 7-11, Rpp. 20-23, Rpp. 30-45, Rpp. 56-61, Rpp. 70-73, Rpp. 79-84, Rpp. 90-91, Rpp. 92-95 }. In Wilkinson the court disagreed under almost identical if not identical circumstance as appellant here that the 10/25/12 was prelitigation NOI pleadings combined with 9/11/15 litigation pleadings did not converted this into two civil cases that required him to filed two NOI and two Expert Affidavits but disagreed with these contention and found this of no consequences because they both comprise a single medical malpractice claim. Wilkinson, S.C. at173(citing Fisher v. Pelstrings, 817 F. Supp. 2d 791, 807 n. 8 (D.S.C.2011)(analyzing procedures for initiating medical malpractice claims and stating " [s]ection 15-79-125 also does not include any language indicating that the case number under which a Notice of Intent is served on a defendant must be the same as the case number assigned to the complaint served on that defendant if a civil action is ultimately initiated")). Therefore, this courts order to affirm conflicts with Wilkinson not to affirm but to proceed on the merit rather than affirm unwarranted dismissal on technical noncompliance with the medical malpractice statutes. Id.

Furthermore, appellant refiled and/ or amend the 10/25/12 attached document which is incorporated by reference into the complaint on 9/11/15 under S.C. Code Statutes 15-79-125(A) and 15-36-100 on the caption of the attached document cured any defect in the NOI and Affidavit of Expert Witness before respondent initial responsive pleading challenge defective NOI and Expert Witness Affidavit filed on 1/5/16. { Rpp. 9-11, Rpp. 20-23, Rpp. 30-45, Rpp. 56-61,Rpp. 62-63, Rpp. 70-73, Rpp. 79-84, Rp. 90- 95, Rpp. 97-98}. S.C. Code Statute 15-36-100 (E) which allows cure by amendment within 30 days after respondent initial responsive pleadings challenge to defective NOI and Affidavit,

which gave appellant until 2/5/16 to cure any defect to state a claim for relief without the action being subject to dismissal. Appellant met this time period so the action is not subject to dismissal for failure to state a claim for which relief can be granted. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8(1987)(We cannot agree with the lower court's view that appellant's amended complaint fail to allege facts sufficient to state a cause of action). Wilkinson, at S.C. 171, applying Ranucci, II, to determine the sufficiency of the NOI and finding error to dismiss because the NOI and Affidavit timely filed in almost identical if not identical circumstances as appellant in this action. Id. Therefore, Wilkinson, is controlling authority on this issue and this court affirm the dismissal of the action conflicts with, Wilkinson. See Grazia v. S.C. Plastering, LLC, 390 S.C.562, 569-574, 703 S.E.2d 196(2010)(Analyzing presuit notice of intent to file claim prior to filing an action and right to cure defects act stay provision harmonizing the two conflict so both statute could be given effect and finding this as procedural rather than substantve mechanism because the General Assembly included this provision to specifically address situation where claimants file an action prior to full compliance with the notice provisions , also finding the stay provision cannot be disregarded no more than not disregarded the notice provision. Finally, citing case from, Florida which follows this procedure to not warranting dismissal of the action in medical malpractice cases under statutory law enacted by the legislature). Id.

Finally, based on his treating physicians statements from TRMC, { Rpp. 9-11, Rpp. 20-23, Rpp. 30-40, Rp. 45, Rpp. 56-61, Rpp. 70-73, Rpp. 79-84, Rp. 90- 95} that " because embolism is a possibility, I called Mr. Washington at home and told him he

needed to come back to the hospital immediately and be put on an anticoagulation because embolism was the likely source of his injury" and " the patient was admitted and because embolism is a possibility I, ordered a Heparin Drip, Neurology has been consulted to be treated according to Neurology protocol". From these statements in combination with the above mentioned acts and omissions of Respondents' failure to follow the generally recognized and accepted procedure in it's profession from 9/24/12 thru. 9/26/12. There is a reasonable deducible inference in the pleadings that respondent failure to follow these procedures was negligent in diagnosing and treatment, therefore respondent breach the standard of care. The S. C. Supreme Court has stated in it's decisions under almost identical if not identical circumstances as appellant here that S.C. Code Statute 15-79-125(A) and 15-36-100 allows appellant to used the above mentioned documented statements to be used as expert witness affidavit with qualifying opinion under these statutes which this court and the circuit court overlooked and misapprehend this which shows appellant is in compliance with the above mandated statutes. Ranucci v. Crain, II, is binding controlling authority on the above issues. See Ranucci v. Crain, 409 S.C. 493,501-502, 507-509, 763 S.E.2d 189 (2014). These same issues were squarely confronted to this court in Appellants' Final Brief In Reply, pp. 8-15, in rebuttal to Respondents' Initial Brief and Final Brief, pp. 5-9, inclusively, by citing Justice, Pleicones, opinion which actually concurs' with Ranucci, I, interpretation and construction of the affidavit statute at issue in this action. This is apparent from the citation 409 S.C. at 510, 763 S.E.2d at 197 from these pages above cited that is actually relying on, Justice, Pleicones, dissenting opinion which rely on Ranucci, I. Therefore, the outcome of this courts' decision to affirm was effected by accepting Respondents'

arguments that Appellant did not file a pre suit affidavit and the treating physician was not qualifying expert witness under the statute which misapprehends appellants' claim for relief. Inversely, if this court did not consider appellants' argument in his Final Brief In Reply, pp. 8-15, this court overlooked this issue in making it's decision which effect the outcome to affirm because it directly conflicts with the S.C. Supreme Court binding precedent, Ranucci v. Crain, II, on the same issue in this action which states a claim where relief can be granted. The S.C. Supreme Court in Ranucci II, overruled Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012) in almost identical if not identical facts and circumstances as appellant in this case granted relief and reversed and remanded. In Ranucci, II, at id. 501-502 the S.C. Supreme Court stated : " Based on the legislative history, we conclude the General Assembly enacted: (1) section 15-36-100 to establish the general construct regarding expert witnesses for all professional negligence cases; and (2) section 15-79-125 as a supplement to section 15-36-100 to provide for pre-litigation requirements that are unique to medical malpractice cases, including mandatory mediation. Thus, even without delving into the specific text of each statute, it is evident the General Assembly intented for sections 15-36-100 and 15-79-125 to be read in pari materia. Because there are no words of limitation surrounding the reference to section 15-36-100, we find it is incorporated into section 15-79-125 in its entirety." Id.

Finally, Ranucci, at, S,C. 508, The S.C. Supreme Court stated in its opinion under almost identical if not identical circumstances as appellants' here in this action, declined to affirm this court and the circuit courts' order to dismiss, stating " As to Dr. Crain's assertions regarding defects in the authorship and content of Dr. Boortz-Marx's affidavit,

we find this is not an appropriate ground to affirm the circuit court's order because the affidavit is facially sufficient given it is sworn an identifies a potentially meritorious medical malpractice claim. Moreover, there is no factual bases in the record to challenge either the expert's qualifications or the content of the affidavit.(quouting Poch v. Bayshore Concrete Prods. /S.C., Inc., 405 S.C. 359, 378 n. 13, 747 S.E.2d 757, 767 n. 13 (2013)(declining to reject affidavit presented as proof of workers' compensation insurance as there was "no basis for which to reject the affidavit as it by its very nature a sworn statement intended as documentary evidence in a legal proceeding"). Thus, we conclude that any alleged deficiencies would have to be made by Dr. Crain filing the appropriate motion to dismiss in circuit court pursuant to section 15-36-100(E). Finally, we find failure to conduit mediation is not fatal to Ranucci's case.". Id. Therefore, this courts order affirming dismissal the treating doctors statements for qualified affidavit purposes under S.C. Code Statute 15-36-100 and being defective conflicts with Ranucci, II. Finally, appellant, here had an additionally 4 (four) days left to conduct mediation before the 120 days deadline when the hearing was held on 1/7/16/ If the circuit court had denied respondent's motion to dismiss the case could have proceeded to mediation within the four days. Therefore, appellant should not be penalized. { Appellant's Final Brief In Reply, pp. 15-16}. Id.

CONCLUSION

The South Carolina Tort Reform Act and Notice of Intent and Expert Witness Affidavit requirements were intended to aid in keeping out frivolous lawsuits out of the court system. Statutes governing professional negligence require the filing of a Notice of Intent to file suit and a Expert Witness Affidavit and other pre-suit procedural requirements prior to filing the Complaint because it helps keep meritless complaints from being litigated. The S.C. Supreme Court case laws has interpret these Medical Malpractice Statutes in a way that the General Assembly intent for these statutes to be construct in a way to not affirm unwarranted dismissal on technical noncompliance with these statutes, but rather to permit meritorious " Complaints" to proceed on the merits. Appellant's " Complaint" technically and fully complied with all of these gate-keeping requirements supported by these same statutes and S.C. Supreme Court case laws cited therein as applied to the facts and circumstances of this case shows that the, Notice of Intent and Expert Witness Affidavit were signed, dated and filed on 10/25/12 prior to the Complaint filed in the circuit court on 9/11/15. Id. Accordingly, this courts overlooked and misapprehend the above matters and also conflicts with S.C. Supreme Court binding precedents.

Accordingly, Motion For Rehearing With Motion For Writ of Certiorari should be granted. SCACR Rules 221, 242(b)(3) and 240. Id.

CERTICFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED,** properly addressed as follows:

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RECEIVED
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SC Court of Appeals

This 25th day of January, 2018.

S/ Jim Washington
Jim Washington
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Appellant, Pro Se

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jim Washington, Appellant,

v.

Trident Medical Center, Respondent.

Appellate Case No. 2016-000495

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-006
Submitted November 1, 2017 – Filed January 10, 2018

AFFIRMED

Jim Washington, of Eutawville, pro se.

C. Mitchell Brown, of Nelson Mullins Riley & Scarborough, LLP, of Columbia; and David H. Batten, of Batten Lee PLLC, of Raleigh, North Carolina, all for Respondent.

PER CURIAM: Jim Washington appeals an order from the circuit court granting Trident Medical Center's motion to dismiss for failure to comply with the presuit requirements in section 15-79-125(A) of the South Carolina Code (Supp. 2017). On appeal, Washington argues the circuit court erred by (1) granting Trident's

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↓ over

motion to dismiss because he filed a timely Notice of Intent to File Suit and a contemporaneous expert witness affidavit as required by section 15-79-125(A), and (2) denying him leave to amend his complaint to state a second theory of recovery. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in dismissing Washington's complaint pursuant to Rule 12(b)(6), SCRCP: *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) ("On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the [circuit] court."); *id.* ("That standard requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" (quoting *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 446, 499 (Ct. App. 2001))); S.C. Code Ann. § 15-79-125(A) ("Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in [s]ection 15-36-100 . . . ").

2. As to whether the circuit court erred in denying Washington leave to amend his complaint: *Lee v. Bunch*, 373 S.C. 654, 660, 647 S.E.2d 197, 200 (2007) ("A motion to amend is addressed to the sound discretion of the [circuit court], and the party opposing the motion has the burden of establishing prejudice."); S.C. Code Ann. § 15-36-100(F) (Supp. 2017) ("If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleadings, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake."); S.C. Code Ann. § 15-3-545(A) (2005) ("[A]ny action . . . to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider . . . must be commenced within three years from the date of treatment, omission, or operation giving rise to the cause of action . . . .").

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Jim Washington, Appellant,

v.

Trident Medical Center, Respondent.

Appellate Case No. 2016-000495

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

J.

J.

Columbia, South Carolina

cc:
Jim Washington
David H. Batten, Esquire
C. Mitchell Brown, Esquire
The Honorable R. Markley Dennis, Jr.

FILED

February 23, 2018

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