23282

FORM 7

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Civil Case; 2013-CP-10-5351
Appeal; 2015-001331

Jack Powell, Appellant,

v.

Medical University of South Carolina, Respondent,

SUPPLEMENTAL RECORD ON APPEAL

I Pro se Appellant Jack Powell hereby certifies that I have mailed my supplemental record on appeal to the Respondents address listed below, by the USPS on May 24th, 2017.

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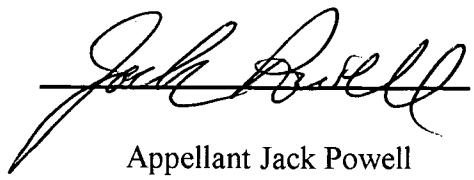
SUPPLEMENTAL RECORD ON APPEAL CERTIFIED

Pro **se** Appellant Jack Powell hereby certifies that his Record on Appeal contains material proposed to be included in the Appeal and not any other matter that is not relevant.



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SUPPLEMENTAL RECORD ON APPEAL

INDEX

Answer of Defendant p.102

7-14-14 Defendants Motion and Motion for Summary Judgment p.112

7-17-14 Defendants Memorandum in Support of it's Motion for Sum Judgment p.114

8-4-14 Form 4 Order Granting Defendant Notice of Motion and Motion for SJ p.137

8-8-14 Plaintiffs Motion for Reconsideration p.138

11-7-14 Defendants Supplemental Memorandum in Support of MSJ p.147

5-6-15 Plaintiffs Motion to Recuse Judge Dennis for Cause p.161

5-19-15 Order Denying Motion to Amend/Reconsideration p.171

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2013-CP-10-5351
JACK POWELL,	)	
	)	
Plaintiff,	)	**ANSWER OF DEFENDANT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA**
	)	
vs.	)	
	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC),	)	
	)	
Defendant.	)	
	)	

The Defendant, The Medical University of South Carolina (MUSC), by and through its undersigned attorneys, denying all allegations not specifically or expressly admitted and/or reserving all rights to amend this pleading pursuant to the South Carolina Rules of Civil Procedure, Rule 15, hereby answers the Plaintiff's Complaint by alleging as follows:

FOR A FIRST DEFENSE

1. In answering pages 1, 2 and 3 of Plaintiff's Complaint, including subparagraphs 1, 2 and 3 on Page 2 and 4, 5 and 6 on page 3, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith and demands strict proof thereof. To the extent that any of the allegations contained on pages 1 and 2 of Plaintiff's Complaint, including subparagraphs 1, 2 and 3 on page 2 and 4, 5, and 6 on page 3 of Plaintiff's Complaint constitute conclusions of law, Defendant MUSC is required neither to admit nor deny those allegations. In further answering pages 1, 2 and 3 of Plaintiff's Complaint, including subparagraphs 1, 2 and 3 on page 2 and 4, 5, and 6 on page 3, Defendant MUSC denies the allegations contained on those pages and in those paragraphs and demands strict proof thereof.

102

FOR A SECOND DEFENSE
PLAINTIFF JACK POWELL BRINGS FORTH THE FOLLOWING CAUSES OF ACTION

2. With regard to paragraph 1 on page 4 of Plaintiff's Complaint, Defendant MUSC lacks sufficient information and knowledge to form a belief about the truth of the allegations in paragraph 1 on page 4 of Plaintiff's Complaint and therefore denies those allegations.

3. In answering paragraph 2 on page 4 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation contained in paragraph 2 on page 4 of Plaintiff's Complaint that is inconsistent therewith and demands strict proof thereof. Defendant MUSC denies the remaining allegations in paragraph 2 of page 4 of Plaintiff's Complaint and demands strict proof thereof.

4. Defendant MUSC denies the allegations in paragraph 3 on page 4 of Plaintiff's Complaint and demands strict proof thereof.

5. In answering paragraph 1 on page 5 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is contained in paragraph 1 of page 5 of Plaintiff's Complaint that is inconsistent therewith and demands strict proof thereof.

6. In answering paragraph 2 on page 5 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation contained in paragraph 2 on page 5 of Plaintiff's Complaint that is inconsistent therewith.

7. In answering paragraph 3 on page 5 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every

allegation contained in paragraph 3 on page 5 of Plaintiff's Complaint that is inconsistent therewith and demands strict proof thereof.

8. Defendant MUSC lacks sufficient information and knowledge to form a belief as to the allegations contained on pages 6, 7 and 8 of Plaintiff's Complaint, including subparagraphs a, b, c, d, e, f and g on page 6 and as to subparagraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 contained on pages 6, 7 and 8 of Plaintiff's Complaint. To the extent that the allegations attempt to assert facts, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation contained on pages 6, 7 and 8, including the foregoing subparagraphs and demands strict proof thereof.

FOR A THIRD DEFENSE
RECKLESS AND GROSS NEGLIGENCE

9. In answering paragraphs 1 and 2 on page 9 of Plaintiff's Complaint, Defendant MUSC denies that it was negligent and/or reckless and/or grossly negligent and demands strict proof thereof. With regard to any remaining allegations, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation contained in paragraph 1 and 2 on page 9 of Plaintiff's Complaint that are inconsistent therewith.

10. In answering paragraph 3 noted as number "3" on page 10 of Plaintiff's Complaint, Defendant MUSC denies those allegations and demands strict proof thereof.

FOR A THIRD DEFENSE
SLANDER AND LIBEL

11. In answering paragraph 1 on page 11 of Plaintiff's Complaint, the allegations concerning Charleston County EMS do not concern Defendant MUSC and therefore no response is required.

104

12. Defendant MUSC denies the allegations on paragraph 2 on page 11 of Plaintiff's Complaint and demands strict proof thereof.

13. Defendant MUSC denies the allegations in paragraph 3 on page 11 of Plaintiff's Complaint and demands strict proof thereof.

14. In answering the allegations on page 12 of Plaintiff's Complaint, specifically, paragraphs 1, 2 and 3, wherein paragraph 1 refers to Nurse Pentz, paragraph 2 refers to Security Guards; Detailed Activity Report, paragraph 3 refers to Public Safety; Incident Report & Additional Narrative and a Note by Nurse Pentz, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith and demands strict proof thereof.

15. In answering the allegations in the paragraph numbered as number "2" on page 12 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith and demands strict proof thereof.

16. In answering the allegations in the paragraph numbered as "3" on page 13 of Plaintiff's Complaint, Defendant MUSC denies that it or any of its employees or agents slandered the Plaintiff and demands strict proof thereof. With regard to the remaining allegations in paragraph numbered "3" on page 13 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith and demands strict proof thereof.

17. Defendant MUSC denies the allegations in paragraphs numbered "4" and "5" on page 13 of Plaintiff's Complaint and demands strict proof thereof.

18. In answering paragraph numbered "6" on page 13 of Plaintiff's Complaint that continues on to page 14 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith and demands strict proof thereof.

FOR A FOURTH DEFENSE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

19. Defendant MUSC denies the allegations in paragraph numbered "1" on page 14 of Plaintiff's Complaint and demands strict proof thereof. In further answering the allegations in the paragraph numbered "1" on page 14 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC with regard to any factual allegations contained in those records and denies each and every allegation contained in the foregoing paragraph that are inconsistent therewith and demands strict proof thereof.

20. In answering the paragraph numbered "2" on page 15 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith. With regard to any remaining allegations in the paragraph numbered "2" on page 15 of Plaintiff's Complaint, Defendant MUSC denies those allegations and demands strict proof thereof.

21. In answering the paragraph numbered "3" on page 16 of Plaintiff's Complaint, Defendant MUSC denies and it was negligent, grossly negligent, reckless, or in any way caused any harm to Plaintiff and demands strict proof thereof. With regard to the remaining allegations contained in the paragraph numbered "3" on page 16 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith and demands strict proof thereof.

FOR A FIFTH DEFENSE
FALSE ARREST AND IMPRISONMENT

22. Defendant MUSC denies the allegations contained on page 17 of Plaintiff's Complaint regarding false arrest and imprisonment and demands strict proof thereof.

FOR A SIXTH DEFENSE
ASSAULT AND BATTERY

23. In answering the allegations contained in the paragraph numbered "1" on page 18 of Plaintiff's Complaint, Defendant MUSC denies the cause of action for assault and battery and demands strict proof thereof. In further answering the allegations contained in the paragraph numbered "1" on page 18 of Plaintiff's Complaint, Defendant MUSC craves reference to the medical and security records of MUSC and denies each and every allegation that is inconsistent therewith and demands strict proof thereof.

24. In answering the allegations contained in the paragraph numbered "2" on page 19 of Plaintiff's Complaint, Defendant MUSC denies the allegations and demands strict proof thereof.

FOR A SEVENTH DEFENSE
DAMAGES

25. Defendant MUSC denies the allegations contained on page 20 of Plaintiff's Complaint, including the "Wherefore" clause and demands strict proof thereof.

26. To the extent that Plaintiff is attempting to plead allegations and/or causes of action in pages 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of Plaintiff's Complaint, Defendant MUSC denies any additional causes of action and/or allegations and craves reference to the medical and security records of MUSC and denies each and every allegation contained in the foregoing pages that are inconsistent therewith and demands strict proof thereof.

107

FOR AN EIGHTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

27. Plaintiff's Complaint is barred and otherwise limited by the applicable provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et. seq. (1976), specifically, S.C. Code Ann. § 15-78-60(5) and (25). Furthermore, Defendant MUSC is not subject to a claim for punitive damages under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-120(b).

FOR A NINTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

28. Any damages suffered by Plaintiff are the direct and proximate result of the contributory and/or comparative negligence of the Plaintiff and Plaintiff's recovery should be barred or alternatively, reduced proportionally to his comparative negligence.

FOR A TENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

29. Any defamatory statements made about the Plaintiff were subject to absolute, qualified, or conditional privilege, and therefore, the Plaintiff is barred from recovery.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

30. Any defamatory statements made about the Plaintiff were true, were made in good faith, and to an individual having a corresponding interest or duty, and therefore, the Plaintiff is barred from recovery.

FOR A TWELFTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

31. Any statements made about Plaintiff were true and do not constitute actionable statements, and therefore, the Plaintiff is barred from recovery.

FOR A THIRTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

32. Any statements made about Plaintiff were opinion and are privileged and, therefore, Plaintiff is barred from recovery.

FOR A FOURTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

33. Plaintiff has failed to mitigate his damages, and some or all of his claims are thus precluded or limited under the doctrine of avoidable consequences.

FOR A FIFTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

34. Any statements made about Plaintiff were invited libel in that he created a situation where Defendant was required to give its opinions about him and, therefore, the Plaintiff is barred from recovery.

FOR A SIXTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

35. Any defamatory statements made about Plaintiff were limited in scope and are, therefore, conditionally privileged, and Plaintiff is barred from recovery

FOR A SEVENTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

36. An award of punitive damages under South Carolina Law violates the Due Process Clauses in the Fifth, Sixth, and Fourteenth Amendments, the Double Jeopardy Clause of the Fifth Amendment, and the Commerce Clause of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

c. Any award of punitive damages based upon the wealth of the Defendant violates due process guarantees;

d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

f. The Plaintiff's claim for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant.

FOR AN EIGHTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

37. Plaintiff's claim for intentional infliction of emotional distress is barred because Defendant MUSC acted in good faith and in a reasonable manner.

FOR A NINETEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

38. Plaintiff's claim for intentional infliction of emotional distress is barred because any actions or omissions by Defendant MUSC are privileged.

FOR A TWENTIETH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

39. Plaintiff's claim for assault and battery is barred because any use of force by Defendant MUSC was lawful.

FOR A TWENTY-FIRST DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE

40. Plaintiff's claim for false arrest and imprisonment is barred because any restraint by Defendant MUSC was lawful.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant, Medical University of South Carolina, prays that the same be dismissed with costs and for such other relief as this Court may deem to be just and proper.

BARNWELL WHALEY PATTERSON
& HELMS, LLC

By: _____

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ATTORNEYS FOR DEFENDANT MUSC

Charleston, South Carolina
October 25, 2013

111

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2013-CP-10-5351
JACK POWELL,	)	
Plaintiff,	)	**DEFENDANT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
vs.	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC),	)	
Defendant.	)	

TO: JACK POWELL, PLAINTIFF:

PLEASE TAKE NOTICE that Defendant the Medical University of South Carolina (hereinafter referred to as "MUSC"), will move before the presiding Judge of the Ninth Judicial Circuit in Charleston County, South Carolina, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order that dismisses MUSC with prejudice. The grounds for this Motion are:

1. Plaintiff's causes of action for defamation, reckless and gross negligence, intentional infliction of emotional distress, false arrest and imprisonment, and assault and battery are barred because Plaintiff cannot establish genuine issues of material fact as to his claims. Furthermore, Plaintiff's intentional infliction of emotional distress claim is prohibited by the South Carolina Tort Claims Act, § 15-78-30(f). And, with regard to Plaintiff's cause of action for intentional infliction of emotional distress, there is no evidence that MUSC's conduct was so extreme and outrageous as to exceed all bounds of decency. Furthermore, the conduct alleged by Plaintiff does not serve as a basis for an action alleging outrage because the law affords another means of redress. See Todd v.

S.C. Farm Bureau Mutual Ins. Co., 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984); quashed in part on other grounds, 287 S.C. 190, 336 S.E.2d 42 (1985).

2. Any communications made by MUSC regarding Plaintiff are qualifiedly privileged, and, thus, are insufficient to support a defamation claim.

3. Any communications made by MUSC regarding Plaintiff are true, and, therefore, are not actionable because truth is a complete defense to defamation.

The Plaintiff cannot establish genuine issues of material fact as to his claims and MUSC is entitled to judgment as a matter of law. This Motion is supported by the pleadings, discovery, depositions, affidavits and any memoranda of law that may be provided to the Court prior to the hearing on this Motion.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: _____

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ATTORNEYS FOR DEFENDANT MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC)

Charleston, South Carolina
July 11, 2014

113

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2013-CP-10-5351
JACK POWELL,	)	
	)	
Plaintiff,	)	**DEFENDANT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC),	)	
	)	
Defendant.	)	
	)	

TO: JACK POWELL, PLAINTIFF, PRO SE:

INTRODUCTION

This is lawsuit brought by the Plaintiff, Jack Powell, Pro Se, alleging causes of action for (1) reckless and gross negligence, (2) slander and libel, (3) intentional infliction of emotional distress, (4) false arrest and imprisonment, and (5) assault and battery. No genuine issues of material fact exist, and MUSC is entitled to summary judgment as a matter of law.

STATEMENT OF FACTS

On June 21, 2012, Plaintiff was transported to the Emergency Department at MUSC by Charleston County EMS after tripping over an exposed and unburied cable line on Folly Road. (Compl. p. 4). Plaintiff claims to have suffered injuries to his head, neck, shoulder, and knee as a result of the fall. (Compl. p. 4). Upon arrival to the Emergency Department, Plaintiff was evaluated and attended to by the ER staff. (Comp. p. 4). X-rays were ordered to evaluate his potential injuries. (Compl. p. 4). Pain medication was ordered for the Plaintiff; however, Plaintiff was also to be transported to

the radiology department for x-rays. (Compl. p. 4). When transport arrived to take Plaintiff to x-ray, Plaintiff asked how long it would take and asked to stay in the ER to wait for his pain medication rather than go to x-ray. The doctor asked Plaintiff if he was sure that he wanted to stay in the ER and wait for his pain medication rather than go to the x-ray department. (Compl. p. 4). Plaintiff replied in the affirmative and then told the doctor "that is about the stupidest question a doctor has ever asked me." (Compl. p. 4). After the x-rays were obtained, Plaintiff contends that the doctor came back into his room, rudely removed his neck brace, and told Plaintiff that he had been discharged. (Compl. p. 4). Plaintiff claimed that he could not move because of pain. (Compl. p. 4).

Plaintiff refused to leave the Emergency Department despite being discharged because he claimed he was in pain. (Compl. pp. 4-5). As a result, MUSC security was called. (Compl. p. 5). Plaintiff contends that security tried to pull him from the bed. (Compl. p. 5). He contends that the MUSC security continued to try to pull him from the bed and finally stopped because he was "yelling from pain." (Compl. p. 5).

MUSC Public Safety was then called and instructed Plaintiff to leave the hospital. (Compl. p. 5). Plaintiff claimed that he could not move, was not going to inflict anymore pain on himself, and asked to be helped from the bed. (Compl. p. 5). Plaintiff then threatened to sue MUSC. (Compl. p. 5). Public Safety then offered to take Plaintiff home, anywhere he wanted to go, or to Roper Hospital. (Compl. p. 5).

Plaintiff next claims that MUSC Public Safety removed him from the ER bed and transported him out of the hospital. (Compl. p. 5). Once outside of the hospital, Public Safety told Plaintiff to get out of the wheelchair and leave the premises. (Compl. p. 5). Plaintiff refused to leave because he claimed that he was in pain. (Compl. p. 5). Again,

Public Safety asked Plaintiff to leave the premises and told him that if he failed to leave, he would be arrested for trespassing. (Compl. p. 5). Plaintiff refused, stated that he would not inflict anymore pain on himself, and asked the officers to help him get out of the wheelchair. (Compl. p. 5). The Public Safety Officers then lifted Plaintiff from the wheelchair and placed him in their police car where he was arrested for trespassing/refusal to leave and transported to jail. (Compl. p. 5).

ARGUMENT

I. Standard of Review

"Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Wilson v. Moseley, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997). In ruling on a motion for summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Id.*

"Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact." Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). "[I]n cases applying a preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid–South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc., 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (*citing* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). For the reasons that follow, this Court should grant Defendant's Motion for Summary Judgment as to Plaintiff's claims in this matter.

II. Reckless and Gross Negligence

Under South Carolina law, medical negligence is the failure of a physician to exercise that degree of care and skill which is ordinarily employed by the profession generally under the same or similar circumstances. Jernigan v. King, 312 S.C. 331, 440 S.E. 2d 379 (Ct. App. 1993)(*citing* Welch v. Whitaker, 282 S.C. 251, 317 S.E. 2d 758 (Ct. App. 1984)). In order to establish the requisite element of negligence in a medical malpractice action, the plaintiff must present (1) evidence of the generally recognized and accepted practices and procedures which would be exercised by average competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances; and (2) evidence that the defendant doctor departed from the recognized and generally accepted standard. See David v. McLeod Regional Medical Center, 367 S.C. 242, 626 S.E.2d 1 (2006); Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633, 634 (1986)(*citing* Cox v. Lund, 286 S.C. 410, 334 S.E.2d 116 (1985)). In South Carolina, the issue of whether a physician deviated from the applicable standard of care is to be determined by what an ordinary careful prudent physician would have done under the same or similar circumstances. McCourt by and through McCourt v. Abernathy, 318 S.C. 301, 307 457 S.E.2d 603, 607 (1995). In a medical malpractice action, the plaintiff

must present evidence, by expert testimony, to establish the required standard of care and the physician's failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge and experience such that no special learning is necessary to evaluate the conduct of the physician. See Pederson v. Gould, 341 S.E.2d at 634; Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 254, 487 S.E.2d 596, 599 (1997); Cox v. Lund, 334 S.E.2d at 116; Martisan v. Hilton Head Health System, L.P., 364 S.C. 430, 613 S.E. 2d 795 (Ct. App. 2005), *reh'g. denied* (2005); Botehlo v. Bycura, 282, S.C. 578, 320 S.E.2d 59 (Ct. App. 1984).

In support of his negligence claim, Plaintiff alleges that MUSC acted wrongfully and demonstrated willful gross negligence when the physicians and nurses ignored foreseeable harm taking place when the security guards were recklessly allowed to try and take Plaintiff from his ER bed. Specifically, Plaintiff claims that the reckless act occurred after he was medically discharged, but before pain medication was administered to Plaintiff. He further contends that this occurred because he was unable to move from the ER bed. Plaintiff further claims that the ER physician made an improper and negligent decision when he ordered more medication and then allowed security to take him from the ER bed. In his deposition, Plaintiff testified:

> Q: Do you think that the health care providers, then, at MUSC were negligent in the care they provided by not properly discharging you?
>
> **A: I think the doctors and the nurse -- yes. They had a responsibility to make sure that I was discharged properly. And if you're trying to work up one of them things where you can get it dismissed because of this, that, and the other, I'll just file it again.**

Q: Tell me in your words or your opinion how was MUSC recklessly and grossly negligent?

A: How they're reckless and grossly negligent?

Q: Yes, sir.

A: You're talking about any specific person at MUSC?

Q: It's your Complaint. You allege recklessness and gross negligence. I need to know who was reckless and grossly negligent.

A: The physicians and nurses ignored forseeable harm taking place when the security guards were recklessly allowed to take me and try to take me from the bed when I was injured, yelling and screaming in pain.

Q: That's from your Complaint. What I want to know is what specific standard of care did the doctors and nurses violate or what statute or what regulation, protocol, procedure -- anything -- you maintain that they violated that would make them reckless and/or grossly negligent.

A: I can't give you nothing fancy right now, but I'm sure we'll be able to later.

Q: This is my only chance to talk to you about this, so I need to know everything you intend to offer.

A: It says right here: Officer McKinnie stopped trying to assist me from lying to a seated position and stopped because I stated I'm not putting any more pain on myself, but yet the doctor allowed him to do it again. Even the Public Safety said that. They said that

Mr. Powell complained the pain was unbearable, and then they turn right around and start -- the doctors let him do it again.

[Dep. J. Powell, pp. 152-154].

There is no question that the decision of whether to discharge a patient and whether to order additional pain medication fall outside the ambit of common knowledge and experience such that no special learning is necessary to evaluate the conduct of the physician. Plaintiff has alleged a cause of action for medical negligence due to the actions of the Emergency Department physician, but has failed to offer expert testimony establishing a deviation from the standard of care.

Therefore, Plaintiff's cause of action for reckless and gross negligence must be dismissed to the extent that he asserts that the negligence resulted from the actions of the physician and other medical personnel working in the Emergency Department during his admission.

III. Slander and Libel

Under South Carolina law, the standards governing a claim of defamation are well-established:

> The tort of defamation allows a complaining party to recover for injury to his reputation as the result of a false communication to others about him, made by the defendant. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). "Slander is a spoken defamation, while libel is a written defamation or one accomplished through actions or conduct." *Id.* In order to prove defamation, a party must show: (1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

See Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 302-03, 631 S.E.2d 286, 292-93 (Ct. App. 2006).

Depending upon the nature of the allegedly defamatory statement, Plaintiff will be required to make different showings regarding damages to support his claim:

> [A] statement may be actionable *per se* or not actionable *per se*. [Citation omitted.] "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." [Citation omitted.] When the statement is classified as actionable *per se*, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages. [Citation omitted.] When the statement is not actionable *per se*, "the plaintiff must plead and prove both common law malice and special damages." [Citation omitted.] "Common law malice means the defendant acted with ill will toward the plaintiff, or acted recklessly or wantonly, i.e., with conscious indifference of the plaintiff's rights." [Citation omitted.] "Slander is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." Goodwin v. Kennedy, 347 S.C. 30, 36, 552 S.E.2d 319, 322-23 (Ct. App. 2001).

See McBride v. School Dist. of Greenville Cty., 389 S.C. 546, 560-61, 698 S.E.2d 845, 852 (Ct. App. 2010) (*citing* Erickson v. Jones Street Publishers, *LLC*, 368 S.C. 444, 629 S.E.2d 653 (2006)); see also Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012)(statements were not capable of any defamatory construction); Smith v. Phoenix Furniture Co., 339 F. Supp. 969 (D.S.C. 1972)(words spoken were not actionable *per se*).

Plaintiff has testified as to what he believes comprised the Defendant's defamatory statements about him. All statements that Plaintiff cites in support of his defamation claim are statements that were made by MUSC medical personnel in his medical record. (See Medical Record of Plaintiff attached hereto as Exhibit "A"). Specifically, in his deposition, Plaintiff testified:

Q: How about what evidence do you have of slander and liable by MUSC?

A: Well, to start with, like I said, I didn't know -- at the time I didn't know that any of those things were said to me, but that came right there. You just read it a little while ago that Nurse Pentz stated right here on this document -- I can paraphrase. She said -- right here it says "verbally abusive to EMS."

Q: And how did that slander you or libel you?

A: Because she just wrote it down right here, and it's not true.

Q: What damages did that cause you by her writing that there?

A: You mean other than individuals reading this? Well, slander caused me a lot of damage because what it caused was by her repeating that to other people caused them to have a bad attitude towards me and then just decide right off the bat that I'm some combative drunk, wino, or some homeless guy, especially since I don't have any insurance....that now by her making these statements or writing it down actually does hurt me because they've got an attitude towards me.

Q: Where in her notes does it say that you're a combative drunk, wino, or that you have no insurance?

A: Well, it's got something to do with the way they look at people. Because see, just like it said right there a little while ago -- remember, they was talking about the way I appeared? What did they say? Do you remember?

Q: Something about "poorly groomed."

A: Yeah.

Q: You acknowledge you were covered in dirt; right? And you said you very might well have appeared that way; right?

A: Right. But they're saying "poorly groomed."

Q: Where in her notes does it say that you were a combative drunk, wino?

A: It doesn't say that, but everybody knows that they deal with those kind of problems there at the ER there all the time.

Q: Let me just short circuit this. You admit you cussed and yelled at the staff at the hospital; correct?

A: After they yanked and pulled on me and trying to pull my arm out of the socket, hurting me, yes.

Q: And you acknowledge and admit -- you would agree that both Nurse Pentz and the doctor and EMS separately stated in their respective notes that you were verbally abusive toward them? Is that fair? Is that accurate?

A. Yes. They said that.

Q, Because you did cuss and yell at them; correct?

A. Well, if their name is asshole then I guess I was talking to them. Because anybody that gets abused and attacked like that -- just like they did this 75 - year- old woman right here and then punch her in the chest -- what do you expect people to do?

[Dep. J. Powell, pp. 154-156].

Q. Did you let them know that you were fearful that they were a bunch of nuts and going to do this again to you?

A. Yeah. I called them a bunch of assholes and crazy assholes and everything else. Okay. Let's put the horse in front of the cart. The yanking and pulling came before the cussing.

[Dep. J. Powell pp. 101-103]

"Special damages are tangible losses or injuries to the plaintiff's property, business, occupation, or profession in which it is possible to identify a specific amount of money as damages." See Erickson, 368 S.C. at 465 n.6, 629 S.E.2d at 664 n.6.

It is obvious, that the allegedly defamatory statements are not defamatory *per se*. MUSC did not accuse Plaintiff of committing a crime of moral turpitude. It did not state that he contracted a loathsome disease. It did not accuse him of adultery or of being unchaste and it did not state that he was unfit to engage in his business or profession. Consequently, the alleged defamation, if actionable, will require Plaintiff to prove both special damages and malice. Because there is no evidence of either element, MUSC is entitled to judgment as a matter of law.

A. Any Communications Made by MUSC Regarding Plaintiff are True and Therefore are Not Actionable Because Truth is a Complete Defense to Defamation.

Under South Carolina law, "truth of the matter is a complete defense to an action based on defamation." See WeSav Financial Corp. v. Forest Hills Homes, Inc., 316 S.C. 442, 450 S.E.2d 580)(citing Ross v. Columbia Newspaper, Inc., 266 S.C. 75, 221 S.E.2d 770 (1976)); see also Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012)(statements were true, therefore, respondent had a complete defense to defamation

and summary judgment was proper). With regard to any statements documented by MUSC about Mr. Powell in the medical record concerning his behavior in the Emergency Department, those statements are true and Plaintiff has even admitted that he made the egregious remarks to the MUSC staff in the ER.

B. Any Communications Made by MUSC Regarding Plaintiff were Qualifiedly Privileged and were Insufficient to Support a Defamation Claim.

Even if the statements are defamatory, which they are not, MUSC is entitled to a qualified privilege as a matter of law. The essential elements of a conditionally privileged communication are "good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and *publication in a proper manner and to proper parties only."* See Fountain v. First Reliance Bank, 398 S.C. at 444, 730 S.E.2d at 310 (citing Manley v. Manley, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987)(quoting Conwell v. Spur Oil Co. of W.S.C., 240 S.C. 170, 178, 125 S.E.2d 270, 274-75 (1962)).

"When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion." See McBride v. School Dist. of Greenville Cty., 389 S.C. at 562, 698 S.E.2d at 853(*citing* Bell v. Bank of Abbeville, 208 S.C. 490, 493-94, 38 S.E.2d 641 (1946)). ("The publication of defamatory words may be under an absolute, or under a qualified or conditional privilege . . . One publishing defamatory words under a qualified or conditional privilege is only liable upon proof of express malice."). The statement must be such that the occasion warrants, and must be made in good faith to

protect the interests of the one who makes it and the persons to whom it is addressed. *Id.* at 562, 853. Communications between employees of an organization are qualifiedly privileged if made in good faith and in the usual course of business. *Id.*

Here, any alleged statements made by MUSC about Mr. Powell were made in the medical records and to medical personnel. The medical records are used to document factual information regarding a patient and the formation in the records is only communicated or shared with other medical personnel in the course of providing care to him. The information and records are further protected from publication to third parties who do not have a corresponding interest in the subject matter by federal privacy laws, namely the Health Insurance Portability & Accountability Act of 1996 (HIPAA). Thus, MUSC would be precluded from disclosing or publishing any information about Plaintiff's health condition except to health care providers and other individuals with a corresponding interest in the subject matter. In determining whether or not the communication was qualifiedly privileged, regard must be had to the occasion and to the relationship of the parties. In addition, it is for the court to determine whether there are facts demonstrating abuse of the privilege. See Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E. 2d 305 (2012)(Fountain failed to show a scintilla of evidence that defendants abused their qualified privilege, thus, summary judgment was appropriate).

Here, Plaintiff cannot demonstrate that MUSC abused the scope of the privilege, and, therefore, summary judgment is appropriate as a matter of law.

IV. The Court Should Grant Summary Judgment as to Plaintiff's Outrage (Intentional Infliction of Emotional Distress) Claim

A. Plaintiff's Intentional Infliction of Emotional Distress Claim is Prohibited by the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-30(f)

Section 15-78-30(f) of the South Carolina Tort Claims Act specifically excludes a cause of action for intentional infliction of emotional distress against a governmental entity. Section 15-78-30(f) specifically provides:

> (f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for **negligence, but does not include the intentional infliction of emotional harm.**

See S.C. Code Ann. §15-78-30(f)(emphasis added); see also Densmore v. City of Greenville, 2011 WL 11733107 (Ct. App. 2011)(unpublished)(trial court properly granted summary judgment to respondents on the cause of action for intentional infliction of emotional distress under the Tort Claims Act).

B. Plaintiff's Intentional Infliction of Emotional Distress Claim Fails Because He Cannot Proffer Any Evidence That the Defendants' Conduct Was So Extreme and Outrageous As to Exceed All Bounds of Decency or Caused Actual Severe Emotional Distress

In the alternative, the Court should enter summary judgment against Plaintiff on his claim for outrage/intentional infliction of emotional distress, because there is no evidence of conduct sufficient to warrant liability for that tort.

Under South Carolina law, the standards governing the tort of outrage are well-settled and require proof that the Defendants engaged in extremely culpable conduct:

> In order to recover for intentional infliction of emotional distress, a plaintiff must establish the following:

(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;

(2) the conduct was so "extreme and outrageous" so as to exceed "**all possible bounds of decency**" and must be regarded as "**atrocious, and utterly intolerable** in a civilized community;"

(3) the actions of the defendant caused plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007); Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (emphasis added); accord Bell v. Dixie Furniture, Inc., 285 S.C. 263, 265, 329 S.E.2d 431, 433 (1985) (citing Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981)).

"[I]t is for the trial court to determine whether the defendant's conduct may be considered so extreme and outrageous as to permit recovery, and only where reasonable minds might differ should the issue be submitted to the jury." See Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 306, 631 S.E.2d 286, 293 (Ct. App. 2006) (citing Hainer v. Am. Med. Int'l, Inc., 320 S.C. 316, 324, 465 S.E.2d 112, 117 (Ct. App. 1995), *aff'd as modified*, 328 S.C. 128, 492 S.E.2d 103 (1997)).

"The majority of cases finding outrageous conduct generally require 'hostile or abusive encounters' or 'coercive or oppressive conduct.'" Fleming v. Rose, 338 S.C. 524, 538, 526 S.E.2d 732, 739 (Ct. App. 2000), *rev'd on other grds.*, 350 S.C. 488, 567 S.E.2d 857 (2002) (quoting Gattison v. South Carolina State College, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995); Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989)).

128

Where a defendant's actions have a reasonable basis, they generally cannot support an outrage claim. See Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 476, 710 S.E.2d 67, 74 (2011) ("We hold that Appellant could not, as a matter of law, maintain a claim for intentional infliction of emotional distress against Respondent as Respondent's conduct towards Appellant was reasonable and in accordance with the valid probate court orders."). In Todd v. South Carolina Farm Bur. Mut. Ins. Co., 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct. App. 1984), *rev'd on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985), the South Carolina Court of Appeals held the tort of intentional infliction of emotional distress is not a "panacea for wounded feelings rather than reprehensible conduct."

Courts of this state have repeatedly held that various forms of bad conduct — even severely culpable conduct — are not sufficient to warrant liability for the tort of outrage; to the contrary, only the most despicable and offensive conduct will support such a claim. See *e.g.*, Melton v. Medtronic, Inc., 389 S.C. 641, 698 S.E.2d 886 (Ct. App. 2010) (affirming summary judgment where defendant "insensitive[ly]" terminated treatment of patient shortly prior to surgery); Save Charleston Found'n v. Murray, 286 S.C. 170, 180, 333 S.E.2d 60, 66 (Ct. App. 1985) ("Merely converting someone's promissory note and maliciously bringing against the person a civil action based on the note is not conduct that, as a matter of law, 'exceeds all possible bounds of decency' and is 'atrocious and utterly intolerable.'"); Corder v. Champion Road Mach. Int'l Corp., 283 S.C. 520, 324 S.E.2d 79 (Ct. App. 1984) (holding that retaliatory discharge for filing a workers' compensation claim, absent claims of verbal assaults or hostile, abusive encounters, did not rise to level required for outrage); compare Bergstrom v. Palmetto

Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48-49 (2004) ("If Hospital recklessly or intentionally made repeated and coercive efforts to separate a mother from her newborn infant, that might well constitute outrageous conduct that we would find utterly intolerable in a civilized community."); Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981) (finding sufficient outrageous conduct where home buyer subjected plaintiff to repeated public browbeatings, obscenities, and threats over a two-year period and even entered her home without permission and verbally attacked her in front of guests).

Here, there is no evidence of conduct that exceeded all possible bounds of decency and was atrocious, and utterly intolerable in a civil society. To the contrary, granting the Plaintiff the benefit of every doubt, he claims that MUSC acted in an unprofessional manner in attempting to manage his behavior on the night of June 21, 2012. There is no evidence of any threats of violence. There is no evidence of hostile confrontations. There is no evidence of oppression or coercion. There is no evidence that MUSC abused Plaintiff. Simply put, there is no evidence of anything that could conceivably be characterized as outrageous.

This Court should grant summary judgment because "[t]here is simply nothing in [Defendants'] actions that could be characterized as extreme and outrageous; as exceeding possible bounds of decency; or which might be regarded as atrocious and utterly intolerable in a civilized community." See Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 306, 631 S.E.2d 286, 293 (Ct. App. 2006) (affirming entry of summary judgment). At most, assuming Plaintiff's allegations to be true, the facts he alleges "may demonstrate unprofessional, inappropriate behavior, [but] they fall short of conduct" required to support an outrage claim. See Gattison v. South Carolina State College, 318

S.C. 148, 157, 456 S.E.2d 414, 419 (Ct. App. 1995). Plaintiff seeks to use the tort of outrage as a panacea to seek a remedy for wounded feelings.

Plaintiff's outrage claim also fails because he cannot proffer any corroborating evidence to support his claims of damage. The only evidence supporting Plaintiff's allegation that he suffered severe emotional harm is his own self-serving testimony. This is insufficient under South Carolina law:

> In [Hansson v. Scalise Builders of S.C., 374 S.C. 352, 650 S.E.2d 68 (2007)], our supreme court found that the plaintiff's testimony he lost sleep and developed a habit of grinding his teeth was not sufficient to survive summary judgment:
>
> > To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something 'more'—in the form of third party witness testimony and other corroborating evidence—in order to make a prima facie showing of 'severe' emotional distress.
>
> 374 S.C. at 358–59, 650 S.E.2d at 72.
>
> Here, Levon Dunn testified that Respondents' actions caused him to develop high blood pressure and digestive problems. He also testified that his nerves were "shot" and that he took medication for his high blood pressure and nervousness. Pamela Dunn testified that she had been "emotionally ill" and that she had lost twenty pounds. Like in *Hansson*, we find this evidence, even when viewed in the light most favorable to the Dunns, is not sufficient to survive a motion for summary judgment.

See AJG Holdings, LLC v. Dunn, 392 S.C. 160, 169, 708 S.E.2d 218, 223-24 (Ct. App. 2011).

Therefore, for the foregoing reasons, this Court should grant Defendant's Motion for Summary Judgment as to Plaintiff's outrage claim.

C. The Conduct Alleged by Plaintiff May Not Serve as the Basis for an Outrage Claim, Because Another Tort Cause of Action Encompasses the Claim

In addition to the foregoing, Plaintiff's outrage claim fails because his remedy, if any, for MUSC's alleged misconduct in making false statements regarding him lies in a claim for defamation, not intentional infliction of emotional distress.

The South Carolina Court of Appeals has held that the tort of intentional infliction of emotional distress is not intended to cover conduct already potentially within the ambit of other causes of action. To the contrary, it was intended to apply, as a cause of action of last resort, where no potential remedy could exist for certain conduct:

> The tort of outrage was designed not as a replacement for the existing tort actions. Rather, it was conceived as a remedy for tortious conduct where no remedy previously existed. Here, an action for defamation, which is the usual remedy to be employed against one who has published falsehoods, is available to Todd.

See Todd v. South Carolina Farm Bur. Mut. Ins. Co., 283 S.C. 155, 173, 321 S.E.2d 602, 613 (Ct. App. 1984) (reversing jury verdict on outrage claim), *quashed in part on other grds.*, 287 S.C. 190, 336 S.E.2d 42 (1985), quoted in 11 S.C. Jur., *Damages* § 21; *accord* Levine v. Walterboro City Police Dep't, 2006 WL 2228993, at *2 (D.S.C. Aug. 3, 2006) ("Intentional infliction of emotional distress is a claim of last resort. In this context, plaintiff could have pursued a defamation claim against newspaper. Since that alternative remedy was available, Todd suggests that a claim for intentional infliction of emotional distress cannot lie.") (granting summary judgment) (attached hereto as Exhibit B).

Here, Plaintiff's intentional infliction of emotional distress claim centers around claims that MUSC made false statements about him in the medical records. Such claims are appropriately brought under a theory of defamation and should be adjudged within the rubric of that tort. The tort of outrage is not a panacea that Plaintiff can use to layer on theories of liability when other causes of action exist to conceivably redress his

alleged harm. If MUSC's conduct impermissibly harmed Plaintiff such that he is entitled to relief, he must assert that claim under the tort of defamation. If, as is the case here, he cannot prove the elements of that tort, he is simply not entitled to any recovery under the law. The tort of outrage is intended to provide relief in those rare circumstances where an existing cause of action cannot conceivably reach a defendant's conduct; that is not the case in the instant lawsuit.

Therefore, for the foregoing reasons, this Court should grant Defendant's Motion for Summary Judgment as to Plaintiff's outrage claim.

V. Plaintiff's Cause of Action for False Arrest and Imprisonment is Barred by the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-60(5)

Plaintiff's claim for false arrest and imprisonment is barred by the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-60(5). Subsection 15–78–60(5) of the South Carolina Code (2005) precludes liability by a governmental entity for a loss resulting from the exercise of discretion or judgment by a governmental employee, or the failure to perform any act or service that is in the discretion or judgment of the employee. See Horton v. City of Columbia, 408 S.C. 27, 757 S.E.2d 537 (Feb. 26, 2014).

Plaintiff's false arrest and imprisonment claim centers on the fact that once he was discharged from the Emergency Department at MUSC after being evaluated on June 21, 2012, he had to be escorted from the Emergency Department by MUSC Hospital Security and Public Safety because he refused to leave. Once outside of the hospital, Plaintiff continued to refuse to leave the premises. As Plaintiff correctly alleges in his Complaint, the Security Officers offered to take Plaintiff home, to Roper Hospital, or anywhere he wanted to go. In his deposition, Plaintiff testified that once outside of the hospital, MUSC Security told him that he was free to leave the premises. [Dep. J. Powell,

pp. 158-159]. He admitted that he did not leave the premises and was therefore arrested and convicted of trespass. Id.

The decision to arrest Plaintiff clearly falls within the scope of S.C. Code Ann. § 15-78-60(5) because it involved the exercise of discretion and judgment by government employees. Thus, Plaintiff's false arrest and imprisonment claims are barred by the Tort Claims Act and summary judgment is appropriate as a matter of law. In addition, because the arrest was lawful, summary judgment is appropriate as a matter of law. See Densmore v. City of Greenville, 2011 WL 11733107 (Ct. App. 2011)(unpublished).

The actions of MUSC in arresting Plaintiff clearly demonstrate the exercise of discretion or judgment by MUSC Public Safety and Hospital Security.

VI. Plaintiff's Cause of Action for Assault and Battery is likewise Barred

A cause of action for assault has two elements. First, it involves conduct on the part of the defendant that puts the victim in reasonable apprehension of a harmful or offensive touching. Second, the defendant must intend the conduct involved. See Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 222, 317 S.E.2d 748 (Ct. App. 1984). The circumstances of whether a sufficient threat has been made are viewed from the perspective of a "reasonable victim."

> There must be just and reasonable ground for the fear; hence a vain or idle threat is not sufficient. It must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear that the person against whom [the threat] is made was peculiarly susceptible to fear, and that the person making the threat knew or took advantage of the fact that he could not stand as much as an ordinary person.

See Brooker v. Silverthorne, 111 S.C. 553, 558-559, 99 S.E.350, 352 (1919); see also, Jones v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995).

Likewise, to establish a claim for civil battery, the Plaintiff must establish (1) a harmful or offensive touching without consent, and (2) an intent to commit the touching or to cause an apprehension of such touching. See 6 Am. Jur.2d Assault and Battery § 111 (1963). Any alleged touching is privileged if it was done in the defense of others. See State v. Hayes, 121 S.C. 163, 113 S.E. 362, 363 (1922).

Plaintiff bases his claim for assault and battery on the fact that MUSC removed him from the stretcher in the Emergency Department after he refused to leave the hospital once he was medically discharged and MUSC Security had to physically lift him into the police car once outside the hospital because he refused to leave the hospital premises. [Dep. J. Powell, pp. 162-163].

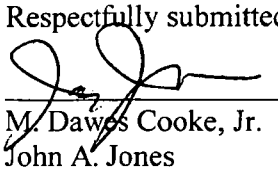
Plaintiff cannot establish a reasonable apprehension of a harmful or offensive touching or that a harmful or offensive touching occurred such that he suffered harm. See Incident Report. Plaintiff has admitted that his behavior in the ER was argumentative and combative toward the MUSC staff. [Dep. J. Powell, pp. 154-156; pp. 101-103]. Furthermore, he has admitted that he refused to leave the hospital and hospital premises even though he was medically discharged. Any action by MUSC to remove him from the premises was absolutely necessary and justified and should have been anticipated by Plaintiff.

CONCLUSION

Based on the foregoing, MUSC is entitled to summary judgment as to Plaintiff's assault and battery causes of action.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT MUSC

Charleston, South Carolina
July 16, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-10-5351

Jack Powell
PLAINTIFF(S)

Medical University of South Carolina
DEFENDANT(S)

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

FILED
2014 AUG -4 AM 11:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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.

X **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.

☐ **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: Court granted Defendant's Motion for summary Judgment. formal order to follow

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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.**

D. Garfield Jones

Circuit Court Judge

2060
Judge Code

7/31/14
Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10-5351

Jack Powell,

Plaintiff,

vs.

Medical University of South Carolina

Defendant,

MOTION FOR RECONSIDERATION

Plaintiff Pro Se; Jack Powell hereby enters this following Motion for Reconsideration to the Honorable Court. Plaintiff hereby enters, on 7-30-14 Judge Dennis ruled Dismissed concerning the Motion for Summary Judgment filed by the Medical University of South Carolina. Plaintiff was not allowed to enter Exhibits "A & "B" to prove false statements in Summary Judgment. Plaintiff states following reasons for the Motion for Reconsideration to be granted;

1. Pursuant Rule 56 (b) the Defendant knew at the time of filing their Motion it was improper because they knew the Plaintiff had ZERO Discovery which was also disclosed during the hearing and MSJ was not filed "30" days after completion of Discovery.

2. Because of Rule 56 (d) that there is a preponderance of undiscovered evidence concerning the MUSC procedures, protocols and actual Discharge laws that are unknown because of the Defendants intentional failure to respond properly. ESPECIALLY, considering the Charleston Police Department can't go onto MUSC property and arrest a Public Safety Officer for assaulting a patient.

3. The Motion was premature, 56 (f) because of the other proceedings; Compelled Interrogatories, Production and Evasive Admissions that were filed weeks before the Summary Judgment was added to the court schedule of 7-30-14. AND the Plaintiff did not have the proper amount of time to prepare a response since, according to the Clerks office, on 7-24-14 the MSJ case had not been added to the 7-30-14 schedule.

4. Because of Rule 56 (e) Pro Se had to appear in court to engage "15" Motions which was emotionally stressful even for an experienced attorney who has paralegals, access to law books, secretaries and financial security considering Pro Se filed under In Forma Pauperis. Many courts take extra care with Pro Se litigants, advising them of the need to respond and the risk of losing by Summary Judgment if an adequate response is not filed and the court may seek to reassure itself by some examination of the record before granting Summary Judgment that was scheduled last, just days before 7-30-14 . Plaintiff enters they did not assist him and he did not even know that he had to send a Response.

5. For the contempt displayed by Judge Dennis when exercising an inflammatory personal attack and insult of the In Forma Pauperis, Pro Se, Jack Powell by stating;

"I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of his defense because of the fear of being shut down again and scrutinized again in a public setting.

6. Because of Rule 56 (c) (2) (4), the Defendant entered, not supported by admissible evidence and is proven by documented fact as entered by Defendant Exhibits "A" & "B" that

Defendant had entered false statements and Plaintiff was not allowed to disclose to the court, these exhibits.

7. Because of Rule 56 (c) (3) unanswered 1st Production & 1st Interrogatories and Evasive Admit that may be considered for Summary Judgment defense that were requested "7" months earlier and were on the court schedule the same day as, Compelled.

8. Because of Rule 56 (c) (1) & Rule 6 (b) allows the court to extend the time to respond if the Motion seems premature. AGAIN, the Plaintiff states he had received Zero Discovery from Defendant, and Defendants own evidence entered into the MSJ opened the door to explore more relevant Discovery.

9. Because of Rule 56 (c) there is a Genuine Dispute of Material Fact.

10. Because the Plaintiff wasn't allowed to prove the Defendant failed to Admit the truth Pursuant RULE (36) by entering relevant Exhibits of the Defendants own hospital reports, Admit questions to Plaintiff during first "Dismissed" MUSC case, Public Safety and Security Guard official reports.

11. The Defendant should have not been allowed to enter to the court that the Plaintiff did not respond to their Motion, since it was originally not a Motion for non-response.

12. Because of the Plaintiff's confusion from the public insult he is now unsure if he had disclosed to the court that the Plaintiff had attended a "4" hour Deposition given by MUSC attorney's. The Plaintiff had the subject included in his last minute Summary Judgment.

THE FOLLOWING IS THE EVIDENCE THAT WAS PREPARED FOR 7-30-14

YOUR HONOR, TO BEGIN WITH THE DEFENDANT HAS ALL OF THE DISCOVERY THEY REQUESTED FROM ME AND THEY ALSO HAVE GIVEN ME A "4" HOUR DEPOSITION. I NOTIFIED THE DEFENDANT OF A DEPOSITON MONTHS AGO AND THE DEFENDANT HAS EVEN USED '11" QUESTIONS I ANSWERED DURING THEIR DEPOSITION, IN THIS MOTION. I HAVE ZERO DISCOVERY IN THIS CASE AND HAVE ASKED THE COURT TO COMPEL DISCOVERY, BUT I DO HAVE A PROPONDERANCE OF EVIDENCE DISCOVERD FROM THE FIRST MUSC CASE THAT CREATED THE NECESSITY OF MUSC TO EXPLAIN WHAT THEIR ACTUAL PROCEDURES AND RESPONSIBILITIES WERE ON 6-21-12.

YOUR HONOR, THE DEFENDANT HAS ENTERED A FALSE STATEMENT, IN THEIR MOTION. THIS RE-CREATION OF MY COMPLAINT ATTEMPTS TO IGNITE AN INFLAMMATORY OPINION TOWARDS ME AND ALSO TRIES TO CONCEAL MUSC'S ANGER.

SEE EXHIBIT "A"

YOUR HONOR, THE DEFENDANT STATED IN THEIR MOTION; WHEN TRANSPORT ARRIVED TO TAKE PLAINTIFF TO X-RAY. PLAINTIFF ASKED HOW LONG WOULD IT TAKE AND ASKED TO STAY IN THE ER TO WAIT FOR HIS PAIN MEDICATION RATHER THAN GO TO X-RAY. THE DOCTOR ASKED PLAINTIFF IF HE WAS SURE THAT HE WANTED TO STAY IN THE ER AND WAIT FOR HIS PAIN MEDICATION RATHER THAN GO TO THE X-RAY DEPARTMENT. PLAINTIFF REPLIED IN THE AFFIRMITIVE AND THEN TOLD THE DOCTOR THAT IS ABOUT THE STUPIDEST QUESTION A DOCTOR HAS EVER ASKED ME.

EXHIBIT "B"

NOW YOUR HONOR, THE DEFENDANT INTENTIONALLY LEFT OUT THE MOST IMPORTANT AND RELEVANT STATEMENTS. I STATED IN MY

COMPLAINT, WHEN THE TRANSPORT MAN PUSHED ME OUT OF THE ROOM AND I ASKED HIM WHERE ARE WE GOING AND HOW LONG WOULD IT TAKE BECAUSE I'M IN PAIN AND A PAIN SHOT IS ON THE WAY. AND HE SAID MAYBE A COUPLE OF HOURS AND WOULD YOU RATHER STAY AND WAIT FOR THE SHOT? I SAID YES, SO HE PUSHED ME BACK INTO THE ER. THEN A FEW MINUTES LATER THE DOCTOR COMES IN AND ASKED ME IF I HAD TOLD THE "UNKNOWN" MAN; THAT I WANTED TO STAY AND WAIT FOR MY PAIN SHOT, AND I SAID YES. "THEN" THE DOCTOR ASKED ARE YOU SURE YOU WANT TO WAIT FOR THE PAIN SHOT OR GO TO THE X-RAY DEPARTMENT. MR. POWELL WHO WAS HAVING SEVERE PAIN, UTTERED TO THE DOCTOR, THAT IS ABOUT THE STUPIDEST QUESTION A DOCTOR HAS EVER ASKED ME. THEN HE ROLLED HIS EYES AND LEFT.

YOUR HONOR, THE DEFENDANT HAS RE-CREATED THE WHOLE INCIDENT BY LEAVING OUT CRUCIAL EVIDENCE THAT EXPLAINS MY DISMAY OF THE REPEATED QUESTIONS OF A PAIN SHOT AND WHY I RESPONDED THE WAY I DID. THERE IS AN ATTEMPT TO BLAME ME, FOR ALL OF THE HOSTILE ATMOSPHERE.

EXHIBITS; "C" "D" "E"

YOUR HONOR, ALSO THE MANS NAME IS STILL UNKNOWN AND I HAVE QUESTIONS FOR HIM. I FIRST ATTEMPTED TO GET HIS NAME THROUGH A FREEDOM OF INFORMATION ACT THAT I SENT TO THE MUSC ATTORNEY ANNETTE DRACHEMAN. THE INFORMATION SHE GAVE ME WAS NOT TRUE AND DURING THE DEPOSITION I ATTENDED, I ASKED IF THEY COULD GET ME THE NAME OF THE TRANSPORT MAN AND THEY SAID YES BUT, THEY DID NOT FORWARD THE NAME AND THE PRODUCTION WITH VITAL PROCEDURES AND PROTOCALS.

SEE EXHIBIT "F"

YOUR HONOR, CONCERNING INTENTIONAL INFLICTION OF

EMOTIONAL DISTRESS AND ASSAULT AND BATTERY, IF YOU WILL LOOK AT PAGE "5" OF MY COMPLAINT, SECOND PARAGRAPH, I STATED THE MUSC SECURITY GUARDS ARE CALLED IN AND THE DOCTORS ALLOWS THEM TO TRY AND PULL MR. POWELL FROM THE BED. MR. POWELL IS YELLING BECAUSE OF THE PAIN INFLICTED UPON HIM AND THE SECURITY GUARDS STOP PULLING.

YOUR HONOR, ON EXHIBIT ' G " ADMIT no. '3" YOU WILL SEE WHERE I ASKED OFFICER RON MCKINNIE, WHY DID YOU STOP TRYING TO PULL MR. POWELL FROM THE TOP OF THE BED?

DEFENDANT ANSWERED, OFFICR MCKINNIE TRIED TO ASSIST PLAINTIFF INTO A SEATED POSITION ON THE BED IN ORDER TO ASSIST PLAINTIFF IN MOVING FROM THE BED TO THE WHEELCHAIR. OFFICER MCKINNIE STOPPED TRYING TO ASSIST PLAINTIFF FROM LYING TO A SEATED POSITION BECAUSE PLAINTIFF STATED; THAT HE WOULD NOT PUT ANYMORE PAIN ON HIMSELF FOR THE HOSPITAL.

YOUR HONOR, EXHIBIT "F" ON PAGE '5" OF MY COMPLAINT, AND THE SEVENTH SENTENCE, I STATED ; THEN THEY TRY AGAIN AND AGAIN THEY STOP TRYING TO PULL THE PLAINTIFF FROM THE ER BED BECAUSE OF THE YELLING FROM PAIN.

YOUR HONOR, PLEASE LOOK AT EXHIBIT " G " AGAIN,, ADMIT no. "7" THAT WAS PRESENTED TO THE, SAME OFFICER. RON MCKINNIE; DID YOU THINK IT WAS A GOOD IDEA TO TRY AND PULL THE INJURED MR. POWELL FROM THE BED, A SECOND TIME? AND HE ANSWERED THAT "NO ONE" ATTEMPTED TO PULL Mr. POWELL FROM THE BED AT ANYTIME. AFTER HE ALREADY ADMITTED TO DOING THIS ON ADMIT no. "3'.

YOUR HONOR, THE DEFENDANT AGAIN, ENTERED A FALSE STATEMENT TO CONCEAL THE FACT THAT THEY RECKLESSLY REPEATED OUTRAGOUS CONDUCT BY ATTEMPTING TO PULL ME FROM THE BED

WHICH WAS INTENTIONAL OFFENSIVE TOUCHING AND I HAVE A GENUINE RIGHT TO ASK HIM TO PROPERLY ANSWER THIS QUESTION DURING DISCOVERY. ALSO BE ABLE TO ASK THE DOCTOR WHY HE INTENTIONALLY FAILED TO ACKNOWLEGE MY OBVIOUS PAIN AND SUFFERING AND TO ALSO EXPLAIN THEIR PROCEDURES & PROTOCALS CONCERNING THIS MATTER. ESPECIALLY WHEN YOU CONSIDER, EXHIBIT "G" no. "2" DR. WATSON STATES MR. POWELL WAS NEVER PULLED FROM THE BED. ANOTHER FALSE STATEMENT AND THEN, ON EXHIBIT " I " THE SECURITY GUARD REPORT, STATED; WAS ASSISTING MR. POWELL BUT PATIENT BECAME AGITATED AND STATED HE WOULD SUE THE HOSPITAL. SECURITY ALSO STATED; THEN TOLD MR. POWELL HE HAD TO GO. MR. POWELL WAS ASSISTED TO THE WHEELCHAIR AND TAKEN TO CBS RAMP.
AND ON EXHIBIT " H " PARAGRAPH "2" SUSPECT WAS TAKEN FROM THE BED.

YOUR HONOR, EXHIBIT "I" STATES I WAS DISCHARGED AT 12:47 AM AND I RECEIVED OXEYCODENE AT 12:55 AM AND SECURITY ARRIVED AT 1:00 AM AND WERE ALLOWED TO START PULLING ON MY INJURED SHOULDER, NECK AND KNEE, ONLY ABOUT "5" TO "10' MINUTES AFTER I TOOK THE MEDICATION. WHICH ACCORDING TO EXHIBIT " J " THE DOCTOR'S INSTRUCTIONS STATED THAT IT COULD TAKE UP TO AN HOUR FOR THE MEDICATION TO TAKE AFFECT AND IT WOULD IMPAIR MY JUDGMENT, SLOW MY REACTION TIME, DON'T DO ANYTHING REQUIRING MENTAL ALERTNESS AND YOU SHOULD RETURN TO THE HOSPITAL IF THERE IS UNEXPECTED WORSENING OR A SIGNIFICANT CHANGE IN YOUR SYMPTOMS.

YOUR HONOR, I SUBMIT THAT THE EVIDENCE STIPULATES THERE WAS AN UNEXPECTED AND SIGNIFICANT WORSENING OF MY SYMPTOMS BECAUSE OF THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND ASSAULT AND BATTERY, AND AGAIN, THERE ARE UNKNOWN PROCEDURES THAT MUSC DID OR DIDN'T FOLLOW.

YOUR HONOR, ON EXHIBIT " K " no's, 8, 14 AND 9 CONCERNING FALE ARREST AND IMPRISONMENT, THE MUSC PUBLIC

SAFETY TOLD ME THEY WOULD GIVE ME A RIDE HOME, ANYWHERE I WANT TO GO OR ROPER HOSPITAL, AFTER I SAID I WOULD SUE.

YOUR HONOR, ON EXHIBIT "L" THE FOLLOWING IS WHAT THEY SAID WHEN WE GOT OUTSIDE.

ADMIT no. 9 ONCE WE GOT OUTSIDE OF THE HOSPITAL THE MUSC PUBLIC SAFETY OFFICERS INFORMED PLAINTIFF HE WAS FREE TO LEAVE THE PREMISES.

ADMIT no. 10 THEY ASKED THE PLAINTIFF TO LEAVE THE PREMISES.

ADMIT no. 11 PLAINTIFF TOLD THE MUSC PUBLIC SAFETY OFFICERS THAT HE COULD NOT GET UP, OUT OF THE WHEELCHAIR.

ADMIT no. 12 PLAINTIFF TOLD THE MUSC PUBLIC SAFETY OFFICERS THAT THEY WOULD HAVE TO HELP HIM OUT OF THE WHEELCHAIR.

YOUR HONOR, IF YOU WILL LOOK AGAIN AT EXHIBIT "H" PARAGRAPH "3" DUE TO HIM CONTINUING TO LOITER ABOUT THE PREMISES, HE WAS CHARGED.

YOUR HONOR, THERE'S ONE RELEVANT ELEMENT MISSING. THERES NOT ONE STATEMENT, FROM ANY OFFICER, STATING THEY WHEELED ME TO SIDE OF THE PATROL CAR AND OPENED THE DOOR, SO I COULD GET IN AND GO FREELY, JUST LIKE ANY ONE ELSE THAT IS DISCHARGED, NOT UNDER ARREST AND LEAVING IN A WHEELCHAIR.

YOUR HONOR, THIS IS INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FALSE ARREST AND IMPRISONMENT.

YOUR HONOR, PLEASE LOOK AGAIN AT EXHIBIT "H" PARAGRAPH "3", RIGHT AFTER LOITERED ABOUT THE PREMISE. THE PUBLIC SAFETY HANDCUFFED ME IN THE FRONT, BECAUSE OF MY MEDICAL

ISSUES AND THEN THEY DROVE TO THEIR OFFICE AND LEFT ME IN THE BACK SEAT OF THEIR CAR FOR "34" MINUTES ALONE IN THEIR PARKING LOT. WHICH WAS INTENTIONAL, RIGHT AFTER THE OFFICERS MADE A MEDICAL DECISION AND THEN IGNORE THE OBVIOUS MEDICAL ISSUES BECAUSE OF ANGER WHICH TURNED INTO INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND GROSS NEGLIGENCE.

YOUR HONOR, I HAD ASKED FOR A SECOND OPINION WHICH IS VERIFIED BY DOCTOR REPORT, EXHIBIT " M " HE AND THE OFFICERS DID NOT FULFILL THIS REQUEST AND IGNORED PROPER PROCEDURES TO TAKE ME TO ROPER HOSPITAL, ALSO AGAIN DECIDED BY OFFICERS, WHO ARE NOT MEDICAL EXPERTS.

YOUR HONOR, PLEASE LOOK AT EXHIBIT "N" no. "5" WHEN SECURITY GUARD RON MCKINNIE IS ASKED A QUESTION ABOUT COMBATIVE, DEFENDANT DID NOT ANSWER THE QUESTION, BY STATING THIS INVOLVES THE EXERCISE OF CLINICAL JUDGEMENT. I ENTER, HOW CAN THE PUBLIC SAFETY HANDCUFF ME IN THE FRONT BECAUSE OF MY MEDICAL ISSUES BUT NOT BE ABLE TO ANSWER A QUESTION ABOUT COMBATIVE WHICH IS AN ELEMENT IN THEIR LINE OF WORK, SECURITY GUARD. THEN AFTER I WAS COMPLAINING OF PAIN BEABLE TO DETERMINE IT'S OK FOR ME TO LAY IN THE BACK SEAT ALONE, FOR "34" MINUTES.

YOUR HONOR, I REQUEST THIS MOTION TO BE DENIED BECAUSE OF THE FALSE STATEMENTS. BECAUSE THERE IS A GENUINE ISSUE OF FACT AND THE NEED FOR THE FURTHERANCE OF JUSTICE.

DATED & SIGNED ON 8-8-14 Jack Powell

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2013-CP-10-5351
JACK POWELL,	)	
	)	
Plaintiff,	)	**Defendant's Supplemental Memorandum in Support of Motion for Summary Judgment**
	)	
vs.	)	
	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC),	)	
	)	
Defendant.	)	

Background

This Court requested that MUSC Public Safety brief whether a person could trespass on public property. As further explained below, though the general rule is that a person cannot trespass on public property, a separate statute criminalizes trespass on public property when a person refuses to leave such public property when it is typically closed.

I. Trespass can occur on public property when a trespassor refuses to leave public property when that public property is regularly closed to the public.

Powell trespassed on the Medical Center's grounds because he refused to leave the medical center's grounds outside of normal business hours. Under S.C. Code Ann. § 16-11-620, a person cannot trespass on public property. See State v. Hanapole, 255 S.C. 258, 268 (1970). However, a separate statute provides that a person can trespass on public property if that person refuses to leave public property outside of its normal business hours:

> Any person who, during those hours of the day or night when the premises owned or occupied by a state, county or municipal agency are regularly closed to the public, shall refuse or fail, without justifiable cause, to leave

> those premises upon being requested to do so by a law-enforcement officer or guard, watchman or custodian responsible for the security or care of the premises, shall be deemed guilty of a misdemeanor and upon conviction, be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

S.C. Code. Ann. § 16-11-630. Unlike section 16-11-620, section 16-11-630 expressly criminalizes trespassing on public property. Id. Where a more specific trespassing statute applies, courts should not apply the general trespassing statute. See In re Joseph B., 278 S.C. 502 (1983) (holding that the school trespassing statute should apply where the defendant allegedly trespassed on a school grounds rather than the general trespassing statute).

Here, the Medical Center is generally open to the public from 6:00 AM to 6:00 PM. See MUSC Medical Center Policy Manual, § EC-15, ¶ F (attached as Ex. A)[1]. After 6:00 PM, MUSC public safety officers are instructed to patrol the Medical Center grounds, ensure that entrances and exits are locked, and control who accesses sensitive areas (including the Emergency Department). Id. As established at trial, Powell refused to leave the Emergency Department after being disruptive and verbally abusive toward the staff and physicians, and after being medically discharged from the Emergency Department. Public Safety was called as a precautionary measure pursuant to hospital policy. Once Powell left the Emergency Department, he had no legitimate reason to be on the Medical Center grounds after normally operating hours. He was asked to leave several times, and was even offered transportation to his home, another hospital, or other destination of his choice. Powell declined to accept the offers, and refused to leave the premises. As a result, MUSC public safety properly arrested him for trespass under S.C.

[1] While this is the current policy in place, the hours of operation were the same in June of 2012 when Powell's trespass occurred.

Code Ann. § 16-11-630 for refusing to leave public property outside of regular business hours.

Conclusion

While a person normally cannot trespass on public property, trespass can occur on public property when one refuses to leave public property when that property is normally closed to the public. Jack Powell was medically discharged from the care of the MUSC Emergency Department and refused to leave the Medical Center's grounds after normally operating hours. As a result, Powell trespassed on the MUSC's premises and this Court should affirm his conviction.

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ATTORNEYS FOR DEFENDANT MUSC

Charleston, South Carolina
November 6, 2014

Exhibit A

MUSC Health

MUSC Medical Center
Policy Manual

Section	No	Title		
EC-15	A-052	**Medical Center-Wide Security**		
Owner:		**Safety & Security Director**		
Location/File:		**N:\Hospital_Admin\Policies\Admin Policies\A-052 MC Security**		
Date Implemented: 05/87		**Reviewed:** 02/04	**Revised:** 12/95, 07/97, 07/99, 09/03, 08/06, 07/09, 08/12	**Effective Date:** 09/14/12

Policy:

Provides an outline of the Medical Center-wide security responsibilities and activities. It is the policy of the MUSC Medical Center that all staff are familiar with the security responsibilities and procedures.

Procedure:

A. Security is a responsibility of all employees of the Medical Center

1. **Responsibilities of Medical Center Staff:**
   a. Know who should legitimately be in their work area.
   b. Request all employees display their identification badge.
   c. Secure offices not in use, utilize lockers and locking desks.
   d. Observe and report suspicious activities or persons.
   e. Direct any individual without visible form of identification to appropriate place to obtain a visitor pass. Notify Security immediately when a person is observed not wearing identification and acts suspicious or who does not have an appropriate destination.

2. **Responsibilities of the Medical Center Security Manager** include tracking and reporting security incidents involving personnel, visitors or patients to the Safety Committee (Environment of Care Committee) at least every other month.

3. **Medical Center Security personnel responsibilities** include the following:
   a. Building and entrance patrol.
   b. Facility access, including locking, unlocking and restricting traffic at various times.
   c. CCTV systems monitoring and response.
   d. Staff assistance with patient restraint and intervention in disruptions by patients, visitors, or staff.
   e. Record keeping and incident reports.

4. **MUSC Public Safety responsibilities** include:
   a. Escort services for visitors and staff as requested.
   b. Investigation of thefts, disturbances, criminal activity.
   c. Other assistance as requested.

B. **Safety and Security personnel training** must meet state and local requirements. All Security personnel shall receive security training.

C. **Package Inspection**: All packages are subject to inspection by Security.
1. Safety and Security Officers are instructed to inspect packages and large handbags brought into or carried out of the Medical Center by employees or visitors.
2. Refusal by employees to cooperate will be reported to the appropriate supervisor for disciplinary action.
3. Refusal by visitors will result in revocation of visiting privilege.
4. Medical Center equipment being removed from the Medical Center requires approval from the respective Department Supervisor. A signed property form must accompany any property removed from the premises.

D. **Patient Room Search:** A patient's room may be searched with or without the patient's consent if an exceptional situation arises that might cause danger to the patient, visitors, or employees (i.e., illegal items such as drugs, alcohol, or weapons hidden in the room).
1. The physician on-call and Nurse Manager/Hospital Supervisors on duty should first determine whether there is a reasonable cause to believe a search is necessary for medical or safety reasons.
2. A Safety & Security Officer along with at least one of the persons listed in item #1 - above (or designee) should conduct the search.
3. Personal property collected during a room search should be inventoried and returned to the patient upon discharge from the hospital. Should contraband or illicit property be found, regulatory or law enforcement authorities will be consulted when deemed appropriate. (Institute of Psychiatry (IOP) will conduct searches according to regulatory requirements and IOP policy.)

   Note: Patients on suicide precautions will have a room search conducted by the attending nurse and a security officer upon initiation of suicide precautions orders and at any time while suicide precautions are in place if the attending nurse and/or attending physician have reasonable cause for concern of the patient's safety.

E. **Lost and Found Services**
1. All persons finding personal property on Medical Center property should contact Security at the earliest opportunity and make arrangements to relinquish such property.
2. Lost and found items should be turned in at the North Tower Security Desk, located at the North Tower entrance.
3. Every reasonable effort will be made by Medical Center Safety and Security to locate the owner and return lost items to the owner.
4. Persons attempting to claim lost items must describe the property and provide proper identification to the satisfaction of the Medical Center Safety and Security Officer.

F. **Special Security Needs – Access Control** will be addressed for the following areas:

1. Providing access control as appropriate to sensitive areas such as:
   a. Emergency Department
   b. Newborn Nurseries
   c. Obstetrics
   d. Special Care Units
   e. Pharmacies
   f. Institute of Psychiatry
   g. Prisoners' Rooms
   h. ICU's
   i. Children's Hospital Patient Care Areas
   j. Human Resources Employment/Benefit office
   k. Pain Management Clinic (RT 9th Floor)

2. Access to the Medical Center between 6:00 p.m. and 6:00 a.m. shall be limited via the card access system.
   a. It is the responsibility of the on-duty Security Coordinator to ensure entrances and exits are locked and reopened as scheduled.
   b. Limited access to the hospitals is maintained through the North Tower entrance. Access to the IOP is via the President Street entrance and Rutledge Tower is via the north entrance.
   c. Entrance and exit from the Medical Center complex is regulated by restricted use of designated doors only.
   d. After normal working hours, on weekends and holidays, persons will use the North Tower entrance. Access to the IOP is via the President Street entrance and Rutledge Tower is via the north entrance.
   e. The remaining doors will be locked at 6:00 p.m. An alarm will sound if these doors are used as exits.
   f. Medical Center areas not in use during evening and night hours, weekends and holidays will remain locked. A Medical Center Safety and Security Officer must check these areas.
   g. For additional security, employees are encouraged to notify Security when working after normal working hours by calling ext. 2-4196.
   h. All Medical Center areas not in use during evening and night hours, weekend and holidays will remain locked. A Medical Center Safety and Security Officer must check these areas.
   i. Safety and Security Officers will keep the Emergency Department parking lot clear for authorized vehicles only and will patrol Emergency Department parking and ambulance receiving areas as part of regular hospital rounds during evening and night shifts. Safety and Security Officers will be available for traffic control and will attempt to clear the area of any infractions. When necessary, Public Safety will be contacted for assistance.

G. **Prisoner Security**

1. Notice will be sent annually to all Department of Corrections facilities using the Medical Center. Notices must provide detailed information on Medical Center Prisoner policy.

2. Anytime a prisoner is treated, an unarmed officer will be in the treatment room for protection of the staff. When an officer provides assistance to medical staff for a prisoner or deals directly with a prisoner (e.g., removing, replacing restraints)

his/her weapon must be secured in the weapon box provided by the treatment facility. If more than one escort is required by host prison or jail system, an armed officer will be immediately available. This policy applies to all escorted persons, both on an inpatient and outpatient basis.

3. Escorts must remain with prisoners at all times. Assigned law enforcement or corrections agency officers are responsible for the safety of prisoners.
   a. Assigned law enforcement or corrections agency officers are to remain within the prisoner's room. In intensive care units, the officer may sit outside the door of the prisoner's room.
   b. Officers are to leave prisoner's rooms only when relieved or at the request of the physician or other appropriate health care provider. Exceptions to the rule that officers must remain in patient's room must be evaluated by Medical Center Security Manager and approved by Hospital Administration.
   c. If the officer on duty is requested to leave the room, the officer will maintain visual contact with the prisoner at a sufficient distance to preclude escape attempts.
   d. If the door must be closed or bed curtains drawn, the officer will assume a position that will prevent the prisoner's escape.
   e. The officer will reenter the room at the departure or request of the physician or health care provider.
   f. If an inpatient prisoner goes to the operating room, the officer will remain in the room until the patient is anesthetized, then wait outside the operating room. When the prisoner is transferred to the recovery room, the officer will accompany and remain with the prisoner.
   g. Precautions will be taken to make sure any potentially dangerous instruments or equipment remain inaccessible to the prisoner.
   h. No visitors shall be allowed in the room of the inpatient prisoner except those authorized by the custodial agency.
      1) Officers escorting prisoners in the Medical Center will be provided identification badges with information on emergency actions to be taken as necessary while within the Medical Center. Additionally, the on duty Security Coordinator will brief escorting officers of Medical Center policies and procedures regarding prisoners.
      2) Prisoners being escorted will be restrained as required by the custodial agency. Prisoners in restraints should be seated in a wheelchair and restraints covered with a sheet.
      3) Inpatient prisoners must be secured to the bed to preclude escape attempts, unless directed otherwise by the attending physician.

H. **Key Control:** A uniform access system is required to effectively safeguard equipment, supplies, medications, and personnel files and associated hospital records.
   1. Employees will have access to a key(s) or an identification card – appropriately programmed for necessary, specific department areas.
      a. Key/card access request approvals are required by the responsible Director/Manager or designee. Keys are issued on an individual basis. Duplicate or multiple rooms/departments keys must not be issued to the same person.
      b. Final approval for key/card access request is processed by the Safety & Security Department after approval from the appropriate Director or Manager.

c. Department Directors are responsible for all key/card access issued to their departments.
d. University Lock Shop makes keys and provides keys to Safety & Security for distribution. The person receiving the key must sign for it upon receipt.
e. University Lock Shop maintains an accurate account of keys. MUHA Safety & Security maintains card access accountability.
    1) Key access must be accounted for and inventoried during change of responsible Director/Manager and/or designee.
    2) In the event of lost keys, notify the supervisor, who will immediately notify Safety & Security at 792-4196 to initiate an investigation to determine the cause of the loss.
        a) If determined the loss is due to negligence, disciplinary action will be taken in accordance with Human Resources policy.
        b) A new request form will be completed and a copy of the investigation report will be forwarded to the appropriate Director.
        c) Once authorized, a replacement key/card access may be issued.
        d) Found keys should be returned to an appropriate Security Desk.
f. When keys are no longer required by an employee (or upon termination or resignation) the Department Director is responsible for retrieving keys and returning them to Security.
g. The use of padlocks and hasps is prohibited, except for personal type locks or situations specifically authorized by the responsible Administrator.

I. **Identification**

1. All employees, staff or other persons doing business in or around the Medical Center will wear identification badges issued by MUSC. This will include but is not limited to contractors and vendors.
2. Inpatients shall wear identification bands during their entire stay. All patients in Ambulatory Care areas receiving blood transfusions, surgical procedures requiring sedation, or whose cognitive abilities may be compromised must wear an identification band.
3. On arrival, visitors should check at the information desk or nursing unit to learn if any restrictions apply to the patient they wish to visit. *Children's Hospital, ICU's, PACU and IOP may have additional visitation guidelines, based on patient needs.*
4. All visitors should obtain a guest badge upon entrance to the hospital and wear it at all times.
5. Visitors to the Institute of Psychiatry must obtain visitor passes from the Security Desk located at the President Street entrance at all times.

J. **Staff must be aware of suspicious activities.** Suspicious, threatening, harassing events must be reported immediately to Public Safety (ext. 2-4196) and appropriate supervisor. Supply details as possible and follow directions of Public Safety.

Events may include but are not limited to:
1. **Telephone Threats**

Whenever a threat of any type is received via phone, attempt to get the caller to identify him/herself. Attempt to determine why the threat is being made. Write all pertinent information down. Keep the caller on the line as long as possible. Ask him/her to repeat the message. Record every word spoken by the person. If the caller indicates the possibility of a bomb, attempt to identify the time of possible detonation. You should ask him/her for this information. Inform the caller that the building is occupied and detonation of a bomb could result in death or serious injury to many innocent people. Be alert for distinguishing background noises; such as traffic, music, voices, aircraft, church bells, etc. Note distinguishing voice characteristic (sex, voice quality, impediment). Note if caller indicates knowledge of the MUSC Medical Center by his/her description of locations. Lead him/her on; kill time; learn if he/she is at all knowledgeable of the Medical Center.

2. **Written Threats**
Whenever a written threat is received, the person receiving the threat shall refrain from handling the item as much as possible. If the threat is contained in an envelope, the letter and envelope shall be handled by touching the outer edges of the document only to prevent destroying physical evidence. Attempt to place the written threat into a large envelope.

3. **Letter Bombs**
Explosive devices are divided into three classifications (timed or delayed-action devices, manual or anti-disturbance devices, remote-controlled devices). Letter texture may feel rigid, look uneven or lopsided, or feel bulkier than normal. Excessive amounts of postage may be present – often far more than needed. Sender is unknown or there is no return address. Handwritten notes appear such as "Rush," "Personal," "Private," and so forth. Addressee normally does not receive mail at the office. Cut or pasted homemade labels are used for lettering. The letter or package may emit an odor or appear to have been disassembled and re-glued. Distorted or foreign writing is present. Resistance or even pressure is felt when trying to remove contents from package. Several combinations of tape are used to secure the package. Contents of parcel may slosh or sound like liquid; some packages may emit a buzzing sound.

4. **Suspicious Package**
Do not open the item. Do not panic. Isolate the letter, parcel, or package. Never move the item. Everyone should be asked to leave the area quickly. Secure the area. The package should be observed from a safe distance until emergency personnel arrive.

K. **Violence Prevention, Reporting, Investigation, and Resolution**

1. The safety and security of Medical Center personnel, patients, and visitors is of vital importance. Acts, threats, or allegations of physical violence, including intimidation, harassment, or coercion, which occur on Medical Center property will not be tolerated. This prohibition against threats or acts of violence applies to all persons involved, including but not limited to Medical Center personnel, contract and temporary employees, patients, and visitors. Violations of this policy by any individual on Medical Center property is considered misconduct and will lead to disciplinary and/or legal action as appropriate.

2. Violence Prevention: Workplace violence prevention (WPVP) is the responsibility of all Medical Center personnel. Knowledge of or suspicion of any anticipated violent act should be reported immediately to Security. Security may request completion of the Confidential Violence Prevention Assistance Notification form (See Appendix 1).

3. Violent Incident Reporting, Investigation, and Resolution: All acts of violence, whether alleged or observed, are to be reported immediately to Security. Security will provide the confidential Medical Center Violent Incident Report form (See Appendix 2) for completion.
    a. Violence Toward Patients: Security will be notified and the Medical Center Violent Incident Report form will be completed. Reports involving abuse of patients will immediately be made known to the appropriate manager, division director, and MUHA Risk Management. Reports involving abuse of a patient by an employee will also be reported to the appropriate Human Resources office. Acts considered to be criminal will be reported to Public Safety.

        As soon as possible, the patient should be separated from the alleged assailant.
        1) The patient will have a complete physical examination performed as soon as possible.
        2) All entities will work together to investigate the situation and provide rapid resolution.
        3) The patient's medical record will reflect brief documentation of the incident and its resolution.
        4) The patient and or his/her legal guardian will be kept informed of the progress of an ongoing investigation, and the resolution of the issue, as appropriate.

    b. Violence Toward Employees (WPVP): Security will be notified and the Medical Center Violent Incident Report form will be completed. Reports involving abuse of employees by patients, visitors, or other employees will immediately be made known to the appropriate manager, division director, and MUHA Risk Management. Reports involving abuse of an employee by another employee will also be reported to the appropriate Human Resources office. Acts considered to be criminal will be reported to Public Safety.

        As soon as possible, the employee should be separated from the alleged assailant. All entities will work together to investigate the situation and provide rapid resolution. If a patient is the alleged assailant, the patient's medical record will reflect brief documentation of the incident and its resolution. The employee will be kept informed of the progress of an ongoing investigation, and the resolution of the issue.

    c. ViolenceToward Visitors: Security will be notified and the Medical Center Violent Incident Report form will be completed. Reports involving abuse of visitors by patients, employees or other visitors will immediately be made known to the appropriate manager, division director, and MUHA Risk Management. Reports involving abuse of a visitor by an employee will also be reported to the appropriate Human Resources office. Acts considered to be criminal will be reported to Public Safety.

        As soon as possible, the visitor should be separated from the alleged assailant. All entities will work together to investigate the situation and provide rapid resolution. If a patient is the alleged assailant, the patient's medical record will reflect brief documentation of the incident and its resolution. The visitor will be

kept informed of the progress of an ongoing investigation, and the resolution of the issue.

L. Weapons brought into MUSC Medical Center

1. Weapon is defined as any firearm, knife, or device that could cause bodily harm or injury.
2. Except as allowed by law, weapons are never permitted on MUSC Medical Center property. Visitors not complying with this regulation will be denied access to the Medical Center.
3. Patients who present for admission with a weapon, the weapon will be sent home with a family member, if possible. Patients being admitted through the Emergency Department or arriving at the Medical Center without a family member will have their weapon confiscated and stored at Public Safety until discharge.

Appendices:
Appendix 1 - Confidential Violence Prevention Assistance Notification
Appendix 2 - Violent Incident Report

Approvals:

As Required	Date
List Hospital Committee(s): EOC	07/12
Ethics Committee	
Accreditation Review	09/12
Legal Review	09/12
Administration/Operations	09/12
Medical Staff Executive Committee	
Governing Body	

Distribution:

Policy Applies to: All	Physicians (Y/N):	Nursing (Y/N):
	Other Clinical Staff (Specify):	Other Staff (Specify):
Educational Plan	Policy Site	
Required Competencies		

Appendix 1

MUSC MEDICAL CENTER

Confidential Violence Prevention Assistance Notification

Requested by: _____

Department: _____ Phone #: _____

Has supervisor been notified? Yes No Name: _____

Date: _____

Location Assistance Needed: _____

Assistance: Briefly Explain (give dates, findings and nature of request). _____

Appendix 2

MUSC MEDICAL CENTER
Violent Incident Report

A reportable violent incident should be defined as any threatening or overt act of physical violence against a person (s) or property whether reported or observed.

Please put additional comments, according to number section, on reverse side of form.

Return to: MUSC Medical Center Security Department

1. Date: _____ Day of Week: _____
2. Time: _____ Assailant: Female Male
   Specific Location: _____
3. Violence Directed toward: ___Patient ___ Staff ___ Visitor ___ Other
   Assailant ___Patient ___ Staff ___ Visitor ___ Other

   Assailant's Name: _____
   Assailant: ___ Unarmed ___ Armed Weapon _____
4. Predisposing factors: ___ Intoxication ___ Dissatisfied with care/Waiting time
   ___ Grief Reaction ___Prior History of Violence
   ___ Gang Related ___ Other (Describe)
   _____
5. Description of Incident: ___ Physical abuse ___ Verbal abuse ___ Other
6. Injuries: ___ Yes ___ No
7. Extent of Injuries: _____
8. Detailed description of incident:
9. Did any person leave the area because of the incident? ___ Yes ___ No ___ Unable to determine
10. Present at time of incident: ___ Medical Center Security Officer ___ Public Safety Officer
11. Needed to call: ___ Medical Center Security Officer ___ Public Safety Officer
12. Termination of incident: Incident defused ___ Yes ___ No Public Safety notified ___ Yes ___ No
    Assailant arrested ___ Yes ___ No
13. Disposition of assailant: ___ Stayed on premises ___ Escorted off premises ___ Left on own
    Other: _____
14. Restraints used: ___ Yes ___ No Type: _____
15. Report completed by: _____
    Title: _____
    Department: _____
    Phone Number: _____

160

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Jack Powell,
Plaintiff,
vs.

C/A NO.: 2013-CP-10-5351

Plaintiff's
Motion to Recuse
Judge Dennis
For Cause

Medical University of South Carolina
Defendant.

FILED
2015 MAY -6 PM 3:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pro Se; Plaintiff Jack Powell moves to Recuse the Honorable Judge Dennis for engaging a biased and prejudiced attitude towards the Pro se, demonstrated with the following biased rulings and a personal insult by Judge Dennis.

Therefore requesting to cease all overseeing or ruling in any of the above cases including any previous and future Motions including Reconsiderations or Request to Proceed In forma Pauperis. Pro se request the matters to be heard by a Judge other than Judge Dennis pursuant to the doctrine of Johnson v. District Court, 674 P.2d 952 (1984).

On April 1st 2015 at 12:00 p.m., while in the hallway before meeting in Judge Dennis's chambers for a discussion about a trial date. Defendant Attorney Ben Davis had stated that he had put his Memorandum for MSJ in the mail that morning. Plaintiff was only notified of this because he had questioned, what happened to your Memorandum? Plaintiff asked how can I Respond in time when we are going to be in court in the morning at 9:30 and Mr. Davis responded with (shrugged shoulders). A few minutes later I told Judge Dennis about this and he said that it's no big deal because it's just the same issues.

Plaintiff appeared on 7-30-14 before Judge Dennis and he granted Summary Judgment for MUSC because the Plaintiff had not Responded to their Memorandum for Summary Judgment and this was in fact a big deal to Judge Dennis and it was a big deal to

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the Plaintiff because Knology entered different and new evidence in their behalf. The Plaintiff wasn't prepared to defend this tactic because of the ongoing evasive and improper Discovery responses by the Defendant.

On April 2nd 2015 before the Plaintiff's 2nd Motion for Summary Judgment Judge Dennis explains during a Motion to Compel Discovery, that he was going to make some rulings that will shake up Columbia concerning the failure to respond to Discovery, that ties up the Court. Judge Dennis also stated Attorney's receiving Motions on the same day of a hearing was improper and the Plaintiff again states the Memorandum being mailed the day before is also improper.

Then Plaintiff appeared before Judge Dennis concerning my Request for 2nd Motion for Summary Judgment against Knology and Plaintiff explained that the reason that I was denied my 1st SJ was because at the last minute the Defendant stated I hadn't proved 100% they owned the lines was because they haven't properly answered the Discovery and the Supplemental Admit and Production was supposed to be returned before this hearing.

Also the Plaintiff had submitted in his Motion for 2nd Summary Judgment that he had stated to Judge Jefferson that the Defendant did not Respond to his Memorandum and she did not enter a ruling about this non-response and Judge Dennis erred and exercised bias because he did not evoke his same ruling about non-response to the Memorandums. Then Judge Dennis ruled with bias and denied my Motion after ignoring his own statements and Rulings concerning Discovery and Response to Memorandums.

The next case during the Knology MSJ motioned by the Defendant, Judge Dennis asked the Defendant if the cable lines belong to Knology and they responded yes, then Judge Dennis stated that is an issue. Plaintiff had stated multiple times the Defendant has

not returned the Discovery and the Supplemental Admit and Production and Judge Dennis stated that I needed to Compel them and stated I already have in your court on 7-30-14. Then Dennis responded very firmly you need to be careful about what you say in my court and then said he will check and he did. I then stated I have here a document from Mr. Davis where he reminded me that you stated for me to send them Supplemental Discovery, which I did. Judge Dennis stated that I needed to supplement with a few specific Requests and I said there were only a few request made and were supposed to have already been returned. He looked at the Supplemental which included;

#6. All documents concerning Lee Endicott at your Charleston Center who agreed to pay Mr. Powell in front of his wife his Doctor bills and was told he would have to wait several weeks to receive the check.

Plaintiff submitted to Judge Dennis that the documents concerning Knology's manager Lee Endicott weren't produced and Plaintiff and his wife contacted their manager and offered Jack Powell $2,900 for his Doctor bills which proves liability and ownership of the unburied cable lines and the next day the cable lines had been removed.

Then Judge Dennis asked if I had an affidavit concerning this matter and I said no because I was unaware the court would not believe this occurred and the Plaintiff had submitted multiple times the Defendant had not properly responded to Discovery and they were supposed to have already returned the Supplemental Request . Also, the Defendant didn't return the documents, but stated in their Response "the amount was in controversy " that proves this happened and if the Plaintiff had been allowed to Respond to their Memorandum, Judge Dennis would have had the evidence in his hand.

Dennis ruled with bias when requiring the Plaintiff to prove this visit occurred and

the cable lines had been removed when Judge Dennis should have submitted his shaking up Columbia by at least making the proper ruling by requiring the Defendant to produce the Supplemental Requested Discovery which he had in his hand right before he asked the Plaintiff if he had an affidavit concerning this visit which is still unanswered.

#6. All documents concerning Lee Endicott at your Charleston Center who agreed to pay Mr. Powell, in front of his wife his doctor bills and was told he would have to wait several weeks to receive the check.

or

#11. Documents stating dates when Knology or Sub-contractor came to the property at 930 Folly Rd. to bury, repair or remove the "2" unburied cable lines after 6-21-12.

or

#10. ADMIT; after Knology or sub-contractor was notified about the trip and fall injury of Mr. Powell, the cable lines were removed.

or

#15. ADMIT; the cable lines your technician or sub-contractor removed from 930 Folly Road after 6-21-12 belonged to Knology

Judge Dennis erred when he ruled with bias towards the Pro se because of the ongoing, relevant issues that are still in question and unanswered. Judge Dennis also exercised an obvious pattern of contempt by denying the In forma Pauperis litigant to re-file a Complaint that was approved by him originally and later he improperly dismissed. Judge Dennis denied the Plaintiff to proceed after the basically same financial information was submitted.

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Matter Number; 15-DE-J-0069

THIS COMPLAINT MADE TO SOUTH CAROLINA DISCIPLINARY BOARD

I Pro se, Jack Powell submit this complaint against Judge Dennis for making a biased and improper ruling when denying my Constitutional right as an indigent to access the courts to re-file a lawsuit against two companies he previously approved me for In forma Pauperis.

HISTORY

1. On 1-23-15 I re-filed one lawsuit against the Folly Oaks Center; Case #2014-CP-10-3819 and the Marshland Communities LLC., Case #2013-CP-10-5876. Judge Dennis previously approved me for In forma Pauperis in both of these suits, that he himself dismissed recently after denying me the right to enter any evidence in my behalf.

2. On 2-26-15 I called Judge Dennis's office to acquire why he had not ruled on my application for In forma Pauperis, which is usually done within a week.

3. On 3-6-15 I received a call that my application was denied about six weeks after my application was submitted.

4. Judge Dennis previously approved these cases for Pro se, In forma Pauperis Jack Powell with basically the same financial information submitted;

MUSC; Case #2013-CP-10-5351
Carolina Center for Occupational Health LLC.; Case #2013-CP-10-6567
Charleston County Detention Center; Case #2013-CP-10-7125
Charleston County Detention Center; Case #2014-CP-10-1561
Knology of Charleston Inc.; Case #2013-CP-10-6019
Charleston County EMS; Case #2013-CP-10-6566
Marshland Communities LLC.; Case #2013-CP-10-5876
Folly Oaks Center Condominium Unit Owners Association Inc.; #2014-CP-10-3819

EVENTS THAT INFLUENCED THE PATTERN OF BIASED CONDUCT, BEGINNING ON 7-30-14

1. I had been scheduled by the Clerks office to appear with 15 various motions which were mostly compel a response for discovery. I did not know after giving these Defendants 30 days to answer and then having to send them a 10 day notice to answer or I would compel them to court to answer, that I still had to call and basically beg these attorney's to respond properly. Of course during the first case Judge Dennis asked me if I had called them and I said no so he told me to go out in the hallway with all the Defendant's to make arrangements for them to send me my requested discovery.

Later that day during my compel for evasive answers against a local entity, I responded to an answer given by the Defendant which was I have proof right here this was an untruthful answer and Judge Dennis basically stated well, that's their answer which is an improper ruling considering the basis for the hearing. (I'm basically giving you this event from memory which may not be 100% accurate since I can't afford to buy

transcripts of the hearings.)

I did snicker or make a low noise of unbelief after he said this, considering the way he had already treated me that day. What I remember is he angrily asked me if I was laughing at the court and I said no and after I apologized to Judge Dennis he made an inflammatory and insulting remark about and to me which was "I'm laughing at you too" which he was referring to everyone in the court room and caused embarrassment, confusion and apprehension to attempt any furthering of my case because of being shut down and embarrassed again in a public setting.

2. During case 2013-CP-10-5351, Pro se Motion for Reconsideration where he entered the contempt by Judge Dennis. Also, Judge Dennis continued his biased conduct when he improperly cut Jack Powell off and granted Summary Judgment after I began with I had received zero Discovery so far in this case and MUSC attorney Jay Jones had entered an untruthful statement in his Supplemental Motion for Summary Judgment.

Case # 2013-CP-10-5351 stating; I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of my case because of being shut down and embarrassed again in a public setting.

3. During case 2014-CP-10-5876, I was not allowed to speak before Judge Dennis dismissed the 1st case against Marshland Communities.

4. During case 2014-CP-10-3819, I was not allowed to enter any argument, law or ordinances violated by the Folly Oaks Center before Judge Dennis dismissed the 1st case against them.

5. Defendant was Granted MSJ during the case 2013-CP-10-6567, Pro se entered in his Reconsideration; Judge Dennis again exercised a contemptuous attitude towards Pro se, Jack Powell by not allowing him to enter; any evidence, cite cases or engage in the argument of council, enter my jail video where I was being brought into the jail in a wheelchair after I had I been arrested by the MUSC Public Safety for Trespassing at the MUSC emergency room parking lot during discharge because I was unable to get out of my wheelchair because of pain and was later ruled to be a False Arrest.

Then Judge Dennis actually stated that my medical condition wasn't relevant, before I was angrily threatened out of my wheelchair by the Carolina Center for Occupational Health male nurse who was featured with two other couples at a MUSC Alumni party on their official Alumni website.

6. Case #2013-Cp-10-6567 has been Appealed to the S. C. Court of Appeals and listed on the last page of the Notice of Appeal is the same biased attitude and statements were entered as evidence as follows; Judge Dennis displayed contempt towards the Plaintiff and made an inflammatory personal attack by making an insulting statement about and to the Plaintiff in the courtroom which was; "I'm laughing at you too" that caused confusion and apprehension to attempt any furthering of his case because of the fear of being scrutinized and the Pro se was shut down and not allowed to enter any evidence in two cases the same day as the Summary Judgment on 11-5-14.

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SUPPLEMENTAL INCIDENT ADDED TO COMPLAINT

On 4-7-15 Pro se, Jack Powell was again improperly Denied his right to proceed In forma Pauperis for the same case; Folly Oaks Center Condominium Unit Owners Association Inc. and Marshland Communities LLC that was submitted with the initial filing of this complaint.

Pro se included in this second denied Motion with a 1040 tax form that verifies that I fall well under the poverty line and it is obvious Judge Dennis doesn't have any respect for the Pro se or the courts procedures.

On 4-1-15 Plaintiff appeared outside of Judge Dennis's Chambers with the Defendant's Attorney and after I had asked, he told me he had put my Memorandum for Motion for Summary Judgment in the mail that morning. I then asked how can I Respond to this since we're supposed to be in court in the morning at 9:30 and he responded with (shrugged shoulders).

When we were in Judge Dennis's office I repeated this to him and he said it's no big deal because it is the just the same issues. Of course the next morning it was a big deal to me because the Defendant entered new evidence in their behalf and they were granted Summary Judgment by Judge Dennis because I had received very few proper Responses to Discovery and the Defendant wouldn't answer certain questions that proves their guilt which would have Denied their MSJ since their Discovery had been unanswered since they were compelled on 7-30-14 for Evasive Responses. I had properly submitted multiple times during the hearing the Defendant had not answered the questions which was an continuation of their improper evasive manner.

This Granted Motion happened about ten minutes after Judge Dennis had given a speech during a Compelled Discovery dispute about how he was going to start shaking up Columbia with his Rulings about failure to Respond to Discovery that ties up the Court and receiving motions on the same day of a hearing were improper. The ongoing failure to Respond in my case was much worse than the one he was giving Columbia his notice and I didn't even receive my Memorandum the day of the hearing.

The contempt for the Pro Se began on 7-30-14 when Judge Dennis insulted me and in case 2013-CP-10-5351 the Defendant was granted Summary Judgment because I did not Respond to their Memorandum and I didn't even know that I was supposed to Respond. If it wasn't a big deal why did he again behave in a biased manner by changing his position and again rule against me, no matter what the circumstances are.

CONCLUSION

Judge Dennis has in fact continued a biased attitude towards me and has acted improperly on several occasions, including this second denial to allow me to proceed with In forma Pauperis against the same two cases he had previously approved.

Unfortunately I've had to mention his bias along with his improper and very appealable rulings and it is obvious that Judge Dennis has displayed contempt towards me. But, I'm a Charleston citizen who has every right to complain about bad attitudes, bad people, file a lawsuit to stop abusive government agencies and I do in fact have the right to my fair day in court. This ruling should be studied, reversed and Judge Dennis should be cited for his abuse of power in the Charleston County 9th District Court.

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Appeal to South Carolina Court of Appeals.

Appellant Pro se, Jack Powell enters this Appeal because of the mistakes made by Judge Dennis during the Motion for Summary Judgment that was granted on 11-5-14 to the Carolina Center for Occupational Health in the Charleston County 9th District Court of Common Pleas. Mistakes were made and entered in the Appellant's Response to Motion for Summary Judgment. Also, for the mistakes made during the Plaintiff's Motion for Reconsideration that was denied on 12-1-14 and mistakes made in the Order Granting Summary Judgment on 11-5-14.

1. During the Summary Judgment hearing, Judge Dennis made the mistake of stopping and not allowing the Plaintiff to enter the following;

A. The MUSC Doctor Instructions for "56" year old Plaintiff, Jack Powell. That revealed the true medical condition of the patient and how susceptible he was to the anger of the CCOH male nurse after he read and ignored the report.

B. The Citing of law.

C. The video when the Plaintiff entered the jail in a wheelchair. Reveals medical condition of patient being wheeled into the jail around 3:00 a.m. under the influence of drugs administered by the Emergency Room Doctor

2. Entered in the Order Granting Summary Judgment, Judge Dennis made the mistake of signing the Order because of the following;

A. The Defendant states; "Plaintiff admits that the Defendant's male nurse simply angrily

told Plaintiff to get out of the wheelchair without any actual offer of physical violence. Plaintiff did not admit to this statement.

3. Judge Dennis made the mistake of granting Summary Judgment when there was a preponderance of relevant evidence entered by the Plaintiff that verified the following cited cases the Appellant Jack Powell tried to enter during the Motion for Summary Judgment hearing on 11-5-14; Brooker v. Silverthorne (1919), Mellen v. Lane (2008), Herring v Lawrence Co. (1952), Jones by Robinson v. Winn Dixie Greenville Inc. (1995) and Papa v. Brunswick (1987).

4. In the Plaintiff's Motion for Reconsideration, Judge Dennis made the mistake of Denying the Motion and the Plaintiff disputes the decision for the following reasons;

A. Wall, Templeton and Haldrup exercised an aggressive and angry manner towards the Plaintiff during their Deposition and also with attorney Jay Jones of Barnwell & Whaley who was present and was the attorney in the case involving Charleston County Detention Center where this same Appeal occurred on the morning of 6-22-12 and Mr. Jones was writing and sliding notes to the Defendant's attorney, to ask questions. RULE 60 (b) (3)

B. On 7-30-14 Pro se was facing "15" Motions and Judge Dennis displayed contempt towards the Plaintiff and made an inflammatory personal attack by making an insulting statement about and to the Plaintiff in the courtroom which was; "I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of his cases because of the fear of being scrutinized and the Appellant was shut down and not

allowed to enter any evidence during two cases that day. Also, Appellant was shut down and not allowed to enter any evidence in two cases the same day as the Summary Judgment 11-5-14. Plaintiff Jack Powell had made a complaint in his Reconsideration concerning Judge Dennis's contempt towards the Pro se.

Appellant Pro se, Jack Powell requests the Honorable South Carolina Court of Appeals to Reverse the Decision made by Judge Dennis of the Court of Common Pleas, 9th District for his mistakes rendered because of contempt for Jack Powell.

Dated and Signed on 12-30-14

Jack Powell
Pro se, Jack Powell

Wherefore, petitioner respectfully moves that Judge Dennis will remove and disqualify himself concerning any cases or rulings involving Pro Se, Jack Powell.

Dated & Signed on 5-6-15

Jack Powell

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Case No. 2013-CP-10-5351
Jack Powell Plaintiff, **Medical University of South Carolina** Defendant.	)	ORDER

FILED
2015 MAY 19 PM 2:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before me upon Motion to Amend/Reconsideration, filed 5/6/2015, by Pro Se Plaintiff, Jack Powell. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion to Amend/Reconsideration is denied;

AND IT IS SO ORDERED!

R. MARKLEY DENNIS, JR.
Presiding Judge

Charleston, South Carolina

May 19, 2015

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