

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

RECEIVED

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SC Court of Appeals

Gary Locklear, Individually and as Personal Representative
Of the Estate of Roy Locklear, Respondents,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro
County Detention Center, Dr. Charles Bush, Southern Health
Partners, and South Carolina Law Enforcement Division, Defendants,

Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL

Appellants, Southern Health Partners and Dr. Charles Bush, pursuant to Rule 240(e), SCACR, submit this Return to Motion, opposing Respondents' Motion to Dismiss, and, in support of the Return, show the following to the Court:

BACKGROUND

This litigation involves a professional negligence claim against Appellants related to the death of Roy Locklear. Mr. Locklear was an inmate at the Marlboro County Detention Center where Appellant Southern Health Partners provides medical services via contract with Marlboro County. Appellant Dr. Bush is a physician contracting with Southern Health Partners.

Respondents served discovery requests on Appellant seeking, *inter alia*, the medical policies and procedures in place at the subject facility. Appellants agreed to produce to policies and procedures in question, but requested that there be a confidentiality order in place to protect their disclosure.

Respondents did not agree to a confidentiality order, and filed a motion to compel discovery. In response to the discovery motion, Appellants supplemented discovery responses (Exhibit A), provided a privilege log (Exhibit B), and requested that counsel for Respondents consent to a confidentiality agreement to protect the policies and procedures from disclosure. (Exhibit C). Appellants also provided the affidavit of the CEO of Southern Health Partners establishing that some of the documents sought by Respondents are confidential and proprietary, and that they have been damaged in the past by a failure to protect. (Exhibit D). Counsel for Respondents, however, refused to consent to a confidentiality agreement or order, and sought the court to compel production without any confidentiality protection for these documents.

The lower court granted Respondents' motion to compel, refusing to protect the material deemed confidential and proprietary by Appellants. Rather than disclosing the confidential and proprietary information contained in the policies and procedures, Appellants filed a Notice of Appeal. Respondents have filed a motion to dismiss this appeal, claiming that the discovery order is not immediately appealable. For the reasons stated below, Appellants assert that the subject order is immediately appealable as the order requires Appellants to produce documents and material which are confidential and contain proprietary information.

ARGUMENT

In their Motion, Respondents state the South Carolina Supreme Court case, *City of Columbia v. A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996),

“does not support” the appeal. (*See* Mot. to Dismiss Appeal at p. 5). They further state that the purpose for citing to the case “would appear to arise from the fact that the order at issue discusses FOIA.” (*See id.* at 6). Respondents’ understanding of the import and relevance of the case is simply erroneous.

In SOUTH CAROLINA APPELLATE PRACTICE, former Chief Justice Toal, one of the authors of the treatise, discusses the appealability of judgments and orders.¹ After discussing the South Carolina Supreme Court case of *Knight Publishing Co. v. University of South Carolina*, 295 S.C. 31, 367 S.E.2d 20 (1998), *overruled on other grounds, Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994), noting that the merits of whether the newspaper was entitled to receive the documents under the FOIA would become moot had the newspaper complied with the order, the treatise makes clear that immediate appeals may well be warranted and permitted for orders requiring a party to turn over certain types of documents. Specifically, the treatise states:

If an order requires a party to turn over documents that the party feels are privileged or contain proprietary or confidential matters, and the party does not have a right to an immediate appeal, **compliance the protection afforded by the privilege or confidentiality a nullity.** *See Ex parte Whetsone*, 289 S.C.580, 347 S.E.2d 881 (1986). Hence, where the appealed order has the effect of revealing the very thing the appellant is claiming should remain confidential, **an immediate appeal may well be warranted and permitted by the appellate courts.** *See City of Columbia v. A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996).

¹ The South Carolina Supreme Court has cited to different editions of the treatise on numerous occasions to clarify the highest court’s position on legal issues. *See, e.g., Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (discussion on clarifying the law on the presentation and use of additional sustaining grounds in an appeal); *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (“reiterating ‘this Court’s longstanding principle of error preservation’”); *S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (same).

Toal *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA, 154 (2016, 3d ed) (citing *City of Columbia v. A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996)) (emphasis added).

Thus, while discovery orders “do not *ordinarily* involve the merits” and are not immediately appealable, *see Tucker v. Honda of South Carolina Manufacturing*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2005) (emphasis added), the treatise instructs that discovery orders requiring a party to turn over proprietary and confidential documents are not only immediately appealable, but warranted to protect the proprietary and confidential information sought by Respondents. Simply put, Appellants cite to *City of Columbia* because it supports the treatise’s assertion that discovery orders like this which compel the production of confidential and proprietary matter are immediately appealable.

Tucker v. Honda of South Carolina Manufacturing, cited by Respondents in their Motion to Dismiss, is notably different from the case at bar precisely because the *Tucker* trial court, in its order, had already enacted measures to protect the confidential information. In other words, the Supreme Court was not addressing the situation where the responding party had no protection from producing proprietary and confidential information.

In *Tucker*, the appellant objected to several deposition questions based upon the attorney-client privilege. 354 S.C. at 576, 582 S.E.2d at 406. The trial court took steps to protect the confidentiality of the proceeding, where the appellant raised “legitimate privilege concerns.” *Id.* In particular, the trial court ordered that the court reporter would seal the deposition record and submit it to the trial court, and the trial court would exclude any privileged information from the trial record, and limited the attendance of the deposition. *Id.* In the case at bar, the lower court offered no protection whatsoever.

The cases cited by the treatise, in contrast, address the very issue here—disclosure of proprietary and confidential information pursuant to a discovery request. In *City of Columbia*, the Supreme Court decided two issues: (1) whether summary judgment was proper on the internal investigation report as exempt from disclosure under FOIA; and (2) whether the trial court properly denied plaintiffs’/appellants’ motion to compel the internal investigation report, which appellants had requested as part of their discovery requests. 322 S.C. at 388, 475 S.E.2d at 749. The defendant/respondent refused to produce the internal report. *Id.*

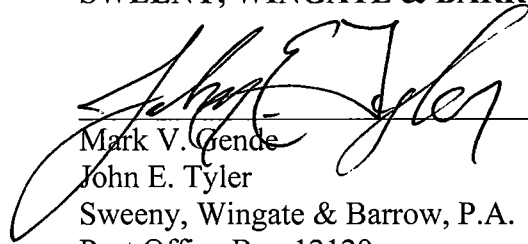
Like the report in *City of Columbia*, the discovery order in this case “has the effect of revealing the very thing” Appellants claim is confidential. *City of Columbia*, 323 S.C. at 388, 475 S.E.2d at 749. Therefore, in the words of the treatise, “an immediate appeal” is warranted.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request the Court issue an order denying Respondents’ Motion to Dismiss.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR APPELLANTS

Columbia, South Carolina

September 6, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF MARLBORO) THE FOURTH JUDICIAL CIRCUIT

Gary Locklear, individually and as) Civil Action No.: 2017-CP-34-00064
Personal Representative of the Estate)
of Roy Locklear)

Plaintiff,)
)
)

v.)
)
)

Marlboro County, Marlboro County)
Sheriff's Office, Marlboro County)
Detention Center, Dr. Charles Bush,)
Southern Health Partners, and South)
Carolina Law Enforcement Division)

DR. CHARLES BUSH AND SOUTHERN)
HEALTH PARTNERS' SUPPLEMENTAL)
ANSWERS TO PLAINTIFF'S)
INTERROGATORIES)

Defendants.)
)
)

**TO: PATRICK J. MCLAUGHLIN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
AND TO THE PLAINTIFF ABOVE-NAMED:**

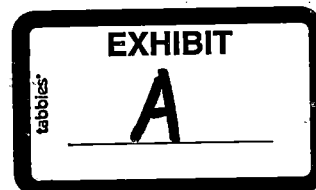
Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute the Defendants Dr. Charles Bush and Southern Health Partners' Answers to Interrogatories propounded by the Plaintiff.

These Answers are continuing in nature and additional information will be supplied as obtained.

1. Give the names and addresses of all persons know to you or your counsel to be witnesses concerning the facts of this case and state whether or not written or recorded statements have been taken from the witnesses and give the name of the person or organization having possession of such statements.

ANSWER:

a. Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear



12824 Peabridge Road
Laurinburg, NC 28352

Defendants are not in possession of any written or recorded statements other than the depositions taken in this action. Witness is a party to this action, and is expected to testify as to the facts and circumstances surrounding this action.

- b. Regina Locklear
12824 Peabridge Road
Laurinburg, NC 28352

Defendants are not in possession of any written or recorded statements other than the depositions taken in this action. Witness is a family member of the deceased and is expected to testify as to the facts and circumstances surrounding this action.

- c. John Locklear
5348 Crestline Road
Laurinburg, NC 28352

Defendants are not in possession of any written or recorded statements. Witness is a family member of the deceased and is expected to testify as to the facts and circumstances surrounding this action.

- d. Janet Locklear
3980 Bowan Grocery Road
McCall SC 29570

Defendants are not in possession of any written or recorded statements. Witness is a family member of the deceased and is expected to testify as to the facts and circumstances surrounding this action.

- e. Bonnie Renee Locklear
2115 A1 Lnae
McCall SC 29570

Defendants are not in possession of any written or recorded statements. Witness is a family member of the deceased and is expected to testify as to the facts and circumstances surrounding this action.

- f. Representative(s) of Marlboro County
Address unknown.

Defendants are not in possession of any written or recorded statements other than the depositions taken in this action. Witness is a party to this

action and is expected to testify as to the facts and circumstances surrounding this action.

- g. Marlboro County Sheriff's Office**
Address unknown.

Defendants are not in possession of any written or recorded statements other than the depositions taken in this action. Witness is a party to this action and is expected to testify as to the facts and circumstances surrounding this action.

- h. Marlboro County Detention Center**
Witness may be contacted via counsel for Marlboro County

Defendants are not in possession of any written or recorded statements other than the depositions taken in this action. Witness is a party to this action and is expected to testify as to the facts and circumstances surrounding this action.

- i. Dr. Charles Bush**
134 SPANISH PT. DRIVE
Beaufort, South Carolina 29902
(Witness may be contact via the undersigned counsel)

Defendants are not in possession of any written or recorded statements. Witness is a party to this action and is expected to testify as to the facts and circumstances surrounding this action.

- j. Southern Health Partners**
2030 Hamilton PI Blvd,
Chattanooga, TN 37421
(Witness may be contact via the undersigned counsel)

Defendants are not in possession of any written or recorded statements. Witness is a party to this action and is expected to testify as to the facts and circumstances surrounding this action.

- k. Dianne Moore**
728 HWY 381 SOUTH
McColl, SC 29570
(Witness may be contact via the undersigned counsel)

Defendants are not in possession of any written or recorded statements. Witness is a nurse employee of Defendant Southern Health Partners, and is expected to testify as to the facts and circumstances surrounding this action.

- I. Representative(s) South Carolina Law Enforcement Division
Address unknown.**

Defendants are not in possession of any written or recorded statements, other than the report already produced by Plaintiff. Witness is a party to this action and is expected to testify as to the facts and circumstances surrounding this action.

- m. All Witnesses (fact or expert) named at any time by any party to this case and all treating physicians.**

Defendants reserve the right to supplement this response.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession or in the possession of your representative or attorney that relate to your claim in this case.

ANSWER: Please see documents Bates labeled SHP 0001 - 0008 previously produced. Defendants maintain a document titled "Policy and Procedure Manual for Health Services in Jails." The undersigned has previously offered to produce the entire manual subject to a confidentiality agreement. See Defendants' Privilege Log, attached herewith.

Additionally, the undersigned is in possession of documents produced by the parties in this action.

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

ANSWER: Beazley USA Services, Inc., 30 Batterson Park Road, Farmington, Connecticut 06032; Policy No. W1A375170301; \$1,000,000 per claim.

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

ANSWER: Defendants have not at this time determined expert witnesses for use at the trial of this case. Defendants will supplement this response consistent with the SCRCPC and any governing scheduling order.

5. For each expert witness listed, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, and provide a copy of any written or recorded statements taken from such witness.

ANSWER: See response to number 4 above.

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

ANSWER: See response to number 1 above.

7. If this Defendant knows of any party not named in this action, please name the party with specificity, and if any party has been improperly named, specify the correct name of said Defendant.

ANSWER: Not applicable.

8. Please identify all written policies, procedures and plans for the classification of inmates for purposes of placement and housing.

- a. Please identify how the Plaintiff was classified by the Defendants, providing a detailed definition of that classification.

b. Please specify who was responsible for classifying the Plaintiff, when that classification took place, the information used in that classification, etc.

ANSWER: Defendants do not have policies and procedures based on housing classifications. However, Defendants maintain a document titled "Policy and Procedure Manual for Health Services in Jails" which contains information responsive to this interrogatory. The undersigned has previously offered to produce the entire manual subject to a confidentiality agreement. See Defendants' Privilege Log, attached herewith.

For information responsive to item (a), please see the deposition testimony taken June 13-14, 2018. See, also, the document previously produced and Bates labeled SHP 000007. The corrections officer performing this intake screening indicated Mr. Locklear stated he was "in good health."

As for item (b), a Marlboro County corrections officer performed an "intake screening" based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018.

9. Please identify all written policies and procedures providing for the appropriate housing and care of inmates classified as the Plaintiff was classified.

ANSWER: Defendants do not have policies and procedures based on housing classifications. Defendants maintain a document titled "Policy and Procedure Manual for Health Services in Jails" which contains information responsive to this interrogatory. The undersigned has previously offered to produce the entire manual subject to a confidentiality agreement. See Defendants' Privilege Log, attached herewith.

For inmates "in good health" as indicated by the county, see, generally, policy numbers J-E-02, J-E-03, J-E-04, and J-E-05.

10. Please identify all written policies and procedures providing for the appropriate housing of all inmates with medical/health issues, specifically substance abuse/dependency issues, as determined by the classification plan.

ANSWER: Defendants do not have policies and procedures based on housing classifications.

11. Please identify all written policies and procedures providing for the appropriate housing and care of all inmates with medical/health issues that make them a suicide risk, as determined by the classification plan.

ANSWER: Defendants do not have policies and procedures based on housing classifications. Defendants maintain a document titled "Policy and Procedure Manual for Health Services in Jails" which contains information responsive to this interrogatory. The undersigned has previously offered to produce the entire manual subject to a confidentiality agreement. See Defendants' Privilege Log, attached herewith. Policy number J-G-05 addresses suicide prevention and J-I-02 addresses emergency psychotropic medication.

12. Please describe in detail Dr. Bush and Southern Health Partners' role in drafting/creating, reviewing and/or approving the Marlboro County Detention Center's medical services, programs and/or policies/procedures.

ANSWER: Defendant Southern Health Partners has developed confidential policies and procedures to be used by its employees in conjunction with the provision of inmate patient health care services at the jail. Dr. Bush reviewed the policies and procedures for use at the subject facility.

13. Please identify the written standard operating procedures that the Defendants developed and implemented, for:

- a. Receiving screening;
- b. Health appraisal data collection;
- c. Non-emergency medical services;
- d. Emergency medical and dental services;
- e. Deciding the emergency nature of illness or injury;
- f. First aid;
- g. Chronic care;
- h. Convalescent care;
- i. Medical preventative maintenance;
- j. Pharmaceuticals;

[no entries for k., l., m., n.]

- o. Screening, referral, and care of inmates with substance abuse/dependency issues;
- p. Screening, referral, and care of inmates with medical/health issues which make them a suicide risk;
- p. Notification of next of kin/legal guardian in case of serious illness, injury, or death;

ANSWER: Defendants maintain a document titled "Policy and Procedure Manual for Health Services in Jails" which contains information responsive to this interrogatory. The undersigned has previously offered to produce the entire manual

subject to a confidentiality agreement. See Defendants' Privilege Log, attached herewith.

Additionally, see individual responses for each sub-item requested:

- a. "Receiving screening;" Policy number J-E-02;**
- b. "Health appraisal data collection;" Policy numbers J-E-02, J-E-03, J-E-04, J-E-05, J-H-01, J-H-02, J-H-03, J-H-04;**
- c. "Non-emergency medical services;" Policy number J-E-07;**
- d. "Emergency medical and dental services;" Policy number J-E-08;**
- e. "Deciding the emergency nature of illness or injury;" Policy number J-C-04 and J-E-08;**
- f. "First aid;" see, generally, J-B-01, J-E-07 and J-E-08;**
- g. "Chronic care;" Policy number J-G-01;**
- h. "Convalescent care;" Policy number J-D-05 and J-E-12;**
- i. "Medical preventative maintenance;" Policy number J-E-07, J-F-01 and J-F-02;**
- j. "Pharmaceuticals;" Policy number J-D-01 and J-D-02, J-I-02;**

[no entries for k., l., m., n.]

- o. "Screening, referral, and care of inmates with substance abuse/dependency issues;" Policy numbers J-E-02, J-E-03, J-E-04, J-E-05, J-E-08, J-E-09, J-G-06;**
- p. "Screening, referral, and care of inmates with medical/health issues which make them a suicide risk;" Policy numbers J-E-02, J-E-03, J-E-04, J-E-05, J-E-08, J-E-09, J-G-04, J-G-05; AND**

- p. "Notification of next of kin/legal guardian in case of serious illness, injury, or death;" None.

14. Please identify the person/persons who screened and/or booked the Plaintiff upon admission to the Defendant's facility, as well as:

- a. When that screening and/or booking took place, specifically how long the Plaintiff was in custody before the screening took place;
- b. Where the Plaintiff was housed before that screening and/or booking took place;
- c. What current illnesses/pre-existing conditions and health issues the screening and/or booking of the Plaintiff identified;
- d. The medications taken and special health requirements the screening and/or booking of the Plaintiff identified;
- e. What other health problems designated by the responsible physician were screened;
- f. What observations, including both physical appearance and state of consciousness/mental status:
 - a. Should have been made during the screening and/or booking?
 - i. How should such observations be documented?
 - b. Were made during the screening and/or booking?
 - i. How were such observations documented?
 - g. What information the person conducting the screening and/or booking had access to at the time of the screening and/or booking?

specifically, did the person conducting the screening and/or booking have access to:

- a. Prior booking records of the Plaintiff;
- b. The Plaintiff's criminal history;
- c. The warrant on which the Plaintiff was taken into custody.

ANSWER: A Marlboro County corrections officer performed an "intake screening" based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018.

- a. When that screening and/or booking took place, specifically how long the Plaintiff was in custody before the screening took place; A Marlboro County corrections officer performed an "intake screening" based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018.
- b. Where the Plaintiff was housed before that screening and/or booking took place; A Marlboro County corrections officer performed an "intake screening" based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018.
- c. What current illnesses/pre-existing conditions and health issues the screening and/or booking of the Plaintiff identified; **None.**
- d. The medications taken and special health requirements the screening and/or booking of the Plaintiff identified; **None.**
- e. What other health problems designated by the responsible physician were screened; **None.**

f. What observations, including both physical appearance and state of consciousness/mental status:

c. Should have been made during the screening and/or booking?

i. How should such observations be documented?

ANSWER: A Marlboro County corrections officer performed an "intake screening" based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018, for information which may be responsive to this interrogatory.

d. Were made during the screening and/or booking?

i. How are such observations documented?

ANSWER: A Marlboro County corrections officer performed an "intake screening" based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018.

g. What information the person conducting the screening and/or booking had access to at the time of the screening and/or booking? specifically, did the person conducting the screening and/or booking have access to:

- a. Prior booking records of the Plaintiff;
- b. The Plaintiff's criminal history;
- c. The warrant on which the Plaintiff was taken into custody.

ANSWER: A Marlboro County corrections officer performed an “intake screening” based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018.

15. Was the law enforcement officer who took the Plaintiff into custody present at the screening and/or booking?

ANSWER: The undersigned Defendants were not present at the subject screening. A Marlboro County corrections officer performed an “intake screening” based on the information listed in SHP 000007. Additionally, please see the deposition testimony taken June 13-14, 2018.

16. What is the procedure for persons conducting screening and/or booking in regards to communicating with the arresting/transporting law enforcement in regards to obtaining necessary health and medical information? For instance:

- a. Are the persons conducting screening and/or booking instructed to ask law enforcement if they have any information about the inmate’s health and medical information?
- b. Should such communication documented [sic]?
- c. Was there any such communication at the time of the plaintiff’s screening and/or booking?
- c. If so, what information was communicated?

ANSWER: A Marlboro County corrections officer performed an “intake screening” based on the information listed in SHP 000007. The undersigned Defendants are not aware of what level of communication the corrections officers engage in with

arresting/transporting law enforcement. Additionally, please see the deposition testimony taken June 13-14, 2018.

16. Please identify the person/persons who notified the Plaintiff's family of health issues that arose during the Plaintiff's incarceration.

ANSWER: Defendants are unaware at this time of the identity of such person/persons.

18. Please list with specificity every incident within the five (5) years preceding the incident giving rise to this complaint, as well as all subsequent years, where a person in the Defendants' care has:

- a. attempted and/or committed suicide. For each of these incidents, please specify:
 - i. the name of the individual and a brief description of the custodial situation;
 - ii. whether the person was identified/classified as having a substance abuse/dependency problem;
 - iii. how long in their custody with the defendants the suicide incident occurred;
 - iv. what precautions/treatment had been offered by the Defendants prior to the suicide incidents.
- b. has required emergency medical treatment due to substance abuse/dependency issues. For each of these incidents, please specify:
 - i. the name of the individual and a brief description of the custodial situation;

- ii. whether they were identified/classified as having a substance abuse/dependency problem;
- iii. how long into their custody with the defendants the emergency medical treatment occurred;
- iv. what precautions/treatment had been offered by the Defendants prior to the emergency medical treatment.

ANSWER: Defendants object to this interrogatory as it is overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence.

19. Please identify the person(s) responsible for training employees responsible for screening and/or booking of inmates both at the time of this incident and currently.

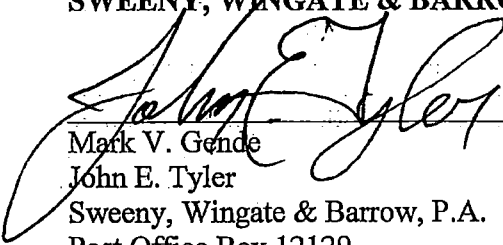
ANSWER: Screenings and bookings are performed by employees of Marlboro County.

20. Please specify any and all employment, training and/or disciplinary action that was taken by the Defendants in response to the incident giving rise to this complaint.

ANSWER: None.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende
John E. Tyler
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANT SOUTHERN
HEALTH PARTNERS AND DR. BUSH**

Columbia, South Carolina
July 10, 2018

Manual for Health Services in Jails.” The undersigned has previously offered to produce the entire manual subject to a confidentiality agreement. See Defendants’ Privilege Log, attached herewith.

Additionally, the undersigned is in possession of documents produced by the Plaintiff in this action.

2. Provide a copy of any and all written and recorded statements taken from or produced by Plaintiff, Defendant or any witnesses, whether written or recorded, which relate in any way to the matters complained of in the Complaint.

RESPONSE: Defendants have none other than the depositions taken in this action and the documents produced by other parties to this action.

3. Provide a copy of any and all insurance policies which have coverage related to the claim.

RESPONSE: See attached documents Bates labeled SHP INS 0001 – 0054.

4. Produce a copy of any and all documentation of all accidents/incidents known by the Defendant to be similar in nature to the accident described in the Plaintiff’s Complaint, which occurred within the five (5) years preceding the incident in question through the current date. Specifically, the Plaintiff is requesting information concerning any accident/incident that was caused by the Defendant’s alleged failure to properly relay vital health information and provide care for health/medical issues and/or provide adequate medical care during custody.

RESPONSE: Defendants object to this request as it is overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence.

5. Any and all writings/documents/manuals/policies/procedures/digital files/electronic entries that memorialize conditions and/or facts related to the Plaintiff, the allegations in the complaint or that were used or referenced in answering the Plaintiff's interrogatories.

RESPONSE: See documents Bates labeled SHP 0001 – 0008 and SHP INS 0001 – 0054. Additionally, Defendants maintain a document titled “Policy and Procedure Manual for Health Services in Jails.” The undersigned has previously offered to produce the entire manual subject to a confidentiality agreement. See Defendants’ Privilege Log, attached herewith.

6. Copies of all documents and tangible things which you might seek to introduce as exhibits for impeachment or demonstrative purposes at the trial of this case.

RESPONSE: Defendants have not at this time determined documents for use at the trial of this matter. Defendants will supplement consistent with the SCRCPC and/or any governing scheduling order.

7. Any and all reports, opinions, correspondence, memorandum or other documentation provided to the Defendant or Defendant’s attorneys from any expert consulted by or retained by the Defendant in this litigation.

RESPONSE: Defendants object to this request to the extent it violates Rule 26(b)(4) of the SCRCPC. However, and without waiving said objection, Defendants have not at this time determined expert witnesses for use at the trial of this case. Defendants will supplement this response consistent with the SCRCPC and any governing scheduling order.

8. If you have a report from an expert witness, produce a copy of the same. Produce a complete copy of said expert witness’ files; including but not limited to all memorandum,

reports, correspondence, records and other documents said expert has considered with respect to this claim; and an up-to-date curriculum vitae for each expert witness.

RESPONSE: Defendants have not at this time determined expert witnesses for use at the trial of this case. Defendants will supplement this response consistent with the SCRCF and any governing scheduling order.

9. Any and all writings/documents/manuals/policies/procedures/digital files/electronic entries that were created or are used by the Defendant pursuant to the *Minimum Standards for Local Detention Facilities in South Carolina: Type H and/or IV Facility City, County, or Regional Jail and/or combined jail/prison camp* as published by the State of South Carolina.

RESPONSE: See Response to number 5 above.

10. A full and complete employee file for any agent/employee who interacted with the decedent and/or was subject to any investigation and/or disciplinary action as a result of this incident. For the purposes of this request to produce, the Plaintiff would consent to the redaction of any personal identifying information.

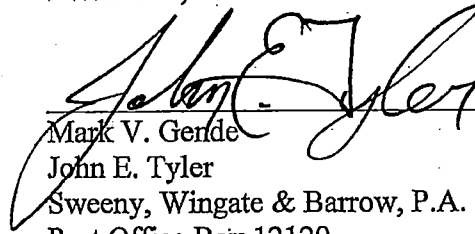
RESPONSE: Defendants object to this request to the extent it is overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants object as there are no allegations related to any employee who responded to the suicide of Mr. Locklear. However, and without waiving said objection, no employee of Southern Health Partners was disciplined related to the subject incident.

11. If a claim of privilege is made concerning any of the above requests, please identify the statement, document, or item as to subject, date to whom from or by whom, and an explanation as to why privilege is claimed.

RESPONSE: See attached Privilege Log.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line. The signature is cursive and somewhat stylized.

Mark V. Gerde
John E. Tyler
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**Attorneys for Defendants Dr. Charles Bush and
Southern Health Partners**

Columbia, South Carolina

July 10, 2018

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
 COUNTY OF MARLBORO) THE FOURTH JUDICIAL CIRCUIT

GARY LOCKLEAR, INDIVIDUALLY) Civil Action No.: 2017-CP-34-00064
 AND AS PERSONAL)
 REPRESENTATIVE OF THE)
 ESTATE OF ROY LOCKLEAR,)
 Plaintiff(s),)

v.)

MARLBORO COUNTY, MARLBORO) DEFENDANTS DR. CHARLES BUSH AND
 COUNTY SHERIFF'S OFFICE,) SOUTHERN HEALTH PARTNERS?
 MARLBORO COUNTY DETENTION) PRIVILEGE LOG
 CENTER, DR. CHARLES BUSH,)
 SOUTHERN HEALTH PARTNERS,)
 AND SOUTH CAROLINA LAW)
 ENFORCEMENT DIVISION,)
 Defendant(s).)

TO: PATRICK J. MCLAUGHLIN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
 AND TO THE PLAINTIFF ABOVE-NAMED:

Please allow the following to serve as Defendant's privilege log with regards to
 privileges that have been asserted in response to the Plaintiff's discovery requests.

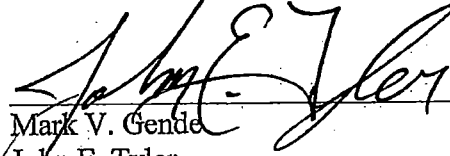
Dates:	Description:	Privilege Asserted:
10/1/2014	Policy and Procedure Manual for Health Services in Jails, 101 pages.	The Defendants assert that the policy manual is confidential, containing proprietary information that should not be produced without a confidentiality order or agreement in place. All pages have been designated by Defendant Southern Health Partners as "Confidential Work Product of Southern Health Partners, Inc." Southern Health Partners is the custodian of this record, and requires non-disclosure from its employees.

(Signature on following page)



Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line.

Mark V. Gendle

John E. Tyler

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

**Attorneys for Defendants Dr. Charles Bush and
Southern Health Partners**

Columbia, South Carolina

July 10, 2018

John E. Tyler

From: Patrick McLaughlin <Patrick@wukelalaw.com>
Sent: Tuesday, July 10, 2018 2:00 PM
To: John E. Tyler
Subject: RE: Locklear File, Supplemental Discovery Responses

I find the response to ¶rog #18 to be inadequate/nonresponsive as addressed in my original motion.

Patrick

From: John E. Tyler [mailto:jet@swblaw.com]
Sent: Tuesday, July 10, 2018 12:25 PM
To: Patrick McLaughlin
Subject: Locklear File, Supplemental Discovery Responses
Importance: High

Patrick,

Attached please find supplemental responses to your client's interrogatories and requests for production in the above-referenced matter. I am providing these consistent with our telephone discussion yesterday. I believe this resolves all issues except for the confidentiality agreement which my client seeks. Would you please review these and let me know whether that is the case?

As for the confidentiality issues, based on our conversations and emails in the past, my understanding of your position is that you assert that my client is not entitled to a confidentiality order or agreement regarding their policies and procedures, such that they could be used in additional actions or investigations against my client.

As we previously discussed, my client's position is that their policy manual is proprietary information that should not be used outside of this litigation, and they go to great lengths to protect the manual from being disclosed. As such, they wish for any reviewing expert to sign an agreement to destroy these documents or return them to you at the resolution of this litigation. As we discussed, it is my understanding that they have been damaged in the past when a competitor gained access to the policy manual and used it for commercial gain.

Originally I requested your consent to a confidentiality order. Shortly thereafter, your motion to compel was filed. After your motion was filed, I obtained the consent of my client to put a confidentiality agreement in place, which I am still offering to do. Since you instructed that you will not agree to confidentiality, I have not prepared the agreement. However, it would be very similar to the federal court standard confidentiality order turned into an agreement between the parties, but I'm sure we could make it more simplified.

Once you've had the opportunity to review these responses (attached), please call me or email me to discuss whether any matter other than confidentiality needs to be addressed.

Sincerely,

John

S·W·B

John E. Tyler | Attorney
Sweeny, Wingate & Barrow, P.A.

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This message may be confidential and protected by the attorney/client, attorney work product or other privileges. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by electronic mail. If the person actually receiving this electronic mail, or any other reader of such electronic mail, is not the intended recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you received this message in error, please send a reply, delete the message immediately, and do not forward this message to any other person.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF MARLBORO) THE FOURTH JUDICIAL CIRCUIT

GARY LOCKLEAR, INDIVIDUALLY) Civil Action No.: 2017-CP-34-00064
AND AS PERSONAL)
REPRESENTATIVE OF THE)
ESTATE OF ROY LOCKLEAR,)
Plaintiff(s),)

v.)

MARLBORO COUNTY, MARLBORO)
COUNTY SHERIFF'S OFFICE,)
MARLBORO COUNTY DETENTION)
CENTER, DR. CHARLES BUSH,)
SOUTHERN HEALTH PARTNERS,)
AND SOUTH CAROLINA LAW)
ENFORCEMENT DIVISION,)
)
Defendant(s).)

AFFIDAVIT OF JENNIFER I. HAIRSINE

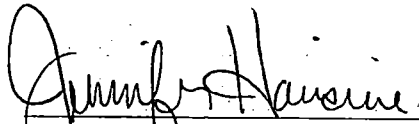
PERSONALLY APPEARED BEFORE ME, the undersigned, Jennifer I. Hairsine, who after being duly sworn, deposes and says:

1. I am Jennifer I. Hairsine. I am over the age of eighteen and competent to give this testimony.
2. I am, and was at all times relevant to the allegations made in the above-captioned lawsuit, the President and Chief Executive Officer of Southern Health Partners, Inc. ("SHP").
3. SHP was founded in 1994 to initially provide health care services to inmates in jails classified as either small or medium size by the American Correctional Association (ACA). SHP's sole business is jail health care services – we do not get pulled into other business lines. This allows SHP to be very familiar with state jail standards along with utilizing the National Commission on Correctional Health Care (NCCHC), along with the American Correctional Association (ACA) standards, as a basis for our policies, procedures, and operations.
4. The provision of jail health care services is a highly competitive business with new companies trying to enter into the market and gain market share.
5. SHP currently provides services at 237 detention facilities in fifteen states.

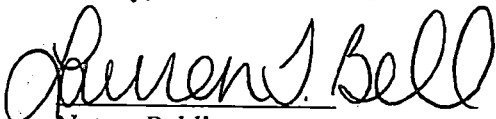


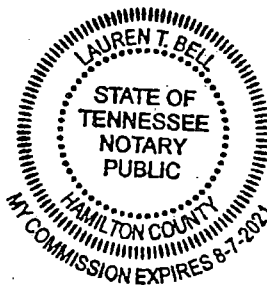
6. I have reviewed the discovery requests of the Plaintiff.
7. For the period of time in question, SHP maintains a document titled "Policy and Procedure Manual for Health Services in Jails."
8. This policy manual is confidential and contains proprietary information. SHP has expended significant time and resources in creating and updating its Policy and Procedure Manual to best address the needs of our unique patient population. Therefore, SHP has taken the following measures to protect its confidentiality:
 - a. All employees of SHP are required to sign a non-disclosure agreement;
 - b. The counties with which we contract do not gain access to the policy manual, and, therefore, do not produce the manual in response to requests under FOIA;
 - c. All pages of the policy manual are marked and labeled "Confidential Work Product of Southern Health Partners, Inc.;"
 - d. In cases where the policy manual might be at issue, our course of dealing is to request confidentiality agreements with all counsel which limit the use of the policy manual to the litigation in question and which require any expert who reviews the policy manual to destroy it upon completion of the litigation.
9. SHP has been damaged in the past by former vendors and employees, as well as a former opposing expert witness attempting to access and use SHP's Policy and Procedure Manual and other proprietary information to obtain business from SHP's existing and potential clients.

FURTHER AFFIANT SAYETH NOT.


Jennifer I. Hairsine
President and Chief Executive Officer
Southern Health Partners, Inc.

Sworn to and subscribed
Before me this 11 day
Of July, 2018


Notary Public
My Commission Expires: 8/7/2021
[NOTARIAL SEAL]



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

RECEIVED

SEP 06 2018

SC Court of Appeals

Gary Locklear, Individually and as Personal Representative
Of the Estate of Roy Locklear, Respondents,

v.

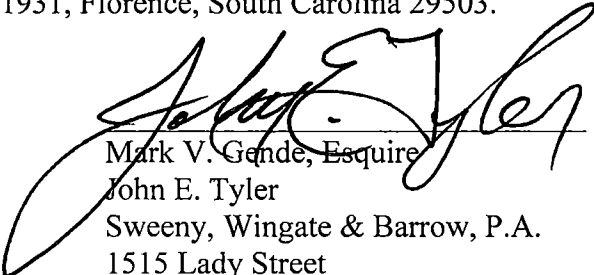
Marlboro County, Marlboro County Sheriff's Office, Marlboro
County Detention Center, Dr. Charles Bush, Southern Health
Partners, and South Carolina Law Enforcement Division, Defendants,

Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

PROOF OF SERVICE

I certify that I have served the Return to Respondent's Motion to Dismiss Appeal on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on September 6, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

September 6, 2018



Mark V. Gende, Esquire
John E. Tyler
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
Attorneys for Appellant

S·W·B

SWEENY WINGATE & BARROW P.A.

September 6, 2018

RECEIVED

SEP 06 2018

SC Court of Appeals

Reply to: Main Office
John E. Tyler
(803) 256-2233 x7110
jet@swblaw.com

V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29202

RE: Gary Locklear v. Marlboro County, Dr. Bush, Southern Health Partners, et al.
Civil Action No.: 2017CP3400064
Appeal Case No.: 2018-001510
Our File: 5480-10735

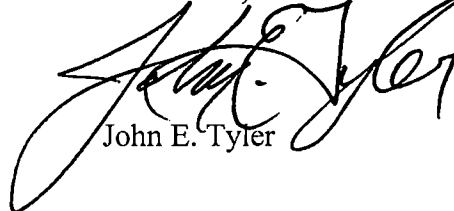
Dear Ms. Allen:

Enclosed for filing are the original and six (6) copies of the Return to Respondent's Motion to Dismiss Appeal in the above-referenced matter. Please stamp and return a copy of the Return to Respondent's Motion to Dismiss Appeal and one copy of the Proof of Service to our courier. By copy of this correspondence with enclosures, opposing counsel is served with same.

Thank you for your assistance and should you have any questions or concerns, please do not hesitate to contact me directly.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.



John E. Tyler

JET/smt

Enclosures

cc: Patrick J. McLaughlin, Esquire, Wukela Law Firm
Samuel F. Arthur III, Esquire, Aiken, Bridges, Nunn, Elliott and Tyler
William H. Davidson II, Esquire, Davidson & Lindemann, P.A.