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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S Jackson Kimball, Special Circuit Judge

Case No 2010-CP 46-02909

Evelyn Grier, as the appointed Personal Representative of the
Estate of Willie James Fee, deceased

Appellant,

v

AMISUB of South Carolina, Inc d/b/a Piedmont Medical
Center

Respondent

RECORD ON APPEAL

RECEIVED

AUG 08 2011

SC Court of Appeals

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

JUDGMENT IN A CIVIL CASE
CASE NO 2010CP4602909

Evelyn Grier vs AMISUB of South Carolina Inc

CHECK ONE

- JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON)
SCRPC (Vol Nonsuit) Rule 43(k) SCRPC (Settled) Other
 Rule 12(b) SCRPC Rule 41(a)
- ACTION STRICKEN (CHECK REASON)
 Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
 Other _____
 Rule 40(j) SCRPC Bankruptcy

IT IS ORDERED AND ADJUDGED

See attached order

Statement of Judgment by the Court

Order

Dated at York South Carolina this 22nd day of December 2010

Court Reporter

s/s Jackson Kimball

PRESIDING JUDGE S JACKSON KIMBALL

This judgment was entered on the 4th day of January 2011 and a copy mailed first class this 4th day of January 2011 to attorneys of record or to parties (when appearing pro se) as follows

John Gressett Felder Jr McGowan Hood
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Columbia SC 29201

William U Gunn Holcombe Bomar Gunn &
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton Clerk of Court

SCRPC APP 24/FORM 4

1/6/11 re-sent to John Felder
1572 Hampton Street
Columbia, SC 29201

CPFORM44M

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Evelyn Grier, as the appointed Personal)
Representative of the Estate of Willie James)
Fee, deceased,)

Plaintiff)

vs)

Amisub of South Carolina Inc , d/b/a)
Piedmont Medical Center,)

Defendant)

ORDER

Case No 2010 CP 46 2909

FILED
2011 JAN -4 AM 8 36
DAVID H. HARRIS
CLERK
YORK COUNTY

This matter came before me on December 16, 2010 upon Motion to Dismiss of Defendant Representing the parties were William McKinnon for Plaintiff, and William U Gunn for Defendant The parties submitted arguments and memoranda of law for the court s consideration

STATEMENT OF CASE

This is a medical negligence suit in which Plaintiff filed her Notice of Intent pursuant to S C Code Ann § 15 79-125 (1976 as amended) against Defendant for claims of wrongful death and survival stemming from alleged acts of medical malpractice The notice purports to comply with § 15 79-125 Attached to the notice is a draft Complaint which, according to the Plaintiff, contains a short and plain statement of the facts showing that Plaintiff is entitled to relief The draft Complaint contains allegations that the Decedent s death and Plaintiff s claims were the direct and proximate result of the alleged negligent actions or inactions of Defendant

Also attached to the Notice of Intent is an affidavit from Nurse Sharon Barber Ms Barber sets out four potential negligent actions or inactions on the part of Defendant relating to care or treatment of the Decedent and makes the statement "[t]hat the actions or inactions of the agents, employees, and/or nurses from PMC contributed to the injuries damages, and death of Willie Fee

DISCUSSION

Prior to filing a medical malpractice claim a plaintiff must file a Notice of Intent to File Suit accompanied by the affidavit of an expert witness under S C Code Ann § 15-79 125(a) The accompanying expert witness affidavit which is filed must specify at least one negligent act or omission claimed to exist and the factual basis for each claim S C Code Ann § 15-36 100(e)

The current versions of §§ 15-75-125 and 15-36-100 were enacted as part of the South Carolina Tort Reform Act of 2005 (the ' Act') The contents of this Act evidence an implicit intent by the legislature of this State to make more stringent the requirements necessary to maintain claims for medical malpractice and to discourage frivolous litigation The Act implements statutes which place damages caps on recoveries in medical malpractice actions under § 15-32-200 *et seq* , and provides Offer of Judgment procedures whereby a party who imprudently refuses to accept an Offer of Judgment may be made to pay attorneys fees and costs of the offering party That requirement is found in S C Code Ann § 15-35-400 Additionally certain changes were made to the privilege granted to the medical peer review process under § 40-71-10 *et seq* The requirements of filing a Notice of Intent to File Suit and supporting expert affidavit fit within the Act's implicit purposes because these requirements assure that a plaintiff has shown a colorable claim of medical malpractice before suit may be maintained

Against this background and in view of existing precedent concerning qualification to render an expert medical opinion I find and conclude that Plaintiff's Notice of Intent to File Suit and accompanying expert affidavit are defective They fail to show facts demonstrating that Plaintiff has a claim upon which she is entitled to recover Specifically, the affidavit of Nurse Sharon Barber fails to articulate relevant facts showing her qualification to opine on the issue of proximate cause Thus Plaintiff's allegations as to the proximate cause of injury and death to Willie Fee are insufficient

The record shows that Mr Fee was admitted to Piedmont Medical Center (' PMC ') in January, 2008 with complex and severe medical issues His medical history included diabetes mellitus type II, for which he did not use insulin and cardiomegaly/cardiomyopathy He had suffered a diabetic hyperosmolar nonketotic coma, a seizure acute renal failure, metabolic acidosis possibly multifactorial due to acute renal failure lactic acidosis hypotension hypoalbuminemia plus proteinuria, and nephrotic syndrome

Mr Fee remained at Piedmont Medical Center almost eight months being discharged to Magnolia Manor on September 15, 2008, only to be readmitted to PMC on September 27, 2008, where he remained until his death on February 24 2009 During this second stay at PMC his diagnosis included fever secondary to aspiration pneumonia and urinary tract infection, aspiration pneumonia and urinary tract infection diffuse and focal cerebral dysfunction large left middle cerebral artery hemorrhagic stroke, encephalopathy, acute renal failure with a possibility of chronic kidney disease, seizure disorder, insulin dependant diabetes, multiple respiratory tract infections a sacral decubitus ulcer, history of upper extremity deep venous thrombosis, and a history of alcohol

OK
2

and cocaine abuse. At all times, his prognosis was poor and he presented a poor quality of life.

I have examined the affidavit of Nurse Barber, and find and conclude that it fails to establish that she is qualified to testify concerning medical causation of the injuries claimed by Plaintiff. For a medical professional to be qualified to give an expert opinion concerning causation of an injury, the professional must be qualified to render a medical diagnosis. See *Nelson v Taylor*, 347 S.C. 210, 553 S.E.2d 488 (Ct. App. 2001).

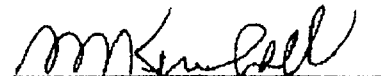
In *Nelson*, the Court held that a physical therapist was not qualified to render expert medical testimony concerning causation of Plaintiff's alleged injuries because physical therapists are not qualified to render medical diagnoses. However, in *Crawford v Henderson*, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003), the Court held that where a nurse practitioner is qualified to render medical diagnoses under proper written protocol from a physician, the nurse practitioner may give expert medical testimony concerning causation.

Here, there is a lack of showing that Ms. Barber is qualified to opine on the question of proximate cause in this instance, as there is no showing of qualification in accordance with *Crawford supra*. I find and conclude that it is implicit in the Tort Reform Act, and in particular the Notice of Intent, Short and Plain Statement of Facts, and the affidavit requirements at issue in this motion, that a showing of proximate cause must be made by submission of a proper affidavit addressing proximate cause, and made by a person qualified to do so. Plaintiff in this instance has failed to submit such an affidavit, and for that reason Defendant's Motion must be granted, unless Plaintiff files and serves a proper affidavit within thirty days of the date of filing of this Order.

Therefore, it is ordered that Plaintiff has thirty days from the date of the filing of this Order within which to submit a proper affidavit by a person qualified to do so, establishing proximate cause in accordance with the discussion herein. Should Plaintiff fail to do so within that thirty-day period, the within action shall be dismissed.

AND IT IS SO ORDERED

December 22, 2010


S. Jackson Kimball
Special Circuit Judge
York County

#3

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

JUDGMENT IN A CIVIL CASE

CASE NO 2010CP4602909

Evelyn Grier vs AMISUB of South Carolina Inc

CHECK ONE.

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON)**
 - Rule 12(b) SCRPC
 - Rule 41(a) SCRPC (Vol Nonsuit)
 - Rule 43(4) SCRPC (Settled),
 - Other
- ACTION STRICKEN (CHECK REASON)**
 - Rule 40(j) SCRPC
 - Bankruptcy
 - Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
 - Other _____

IT IS ORDERED AND ADJUDGED

See attached order

Statement of Judgment by the Court

Order of Dismissal

Dated at York, South Carolina, this 9th Day of February 2011

Court Reporter

S/S Jackson Kimball

PRESIDING JUDGE S JACKSON KIMBALL

This judgment was entered on the 10th Day of March 2011 and a copy mailed first class this 10th Day of March 2011 to attorneys of record or to parties (when appearing pro se) as follows:

**John Gressette Felder Jr McGowan Hood
Felder & Johnson 1517 Hampton Street
Columbia, SC 29201**

**William U Genn Hnlcombe Bomar Gunn &
Bradford PA P O Box 1897 Spartanburg SC
29304**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP 24/FORM 4

David Hamilton Clerk of Court

CPFORM4M

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Evelyn Grier, as the appointed Personal Representative of the Estate of Willie James Fee, deceased,

Plaintiff(s)

vs

AMISUB of South Carolina, Inc d/b/a Piedmont Medical Center,

Defendant(s)

(Please Print)

Submitted By John G Felder Jr

Address 1517 Hampton Street Columbia, South Carolina 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 46- 2909

Enr. dt. 11/10/10
C.C. CP & H
YORK COUNTY SC

2010 JUL 12 PM 4:15
FELDER, JOHN G

SC Bar # 7051

Telephone # (803) 779 0400

Fax # (803) 256 0702

Other

E mail jfelder@mcgowanhood.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: [] Constructions (100), [] Debt Collection (110), [] Employment (120), [] General (130), [] Breach of Contract (140), [] Other (199)
Torts Professional Malpractice: [] Dental Malpractice (200), [] Legal Malpractice (210), [] Medical Malpractice (220), Previous Notice of Intent Case # 20 CP, [X] Notice/ File Med Mal (230), [] Other (299)
Torts - Personal Injury: [] Assault/Slander/Label (300), [] Conversion (310), [] Motor Vehicle Accident (320), [] Premises Liability (330), [] Products Liability (340), [] Personal Injury (350), [] Wrongful Death (360), [] Other (399)
Real Property: [] Claim & Delivery (400), [] Condemnation (410), [] Foreclosure (420), [] Mechanic's Lien (430), [] Partition (440), [] Possession (450), [] Building Code Violation (460), [] Other (499)
Inmate Petitions: [] PCR (500), [] Mandamus (520), [] Habeas Corpus (530), [] Other (599)
Judgments/Settlements: [] Death Settlement (700), [] Foreign Judgment (710), [] Magistrate's Judgment (720), [] Minor Settlement (730), [] Transcript Judgment (740), [] Lis Pendens (750), [] Transfer of Structured Settlement Payment Rights Application (760), [] Other (799)
Administrative Law/Relief: [] Reinstate Driver's License (800), [] Judicial Review (810), [] Relief (820), [] Permanent Injunction (830), [] Forfeiture-Petition (840), [] Forfeiture-Consent Order (850), [] Other (899)
Appeals: [] Arbitration (900), [] Magistrate-Civil (910), [] Magistrate-Criminal (920), [] Municipal (930), [] Probate Court (940), [] SCDOT (950), [] Worker's Comp (960), [] Zoning Board (970), [] Public Service Commission (990), [] Employment Security Comm (991), [] Other (999)
Special/Complex/Other: [] Environmental (600), [] Automobile Arb (610), [] Medical (620), [] Other (699), [] Pharmaceuticals (630), [] Unfair Trade Practices (640), [] Out of State Depositions (650), [] Motion to Quash Subpoena in an Out-of-County Action (660), [] Sexual Predator (510)

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT

You are required to take the following action(s)

- 1 The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
- 2 The initial ADR conference must be held within 300 days after the filing of the action.
- 3 Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs (Medical malpractice mediation is mandatory statewide).
- 4 Cases are exempt from ADR only upon the following grounds:
 - a Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition,
 - b Requests for temporary relief,
 - c Appeals
 - d Post Conviction relief matters,
 - e Contempt of Court proceedings,
 - f Forfeiture proceedings brought by governmental entities,
 - g Mortgage foreclosures, and
 - h Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute
- 5 In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
- 6 Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note **You must comply with the Supreme Court Rules regarding ADR**
Failure to do so may affect your case or may result in sanctions

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) OF THE SIXTEENTH JUDICIAL CIRCUIT

)
)
) Evelyn Grier, as the appointed Personal
) Representative of the Estate of
) Wilhe James Fee, deceased,

)
)
) C A No 2010 CP 46-2909

)
)
) Plaintiff,

)
) vs

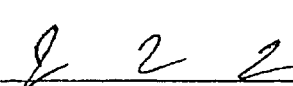
)
) **NOTICE OF INTENT**
) **TO FILE SUIT**

)
) AMISUB of South Carolina, Inc d/b/a
) Piedmont Medical Center,

)
) Defendant
)
)

Pursuant to S C Code Ann 15-79 125, Plaintiff above named files this Notice of Intent to File Suit Attached hereto as "Exhibit A" and incorporated herein by reference is a Complaint that lays out to the factual allegations and legal claims "Exhibit A" is Plaintiff's "short and plain statement of the facts showing that the party is entitled to relief" Attached as "Exhibit B" are affidavits from experts delineating at least one negligent act or omission giving rise to this case Attached as "Exhibit C" are Answers to the Standard Interrogatories as set forth in S C R C P 33 (b)

Respectfully submitted



John G. Felder, Jr
Kevin H Sitnik
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FILED
2010 JUL 12 PM 4 15
CLERK OF COURT
SOUTH CAROLINA
YORK COUNTY SC

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July 8, 2010

EXHIBIT A

Plaintiff's short and plain
statement of the facts
showing that the party is
entitled to relief

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	
Evelyn Grier, as the appointed Personal)	
Representative of the Estate of	)	CA No 2010-CP 46- <u>2909</u>
Willie James Fee, deceased,)	
)	
Plaintiff,)	
vs	)	<u>SUMMONS</u>
	)	(Jury Trial Demanded)
AMISUB of South Carolina, Inc d/b/a)	
Piedmont Medical Center,)	
)	
Defendant.)	
)	

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 1517 Hampton Street, Columbia, South Carolina 29201 within thirty (30) days after the service hereof, exclusive of the day of such service, and, if you fail to appear and defend by filing an Answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint

Respectfully submitted,

DRAFT

John G Felder, Jr
Kevin H Sitnik
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1517 Hampton Street
Columbia, South Carolina 29201
Telephone (803) 779-0100
Facsimile (803) 787-0750
jfelder@mcgowanhood.com
ksitnik@mcgowanhood.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July _____, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	
Evelyn Grier, as the appointed Personal)	
Representative of the Estate of	)	CA No 2010-CP-46- <u>2909</u>
Willie James Fee, deceased,)	
)	
Plaintiff,)	
vs	)	<u>COMPLAINT</u>
	)	(Jury Trial Demanded)
AMISUB of South Carolina, Inc d/b/a)	
Piedmont Medical Center,)	
)	
Defendant)	

The Plaintiff, by and through her undersigned counsel, for her Complaint against the Defendant, does hereby allege as follows

PARTIES

Plaintiff

1 The Plaintiff, Evelyn Grier, is a citizen and resident of the county of York, State of South Carolina, and is the Personal Representative of the Estate of Willie James Fee (hereinafter referred to as "decedent") deceased. She brings this action on behalf of the Estate of decedent, for damages recoverable pursuant to section 15-5-90, Code of Laws of South Carolina (1976, as amended) and for damages recoverable by the statutory beneficiaries of the decedent pursuant to section 15-51-10, et seq, Code of Laws of South Carolina (1976, as amended)

Defendant

2 Upon information and belief, AMISUB of South Carolina d/b/a Piedmont Medical Center is an entity incorporated under the laws of the State of South Carolina, and

was licensed and doing business in the County of York at all times complained herein

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

- 3 Upon information and belief, the Decedent was admitted to Piedmont Medical
Center on January 23, 2008
- 4 Upon information and belief, the Decedent suffered a cardiac arrest on February
23, 2008 and was severely encephalopathic with diffuse hemorrhages on brain CT
with "poor prognosis "
- 5 Upon information and belief, the Decedent remained at Piedmont Medical Center
until September 16, 2008, when he was transferred to Magnolia Manor
- 6 Upon information and belief, the Decedent was readmitted to Piedmont Medical
Center on September 27, 2008
- 7 Upon information and belief, Decedent's health conditions were aggravated and
exacerbated by the Defendants' repeated failure to properly supervise or monitor
his medical condition in that he suffered multiple pressure ulcers including a
stage four pressure ulcer to his sacrum and sepsis which all contributed to his
death, which occurred on February 25, 2009

FOR A FIRST CAUSE OF ACTION
(Negligence - Wrongful Death)

- 8 The Plaintiff re alleges and reiterates paragraphs one (1) through
seven (7) as though fully set forth herein verbatim and further alleges
- 9 Defendant, either personally or through it's employees and agents did undertake
the duty to render medical care to the decedent in accordance with the prevailing

and acceptable professional standard of care for hospitals and their employees and agents in the national community

10 Notwithstanding said undertaking and while the decedent was under the care of Defendant, Defendant and its employees and agents departed from the prevailing and acceptable professional standards of care and treatment of the decedent and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to the decedent, and they are liable for one or more of the following acts or omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care

- a Failing to perform proper assessments and adequately document,
- b Failing to ensure the most reasonable and safe care for Mr Fee,
- c in failing to follow and enforce reasonable care in performing proper monitoring and treatment of the decedent,
- d in failing to have in place proper and adequate policies, procedures, protocols, rules and regulations in regard to pressure ulcers and dehydration, or if such polices, procedures, rules and regulations were in place, in failing to enforce them
- e in failing to ensure that the decedent had proper care,
- f in failing to follow physician orders in a timely fashion,
- g in failing to ensure physical therapy was involved in Mr Fee's care to avoid/minimize contractures,
- h in failing to ensure that the decedent was kept as safe as possible as a result of his medical condition, and
- i in such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure

11 As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by agents and/or employees of Defendant, the Plaintiff's decedent suffered from severe debilitating injuries that resulted in his death, as a result of which the decedent's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow the likes of which no person should endure, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual damages pursuant to section 15-51-10, et seq , Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action.

FOR A SECOND CAUSE OF ACTION
(Negligence - Survivorship Action)

12 The Plaintiff re alleges and reiterates paragraphs one (1) through eleven (11) as though fully set forth herein verbatim and further alleges

13 As a direct and proximate result of the negligence, carelessness, gross negligence and recklessness and departures from professional standards of care by Defendant, as herein set forth above, Willie James Fee endured continuous and excruciating conscious pain and suffering and mental distress in the time leading up to his death on February 25, 2009 Evelyn Grier and the Estate of Willie James Fee have incurred funeral and burial expenses for which the Defendants are liable unto the Plaintiff for actual and punitive damages pursuant to §15-5-90 S C Code Ann 1976 in an amount to be determined by the jury at the trial of this action.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action for the cost and disbursements in this action and such other and further relief as the Court deems just and proper

Respectfully submitted,

DRAFT

John G Felder, Jr
Kevin H Sitrnk
MCGOWAN, HOOD & FELDER LLC
1517 Hampton Street
Columbia, South Carolina 29201
Telephone (803) 779-0100
Facsimile (803) 787 0750
jfelder@mcgowanhood.com
ksitrnk@mcgowanhood.com

Columbia, South Carolina
July _____ 2010

EXHIBIT B

Affidavits from experts

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

Evelyn Grier as Personal)
Representative of the Estate of)
Willie James Fee, Deceased)

C A No 09-CP-46

Plaintiff,)

AFFIDAVIT

Sharon Barber, RN, BSN, WOCN, WCC
(S C Code Ann §15-36-100)

vs)

AMBISUB of South Carolina d/b/a)
Piedmont Medical Center,)

Defendant)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING DULY SWORN, STATES AS FOLLOWS.

1 I am a professional licensed Registered Nurse My clinical practice involves consulting and clinical aspects which includes directing, teaching, mentoring and monitoring nurses for wound care programs in hospitals My education, training, and experience are set forth in the attached CV (Exhibit A) It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care provided to Willie Fee in this case

2 My nursing practice is primarily located in Pineville, North Carolina

3 I am familiar with the standard of care of what a reasonably prudent Registered Nurse would do or not do in providing care to prevent skin break down but when it does occur how to facilitate healing and minimize the risk of complications Furthermore, I am familiar with the type of nursing care rendered to Willie Fee I am familiar with the breaches of the standard of care which can occur and result in harm to a patient similar to the situation involving Willie Fee

4 I have reviewed the medical records of Willie Fee which consisted in part of records from Piedmont Medical Center and Magnolia Manor The records I have reviewed are the type of documents which I would consider in rendering an expert opinion in this case

5 After my review of the above referenced medical records of Willie Fee, it is my opinion to a reasonable degree of nursing certainty that the agents, employees and/or nurses from AMBISUB of South Carolina d/b/a Piedmont Medical Center (hereinafter "PMC"), committed negligent acts or omissions in their care and treatment of Willie Fee Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses from PMC, are as follows

- * Failure to ensure safe and proper care to Willie Fee,
- * Failing to follow physician orders in a timely fashion,
- * Failing to institute measures to avoid skin breakdown in the face of his high risk for skin breakdown, and,
- * Failing to ensure physical therapy was involved in Mr. Fee's care to avoid/minimize contractures

6 Further, it is my opinion to a reasonable degree of nursing certainty that the actions or inactions of the agents, employees and/or nurses from PMC contributed to the injuries, damages and death of Willie Fee

7 The factual basis for my opinion about the breaches of the standard of care by the agents, employees and/or nurses from PMC at this time is the medical records of Willie Fee The factual basis of my opinions may be supplemented at a later time

8 This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any Defendant Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving additional medical records, documents, depositions and/or information

Sharon Barber RN, BSN, WOCM, WCC
Sharon Barber, RN, BSN, WOCM, WCC

Sworn to and signed before me
this 2nd day of June, 2010

Elizabeth Williams
Notary Public

My Commission expires 6/4/2014

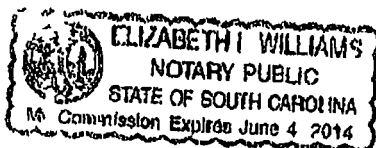


EXHIBIT C

Answers to the Standard Interrogatories

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	
Evelyn Grier, as the appointed Personal	)	C A No 2010-CP-46- <u>2909</u>
Representative of the Estate of)	
Willie James Fee, deceased,)	
)	
Plaintiff,	)	<u>ANSWERS TO</u>
vs	)	<u>STANDARD INTERROGATORIES</u>
	)	§15-36-100 SCCA
AMISUB of South Carolina, Inc d/b/a)	
Piedmont Medical Center,)	
)	
Defendant)	

TO THE DEFENDANT ABOVE NAMED

1 Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or written or recorded statements have been taken from the witnesses and indicate who has possession of such statements

ANSWER Evelyn Grier
c/o McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, South Carolina 29201

- Ms Grier is Personal Representative and daughter of the decedent in this matter It is anticipated that she will testify as to the injuries her father sustained, the medical treatment her father received as a result thereof, the emotional distress and pain and suffering she and her father endured as a result thereof
- Plaintiff is not aware of any written or recorded statements

Evelyn Stewart
1088 Albert Street
Rock Hill, South Carolina 29730

- Ms Stewart is the sister of the decedent in this matter It is anticipated that she will testify as to the injuries her brother sustained, the medical treatment her brother received, the emotional distress and pain and suffering she and her brother endured as a result thereof
- Plaintiff is not aware of any written or recorded statements

Eva Jones
1327 Ogden Road
Rock Hill, South Carolina 29730

- Ms Jones is the aunt of the decedent in this matter It is anticipated that she will testify as to the injuries her nephew sustained, the medical treatment her nephew received, the emotional distress and pain and suffering she and her nephew endured as a result thereof
- Plaintiff is not aware of any written or recorded statements

Plaintiff also reserves the right to name all Defendants, healthcare providers, and any witnesses identified by Defendants, and expect them to testify as to their knowledge of the events and circumstances involved in this case

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

ANSWER Medical Records
Magnolia Manor (MM -001-00359) |
Piedmont Medical Center DOA 1-23-08 (PMC - 001-002680)
Piedmont Medical Center DOA 9-27 08 - 2 25-28
(PMC - 001-002680)

Medical Bills
Magnolia Manor (MM - Bills - 001-002)
PMC Bills DOS 12 7-06 (001)
PMC Bills DOS 2-6-07 (001)
PMC Bills DOS 1-23-08 - 9-15 08 (001-00162)
PMC Bills DOS 9-27-08 - 2-25-09 (001-00126)

Plaintiff reserves the right to supplement should additional responsive documents be identified

3 In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved

ANSWER Piedmont Medical Center
222 S Herlong Ave

Rock Hill, South Carolina 29732
*** Physicians listed in medical records**
*** \$1,256,374 70**

Magnolia Manor - Rock Hill, Inc
127 Murrah Drive
Rock Hill, South Carolina 29732-2390
*** Physicians listed in medical records**
*** \$5,763 31**

Plaintiff reserves the right to supplement this answer should additional responsive information become available

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

ANSWER Plaintiff's decedent had Medicare and Medicaid

5 Set forth an itemized statement of all damages, exclusive of pain and suffering, claim to have been sustained by the party

ANSWER In addition to pain and suffering sustained by the decedent, and mental anguish and emotional distress experienced by the decedent's statutory beneficiaries at the loss of the aid, comfort, support, society and companionship of the decedent, Plaintiff incurred medical bills from the physicians listed above. Plaintiff reserves the right to supplement this answer once additional responsive information becomes available, and further bills are received through discovery

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

ANSWER Sharon Barber, RN, BSN, WOCN, WCC
8024 Hillanby Court

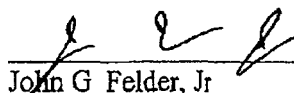
Waxhaw, North Carolina 28173

Plaintiffs reserve the right to supplement this answer should additional experts be identified. Plaintiffs also reserve the right to call any treating physician as an expert with their field.

7 For each person known to the party 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 witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER Plaintiffs' crave reference to Interrogatory 1. Also, the affidavit of Sharon Barber, RN, BSN, WOCN, WCC is attached as "Exhibit B." No other written or recorded statements have been made. Plaintiff reserves the right to supplement once additional responsive information becomes available.

Respectfully submitted,



John G. Felder, Jr.
Kevin H. Sitnik
MCGOWAN, HOOD & FELDER, LLC
1517 Hampton Street
Columbia, South Carolina 29201
Telephone (803) 779-0100
Facsimile (803) 787-0750
jfelder@mcgowanhood.com
ksitnik@mcgowanhood.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July 8, 2010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Evelyn Grier, as the appointed PR of the)
 Estate of Wilhe James Fee, deceased)
 _____)
 Plaintiff)
 vs)
)
 Amisub of South Carolina, Inc, d/b/a)
 Piedmont Medical Center)
 _____)
 Defendant)

IN THE COURT OF COMMON PLEAS
 _____ JUDICIAL CIRCUIT
 CASE NO 2010-CP 46_2909
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Plaintiff's Attorney John Felder and Kevin Sitnik, Bar No _____ Address McGowan Hood & Felder 1517 Hampton St , Columbia, SC 29201 Phone _____ Fax _____ E mail _____ Other _____	Defendant s Attorney William L Gunn, Bar No _____ Address Holcombe Bomar, PA P O Drawer 1897, Spartanburg, SC 29304 Phone 864 594-5300 Fax864-585-3844 E-mail bgunn@holcombebomar.com Other _____
---	---

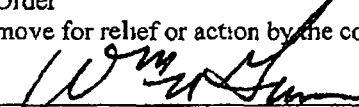
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I Hearing Information

Nature of Motion Dismiss for Insufficiency of Affidavit
 Estimated Time Needed 15 mins Court Reporter Needed YES/ NO

SECTION II Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order


 Signature of Attorney for Plaintiff / Defendant

October 27, 2010
Date submitted

SECTION III Motion Fee

PAID - AMOUNT \$ _____
 EXEMPT (check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69 SCRPC)
 Proposed order submitted at request of the court, or reduced to writing from motion made in open court per judge s instructions
 Name of Court Reporter _____
 Other _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order
 Other _____

JUDGE CODE _____
 Date _____

CLERK'S VERIFICATION

Collected by _____ Date Filed _____
 MOTION FEE COLLECTED \$ _____
 CONTESTED - AMOUNT DUE \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Evelyn Grier, as the appointed)
Personal Representative of the)
Estate of Willie James Fee,)
deceased,)

NOTICE OF MOTION TO DISMISS
FOR INSUFFICIENCY OF AFFIDAVIT

Plaintiff)

C A No 2010-CP-46-2909

vs)

Amisub of South Carolina, Inc ,)
d/b/a Piedmont Medical Center)

Defendant)

TO JOHN G FELDER, JR and KEVIN H SITNIK of McGowan, Hood & Felder LLC
Attorneys for Plaintiff

YOU WILL PLEASE TAKE NOTICE that Defendant Amisub of South Carolina Inc
d/b/a Piedmont Medical Center, through its undersigned attorneys will move on the tenth
(10th) day after service hereof at 10 00 a m , or as soon thereafter as counsel can be
heard, before the presiding Judge of the Court of Common Pleas for York County for an
Order dismissing the above-entitled Notice of Intent to File Suit on the basis the notice and
supporting affidavit of purported expert do not comport or comply with §§15-79-125 and
15-36-100 of the Code of Laws of South Carolina (1976 as amended) More particularly,
the affidavit supplied by Plaintiff is of a registered nurse and wound care specialist She
opines therein that the actions or inactions of the agents, employees and/or nurses from
Piedmont Medical Center contributed to the injuries, damages and death of Willie Fee

Any causation opinion may not be made by a nursing expert and moreover, the
affidavit does not affirmatively relate that Ms Barber is able to express opinions regarding

proximate cause of injuries and death

HOLCOMBE BOMAR, P A

By  _____

William U Gunn
P O Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com

Attorney for Amisub of South Carolina
Inc d/b/a Piedmont Medical Center

Spartanburg, SC

October 27 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Evelyn Grier, as the appointed)
Personal Representative of the)
Estate of Willie James Fee,)
deceased,)

CERTIFICATE OF SERVICE

Plaintiff)

C A. No 2010-CP-46-2909

vs)

Amisub of South Carolina, Inc ,)
d/b/a Piedmont Medical Center,)

Defendant)

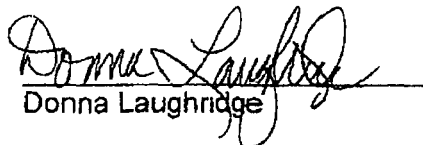
I the undersigned paralegal in the law offices of Holcombe Bomar P A attorneys for Defendant Amisub of South Carolina Inc , d/b/a Piedmont Medical Center, certify that I have mailed by United States Mail a copy of the hereinbelow listed pleading to counsel in this matter on the 27th day of October, 2010 as follows

PLEADING

Notice of Motion to Dismiss for Insufficiency of Affidavit

COUNSEL SERVED

John G Felder Jr , Esquire
Kevin H Sitnik Esquire
McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, SC 29201


Donna Laughridge

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Evelyn Grier, as the appointed Personal
Representative of the Estate of
Wilhe James Fee, deceased,

Plaintiff,

vs

AMISUB of South Carolina, Inc d/b/a
Piedmont Medical Center,

Defendant.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

C A No 2010-CP-46-2909

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO MOTION TO
DISMISS**

Evelyn Grier, as the appointed Personal Representative of the Estate of Willie James Fee, deceased, filed the instant Notice of Intent to File Suit¹ on July 12, 2010 pursuant to S C Code Ann. § 15-79-125 alleging that decedent Willie Fee died as a result of pressure ulcers proximately caused by Defendant AMISUB. The instant Notice of Intent was supported by the Affidavit of Sharon Barber, RN. Defendant AMISUB has responded with a motion to dismiss, claiming the affidavit of Nurse Barber does not meet the statutory requirements of S C Code Ann §§ 15-79-125 and 15-36-100. Defendant's motion is wrong as a matter of law and should be denied.

¹ Attached as Exhibit A

S C Code Ann § 15-79-125 requires “Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100 ” That provision, S C Code Ann § 15-36-100, provides “the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit”

(emphasis added)

Nurse Barber’s affidavit states, in relevant part

[I]t is my opinion to a reasonable degree of nursing certainty that the agents, employees and/or nurses from AMBISUB of South Carolina d/b/a Piedmont Medical Center (hereinafter "PMC"), committed negligent acts or omissions in their care and treatment of Willie Fee Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses from PMC, are as follows

- * Failure to ensure safe and proper care to Willie Fee,
- * Failing to follow physician orders in a timely fashion,
- * Failing to institute measures to avoid skin breakdown in the face of his high risk for skin breakdown,
- * Failing to ensure physical therapy was involved in Mr Fee’s care to avoid/minimize contractures, and

The affidavit provides four separate and distinct “negligent acts or omissions,” echoing the exact language of S C Code Ann § 15-36-100

Defendant describes the basis for its motion in this way “Any causation opinion may not be made by a nursing expert, and moreover, the affidavit does not affirmatively relate that Ms Barber is able to express opinions regarding proximate cause of injuries and death ” In other words, Defendant faults Plaintiff’s Notice of Intent because the affidavit does not contain a physician’s opinion regarding proximate cause Contrary to Defendant’s implied assertion, no


provision of South Carolina law requires that Section 15-36-100 affidavits address probable cause and the motion is therefore meritless

All that is required for the affidavit is one "negligent act or omission." That phrase is a term of art in South Carolina. It merely means the "breach" – one of the four elements of a negligence cause of action – and is not a synonym for all four elements of a negligence cause of action, as our Supreme Court has stated over and over, as recently as this summer. "To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission, and (3) damages proximately resulting from the breach of duty" (emphasis added) *Fowler v Hunter*, 388 S.C. 355, 361, 697 S.E.2d 531, 534 (2010), reh'g denied (Aug. 19, 2010). See also *Moore v Weinberg*, 383 S.C. 583, 588, 681 S.E.2d 875, 878 (2009) ("In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages") (emphasis added), *Vinson v Hartley*, 324 S.C. 389, 399, 477 S.E.2d 715, 720 (S.C. Ct. App. 1996) ("To prevail in an action founded in negligence, the plaintiff must establish three essential elements: (1) a duty of care owed by the defendant to the plaintiff, (2) a breach of that duty by a negligent act or omission, and (3) damage proximately caused by a breach of duty" (emphasis added)), *Crolley v Hutchins*, 300 S.C. 355, 356, 387 S.E.2d 716, 717 (S.C. Ct. App. 1989) ("In order to recover in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission, and (3) damage proximately resulting from the breach")

Further, "negligence" as a general term means the breach or deviation from the standard of care and does not include causation "Negligence is the failure to use such care as a reasonably prudent and careful person " *Black's Law Dictionary*, 6th Ed (West) Defendant AMISUB is wrongfully conflating "negligence" with the elements of a negligence cause of action, or "actionable negligence " *See, e g , Black's Law Dictionary*, 6th Ed (West) ("actionable negligence" is defined as a breach "resulting in damage or injury") There is no language in S C Code Ann § 15-36-100 requiring an affidavit including all four elements of actionable negligence

Neither is there a reported case in South Carolina interpreting S C Code Ann § 15-36-100 as requiring the affidavit to include an opinion on proximate cause Such an interpretation would directly contradict numerous South Carolina opinions defining "negligent act or omission" as synonymous with the breach of the standard of care, one of the four elements of negligence Defendant's motion should be denied

Respectfully submitted,



William A. McKinnon
MCGOWAN HOOD & FELDER
1539 Health Care Dr
Rock Hill, SC 29732
Telephone (803) 327-7800
Facsimile (803) 328-5656
Email bmckinnon@mcgowanhood.com

John G. Felder, Jr
MCGOWAN HOOD & FELDER
1517 Hampton Street

Columbia, South Carolina 29201
Telephone (803) 779-0100
Facsimile (803) 256-0702
Email jfelder@mcgowanhood.com

Attorneys for Plaintiff

December 15, 2010
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Evelyn Grier, as the appointed Personal Representative of the Estate of Willie James Fee, deceased,

Plaintiff(s)

VS

AMISUB of South Carolina, Inc. d/b/a Piedmont Medical Center,

Defendant(s)

(Please Print)

Submitted By John G Felder, Jr

Address: 1517 Hampton Street
Columbia, South Carolina 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP-46-2909

FILED RECEIVED
2010 JUL 12 PM 4 15
CLERK OF COURT
YORK COUNTY SC

SC Bar # 7051

Telephone # (803) 779-0450

Fax # (803) 256-0702

Other:

E mail jfelder@mcgowanhood.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| <p>Contracts</p> <input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | <p>Torts Professional Malpractice</p> <input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20 CP _____
<input checked="" type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <input type="checkbox"/> Assault/Stander/Label (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | <p>Real Property</p> <input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanics Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <input type="checkbox"/> Reinstate Driver's License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | <p>Appeals</p> <input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate Civil (910)
<input type="checkbox"/> Magistrate Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Commission (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) | | | |
| <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of-State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | | | |

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT

You are required to take the following action(s)

- 1 The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed
- 2 The initial ADR conference must be held within 300 days after the filing of the action.
- 3 Pre-suit medical malpractice mediations required by S C Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs (Medical malpractice mediation is mandatory statewide)
- 4 Cases are exempt from ADR only upon the following grounds
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition,
 - b. Requests for temporary relief,
 - c. Appeals
 - d. Post Conviction relief matters,
 - e. Contempt of Court proceedings,
 - f. Forfeiture proceedings brought by governmental entities,
 - g. Mortgage foreclosures and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute
- 5 In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation
- 6 Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded

Please Note **You must comply with the Supreme Court Rules regarding ADR**
 Failure to do so may affect your case or may result in sanctions

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

Evelyn Grier, as the appointed Personal
Representative of the Estate of
Wilhe James Fee, deceased,

CA No 2010 CP-46 2909

Plaintiff,

vs

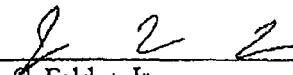
**NOTICE OF INTENT
TO FILE SUIT**

AMISUB of South Carolina, Inc d/b/a
Piedmont Medical Center,

Defendant.

Pursuant to S C Code Ann 15 79-125, Plaintiff above named files this Notice of Intent to File Suit Attached hereto as "Exhibit A" and incorporated herein by reference is a Complaint that lays out to the factual allegations and legal claims "Exhibit A" is Plaintiff's "short and plain statement of the facts showing that the party is entitled to relief" Attached as "Exhibit B" are affidavits from experts delineating at least one negligent act or omission giving rise to this case Attached as "Exhibit C" are Answers to the Standard Interrogatories as set forth in S C R C P 33 (b)

Respectfully submitted,


John G. Felder, Jr
Kevin H. Sitrnik
MCGOWAN, HOOD & FELDER, LLC
1517 Hampton Street
Columbia, South Carolina 29201
Telephone (803) 779-0100
Facsimile (803) 787 0750
jfelder@mcgowanhood.com
ksitrnik@mcgowanhood.com

FILED
2010 JUL 12 PM 4 15
CLERK OF COURT
SOUTH CAROLINA
YORK COUNTY, SC

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July 8, 2010

EXHIBIT A

Plaintiff's short and plain
statement of the facts
showing that the party is
entitled to relief

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) OF THE SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK

Evelyn Grier, as the appointed Personal
Representative of the Estate of
Willie James Fee, deceased,

CA No 2010 CP 46 2909

Plaintiff,

vs

SUMMONS
(Jury Trial Demanded)

AMISUB of South Carolina, Inc d/b/a
Piedmont Medical Center,

Defendant

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 1517 Hampton Street, Columbia, South Carolina 29201 within thirty (30) days after the service hereof, exclusive of the day of such service, and, if you fail to appear and defend by filing an Answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint

Respectfully submitted,

DRAFT

John G Felder, Jr
Kevin H Sitnik
MCGOWAN, HOOD & FELDER, LLC
1517 Hampton Street
Columbia, South Carolina 29201
Telephone (803) 779-0100
Facsimile (803) 787-0750
jfelder@mcgowanhood.com
ksitnik@mcgowanhood.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July _____, 2010

was licensed and doing business in the County of York at all times complained herein

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

- 3 Upon information and belief, the Decedent was admitted to Piedmont Medical
Center on January 23, 2008
- 4 Upon information and belief, the Decedent suffered a cardiac arrest on February
23, 2008 and was severely encephalopathic with diffuse hemorrhages on brain CT
with "poor prognosis "
- 5 Upon information and belief the Decedent remained at Piedmont Medical Center
until September 16, 2008, when he was transferred to Magnolia Manor
- 6 Upon information and belief, the Decedent was readmitted to Piedmont Medical
Center on September 27, 2008
- 7 Upon information and belief, Decedent's health conditions were aggravated and
exacerbated by the Defendants' repeated failure to properly supervise or monitor
his medical condition in that he suffered multiple pressure ulcers including a
stage four pressure ulcer to his sacrum and sepsis which all contributed to his
death, which occurred on February 25, 2009

FOR A FIRST CAUSE OF ACTION
(Negligence - Wrongful Death)

- 8 The Plaintiff re alleges and reiterates paragraphs one (1) through
seven (7) as though fully set forth herein verbatim and further alleges
- 9 Defendant, either personally or through it's employees and agents did undertake
the duty to render medical care to the decedent in accordance with the prevailing

and acceptable professional standard of care for hospitals and their employees and agents in the national community

10 Notwithstanding said undertaking and while the decedent was under the care of Defendant, Defendant and its employees and agents departed from the prevailing and acceptable professional standards of care and treatment of the decedent and were thereby negligent, careless, grossly negligent reckless and in violation of the duties owed to the decedent, and they are liable for one or more of the following acts or omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care

- a Failing to perform proper assessments and adequately document,
- b Failing to ensure the most reasonable and safe care for Mr Fee,
- c in failing to follow and enforce reasonable care in performing proper monitoring and treatment of the decedent,
- d in failing to have in place proper and adequate policies, procedures, protocols, rules and regulations in regard to pressure ulcers and dehydration, or if such policies, procedures, rules and regulations were in place, in failing to enforce them
- e in failing to ensure that the decedent had proper care,
- f in failing to follow physician orders in a timely fashion,
- g in failing to ensure physical therapy was involved in Mr Fee's care to avoid/minimize contractures,
- h in failing to ensure that the decedent was kept as safe as possible as a result of his medical condition, and
- i in such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure

11 As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by agents and/or employees of Defendant, the Plaintiff's decedent suffered from severe debilitating injuries that resulted in his death, as a result of which the decedent's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, the likes of which no person should endure, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual damages pursuant to section 15-51-10, et seq, Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action

FOR A SECOND CAUSE OF ACTION
(Negligence - Survivorship Action)

12 The Plaintiff re alleges and reiterates paragraphs one (1) through
eleven (11) as though fully set forth herein verbatim and further alleges
13 As a direct and proximate result of the negligence, carelessness, gross
negligence and recklessness and departures from professional standards of care by
Defendant, as herein set forth above, Willie James Fee endured continuous and
excruciating conscious pain and suffering and mental distress in the time leading
up to his death on February 25, 2009 Evelyn Grier and the Estate of Willie James
Fee have incurred funeral and burial expenses for which the Defendants are liable
unto the Plaintiff for actual and punitive damages pursuant to §15-5 90 S C Code
Ann 1976 in an amount to be determined by the jury at the trial of this action

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action for the cost and disbursements in this action and such other and further relief as the Court deems just and proper.

Respectfully submitted,

DRAFT

John G. Felder, Jr.
Kevin H. Sitnik
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jfelder@mcgowanhood.com
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Columbia, South Carolina
July _____, 2010

EXHIBIT B

11

Affidavits from experts

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

Evelyn Grier as Personal
Representative of the Estate of
Willie James Fee, Deceased)

C.A No 09-CP-46-

Plaintiff,)

AFFIDAVIT
Sharon Barber, RN, BSN, WOCN, WCC
(S C Code Ann. §15-36-100)

vs)

AMBISUB of South Carolina d/b/a
Piedmont Medical Center,)

Defendant)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING DULY SWORN, STATES AS FOLLOWS

1 I am a professional licensed Registered Nurse My clinical practice involves consulting and clinical aspects which includes directing, teaching, mentoring and monitoring nurses for wound care programs in hospitals My education, training, and experience are set forth in the attached CV (Exhibit A) It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care provided to Willie Fee in this case

2 My nursing practice is primarily located in Pineville, North Carolina

3 I am familiar with the standard of care of what a reasonably prudent Registered Nurse would do or not do in providing care to prevent skin break down but when it does occur how to facilitate healing and minimize the risk of complications Furthermore I am familiar with the type of nursing care rendered to Willie Fee I am familiar with the breaches of the standard of care which can occur and result in harm to a patient similar to the situation involving Willie Fee

4 I have reviewed the medical records of Willie Fee which consisted in part of records from Piedmont Medical Center and Magnolia Manor The records I have reviewed are the type of documents which I would consider in rendering an expert opinion in this case

5 After my review of the above referenced medical records of Willie Fee, it is my opinion to a reasonable degree of nursing certainty that the agents, employees and/or nurses from AMBISUB of South Carolina d/b/a Piedmont Medical Center (hereinafter "PMC"), committed negligent acts or omissions in their care and treatment of Willie Fee. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses from PMC, are as follows:

- * Failure to ensure safe and proper care to Willie Fee,
- * Failing to follow physician orders in a timely fashion;
- * Failing to institute measures to avoid skin breakdown in the face of his high risk for skin breakdown, and,
- * Failing to ensure physical therapy was involved in Mr. Fee's care to avoid/minimize contractures

6 Further, it is my opinion to a reasonable degree of nursing certainty that the actions or inactions of the agents, employees and/or nurses from PMC contributed to the injuries, damages and death of Willie Fee.

7 The factual basis for my opinion about the breaches of the standard of care by the agents, employees and/or nurses from PMC at this time is the medical records of Willie Fee. The factual basis of my opinions may be supplemented at a later time.

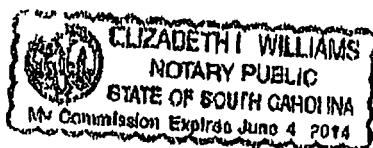
8 This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any Defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving additional medical records, documents, depositions and/or information.

Sharon Barber RN, BSN, WOCN, WCC
Sharon Barber, RN, BSN, WOCN, WCC

Sworn to and signed before me
this 25th day of June, 2010

Elizabeth Williams
Notary Public

My Commission expires: 6/4/2014




Waxhaw, North Carolina 28173

Plaintiffs reserve the right to supplement this answer should additional experts be identified. Plaintiffs also reserve the right to call any treating physician as an expert with their field.

7 For each person known to the party 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 witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER Plaintiffs' crave reference to Interrogatory 1. Also, the affidavit of Sharon Barber, RN, BSN, WOCN, WCC is attached as "Exhibit B." No other written or recorded statements have been made. Plaintiff reserves the right to supplement once additional responsive information becomes available.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July 8, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Evelyn Grier, as the appointed)
Personal Representative of the)
Estate of Willie James Fee,)
deceased,)
)
Plaintiff,)

MEMORANDUM IN SUPPORT OF
DEFENDANT S MOTION TO DISMISS
FOR INSUFFICIENCY OF AFFIDAVIT

vs)

C A No 2010-CP-46-2909

Amisub of South Carolina, Inc)
d/b/a Piedmont Medical Center)
)
Defendant)

Defendant Amisub of South Carolina Inc d/b/a Piedmont Medical Center ("Amisub ")
offers the following Memorandum in Support of its Motion to Dismiss for Insufficiency of
Affidavit

STATEMENT OF THE FACTS

On July 12, 2010, Plaintiff Evelyn Grier, Personal Representative of the Estate of Willie James Fee (Plaintiff) filed her Notice of Intent to File Suit (Notice) against Amisub for claims of wrongful death and survivorship stemming from alleged acts of medical malpractice Said Notice purports to comply with S C Code Ann § 15-79-125 Attached to the Notice as Exhibit "A" is a draft complaint which, according to Plaintiff, contains a short and plain statement of the facts showing that Plaintiff is entitled to relief Exhibit "A" contains bare allegations that Mr Fee s death and Plaintiff s survivorship claims were the direct and proximate result of the alleged negligent actions or inactions of Amisub relating to Amisub's ' failure to properly supervise or monitor [Mr Fee s] medical condition in that he

suffered multiple pressure ulcers which all contributed to his death ' Exhibit A', ¶ 7 Attached to the Notice as Exhibit "B" is an Affidavit from Nurse Sharon Barber Nurse Barber sets out four potential negligent actions or inactions of Amisub relating to the care and treatment of Mr Fee, and makes the factually unsupported statement "that the actions or inactions of the agents employees and/or nurses from PMC contributed to the injuries damages and death of Willie Fee " Expert Affidavit, ¶ 5, 6

APPLICABLE LAW

Before filing a medical malpractice claim, a plaintiff must file a notice of intent to file suit ("Notice") accompanied by an affidavit of an expert witness S C Code Ann § 15-79-125(A) The Notice must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief Id The accompanying expert witness affidavit "must specify at least one negligent act or omission claimed to exist and the factual basis for each claim" S C Code Ann § 15-36-100(B) Where a defendant alleges with specificity, by motion to dismiss that the affidavit is defective the plaintiff's complaint is subject to dismissal for failure to state a claim S C Code Ann § 15-36-100(E)

The current versions of Sections 15-75-125 and 15-36-100 were enacted as part of the South Carolina Tort Reform Act of 2005 (the "Act") The contents of the Act evidence an implicit intent by the Legislature to refine the requirements necessary to maintain claims for medical malpractice and to discourage wasteful litigation The Act implements statutes which place damages caps on recoveries in medical malpractice actions (S C Code Ann § 15-32-200, et seq.), provide offer of judgment procedures whereby a party who imprudently refuses to accept an offer of judgment may be made to pay certain attorney's fees and costs of the offering party (S C Code Ann § 15-35-400), and revamp the privilege

granted to the medical peer review process (S C Code Ann § 40-71-10, et seq.) The requirements of filing a notice of intent to file suit and supporting expert affidavit fit within the Act's implicit purposes because these requirements assure that a plaintiff has shown a colorable claim of medical malpractice before suit is filed

To be entitled to relief upon a claim of medical malpractice, a plaintiff must show that the defendant deviated from "generally recognized practices and procedures" and that said deviation, 'was the proximate cause of the plaintiff's alleged injuries and damages " David v McLeod Regional Med Ctr , 367 S C 242, 626 S E 2d 1 (2006), see also Hanselmann v McCardle, 275 S C 46 49 267 S E 2d 531 533 (1980) ("A plaintiff must plead and prove not only that he has been injured and the defendant's fault, but also the causal connection between the two) Where causation of an injury is not within the common knowledge or experience of laymen "proof of proximate cause must be established by expert testimony " Welch v Whitaker, 282 S C 251, 317 S E 2d 758 (Ct App 1984)

For a medical professional to be qualified to give an expert opinion concerning causation of an injury, said professional must be qualified to render medical diagnoses See Nelson v Taylor, 347 S C 210, 553 S E 2d 488 (Ct App 2001) (holding that a physical therapist was not qualified to render expert medical testimony concerning causation of plaintiff's alleged injuries because physical therapists are not qualified to render medical diagnoses), Crawford v Henderson, 356 S C 389, 589 S E 2d 204 (Ct App 2003) (holding that where a nurse practitioner was qualified to render medical diagnoses under proper written protocol from a physician, said nurse practitioner was qualified to render expert medical testimony concerning causation)

ARGUMENTS

Plaintiff's Notice of Intent to File Suit and accompanying expert affidavit are defective because they fail to show facts demonstrating that Plaintiff has a claim upon which she is entitled to recover

Upon his admission to Piedmont Medical Center on January 22-23 2008, Mr Fee was suffering from a multitude of complex and severe medical issues His past medical history included diabetes mellitus type 2 for which he did not use insulin and cardiomegaly/ cardiomyopathy Mr Fee's admitting diagnoses included a diabetic hyperosmolar nonketotic coma a seizure possibly secondary to alcohol withdrawal or cocaine abuse, acute renal failure metabolic acidosis possibly multifactorial due to acute renal failure and lactic acidosis, hypotension and hypoalbuminemia plus proteinuria nephrotic syndrome Further, Mr Fee's social history revealed habitual cigarette use regular alcohol consumption, and abuse of illicit drugs

After months of treatment, Mr Fee was discharged to the care of Magnolia Manor on September 15 2008, only to be readmitted to PMC on September 27 2008 where he remained until his death on February 24, 2009 Mr Fee's diagnoses during this second stay at Piedmont Medical Center included fever secondary to aspiration pneumonia and urinary tract infection aspiration pneumonia and urinary tract infection diffuse and focal cerebral dysfunction, large left middle cerebral artery hemorrhagic stroke, encephalopathy, actual renal failure with a possibility of chronic kidney disease seizure disorder, insulin dependant diabetes multiple respiratory tract infections, a sacral decubitus ulcer history of upper extremity deep venous thrombosis, and history of alcohol and cocaine abuse At all times, Mr Fee's prognosis was poor, and he presented a poor quality of life

In accord with South Carolina case law, proximate cause must be established to maintain an action for medical malpractice. Because the complex medical issues presented in this matter are outside of the common knowledge and experience of a layperson, expert medical testimony is required to show that alleged negligent actions or inactions relating to pressure ulcers proximately caused Mr. Fee's death. Plaintiff's draft complaint attached to the Notice contains bare allegations of proximate cause not supported by the facts alleged. As to Nurse Barber's expert affidavit, neither Plaintiff nor Nurse Barber have established that she is qualified to testify concerning medical causation of the injuries claimed by Plaintiff because Nurse Barber's affidavit does not establish any qualifications she legally holds which entitle her to diagnose Mr. Fee's many existing health conditions and conclude that alleged acts of negligence related to pressure ulcers were the proximate cause of Mr. Fee's death.

Even if Nurse Barber could be found qualified to diagnose the many medical conditions plaguing Mr. Fee in order to determine the proximate cause of his death, Nurse Barber's affidavit fails to specify the factual basis for her broad conclusion that alleged negligent actions or inactions of Amisub contributed to Plaintiff's injuries. Where so many medical and social history factors contributed to Mr. Fee's condition and where Mr. Fee's prognosis was poor at all times, more factual bases than bare statements alleging causation must be made to support a showing of proximate cause, a prerequisite to showing a claim upon which Plaintiff is entitled to relief.

Additionally, the implicit intent behind the Tort Reform Act of 2005 must be considered. Allowing this action to move forward based upon the defective Notice and accompanying expert affidavit would contravene the implicit purpose underlying S.C. Code

Ann § 15-79-125 and § 15-36-100 These statutes are part of a broader statutory scheme enacted to prevent plaintiffs from bringing medical malpractice allegations which lack the requisite merits of colorable claims Without requiring that Plaintiff show proximate causation necessary for Plaintiff to present a claim upon which she is entitled to relief these statutes will not serve their function of preventing non-meritorious claims from being filed

CONCLUSION

For the reasons set forth above, Defendant Amisub respectfully requests that this Court grant its Motion to Dismiss for Insufficiency of Affidavit Pursuant to S C Code Ann § 15-79-125 and § 15-36-100, Plaintiff has failed to show a claim in medical malpractice upon which she is entitled to relief, and Defendants therefore are entitled to dismissal of this action

Respectfully submitted

HOLCOMBE BOMAR P A

By

William U Gunn
Post Office Drawer 1897
Spartanburg South Carolina 29304
(864) 594-5300
(864) 585-4273 fax

Attorneys for Defendant Amisub of South
Carolina, Inc , d/b/a Piedmont Medical Center

Spartanburg SC

December 15, 2010

I N D E X

WITNESS

DIRECT

CROSS

RE-DIRECT

RE-CROSS

(NO TESTIMONY TAKEN)

E X H I B I T S

EXHIBIT NO	DESCRIPTION	ID	EV
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(NO EXHIBITS)

1 THE COURT - ALL RIGHT, MR GUNN, THIS IS YOUR
2 MOTION TO DISMISS ---

3 MR. GUNN - YES, SIR

4 THE COURT - --- UNDER THOSE STATUTES THAT HAVE
5 YET TO BE CONSTRUED BY AN APPELLATE COURT IN SOUTH
6 CAROLINA

7 MR. GUNN - YES, SIR THIS IS A MEDICAL
8 NEGLIGENCE ACTION IT'S REALLY ONLY AT THE NOTICE OF
9 INTENT STAGE WILLIE FEE WAS A PATIENT AT THE HOSPITAL,
10 A FELLOW IN HIS FIFTIES, DATE OF BIRTH OF JANUARY 12TH,
11 1955, SO HE WAS ABOUT FIFTY-FOUR AT THE TIME OF HIS DEATH
12 HE WAS ADMITTED ON JANUARY 23RD, 2008 WITH ANY NUMBER OF
13 SERIOUS MALADIES HE WAS AN UNTREATED TYPE 2 DIABETIC
14 HE WAS IN A DIABETIC COMA, HE HAD A SEIZURE, COCAINE AND
15 ALCOHOL WITHDRAWAL, ACUTE RENAL FAILURE, HE WAS ACIDOTIC,
16 HE HAD HYPOTENSION I MEAN HE WAS IN ---

17 THE COURT - BAD SHAPE

18 MR. GUNN - --- DISASTROUS MEDICAL CONDITION HE
19 SPENT --- HE SPENT SOME EIGHT MONTHS IN THE HOSPITAL AT
20 THAT POINT HE WAS DISCHARGED ON SEPTEMBER THE 15TH,
21 2008, SPENT TWELVE DAYS AT MAGNOLIA MANOR AND WAS BACK AT
22 PIEDMONT MEDICAL CENTER HIS SECOND STINT ---

23 THE COURT - I'M SORRY, HOW LONG WAS HE AT
24 PIEDMONT?

25 MR. GUNN - EIGHT MONTHS THE FIRST TIME

1 THE COURT - EIGHT MONTHS OKAY, I ---

2 MR. GUNN - YES, SIR

3 THE COURT - --- DIDN'T PICK THAT UP ALL RIGHT

4 MR. GUNN - YES, SIR THE SECOND TOUR OF DUTY AT
5 PIEDMONT MEDICAL CENTER AFTER TWELVE DAYS AT MAGNOLIA, HE
6 CAME BACK ON SEPTEMBER 27TH AND STAYED UNTIL HIS DEATH ON
7 FEBRUARY 24TH, 2009, FIVE MONTHS THEREABOUTS ON THE
8 SECOND ADMISSION HE HAD A LOT OF THOSE SAME CONDITIONS
9 HE HAD A URINARY TRACT INFECTION, HE HAD CEREBRAL
10 DISFUNCTION, BOTH GLOBALLY AND LOCAL HE HAD A --- HAD
11 SUFFERED A STROKE HE HAD ENCEPHALOPATHY HE HAD ACUTE
12 RENAL FAILURE, A DECUBITUS ULCER, UPPER EXTREMITY DEEP
13 VENOUS THROMBOSIS AND THE ALCOHOL AND COCAINE WITHDRAWAL
14 ISSUES STILL PERSISTED THE DEATH NOTE AND I HAVE A COPY
15 OF THE DEATH NOTE I DON'T THINK THERE'S ANY DISPUTE
16 ABOUT THE MEDICAL RECORDS OR ANYTHING, AND I REALIZE
17 THAT'S OUTSIDE THE FOUR CORNERS OF THE MOTION, BUT HE HAD
18 A VERY, VERY COMPLEX MEDICAL ISSUE AND THIS DECUBITUS
19 ULCER IS WHAT IS THE NATURE OF THE AFFIDAVIT PROVIDED BY
20 SHARON BARBER WHO IS ESSENTIALLY A WOUND CARE EXPERT
21 SAYING ---

22 THE COURT - WHAT ARE HER CREDENTIALS? IS HE ---
23 SHE'S A RN?

24 MR. GUNN - YES, SIR, AND I THINK SHE HAS SOME
25 CERTIFICATIONS IN WOUND CARE, DOESN'T SHE? I MEAN ---

1 MR. MCKINNON - SHE DOES, YOUR HONOR

2 MR. GUNN - YES I DON'T --- WE DON'T DISPUTE
3 HER ---

4 THE COURT - OKAY

5 MR. GUNN - --- CAPACITIES IN THAT REGARD WHAT
6 THIS HAS TO DO WITH AND IT --- AND I THINK IT'S A MATTER
7 OF FIRST IMPRESSION FOR THE COURT

8 THE COURT - I THINK SO I COULDN'T FIND IT

9 MR. GUNN - AND IT HAS TO DO WITH THE STATUTES
10 THAT CAME INTO EFFECT IN 2005, SECTION 15-79-10 WHICH
11 REQUIRES THE FILING OF NOTICE OF INTENT, THE SHORT AND
12 PLAIN STATEMENT OF THE FACTS AND AN AFFIDAVIT THE
13 AFFIDAVIT IN TURN HAS TO COMPLY WITH SECTION 15-36-100
14 WHICH IS A BROADER STATUTE THAT APPLIES TO ALL
15 PROFESSIONAL NEGLIGENCE ACTIONS IT'S SIMPLY STATED, YOUR
16 HONOR, OUR POSITION THAT --- THAT MS BARBER IS NOT
17 QUALIFIED TO MAKE A SUMMARY STATEMENT AS TO THIS DECUBITUS
18 ULCER IN THIS PATIENT, WITH ALL THESE VERY, VERY SERIOUS
19 MALADIES SHE'S NOT QUALIFIED TO SAY, NOR DOES SHE SAY THAT
20 SHE'S QUALIFIED I MEAN SHE --- SHE GIVES THE OPINION,
21 BUT SHE'S NOT QUALIFIED TO SAY THAT THIS CONTRIBUTED TO
22 HIS DEATH OR PERSONAL INJURIES

23 THE COURT - IF I REMEMBER --- CORRECT ME IF I'M
24 WRONG --- WELL, NOW SHE DOES --- QUALIFIED AND SAYING ARE
25 TWO DIFFERENT THINGS --- BUT SHE DEALS --- SHE DOES DEAL -

1 -- DOES EVERYBODY AGREE THAT SHE DEALS ONLY WITH WHAT SHE
2 CALLS, PREVENTS --- PROVIDING CARE TO PREVENT SKIN
3 BREAKDOWN?

4 MR. GUNN - YES, SIR THAT'S WHAT --- THAT'S MY
5 UNDERSTANDING

6 THE COURT - OKAY

7 MR. GUNN - THERE'S A PRETTY GOOD --- PRETTY GOOD
8 COTTAGE INDUSTRY OF NURSING EXPERTS OUT THERE IN THAT
9 FIELD, AND I THINK THAT'S WHAT SHE DOES SHE --- SHE
10 TESTIFIES ABOUT --- AND ADDRESSES, YOU KNOW, TURNING,
11 REPOSITIONING, SKIN CARE AND SHE'S QUALIFIED IN THAT BUT -
12 -- EXCUSE ME, I DIDN'T MEAN TO INTERRUPT ---

13 MR. MCKINNON - YOUR HONOR, I APOLOGIZE, YOUR
14 HONOR, I WAS JUST UNCLEAR IF YOU WERE DIRECTING THE
15 QUESTION TO ME AS WELL, YOUR HONOR, AND IF YOU WERE ---

16 THE COURT - WELL, I --- WELL, I GUESS I'LL JUST
17 ASK YOU THAT I READ HER --- HER AFFIDAVIT TO REFER ONLY
18 TO PROVIDING CARE TO PREVENT WHAT A REASONABLY PRUDENT
19 REGISTERED NURSE WOULD DO OR NOT DO IN PROVIDING CARE TO
20 PREVENT SKIN BREAKDOWN THAT'S WHAT SHE SAYS

21 MR. MCKINNON - WELL, AND SHE ALSO PROVIDES A
22 PROXIMATE CAUSE OPINION, YOUR HONOR I MEAN THAT'S ---
23 SHE STATES THAT THE BREACHES CAUSED THE INJURIES TO MR
24 FEE

25 THE COURT - ALL RIGHT GO AHEAD, MR GUNN

1 MR. GUNN - YES, SIR AND, YOUR HONOR, SHE DOES
2 SAY THAT IN A VERY CONCLUSORY WAY, ---

3 THE COURT - SHE DOES

4 MR. GUNN - --- BUT SHE DOESN'T --- SHE DOESN'T
5 SAY THAT SHE'S QUALIFIED TO ADDRESS PROXIMATE CAUSE AND
6 WHAT RESULTS THE PATIENT HAD AND GIVEN --- IF YOUR HONOR,
7 PLEASE, GIVEN THE MULTITUDE OF SERIOUS MEDICAL PROBLEMS OF
8 THIS PATIENT, WE WOULD SUBMIT TO YOUR HONOR THAT THE VERY
9 SPIRIT AND LETTER OF THESE STATUTORY REQUIREMENTS THE
10 LEGISLATURE PUT IN EFFECT IS FOR THE COURT TO SERVE AS A
11 GATE-KEEPER AND, YOU KNOW, IF THERE WAS A --- IF THERE WAS
12 A QUALIFIED CRITICAL CARE DOCTOR OR QUALIFIED PHYSIATRIST
13 OR SOME QUALIFIED PHYSICIAN OUT THERE WHO COULD EXPRESS
14 THIS OPINION, MR MCKINNON AND HIS COLLEAGUES ARE VERY
15 ABLE, VERY RESOURCEFUL AND WE HAVE THAT NOW, WE'RE NOT
16 ASKING THE COURT TO DISMISS THE CASE WITH PREJUDICE AND
17 END IT I THINK UNDER 15-36-100, AS I RECALL, THERE IS A
18 PROVISION THAT THEY CAN BE GIVEN TIME TO GATHER A
19 SUFFICIENT-AFFIDAVIT

20 THE COURT - I ASSUME THERE'S NO STATUTE PROBLEM
21 WITH THIS ONE, NO STATUTE OF LIMITATIONS?

22 MR. GUNN - NO, SIR, I DON'T THINK SO, AND I ---
23 YOU KNOW, I --- BUT I --- BUT I THINK THAT --- I THINK
24 THAT BEFORE THE HOSPITAL HAS TO SPEND THE MONEY TO DEFEND
25 THE CASE TO GO TO THE PRE-SUIT MEDIATION, TO DO ALL

1 THINGS, THAT THE PLAINTIFF OUGHT TO COME FORWARD WITH THAT
2 AFFIDAVIT IF THE AFFIDAVIT'S SUFFICIENT WE'LL HAVE THE
3 PRE-SUIT MEDIATION, PROBABLY WON'T BE SUCCESSFUL, BUT
4 WE'LL HAVE IT, AND THEY CAN FILE THE SUMMONS AND COMPLAINT
5 AND WE'LL GET ON WITH IT AND AS I SAY, IT'S A MATTER OF
6 NOVEL IMPRESSION, AND I WISH I COULD CITE SOMETHING OTHER
7 THAN THE FACT THAT A MEDICAL NEGLIGENCE ACTION ---

8 THE COURT - WELL, YOU DID CITE THE TWO CASES
9 ABOUT CONSTRAINTS ON THE ABILITY OF NURSES TO TESTIFY

10 MR. GUNN - YES, SIR YES, SIR, THAT IS ---
11 THERE IS SOME LAW ON THAT AND ---

12 THE COURT - AND I HAD TROUBLE TRYING TO FIGURE
13 OUT HOW THAT CROSSES OVER HONESTLY

14 MR. GUNN - WELL, EXCEPT TO THE EXTENT THAT IT
15 DOES SUPPORT THE PROPOSITION THAT GENERALLY SPEAKING AS
16 NURSES ---

17 THE COURT - IT'S LIMITED

18 MR. GUNN - --- THERE'S NOT QUALIFIED TO GIVE
19 OPINIONS THAT ARE --- THAT INTRUDE INTO THE AREA OF
20 MEDICAL EXPERTISE AS OPPOSED TO NURSING EXPERTISE

21 THE COURT - WELL, --- OKAY ALL RIGHT MR
22 MCKINNON?

23 MR. MCKINNON - YOUR HONOR, OUR PRINCIPAL
24 OBJECTION TO MR GUNN'S ARGUMENT IS HE IS TRYING TO ADD A
25 REQUIREMENT THE STATUTE SIMPLY DOES NOT MEET THE

1 LANGUAGE FROM 15-36-100, YOUR HONOR, SAYS, QUOTE, THE
2 PLAINTIFF MUST FILE AS PART OF THE COMPLAINT AN AFFIDAVIT
3 ON AN EXPERT WITNESS WHICH MUST SPECIFY AT LEAST ONE
4 NEGLIGENT ACT OR OMISSION THAT IS THE LANGUAGE
5 NEGLIGENT ACT OR OMISSION, YOUR HONOR THAT IS A TERM OF
6 ART IN SOUTH CAROLINA IF YOU WILL WESTLAW SEARCH, IT
7 COMES UP SEVENTY-NINE RESULTS FROM COURT OF APPEALS CASES
8 AND SUPREME COURT CASES IT CLEARLY REFERS TO THE BREACH
9 ELEMENT IT DOES NOT REFER TO CAUSATION AND JUST, YOUR
10 HONOR, ON READING --- THIS IS A CASE --- FOWLER V HUNTER
11 OUR SUPREME COURT DECIDED IN MAY OF THIS YEAR IN A
12 NEGLIGENCE ACTION A PLAINTIFF MUST SHOW THAT, ONE ---

13 THE COURT - I DON'T HAVE ANY --- ANY QUESTION
14 ABOUT THE LAW ---

15 MR. MCKINNON - OKAY, I'M SORRY

16 THE COURT - --- WITH REGARD TO WHAT A PLAINTIFF
17 HAS TO SHOW IN A NEGLIGENCE ACTION

18 MR. MCKINNON - OKAY, BUT MY POINT IS SIMPLY,
19 YOUR HONOR, THAT THE ELEMENT NUMBER TWO IN THE WORDS OF
20 OUR SUPREME COURT IS THE DEFENDANT BREACHED THE DUTY BY A
21 NEGLIGENT ACT OR OMISSION THAT'S THE LANGUAGE THE
22 LEGISLATURE USED IN 15-36-100 IT IS CLEARLY A REFERENCE
23 TO THE BREACH ELEMENT AND NOT A REFERENCE TO CAUSATION
24 AND MR GUNN IS ASSUMING I HAVE TO PROVE PROXIMATE CAUSE
25 BY AFFIDAVIT WHICH I DO NOT IT IS NOT IN THE STATUTE

1 IT IS NOT REQUIRED ALL I HAVE TO SHOW IS A BREACH OF THE
2 STANDARD OF CARE, AND THERE ARE FOUR SUCH BREACHES SET
3 FORTH IN THAT AFFIDAVIT, YOUR HONOR

4 THE COURT - (PAUSE) BEAR WITH ME A MINUTE

5 MR. MCKINNON - YES, SIR

6 THE COURT - (PAUSE) HAVE A SEAT

7 MR. MCKINNON - YES, SIR

8 THE COURT - (PAUSE) MR GUNN, WHAT --- TELL ME
9 WHAT --- HOW DOES --- HOW DOES CAUSATION PLUG INTO THIS
10 STATUTE IN YOUR JUDGMENT?

11 MR. GUNN - WELL, YOUR HONOR, MY GOOD FRIEND LEFT
12 OFF THE SECOND PART OF THAT SENTENCE THAT SAYS THE
13 ACCOMPANYING EXPERT WITNESS AFFIDAVIT MUST SPECIFY AT
14 LEAST ONE NEGLIGENT ACT OR OMISSION CLAIM TO EXIST AND THE
15 FACTUAL BASIS FOR EACH CLAIM NOW, A CLAIM IS THE LAWSUIT
16 IN ITS ENTIRETY OR THE CAUSE --- THE CLAIM IS A CAUSE OF
17 ACTION, DEATH, SURVIVAL, CONSORTIUM, WHATEVER IT HAPPENS
18 TO BE AND I THINK A PLAIN READING OF THAT IS THAT THE
19 EXPERT HAS TO COME FORWARD AND SAY, YOU KNOW, CONNECT UP
20 THE ALLEGED NEGLIGENT ACT WITH THE RESULT THAT OBTAINED
21 I MEAN I ---

22 THE COURT - IN MORE THAN A CONCLUSORY WAY

23 MR. GUNN - YES, SIR, AND I THINK CLEARLY THAT'S
24 WHAT THE LEGISLATURE INTENDED THE LEGISLATURE INTENDED
25 THIS PROCEDURE TO BE A GATE-KEEPER AS TO LAWSUITS AND,

1 YOU KNOW, IF --- IF SUCH AN AFFIDAVIT IS FURNISHED, FINE,
2 WE'LL TUCK IN OUR FILE AND PRESS ON

3 THE COURT - WELL, LET ME --- ARE YOU SAYING THAT
4 --- THAT MS BROWN (SIC) BECAUSE SHE IS A NURSE AND
5 CERTIFIED WITH --- IN WOUND CARE MAY NOT RENDER SUCH AN
6 AFFIDAVIT ---

7 MR. GUNN - YES, SIR

8 THE COURT - ---- AT ALL ---

9 MR. GUNN - YES, SIR

10 THE COURT - --- EVER?

11 MR. GUNN - I'M SAYING (A) THAT SHE IS NOT
12 CAPABLE OR DOES NOT HAVE THE EXPERTISE TO DO THAT, AND (B)
13 ---

14 THE COURT - AND IN WHAT RESPECT --- LET'S LAY
15 ASIDE SOME OF THE OTHER ---

16 MR. GUNN - YES, SIR

17 THE COURT - I DON'T SEE HOW THE MAN SURVIVED
18 THAT LONG --- THE OTHER PROBLEMS HE HAD, MEDICAL PROBLEMS
19 HE HAD ---

20 MR. GUNN - YES, SIR

21 THE COURT - --- AND JUST SAY IT WAS A WOUND CARE
22 CASE

23 MR. GUNN - RIGHT

24 THE COURT - JUST A WOUND CARE CASE ARE YOU
25 SAYING THAT IN A WOUND CARE CASE THAT A NURSE CERTIFIED IN

1 WOUND CARE WOULD NOT BE A --- COULD NOT GIVE A SUFFICIENT
2 AFFIDAVIT TO SATISFY 15-36-100?

3 MR. GUNN - IN --- I CAN IMAGINE IF YOUR HONOR
4 PLEASE AN INSTANCE WHERE SUCH A NURSE COULD --- IF A NURSE
5 SAID ---

6 THE COURT - IS BECAUSE IT'S IMPLICIT THAT ---
7 IMPLICIT IN HER STATEMENT IS A DIAGNOSIS?

8 MR. GUNN - A DIAGNOSIS AND A FOLLOWING OF DEATH
9 THIS IS A DEATH ACTION AND A SURVIVORSHIP ACTION I CAN
10 IMAGINE IN ANSWER TO YOUR HONOR'S QUESTION THAT THERE
11 WOULD BE A CASE WHERE A --- A CERTIFIED WOUND CARE EXPERT
12 LIKE MS BARBER COULD SAY AS A RESULT OF FAILURE TO APPLY
13 TOPICAL CREAM, REPOSITION THE PATIENT, ETCETERA, THE
14 PATIENT DEVELOPED A DECUBITUS ULCER OKAY, THAT'S FINE
15 AND AS A RESULT OF THAT DECUBITUS ULCER THE MEDICAL
16 RECORDS REFLECT THAT THE PATIENT WAS ADMINISTERED MORPHINE
17 SULFATE THREE MILLIGRAMS FOUR TIMES A DAY THAT TELLS ME
18 THE PATIENT HAD PAIN OKAY THAT'S A SUFFICIENT
19 AFFIDAVIT FOR PERSONAL INJURY BUT THIS DOESN'T EVEN
20 REACH THAT LEVEL IF --- IF THEY WANT TO GET AN AMENDED
21 AFFIDAVIT AND LIMIT IT TO SURVIVAL CLAIM AND SHE CAN SAY
22 WHAT PERSONAL INJURY OR WHAT DISCOMFORT OR WHAT THE
23 PATIENT EXPERIENCED, I MIGHT NOT BE BACK I DON'T THINK
24 I WOULD BE, BUT INsofar AS A GENERAL CONCLUSION THAT THE
25 PATIENT DIED AS A RESULT OF THE DECUBITUS ULCER WHEN THE

1 MEDICAL --- I THINK UNDISPUTED MEDICAL RECORD IS THAT THIS
2 POOR FELLOW WAS A WALKING MEDICAL DISASTER, AND AS A
3 MATTER OF FACT HAD A DO NOT RESUSCITATE ORDER ON HIS
4 CHART, THEN WE GOT A DIFFERENT CASE

5 THE COURT - IF THE --- IF A PERSON WERE INJURED
6 --- WELL, --- IF A PERSON PRESENTED TO A HOSPITAL AND HAD
7 A FRACTURED FEMUR THAT WAS REPAIRED BY AN ORTHOPAEDIC
8 SURGEON AND HEAD TRAUMA THAT WAS DEALT WITH BY A
9 NEUROLOGIST OR A NEUROSURGEON, WOULD IT BE SUFFICIENT TO
10 COMMENCE A MALPRACTICE ACTION TO SUBMIT THE AFFIDAVIT OF
11 ONLY ONE OF THOSE DOCTORS, AND IF SO, WOULD IT BE
12 SUFFICIENT ONLY AS TO THAT DOCTOR'S SPECIALTY?

13 MR. GUNN - I THINK THAT WOULD BE CORRECT UNLESS
14 THERE WAS A SHOWING --- UNLESS THERE WAS SOME SHOWING, FOR
15 EXAMPLE, BY THE ORTHOPAEDIST THAT HE HAD --- HAD SOME
16 EXPERTISE AND COULD EVALUATE THE OTHER PRACTITIONER'S AREA
17 OF CARE I THINK ---

18 THE COURT - I THINK I JUST GOT REVERSED ON ONE
19 OF THOSE

20 MR. GUNN - I'M AFRAID TO ASK HOW YOU ---

21 (LAUGHTER)

22 THE COURT - THINK ABOUT A COUPLE OF MONTHS AGO

23 MR. GUNN - I'D RATHER REMAIN IN THE DARK AS TO
24 HOW YOU RULED, ---

25 (LAUGHTER)

1 MR. GUNN - BUT I --- YOU KNOW, I DON'T --- I
2 THINK --- I THINK HERE --- AND, YOU KNOW, THE COURT CAN
3 FASHION SUCH RELIEF AS MIGHT BE APPROPRIATE HERE I THINK
4 --- I THINK THE COURT COULD PERMIT THE SURVIVAL CLAIM TO
5 GO FORWARD AND REQUIRE AN AFFIDAVIT AS TO --- AS TO
6 WRONGFUL DEATH

7 THE COURT - BUT CLEARLY THE ORTHOPAEDIC SURGEON
8 COULD OPINE ABOUT MEDICAL --- ABOUT MALPRACTICE FOR THE
9 PURPOSE OF THE ORTHOPAEDIC INJURY AND CAUSATION ---

10 MR. GUNN - CORRECT, YES, SIR, NO QUESTION
11 CAUSATION AS TO ---

12 THE COURT - --- BUT OBVIOUSLY NOT THE NEUROLOGY
13 PART

14 MR. GUNN - --- ORTHOPAEDIC --- RIGHT CAUSATION
15 AS TO THE ORTHOPAEDIC PORTION

16 THE COURT - YES, OKAY

17 MR. GUNN - ASSUMING --- I MEAN HE CAN'T --- HE
18 COULDN'T --- HE COULDN'T OPINE THAT THE --- THAT THE
19 PATIENT HAD SOME INJURY THAT WAS NON-ORTHOPAEDIC

20 THE COURT - OKAY ALL RIGHT, I UNDERSTAND
21 YES, SIR?

22 MR. MCKINNON - VERY BRIEFLY MAY I HAND UP A
23 COPY OF THE STATUTE?

24 THE COURT - I'VE GOT ONE RIGHT HERE I'VE BEEN
25 LOOKING AT IT WHILE I'VE BEEN ASKING THESE QUESTIONS

1 MR. MCKINNON - AND, YOUR HONOR, I JUST FEEL LIKE
2 MR GUNN'S LEADING THE COURT DOWN A RABBIT TRAIL NO
3 COURT IN SOUTH CAROLINA HAS EVER HELD PROXIMATE CAUSATION
4 IS REQUIRED IN ONE OF THESE AFFIDAVIT'S, YOUR HONOR THE
5 STATUTE ---

6 THE COURT - NO COURT'S EVER HELD ANYTHING ABOUT
7 EITHER ONE OF THESE STATUTES

8 MR. MCKINNON - ALL RIGHT, BUT ---

9 THE COURT - --- EXCEPT ME, AND I WISH SOMEBODY
10 WOULD --- OR IN OTHER CIRCUIT COURTS

11 MR. MCKINNON - THE REQUIREMENT, YOUR HONOR, IS
12 ONE NEGLIGENT ACT OR OMISSION CLAIM TO EXIST WE'VE DONE
13 THAT

14 THE COURT - WELL, ISN'T --- THE QUESTION IN MY
15 MIND IS AND AS I READ THE --- READ THE FILE IS --- IS THE
16 MATTER OF CAUSATION IMPLICIT IN THAT, BECAUSE YOU CAN HAVE
17 ALL MANNER OF MALPRACTICE, BUT IF IT'S NOT --- DOES NOT
18 CAUSE THE ALLEGED INJURY, IT DOESN'T MATTER

19 MR. MCKINNON - IT DOES, AND, YOUR HONOR, THE
20 LEGISLATURE CERTAINLY COULD'VE SAID THE AFFIDAVIT MUST
21 INCORPORATE ALL FOUR ELEMENTS OF THE NEGLIGENCE CAUSE OF
22 ACTION

23 THE COURT - MY QUESTION IS, WHY IS THAT NOT
24 IMPLICIT IN WHAT THE STATUTE SAYS?

25 MR. MCKINNON - BECAUSE THE LANGUAGE THE

1 LEGISLATURE CHOSE, THE, QUOTE, NEGLIGENCE ACT OR OMISSION,
2 THAT IS A TERM OF ART THAT IS USED IN NEARLY A HUNDRED
3 TIMES IN SOUTH CAROLINA CASES ---

4 THE COURT - I UNDERSTAND WHAT A NEGLIGENT ACT OR
5 OMISSION IS

6 MR. MCKINNON - --- ALWAYS TO REFER TO THE BREACH
7 AND NOT TO CAUSATION

8 THE COURT - BUT IF IT DIDN'T CAUSE SOMETHING,
9 HOW COULD IT BE MALPRACTICE?

10 MR. MCKINNON - YOUR HONOR, I UNDERSTAND AND
11 CERTAINLY WHEN WE GET TO A TRIAL, WE HAVE TO PROVE
12 CAUSATION, BUT --- AND --- BUT THE QUESTION IS WHAT DOES
13 THE EXPERT AFFIDAVIT HAVE TO CONTAIN AND ALL THE EXPERT --
14 -

15 THE COURT - LET'S GO BACK TO MY EXAMPLE I GAVE
16 MR. GUNN LET'S SAY IF A PERSON PRESENTED AT THE
17 HOSPITAL, HAD A FRACTURED FEMUR AND HEAD TRAUMA, HE DIES
18 AS A RESULT OF THE HEAD TRAUMA, ALLEGED MALPRACTICE OF THE
19 NEUROLOGIST OR NEUROSURGEON NO CLAIM THAT HE DIED AS A
20 RESULT OF THE FRACTURED FEMUR YOU WOULDN'T SAY THAT AN
21 AFFIDAVIT OF THE ORTHOPAEDIC SURGEON THAT --- THAT THERE
22 WAS MALPRACTICE IN TREATING THE FRACTURED FEMUR WOULD
23 SATISFY THIS STATUTE TO PERMIT GOING FORWARD WITH THE
24 LAWSUIT, WOULD YOU?

25 MR. MCKINNON - IT WOULD, YOUR HONOR, IF THE

1 LAWSUIT --- THE CLAIM WAS FOR THE FEMUR

2 THE COURT - WHICH IMPLIES CAUSATION

3 MR. MCKINNON - AND THE CAUSATION IS CLEARLY
4 ALLEGED IN OUR DRAFT COMPLAINT, OUR SHORT AND PLAIN
5 STATEMENT OF THE FACTS

6 THE COURT - NO, WE --- THAT'S NOT THE PROBLEM
7 THE PROBLEM IS A NURSE TESTIFIED AS TO CAUSATION

8 MR. MCKINNON - BUT, YOUR HONOR, THE NURSE
9 DOESN'T HAVE TO COVER CAUSATION IT'S JUST THE AFFIDAVIT
10 THE DRAFT --- THE DRAFT COMPLAINT COVERS CAUSATION THE
11 AFFIDAVIT DOES NOT HAVE TO COVER CAUSATION

12 THE COURT - OKAY WELL ---

13 MR. MCKINNON - BECAUSE, YOUR HONOR, THERE ARE
14 MEDICAL MALPRACTICE CASES WHERE CAUSATION DOESN'T MEAN YOU
15 NEED EXPERT TESTIMONY THE SURGEON CUTS OFF THE WRONG
16 LEG, YOU DON'T NEED EXPERT TESTIMONY ON CAUSATION ALL OF
17 THE --- WHAT --- THE GATE-KEEPING FUNCTION IS SO THAT
18 DOCTORS AREN'T SUED ---

19 THE COURT - BUT YOU CLEARLY NEED CAUSATION
20 TESTIMONY IN THIS CASE

21 MR. MCKINNON - I THINK WE NEED CAUSATION IN THIS
22 CASE, YOUR HONOR, BUT NOT --- NOT AS PART OF THE EXPERT
23 AFFIDAVIT

24 THE COURT - OKAY, WELL, THAT'S --- THAT BEGS THE
25 QUESTION OKAY THANK YOU I DON'T THINK I NEED --- I -

1 -- THIS WOULD BE ABOUT THE SIXTH ONE OF THESE THAT I'VE
2 DEALT WITH UNDER THOSE STATUTES ONE OR TWO OF THEM
3 PROBABLY IN YOURS, MR MCKINNON AND SO FAR AS I KNOW ---
4 IS THERE ANY CASE ON APPEAL ABOUT ANY OF THIS?

5 MR. GUNN - I DON'T KNOW, SIR I --- YOU KNOW,
6 YOU HEAR RUMORS FROM PEOPLE AND YOU HEAR PEOPLE AT
7 SEMINARS AND ALL THIS STUFF AND ---

8 THE COURT - IT DOESN'T MATTER

9 MR. GUNN - --- I DON'T KNOW

10 THE COURT - THE GENERAL LAW HAS BEEN THAT ABSENT
11 A SPECIFIC --- AND THIS IS WHAT MAKES IT CONFUSING FOR ME,
12 TOO --- ABSENT A SPECIFIC WRITTEN PROTOCOL, GIVING A NURSE
13 THE ABILITY TO TREAT, DIAGNOSE, THAT KIND OF THING, THAT
14 THE NURSE CAN'T TESTIFY AS TO THOSE THINGS THAT A DOCTOR
15 WOULD NORMALLY DECIDE, ONE OF THOSE IS CAUSATION I'M
16 INCLINED TO BELIEVE THAT --- THAT CAUSATION IS IMPLICIT IN
17 THE REQUIREMENT OF AN AFFIDAVIT, OTHERWISE, IT WOULD MAKE
18 NO SENSE TO ME IT MIGHT MAKE SENSE TO THE COURT OF
19 APPEALS, BUT IT WOULDN'T MAKE --- IT DOESN'T MAKE SENSE
20 AND I DON'T --- AND THEY MAY BE RIGHT, BECAUSE THEY HAVE
21 TO RULE ON IT, BUT I THINK THAT UNDER THE CURRENT LAW THIS
22 PERSON WOULDN'T FALL UNDER THE SORT OF QUASI EXCEPTION
23 THAT WOULD PERMIT HER TO TESTIFY ABOUT THE THINGS SHE'S
24 RENDER --- SAYING BY AFFIDAVIT WITHOUT SOME SPECIFIC
25 AUTHORIZATION, AND I DON'T KNOW HOW YOU DEAL WITH THAT IN

1 THIS AFFIDAVIT CONTEXT, BECAUSE YOU WOULDN'T HAVE A
2 PROTOCOL AUTHORIZING HER TO DO IT AND THEN LET HER RENDER
3 THIS AFFIDAVIT THAT DOESN'T MAKE ANY SENSE, BUT --- ALL
4 RIGHT, NOW, HAVING SAID THAT, I'M GOING TO GRANT THE
5 MOTION, BUT I'M GOING TO GRANT THE --- GRANT THE PLAINTIFF
6 THIRTY DAYS AS PROVIDED IN THE STATUTE, SUBSECTION (E) TO
7 CURE WHAT I SEE AS A DEFECT

8 MR. GUNN - YOUR HONOR, I'LL BE GLAD TO PREPARE
9 A PROPOSED ORDER AND SUBMIT IT TO COUNSEL AND TO THE COURT
10 AND WE'LL PUT THAT THIRTY DAY --- GRANTING THIRTY DAYS
11 FROM THE DATE OF THE ORDER.

12 THE COURT - ALL RIGHT, IF YOU'LL DO THAT BY E-
13 MAIL IN AN EDITABLE FORM

14 MR. GUNN - I WILL I WILL

15 MR. MCKINNON - THANK YOU, YOUR HONOR

16 THE COURT - YES, SIR, THANK YOU

17 (END OF TRANSCRIPT)

18

19

20

21

22

23

24


25

CERTIFICATE

I, SHIRLEY G BROOM, THE UNDERSIGNED COURT REPORTER, HEREBY CERTIFY THAT THE FOREGOING 21 PAGES CONSTITUTE A TRUE RECORD OF PROCEEDINGS TAKEN IN THE CASE OF EVELYN GRIER, AS APPOINTED PERSONAL REPRESENTATIVE OF THE ESTATE OF WILLIE JAMES FEE DECEASED VS AMISUB OF SOUTH CAROLINA, INC , D/B/A PIEDMONT MEDICAL CENTER, AS TAKEN BY ME AT THE TIME AND PLACE STATED

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE

THIS THE 26th DAY OF April, 2011


SHIRLEY G BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S Jackson Kimball, Special Circuit Judge

Case No 2010-CP-46-02909

Evelyn Grier, as the appointed Personal Representative of the
Estate of Willie James Fee, deceased

Appellant,

v

AMISUB of South Carolina, Inc d/b/a Piedmont Medical
Center

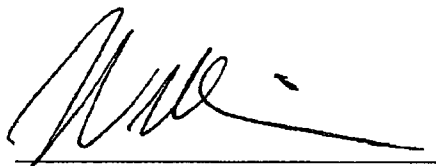
Respondent

CERTIFICATE OF COUNSEL

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

August 4, 2011

[signature page follows]



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S Jackson Kimball, Special Circuit Judge

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AMISUB of South Carolina, Inc d/b/a Piedmont Medical
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PROOF OF SERVICE

I certify that I have served the **Record on Appeal** upon AMISUB of South Carolina, Inc d/b/a Piedmont Medical by depositing a copy of it in the United States Mail, first-class postage prepaid, on August 5, 2011, addressed to its attorney of record, William U Gunn, HOLCOMBE BOMAR, PA, 100 Dunbar St , Ste 200, Spartanburg, SC 29304

August 5, 2011

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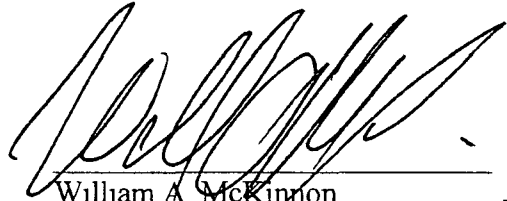
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