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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Order denying Appellants' Petition for Rehearing (S.C. Ct. App. filed Dec. 18, 2018)

Gary Locklear, individually and as Personal Representative
Of the Estate of Roy Locklear, Respondent,

v.

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

Of which, Southern Health Partners and Dr. Charles Bush are Petitioners.

APPENDIX

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State of South Carolina)
County of Marlboro)

In Circuit Court of the
Fourth Judicial Circuit
2017-CP-34-00064

GARY LOCKLEAR, individually)
and as Personal Representative)
of the Estate of Roy Locklear,)

Plaintiff,)

vs.)

Transcript of Record.

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

Defendants.)

Marlboro, South Carolina
July 13, 2018

B E F O R E:

The Honorable Roger E. Henderson

A P P E A R A N C E S:

Mr. Patrick J. McLaughlin, Esquire
Attorney for Plaintiff

Mr. John E. Tyler, Esquire
Attorney for Defendant,
Southern Health Partners and
Dr. Bush

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

(NO WITNESSES WERE CALLED TO TESTIFY DURING HEARING)

(NO EXHIBITS WERE INTRODUCED DURING HEARING)

P R O C E E D I N G S

1
2 THE COURT: All right. Gentlemen, are we ready on
3 the first case. It looks like it's Locklear versus
4 Marlboro County, is that correct?

5 MR. McLAUGHLIN: Yes, sir, Your Honor.

6 THE COURT: All right. If you, Mr. McLaughlin,
7 would identify this matter and tell us what relief you
8 seek?

9 MR. McLAUGHLIN: Sure, Your Honor. Thank you very
10 much. May it please, the Court? Your Honor, Patrick
11 McLaughlin with Wukela Law Firm in Florence, appearing
12 today for Gary Locklear as a personal representative of the
13 Estate of Roy Locklear in the case versus Marlboro County,
14 Marlboro County Sheriff's Office, Marlboro County Detention
15 Center, Dr. Charles Bush, Southern Health Partners and the
16 South Carolina Law Enforcement Division. And, Your Honor,
17 if I may, I made a little packet that I will pass up and
18 judge, I understand the light situation and I'll read off,
19 kind of, the relevant portion that I want to make of this
20 as I go through my argument. But I wanted to give you the
21 support of what I'm saying as I did so. Judge, this case,
22 suit was filed in this case -- we're here today about a
23 motion to compel that I file -- Suit was filed in this
24 case February 24, 2017. Now, just to give you a very short
25 synopsis of what the case is about, judge, back in October,

1 I think, it was late October of 2014, Mr. Locklear had a
2 pending bench warrant out on him for failing drug court.
3 He had been sent -- he had pled guilty to a burglary and
4 had been sentenced to the Marlboro County drug court and he
5 had failed it by flunking five drug test in a row. And so
6 there have been a bench warrant out for him for quite some
7 time. The gentleman, I believe it's Mr. Harrington, maybe,
8 who runs the drug court, had called sled and ask Agent
9 Truex to go out and find this Mr. Locklear and serve him
10 with the warrant and bring him in. So over the period of
11 about two or three weeks Agent Truex was looking for him
12 and he found his parents. His parents, it's uncontested
13 that the father, Roy's father, my client now, Mr. Locklear
14 told him when he found him, listen, this is all news to me.
15 I thought this was taken care of. It doesn't surprise me
16 that he's lying to me. He's a drug addict. He's been a
17 drug addict for a long time. He's got a drug problem.
18 Going to jail would be the best thing for him. Eventually,
19 what happens is Roy's father makes him get in touch with
20 Agent Truex. He gets in touch with him. It's arranged
21 that he will turn himself in. He eventually turns himself
22 in to Agent Truex on November 5, 2014. Once again,
23 uncontested, on the ride to the jail he tells Agent Truex
24 about his drug problem and how bad it is. Truex takes him
25 to the detention center, he gets booked in. During the

1 booking process that where there supposed to do an initial
2 screening of him and it's done via computer is what we
3 found out in the few depositions that we've done, it's
4 marked "no" they don't check where he has substance abuse
5 problems at all. And so Roy goes in within 24 hours he has
6 hung himself and he has died. And certainly the
7 allegations -- our allegations in the case are that the
8 screening was inadequate. That they had information that
9 he was, that he had a substance abuse problem. He had
10 affirmatively told him he had substance abuse problems.
11 That sled had failed him by Agent Truex not relaying that
12 information to the detention center. Agent Truex admitted
13 that he didn't tell them that when he got there. His, at
14 his testimony, his - sled has admitted that they're suppose
15 to relay health and medical information to the detention
16 center and when asked at his deposition why he didn't do
17 that, Agent Truex's reasoning was, was that's not health
18 and medical information. It's life history information.
19 Okay. So be it. So, anyway, our allegations are that,
20 that sled failed him in that way. That Marlboro County
21 failed him and that they had the bench warrant sitting
22 right there when they booked him. The bench warrant says
23 he's failed five drug test. You should've known he had a
24 drug dependency problems, you should have checked that.
25 And during the deposition of the booking officer she had

1 admitted that had there been notice of substance abuse
2 problems they would've probably put him in holding right
3 then and the nurse was there when he got booked and the
4 nurse would've been asked to see him. The allegations
5 against Southern Health Partners who we're here about today
6 is that they are responsible for (a) the healthcare that is
7 provided at the detention center but, (b) there also
8 responsible for the policies and procedures related to
9 healthcare there. Which includes screening. Which
10 includes how to handle folks with substance abuse issues.
11 Which includes identifying people who may be at risk for
12 suicide. So those are the allegations of the complaint.
13 Like I said it was filed in February of 2017. On May 3,
14 2017, the plaintiff served initial discovery request of all
15 the defendants. November 13, 2017, I hadn't got responses
16 from everybody up until this. And I'm working with two
17 other defendants and I'm working with John and his clients
18 trying to get these discovery responses and we reach the
19 point where I'm going to have to file a motion to compel.
20 So Mr. Tyler sent to me discovery responses on November 13,
21 2017 and he calls me before I get it, to basically tell me,
22 listen I'm sending you these but I will touch base with you
23 before I do. You're going to get upset if you just look at
24 them and I don't explained to you because I'm not answering
25 a whole bunch of stuff, I'm saying I've got supplement it.

1 I'm working with my folks to be able to get this
2 information to provide it to you. I say, okay, I
3 appreciate that heads up. I've obviously got to move
4 forward because I ain't heard anything from the other two
5 defendants so I'll go ahead and file a motion to compel
6 against them. Which I do. I do not name Southern Health
7 Partners at that time because I've talked to Mr. Tyler,
8 he's told me he's going get that stuff for you. We're
9 going to work on it. So that happened. I filed that
10 motion to compel on December 5, 2017. Between December 17,
11 2017 and May of this year, I work out the discovery issues
12 with the other two defendants and they respond and they
13 give me the stuff. This, the original motion that I have
14 filed against sled, and Marlboro County, pops up on the
15 roster over here for May 14, 2018. So I contacted the
16 clerk of court and I let her know this, this one we've
17 worked out the issue on this particular motion because I've
18 worked it out with sled and Marlboro County. And once I
19 did that I contacted, I think this was the week before so
20 it was like the week of May 8th and I contacted everybody
21 to let them know, listen this thing is popping up. I've
22 let the clerk of court know that, that motion has been
23 resolved, but I also remind at the time Marlboro County's
24 attorney owed me some supplementals and I reminded Buddy
25 Arthur about that and Buddy got in touch with me and said,

1 I'm going to get it to you. I'm working on it. And also
2 reminded Mr. Tyler, hey, I never got anything from you yet,
3 you know, I need this stuff. And, in fact, I told him
4 listen we got these, the first round of depositions are
5 coming up in June, I need a response before then. And I
6 get an email response back from John saying that he'll be
7 able to, he'll should be able to supplement by Wednesday of
8 next week which would have been May 16, 2018. May 16th
9 comes and goes, no response. On May 18, 2018, I get an
10 email where he's sending me the table of contents for their
11 policies and procedure and he, basically, ask, hey, Patrick
12 how about give me a call. I want you to look at this and
13 let's try and figure out what you think you really need for
14 this case and we'll see about getting that to you and I'm
15 working on the confidentiality order to turn this over to
16 you. Well -- so I respond to that via email and I say,
17 listen, I've got a couple problems with this. Number one,
18 is I asked you very specific factual answers for factual
19 situation in my interrogatories. I lay out, hey, how about
20 tell me which policy and procedure would apply to this type
21 of situation, which would apply to this type of situation.
22 And I said you got to answer those. You've got to tell me
23 these are, your client, has to tell me these are the
24 policies and procedures we have that we think are applied
25 to these type situation. It was the same argument that I

1 had, had with sled and they had agreed and eventually done
2 that. I said so you've got to answer. And then I also
3 need to get all of it to see whether or not you're being
4 honest with me. In other words, not just the policies and
5 procedures you've identified. I want them all so I can see
6 whether or not your client is being honest and find out
7 whether or not they've identified every policies and
8 procedures which would be applicable. And I said as of
9 this confidentiality thing, and I'm opposed to that in
10 general just a confidentiality order with no support. I
11 said, the motion I'd be willing to do is, is if you want to
12 do like a form federal order where you turn everything over
13 to me and then you tell me what you think, what you want
14 protection on. And then I'll look at it and if I don't
15 agree with you, I'll tell you what I disagree shouldn't be
16 protected and then the burden is on you guys to go get that
17 protection from the court. I said, if you want to do that,
18 that's fine. You know, feel free to call me if we need to
19 discuss it. Well, I don't get any response to that which
20 leads to me filing the current motion to compel on June 4,
21 2018. Since that time, you know, John -- John called me.
22 We finally got together on the phone on July 9th. We had a
23 conversation about it. And, Your Honor, I'll be candid
24 with you I'm kind of at the point, at that point, I thought
25 this motion hearing has been set. I've got the court date.

1 My patience is a little worn thin with getting the stuff
2 and I'm like, let's just put it before the judge and let
3 him decide. I can't -- I don't agree with you about this
4 confidentiality stuff and John understood. He said, well
5 I'm going to supplement. I'm going to get you the
6 supplementals that I can now and then we'll move forward on
7 that. So on the next day July 10th which would've been
8 Wednesday of this week, I get the supplemental responses
9 from John and I review them real quickly. And I let him
10 know that I still got an issue particularly with
11 Interrogatory Number 18 which is an interrogatory, judge,
12 where I asked for, I think, going back five years Southern
13 Health Partners to identify for me other instances where
14 there's been suicides and where somebody under their care
15 has committed suicide or attempted suicide and then, also
16 where someone under their care has required emergency
17 medical treatment due to drugs substance abuse issues.
18 Which I think is reasonably calculated to lead to
19 admissible evidence in this case. And so I said, listen -
20 - you know, the response there was, was still the objection
21 response I originally got. I said, I think I still need to
22 get that. The next day July 11, 2018, I get an email from
23 John when an affidavit from Mrs. Hairsine, I don't know if
24 I'm saying her name correctly ---

25 MR. McLAUGHLIN: --- Hairsine - and do you have a

1 copy of ---

2 MR. TYLER: If I may approach, Your Honor?

3 THE COURT: Yes, sir.

4 MR. TYLER: Here's a courtesy copy.

5 MR. McLAUGHLIN: And so, Your Honor, I did -- John
6 sends me that affidavit that he lets me know that he's
7 going to submit in trying, in us arguing about this
8 confidentiality issue. And then he proposes about the
9 suicide question about the Interrogatory 18. Well, what if
10 we just did Marlboro County Detention Center which I think
11 it still inadequate. And I'll get into that why I think
12 that would still be inadequate here shortly. But I review
13 that email and I let him know, you know, listen, this
14 affidavit hasn't changed my mind about the confidentiality
15 issue. And, no, I still have a problem with Interrogatory
16 18. So that brings us to today, judge.

17 The packet that I've passed up to you, I want to go
18 through because these are the things that are in support of
19 us getting the policies and procedures at Southern Health
20 Partners has without any protection. And the first tab,
21 there's four tabs here, Your Honor. The first tab is it's
22 not all of the minimum standards but it's the selective
23 ones I think are relevant to our argument here today. The
24 minimum standards for local detention facilities in South
25 Carolina and, Your Honor, this is been out since July 26,

1 2013 and it's the current version. So it was a version
2 that was in effect at the time of Mr. Locklear's death
3 through today. The first page, and the minimum standards
4 have sections, numbered section, and you'll notice the
5 first page, page one has a Section 1001 which is titled
6 "Statutory Authority" and I included that here, Your Honor,
7 to just show the court, listen, the standards are
8 authorized by law. Specifically, Sections 24-9-10 through
9 24-9-50 of the South Carolina Code of Laws. The next page,
10 Your Honor, actually it goes through and kind of describes
11 each of those statutes. The next page talks about how
12 24-9-30 is the enforcement of the minimum standards. So in
13 other words these standards aren't just adopted, the South
14 Carolina Code provides for them to be enforced. If you
15 turn to the next page of this minimum standard expert, we
16 get into the introduction to the minimum standards which is
17 Section 1002 of it. These regulations have been prepared
18 and adopted for the purpose of establishing minimum
19 standards for the operation and administration and design
20 of detention facilities. The keywords there for our case
21 being "the operation and the administration." So these
22 standards apply to how the Marlboro County Detention Center
23 is being run. The next page documents Section 1020 which
24 is the overall general section administration management
25 within it, it has 1021 which is "manual of policies and

1 procedures." This is a very relevant section to this
2 argument today, judge. You'll see there Subsection A of
3 1021 says, "each facility shall have a written manual of
4 all policies and procedures for the operation of the
5 facility." At the bottom of that Subsection A Paragraph,
6 in case there's any question about who has, who's to have
7 access to these things, it says, "these policies and
8 procedures shall be made readily available to all
9 personnel." So a minimum standard say, you gotta have a
10 written manual of all your policies and procedures for the
11 operation of this facility and all personnel there are
12 supposed to have access to it. Below there, Your Honor,
13 you'll see that it says, the Paragraph B of Section 1021
14 says, "the following standards require written policies and
15 procedure." Now, Your Honor, it list a whole bunch of them
16 here. The relevant ones that we have are all the way on
17 that column to your right beginning at 2051 through 2056.
18 And why those are relevant, Your Honor, you'll see
19 flipping, after we flip through this to the next page,
20 these are all the standards that deal with medical
21 treatment. And they fall under the general Section of 2050
22 which is medical services and they begin with Section 2051
23 which is the responsible physician section. "Each facility
24 shall have a written agreement or arrangement with a
25 licensed or certified physician or medical authority for

1 the review and approval of the facilities medical services.
2 If the facility has a contract for inmate medical services
3 the medical provider will be responsible for developing all
4 related policies and procedures. Documentation of the
5 review and approval for medical services and for medical
6 procedures see, Standard 2052, which is the next standard,
7 is maintained on file." It seems pretty easy there. The
8 next Section 2052, -- and by the way, Your Honor, that's
9 who Dr. Bush is in all of this -- Dr. Bush is the doctor
10 who was designated as the responsible physician. Now, Bush
11 is placed here. Marlboro County has a contract with
12 Southern Health Partners to provide him with this. Bush is
13 brought in by Southern Health Partners as the responsible
14 physician. The next Section, Your Honor, 2052, "each
15 facility, -- it's kind of medical procedure, and it says,
16 "each facility or its contract medical provider shall
17 develop and implement written standard operating procedures
18 which are approved by the responsible physician or medical
19 authority for the following: and then it list, you know, A
20 through JS, of items which they should be, they are
21 required to have written standard operating procedures of
22 note to this case which will be relevant would be A, the
23 receiving screening. M, detoxification. O, screening
24 referral and care of mentally ill and of mentally retarded
25 inmates. And then, R, which would be suicide prevention.

1 The next standard is 2053, and that is the screening
2 standard. Your Honor, there's a difference -- what it is
3 you've got basically kind of two screening's when you get
4 booked. The initial screening which in the standards is
5 what screening is. And then there's another one that
6 within 14 days, in other words, every inmate when they get
7 booked has to have that initial screening. Then at least
8 according to the minimum standards, within 14 days, there
9 supposed to have a more in depth screening. I think it's,
10 at time referred to, in these things as a health appraisal.
11 But, basically, they need to meet with the medical staff so
12 that the medical staff can do, I guess, more in-depth kind
13 of interview with the person. So, anyway moving on back to
14 2053, this is screening and once, again, "each facility
15 shall perform screening of all inmates immediately upon
16 admission to the facility with the findings recorded on
17 form approved by responsible physician or medical
18 authority. In every case such screening shall occur before
19 the inmate is placed into general population or housing
20 area and shall include inquiry into," and that it list A
21 through H. Of course, the current A, would be current
22 illness, pre-existing conditions and health problems which
23 would be, we would argue, is relevant to our case.

24 THE COURT: Mmm, hmm.

25 MR. McLAUGHLIN: B, medications taken, special

1 health requirements. Well, if you want to say, you know,
2 that the evidence is he abused pain pills and whether or
3 not that's medication or just drugs but it could apply.
4 Screening of other health problems designated by the
5 responsible physician is C. That certainly would seem to
6 be reasonable calculated to leave relevant evidence. D,
7 behavioral observation including state of consciousness and
8 mental status. That would be relevant in this case. E,
9 notation of body deformities, trauma markings, bruises,
10 lesion, ease of movement, jaundice and other physical
11 characteristics of medical interests. The evidence that is
12 uncontradicted so far is that one of the specific things
13 that Agent Truex has been told and has been vivid to being
14 told was that Roy said he didn't have any teeth left. He
15 had been abusing drugs for so long he had, I guess, what's
16 commonly referred to as meth mouth. F, overall condition
17 of skin and body including rashes and infestation. G,
18 disposition referral of inmates to qualified medical
19 personnel on emergency basis. And H, which is certainly
20 relevant here, likelihood of suicide attempt by inmate. I
21 included some other Sections here, Your Honor, 2054
22 emergencies, 2055 sick call, 2056 health appraisal, 2057
23 pharmacy standards, certainly maybe health appraisal,
24 emergency situation could apply here but I won't belabor
25 the point by going through those. I think I hit the high

1 marks on the ones I did talk about.

2 The next portion of the packet, Your Honor, is
3 relevant statutes related to the South Carolina Freedom of
4 Information Act. And judge the reason why I've included
5 this and the argument I've explained to Mr. Tyler is,
6 listen, I don't think you get confidentiality because I
7 think this stuff is stuff that we should be disclosed via
8 FOIA. And the reason for that is if you look at the first
9 statute I've got is 30-4-15 and that's the findings and
10 purpose when the legislature enacted Freedom of Information
11 Act and I put that in just to highlight what the purpose
12 was. And the General Assembly finds that "it is vital in a
13 democratic society that public business be performed in an
14 open and public manner so that citizens shall be advised of
15 the performance public officials and of the decisions that
16 are reached in public activity and in the formulation of
17 public policy." It goes on to say, toward this end,
18 "provisions of this chapter is must be construed so as to
19 make it possible for citizens or their representatives to
20 learn and report fully the activities of their public
21 official at a minimum cost or delay to the person seeking
22 access to the public document or meetings." I put in the
23 next Section, 30-4-20 which is the definitions, Your Honor,
24 it's merely to point out that Subsection C of this defines
25 what a public record is. "Public records includes all

1 books, papers, maps, photographs, cards, tape recordings or
2 other documentary materials regardless of physical form or
3 characteristics prepared, own, used in the possession of or
4 retaining by public body." Now, certainly we know the
5 minimum standards say you've got to keep this site.
6 Minimum standards say, all your employees are supposed to
7 have access to it. Sounds to me like it ought to be a
8 public record. The next Statue is 30-4-30 and I simply
9 included that because it talks about the right to these
10 records and in Subsection A(1), "a person has a right to
11 inspect, copy, or receive an electronic transmission of any
12 public record of a public body except as otherwise provided
13 by 30-4-40." Well, I included 30-4-40, Your Honor, because
14 in understanding the argument from Mr. Tyler and certainly
15 I could be wrong, but I think looking at this affidavit
16 from Mrs. Hairsine, from the CEO of Southern Health
17 Partners, I think I understand it, they're trying to say
18 that this stuff is, basically, like, these manuals are
19 somehow proprietary information and that they've been
20 burned in the past because they didn't get this type of
21 protection and experts have somehow used it either start
22 competing businesses or something like that. Well, if you
23 look at 30-4-40 Subsection A(1), this is the only, this is
24 the exception to the fact that all public records should be
25 disclosed that applies the trade secrets exception and I

1 don't believe that type of argument would fall under this.

2 If you look at it the trade secret is defined by the

3 Freedom of Information Act "are un-patented, secret,

4 commercially valuable plans, appliances, formulas or

5 processes which are used for the making, preparing,

6 compounding, treating or processing of articles or

7 materials which are trade commodities obtained from a

8 person and which are generally recognized as confidential

9 and work product in whole or in part collected or produced

10 for sale or resale and paid subscriber information."

11 Policies and procedures about how a detention center is

12 supposed to provide medical services would not fall under

13 that. It goes on, the next part of it talks, "trades can

14 also include for those public bodies who market services or

15 products in competition with others, feasibility planning

16 and marketing studies, marine terminal service and non-

17 tariff agreements and evaluations and other materials which

18 contain references to potential customers competitive

19 information or evaluation". I would argue that a policy

20 procedure manual of how taking care of inmates is none of

21 those things either. There's a, on the next page, under

22 Subsection -- Subsection 5 there is 5(C) and it talks about

23 "confidential proprietary information provided to a public

24 body for economic development or contract negotiation

25 purposes is not required to be disclosed", but that would

1 apply for a manual on how to take care of folks in jail.
2 The next section in there, as you flip through a couple
3 pages, Your Honor, and it's 30-4-50 and I included this
4 because this is what the General Assembly says, you know
5 what there are some things that we're going to let you know
6 are specifically public records that should be disclosed,
7 30-4-50, "certain matters declare public information."
8 Subsection A, specifically says, "the following categories
9 of information are specifically made public information
10 subject to the restrictions and limitations of the other
11 statutes", 30-4-20, 30-4-40, 30-4-70 which I don't believe
12 apply. And if you look at Subsection 2, it specifically
13 says, "administrative staff manuals and instructions to
14 staff that affect a member of the public." Certainly
15 manuals on how to provide adequate medical care to inmates,
16 how to screen those inmates, how to find out if they are at
17 risk for suicide, would fall under that. So, Your Honor,
18 my argument is one, the minimum standard says there's
19 suppose to have written policies and procedures for all
20 their operations and they've got to be available for all
21 personnel. And FOIA says, that this is exactly the type of
22 material that should be made available to the public.

23 Here's where things get interesting, kinda of
24 developed this week when I got this affidavit and these
25 supplemental responses. In interpreting this, and, of

1 course, interpretation you're always, you know, up for
2 argument, but it's almost as if Southern Health Partners is
3 admitting to violating the minimum standards. And I say
4 that, Your Honor, because in their answers to
5 interrogatories, their supplemental answers to my
6 interrogatories, and these were the ones, judge, remember
7 where I said, listen, I have specific facts, you gotta tell
8 me which policies apply and they have. They had answered
9 several Interrogatories, 9, 11, and 13, they had answered
10 by identifying a whole bunch of sections in this manual
11 which Mrs. Hairsine calls the policy and procedure manual
12 for health services in jails. So they've identified all
13 these policies, Your Honor, which they say, you know, given
14 the questions you're asking, the way they answer it is,
15 basically, given the questions you're asking, you know, it
16 would be in this manual which we've offered to turn over to
17 you under this confidentiality order, but we would
18 specifically direct you to certain sections. And they do
19 that. They cite them by section numbers. The sections are
20 J, dash a letter and then dash a number. For instance, J-
21 E-02, J-E-03, that type of thing. Well, here is where it
22 gets interesting. According to her affidavit, Marlboro
23 County does not have access to this. Her affidavit
24 Paragraph 8, Subsection B, "the counties with which we
25 contract do not gain access to the policy manual." Okay,

1 well, wait a minute. You're are identify policies that you
2 say would be applicable to the specific facts and you're
3 telling me that the county doesn't have access to it. And
4 here's where it really gets interesting because, Your
5 Honor, if you compare my Interrogatories Number 13 to that
6 Section 2052 of the minimum standards that was the one that
7 listed all of the things that you should have, you know,
8 that was the medical procedures thing. It listed all these
9 things that you should have written policies about, right?
10 Receiving screening A through O, and it listed all these
11 items. My Interrogatory 13 which they have identified an,
12 Your Honor, here it is, it just -- they identifies numerous
13 policy sections for all these. I did A through J, because
14 I took out some of the ones. I copied that in his, I
15 copied and pasted it, the minimum standards, into my
16 interrogatory and I said, identify for me your policies and
17 procedures which would apply to receiving straight, they
18 did. Health appraisal data collection, they did. Non-
19 emergency medical services, they did it. Emergency medical
20 and dental services, they did. Deciding the emergency
21 nature of illness or injury, they did. First aid, they
22 did. Chronic care, they did. Convalescent care, they did.
23 Medical prevent of maintenance, they did. Pharmaceuticals,
24 they did. So all these things the minimum standards say
25. you've got to have written policies for and these written

1 policies have to be at the facility and they have to, and
2 all the personnel facility have to have access to it. They
3 answered and they said, oh, yeah, in this policy -- in this
4 policy and procedure manual for health services in jail
5 which Mrs. Hairsine says they have. They've identified
6 parts of it, their response to this interrogatory, but then
7 she says the counties do not gain access to the policy
8 manual. So that's bizarre. But it's kind of pardon
9 parcel, Your Honor, for how they appear Southern Health
10 Partners appears to treat these things. What it is, is
11 part of it is, this argument about confidentiality makes no
12 sense. Tab 3 in this, these are two forms which I got from
13 Southern Health Partners in their initial discovery
14 responses. In other words, back before I filed the very
15 first motion to compel, Mr. Tyler called me and said I'm
16 sending you a response. It's not really adequate yet. I'm
17 going to work on it. These were two documents that they
18 gave me and, Your Honor, these, these are my clients
19 medical records with them. And the reason why I put them
20 in here because if you look they actually stamp it at the
21 very bottom on the first page down here, confidential work
22 product of SHP. On the next page, turn it landscape wise
23 down there at the bottom, confidential work product of SHP.
24 So, in other words, Southern Health Partners thinks that my
25 clients medical records are there confidential work product

1 which is bizarre to say the least. The next page in there,
2 Your Honor, is where I'm really starting to get confused
3 and this is titled "document referral to medical". Your
4 Honor, this document was provided to me in discovery by
5 Marlboro County Detention Center. Now, if you look at this
6 document it appears very much to be part of a manual from
7 Southern Health Partners. Down here at the bottom if you
8 look it is titled "officer training manual/information for
9 inmate healthcare." Well, man that sounds like something
10 that is directly on point to what I ought to be getting in
11 this case. Oddly enough, that ain't what Mrs. Hairsine is
12 even talking about. They haven't even identified this
13 manual in their discovery which is weird because the manual
14 has been around since March 2007 and, obviously, it's still
15 on site because I got it. I got this from Marlboro County.
16 Once again, you'll notice they stand it, confidential work
17 product from Southern Health Partners. So, I don't know
18 how you can reconcile this lady's affidavit with the fact
19 that the minimum standards requires the manuals to be on
20 site. Where it appears there some type of manual on site
21 but it ain't the one she's talking about. Now, maybe the
22 reason is and this is what I suspect, I think there's all
23 kind of different types of manuals. And here's where this
24 problem of well, we're only going to turn things over with
25 confidentiality agreements becomes an issue, judge.

1 Because how do I know what they've got if they're not
2 required to give me all of the stuff. I got to rely on
3 them to do it. I wouldn't have known about this other
4 manual like right here unless this sheet didn't happen to
5 have -- I talked to Mr. Arthur about it, the lawyer from
6 Marlboro County, because I was like where's the rest of
7 this? He said, well this was just in some file, it was a
8 copy form. I said, okay, all right. But if you turn to
9 the next item in here, Your Honor, this is where this
10 affidavit really begins to maybe have questions and this is
11 deposition testimony of Kevin Thomas who is the current
12 Warden out there. Now, this is not for my case, Your
13 Honor, this is from another case. This is from the case of
14 Robert Kenneth Hilliard versus Southern Health Partners and
15 Marlboro County. And this deposition was taken just last
16 month. Your Honor, I represent to you I believe Mr.
17 Hilliard his issue was, came up within six months of Roy's
18 suicide. I think it was within six months after Mr.
19 Hilliard had issues out there at the detention center. He
20 was a diabetic and I think the allegations are they failed
21 to properly diagnose, they failed to properly diagnose he
22 had, he had a very long history with pain medications and
23 he had withdrawal issues while he was there and then also
24 maybe that didn't treat his diabetes properly while he was
25 there. I don't believe Mr. Hilliard died but I think he had

1 some significant medical issues. But anyway, be that as it
2 may, this is a deposition taken in June and if you turn,
3 and I apologize, Your Honor, that these were the condensed
4 pages. That's all I had. So it's very small so I'll read
5 it. And the excerpt that I provided is four pages, the
6 relevant pages are Pages 21 through 23, beginning at Line
7 16 of page 21. I will read it out for you:

8 "Question: Now, Mr. Thomas the document that I just
9 provided you is titled physician provided treatment
10 protocols, do you see that?"

11 "Answer: Yes, sir."

12 "Question: And do you see where the provider signature is
13 Dr. Charles A. Bush, MD, do you see that right there?"

14 "Answer: Yes, sir."

15 "Question: And it was -- it appears to be treatment
16 protocols created for the Marlboro County Detention Center,
17 do you see that?"

18 "Answer: Yes, sir."

19 "Question: All right. Is it your understanding that these
20 documents would be policies and procedures developed in
21 accordance with the minimum standards for local detention
22 facilities in South Carolina and made for Marlboro County
23 Detention Center?"

24 There's an objection and then the Answer is, "That's
25 correct."

1 "Question: And these will be kept somewhere within the
2 premises of the detention center?"

3 "Answer: Correct."

4 "Question: And likely the place where these are kept is
5 somewhere in the medical unit itself, correct?"

6 There's an objection and then the answer, "Correct."

7 "Question: In the medical unit within the detention center
8 is part of the detention center it's not leased out by
9 Southern Health Partners it's not rented to somebody else
10 it is still owned and controlled by the detention center?"

11 "Answer: Correct."

12 "Question: So it is governmental property?"

13 "Answer: Correct."

14 "Question: And then you would agree with me this document
15 right here sits on governmental property?"

16 "Answer: Correct."

17 I don't know what that document is and the reason why I
18 don't know is because there's a confidentiality agreement
19 in that case. That other lawyer can't share with me what
20 that document is. Whether or not that document happens to
21 be the same thing, he referred to it as a little bit
22 different name than the policy and procedure manual for
23 health services in jails. Maybe that's the third one out
24 there. The issue is as I can't know that because there's
25 confidentiality agreement out there. But here, Your Honor,

1 is where it gets really good. The horse has done left the
2 barn. And I say that because these policies, some of these
3 policies and procedures are out there floating around.
4 They were turned over outside of any protective orders.
5 Outside of any confidentiality agreements. In the
6 privilege log that Southern Health Partners has given me it
7 says whatever manual it is this lady is talking about is
8 101 pages. I've got 49 pages of what appears to be that
9 manual. Interestingly enough, it has a Section JA-05.
10 That section is titled "policies and procedures" and it
11 says, "Southern Health, SHP, has a manual of written
12 policies and procedures regarding the implementation of
13 healthcare services at the facility. One complete and
14 current copy must be maintained at each facility." It seems
15 pretty simple. There's another policy which was not
16 identified in any of the identifications which I ask about
17 in interrogatories and that one was titled it's "JG-08" and
18 the title is "inmates with alcohol or other drug problems."
19 That sounds like it would be directly on point to what I
20 need. And I only put that in there, Your Honor, to show
21 that if these types of request for protection and let's
22 just let the plaintiff's get only what they need for their
23 case. How -- if I rely on them to tell me what that is,
24 they didn't even identified this policy. I would not have
25 gotten it. There's another interesting policy in here "JC-

1 04". Now, this one was identified. It was identified in
2 response to a request to one of those minimum standard
3 subsections that I just copied and put into my
4 interrogatory. One of them is "deciding the emergency
5 nature of illness or injury." And this one was identified
6 as being relevant to that. Well, this one was called
7 "training for correctional officers." "All correctional
8 officers at the facility should receive training which
9 includes first aid, CPR and screening techniques to
10 recognize signs and symptoms of chronic in any emergent
11 conditions." So I guess that's what was identified for
12 that one. And it certainly seems like it's directly on
13 point for my case. But here's what I find this an
14 interesting because down under procedure it talks about the
15 fact that Southern Health Partners does training of these
16 officers. And this came out at the deposition -- we've
17 taken two depositions so far, excuse me, four. They depose
18 my client, the father, and then the mother of Roy. And
19 then I had deposed the sled agent and the one Marlboro
20 County officer who did the booking that day. And during
21 her deposition I believe she talked about the fact that,
22 that they had, had like ongoing -- we talked about her
23 training at the Criminal Justice Academy and all that and
24 she talked about how sometimes people would come in to do
25 training on site. It was my understanding that she said

1 that those people came, she didn't know where, but she
2 thought they were being provided by Southern Health
3 Partners. Well, I flagged this because it talks about the
4 procedure and it says, "training program should be provided
5 by a jail training coordinator or through programs funded
6 by the county or state depending upon the facility
7 resources. All training programs provided by SHP must be
8 documented and the jail training coordinator will keep
9 attendance rosters upon request by the jail administrator.
10 The MTA shall coordinate training on the topics listed
11 below. First-aid, suicide prevention, CPR, screening
12 techniques, health referrals, medical administration
13 recognizing chronic conditions and illness, suicide
14 prevention, screening techniques, recognizing chronic
15 conditions and illness" are directly on point on my case.
16 The reason why I flagged this is because one of the issues
17 I've got with the supplemental interrogatories that were
18 provided is Interrogatory Number 19, I had specifically
19 asked, "please identify the persons responsible for
20 training employees, responsible for screening and/or
21 booking of inmates both at the time of the incident and
22 current." There supplemental answer, "is screening's and
23 bookings are performed by employees of Marlboro County."
24 Okay. Yes, that's true but at least according to this JC-
25 04 and according to the deposition testimony of Ms. Jacobs

1 who was the booking officer it sounds like there's
2 additional training that goes on while they're there. That
3 training may or may not be performed by Southern Health
4 Partners. If so, they ought to be identifying who did it
5 or if they contracted out some third-party to come through
6 and do it, they need to identify that. If there was some
7 type of materials involved with it. I ought to be getting
8 those as well. So ---

9 THE COURT: Read that response to me again?

10 MR. McLAUGHLIN: Yes, sir. "Screening's and
11 bookings are performed by employees of Marlboro County."
12 So the last issue, judge, is the Interrogatory Number 18
13 and that was the one, Your Honor, where I ask -- this is
14 what Interrogatory 18 asked for, "please list with
15 specificity every incident within the five years preceding
16 the incident, giving rise to this complaint, as well as all
17 subsequent years where a person in the defendant's care
18 has," Subsection (A), "attempted and/or committed suicide.
19 For each of these incidents please specify the name of the
20 individual and a brief description of the custodial
21 situation. Whether the person was identified/classified as
22 having a substance abuse dependency problem. How long in
23 their custody with the defendant's, the suicide incident
24 occurred? What precautions/treatments have been offered by
25 the defendant's prior to the suicide incidences?" Then

1 Subsection (B), I ask for that same, to go for the same
2 date range "of people in the defendant's care who have
3 required emergency medical treatment due to substance abuse
4 dependency issues for each of these incidents. Please
5 specify the name of the individual and a brief description
6 of the custodian situation, whether they were
7 identified/classified as having a substance abuse
8 dependency problem? How long in to their custody with the
9 defendant's, the emergency medical treatment occurred and
10 what precautions treatments had been offered by the
11 defendant's prior to the emergency medical treatment?" The
12 proposal from John the other day when we talked about,
13 well, what if we just gave you that information for
14 Marlboro County? I got a problem with that and here's the
15 problem that I've got. These guys are formulating policies
16 and procedures for the medical care in detention centers,
17 not just in Marlboro County, but throughout South Carolina
18 and not just through South Carolina, according to her
19 affidavit 237 detention facilities in fifteen states. So,
20 looking at Marlboro County would be a very finite sample
21 size for the people under their care versus everyone in
22 their care and why I need -- why I think this information
23 is relevant, is the whole -- Southern Health Partners never
24 saw my guy. Okay. So the whole idea of whether or not
25 they have any liability on this case is going to revolve

1 around whether or not the policies and procedures they
2 created or reviewed and approved for Marlboro County to use
3 were adequate to address these problems. And if these
4 guys, these policies and procedures, they ain't just using
5 them in Marlboro County, use them all over the place. And
6 so if they got -- maybe if there's only 'x' number of
7 suicides or emergency situations with drug uses in Marlboro
8 County, but out of 237 I bet there's a lot more. And if
9 there's enough in all their facilities that it should raise
10 a flag and say hey, wait a minute, do you realize in 2013
11 that we had 'x' number of suicides, 'y' number of emergency
12 situations due to drug problems. What's going on with our
13 screening? Maybe we need to change these policies. And so
14 I think that's reasonably calculated to lead to admissible
15 evidence that they may have been on constructive notice
16 that the policies and procedures that they either
17 formulated and created or that they reviewed and approved
18 for use of Marlboro County and any other wing, at any other
19 detention facilities were fallen short and that, that they
20 ignored that notice. And they didn't change it and that
21 led to Roy not being properly screened and committing
22 suicide.

23 Your Honor, I think that I've touched on all the
24 outstanding issues. I have prepared an affidavit of
25 attorney fees and costs in this matter. Judge, I've got it

1 down as eight hours. I will tell you that, I think, from
2 my preparation of what I did today and then that motion,
3 it's probably a lot more than that and that doesn't include
4 any of my time today, but the total amount comes to
5 \$3,225.00. That's \$400.00 an hour. That's my hourly rate
6 now. The last time I think I had a motion to compel where
7 we had to go this far with it was about four years ago in
8 front of Judge Seals and I put that date in here. I think
9 at the time he approved \$300.00. And I think in the
10 intervening four years that my experience and the amount of
11 cases that I have, justified the increase of a hundred more
12 dollars if I can pass this up please.

13 THE COURT: All right. Mr. Tyler?

14 MR. TYLER: Yes, Your Honor. May it please, the
15 court? My name is John Tyler. I'm with Sweeney, Wingate
16 and Barrow and I represent Southern Health Partners and Dr.
17 Bush in this action. And, Your Honor as -- if I can
18 condense it down to two main issues of everything that
19 we've just heard. Number one, is the confidentiality of
20 policies and procedures. And then, Number two, is the over
21 broad and unduly burdensome nature of the request for all
22 incidents of those events listed by Mr. McLaughlin in
23 Interrogatory Number 18.

24 First, Your Honor, as to the confidentiality I
25 provided for Your Honor's review the affidavit of the

1 president and CEO of Southern Health Partners. I want to
2 -- he talked about the relevancy of all these different
3 provisions of the policy manual. Your Honor, we agree with
4 him and we want to give him the whole manual. We've just,
5 Southern Health Partners, has been burned before by not
6 having a confidentiality order in place to protect the
7 future disclosure of that information to competitors. It
8 contains proprietary information and trade secrets as
9 outline in the affidavit. This is a highly competitive
10 business. There are multiple, I know of, at least four or
11 five different providers in South Carolina that are
12 competing for the various county facilities. And then when
13 you go nationwide with all the different members of the
14 National Commission on Correctional Health Care it's a very
15 competitive industry. And they take strong measures to
16 protect the confidentiality that would require an employee
17 non-disclosure agreements. They -- and they always seek
18 confidentiality agreements in litigation. And I don't --
19 coming in today, I had, we had agreed at least my client
20 and I had agreed, well, let's not seek a confidentiality
21 order. We can just do it confidentiality agreement and
22 maybe that will suffice to protect the information. But Mr.
23 McLaughlin was not willing to go that route. They have been
24 damages in the past as it is outlined in that affidavit.
25 Your Honor, in terms of the -- the nature of these

1 documents and whether they are subject to FOIA and that
2 being a reason to compel production outside of the
3 confidentiality order. FOIA has a trade secret exemption.
4 There's a South Carolina Court of Appeals case that's on
5 point. It's Campbell versus Marion County Hospital. I have
6 a courtesy copy if Your Honor wishes to review it.

7 THE COURT: Yes.

8 MR. TYLER: Your Honor, the case examines the FOIA
9 and the trades secret exemption particularly under
10 healthcare system and on the sixth page of the document
11 that I've handed to you which is -- which would be 354 S.C.
12 at 284 on the right-hand column it explains that the , "FOIA
13 provides that any person has the right to inspect or copy
14 any public record of a public body, unless an exemption is
15 listed in Section 30-4-40 applies." And it goes on to talk
16 about the trade secret exemption. On to the next page on
17 the right hand column starting at the first full paragraph
18 the statute specifically defines, "trade secrets for public
19 bodies such as the hospital that market services."
20 Certainly Southern Health included there. They market
21 their services all across the state and successfully
22 marketed in a number counties. "Trade secrets include
23 feasibility planning and marketing studies and evaluations
24 and other materials which contain references to potential
25 customers competitive information or evaluation. It is

1 evident from reading the entire trade secret section that
2 legislature intended the trade secret exemption to protect
3 organizations studies or preparations in its quest to
4 produce or sell its products or services to potential
5 customers." Your Honor, in this case the trade secrets are
6 the proprietary information contained within the policies
7 and procedures. The potential customers of the various
8 counties of this state and to other states alike. And so
9 we simply asked that a confidentiality agreement be set in
10 place prior to producing this. As Mr. McLaughlin
11 addressed, I've outlined in painstaking detail responses to
12 many compounds interrogatories related to the state,
13 minimum standards and what policies and procedures apply.
14 I've provided the table of contents that show a listing of
15 the policies and procedures within the 101 page manual that
16 I'm offering to produce. So to the extent he's not sure
17 what's in there I've already provided a list of everything
18 that's contained in there. And so it would be a -- it
19 would be an undue burden on their business, Your Honor, for
20 this to get into the wrong hands as its happened before.
21 And so were asking for a confidentiality order that just
22 limits this to it's use in this case. We certainly believe
23 that's appropriate.

24 Your Honor, to the extent that additional officer
25 training manuals or treatment protocols may exist, Your

1 Honor, we'll produce those. I'll go back to my client and
2 asked specifically about that. All of the interrogatories
3 various specifically list the policies and procedures and
4 so I've had with me for the last couple of months that
5 policies and procedures manual. But to the extent that
6 officer training manual or treatment protocols exist, Your
7 Honor, we produce those under the same confidentiality
8 order. And if for some reason they don't exist then the
9 county has a document perhaps from another County, we'll
10 just respond to that, we don't know how the county got
11 that.

12 Then finally on Interrogatory Number 18, Your Honor,
13 our position is that it's clearly over broad and unduly
14 burdensome as it's asking for a pretty thorough evaluation
15 of 237 active facilities and presumably a number of
16 interactive facilities as well. If such an evaluation were
17 to be able to be performed within three hours on each
18 facility which I think is probably far less than the amount
19 of time it would take per facility, three hours per
20 facility times two hundred and thirty-seven times the
21 paralegal rate of a hundred bucks an hour to review
22 everything and compile it that would be \$71,000.00 simply
23 to respond to one interrogatory in this case. However,
24 we've offered to produce a list of incidents that have
25 occurred at the Marlboro County Detention Facility, FOIA

1 the HIPPA violations. He's asked for specific identities
2 of people. We can't do that as a health provider. We need
3 to -- we need to redact that information. I've offered to
4 provide a limited listing for Marlboro County and that has
5 not satisfied opposing counsel.

6 So, Your Honor, just to sum up the confidentiality
7 order is not being sought for any sort of delay or to
8 hinder opposing counsel's ability to litigate this case as
9 he should be able to do. This is to protect their
10 proprietary business information. Trade secrets that are
11 indeed protected from disclosure by FOIA.

12 Secondly, Your Honor, the over breadth and burdensome
13 expense of fully responding to everything that opposing
14 counsel seeks in Interrogatory Number 18 is a six-figure
15 number and it's just too much. We asked that it be limited
16 to the facility in question.

17 MR. McLAUGHLIN: If I may briefly respond, Your
18 Honor? First off, if you noticed, there was no explanation
19 given to this court. What they've been doing for over a
20 year, what that delay was, there's been no explanation for
21 it at all. You'll notice the trade secrets stuff and judge
22 I included that statute in the packet you've got that was
23 30-4-40, it's when there. And it talks about, like, stuff
24 that allows you to get potential customers, market
25 research, things like that. I'm asking for the manuals

1 you're supposed to have by minimum standards on what
2 explains to me how you provide medical care to the people
3 of South Carolina in South Carolina public detention
4 facilities. Things that pursuant to FOIA you're supposed
5 to have on site. You'll notice that we're offered to
6 produce this hundred and one page manual, there's,
7 obviously, other stuff out there. The county gave you me
8 one. This officer training manual. It's like they've
9 identified this one manual, oh, well, here it is. I asked
10 my request to produce had Number 9 and it was one of the
11 ones I included in my motion to compel that you haven't
12 answered fully, "any and all writings, documents, manuals,
13 policies, procedures, digital files, electronic entries
14 that were created or used by the defendant's pursuant to
15 the minimum standards for local detention facilities in
16 South Carolina, type 'H' and/or four facilities, city,
17 county, or regional jail, and/or combined jail prison camp
18 as published by the State of South Carolina. I asked, give
19 me what you got in response to that. They've identified
20 one manual. Oddly enough, nowhere in the stuff they've
21 produced or identified is anything that is signed by the
22 responsible physician signing off on it with what part of
23 the minimum standards are supposed to have. Remember that
24 was one of the standards, 2051, the last thing in that
25 paragraph, "documentation of the review and approval for

1 medical services and for medical procedures is maintained
2 on file." That's not identified anywhere. How come that's
3 not being produced.

4 The ideal that, Your Honor, Interrogatory 18 was so
5 overly burdensome or, yeah, over broad I thought it was
6 pretty doggone specific. You know, in fact, it's kinda
7 like he argued, well, he's asked the specific things and it
8 would take all this effort for us to go do it. Well, just
9 saying that doesn't make it so. It seems to me most
10 corporations have risk management. Most of them carry
11 insurance of some type where they have to provide
12 information to their insurance carriers about hazard
13 incidences that have occurred. It would seem to me that a
14 corporation that is so big and vast that has all these
15 facilities all over the place probably attracts incidences
16 like that. But you know what, if that's not the answer put
17 it in writing and answer that interrogatory saying that.
18 And that way, you know what, maybe that's an issue of
19 liability. If you're not tracking this type of stuff,
20 maybe my expert would like to know that so that he can say
21 it's ridiculous for you to be providing these medical,
22 these policies and procedures and not tracking whether or
23 not they're working or not. That would seem to me would be
24 an issue that could give rise to constructive notice of a
25 problem. But here's the thing, the comment, for this to

1 get -- they don't want this policy to get in the wrong
2 hands. This isn't -- this stuff isn't nuclear codes. It's
3 the policies and procedures for how the Marlboro County
4 Detention Center or the Lee County Detention Center or the
5 Darlington County Detention Center, whatever public
6 detention center provides medical care to the inmates in
7 their custody. If that isn't a public concern that should
8 get into anybody's hands who wants it. There is no wrong
9 hands for that.

10 And that, Your Honor, is my issue with this ideal of a
11 confidentiality thing. This is exactly what FOIA was made
12 for. So that we could know the types of conduct that our
13 public officials are doing which could directly affect us,
14 our loved ones, and our neighbors. And they ought to have
15 to provide -- now, listen, if they've got something in all
16 this stuff that says, hey, this is how we go out and get
17 new business, here's a list of all of our customers, and
18 they want to restrict that than I think that -- you know,
19 what, there's an argument there that yeah, that may be a
20 trade secret, but not how you provide the medical care to
21 the people within your facility. If you don't like the
22 ideal that, that's discoverable stop taking government
23 money. Stop providing the medical care in government
24 facilities. Go out and vote for your own hospital and do
25 whatever you want, but if you're going to take public money

1 and you're going to provide treatment to the public, then
2 the public's got a right to know how you're going to do it
3 so that they could find out if something goes wrong, why it
4 went wrong and whether or not you did the things you say
5 you were supposed to do.

6 THE COURT: All right. Mr. Tyler?

7 MR. TYLER: Your Honor, regardless of how opposing
8 counsel feels about the importance of the protection of the
9 privacy, rights, and trade secrets under HIPAA and/or FOIA
10 Your Honor, there is an exemption under FOIA this is on
11 exactly to protect what we're asking for.

12 Nothing further, Your Honor.

13 THE COURT: Mr. Tyler, please try to explain to me
14 how the policies and procedure manual fall within the
15 feasibility, planning, marketing studies and evaluations
16 and other material which contain references potential
17 customers and petty information or evaluation?

18 MR. TYLER: Yes, Your Honor. That is at the very
19 core of what this competitive business is about. It's how
20 they respond in various situations. How they provide
21 healthcare services in various situations. And there are
22 several model codes out there, this is not one of those
23 facilities that requires a model code. This is a -- this
24 is a facility that it's not NCCHC accredited. It is --
25 it's a a facility where those policies and procedures are

1 set by the company providing it. And ---

2 THE COURT: You aren't answering my question. How
3 does that have anything to do with planning, marketing
4 studies and evaluations and references potential customers,
5 there's nothing about that competitive information,
6 evaluation. What's the policies and procedures manual, how
7 does it deal with that?

8 MR. TYLER: Your Honor, it's competitive
9 information because it's exactly how they provide the
10 services at these facilities. The counties ---

11 THE COURT: Aren't they all supposed to follow the
12 procedures set forth by the State of South Carolina?

13 MR. TYLER: Well, that's the minimum standards,
14 Your Honor. But these are in interpretations and their own
15 internal operating procedures of how they, not only comply
16 with those minimum standards, but comply with their own
17 aspirations as a company. That's separate and apart from
18 those minimum standards which have been cited. And so,
19 Your Honor, these are -- these are this particular
20 companies aspirations which they use in their process of
21 gaining new contracts with other counties. That's been
22 marketed.

23 THE COURT: I'm going to be honest with you, I'm
24 having a hard time seeing that, quite frankly. No
25 disrespect to you and your arguments though. I'm having a

1 hard time seeing that..

2 MR. TYLER: Your Honor, if opposing counsel wishes
3 to FOIA the county and see if they produce it in response.
4 They probably folded out as exempt under FOIA.

5 MR. McLAUGHLIN: Your Honor, I thought the county
6 didn't have one. That's what the CEO said.

7 THE COURT: Yeah ---

8 MR. McLAUGHLIN: According to the CEO they ain't
9 got them.

10 THE COURT: I agree that the defendant's provided
11 to complete the information. I agree with that statement.
12 As you said, in which we contact do not gain access to the
13 policy. We know that's not true because they've got one.
14 You've admitted they got one. So where is she coming from?

15 MR. TYLER: Your Honor, their healthcare personnel
16 also has access to the policy manual in the healthcare
17 station at the facility. Now I can't -- this is ---

18 THE COURT: That's not what she says, does it? I
19 mean, I'm looking at the plain English language ---

20 MR. TYLER: Yes, Your Honor.

21 THE COURT: --- right here. I mean, she says, "the
22 county in which we contact do not gain access to the policy
23 manual and, therefore, we do not produce the manual
24 response to the question under FOIA." Obviously, if they
25 didn't have it they couldn't produce it, you know. But we

1 know they've got one.

2 MR. TYLER: And Your Honor ---

3 THE COURT: You've given him part of it.

4 MR. TYLER: Yes, Your Honor, we're happy to provide
5 the whole thing.

6 THE COURT: Why haven't you already provided the
7 whole thing?

8 MR. TYLER: Your Honor, because we've requested a
9 confidentiality order.

10 THE COURT: All right. I'm going to think about
11 this. It ain't gonna take me long. I'll get back in touch
12 with you possibly this afternoon.

13 MR. McLAUGHLIN: Yes, sir. Thank you, Your Honor.

14 THE COURT: If not, then the first of the week.

15 MR. McLAUGHLIN: Yes, sir.

16 MR. TYLER: Thank you, Your Honor.

17 (CONCLUSION OF THE HEARING HELD ON JULY 13, 2018)

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CERTIFICATE

I, the undersigned, Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Marlboro County, South Carolina, on the July 13th day of July, 2018:

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa S. Carter
Circuit Court Reporter

October 11, 2018

Paul D Kent

From: John E. Tyler
Sent: Friday, July 20, 2018 4:13 PM
To: 'Henderson, Roger E. Law Clerk (Joshua R. Brown)'
Cc: scox@wukelalaw.com; 'Patrick McLaughlin'
Subject: RE: Motion to Compel: 2017-CP-34-0064 Estate of Roy Locklear
Attachments: Email1 INT Supplemental Responses.pdf; Email1 Privilege Log.pdf; Email1 Response.pdf; Email1 RFP Supplemental Responses.pdf; Email1.pdf; Email2 Hairsine Affidavit.pdf; Email2 Response.pdf; Email2.pdf

Dear Judge Henderson,

Respectfully, Your Honor, the 24-page Proposed Order offered by Mr. McLaughlin appears to be deficient for the following reasons.

1. The proposed order mischaracterizes the arguments raised by Defendants in response to Interrogatory # 18 and regarding Defendants' request for confidentiality.
2. The proposed order fails to take into account that, several days prior to the hearing, all issues were resolved other than my client's confidentiality protections and my client's objections to interrogatory # 18. Attached is "Email1," which is an email in which I provided supplemental responses to Plaintiff's interrogatories (attached as "Email1 INT Supplemental Response"), supplemental responses to Plaintiff's Requests for Production (attached as "Email1 RFP Supplement Response"), and a Privilege Log (attached as "Email1 Privilege Log").

In Email1, I stated the following: "I believe this resolves all issues except for the confidentiality agreement which my client seeks. Would you please review these and let me know whether that is the case?"

Mr. McLaughlin's response to this was "I find the response to I'rog #18 to be inadequate/nonresponsive as addressed in my original motion." (See response email from Mr. McLaughlin attached as "Email1 Response"). Therefore, the undersigned believed in good faith that all issues at this point were resolved other than legal arguments related to confidentiality and interrogatory # 18.

3. The proposed order fails to take into account that additional efforts were made to resolve the two remaining issues. In Email2, I provided the affidavit of Jennifer Hairsine which further addressed some of our ongoing discussions regarding confidentiality. (See Email2). Additionally, in an attempt to resolve Interrogatory # 18, I offered to provide responsive information regarding the facility in question. Mr. McLaughlin's response further indicated that the only two issues to be addressed by the Court were confidentiality and Interrogatory # 18.
4. The proposed order fails to take into account case law I presented at the hearing.

In light of these objections, I respectfully request five (5) days to provide a Proposed Order for Your Honor's consideration.

Respectfully,

John Tyler



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

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From: Patrick McLaughlin <Patrick@wukelalaw.com>
Sent: Friday, July 20, 2018 2:07 PM
To: 'Henderson, Roger E. Law Clerk (Joshua R. Brown)' <rhendersonlc@sccourts.org>
Cc: John E. Tyler <jet@swblaw.com>; scox@wukelalaw.com
Subject: RE: Motion to Compel: 2017-CP-34-0064 Estate of Roy Locklear

Joshua:

Attached is the proposed order in a word format.

Please let me know if you have any issues opening the file or if you need anything else.

Opposing counsel is being courtesy copied on this email.

Patrick J. McLaughlin

Wukela Law Firm
403 Second Loop Rd.
PO Box 13057
Florence, SC 29504-3057
(O) 843-669-5634
(F) 843-669-5150
(M) 843-409-3892
Patrick@wukelalaw.com

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copies, electronic, paper or otherwise, which you may have of this communication.

From: Henderson, Roger E. Law Clerk (Joshua R. Brown) [<mailto:rhendersonlc@sccourts.org>]
Sent: Tuesday, July 17, 2018 11:35 AM
To: patrick@wukelalaw.com
Cc: jet@swblaw.com
Subject: Motion to Compel: 2017-CP-34-0064 Estate of Roy Locklear

Mr. McLaughlin,

Please prepare Judge Henderson an order, where in, he grants your motion to compel in full. The defendants Southern Health Partners and Dr. Charles Busch must respond in full to all interrogatories and requests for production by August 17th, 2018. This includes interrogatory #18, as well as all other interrogatories. For every day that the defendants fail to respond after August 17th, 2018, they must pay to the Plaintiff's attorney, the sum of \$200.00 (Two-Hundred Dollars) per day. Judge Henderson does not find that a confidentiality or protective order is necessary or appropriate in this case. He further specifically finds that the information being sought by the plaintiff is not in the form of trade secrets protected by FOIA. The Plaintiff is entitled to attorney fees for the Defendants failure to respond in a timely fashion, therefore the Defendants must pay to you the sum of \$3,750.00 (Three-thousand seven-hundred and fifty dollars) within 30 days. Please include in the order sufficient facts and law to support the Judge's decision. Please provide Mr. Tyler with a copy of your proposed order when it is submitted to our office.

Best regards,

Joshua R. Brown
Law Clerk for
The Honorable Roger E. Henderson
155 West Main Street
P.O. Box 311
Chesterfield, SC 29709
(T): (843)623-3080
(F): (843)623-3402

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**John E. Tyler**

---

**From:** John E. Tyler  
**Sent:** Tuesday, July 10, 2018 12:25 PM  
**To:** 'Patrick McLaughlin'  
**Subject:** Locklear File, Supplemental Discovery Responses  
**Attachments:** 20180710115919676.pdf; 20180710115940939.pdf; 20180710120122948.pdf  
  
**Importance:** High

Patrick,

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

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

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

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

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

Sincerely,

John

**S·W·B**

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

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

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

Plaintiff, )

v. )

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

Defendants. )

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

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

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

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

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

ANSWER:

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

12824 Peabridge Road  
Laurinburg, NC 28352

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Defendants reserve the right to supplement this response.**

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

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

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

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

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

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

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

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

**ANSWER:** See response to number 4 above.

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

**ANSWER:** See response to number 1 above.

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

**ANSWER:** Not applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. How should such observations be documented?

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

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

i. How are such observations documented?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

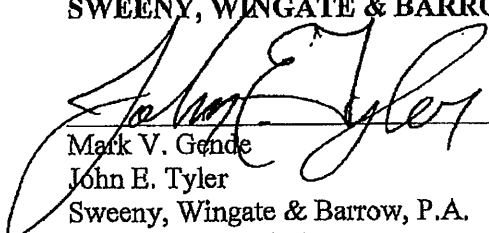
**ANSWER:** Screenings and bookings are performed by employees of Marlboro County.

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

**ANSWER:** Nonc.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



Mark V. Gende

John E. Tyler

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

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

Columbia, South Carolina  
July 10, 2018

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

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

v. )

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

DEFENDANTS DR. CHARLES BUSH AND  
SOUTHERN HEALTH PARTNERS'  
SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S REQUESTS FOR  
PRODUCTION

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

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute  
Defendants Dr. Charles Bush and Southern Health Partners' Responses to Request for Production  
propounded by Plaintiffs:

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

1. Provide a copy of any and all photographs, plats, sketches, or other prepared  
documents in your possession or in the possession of your representative or attorney that relate  
in any way to the matters complained of in the Complaint.

**RESPONSE:** Please see documents Bates labeled SHP 0001 - 0008 produced  
herewith. Additionally, Defendants maintain a document titled "Policy and Procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**RESPONSE:** See Response to number 5 above.

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

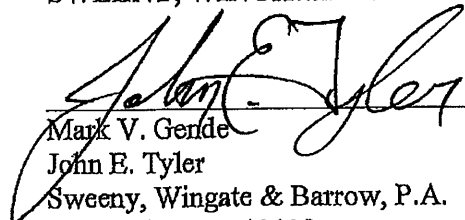
**RESPONSE:** Defendants object to this request to the extent it is overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants object as there are no allegations related to any employee who responded to the suicide of Mr. Locklear. However,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

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

**RESPONSE: See attached Privilege Log.**

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



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

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

Columbia, South Carolina.

July 10, 2018

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

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

v. )

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

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

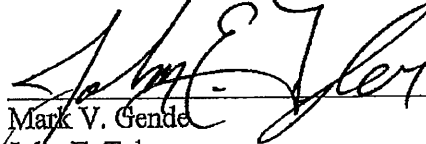
Please allow the following to serve as Defendant's privilege log with regards to  
privileges that have been asserted in response to the Plaintiff's discovery requests.

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

(Signature on following page)

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**

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

Mark V. Gende

John E. Tyler

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

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

Columbia, South Carolina

July 10, 2018

**John E. Tyler**

---

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

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

Patrick

---

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

Patrick,

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

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

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

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

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

Sincerely,

John

**S·W·B**

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

1515 Lady St. (29201)

T ■ 803-256-2233

PO Box 12129  
Columbia, SC 29211  
[www.swblaw.com](http://www.swblaw.com)

ext. 7110  
F ■ 803-256-9177  
[jlet@swblaw.com](mailto:jlet@swblaw.com)

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**John E. Tyler**

---

**From:** John E. Tyler  
**Sent:** Wednesday, July 11, 2018 5:48 PM  
**To:** 'Patrick McLaughlin'  
**Subject:** RE: Locklear File, Supplemental Discovery Responses  
**Attachments:** Hairsine Affidavit.pdf

Patrick,

Attached is an affidavit from the President of Southern Health related to their concerns over confidentiality. I will bring courtesy copies to the hearing on Friday. I'd ask that you please reevaluate your position on the confidentiality agreement.

In response to INT #18, would this issue be resolved if my client provided a list of suicide/suicide attempts at the Marlboro County facility, including dates of occurrence? For HIPAA reasons, they cannot disclose the identity of individuals.

Thanks,

John

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Sincerely,

John

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STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
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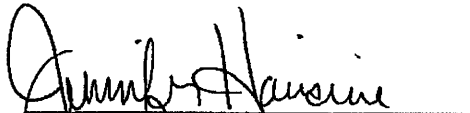
AFFIDAVIT OF JENNIFER I. HAIRSINE

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

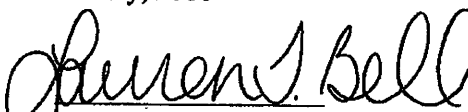
1. I am Jennifer I. Hairsine. I am over the age of eighteen and competent to give this testimony.
2. I am, and was at all times relevant to the allegations made in the above-captioned lawsuit, the President and Chief Executive Officer of Southern Health Partners, Inc. ("SHP").
3. SHP was founded in 1994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

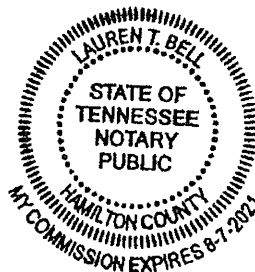
6. I have reviewed the discovery requests of the Plaintiff.
7. For the period of time in question, SHP maintains a document titled "Policy and Procedure Manual for Health Services in Jails."
8. This policy manual is confidential and contains proprietary information. SHP has expended significant time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

FURTHER AFFIANT SAYETH NOT.

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

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

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





**John E. Tyler**

---

**From:** Patrick McLaughlin <Patrick@wukelalaw.com>  
**Sent:** Thursday, July 12, 2018 12:58 PM  
**To:** John E. Tyler  
**Subject:** RE: Locklear File, Supplemental Discovery Responses

John:

Sorry, but my position on both remains unchanged.

Patrick

---

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John

**S·W·B**

John E. Tyler | Attorney  
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87950

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

**RECEIVED**

AUG 16 2018

SC Court of Appeals

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

v.

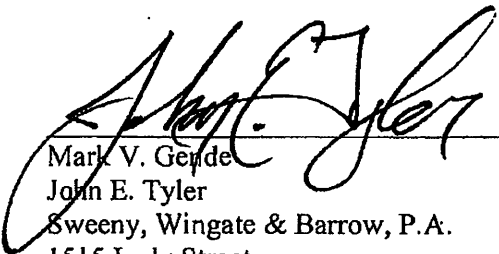
Marlboro County, Marlboro County Sheriff's Office, Marlboro  
County Detention Center, Dr. Charles Bush, Southern Health  
Partners, and South Carolina Law Enforcement Division.....Defendants,

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

**NOTICE OF APPEAL**

Southern Health Partners and Dr. Charles Bush appeal the order of the Honorable Roger E. Henderson dated July 31, 2018 and entered August 8, 2018. Appellants received a copy of this decision on August 9, 2018. Among other grounds, Appellants appeal this order consistent with Toal *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA, 94 (2d ed) (citing *City of Columbia v. A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996)).

August 16, 2018

  
Mark V. Gende  
John E. Tyler  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, South Carolina 29201  
(803) 256-2233  
Attorneys for Appellants

Other Counsel of Record:

Patrick McLaughlin  
Patrick J. McLaughlin, Esquire  
Wukela Law Firm  
403 2nd Loop Road (29505)  
Post Office Box 13057  
Florence, SC 29504-3057  
Attorney for Respondents

William H. Davidson II, Esquire  
Davidson & Lindemann, P.A.  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, SC 29202  
Attorney for Defendant S.L.E.D.

Samuel F. Arthur III, Esquire  
Aiken, Bridges, Nunn, Elliott and Tyle  
181 East Evans Street, Suite 409  
Post Office Drawer 1931  
Florence, SC 29503  
Attorney for Defendants Marlboro  
County, Marlboro County Sheriff's  
Office, Marlboro County Detention Center

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

**RECEIVED**

AUG 16 2018

SC Court of Appeals

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

v.

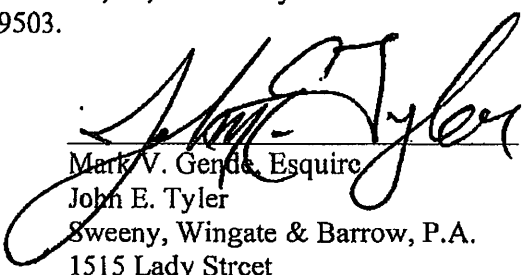
Marlboro County, Marlboro County Sheriff's Office, Marlboro  
County Detention Center, Dr. Charles Bush, Southern Health  
Partners, and South Carolina Law Enforcement Division.....Defendants,

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

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on August 16, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

August 16, 2018

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



**SWEENEY WINGATE & BARROW P.A.**

August 16, 2018

Reply to: Main Office

John E. Tyler  
(803) 256-2233 x7  
jet@swblaw.com

**VIA HAND DELIVERY**

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

**RECEIVED**

AUG 16 2018

SC. Court of Appeals

RE: Gary Locklear v. Marlboro County, Dr. Bush, Southern Health Partners, et al.  
Civil Action No.: 2017-CP-34-00064  
Our File: 5480-10735

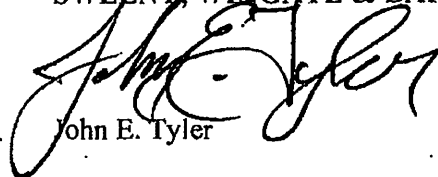
Dear Ms. Allen:

Enclosed for filing is the original and three (3) copies of the Notice of Appeal and the original and one (1) copy of the Proof of Service in the above-referenced action along with this firm's check in the amount of \$100 for the filing fee. Also enclosed is a copy of the Order of Honorable Roger E. Henderson, Circuit Court Judge, which is being appealed: Order dated August 8, 2018.

Please return to the courier who delivers these, three (3) stamped copies of the Notice of Appeal and one (1) stamped copy of the Proof of Service. Should you have any questions or concerns, please do not hesitate to contact me.

Yours truly,

**SWEENEY WINGATE & BARROW, P.A.**



John E. Tyler

JET/smt

Enclosures

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

STATE OF SOUTH CAROLINA )

COUNTY OF MARLBORO )

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

Plaintiffs, )

vs. )

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

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
CIVIL ACTION NO: 2017-CP-34-00064

RECEIVED

AUG 16 2018

ORDER

SC Court of Appeals

FILED  
2018 AUG -8 P 12:14  
AHIMA H. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

Date of Hearing: February 13, 2018

Appearances: Patrick J. McLaughlin, Attorney for Plaintiff  
John E. Tyler, Attorney for Defendants Bush and  
Southern Health Partners

THIS MATTER is before the court on the Plaintiff's Motion to Compel Discovery Against Defendants Dr. Charles Bush and Southern Health Partners (hereinafter "Bush/SHP"). The court, having reviewed the Plaintiff's motion and exhibit packet, the Defendants' submitted affidavit and having considered arguments of counsel, grants the Plaintiff's motion.

**BRIEF STATEMENT OF THE CASE**

On November 5, 2014, Roy Locklear turned himself in to SLED Agent Brian Truex, who had been trying to locate Locklear and arrest him on a bench warrant issued by the Marlboro County Drug Court. The bench warrant itself documents that it was issued because Locklear had violated the terms of drug court by failing five (5) consecutive drug tests. Prior to Locklear turning himself in, Agent Truex spoke with Roy's father, Gary Locklear, who is the Plaintiff in

A CERTIFIED TRUE COPY

*Ashia M. Williams*

CLERK OF COURT  
MARLBORO COUNTY

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*ME*

this case. The Plaintiff informed Agent Truex that his son was a drug addict who had struggled with drug addiction for much of his life, to the point that Roy had lost most of his teeth.

While being transported to the Marlboro County Detention Center (MCDC), Roy personally discussed his drug addiction with Agent Truex, going so far as to ask Agent Truex for assistance in getting help, leading Agent Truex to contact Will Harrington with the Marlboro County Drug Court from the vehicle. Upon arrival at MCDC, Roy was booked. Despite the information from the warrant and the information relayed by both Roy and his father, when booked, the question on the booking form dealing with whether or not Roy had "drug dependency problems" was not checked.

Within twenty-four (24) hours of being booked, Roy attempted suicide by banging himself in his cell. After being discovered, Roy was nonresponsive and was transported to McLeod Regional Medical Center in Florence, South Carolina where he was diagnosed with severe anoxic brain injury. Roy died on November 14, 2014.

A summons and complaint was filed in this matter on or about February 24, 2017, following a Notice of Intent to file suit in a medical malpractice case that had been filed pursuant to S.C. Code §15-79-125. The factual allegations supporting the Plaintiff's causes of action deal with the acts/omissions of the Defendants in transporting, booking and screening the decedent and in failing to provide him the reasonable standard of care necessary for a drug addict in a detention center setting.

#### **HISTORY OF THE CURRENT DISPUTE**

The current dispute involves Bush/SHP's failure to adequately respond to the Plaintiff's initial discovery requests. As noted during argument, given the relatively short amount of time Roy was actually in custody at MCDC before his attempted suicide and subsequent transport to

the hospital, the allegations against Bush/SHP arise from the role they play as the "Responsible Physician" for MCDC pursuant to the *Minimum Standards for Local Detention Facilities in South Carolina*.

On or about May 3, 2017, the Plaintiff served all defense counsels with initial discovery Interrogatories and Requests for Production.

Subsequent to serving those discovery requests, Plaintiff's counsel had to contact all of the Defendants due to not timely receiving responses. Ultimately, Plaintiff's counsel had to file a motion to compel against the other Defendants in this matter, said motion being filed on or about December 5, 2017. Bush/SHP were not included in that original motion to compel because they produced discovery responses on or about November 13, 2017. However, in acknowledgement that those initial responses were not adequate, Bush/SHP's counsel contacted Plaintiff's counsel to let him know that he was in the process of trying to get the information to more fully respond.

Via email dated May 8, 2018, Plaintiff's counsel reminded Bush/SHP's counsel that the Plaintiff was owed supplemental discovery responses and that he needed that material prior to upcoming depositions scheduled for the week of June 11, 2018. Bush/SHP's counsel responded via email that he "should be able to supplement by Wednesday of next week."

On Friday May 18, 2018 (two days after the supplementation response that had been promised the week before), Bush/SHP's counsel sent an email that included a table of contents for Bush/SHP's policies and procedures manual asking Plaintiff's counsel to call to "discuss which items are necessary for this case" and informing Plaintiff's counsel for the first time that Bush/SHP would require a confidentiality agreement, which was in the process of being drafted.

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Plaintiff's counsel responded to that email via a reply email on May 18, 2018, explaining why such proposed responses were inadequate, his objections to a confidentiality agreement and letting Bush/SHP's counsel know he would be available the first part of the following week to discuss. Receiving no further communication or any supplemental discovery response, the current motion to compel was filed on June 6, 2018. In that motion, the Plaintiff specifically identified thirteen (13) interrogatories (Nos. 3, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19 and 20) and five (5) requests to produce (Nos. 3, 4, 5, 9 and 11) as being inadequate/non-responsive.

On July 10, 2018, Bush/SHP supplemented discovery responses and produced a privilege log asserting that a 101-page manual titled "Policy and Procedure Manual for Health Services in Jail" was the "Confidential Work Product of Southern Health Partners, Inc."

#### LEGAL STANDARDS

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26(b)(1) SCRCP.

The rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. Samples v. Mitchell, 329 S.C. 105, 113-114, 495 S.E.2d 213, 215 (Ct. App. 1997) (citing Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987)). "The entire thrust of the discovery rules

involve full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." Id. at 113, 217 (citing State Highway Dep't v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973)).

### ARGUMENTS OF THE PARTIES

#### Plaintiff's Arguments:

The Plaintiff argues that Bush/SHP has refused to answer/respond to discovery requests on three apparent grounds:

- 1) That Bush/SHP wants the Plaintiff to answer his own discovery requests by asking the Plaintiff to review a table of contents of their policies and procedures and then "discuss what is needed for this case." The Plaintiff argues this position violates and ignores the purpose of the South Carolina Rules of Civil Procedure;
- 2) That Bush/SHP only wants to produce material/documents in response to Requests to Produce under a confidentiality agreement. The Plaintiff argues this position violates and ignores the purpose of the South Carolina Rules of Civil Procedure. The Plaintiff also argues that the material/documents he seeks would be subject to production under the South Carolina Freedom of Information Act; and,
- 3) That Bush/SHP objects to Interrogatories No. Eighteen (18) and No. Nineteen (19) because they are "overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence." The Plaintiff argues these objections are unacceptable nonspecific, boilerplate objections that fail to properly respond and that the interrogatories are limited in scope, not unduly burdensome, reasonably calculated to lead to admissible evidence and that Bush/SHP are in the best position to be able to provide the information sought.

**Bush/SHP's Arguments:**

Bush/SHP argues that a confidentiality agreement and/or protective/confidentiality order is necessary because of the "confidential and proprietary" nature of the information that would be disclosed upon production of the responsive material/documents.

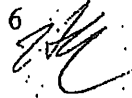
Bush/SHP argues that responding to Interrogatory No. 18 would be unduly burdensome.

**DISCUSSION**

**Providing answers to interrogatories asking for specific information**

The Court first addresses the issue over Bush/SHP wanting the Plaintiff to review a table of contents and then "discuss which items are needed for this case." The Court notes that subsequent to the filing of Plaintiff's motion, Bush/SHP provided supplemental discovery responses wherein they responded to specific requests in Interrogatories No. 9, 11 and 13 by identifying specific sections of the "Policy and Procedure Manual for Health Services in Jail." However, the Court is concerned that the original attempted response by Bush/SHP is a tactic being used more and more in civil litigation: parties attempting to avoid having to identify specifics in response to interrogatories.

The South Carolina Rules of Civil Procedure make clear that "each interrogatory shall be answered separately and fully in writing under oath..." Rule 33(a) SCRPC. The purpose of the requirement that each interrogatory be answered separately and fully in writing under oath is stated clearly within the rule itself: "the answers may be used to the extent permitted by the rules of evidence." Rule 33(d) SCRPC. Or as one of our Federal Court of Appeals has more plainly stated: "Answers to interrogatories are evidence." Emmel v. Coca-Cola Bottling Co. of Chicago, 95 F.3d 627, 635 (7<sup>th</sup> Cir. Ct. App. 1996).

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Put simply, parties are entitled to ask opposing parties to specifically answer discovery requests. As long as those requests fall within what is allowed by the rules, the opposing party has to respond. The party requesting those responses may then use the responses against the other party. This basic concept is what makes discovery work. It is the potential exposure from inaccurate or inadequate responses later on in litigation that forces parties to respond fully and accurately to discovery requests.

I FIND that the Plaintiff was justified in refusing to answer his own interrogatories and instead filing a motion to compel that Bush/SHP answer his interrogatories.

#### Confidentiality/Protective Order

"What transpires in the court room is public property." Craig v. Harney, 331 U.S. 367 (1947). Rule 26(c) contemplates that, unless compelling reasons exist for imposing restrictions, all discovery will take place in an open court. See e.g., Public Citizen v. Liggett Group, Inc., 858 F.2d 775, 789 (1<sup>st</sup> Cir. 1998), Cert. denied, 488 U.S. 1030 (1989); In re Agent Orange Product Liability Litigation, 82 F.2d 139, 145-146 (2<sup>nd</sup> Cir. 1987), Cert. denied, 484 U.S. 953 (1987). As a general proposition, pretrial discovery must take place in the public unless compelling reasons exist for denying access to the proceedings. AT&T v. Grady, 594 F.2d 594, 596 (7<sup>th</sup> Cir. 1978). "When parties 'call on the courts, they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials.'" Co. Doe v. Pub. Citizen, 749 F.3d 246, 271 (4<sup>th</sup> Cir. Apr. 16, 2014).

"Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending...may make an order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including [...] (7) that a trade secret or other confidential research,



development, or commercial information not be disclosed or be disclosed only in a designated way." Rule 26(c) SCRCF, irrelevant portions omitted. Pursuant to the language of the rule, issuing any kind of protective order is within the Court's discretion and can only take place after a showing of good cause.

Bush/SHP bears the burden of showing good cause exists for protection under Rule 26(c). In order to meet that burden, a defendant must state particular and specific facts to justify its position. Gulf Oil Company v. Bernard 452 U.S. 89, 102 (1981); Rivera v. Nibco, Inc., 364 F.3d 1057, 1063 (9<sup>th</sup> Cir. 2004). Further, defendants must not only show that the documents at issue contain trade secrets, but must also show that the release of these documents would cause cognizable or commercial harm. United States v. Hooker Chemical and Plastic Corp., 90 F.R.D. 421 (W.D. N.Y. 1991); Grundberg v. Upjohn Company, 137 F.R.D. 372, 395 (D. Utah 1991); DDS, Inc. v. Lucas Aerospace Power Transmission Corp., 182 F.R.D. 441, 442 (1998). Defendants must demonstrate that any disclosure will work a "clearly defined and very serious injury" to the company. Waelde v. Merck, Sharp, and Dohme, 94 F.R.D. 27, 28 (E.D. Mich. 1981).

Particular and specific demonstrations of fact, as opposed to stereotypes or conclusory statements, must be demonstrated. General Dynamics Corp. v. Selb Manufacturing Corp., 41 F.2d 1204, 1212 (8<sup>th</sup> Cir. 1973), Cert. denied, 414 U.S. 1162 (1974).

The Court finds Bush/SHP fails to meet this burden. Specifically, the only support Bush/SHP offered the Court in support of their argument was the affidavit of Jennifer I. Hairsine, the President and Chief Executive Officer of Southern Health Partners, Inc. That affidavit offers only self-serving, conclusory statements such as "this policy manual is confidential and contains proprietary information." *Affidavit of Jennifer Hairsine*, ¶8. There is no attempt to explain to the Court what makes this material proprietary information; just a conclusory assertion that it is. The

affidavit contains no specific demonstrations of fact regarding any clearly defined and very serious injury Bush/SHP would suffer if not afforded the protection they seek. Rather, there is only an anecdotal assertion that "SHP has been damaged in the past by former vendors and employees, as well as a former opposing expert witness attempting to access and use SHP's policy and Procedure Manual and other proprietary information to obtain business from SHP's existing and potential clients." *Affidavit of Jennifer Hairsine*, ¶9.

Bush/SHP did not identify to the Court any specific instance of such harm occurring and ignores the fact that the affidavit itself discredits their argument. Simply put, if former vendors, employees and opposing expert witnesses already have access to this alleged proprietary material, how can it be "secret"? "Unlike other assets, the value of a trade secret hinges on its secrecy." Laffite v. Bridgestone Corp., 381 S.C. 160, 674 S.E.2d 154 (2009).

The Plaintiff effectively drove home this point during the hearing by showing the Court that he had obtained forty-nine (49) pages of the 101-page "Policy and Procedure Manual for Health Services in Jails," the alleged proprietary material for which Bush/SHP argues it needs protection. Plaintiff's counsel was able to obtain this material as it had previously been produced in other litigation without any protection. That combined with the admissions in Ms. Hairsine's own affidavit support the fact that the ship has sailed on Bush/SHP's ability to claim this material is secret. "In order to be protected, a trade secret must be the subject of reasonable efforts 'to maintain its secrecy.'" Hartstock v. Goodyear Dunlop Tires N. Am. Ltd., 2018 S.C. Lexis 44, 7-8 (S. Ct. 2018), citing S.C. Code §39-8-20(5)(a)(ii). The protection Bush/SHP asks this Court to grant now is merely an attempt to shut the barn door after the proverbial horse has already left.

In addition to asking that Bush/SHP identify specific policies and procedures that would apply to certain factual scenarios based on the factual allegations of this case, the Plaintiff also requested, through his request to produce number nine (9), all policies and procedures "that were created or are used by the Defendant pursuant to the *Minimum Standards for Local Detention Facilities in South Carolina: Type H and/or IV Facility, City, County, or Regional Jail and/or Combined Jail/Prison Camp* (hereinafter "MSSC") as published by the State of South Carolina. These standards were arrived at over a thirty-three (33) year period beginning in July of 1980 and resulting in the publication of the current standards on July 26, 2013.

The MSSC were promulgated by statute. Specifically, S.C. Code §24-9-10 through §24-9-50. MSSC, §1001, p.1.

The MSSC represents the State of South Carolina's regulations "prepared and adopted for operation, administration, and design of detention facilities. These regulations shall be known as 'Minimum Standards.'" MSSC, §1002, p.4. They are subject to FOIA and readily available to the public.<sup>1</sup>

The MSSC requires that each facility "shall have a written manual of all policies and procedures for the operation of the facility" and that "the policies and procedures shall be made readily available to all personnel." MSSC, §1021, p.13.

The MSSC also requires that each facility "shall have written procedures for admitting new inmates which include [...] (d) Medical screening (See 2053) [...] (j) Screening interview [...] (m) Classification for assignment to a housing unit." MSSC, §1042, p.19.

<sup>1</sup> As the Plaintiff noted, a Google search of "sc minimum standards for detention centers" on May 30, 2018 returns links to readable/downloadable PDF versions of MSSC through the S.C. Association of Counties and the South Carolina State Library Digital Collection websites among others.

The MSSC has several sections devoted to medical issues (§§2050 – 2057) that the Plaintiff noted in his motion. For the purposes of this order, the Court highlights two particular sections:

#### **2051 RESPONSIBLE PHYSICIAN**

Each facility shall have a written agreement or arrangement with a licensed or certified physician or medical authority for the review and approval of the facility's medical services. If the facility has a contract for inmate medical services, the medical provider will be responsible for developing all related policies and procedures. Documentation of the review and approval for medical services and for medical procedures (See Standard 2052) is maintained on file. (Revised July 2013)  
MSSC, §2051, p.51.

Bush/SHP has been identified as the "Responsible Physician" for MCDC. The Court specifically mentions §2051 because it requires documentation of the review and approval for medical services and for medical procedures and requires that documentation be "maintained on file." As the Plaintiff pointed out at the hearing, nowhere in their discovery responses does it appear that Bush/SHP has produced or even identified such documentation. If that documentation is part of the material Bush/SHP asserts is "confidential work product," that fact in and of itself shows the spurious nature with which Bush/SHP asserts such designation.

As evidenced by documents provided to the Court during the hearing, Bush/SHP labels everything "Confidential Work Product of SHP." The Plaintiff provided the Court with documents that are personal medical records for Roy Locklear that Bush/SHP labeled "Confidential Work Product of SHP." Bush/SHP obviously recognizes these documents are not confidential work product, as they already produced them. However, they are evidence of the way Bush/SHP abuses the designation.

#### **2052 MEDICAL PROCEDURES**

Each facility or its contract medical provider shall develop and implement written standard operating procedures, which are approved by the responsible physician or medical authority, for the following:

(Revised July 2013)

- (a) Receiving screening (See 2053)
  - (b) Health appraisal data collection (See 2056)
  - (c) Non-emergency medical services
  - (d) Emergency medical and dental services
  - (e) Deciding the emergency nature of illness or injury
  - (f) Dental screening, hygiene, examination, and treatment
  - (g) Provision of medical and dental prostheses
  - (h) First aid
  - (i) Chronic care
  - (j) Convalescent care
  - (k) Medical preventive maintenance
  - (l) Delousing
  - (m) Detoxification
  - (n) Pharmaceuticals
  - (o) Screening referral, and care of mentally ill and of mentally retarded inmates
  - (p) Notification of next of kin or legal guardian in case of serious illness, injury, or death
  - (q) Prohibition against conducting medical and/or pharmaceutical testing for experimental or research purposes
  - (r) Suicide prevention
  - (s) Prompt notification of parents or guardian and DJJ when a juvenile requires medical treatment of a non-routine nature.
- MSSC, §2052, p.51-52.

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ALBERTA WILLIAMS  
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MARICOPA COUNTY, AZ

Plaintiff essentially copied and pasted most of §2052 in to Interrogatory No. Thirteen (13), asking Bush/SHP to "please identify the written standard operating procedures that the Defendants developed and implemented for:" and then listed relevant subsections of §2052. In their supplemental discovery, Bush/SHP answered Interrogatory No. Thirteen (13), identifying specific sections of the "Policy and Procedure Manual for Health Services in Jail" that they had identified in their privilege log and for which they seek protection. Additionally, the only policies or procedures identified by Bush/SHP in their supplemental responses to the Plaintiff's requests to produce is the "Policy and Procedure Manual for Health Services in Jail." Thus, Bush/SHP's own discovery responses state that this "Policy and Procedure Manual for Health Services in Jail" was created to comply with the requirements of the MSSC.

The South Carolina Freedom of Information Act (S.C. Code §30-4-10 thru 30-4-165) mandates, upon request, the disclosure of records held by a "public body" unless the documents fall within enumerated exceptions. Burton v. York Co. Sheriff's Office, 358 S.C. 339, 347 (Ct. App. 2004). The Act goes on to enumerate matters exempt from disclosure in S.C. Code §30-4-40, of which the relevant portion to this case would be subsection (a)(1) "Trade Secrets" which the act defines as:

Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and non-tariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation. S.C. Code §30-4-40(a)(1).

During the hearing, the Court specifically asked Bush/SHP to explain how the policies and procedures they were required to have, pursuant to the MSSC, fell within the definition of trade secrets pursuant to S.C. Code §30-4-40(a)(1). Bush/SHP could not offer any response other than a conclusory statement that the material was their proprietary work product.

The Court finds that policies and procedures required under the MSSC do not fall into the above definition. While Bush/SHP may not themselves be a "public body," the policies and procedures they developed and approved (as required by the MSSC for medical screening, care and classification at the Marlboro County Detention Center) are required by the MSSC to be in "the written manual of all policies and procedures for the operation of the facility" and "shall be made readily available to all personnel." MSSC, §1021, p.13.

The purpose of the MSSC requiring these policies and procedures to be in place is obvious: the policies and procedures used to screen, classify and care for persons under the control of the State are clearly a matter of great public concern and interest. If they so desire, the people of Marlboro County have the right to use FOIA to view the policies and procedures for healthcare that will be applicable to those individuals providing care for the inmates being held at the County's detention center. The Court finds that this type of material fits squarely within the definition of information that is specifically designated as public information subject to FOIA as "administrative staff manuals and instructions to staff that affect a member of the public." S.C. Code §30-4-50(A)(2).

The Court notes that in her affidavit, Ms. Hairsine testifies that "SHP's sole business is jail health care services -- we do not get pulled into other business lines. This allows SHP to be very familiar with state jail standards...as a basis for our policies, procedures, and operations." *Affidavit of Jennifer Hairsine*, ¶3. If that is true, then there is no excuse for Bush/SHP to not realize that the MSSC require that the policies and procedures they create/review/approve for use in South Carolina detention centers and jails must be readily available to all personnel of each facility. MSSC §1021. As such policies and procedures are used by a public body and are instructions to staff that affect a member of the public, they are public information subject to production under the South Carolina Freedom of Information Act. S.C. Code §30-4-20(c) and §30-4-50(A)(2).

The problem posed by Bush/SHP's refusal to produce the requested discovery absent some confidentiality protection is exemplified by one particular document presented by the Plaintiff at the hearing. That document was obtained by the Plaintiff through discovery responses by Defendant Marlboro County Detention Center. It is one page, labeled "Page: 9" from a

document titled "SHP - Officer Training Manual/Information for Inmate Healthcare" and, not surprisingly, marked as being "Confidential Work Product of SHP." As explained to the Court, this document just happened to be in a folder of other material that was copied and produced to the Plaintiff in discovery.

Why is this document significant? It is significant because nowhere in Bush/SHP's discovery responses are there any references to an "Officer Training Manual/Information for Inmate Healthcare." In other words, it was nothing but dumb luck that alerted the Plaintiff to the existence of what would appear to be discovery material that is responsive to his discovery requests but not identified or produced by Bush/SHP.

The rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. Samples v. Mitchell, 329 S.C. 105, 113-114, 495 S.E.2d 213, 215 (Ct. App. 1997) (citing Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987)). "The entire thrust of the discovery rules involve full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." Id. at 113, 217 (citing State Highway Dep't v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973)).

Parties should not have to count on luck in being able to discover evidence. That is precisely why the burden to keep discovery material secret is so high.

I FIND that Bush/SHP is not entitled to a confidentiality or protective order.

**Interrogatories No. Eighteen (18) and No. Nineteen (19)**

In failing to respond to Interrogatories No. Eighteen (18) and No. Nineteen (19), Bush/SHP merely inserted nonspecific, boilerplate objections stating "Defendants object to this

interrogatory as it is overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence."

"[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery 'must show specifically how...each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.'" Curtis v. Time Warner Entm't-Advance/Newhouse P'ship, 2013 U.S. Dist. LEXIS 68115 (D.S.C. May 14, 2013), citing to Josephs v. Harris Corp., 677 F.2d 985, 992 (3d Cir. 1982).

In Interrogatory No. Eighteen (18), the Plaintiff asked for historical data concerning other incidents for persons in Bush/SHP's care that were similar to the incident involving Roy Locklear. The Plaintiff specifically limited the information sought to incidents of "attempted and/or committed suicide" and "emergency medical treatment due to substance abuse/dependency issues." The Plaintiff specifically limited the time frame to five (5) years preceding the incident with Roy Locklear through the subsequent years. The Plaintiff included subparts in the interrogatory to specifically note the information he was seeking.

"If there is an objection based upon an unduly broad scope, such as time frame or geographic location, discovery should be provided as to those matters within the scope which are not disputed. For example, if discovery is sought nationwide for a ten-year period, and the responding party objects on the ground that only a five-year period limited to activities in the State of South Carolina is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of South Carolina and then object to the overage." Curtis at 6.

The Court notes that despite having conversations with Plaintiff's counsel in the week leading up the hearing about whether the Plaintiff would agree to limit the request solely to MCDC (to which the Plaintiff did not agree), Bush/SHP has failed to produce even that limited response.

The Plaintiff argued, and the Court agrees, that as the entity assuming the responsibility for approving and reviewing policies and procedures for medical care within South Carolina detention facilities, the institutional knowledge Bush/SHP has regarding the effectiveness of those policies and procedures in detecting and preventing suicidal and emergency medical situations related to substance abuse is reasonably calculated to lead to admissible evidence in this case.

The Plaintiff argued, and the Court agrees, that this is the type of risk information a corporation involved in such a "highly competitive business," as Ms. Hairsine explains the provision of jail health care services to be, would likely track. If not for insurance purposes, at least for showing customers and potential customers how effective their "proprietary" policies and procedures are in relation to all the "new companies trying to enter into the market and gain market share." *Affidavit of Jennifer Hairsine*, ¶4.

Bush/SHP offered nothing more than conclusory statements as to how difficult obtaining the information may be and failed to provide any response whatsoever. As such, the court finds that Bush/SHP is to respond in full to Interrogatory No. Eighteen (18) with the caveat that they may merely provide initials instead of inmate names. This will protect the identity of the inmates while allowing the individual incidents to be identified if needed in any future reference.

As to Interrogatory No. Nineteen (19), the Plaintiff asked Bush/SHP to "please identify the person(s) responsible for training employees responsible for screening and/or booking of

inmates at the time of this incident and currently." Again, Bush/SHP initially asserted an improper nonspecific, boilerplate objection. In their supplemental responses, Bush/SHP answered "screenings and bookings are performed by employees of Marlboro County." However, the Plaintiff pointed out at the hearing that Tajuana Jacobs, the MCDC officer who booked Roy Locklear, discussed at her deposition training that they sometimes received, believed to be provided by Bush/SHP.

Plaintiff's counsel pointed out that section J-C-04 of the "Policy and Procedure Manual for Health Services in Jails" in the 49-pages of that document he had already obtained was titled "Training For Correctional Officers" and specifically discussed that the upon request, SHP would coordinate training for issues such as suicide prevention, screening techniques and recognizing chronic conditions/illnesses. The court finds that Bush/SHP needs to identify any persons they have had conduct such training and produce any materials used in any such training.

1 FIND that Bush/SHP must respond in full to all the Plaintiff's interrogatories and requests to produce, including Interrogatories No. Eighteen (18) and No. Nineteen (19).

#### Sanctions

The selection of a sanction for discovery violations is within the trial court's discretion. The sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of the case. Griffin Grading & Clearing, Inc. v. Tire Service Equip. Manufacturing Co., Inc., 334 S.C. 193, 198 S.E.2d 716, 718 (Ct. App. 1999). In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. Griffin at 199, 719.

An appellate court will not interfere with a trial court's decision on discovery sanctions unless the trial court abused its discretion. Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985). An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of the appellant, thereby amounting to an error of law. Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989).

S.C.R.C.P. Rule 37(a)(3) provides that "an evasive or incomplete answer is to be treated as a failure to answer." While Rule 37(b) provides for sanctions for failure to comply with an order of the circuit court, Rule 37(d) also provides that the same sanctions shall be available "if a party... fails to serve answers... to interrogatories submitted under Rule 33."

A failure to exercise discretion amounts to an abuse of that discretion and is an error of law. Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). Even though the imposition of sanctions is usually left to the sound discretion of the trial judge, whatever sanction the judge imposes should serve to protect the rights of discovery provided by the Rules. Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery. Samples at 114, 217.

The court finds the conduct of Bush/SHP in this discovery dispute to be abusive. Specifically, the court notes that Bush/SHP ignored their duty under the rules to either adequately respond to the Plaintiff's discovery requests or to move for protection. Despite the discussion in this order about the protection sought by Bush/SHP, the court notes they never actually moved for such protection.

"In all cases where the policy manual might be at issue, our course of dealing is to request confidentiality agreements with all counsel which limit the use of the policy manual to

the litigation in question and which require any expert who reviews the policy manual to destroy it upon completion of the litigation." *Affidavit of Jennifer Hairsine*, ¶8(d). While that may be the practice of Bush/SHP, the State of South Carolina Rules of Civil Procedure are a little more demanding. "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown..." begins Rule 26(c) SCRPC. That language is clear: a party seeking protection must ask the court for it.

Instead of seeking the protection they admittedly seek in all cases where similar discovery is requested, Bush/SHP engaged in dilatory conduct. Specifically, after acknowledging the inadequacy of their initial discovery responses, Bush/SHP made representations to the Plaintiff that more adequate responses would be forthcoming.

Some six (6) months later, after being reminded of the promised supplementation and noticed that the Plaintiff needed those supplemental responses before the depositions scheduled for the week of June 11, 2018, Bush/SHP again represented to the Plaintiff that they would be supplementing their responses the following week. Rather than supplementing as promised, Bush/SHP instead attempted to avoid actually answering interrogatories and for the first time informed the Plaintiff that he would have to enter in to a confidentiality agreement to obtain his requested discovery. The Court notes Bush/SHP offered no explanation for their delay in failing to supplement their responses as they originally represented to the Plaintiff they would do when they submitted their initial response.

As a result of this conduct, the Plaintiff had to proceed with the first round of depositions in this matter without having adequate discovery responses from Bush/SHP. At the very least, this prejudiced the Plaintiff from being able to examine Officer Jacobs adequately about training

provided by Bush/SHP as he was denied access to a Bush/SHP policy/procedure directly on point (see discussion of J-C-04 above).

Further, even in their supplemental responses, Bush/SHP appears to still be providing incomplete and inadequate responses. In addition to the issue related to Interrogatory No. Nineteen (19) discussed above, the Plaintiff noted that in the 49-pages of the "Policy and Procedure Manual for Health Services in Jails" he had obtained, there was a section J-G-08, titled "Inmates with Alcohol or Other Drug Problems." Despite such a policy clearly falling within the scope of several of the Plaintiff's interrogatories, Bush/SHP failed to identify this policy section. While the court understands mistakes can and will happen in good faith efforts to comply with discovery, such a basic failure only serves to highlight the failures by Bush/SHP to properly respond already addressed above.

The court finds that Bush/SHP's conduct was abusive, violated the rules of civil procedure, prejudiced the Plaintiff and necessitated the filing of this motion. As such, the court finds an award of sanctions to be appropriate in this matter.

At the hearing, Plaintiff's counsel, Attorney Patrick J. McLaughlin, submitted an affidavit of attorney's fees and costs. That affidavit noted Attorney McLaughlin has been licensed to practice law in South Carolina since May 18, 2005 and that his current minimum hourly rate is Four Hundred and no/100 (\$400.00) Dollars per hour. Attorney McLaughlin informed the court that the last hourly rate he had been awarded in State court was via a May 6, 2014 Order signed by the Honorable William H. Seals, Jr. at the rate of Three Hundred and no/100 (\$300.00) Dollars per hour. Attorney McLaughlin represented to the court that in the intervening four (4) years since that award, his hourly rate has risen commiserate with additional experience and in relation to his case load.

The court finds Attorney McLaughlin's hourly rate of Four Hundred and no/100 (\$400.00) Dollars per hour to be reasonable. In doing so, the Court notes it is aware of Attorney McLaughlin's reputation in the legal community and recognizes the complex nature of the present case, which is a medical malpractice case involving multiple defendants, both public and private.

Attorney McLaughlin submitted an affidavit documenting a total of eight (8) hours worked on this matter (not including time for travel and attendance at the hearing which occurred in Bennettsville, South Carolina) and Twenty-five and no/100 (\$25.00) Dollars in costs for the filing fee. Attorney McLaughlin represented to the court that his affidavit was conservative in its documentation of only eight (8) hours in work on this motion. Having been provided with a twenty-one (21) page motion and an additional exhibit packet containing relevant standards, statutes, other material and seeing Attorney McLaughlin's presentation at the hearing, the court finds it likely he worked in excess of the eight (8) hours submitted on his affidavit.

The court finds that Bush/SHP must pay to Attorney McLaughlin Three Thousand Seven Hundred Fifty and no/100 (\$3,750.00) Dollars for attorney's fees and costs within thirty (30) days of the date of this order.

Additionally, the court finds that Bush/SHP must respond in full to all the Plaintiff's interrogatories and requests to produce by August 17, 2018. For every day that Bush/SHP fail to respond after August 17, 2018, they will owe Plaintiff's counsel the sum of Two Hundred and no/100 (\$200.00) Dollars per day.

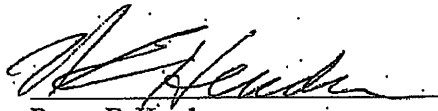
I FIND that the Plaintiff is entitled to sanctions in the form of attorney's fees and costs as described above, as well as additional sanctions by way of the per-day fee described above for any failure respond in full by the August 17, 2018 deadline.

CONCLUSION

Based on the above, Defendants Bush/SHP are ordered to reimburse Attorney Patrick J. McLaughlin Three Thousand Seven Hundred Fifty and no/100 (\$3,750.00) Dollars for attorney's fees and costs within thirty (30) days of the date of this order for violating the South Carolina Rules of Civil Procedure. Additionally, Defendants Bush/SHP are ordered to pay Two Hundred and no/100 (\$200.00) Dollars per day for every day past the August 17, 2018 deadline that they fail to fully respond to the Plaintiff's interrogatories and requests to produce.

AND IT IS SO ORDERED.

July 31, 2018

  
Roger E. Henderson  
Circuit Court Judge – 4<sup>th</sup> Circuit

FILED  
2018 AUG - 8 P 12:14  
AUSTIN A. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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August 20, 2018

Mr. John Earle Tyler, Esquire  
PO Box 12129  
Columbia SC 29211

Re: Gary Locklear v. Marlboro County  
Appellate Case No. 2018-001510

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02). Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

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

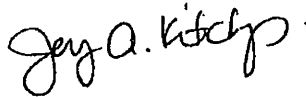
v.

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

Of which Southern Health Partners and Dr. Charles Bush are Appellants.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jay A. Kitch".

CLERK

cc: Mark V. Gende, Esquire  
Patrick James McLaughlin, Esquire

87695

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge  
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

**RECEIVED**  
AUG 28 2018  
SC Court of Appeals

Gary Locklear, Individually and as Personal Representative of the  
Estate of Roy Locklear, ..... Respondent,

vs.

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

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

**MOTION TO DISMISS AND  
MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS**

Patrick J. McLaughlin  
Wukela Law Firm  
PO Box 13057  
Florence, SC 29504  
T: 843-669-5634  
Attorney for Respondent

This motion is made pursuant to Rule 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. Respondents Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, move this Court to dismiss the appeal that was filed and served via United States Postal Service on August 16, 2018. The appeal is from an unappealable order and would serve no purpose other than to further unnecessary delay in this matter. For the reasons stated below, this Court should dismiss this appeal to avoid such delay.

### **BACKGROUND**

This is a case involving wrongful death and survival claims arising from an attempted suicide incident involving Roy Locklear while he was in custody at the Marlboro County Detention Center (MCDC) on November 5<sup>th</sup> and 6<sup>th</sup>, 2014.<sup>1</sup> A summons and complaint were filed in this matter on or about February 24, 2017, following a Notice of Intent to file suit in a medical malpractice case that had been filed pursuant to S.C. Code §15-79-125.

The factual allegations supporting the Plaintiff's causes of action deal with the acts/omissions of the Defendants in transporting, booking and screening the decedent and in failing to provide him the reasonable standard of care necessary for persons with substance abuse issues in a detention center setting. Given the relatively short amount of time Roy was actually in custody at MCDC before his attempted suicide and subsequent transport to the hospital, the allegations against the Appellants (Bush/SHP) arise from the role they play as the "Responsible Physician" for MCDC pursuant to the *Minimum Standards for Local Detention Facilities in South Carolina*.

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<sup>1</sup> While Roy survived the initial suicide attempt, he never recovered, remaining hospitalized for severe hypoxic anoxic brain injury until his death on November 14, 2014.

The order for which Bush/SHP have noticed their intent to appeal is an order granting the Plaintiff's motion to compel discovery against Bush/SHP for their failure to adequately respond to the Plaintiff's initial discovery requests

On or about May 3, 2017, the Plaintiff served all defense counsels with initial discovery interrogatories and requests for production.

Subsequent to serving those discovery requests Plaintiff's counsel had to contact all of the Defendants due to not timely receiving responses. Ultimately, Plaintiff's counsel had to file a motion to compel against the other Defendants in this matter; said motion being filed on or about December 5, 2017. Bush/SHP were not included in that original motion to compel because they produced discovery responses on or about November 13, 2017. However, in acknowledgement that those initial responses were not adequate, Bush/SHP's counsel contacted Plaintiff's counsel to let him know that he was in the process of trying to get the information to more fully respond.

Via an email dated May 8, 2018, Plaintiff's counsel reminded Bush/SHP's counsel that the Plaintiff was owed supplemental discovery responses and that he needed that material prior to upcoming depositions scheduled for the week of June 11, 2018. Bush/SHP's counsel responded via email that he "should be able to supplement by Wednesday of next week."

On Friday May 18, 2018 (two days after the supplementation response that had been promised the week before), Bush/SHP's counsel sent an email that included a table of contents for Bush/SHP's policies and procedures manual asking Plaintiff's counsel to call to "discuss which items are necessary for this case" and informing Plaintiff's counsel for the first time that Bush/SHP would require a confidentiality agreement, which was in the process of being drafted.

That same day, Plaintiff's counsel responded to that email via a reply email that explained why such proposed responses were inadequate, his objections to a confidentiality agreement and

letting Bush/SHP's counsel know he would be available to discuss the issue during the first part of the following week. Receiving no further communication or any supplemental discovery response, the current motion to compel was filed on June 6, 2018. In that motion, the Plaintiff specifically identified thirteen (13) interrogatories (Nos. 3, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19 and 20) and five (5) requests to produce (Nos. 3, 4, 5, 9 and 11) as being inadequate/non-responsive.

On July 10, 2018, Bush/SHP supplemented their discovery responses and produced a privilege log asserting that a 101-page manual titled "Policy and Procedure Manual for Health Services in Jail" was the "Confidential Work Product of Southern Health Partners, Inc."

On July 11, 2018, Bush/SHP's counsel sent Plaintiff's counsel an email that had attached an affidavit from Jennifer I. Hairsine, identified as the President and Chief Executive Officer of SHP. The email asked if Plaintiff's counsel would reconsider a confidentiality agreement in light of the affidavit and also asked if Interrogatory #18 could be resolved if Bush/SHP provided a list of suicide/suicide attempts at MCDC.

On July 12, 2018, Plaintiff's counsel informed Bush/SHP's counsel via email that his position on neither issue had changed.

On July 13, 2018, a hearing was held before the Honorable Roger E. Henderson on the Plaintiff's motion. Both parties appeared at that hearing through counsel and made argument to the court. Judge Henderson took the matter under advisement and ultimately issued an order which Bush/SHP has noticed an intent to appeal.

#### **ARGUMENT**

The Plaintiff moves for dismissal of this appeal on the grounds that Bush/SHP is seeking to appeal an interlocutory order which is not immediately appealable. Specifically, Bush/SHP is seeking to appeal an order compelling discovery.

An order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. Tucker v. Honda of S.C. Mfg., 353 S.C. 574, 577, 582 S.E.2d 405, 406 (2003), citing Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986). Discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statutes, involve the merits of the action or effect a substantial right.<sup>2</sup> Grosshuesch v. Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008), citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568-69, 144 S.E.2d 813, 816 (1965).

Since a contempt order is final in nature, an order compelling discovery may be appealed only after the trial court holds a party in contempt. Tucker at 577, 406-407, citing Hooper v. Rockwell, 334 S.C. 281, 513 S.E.2d 358 (1999), emphasis added. Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. Tucker at 577, 407, citing Ex parte Whetstone.

In the present case, Bush/SHP has failed to obtain any such final contempt order and, as such, their appeal should be dismissed.

In their *Notice of Intent*, Bush/SHP cites to the City of Columbia v. A.C.L.U. of South Carolina, Inc., 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996). However, this case does not support their appeal. In City of Columbia, after they received a FOIA request seeking an internal police report, the City brought a declaratory judgment action seeking clarification under the South Carolina Freedom of Information Act (FOIA). The City had refused to provide the contents of the internal police report and instead sought a declaratory judgment from the trial court that the report

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<sup>2</sup> A "substantial right" is when "such order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." Mid-State Distribs. v. Century Imps., 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993). That is not the case with the present order.

was exempt from disclosure. As part of their discovery requests, the ACLU asked for the very report that was the subject of the action. City of Columbia at 386, 748.

When the City did not produce the report in response to the ACLU's requests for production, the ACLU filed a motion to compel the report to be provided, which the trial court denied. The ACLU appealed. In denying that appeal, the Court noted that the production of police report was very the subject matter of the case itself. City of Columbia at 388, 749, citing Knight Publishing Co. v. University of South Carolina, 295 S.C. 31, 367 S.E.2d 20 (1988) (a FOIA action in which the plaintiff's discovery requests sought production of documents which were the subject matter of the lawsuit).

Bush/SHP's purpose for citing to the City of Columbia case in support of their right to appeal Judge Henderson's order would appear to arise from the fact that the order at issue discusses FOIA. This reliance is misguided, as the discussion of FOIA in the order at bar arises merely in support of the argument that Bush/SHP are not entitled to any protection for the documents responsive to the Plaintiff's discovery requests because such documents are public records that would be subject to production under FOIA. In other words, whether or not those documents are subject to FOIA is not the subject matter of this case (as they were in City of Columbia and Knight Publishing).<sup>3</sup>

In the present case, the discussion of FOIA and the production requirements for documents subject to FOIA merely serve as grounds for why the trial court granted the Plaintiff's motion to compel. As Judge Henderson explained in his order:

During the hearing, the Court specifically asked Bush/SHP to explain how the

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<sup>3</sup> Just because FOIA is mentioned in a case does not make *City of Columbia* controlling. See Evening Post Publ. Co. v. Berkeley County Sch. Dist., 392 S.C. 76 (2011).

policies and procedures they were required to have, pursuant to the MSSC, fell within the definition of trade secrets pursuant to S.C. Code §30-4-40(a)(1). Bush/SHP could not offer any response other than a conclusory statement that the material was their proprietary work product.

The Court finds that policies and procedures required under the MSSC do not fall into the above definition. While Bush/SHP may not themselves be a "public body," the policies and procedures they developed and approved (as required by the MSSC for medical screening, care and classification at the Marlboro County Detention Center) are required by the MSSC to be in "the written manual of all policies and procedures for the operation of the facility" and "shall be made readily available to all personnel." MSSC, §1021, p.13.

The purpose of the MSSC requiring these policies and procedures to be in place is obvious: the policies and procedures used to screen, classify and care for persons under the control of the State are clearly a matter of great public concern and interest. If they so desire, the people of Marlboro County have the right to use FOIA to view the policies and procedures for healthcare that will be applicable to those individuals providing care for the inmates being held at the County's detention center. The Court finds that this type of material fits squarely within the definition of information that is specifically designated as public information subject to FOIA as "administrative staff manuals and instructions to staff that affect a member of the public." S.C. Code §30-4-50(A)(2).

The Court notes that in her affidavit, Ms. Hairsine testifies that "SHP's sole business is jail health care services – we do not get pulled into other business lines. This allows SHP to be very familiar with state jail standards...as a basis for our policies, procedures, and operations." *Affidavit of Jennifer Hairsine*, ¶3. If that is true, then there is no excuse for Bush/SHP to not realize that the MSSC requires that the policies and procedures they create/review/approve for use in South Carolina detention centers and jails must be readily available to all personnel of each facility. MSSC §1021. As such policies and procedures are used by a public body and are instructions to staff that affect a member of the public, they are public information subject to production under the South Carolina Freedom of Information Act. S.C. Code §30-4-20(c) and §30-4-50(A)(2).

Order, p.14-15.

In addition to the grounds explained above, Judge Henderson also found additional grounds for granting the Plaintiff's motion:

The Court finds Bush/SHP fails to meet this burden. Specifically, the only support Bush/SHP offered the Court in support of their argument was the affidavit of Jennifer I. Hairsine, the President and Chief Executive Officer of Southern Health

Partners, Inc. That affidavit offers only self-serving, conclusory statements such as “this policy manual is confidential and contains proprietary information.” *Affidavit of Jennifer Hairsine*, ¶8. There is no attempt to explain to the Court what makes this material proprietary information; just a conclusory assertion that it is. The affidavit contains no specific demonstrations of fact regarding any clearly defined and very serious injury Bush/SHP would suffer if not afforded the protection they seek. Rather, there is only an anecdotal assertion that “SHP has been damaged in the past by former vendors and employees, as well as a former opposing expert witness attempting to access and use SHP’s policy and Procedure Manual and other proprietary information to obtain business from SHP’s existing and potential clients.” *Affidavit of Jennifer Hairsine*, ¶9.

Bush/SHP did not identify to the Court any specific instance of such harm occurring and ignores the fact that the affidavit itself discredits their argument. Simply put, if former vendors, employees and opposing expert witnesses already have access to this alleged proprietary material, how can it be “secret”? “Unlike other assets, the value of a trade secret hinges on its secrecy.” *Laffite v. Bridgestone Corp.*, 381 S.C. 160, 674 S.E.2d 154 (2009).

The Plaintiff effectively drove home this point during the hearing by showing the Court that he had obtained forty-nine (49) pages of the 101-page “Policy and Procedure Manual for Health Services in Jails,” the alleged proprietary material for which Bush/SHP argues it needs protection. Plaintiff’s counsel was able to obtain this material as it had previously been produced in other litigation without any protection. That combined with the admissions in Ms. Hairsine’s own affidavit support the fact that the ship has sailed on Bush/SHP’s ability to claim this material is secret. “In order to be protected, a trade secret must be the subject of reasonable efforts ‘to maintain its secrecy.’” *Hartstock v. Goodyear Dunlop Tires N. Am. Ltd.*, 2018 S.C. Lexis 44, 7-8 (S. Ct. 2018), citing S.C. Code §39-8-20(5)(a)(ii). The protection Bush/SHP asks this Court to grant now is merely an attempt to shut the barn door after the proverbial horse has already left.

Order, p.8-9.

In vacating an opinion from the Court of Appeals that reversed an order compelling discovery, the South Carolina Supreme Court described *Tucker* as “holding an order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege.” *Wieters v. Bon-Secours St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009), emphasis added.

If the *Wieters* court was not willing to immediately review a discovery order that was

alleged to violate attorney-client privilege, the Plaintiff fails to see how the present discovery order is appealable. Bush/SHP's actions appear to be more of the same dilatory conduct which led to the appealed order. As Judge Henderson noted in finding Bush/SHP's discovery conduct to be abusive, Bush/SHP never actually moved for protection. Order p.20. Nor did Bush/SHP ever offer any "explanation for their delay in failing to supplement their responses as they originally represented to the Plaintiff they would do when they submitted their initial response." Order, p.21.

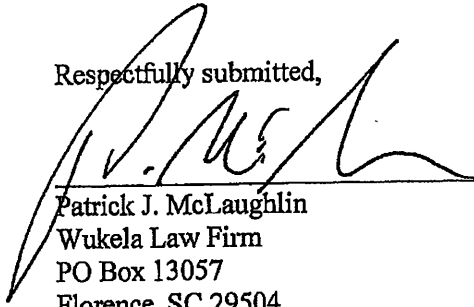
This Court should not allow Bush/SHP to continue to delay this matter by refusing to produce basic discovery.

### CONCLUSION

Based on the above, the Plaintiff respectfully requests that the Court dismiss Bush/SHP's appeal on the grounds that it seeks to appeal a discovery order, which is interlocutory in nature and not immediately appealable.

August 27, 2018

Respectfully submitted,



Patrick J. McLaughlin  
Wukela Law Firm  
PO Box 13057  
Florence, SC 29504  
T: 843-669-5634  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge  
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

**RECEIVED**  
AUG 28 2018  
SC Court of Appeals

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

vs.

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

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

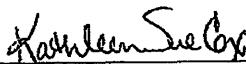
CERTIFICATE OF SERVICE

I, Kathleen Sue Cox, of the Wukela Law Firm, certify that she did serve copies of the Respondent's Motion to Dismiss and Memorandum In Support of the Motion to Dismiss on the Appellants and Defendants by depositing a copy of it and a Certificate of Service in the United States Mail, postage prepaid, on August 27, 2018, addressed to their attorneys of record. Said envelopes being addressed to the following person(s):

Mark V. Gerde  
John E. Tyler  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201  
T: 803-256-2233  
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

Other Counsel of Record:  
William H. Davidson, II  
Davidson & Lindemann, P.A.  
P.O. Box 8568  
Columbia, SC 29202  
Attorney for South Carolina law Enforcement Division

Samuel F. Arthur, III  
Aiken Bridges  
P.O. Box 1931  
Florence, SC 29503-1931  
Attorney for Marlboro County, Marlboro County Sheriff's Office,  
Marlboro County Detention Center

  
\_\_\_\_\_  
Kathleen Sue Cox

# WUKELA LAW FIRM

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August 27, 2018

**RECEIVED**

AUG 28 2018

SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211

Re: Appellate Case No. 2018-001510  
Common Pleas Case No. 2017-CP-34-00064  
Gary Locklear, Individually and as Personal Representative of the  
Estate of Roy Locklear, Respondent,  
vs.  
Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center,  
Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement  
Division, Defendants.  
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

Dear Ms. Kitchings:

Enclosed please find for filing the following:

1. Original and six (6) copies of Motion To Dismiss and Memorandum In Support of the Motion to Dismiss;
2. Certificate of Service on the Appellant and Defendants;
3. A filing fee of Twenty-Five (\$25.00) Dollars.

Yours truly,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

PJM:ksc  
Enclosures

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Page 2  
August 27, 2018

cc:  
Mark V. Gerde  
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Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

William H. Davidson, II  
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Attorney for South Carolina law Enforcement Division

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Marlboro County Detention Center



## First Class Mail

**WUKELA LAW FIRM**  
403 SECOND LOOP ROAD  
P.O. BOX 13057  
FLORENCE, SC 29504

To:

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211

**RECEIVED**

AUG 28 2018

SC Court of Appeals



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

**RECEIVED**

SEP 06 2018

**SC Court of Appeals**

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

v.

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

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

**RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL**

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

**BACKGROUND**

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

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

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

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

#### ARGUMENT

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

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

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

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

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

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

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

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

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

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

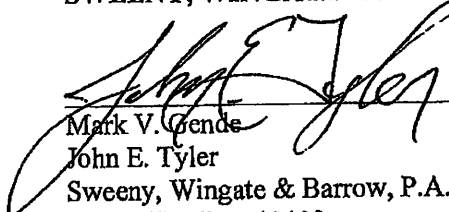
Like the report in *City of Columbia*, the discovery order in this case “has the effect of revealing the very thing” Appellants claim is confidential. *City of Columbia*, 323 S.C. at 388, 475 S.E.2d at 749. Therefore, in the words of the treatise, “an immediate appeal” is warranted.

#### **CONCLUSION**

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

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**

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

**ATTORNEYS FOR APPELLANTS**

Columbia, South Carolina

September 6, 2018

STATE OF SOUTH CAROLINA  
COUNTY OF MARLBORO

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

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

) Civil Action No.: 2017-CP-34-00064  
)

)  
) Plaintiff,  
)

) v.  
)

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

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

)  
) Defendants.  
)

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

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

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

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

**ANSWER:**

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



12824 Peabridge Road  
Laurinburg, NC 28352

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Representative(s) South Carolina Law Enforcement Division  
Address unknown.

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

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

Defendants reserve the right to supplement this response.

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

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

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

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

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

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

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

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

**ANSWER:** See response to number 4 above.

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

**ANSWER:** See response to number 1 above.

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

**ANSWER:** Not applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. How should such observations be documented?

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

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

i. How are such observations documented?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

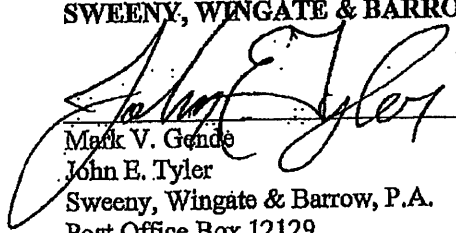
**ANSWER:** Screenings and bookings are performed by employees of Marlboro County.

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

**ANSWER:** None.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



Mark V. Gende

John E. Tyler

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

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

Columbia, South Carolina  
July 10, 2018

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

) THE COURT OF COMMON PLEAS

) THE FOURTH JUDICIAL CIRCUIT

GARY LOCKLEAR, INDIVIDUALLY  
AND AS PERSONAL  
REPRESENTATIVE OF THE  
ESTATE OF ROY LOCKLEAR,

Plaintiff(s),

v.

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

Defendant(s).

Civil Action No.: 2017-CP-34-00064

DEFENDANTS DR. CHARLES BUSH AND  
SOUTHERN HEALTH PARTNERS'  
SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S REQUESTS FOR  
PRODUCTION

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

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute  
Defendants Dr. Charles Bush and Southern Health Partners' Responses to Request for Production  
propounded by Plaintiffs:

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

1. Provide a copy of any and all photographs, plats, sketches, or other prepared  
documents in your possession or in the possession of your representative or attorney that relate  
in any way to the matters complained of in the Complaint.

**RESPONSE:** Please see documents Bates labeled SHP 0001 - 0008 produced  
herewith. Additionally, Defendants maintain a document titled "Policy and Procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**RESPONSE:** See Response to number 5 above.

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

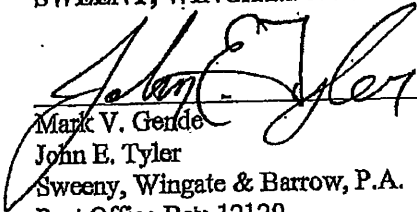
**RESPONSE:** Defendants object to this request to the extent it is overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants object as there are no allegations related to any employee who responded to the suicide of Mr. Locklear. However,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

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

**RESPONSE: See attached Privilege Log.**

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



Mark V. Gende

John E. Tyler

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

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

Columbia, South Carolina.

July 10, 2018

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

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

v. )

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

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

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

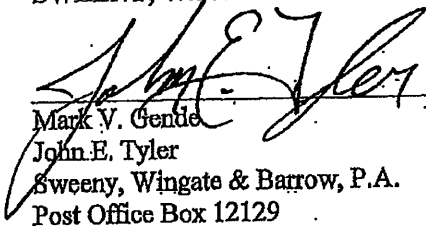
| Dates:    | Description:                                                         | Privilege Asserted:                                                                                                                                                                                                    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

(Signature on following page)



Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



Mark V. Gende

John E. Tyler

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

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

Columbia, South Carolina

July 10, 2018

**John E. Tyler**

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

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

Patrick

---

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

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

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

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

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

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

Sincerely,

John

**S.W.B.**

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

1515 Lady St. (29201)

T 803-256-2233

1



PQ Box 12129  
Columbia, SC 29211  
[www.swblaw.com](http://www.swblaw.com)

ext. 7110  
F # 803-256-9177  
[jet@swblaw.com](mailto:jet@swblaw.com)

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

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

) THE COURT OF COMMON PLEAS

) THE FOURTH JUDICIAL CIRCUIT

GARY LOCKLEAR, INDIVIDUALLY  
AND AS PERSONAL  
REPRESENTATIVE OF THE  
ESTATE OF ROY LOCKLEAR,

Plaintiff(s),

v.

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

Defendant(s).

Civil Action No.: 2017-CP-34-00064

AFFIDAVIT OF JENNIFER I. HAIRSINE

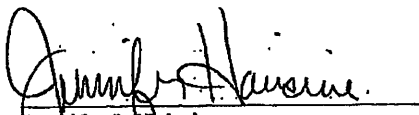
PERSONALLY APPEARED BEFORE ME, the undersigned, Jennifer I. Hairsine, who after being duly sworn, deposes and says:

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

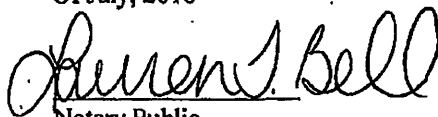


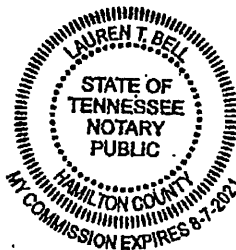
6. I have reviewed the discovery requests of the Plaintiff.
7. For the period of time in question, SHP maintains a document titled "Policy and Procedure Manual for Health Services in Jails."
8. This policy manual is confidential and contains proprietary information. SHP has expended significant time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

FURTHER AFFIANT SAYETH NOT.

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

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

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



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

**RECEIVED**

SEP 06 2018

SC Court of Appeals

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

v.

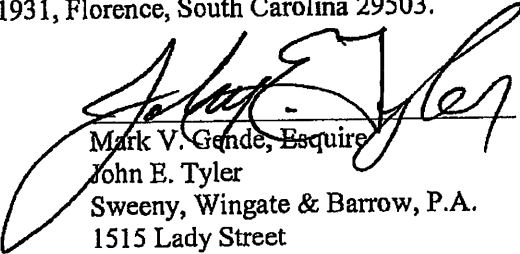
Marlboro County, Marlboro County Sheriff's Office, Marlboro  
County Detention Center, Dr. Charles Bush, Southern Health  
Partners, and South Carolina Law Enforcement Division, Defendants,

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

**PROOF OF SERVICE**

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

September 6, 2018

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

# S·W·B

SWEENEY WINGATE & BARROW P.A.

**RECEIVED**

SEP 06 2018

September 6, 2018

**SC Court of Appeals**

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

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

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

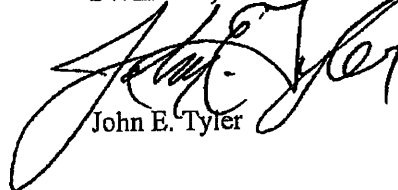
Dear Ms. Allen:

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

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

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



John E. Tyler

JET/smt

Enclosures

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

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211  
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

APP 000159

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge  
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

**RECEIVED**  
SEP 17 2018  
SC Court of Appeals

Gary Locklear, Individually and as Personal Representative of the  
Estate of Roy Locklear, ..... Respondent,

vs.

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

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

**REPLY TO APPELLANTS' RETURN**

Patrick J. McLaughlin  
Wukela Law Firm  
PO Box 13057  
Florence, SC 29504  
T: 843-669-5634  
Attorney for Respondent

Respondent received the Appellants' Return via USPS on September 11, 2018. This Reply follows, pursuant to Rule 240(f) SCACR.

### ARGUMENT

Appellants' return seeks to take a suggestion from a treatise and elevate it in to a new rule for the appellate courts of South Carolina. To do so would result in South Carolina's appellate courts being asked to referee basic discovery disputes, causing unnecessary and unjust delay.

Specifically, Appellants take the suggestion offered by former Chief Justice Toal, in her book, Appellate Practice in South Carolina, that "where an appealed order has the effect of revealing the very thing the appellant was claiming should remain confidential, an immediate appeal may well be warranted and permitted by the appellate court," and mischaracterizes this suggestion as an "assertion that discovery orders like this which compel the production of confidential and proprietary matter are immediately appealable." Response at 3-4, citing Toal, *et al.*, Appellate Practice in South Carolina, 154 (2016, 3d ed), emphasis added.

However, that suggestion that some discovery orders may warrant an immediate appeal speaks only to a unique case where the production of confidential material was precisely why the litigation had been commenced and was the entirety of the matter in controversy. City of Columbia v. A.C.L.U. of South Carolina, Inc., 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996). Contrary to Appellants' argument, City of Columbia does not "address the very issue here – disclosure of proprietary and confidential information pursuant to a discovery request." Response at 5. Instead, City of Columbia addresses a party's attempts to prevail on the actual merits of a certain type of case (declaratory judgment actions involving FOIA exemptions) through a discovery request during litigation.

The Appellants are asking this Court to allow parties who are unsuccessful in litigating a common discovery dispute (Orders of Protection), to immediately appeal when they are unsuccessful in those common discovery disputes. To do so would invite unnecessary delay and needless appeals. Preventing such spurious appeals is precisely the reasoning behind the general rule that orders compelling discovery that do not involve the merits of the case are interlocutory and may not be appealed. Tucker v. Honda of S.C. Mfg., 353 S.C. 574, 577, 582 S.E.2d 405, 406 (2003), citing Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986); Grosshuesch v. Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008), citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568-69, 144 S.E.2d 813, 816 (1965).

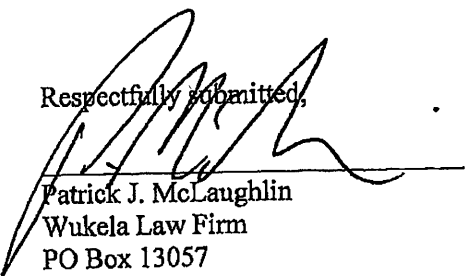
Further, the Appellants' failure to follow the clear instructions from Tucker that an order compelling discovery may be appealed only after the trial court holds a party in contempt, is clearly an attempt by the Appellants to continue to delay responding to discovery while avoiding penalty for doing so. Tucker at 577, 406-407.

### CONCLUSION

Based on the above, the Plaintiff respectfully requests that the Court dismiss Bush/SHP's appeal on the grounds that it seeks to appeal a discovery order, which is interlocutory in nature and not immediately appealable.

September 12, 2018

Respectfully submitted,



Patrick J. McLaughlin  
Wukela Law Firm  
PO Box 13057  
Florence, SC 29504  
T: 843-669-5634  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge  
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

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

vs.

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

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

CERTIFICATE OF SERVICE

I, Kathleen Sue Cox, of the Wukela Law Firm, certify that she did serve copies of the Respondent's Reply To Appellant's Return on the Appellants and Defendants by depositing a copy of it and a Certificate of Service in the United States Mail, postage prepaid, on September 12, 2018, addressed to their attorneys of record. Said envelopes being addressed to the following person(s):

Mark V. Gerde  
John E. Tyler  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201  
T: 803-256-2233  
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

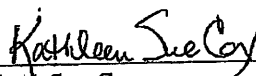
Other Counsel of Record:  
William H. Davidson, II  
Davidson & Lindemann, P.A.  
P.O. Box 8568  
Columbia, SC 29202  
Attorney for South Carolina law Enforcement Division

**RECEIVED**

SEP 17 2018

SC Court of Appeals

Samuel F. Arthur, III  
Aiken Bridges  
P.O. Box 1931  
Florence, SC 29503-1931  
Attorney for Marlboro County, Marlboro County Sheriff's Office,  
Marlboro County Detention Center

  
\_\_\_\_\_  
Kathleen Sue Cox

# WUKELA LAW FIRM

Steve Wukela, Jr.  
Benjamin D. Moore  
Christl B. McDaniel  
Stephen J. Wukela  
Patrick J. McLaughlin  
Pheobe A. Clark  
Frank C. Swaggard

403 Second Loop Road  
P.O. Box 13057  
Florence, SC 29504-3057

(843) 669-5634  
FAX (843) 669-5150

September 12, 2018

**RECEIVED**

SEP 17 2018

**SC Court of Appeals**

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211

Re: Appellate Case No. 2018-001510  
Common Pleas Case No. 2017-CP-34-00064  
Gary Locklear, Individually and as Personal Representative of the  
Estate of Roy Locklear, Respondent,  
vs.  
Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center,  
Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement  
Division, Defendants.  
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

Dear Ms. Kitchings:

Enclosed please find for filing the following:

1. Original and six (6) copies of Respondent's Reply To Appellants' Return;
2. Certificate of Service on the Appellant and Defendants.

Please stamp and return a copy of the Respondent's Reply To Appellants' Return and a copy of the Certificate of Service.

Yours truly,

WUKELA LAW FIRM

PATRICK J. McLAUGHLIN

PJM:ksc  
Enclosures

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Page 2  
September 12, 2018

**RECEIVED**  
SEP 17 2018  
SC Court of Appeals

cc:  
Mark V. Gerde  
John E. Tyler  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201

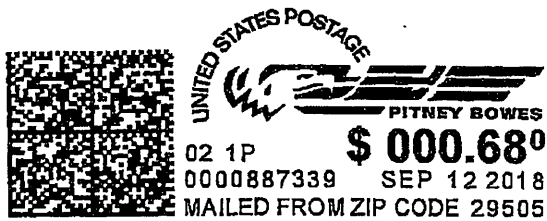
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

William H. Davidson, II  
Davidson & Lindemann, P.A.  
P.O. Box 8568  
Columbia, SC 29202

Attorney for South Carolina law Enforcement Division

Samuel F. Arthur, III  
Aiken Bridges  
P.O. Box 1931  
Florence, SC 29503-1931

Attorney for Marlboro County, Marlboro County Sheriff's Office,  
Marlboro County Detention Center



## First Class Mail

**RECEIVED**  
SEP 17 2018  
SC Court of Appeals

**WUKELA LAW FIRM**  
403 SECOND LOOP ROAD  
P.O. BOX 13057  
FLORENCE, SC 29504

To:

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211

FIRST CLASS

FIRST CLASS

FIRST CLASS

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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

v.

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

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

**SUR-REPLY TO RESPONDENTS' RESPONSE TO APPELLANTS' RETURN TO  
RESPONDENTS' MOTION TO DISMISS APPEAL**

Appellants respectfully submit this Sur-Reply to briefly respond to Respondents' Response to the Return to the Motion to Dismiss to clarify the law cited in Appellant's Notice of Appeal.

The Supreme Court of South Carolina in *City of Columbia v. A.C.L.U., Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996) determined two issues: (1) whether summary judgment was appropriate; and (2) whether an internal investigation report should be produced in discovery. The court *independently* answered the question of whether the report fell under an exception to

**RECEIVED**  
SEP 20 2018  
SC Court of Appeals

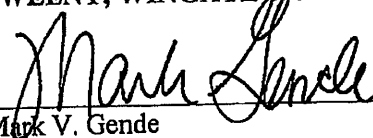
FOIA. While the case was before the court because of the FOIA issue, the South Carolina Supreme Court addressed whether the report contained proprietary and confidential information and should be produced pursuant to a discovery request separately from the issue that commenced the litigation. In other words, it is simply incorrect to suggest, as Respondents do, that discovery orders are appealable "only in the unique case where the production of confidential material was precisely why the litigation had been commenced and was the entirety of the matter in controversy." *Respondents' Reply* at p.2.

**CONCLUSION**

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

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



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

**ATTORNEYS FOR DEFENDANT**

Columbia, South Carolina

September 20, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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

v.

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

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

**RECEIVED**

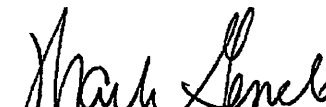
SEP 20 2018

SC Court of Appeals

**PROOF OF SERVICE**

I certify that I have served the Sur-Reply to Respondents' Response to Appellants' Return to Respondents' Motion to Dismiss Appeal on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on September 20, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

September 20, 2018

  
Mark V. Gende, Esquire  
Ryan J. Patane  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, South Carolina 29201  
Attorneys for Appellant



SWEENEY WINGATE & BARROW P.A.

September 20, 2018

Reply to: Main Office  
Mark V. Gende  
(803) 256-2233 x7121  
mvg@swblaw.com

**VIA HAND DELIVERY**

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

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SEP 20 2018

SC Court of Appeals

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

Dear Ms. Allen:

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

Pursuant to the South Carolina Supreme Court Order from September 17, 2018, which declared the days of Tuesday, September 11, 2018, through Friday, September 21, 2018, to be statewide "holidays" for the purposes of computing time under Rule 263 of the South Carolina Appellate Court Rules," this filing is timely.

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

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Mark V. Gende

September 20, 2018  
Page 2 of 2

MVG/smt

Enclosures

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



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

October 04, 2018

Mr. Patrick James McLaughlin, Esquire  
PO Box 13057  
Florence SC 29504

Re: Gary Locklear v. Marlboro County  
Appellate Case No. 2018-001510

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

  
CLERK

cc: John Earle Tyler, Esquire  
Mark V. Gende, Esquire

# The South Carolina Court of Appeals

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

v.

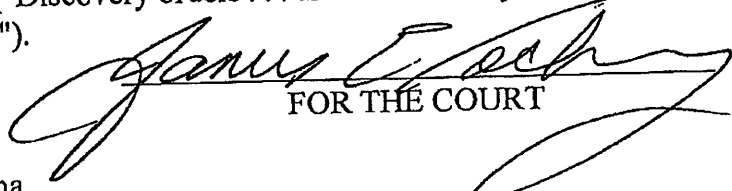
Marlboro County, Marlboro County Sheriff's Office,  
Marlboro County Detention Center, Dr. Charles Bush,  
Southern Health Partners, and South Carolina Law  
Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush  
are Appellants.

Appellate Case No. 2018-001510

## ORDER

Respondent's motion to dismiss the appeal is granted because the underlying order is not immediately appealable. *See Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[T]he fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Hamm v. S.C. Pub. Serv. Comm'n.*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) ("Discovery orders . . . are interlocutory and are not immediately appealable.").

  
FOR THE COURT

Columbia, South Carolina

cc: John Earle Tyler, Esquire  
Mark V. Gende, Esquire  
Patrick James McLaughlin, Esquire

**FILED**

October 4, 2018

88076

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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

v.

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

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

**RECEIVED**  
OCT 12 2018  
SC Court of Appeals

**PETITION FOR REHEARING**

For the reasons set forth below, Appellants respectfully submit this Petition for Rehearing, pursuant to Rule 221(a) and Rule 240, SCACR, in response to this Court's Order dismissing their appeal.

**STANDARD**

"A petition for rehearing . . . shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR.

Appellants submit that the following points were not addressed, were overlooked, or were misapprehended by the Court, and respectfully ask this Court to reconsider their Motion to Appeal.

1. **The Order does not address the exception to the appealability of discovery orders, which was argued by Appellants.**

In their Return to Respondents' Motion to Dismiss, Appellants admitted that discovery orders are generally not immediately appealable. *See Tucker v. Honda of South Carolina Manuf.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2005) (discovery orders "do not *ordinarily* involve the merits" and are not immediately appealable) (emphasis added). However, Appellants argued that there are exceptions to the general rule, recognized by the South Carolina Supreme Court, and as is set forth in Appellants' Notice of Appeal and Return to Respondent's Motion to Dismiss Appellant's Appeal, and discussed in a leading authority on South Carolina Appellate law, Toal, *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA, 154 (2016, 3d ed). These were not addressed by this Court.

Specifically, an immediate appeal is warranted when orders require the disclosure of material that is confidential and/or proprietary in nature. The South Carolina Supreme Court addressed the issue of the appealability of discovery orders in *City of Columbia v. A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996). *City of Columbia* shows one of the exceptions to the general rule is that discovery orders, which compel the production of confidential and proprietary matter, are immediately appealable.

The same is true in this Appeal. As is set forth in the Appellants' Return to Respondents' Motion to Dismiss Appellants' Appeal, the documents Respondents seek are proprietary and/or confidential in nature, and an appeal of the Order compelling production is warranted. *See Toal et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA, 154 (2016, 3d ed) (citing *City of Columbia v.*

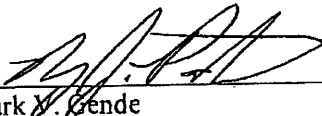
*A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996) ("if an order requires a party to turn over documents that the party feels are privileged or contain proprietary or confidential matters, and the party does not have a right to an immediate appeal, compliance the protection afforded by the privilege or confidentiality a nullity. [] Hence, where the appealed order has the effect of revealing the very thing the appellant is claiming should remain confidential, an immediate appeal may well be warranted and permitted by the appellate courts." internal citations omitted)).

### **CONCLUSION**

For the reasons stated above, Appellants respectfully submit this Petition for Rehearing asking the Court to address the circumstances where discovery orders can be appealed when orders require the production of confidential and proprietary information, and deny Respondents' Motion to Dismiss.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



Mark W. Gende  
Ryan J. Patane  
Sweeney, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, SC 29211  
(803) 256-2233

**ATTORNEYS FOR APPELLANTS**

Columbia, South Carolina

October 12, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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

v.

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

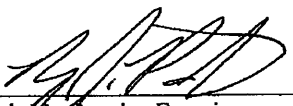
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

**RECEIVED**  
OCT 12 2018  
SC Court of Appeals

**PROOF OF SERVICE**

I certify that I have served the Petition for Rehearing on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on October 12, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

October 12, 2018

  
Mark W. Gende, Esquire  
Ryan J. Patane, Esquire  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, South Carolina 29201  
Attorneys for Appellant



SWEENY WINGATE & BARROW P.A.

October 12, 2018

Reply to: Main Office  
Ryan J. Patane  
(803) 256-2233 x7121  
rin@swblaw.com

RECEIVED

OCT 12 2018

SC Court of Appeals

VIA HAND DELIVERY

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

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

Dear Ms. Allen:

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

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

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Ryan J. Patane

RJP/smt  
Enclosures

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

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211  
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

APP 000179

**S·W·B**

SWEENEY WINGATE & BARROW P.A.

1515 LADY ST. (29201) • PO BOX 12129 • COLUMBIA, SC 29211

**VIA HAND DELIVERY**

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

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OCT 12 2010  
SC Court of Appeals

5480-10735

88077

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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

v.

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

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

**RECEIVED**  
OCT 12 2018  
SC Court of Appeals

**MOTION FOR SUBSTITUTION OF REPRESENTATION**

The above-named Appellants, by and through the undersigned counsel, hereby respectfully move this Court to substitute representation. Attorney John Tyler is no longer employed with the law firm of Sweeny, Wingate & Barrow, P.A.. Associate Ryan J. Patane of the law firm of Sweeny, Wingate & Barrow, P.A. will replace John Tyler going forward and attorney Mark V. Gende of this law firm will continue as lead attorney in this matter.

[Signature Block on Next Page]

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



---

*for* Mark V. Gende, S.C. Bar No. 72835  
Ryan J. Patane, S.C. Bar No. 103116  
Sweeny, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, SC 29211  
(803) 256-2233

**ATTORNEYS FOR APPELLANTS**

Columbia, South Carolina

October 12, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-00064

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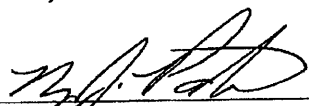
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

**RECEIVED**  
OCT 12 2018  
SC Court of Appeals

**PROOF OF SERVICE**

I certify that I have served the Motion for Substitution of Representation on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on October 12, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

October 12, 2018

  
\_\_\_\_\_  
Mark V. Gende, Esquire  
Ryan J. Patane, Esquire  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, South Carolina 29201  
Attorneys for Appellant



SWEENY WINGATE & BARROW P.A.

October 12, 2018

Reply to: Main Office  
Ryan J. Patane  
(803) 256-2233 x71113  
rjp@swblaw.com

**VIA HAND DELIVERY**

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

**RECEIVED**

**OCT 12 2018**

**SC Court of Appeals**

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

Dear Ms. Allen:

Enclosed for filing, please find the originals and one (1) copy each of Appellants Motion for Substitution of Counsel and Proof of Service in the above-referenced matter. Please return a clocked copy of each to me via our courier. Also enclosed is the \$25 filing fee.

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

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Ryan J. Patane

RJP/smt

Enclosures

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



SWEENEY WINGATE & BARROW P.A.

October 11, 2018

Reply to: Main Office  
Mark V. Gende  
(803) 256-2233 x7121  
mvg@swblaw.com

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

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

Dear Ms. Allen:

Southern Health Partners and Dr. Charles Bush filed an appeal in the above-referenced case on August 16, 2018. The Appellants, Southern Health Partners and Dr. Charles Bush are in receipt of the Transcript of Record relevant to this appeal. This transcript was received on October 11, 2018.

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

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Mark V. Gende

MVG/smt

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

**RECEIVED**  
OCT 15 2018  
SC Court of Appeals

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211  
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

APP 000185

**S·W·B**

SWEENEY WINGATE & BARROW P.A.

1515 LADY ST. (29201) • PO BOX 12129 • COLUMBIA, SC 29211



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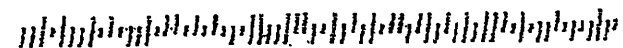
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0000350880 OCT. 11. 2018

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

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OCT 15 2018  
SC Court of Appeals

5480-10735

2921131629 5012



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge  
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

**RECEIVED**  
OCT 16 2018  
SC Court of Appeals

Gary Locklear, Individually and as Personal Representative of the  
Estate of Roy Locklear, ..... Respondent,

vs.

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

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

**RETURN TO APPELLANTS' PETITION FOR REHEARING**

Patrick J. McLaughlin  
Wukela Law Firm  
PO Box 13057  
Florence, SC 29504  
T: 843-669-5634  
Attorney for Respondent

Respondent received the Appellants' Petition for Rehearing via email on October 12, 2018. This Return follows, pursuant to Rule 240(e) SCACR.

### ARGUMENT

Appellants' petition for a rehearing arguing that the Court of Appeals did not address "exceptions to the general rule, recognized by the South Carolina Supreme Court" that discovery orders are generally not immediately appealable. (*Petition*, p.2). Appellants' petition continues to ignore the explicit requirements the South Carolina Supreme Court has imposed in order to appeal discovery orders and continues to mischaracterize a suggestion from a treatise as controlling precedent.

In what is now their third (3<sup>rd</sup>) filing since the Respondent's motion to dismiss pointed out the Appellants' failure to follow the South Carolina Supreme Court's explicit instructions on how a party may properly appeal a discovery order as outlined in Tucker v. Honda of South Carolina Manuf., 354 S.C. 574, 582 S.E.2d 405 (2005), the Appellants have yet to explain to this court why their failure to follow those instructions should be excused ("an order compelling discovery may be appealed only after the trial court holds a party in contempt." Tucker at 577, 406-407, emphasis added).

Instead of following these explicit instructions from a controlling South Carolina Supreme Court case, the Appellants take a suggestion offered in a treatise and try to elevate it to controlling precedent. The Appellants ignore the permissive-nature of the language used by former Chief Justice Toal in her book, Appellate Practice in South Carolina, that "where an appealed order has the effect of revealing the very thing the appellant was claiming should remain confidential, an immediate appeal may well be warranted and permitted by the appellate court," and instead they

try to cast that language as mandatory. Toal, *et al.*, Appellate Practice in South Carolina, 154 (2016, 3d ed), emphasis added. In doing so, the Appellants continue to refuse acknowledging that suggestion arises from a unique case where the production of confidential material was precisely why the litigation had been commenced and was the entirety of the matter in controversy. City of Columbia v. A.C.L.U. of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996). This case does not have those unique set of facts and as such, City of Columbia does not apply.

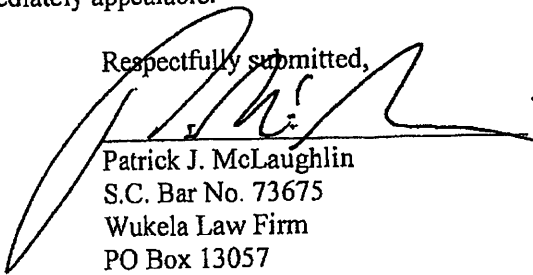
This latest attempt by the Appellants to continue to litigate a basic discovery dispute through the appellate courts without following the clear instructions from Tucker and appealing the discovery order only after the trial court has held them in contempt, is clearly an attempt by the Appellants to continue to delay responding to discovery while avoiding penalty for doing so. Tucker at 577, 406-407.

### CONCLUSION

Based on the above, the Plaintiff respectfully requests that the Court dismiss Bush/SHP's petition for rehearing on the grounds that it seeks to appeal a discovery order, which is interlocutory in nature and not immediately appealable.

October 15, 2018

Respectfully submitted,



Patrick J. McLaughlin  
S.C. Bar No. 73675  
Wukela Law Firm  
PO Box 13057  
Florence, SC 29504  
T: 843-669-5634  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge  
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

Gary Locklear, Individually and as Personal Representative of the  
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vs.

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

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

CERTIFICATE OF SERVICE

I, Kathleen Sue Cox, of the Wukela Law Firm, certify that she did serve copies of the Return to Appellants' Petition For Rehearing by the Respondent by depositing a copy of it and a Certificate of Service in the United States Mail, postage prepaid, on October 15, 2018, addressed to their attorneys of record. Said envelopes being addressed to the following person(s):

Mark V. Gerde  
Ryan J. Patane  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201  
T: 803-256-2233  
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

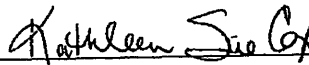
Other Counsel of Record:  
William H. Davidson, II  
Davidson & Lindemann, P.A.  
P.O. Box 8568  
Columbia, SC 29202  
Attorney for South Carolina law Enforcement Division

**RECEIVED**

OCT 16 2018

**SC Court of Appeals**

Samuel F. Arthur, III  
Aiken Bridges  
P.O. Box 1931  
Florence, SC 29503-1931  
Attorney for Marlboro County, Marlboro County Sheriff's Office,  
Marlboro County Detention Center

  
Kathleen Sue Cox

# WUKELA LAW FIRM

Steve Wukela, Jr.  
Benjamin D. Moore  
Christi B. McDaniel  
Stephen J. Wukela  
Patrick J. McLaughlin  
Pheobe A. Clark  
Frank C. Swaggard

403 Second Loop Road  
P.O. Box 13057  
Florence, SC 29504-3057

(843) 669-5634  
FAX (843) 669-5150

October 15, 2018

**RECEIVED**  
OCT 16 2018  
SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211

Re: Appellate Case No. 2018-001510  
Common Pleas Case No. 2017-CP-34-00064  
Gary Locklear, Individually and as Personal Representative of the  
Estate of Roy Locklear, Respondent,  
vs.  
Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center,  
Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement  
Division, Defendants.  
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

Dear Ms. Kitchings:

Enclosed please find for filing the following:

1. Original and six (6) copies of Return to Appellants' Petition For Rehearing by the Respondent;
2. Certificate of Service on the Appellants and Defendants;

Yours truly,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

PJM:ksc  
Enclosures

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Page 2  
October 15, 2018

cc:  
Mark V. Gerde  
Ryan J. Patane  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201  
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

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Attorney for South Carolina law Enforcement Division

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P.O. Box 1931  
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Attorney for Marlboro County, Marlboro County Sheriff's Office,  
Marlboro County Detention Center

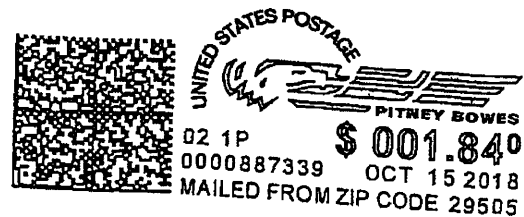
**RECEIVED**  
OCT 16 2018  
SC Court of Appeals

**First Class Mail**

**WUKELA LAW FIRM**  
403 SECOND LOOP ROAD  
P.O. BOX 13057  
FLORENCE, SC 29504

To:

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211



FIRST CLASS

FIRST CLASS

FIRST CLASS

# The South Carolina Court of Appeals

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

v.

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

Of which Southern Health Partners and Dr. Charles Bush  
are Appellants.

Appellate Case No. 2018-001510

The Honorable Roger E. Henderson  
Marlboro County  
Trial Court Case No. 2017CP3400064

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## ORDER

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Appellants move this Court to substitute Ryan J. Patane, Esquire, for attorney John Tyler, Esquire, formerly of Sweeny, Wingate & Barrow, P.A. A return has not been filed. The motion is Granted. John Tyler shall no longer be copied on any correspondence regarding this matter on appeal.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

**FILED**

October 17, 2018

---

Columbia, South Carolina

cc:

John Earle Tyler, Esquire

Mark V. Gende, Esquire

Patrick James McLaughlin, Esquire

Ryan Joseph Patane, Esquire

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

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Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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**RECEIVED**  
OCT 22 2018  
SC Court of Appeals

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

v.

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

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

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**REPLY TO RESPONDENTS' RETURN TO APPELLANTS' PETITION FOR  
REHEARING**

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Appellants respectfully submit this Reply to Respondent's Return to Appellants' Petition  
for Rehearing, pursuant to Rule 240, SCACR.

**ARGUMENT**

The Court of Appeals should grant Appellants' Petition for Rehearing and reverse the  
dismissal of its Notice of Appeal.

Appellants, and all entities doing business or considering to do business in South Carolina, have a reasonable and legitimate interest in protecting proprietary and trade secret information. This legitimate interest must be protected by South Carolina courts.

The central issue in the instant appeal is the circuit court's order that refuses to allow Appellants to produce policy and procedure documents under the confidentiality order, where Appellants have argued such documents contain proprietary information and/or trade secrets. Such confidentiality orders are a staple of litigation discovery and serve as the most basic protection against the widespread and public dissemination of a business entity's work product.

Companies may expend many years, countless hours, and significant capital developing such work product. This work product sets one entity apart from its competitors in the marketplace. Companies should not be coerced into a public disclosure of such work product by being commanded to produce it without a confidentiality order.

Appellants made a good-faith argument for entry of the confidentiality order. That argument is supported by an affidavit of the president and chief executive officer of Appellant. Notwithstanding, the subject order dismisses as illegitimate Appellants' good-faith argument by granting Respondent's counsel attorney's fees and imposing a per diem preemptive sanction, if the subject documents were not produced by a date certain. While an order is a legitimate form of judicial compulsion, in this case adding fees and potential sanctions to a good-faith discovery dispute amounts to unreasonable coercion.

This order places the business entity in a no-win predicament. The business entity is considered (wrongly, in Appellants' view) to have no option except to comply with the order or be held in contempt. Once in contempt it may appeal the contempt citation. This process places a business in great jeopardy should it not fully prevail in overturning the contempt citation. This

is an unreasonable predicament into which to place a business for the "offence" of seeking to protect its proprietary work product. Such a predicament is unnecessary where the entry of a common confidentiality order would not hinder any legitimate use by the Respondent of the protected documents in the litigation and would protect the legitimate interests of the Appellant.

The problem with the comply-or-be-held-in-contempt sword when dealing with proprietary and/or trade secret work product has been recognized in at least one authoritative South Carolina treatise and in South Carolina case law. The specific authority is discussed in Appellant's Petition for Rehearing, Notice of Appeal, and Return to Respondent's Motion to Dismiss Appellant's Appeal, and form the good-faith basis to argue in the instant appeal that an exception exists to the general rule that discovery orders are not immediately appealable. In his Return to Appellant's Petition for Rehearing, Respondent ignores the case law and summarily dismisses the treatise that lists exceptions to the ordinary rule that discovery orders are not immediately appealable. Appellants, however, have contended from the inception of this appeal that the facts of this case fall under one or more of the potential exceptions to the ordinary rule.

This issue is of significant importance to litigation and business throughout the State of South Carolina. Within days of its issuance, the subject order had already been disseminated and is being used on the opposite side of the state in an attempt to force the Appellant entity to produce similar work product in a matter where Appellant is not even a party. It is foreseeable that the subject order eventually will be used across the state and in every type of litigation to compel entities doing business in South Carolina to disclose what is reasonably argued to be proprietary and/or trade secret work product with no protections whatsoever. This unreasonable, unnecessary, and unprecedented compelled dissemination of proprietary and/or trade secret

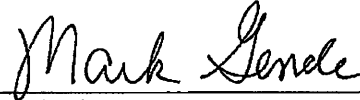
information, without the benefit of review by a higher court, can only have the foreseeable result of chilling competitive business in South Carolina.

**CONCLUSION**

For the reasons stated above, and as is set forth in Appellants' Petition for Rehearing, Return to Respondent's Motion to Dismiss Appellant's Appeal and Notice of Appeal, Appellants respectfully request this Court to consider its Petition for Rehearing, reverse its dismissal of Appellants' Appeal and allow the Appeal to proceed.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



---

Mark V. Gende  
Ryan J. Patane  
Sweeney, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, SC 29211  
(803) 256-2233

**ATTORNEYS FOR APPELLANTS**

Columbia, South Carolina

October 22, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

**RECEIVED**

OCT 22 2018  
SC Court of Appeals

Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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

v.

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

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

**PROOF OF SERVICE**

I certify that I have served the Reply to Respondents' Return to Appellants' Petition for Rehearing on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on October 22, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

October 22, 2018



Mark V. Gende, Esquire  
Ryan J. Patane, Esquire  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, South Carolina 29201  
Attorneys for Appellant



SWEENEY WINGATE & BARROW P.A.

October 22, 2018

**VIA HAND DELIVERY**

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

Reply to: Main Office  
Ryan J. Patane  
803-256-2233 x7121  
rjp@swblaw.com  
**RECEIVED**  
OCT 22 2018  
SC Court of Appeals

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

Dear Ms. Allen:

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

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

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Ryan J. Patane

RJP/smt  
Enclosures

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

# The South Carolina Court of Appeals

Gary Locklear, individually and as Personal  
Representative of the Estate of Roy Locklear,  
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Southern Health Partners, and South Carolina Law  
Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush  
are Appellants.

Appellate Case No. 2018-001510

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

*Thomas C. Luff*

J.

*Paul G. Shortz Jr.*

J.

*H. Burr Wale*

J.

Columbia, South Carolina

**FILED**

December 18, 2018

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cc:

Mark V. Gende, Esquire

Patrick James McLaughlin, Esquire

Ryan Joseph Patane, Esquire