

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

MAR 11 2019

SC Court of Appeals

Case No. 2012-CP-43-2030

Appellate Case No.: 2016-000774

Win Myat.....Appellant,

v.

Tuomey Healthcare System.....Respondent.

**APPELLANT’S RETURN TO MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF**

Appellant Win Myat submits this Return to Prisma Health Tuomey and the S.C. Hospital Association’s Motion for Leave to File an *Amicus Curiae* Brief. The Movants’ Motion to submit the *Amicus* brief should be denied because it is untimely and because Prisma Health Tuomey has a direct interest in the litigation. Such an interest is not that of a “friend of the court” but rather that of an interested litigant who is seeking to file additional briefing beyond that permitted by the rules.

Rule 213 provides:

A brief of an *amicus curiae* may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave to file. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an *amicus curiae* is desirable. The brief shall be limited to

argument of the issues on appeal as presented by the parties *and shall comply with the requirements of Rules 208(b) and 211*. If leave to file an amicus curiae brief is granted, the appellate court will specify the period in which a response to the brief may be filed.

Rule 213, SCACR (2019)(emphasis added). Both referenced appellate court rules governing briefing (Rule 208 and 211) specify the times to file initial and final briefs. The latter date provided for in Rule 211(a) requires that briefs be served within 20 days after the filing and service of the Record on appeal. In this appeal, the Record on Appeal was served on May 16, 2017 and all briefing was completed by July 13, 2017, over a year and a half ago. Because the brief submitted by the Movants is long overdue and even submitted after oral argument, the Court should not permit the Movant's leave to file their brief.

Moreover, Prisma Health Tuomey's interest in this litigation is beyond that of a "friend of the court," rather it has a direct interest in the litigation. Prisma Health Tuomey, formerly known as Palmetto Heath Tuomey¹ is the successor in interest to certain of the assets of Respondent Tuomey Healthcare System. As testified to by Respondent's Rule 30(B)(6) witness, Palmetto Health Tuomey is the residual beneficiary of the assets of Respondent Tuomey Healthcare System. R. p. 1660-61 (Transcript of the March 6, 2016 Hearing Testimony of Tom Moran, Esquire - Rule 30(b)(6) Designee of Respondent). Because Prisma Health Tuomey's interest is truly that of a litigant who has been aware of the verdict and appellate proceedings at issue all along, the Court should not permit its untimely attempt to submit further briefing on the application of the Solicitation of Charitable Funds Act ("SCFA") issue.

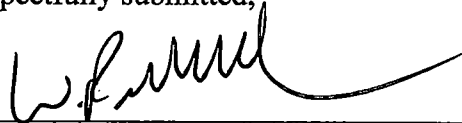
¹ See Prisma Health Tuomey's Secretary of State record attached hereto as Exhibit 1 indicating that it was formerly Palmetto Health Tuomey.

In the alternative, in the event the Court permits the Movant's leave to file the *Amicus Curiae* brief, Appellant requests the opportunity to address the Movant's arguments relating to the application of the SCFA. Appellant contends that the SCFA's language and public policy do *not* support a bright line rule that permits unscrupulous entities that operate outside the bounds of the requirements of 26 U.S.C. § 501(c)(3) and which are guilty of massive taxpayer fraud² to hide behind the liability protections of the SCFA.

For these reasons Appellant respectfully requests the Court deny the Movant's Motion for leave to file an *Amici Curiae* brief, and in the alternative, requests leave under Rule 213 to file a responsive brief to address the arguments made by the Movants.

March 11, 2019

Respectfully submitted,



William R. Padget (SC Bar #72579)
Francis M. Hinson, IV (SC Bar #74917)
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Attorneys for Appellant Win Myat

² The Fourth Circuit opinion expressly addresses the enormity of the frauds committed by Respondent stating that “while the penalty is certainly severe, it is meant to reflect the sheer breadth of the fraud Tuomey perpetrated upon the federal government.” U.S. ex rel. Drakeford v. Tuomey, 792 F.3d 364, 389 (4th Cir. 2015).

South Carolina Secretary of State Mark Hammond

Business Entities Online

File, Search, and Retrieve Documents Electronically

Prisma Health Tuomey

Corporate Information

Entity Type: Nonprofit

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 08/26/2015

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: John J. Singerling, III

Address: 1301 Taylor Street, Suite
9-A
Columbia, South Carolina
29201



Official Documents On File

Filing Type	Filing Date
Articles of Amendment	12/17/2018
Articles of Amendment	09/21/2018
Notice of Change of Registered Office or Registered Agent or Both of a Nonprofit Corporation	01/11/2018
Amendment	12/04/2015
Incorporation	08/26/2015

Former Names

Name	Filing Date
PALMETTO HEALTH TUOMEY	08/26/2015

For filing questions please contact us at **803-734-2158**

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PROOF OF SERVICE

I certify that I have served the *Appellant's Return To Motion For Leave To File Amici Curiae Brief* on the following counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on March 11, 2019:

David C. Holler
126 N. Main Street
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(Signature on next page)



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Reply to Columbia Office

March 11, 2019

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
MAR 11 2019
SC Court of Appeals

RE: *Win Myat v. Tuomey Regional Medical Center*
Appeal Case No.: 2016-000774

Dear Ms. Kitchings:

Enclosed for filing please find the Appellant's Return to Motion for Leave to File Amici Curiae Brief along with the Proof of Service in regard to the above-named matter.

Should you have any questions, please feel free to contact me. With kind regards, I remain

Sincerely,

William R. Padget

WRP/kjt

cc: David Holler, Esq.
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Grayson Lambert, Esq.
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