

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Case No. 2013-CP-10-00444

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2013-001933

Jeremy Greene,

Appellant,

v.

Medical University of South Carolina,

Respondent.

RECORD ON APPEAL

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December 30, 2013
Charleston, South Carolina

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON,)

Jeremy Greene,)

Plaintiff(s))

vs.)

Medical University of South Carolina,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10 - 444

Submitted By: Bland Richter, LLP

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Stander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Contdemnation (410), Foreclosure (420), Mechanics Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Sexual Predator (510)

Submitting Party Signature:

Date: January 22, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Jeremy Greene,)
)
Plaintiff,)
)
vs.)
)
Medical University of South)
Carolina,)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
ACTION NO: 2013-CP- 10-444

FILED
2013 JUN 24 PM 4:11
JULIE J. HENNINGSTROM
CLERK OF COURT

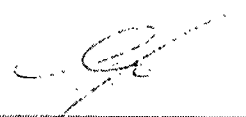
SUMMONS

JURY TRIAL DEMANDED!

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

BLAND RICHTER, LLP
Attorneys for Plaintiff



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Charleston, South Carolina
January 22, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
ACTION NO: 2013-CP- 10-444

Jeremy Greene,)
)
Plaintiff,)
)
vs.)
)
Medical University of South)
Carolina,)
)

COMPLAINT
(Breach of Contract / Defamation)

JURY TRIAL DEMANDED!

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CLERK OF COURT

The Plaintiff, complaining of the conduct of the Defendant herein, alleges as follows:

Parties and Jurisdiction

1. The Plaintiff, Jeremy Greene ("Greene"), is a citizen and resident of Dorchester County, South Carolina.
2. The Defendant, Medical University of South Carolina ("MUSC"), is a political agency or subdivision of the State of South Carolina.
3. This action is brought pursuant to the South Carolina Tort Claims Act, 15-78-10, et seq., South Carolina Code of Laws, 1976, as amended.

Factual Background

4. MUSC is a public hospital which provides a variety of health care services, including specifically treatment of patients suffering from renal conditions and the treatment of patients ultimately requiring kidney transplants.
5. In order to be considered for kidney transplant at MUSC, prospective patients make application to MUSC's kidney transplant program.
6. Once accepted into the program, kidney transplant patients are tracked with regard to the function of their kidneys, are maintained ultimately on a program of dialysis and are profiled for an appropriate donor match should a donor kidney become available.

7. As a citizen of Summerville, South Carolina, MUSC and its kidney transplant program represents the safest and most convenient transplant program available to the Plaintiff.
8. Prior to 1999, the Plaintiff suffered from renal insufficiency which progressed eventually to the point of requiring dialysis and kidney transplant.
9. In or around May 1994, the Plaintiff began dialysis under the supervision of MUSC, and the Plaintiff also began the application process to receive a kidney transplant.
10. Unlike other transplant programs, MUSC did not have or did not provide to the Plaintiff a written policy setting forth with specificity what was required of the Plaintiff in order to remain in the program and/or what the Plaintiff's rights were in the event that he allegedly deviated from any program requirement.
11. In 1999, the Plaintiff underwent a successful transplant of a cadaver kidney at MUSC.
12. At the time of the transplant, it was known or anticipated that with proper care, the transplant kidney had an expected life of 4 to 7 years.
13. At the time of the transplant, it was known or anticipated that the Plaintiff would require another transplant in the future.
14. Following his transplant surgery in 1999, the Plaintiff remained a patient of the MUSC kidney transplant program and continued to receive care and monitoring of his transplanted kidney.
15. Following his transplant surgery in 1999, the Plaintiff remained compliant with any and all requirements of the kidney transplant program which were made known to him.
16. Largely through his efforts and dedication to maintaining the health of his transplanted kidney, the Plaintiff's kidney ultimately lasted for 12 years before failing to the point where a subsequent transplant became necessary.
17. Beginning in or around June, 2010, the Plaintiff's kidney began to fail.

18. The Plaintiff suffered from extremely high blood pressure and other conditions which became life threatening.
19. In or around September, 2010, the Plaintiff's father asked the Plaintiff's physicians at MUSC whether it would be acceptable for Greene to seek a second opinion for his condition at Massachusetts General Hospital in Boston.
20. The Plaintiff's father and wife were assured that the consultation was acceptable and would not be an impediment to Greene's continued status as a patient of the MUSC kidney transplant program.
21. The Plaintiff was flown to Boston in late 2010, where he received care for his renal condition.
22. The Plaintiff returned to South Carolina in a better state of health and prepared to continue in the MUSC kidney transplant program.
23. On February 2, 2011, the Plaintiff received a letter from the MUSC Transplant Center informing the Plaintiff that he would not "be placed on the MUSC kidney transplant list" because of his alleged "history of severe noncompliance."
24. The letter offered no explanation of the alleged non-compliance, nor has any explanation been provided to date.
25. The Plaintiff received no notice of the alleged non-compliance, nor was he provided any opportunity to cure any alleged non-compliance.
26. As a result of the unilateral and unjustified action of MUSC, the Plaintiff was forced to seek admission on an alternative transplant list.
27. The Plaintiff applied to the Mayo Clinic in Jacksonville, Florida. The Mayo Clinic reviewed the Plaintiff's health history thoroughly and accepted him into its transplant program without reservation.

28. As a result of MUSC's unilateral and unjustified ouster of Greene from its program, he has suffered damages and will continue to suffer damages through the increased time and expense of travel to and from Jacksonville, Florida for care which should have remained available to him in his home town. Following a future transplant surgery, the Plaintiff will further be forced to take up temporary residence in Florida at considerable expense which would have otherwise been avoided.

For a First Cause of Action

Breach of Contract

29. Paragraphs 1 through 28 above are incorporated herein as if realleged in full verbatim.
30. At all times relevant hereto, the Plaintiff and Defendant were in a contractual relationship in which the Defendant was contractually bound to provide medical care and services to the Plaintiff, including specifically providing him with a kidney transplant should his condition require it.
31. At all times relevant hereto, the Plaintiff met all of the terms and conditions of his contract.
32. On or about February 2, 2011, the Defendant unilaterally, without justification, without warning and without the right or opportunity to cure, breached its contract with the Plaintiff by summarily dismissing him from the kidney transplant program.
33. At all times relevant hereto, the contract between the parties was imbued also with the obligation of good faith and fair dealing.
34. On or about February 2, 2011, the Defendant unilaterally, without justification, without warning and without the right or opportunity to cure, breached its obligation of good faith and fair dealing with the Plaintiff by summarily dismissing him from the kidney

transplant program and by falsely reporting that the basis for its decision was the Plaintiff's alleged "history of severe non-compliance."

35. As a result of MUSC's unilateral and unjustified ouster of Greene from its program, he has suffered damages and will continue to suffer damages through the increased time and expense of travel to and from Jacksonville, Florida for care which should have remained available to him in his home town. Following a future transplant surgery, the Plaintiff will further be forced to take up temporary residence in Florida at considerable expense which would have otherwise been avoided.
36. The Plaintiff is entitled to judgment against the Defendant in an amount determined by a jury to be sufficient to compensate him fully for all losses, past, present and future.

For a Second Cause of Action

Defamation

37. Paragraphs 1 through 36 above are incorporated herein as if realleged in full verbatim.
38. The Defendant, by and through its agents, falsely published both orally and in writing that the Plaintiff had a "history of severe non-compliance" with regard to his participation in the kidney transplant program.
39. The statements made by the Defendant's agents were false and were known to be false at the time they were made.
40. The statements have become a permanent part of the Plaintiff's medical record.
41. The statements led to the unilateral and unjustified decision to terminate the Plaintiff from the kidney transplant program.
42. As a direct result, the Plaintiff has suffered damages and will continue to suffer damages through the increased time and expense of travel to and from Jacksonville, Florida for care which should have remained available to him in his home town. Following a future

transplant surgery, the Plaintiff will further be forced to take up temporary residence in Florida at considerable expense which would have otherwise been avoided. The Plaintiff has been further harmed and will continue to be harmed through the publication in his medical record of the false allegation that his is non-compliant with his care.

43. The Plaintiff is entitled to judgment against the Defendant in an amount determined by a jury to be sufficient to compensate him fully for all losses, past, present and future.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in an amount determined by a jury to be sufficient to compensate him fully for all losses, past, present and future, together with such additional relief as the court may deem just and proper, including the costs of this action.

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Charleston, South Carolina

January 22 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
)	
Jeremy Greene,	)	C/A No. 13-CP-10-444
)	
)	
Plaintiffs,)	
)	
Versus	)	DEFENDANT'S ANSWER TO
	)	PLAINTIFF'S COMPLAINT
Medical University of South Carolina,	)	(Jury Trial Demanded)
)	
Defendant.)	

COMES NOW the Defendant, Medical University of South Carolina (hereinafter "the Defendant" or "MUSC"), by and through its undersigned counsel, subject to its motion to dismiss filed herewith, answering the Complaint of the Plaintiff as follows:

1. The Defendant denies each and every allegation of the Plaintiff's Complaint which is not hereinafter specifically admitted.
2. The allegations of Paragraphs 1, 2, and 3 state conclusions of law which require no response. To the extent a response is required, the Defendant admits only so much as alleges that the Medical University of South Carolina is a governmental healthcare facility as defined by the South Carolina Tort Claims Act with applicable limitations of liability and rights defined therein.
3. The Defendant admits the allegations of Paragraph 4 of the Plaintiff's Complaint.
4. In response to the allegations of Paragraphs 5 and 6, the Defendant admits that there is a kidney transplant program associated with the Defendant's services as a governmental healthcare facility. Further reference is made to the specifics of the procedures relative to acceptance into the program, testimony of treating providers within the program, and review of the applicable terms and conditions therein for a full and accurate recitation as to the scope of the program.
5. The Defendant has insufficient information upon which to admit or deny the allegations of Paragraph 7.

6. In response to Paragraphs 8 through 27, the Defendant asserts that at all times the Plaintiff was provided medical care within the standard of care and utilized appropriate parameters relative to the standard of care for kidney transplant programs for its patient. Further reference is made to the Plaintiff's medical records for specific and accurate recitation of the Plaintiff's healthcare complaints, treatments and noncompliance, including the medical providers involved who can provide a more accurate recitation of the events and facts at issue. All remaining and inconsistent allegations are denied.

7. The Defendant denies the allegations of Paragraph 28.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

8. In response to the allegation of Paragraph 29, the Defendant repeats and reiterates its prior responses as if fully repeated herein verbatim.

9. The Defendant denies the allegations of Paragraph 30 of the Plaintiff's Complaint.

10. The Defendant denies the allegations of Paragraphs 30, 31, 32, 33, 34, 35, and 36 of the Plaintiff's Complaint, being all remaining allegations of the First Cause of Action.

AS TO THE SECOND CAUSE OF ACTION
(Defamation)

11. In response to the allegations of Paragraph 37, the Defendants repeats and reiterates its prior responses as if fully repeated herein verbatim.

12. The Defendant denies the allegations of Paragraphs 38, 39, 40, 41, 42, and 43, being all remaining allegations of the Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Governmental Immunity/Tort Claims Act)

13. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 12 above as if fully repeated herein verbatim.

14. The provisions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq., including all subparts, apply to this action. MUSC is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and as such is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act pursuant to South Carolina Code Ann. § 15-78-60. The South Carolina Tort Claims Act constitutes the exclusive remedy for any tort committed by the employee of the governmental entity who is acting within the scope of his or her employment. Further, while the Defendant specifically denies that the Plaintiff is entitled to recover any damages as set out in the preceding paragraphs of this Answer, the limitations on liability provided in South Carolina Code Ann. § 15-78-120 apply to this action. Accordingly, the Plaintiff is not entitled to recover any award for damages that exceeds the limitation of liability set forth in S. C. Code Ann. § 15-78-120. Also, the Plaintiff is not entitled to recover punitive or exemplary damages or pre-judgment interest as set forth in S. C. Code Ann. § 15-78-120.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(§15-78-60 - Tort Claims Act)

15. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 14 above as if fully repeated herein verbatim.

16. MUSC is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and as such is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act. The Plaintiff is not entitled to recovery against the Defendant pursuant to South Carolina Code Ann. § 15-78-60, including all subsections but not limited to the following specific subsections: (1), (2), (3), (4), (5), (12), (17), (20), (21), (22) and (25). The Defendant further reserves the right to plead as a bar to suit any other applicable provision of § 15-78-60.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(No Deviation from Standard of Care)

17. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 18 above as if fully repeated herein verbatim.

18. That the care and treatment administered by MUSC and its employees conformed to and was in full compliance with the standard of care. All care and treatment administered by MUSC and its employees was within acceptable medical standards and methods, and, at no time pertinent hereto, did MUSC nor its employees deviate from any medical standard while caring for or tending to Plaintiff. Consequently, the Plaintiff is barred from recovery against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(No Proximate Cause)

19. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 18 above as if fully repeated herein verbatim.

20. That, even if the Defendant improperly acted as alleged in the Complaint, which is specifically denied, the actions of the Defendant does not constitute the direct or proximate cause of any injury alleged by the Plaintiff and therefore the Defendant is not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Failure to State a Claim)

21. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 20 above as if fully repeated herein verbatim.

22. The allegations contained in the Complaint fail in their entirety to state a claim upon which relief may be granted against the Defendant. Accordingly, this action should be dismissed.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Statute of limitations)

23. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 22 above as if fully repeated herein verbatim.

24. The Plaintiff failed to commence this action within the requisite statute of limitations. Accordingly, this matter should be dismissed against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Absolute/Qualified/Conditional Privilege)

25. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 24 above as if fully repeated herein verbatim.

26. Defendant asserts absolute, qualified and/or conditional privilege of its communications as a complete bar to Plaintiff's claims.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Good Faith)

27. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 26 above as if fully repeated herein verbatim.

28. Defendant asserts that all alleged statements were made in good faith in a confidential manner within the regular course of business.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Breach of Contract Inapplicable to Medical Care)

29. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 28 above as if fully repeated herein verbatim.

30. Defendant asserts that a cause of action for breach of contract is not recognized as the allegations surround the providing of medical care and breach of contract is not a recognized cause of action with the South Carolina Courts.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(No Express Contract)

31. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 30 above as if fully repeated herein verbatim.

32. Plaintiff has failed to allege an express contract by the Defendant to render a definite result, and therefore, no legal action rests in contract.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(No Publication)

33. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 32 above as if fully repeated herein verbatim.

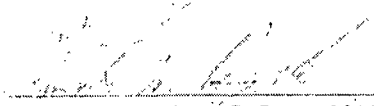
34. There was no publication or communication to anyone other than the Plaintiff of the alleged defamatory statement, and, therefore, an action for defamation cannot lie.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

35. The Defendant realleges and incorporates by reference all of its responses in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

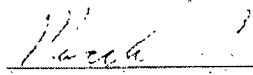
36. The Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

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Hugh W. Buyck (S.C. Bar # 66462)
Darren K. Sanders (S.C. Bar # 68296)

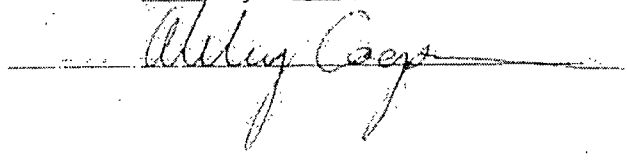
Attorneys for the Defendant
Medical University of South Carolina


_____, 2013
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, emailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 19 day of March, 2013.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
1
1 NINTH JUDICIAL CIRCUIT

Jeremy Greene,

CASE NO. 13-CP-10-444

Plaintiff.

Versus

**DEFENDANT'S NOTICE OF MOTION AND
MOTION TO DISMISS**

Medical University of South Carolina.

Defendant.

check box above indicating submitting party

Plaintiff's attorney: Ronald L. Richter, Jr., Esquire 18 Broad Street Mezzanine Level Charleston, SC 29401 Email: Ronnie@blandrichter.com Phone: (843) 573-9900 Fax: (843) 573-0200	Defendant's attorney: Hugh W. Buyck (S.C. Bar # 66462) Buyck & Sanders Law Firm, LLC 757 Johnnie Dodds Blvd., Ste. 100 P.O. Box 2424 Mt. Pleasant, SC 29465-2424 Phone: (843) 377-1400, Fax: (843) 377-1403 Email: hwb@buyckfirm.com
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)	
SECTION I: Hearing Information	
Nature of Motion: Notice of Motion and Motion to Dismiss	
Estimated Time Needed: 20 min. Court Reporter Needed: YES <input checked="" type="checkbox"/> / NO <input type="checkbox"/>	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order - I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff/ <input checked="" type="checkbox"/> Defendant	Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT, \$25 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ DATE: _____
CLERK'S VERIFICATION	
Collected by: _____ (print name)	<u>DATE FILED</u>
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED-AMOUNT DUE: _____	

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Jeremy Greene,	)	C/A No. 13-CP-10-444
)	
)	
Plaintiffs,)	
)	
Versus	)	DEFENDANT'S
	)	NOTICE OF MOTION
	)	AND
Medical University of South Carolina,	)	MOTION TO DISMISS
)	
)	
Defendant.)	

TO: RONALD L. RICHTER, JR., ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, the medical University of South Carolina, by and through its undersigned counsel, will move before the Court ten (10) days hence or as soon thereafter as counsel may be heard, pursuant to Rule 12(b)(6) for an Order dismissing Plaintiffs' Complaint.

1. The South Carolina Supreme Court has specifically held that within the context of a tort concerning medical care a cause of action for breach of contract is not recognized. Banks v. Medical University of S.C., 314 S.C. 376, 444 S.E.2d 519 (1994).

2. The defamatory publications asserted by the Plaintiff were made within absolute and qualified privileges of the Plaintiff's medical records in the regular course of business. Further, there was no publication of the alleged defamatory information. Thus, there can be no claim for defamation.

These Defendants reserve the right to further support the motion through memorandum filed in accordance with the South Carolina Rules of Civil Procedure.

BUYCK & SANDERS LAW FIRM, LLC

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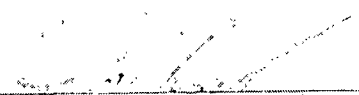
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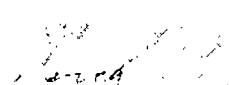
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Darren K. Sanders (S.C. Bar # 68296)

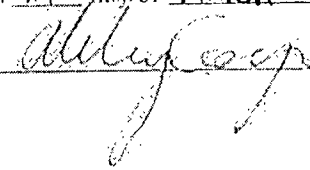
Attorneys for the Defendant
Medical University of South Carolina


_____, 2013
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, emailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 19 day of March, 2013.



by subsection (B)¹, to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Chapter 79, Title 38 acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.” Article 5, Chapter 79, Title 38, codified at §38-79-410(A), provides: “[l]icensed health care providers’ means physicians and surgeons; directors, officers, and trustees of hospitals; nurses; oral surgeons; dentists; pharmacists; chiropractors; optometrists; podiatrists; hospitals; nursing homes; or any similar category of licensed health care providers.”

I. South Carolina Does Not Recognize a Cause of Action for Breach of Contract for Failure to Provide Medical Care.

In Banks v. MUSC, 314 S.C. 376, 444 S.E.2d 519 (1994), the South Carolina Supreme Court specifically held that within the context of a tort concerning medical care a cause of action for breach of contract is not recognized. Banks filed suit against various doctors and the Medical University, alleging wrongful death and survival actions, as well as actions for battery, deprivation of liberty interests, breach of duty, and breach of contract related to the care of a 9 year old child who ultimately died following the development of a pulmonary embolus associated with treatment and surgery for a variety of medical conditions. Judgment was summarily granted on the causes of action for battery, deprivation of liberty interests pursuant to 42 U.S.C.A. §1983, and breach of contract.

¹ §15-3-545(B) When the action is for damages arising out of the placement and inadvertent, accidental, or unintentional leaving of a foreign object in the body or person of any one or the negligent placement of any appliance or apparatus in or upon any such person by any licensed health care provider acting within the scope of his profession by reason of any medical, surgical, or dental treatment or operation, the action must be commenced within two years from date of discovery or when it reasonably ought to have been discovered; provided, that, in no event shall there be a limitation on the commencement of the action less than three years after the placement or leaving of the appliance or apparatus.

On appeal the South Carolina Supreme Court addressed the breach of contract claim and specifically stated that “[w]e now decline to recognize a cause of action for breach of implied contract arising from an alleged failure to provide adequate medical treatment.” Banks, 314 S.C. 376, 379-80. The Court acknowledged that there is a recognized recovery for breach of an express pre-treatment warranty to effect a particular result, Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct.App. 1984), affirmed as modified 288 S.C. 398, 343 S.E.2d 27 (1985), but the Court declined to recognize a cause of action for breach of implied contract arising from an alleged failure to provide adequate medical treatment holding that such an allegation clearly sounds in medical malpractice, not in contract. The Court held that “absent an express contract by the physician to render a definite result, an action for medical malpractice rests in tort, not contract.” Banks, 314 S.C. 376, 380. The Banks court further noted that, “South Carolina has followed the established tenet that a physician is not an insurer or guarantor of a beneficial result.” citing Starnes v. Taylor, 272 N.C. 386, 158 S.E.2d 339 (1968).

In the instant action, Plaintiff admits on the face of his Complaint that there was no specific pre-treatment warranty to effect a particular result noting at Paragraph 10 that “MUSC did not have or did not provide to the Plaintiff a written policy setting forth specifically what was required of the Plaintiff in order to remain in the program and/or what the Plaintiff’s rights were in the event that he allegedly deviated from any program requirement.” Plainly, this asserts that the action rests on an implied contract and any cause of action rests in medical malpractice in accordance with S.C. Code Ann. §15-3-545, not contract.

The allegations of the breach of contract cause of action contained within Paragraphs 29 through 36 makes a presumption that the Plaintiff remained a viable candidate for a kidney transplant. Various allegations discuss contractual obligations to provide medical care but without specific reference to a particular result arising from a specific contract. The entire basis of the causes of action arises from implied obligations and presumptions of a guaranteed result

despite known uncertainties of organ transplants. This action, therefore, fails to assert an actionable claim and must be dismissed.

II. The Alleged Defamatory Statements Are Not Actionable and Afforded a Qualified Privilege.

Plaintiff asserts through a second and final cause of action that the Defendant's agents made statements becoming part of his medical records that he had a "history of severe non-compliance." These statements purportedly led to the Plaintiff's dismissal from the MUSC kidney transplant program or the program at the Defendant's own facility.

The Defendant initially asserts that these statements on their face are not defamatory. It is the trial court's function to determine initially whether a statement is susceptible of having a defamatory meaning. Pierce v. Northwestern Mut. Life Ins. Co., 444 F. Supp. 1098 (D.S.C. 1978). Statements by the Defendant amongst its own agents concerning medical care and medical judgments arising within its own facility certainly cannot form the basis of a defamatory publication. Among other defects, the statements would not have been published or relied upon by a third person. Plaintiff contends these specific statements led to his dismissal from MUSC's kidney transplant program. This is simply an ironic and legally unsustainable position. Furthermore, Plaintiff admits that he received care at other facilities and was accepted into their kidney transplant program.

Nevertheless, as the statements concern medical care rendered to the Plaintiff, the statements retain a qualified privilege. "In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court." Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E.2d 641 (1946). In determining whether or not a communication was qualifiedly privileged, regard must be had to the occasion and to the relationship of the parties, and this is set forth on the face of the Complaint. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by

reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. Bell, 208 S.C. at 493-94, 38 S.E.2d at 643. This issue is implicated by the underlying medical complexities of the Plaintiff's care, but the bottom line is that the Plaintiff contends that defamatory statements within the Defendant's own records led the Defendant to dismiss the Plaintiff from its kidney transplant program.

The courts have recently addressed the applicability of a qualified privilege in Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012). The Fountain court explained that one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. *Id.* at 484, 514 S.E.2d at 134. "The essential elements of a conditionally privileged communication may be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." Manley v. Manley, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Cl.App. 1987) (quoting Conwell v. Spur Oil Co. of W.S.C., 240 S.C. 170, 178, 125 S.E.2d 270, 274-75 (1962)). An abuse of the privilege occurs in one of two situations: (1) a statement made in good faith that goes beyond the scope of what is reasonable under the duties and interests involved or (2) a statement made in reckless disregard of the victim's rights. Swinton Creek, 334 S.C. at 486, 514 S.E.2d at 135. "While abuse of privilege is ordinarily an issue for the jury, . . . in the absence of a controversy as to the facts . . . it is for the court to say in a given instance whether or not the privilege has been abused or exceeded." Woodward v. S.C. Farm Bureau Ins. Co., 277 S.C. 29, 32-33, 282 S.E.2d 599, 601 (1981).

Healthcare providers clearly can express opinions, judgments and conclusions within their charts in order to formulate an appropriate treatment plan and document a patient's chart for past, current and future care. To hold that expressions in a medical records that one has been

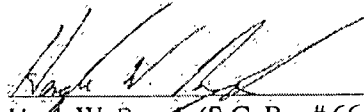
“noncompliant” arises to a defamatory meaning would place all healthcare providers in an untenable position. It is mandated that “[a]ll of the parts of the publication must be considered in order to ascertain the true meaning, and words are not to be given a meaning other than that which the context would show them to have.” Jones v. Garner, 250 S.C. 479, 485, 158 S.E.2d 909, 912 (1968). There is nothing improper with these conclusions within the context of the Plaintiff’s medical chart. The statements within the Complaint are limited in scope, expressed within a proper occasion, and published in a proper manner. As such, the statements expressed within the Plaintiff’s Complaint deserve a qualified privilege under the duties and interests involved.

Conclusion

Plaintiff’s Complaint should be dismissed in its entirety. There is no recognized cause of action for breach of contract for alleged failure to provide medical care as asserted within the Plaintiff’s first cause of action. The alleged statements within the Plaintiff’s second cause of action are not defamatory, and even if so, they are qualifiedly privileged. Therefore, in accordance with Rule 12(b)(6), the Complaint fails to state sufficient facts to assert any cause of action leading to its dismissal.

Respectfully submitted,

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Darren K. Sanders (S.C. Bar # 68296)

Attorneys for the Defendant
Medical University of South Carolina

August 6, 2013
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, emailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6 day of August, 2013.

Brianne O'Brien

STATE OF SOUTH CAROLINA)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
Jeremy Greene,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. 13-CP-10-0444
)	
Medical University of South Carolina)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing was held in the above-captioned action on August 8, 2013, before The Honorable R. Markley Dennis, Jr., in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Ronald R. Richter, Jr.
 Appearing for Plaintiff

Hugh W. Buyck, Esq.
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: Okay, the next one is
2 Jeremy Greene versus the Medical University of
3 South Carolina. It is a Motion to dismiss.

4 MR. BUYCK: Yes, sir, Your Honor.
5 Your Honor, this is an action in which Mr.
6 Greene has sued the medical university under two
7 causes of action related to his dismissal from
8 the kidney transplant program. First, he has
9 alleged a cause of action for breach of
10 contract. Second, he alleged a cause of action
11 for defamation -- apparently due to the words
12 "noncompliance" in his medical records. Those
13 are the only two causes of action.

14 THE COURT: Okay.

15 MR. BUYCK: We filed a Motion to
16 dismiss the breach of contract action on the
17 grounds of *Banks v. Medical University of South*
18 *Carolina*, which stands for the proposition that
19 a cause of action does not lie in medicine
20 unless there is an express contract for a
21 particular result. Paragraph four of the
22 Complaint -- and nothing is beyond the bounds
23 of the Complaint.

24 THE COURT: Okay.

25 MR. BUYCK: Paragraph four of the

1 Complaint states specifically that there was no
2 policy or contract with the plaintiff.

3 Therefore, this should be a medical malpractice
4 action in accordance with *Banks*. I think that's
5 unconverted and therefore this should have been
6 filed in accordance with medical malpractice.

7 The second is this allegation of
8 defamation because of the words "noncompliant"
9 patient in the medical records. We assert, one,
10 that it is a matter for this court to make a
11 determination as to whether something is
12 defamatory in meaning. Two, this court has the
13 right as a matter of law to determine whether or
14 not it is within a qualified privilege. Based
15 upon the allegations of the Complaint, it is
16 clear that issues within the medical chart would
17 fit within a qualified privilege. The other
18 aspect of that, Your Honor, ---

19 THE COURT: I can help you here. I
20 don't quarrel with you absolutely but there is
21 no way in the world that I can decide that based
22 on the pleadings alone.

23 MR. BUYCK: Next I'd ask you to look
24 at the pleadings as to -- the only publication
25 alleged ---

1 THE COURT: I'm sorry, I can't. The
2 publication would be what, that everybody saw
3 it?

4 MR. BUYCK: The publication (sic) is
5 that he fell out of the liver transplant program
6 at MUSC because someone at MUSC put that he was
7 noncompliant. Therefore, it's the institution
8 itself having defamatory remarks within its own
9 institution, which led to ---

10 THE COURT: You may be all right, but
11 you don't need this done on a Motion to dismiss.
12 It's not going to stand. I'm sorry. There is
13 no way that I can get to that point without
14 going way beyond the pleadings.

15 Let me hear from you, Mr. Richter, on
16 the breach of contract.

17 MR. RICHTER: Judge, as you know,
18 I've been a lawyer for twenty years now. I've
19 evaluated hundreds of medical malpractice cases,
20 I've filed dozens, I've tried to conclusion
21 quite a few.

22 THE COURT: Tell me about the breach
23 of trust. I appreciate all that.

24 MR RICHTER: This is not a medical
25 malpractice action.

1 THE COURT: I appreciate that but it
2 ain't a breach of contract either.

3 MR. RICHTER: Well, Your Honor,
4 Banks does not stand for the proposition that's
5 been advanced. Banks was an eight-year-old
6 child that was transported to MUSC ---

7 THE COURT: I tell you what. That
8 one I will frame for you up the road by doing it
9 on the Motion to dismiss. I think it's -- I
10 don't think that there is any contract to do
11 what's alleged. There is no express contract.

12 MR. RICHTER: Judge, what the
13 Complaint says is that Mr. Greene was a member
14 of the transplant program, that there were
15 mutual obligations back and forth in the
16 program. The Complaint says nothing about the
17 care ---

18 THE COURT: You're telling me that it
19 is a contract action when in actuality it's
20 failure 'to do what you told me that you were
21 going to do', and that's medical treatment.
22 Thank you so much. I'm comfortable with that
23 being reviewed on a Motion to dismiss, so that
24 -- we can take care of that.

25 I think your defamation stands for

1 awhile. So thank you. I grant your Motion in
2 part, if you want to prepare me an Order that it
3 is granted in part, I will be happy to sign it
4 as to the breach of contract. Thank you.

5 (HEARING CONCLUDED)

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CERTIFICATE OF REPORTER

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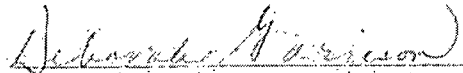
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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable R. Markley Dennis,
Jr., on August 8, 2013;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

September 10, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jeremy Greene,

Plaintiffs,

Versus

Medical University of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS
)
) NINTH JUDICIAL CIRCUIT
)
) C/A No. 13-CP-10-444

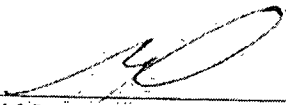
**STIPULATION OF DISMISSAL
OF DEFMATION ACTION
WITH PREJUDICE**

IN ACCORDANCE WITH Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure,

IT IS HEREBY STIPULATED by all parties who have appeared in this action that the Plaintiff's defamation cause of action is hereby dismissed WITH PREJUDICE.

WE SO STIPULATE:

WE SO STIPULATE:



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Attorney for Defendant
Medical University of South Carolina

FILED
2013 SEP 25 PM 3:01
CLERK OF COURT
COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CHARLESTON, SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Case No. 2013-CP-10-00444

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2013-001933

Jeremy Greene,

Appellant,


v.

Medical University of South Carolina,

Respondent.

CERTIFICATE OF COUNSEL

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



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December 30, 2013
Charleston, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Case No. 2013-CP-10-00444

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2013-001933

Jeremy Greene,

Appellant,

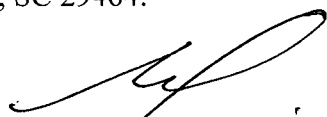
v.

Medical University of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Record of Appeal on Respondent, Medical University of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on January 2, 2014; addressed to their attorney of record, Hugh W. Buyck, Esquire, Buyck & Sanders, LLC, 757 Johnnie Dodds Blvd., Suite 100, Mt. Pleasant, SC 29464.



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January 2, 2014
Charleston, South Carolina

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JAN 06 2014

SC Court of Appeals