

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2016-000774

Case No. 2012-CP-43-2030

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**RECEIVED**  
MAR 15 2019  
SC Court of Appeals

Win Myat, ..... Appellant,

v.

Tuomey Regional Medical Center, ..... Respondent,

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REPLY IN SUPPORT OF  
PRISMA HEALTH TUOMEY AND  
SOUTH CAROLINA HOSPITAL ASSOCIATION'S  
MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

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Pursuant to Rules 213 and 240(f), SCACR, Prisma Health Tuomey and the South Carolina Hospital Association respectfully submit this reply in support of their motion for leave to file an *amici curiae* brief in support of Respondent Tuomey Regional Medical Center.

### Introduction

Myat opposes the motion for leave to file an *amici curiae* brief for two reasons. First, he insists that the *amici curiae* brief is untimely. Second, he maintains that Prisma Health Tuomey is not a friend of the Court but rather an interested party. Neither argument is well founded. The Court should therefore grant the motion for leave to file an *amici curiae* brief and consider the arguments raised in that brief about what entities are protected by the cap on damages against charitable organizations in S.C. Code § 33-56-180(A).

### Argument

#### **I. The Motion Is Timely.**

Myat points to Rule 213's reference to Rule 208(b) and Rule 211 to insist that the time limits for filing an *amicus* brief are the same as for filing parties' briefs. Not so.

No South Carolina case appears to have ever adopted Myat's argument, and for good reason. Rule 213, SCACR, refers specifically to Rule 208(b), SCACR, which governs the *content* of briefs. Rule 208(a), SCACR—which is not mentioned by Rule 213—is about the *timing* of briefs. Meanwhile, Rule 211(b), SCACR, provides additional instructions for what changes are required or permitted to initial briefs before final briefs are served. That provision of Rule 211 is the only part of that Rule that refers to

Rule 208(b), so it makes sense that it would be the part of Rule 211 that is applicable to an *amicus* brief.

In other words, under the South Carolina Appellate Court Rules, there is no timeframe by which an *amicus* brief must be filed. The appellate courts are free, in their wisdom and discretion, to consider an *amicus* brief whenever they believe doing so would be beneficial in deciding the case, regardless of when the brief was filed.

Additionally, Rule 211(a)—by its very terms—cannot apply to an *amicus* brief. Rule 211(a) applies to a “party” to the appeal. A “party” is “[o]ne by or against whom a lawsuit is brought.” Black’s Law Dictionary 1232 (9th ed. 2009). Courts must interpret this rule according to its plain language. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *cf. Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (holding that rules of procedure should be interpreted with the tools of statutory construction). An *amicus curiae* is not a party, so Rule 211(a) does not apply to an *amicus* brief.

This conclusion that Rule 211(a) does not provide the timeframe for filing an *amicus* brief is bolstered by contrasting our Appellate Court Rules with the Federal Rules of Appellate Procedure and the Rules of the Supreme Court of the United States. Both of those sets of federal rules provide specific time periods for filing an *amicus* brief explicitly in the rules governing *amicus* briefs. *See* Fed. R. App. P. 29(a)(6), 29(b)(5); Supreme Court Rule 37(3)(a). The South Carolina Appellate Court Rules do not impose such clear deadlines for *amicus* briefs.

In any event, applying the time period of Rule 211(a), SCACR, here would be unwarranted and inequitable. The far-reaching implications of Myat's argument on appeal about the cap on damages against a charitable organization under S.C. Code § 33-56-180(A) were not evident until he filed his second lawsuit against Prisma Health Tuomey, attempting to hold Prisma Health Tuomey liable for his judgment against Tuomey Regional Medical Center based on an action by Tuomey Regional Medical Center prior to the transaction with Prisma Health Tuomey. That second lawsuit against Prisma Health Tuomey was not filed until December 28, 2018 (more than five months after the final briefs were filed in this appeal) and was not served until almost a month after that. The motion for leave to file the *amici curiae* brief was filed on February 19, 2019—less than a month after the second lawsuit was served. Thus, Prisma Health Tuomey and the Hospital Association moved expeditiously to file an eighteen-page appellate brief less than four weeks after Myat's second lawsuit was served.

## **II. Prisma Health Tuomey and the Hospital Association Are Friends of the Court.**

Myat tries to cast Prisma Health Tuomey as a party to this litigation, rather than as an *amicus curiae*. This argument misconstrues the relationship between Prisma Health Tuomey and Tuomey Regional Medical Center and disregards the allegations in this lawsuit.

Before even focusing on Myat's second argument, an initial observation is warranted: Myat does not even accuse the Hospital Association of being a party here.

Thus, everyone apparently agrees that the Hospital Association is in fact an *amicus* in this case.

As for Prisma Health Tuomey, it and Tuomey Regional Medical Center are separate legal entities. Myat knows as much. He sued each entity—in separate lawsuits. Prisma Health Tuomey did not assume Myat’s judgment against Tuomey Regional Medical Center as part of the transaction between Prisma Health Tuomey and Tuomey Regional Medical Center. *See Amici* Br. 3 n.1. As part of that transaction, a portion of the consideration was placed in trust to be used to satisfy expenses and liabilities of Tuomey Regional Medical Center. If some residual assets of that trust were to be paid eventually to Prisma Health Tuomey, that would require that all expense and liabilities of Tuomey Regional Medical Center had been provided for. That speculative possibility does not transmogrify Prisma Health Tuomey into a party in this case. The simple fact remains that Myat did not sue Prisma Health Tuomey in this lawsuit.

Moreover, Myat’s argument that Prisma Health Tuomey has “a direct interest” here to make it tantamount to a party assumes that Myat’s claim against Prisma Health Tuomey has merit. Those claims, however, are fatally flawed, and Prisma Health Tuomey has moved to dismiss them based on standing and ripeness, as well as other grounds. *See* Mot. to Dismiss, *Myat v. Tuomey Reg. Med. Ctr. n/k/a Palmetto Health Tuomey n/k/a Prisma Health Tuomey*, No. 2018-CP-43-2265 (S.C. Ct. Comm. Pls. Feb. 25, 2019).

Ultimately, every *amicus* has an interest in litigation. Indeed, without an interest, an *amicus* would have no reason to file a brief. *See* Rule 213, SCACR (requiring that a motion for leave to file an *amicus* brief “shall identify the interest of the applicant”). That Prisma Health Tuomey cares about the outcome of this appeal does not mean that it is a party to it.

**III. The *Amici Curiae* Brief Raises Important Arguments that the Court Should Consider.**

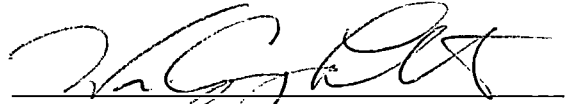
Myat never takes issue with the fact that Prisma Health Tuomey and the Hospital Association have raised important issues. He has offered the Court an interpretation of S.C. Code § 33-56-170 and § 33-56-180(A) that no court of record in this State has ever adopted; that, if his interpretation were to be the law, promulgating that law would be the General Assembly’s prerogative; and that has serious policy implications for charitable organizations throughout the State. Prisma Health Tuomey and the Hospital Association’s *amici curiae* brief explores those policy concerns for the Court’s consideration. The *amici curiae* brief also demonstrates how normal tools of statutory construction support the same conclusion as the policy concerns: a bright-line rule of looking to the Internal Revenue Service’s determination of an entity’s status as a 501(c)(3) organization should apply to determine whether that organization is protected by § 33-56-180(A)’s cap.

If Myat wishes to file a response to the *amici curiae* brief, Prisma Health Tuomey and the Hospital Association do not oppose that response, given that Rule 213 specifically contemplates such a filing.

**Conclusion**

The motion for leave to file the *amici curiae* brief should be granted.

Respectfully Submitted,



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March 15, 2019  
Columbia, SC

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CERTIFICATE OF SERVICE

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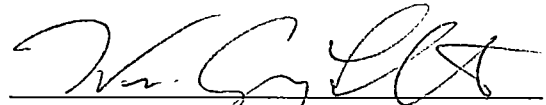
This Reply in Support of Motion for Leave to File *Amici Curiae* Brief was served on all counsel of record via first class U.S. Mail, postage prepaid, on March 15, 2019:

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March 15, 2019

**Via Courier**

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

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Dear Ms. Kitchings:

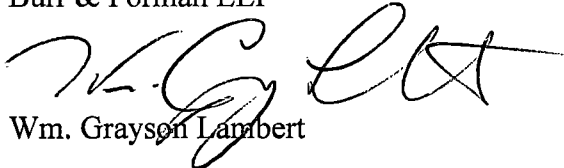
Enclosed for filing, please find the original and ten copies of the Reply in Support of Prisma Health Tuomey and South Carolina Hospital Association's Motion for Leave to File *Amici Curiae* Brief in the above case. I would appreciate it if you would file the original and return the file stamped extra copies to me via our courier.

By copy of this letter, I am herewith serving counsel of record with a copy of the brief.

Thank you for your assistance in this matter.

Respectfully yours,

Burr & Forman LLP



Wm. Grayson Lambert

WGL:lg

Enclosures

cc: William R. Padget, Esq. (w/enc.)  
David C. Holler, Esq. (w/enc.)