

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

RECEIVED

NOV 17 2014

HONORABLE R. MARKLEY DENNIS, JR.
CIRCUIT COURT JUDGE

SC Court of Appeals

C.A. NO. 2013-CP10-00088

CT. APP. NO.: 2013-001673

BEVERLY C. MOORE-ROWE.....Appellant

vs.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; ROPER ST. FRANCIS FOUNDATION, D/B/A ROPER ST. FRANCIS HEALTHCARE; BON SECOURS-ST. FRANCIS HEALTH SYSTEM FOUNDATION, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; ROPER HOSPITAL, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; BYRON N. BAILEY, M.D.; CHRISTINE C. THOMPSON, M.D., A/K/A CHRISTINE THOMPSON, M.D.; CHARLESTON NEUROSURGICAL ASSOCIATES, LLC; MT. PLEASANT ANESTHESIA ASSOCIATES, PA; CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, D/B/A CHARLESTON SURGERY CENTER; TAMMY MCGRAW, CRNA, ALSO KNOWN AS TAMMY MCGRAW SPEICHER, CRNA; NURSE ANESTHESIA OF SOUTH CAROLINA, LLC; JEFFERY S. WAGER, CRNA; TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC.; AND STEVEN HEATH COBB,.....Respondents

AMENDED RECORD ON APPEAL

ORIGINAL

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52 Chadwick Drive
Charleston, South Carolina 29407
Phone: (843) 737-0733
The Appellant

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Charleston Neurological Associates, LLC

Fred W. Suggs, III, Esquire
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Greenville, S.C. 29603
Attorney for Respondents, Bon Secours Health Systems, Inc.,
Bon Secours St. Francis Health System Foundation, Inc., Bon
Secours St. Francis Hospital

Jack G. Gresh, Esquire
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40 Calhoun Street, Suite 550
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Attorney for Respondent, Charleston Surgery Center Limited
Partnership d/b/a Charleston Surgery Center

Andrew S. Halio, Esquire
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PO Box 747
Charleston S.C. 29402-0747
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Attorney for Respondents, Nurse Anesthesia Of South
Carolina, LLC, Jeffery Wager, CRNA, and Tammy McGraw,
CNRA a/k/a Tammy McGraw Speicher, CNRA

Hood Law Firm, LLC
Attention: Robert H. Hood, Esquire
Attention: James B. Hood, Esquire
Attention: Deborah H. Sheffield, Esquire
P.O. Box 1508
Charleston S.C. 29402-1508
Attorneys for Respondent, Christine C. Thompson, M.D.

Young Clement Rivers, LLP
Attention: Christine Kent Toporek, Esquire
Attention: Stephen L. Brown, Esquire
Attention: Joseph J. Tierney, Jr., Esquire
Attention: Russell Grainer Hines, Esquire
P.O. Box 993
Charleston, S.C. 29402
Attorneys for Respondents, Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital,
and Roper St. Francis Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours St. Francis Xavier
Hospital and Roper St. Francis Healthcare, Roper St. Francis
Healthcare, Roper St. Francis Foundation, d/b/a Roper St.
Francis Healthcare, Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis Healthcare.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-0088

Beverly C Moore Rowe

Bon Secours St. Francis Xavier Hospital Inc,
et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss (atty James Bernard Hood) was granted. Defendant's Motion to Strike or Dismiss was granted. Defendant's Motion to Dismiss (atty Darren Kent Sanders) was granted. Defendant's Motion to Dismiss (atty Fred W. Suggs III) was granted. Defendant's Motion to Dismiss (atty Jack G Gresh) was granted. Defendant's Motion to Dismiss (atty Christine Kent Toporek) was granted. Defendant's Motion to Dismiss (atty Andrew Steven Halio) granted. Formal Orders to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

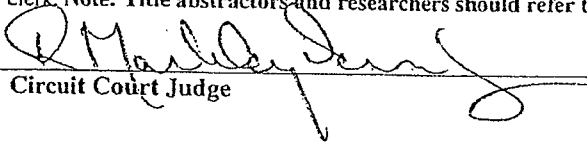
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2060
Judge Code

6/12/13
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

Beverly C. Moore-Rowe and Arthur Peter Rowe)

CASE NO.

~~2013-CP-10-00099-8~~ 2013-CP-10-00088

☐ Plaintiff(s),)

Versus)

ORDER

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a)
Bon Secours St. Francis Xavier Hospital, Bon)
Secours St. Francis Hospital and Roper St. Francis)
Healthcare, Bon Secours St. Francis Health System,)
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,)
et al.)

☒ Defendant(s).)

check box above indicating submitting party

Pro Se Plaintiff:

Beverly C. Moore-Rowe
Arthur Peter Rowe
52 Chadwick Drive
Charleston, SC 29407

Defendant's attorney:

Jeffrey M. Bogdan (SC #76354)
Hood Law Firm, LLC
172 Meeting Street, P.O. Box 1508
Charleston SC 29402
Phone: (843) 577-1207; Fax: (843) 722-1630
Email: Jeffrey.Bogdan@hoodlaw.com

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Minutes

Court Reporter Needed: YES ☐ / NO ☐

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order -

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff(s)/☒ Defendant(s)

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: 2060

DATE: 6-28-2013

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED:

☐ CONTESTED-AMOUNT DUE:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-00088 CP-Charleston

FILED

Beverly C. Moore-Rowe

2013 JUL -3 PM 3:03

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____ Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis Healthcare, Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA, Charleston
Surgery Center Limited Partnership, d/b/a
Charleston Surgery Center, Tammy McGraw,
CRNA, also known as Tammy McGraw
Speicher, CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath Cobb

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jeffrey M. Bogdan (SC #76354)

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify
arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR
ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment
by the Court:

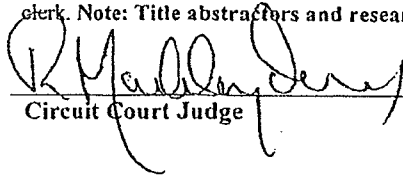
ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2060
Judge Code

6-28-2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically

requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Beverly C. Moore-Rowe,	)	
	)	C/A No. 2013-CP-10-00088
Plaintiff,	)	
	)	
Versus	)	
	)	
Bon Secours-St. Francis Xavier Hospital,	)	
Inc., d/b/a Bon Secours St. Francis	)	
Xavier Hospital, Bon Secours St. Francis	)	
Hospital and Roper St. Francis	)	ORDER
Healthcare, Bon Secours St. Francis	)	
Health System, Inc., d/b/a Bon Secours	)	
St. Francis Xavier Hospital, Bon Secours	)	
St. Francis Hospital and Roper St.	)	
Francis Healthcare, Bon Secours Health	)	
System, Inc., d/b/a Bon Secours St.	)	
Francis Hospital and Roper St. Francis	)	
Healthcare, Roper St. Francis	)	
Foundation, d/b/a Roper St. Francis	)	
Healthcare, Bon Secours-St. Francis	)	
Health System Foundation, Inc., d/b/a	)	
Roper St. Francis Healthcare, Roper	)	
Hospital, Inc., d/b/a Roper St. Francis	)	
Healthcare, Byron N. Bailey, M.D.,	)	
Christine C. Thompson, M.D., a/k/a	)	
Christine Thompson, M.D., Charleston	)	
Neurosurgical Associates, LLC, Mt.	)	
Pleasant Anesthesia Associates, PA,	)	
Charleston Surgery Center Limited	)	
Partnership, d/b/a Charleston Surgery	)	
Center, Tammy McGraw, CRNA, also	)	
known as Tammy McGraw Speicher,	)	
CRNA, Nurse Anesthesia of South	)	
Carolina, LLC, Jeffery S. Wager, CRNA,	)	
Tricoastal Healthcare Billing and	)	
Management, Inc., and Steven Heath	)	
Cobb,	)	
Defendants.	)	

This matter came before the Court on Motions to Dismiss filed by all Defendants. A hearing was held on May 31, 2013. The Plaintiff appeared *pro se*. Jeffrey Michael Bogdan, Esquire appeared on behalf of the Defendant Christine C.

RMDG/11

FILED
2013 JUL -3 PM 3:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Thompson, M.D., a/k/a Christine Thompson, M.D.; Fred W. Suggs, III, Esquire appeared on behalf of Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc.; Shawn T. Pinkston, Esquire appeared on behalf of Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Darren K. Sanders, Esquire appeared on behalf of Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC; Andrew S. Halio, Esquire appeared on behalf of Defendant Steven Heath Cobb; Jonathan Dunlap, Esquire appeared on behalf of Nurse Anesthesia of South Carolina, LLC; Christine Kent Toporek, Esquire appeared on behalf of Defendants Bon Secours St. Francis Xavier Hospital d/b/a Bon Secours St. Francis Xavier Hospital, Roper St. Francis Healthcare, Roper St. Francis Foundation d/b/a Roper St. Francis Healthcare, and Roper Hospital Inc. d/b/a Roper St. Francis Healthcare. Memoranda of law were submitted by the parties and incorporated into the record and oral arguments were entertained. After having reviewed the pleadings and having considered the arguments and legal memoranda of the parties, I grant the Defendants' Motions to Dismiss on the grounds that the Plaintiff failed to file an expert affidavit contemporaneously with her Notice of Intent to File Suit as mandated by South Carolina Code Section 15-79-125.

FACTS

The Plaintiff filed a Notice of Intent to File Suit on January 7, 2013 alleging medical negligence arising out of a January 7, 2010 cervical spine surgery. Plaintiff failed to contemporaneously file an expert affidavit with her Notice of Intent. Plaintiff asserted in her Notice of Intent that S.C. Code § 15-36-100(C)(1) allowed her to supplement her pleading with an expert affidavit.

Each Defendant then filed separate Motions to Dismiss the Plaintiff's Notice of Intent to File Suit based on her failure to contemporaneously file an expert affidavit.

Defendants Jeffery S. Wager, CRNA and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA have pending Motions to Dismiss based on insufficient service of process in this action. As such, these parties did not enter an appearance at this hearing. Their pending Motions to Dismiss have been rendered moot by this Order.

STANDARD ON DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004) aff'd 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). An expert affidavit filed pursuant to South Carolina Code Section 15-36-100 is a pleading for the purpose of the circuit court's evaluation of motions and

the merits of the plaintiff's case. Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), cert. pending.

PROCEDURAL REQUIREMENTS TO BRING A PROFESSIONAL NEGLIGENCE ACTION

This is a medical malpractice action and therefore is governed by the procedural requirement set forth in South Carolina Code Sections 15-79-125 and 15-36-100. These procedural statutes apply independently of one another as "each statute governs a distinct time period during the litigation process, and those time periods are consecutive." Id. at 176, 723 S.E.2d at 246. "Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suit and ends with prelitigation mediation. If the parties are unable to resolve their dispute through mediation, section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit." Id. In the instant case, the Plaintiff failed to comply with the filing requirements of section 15-79-125.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code Section 15-79-125 establishes the prelitigation requirements for medical malpractice actions. Id. Section 15-79-125(A) states, in pertinent part, "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100" S.C. Code Ann. §15-79-125(A). "This provision imposes two requirements on the affidavit, that it be filed at the same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100." Ranucci, 397 S.C. at 176, 723 S.E.2d at 246.

South Carolina Code § 15-36-100 enumerates certain requirements for filing complaints in actions for damages based on professional negligence including subsection B which requires the plaintiff to file an expert affidavit contemporaneously with the complaint. Subsection (C)(1) of §15-36-100 provides an exception to the contemporaneous affidavit requirement when the applicable statute of limitations will expire within 10 days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert affidavit could not be prepared. Subsection 15-36-100(C)(1) allows the plaintiff 45 days to supplement the complaint with an expert affidavit.

In Ranucci, the Court of Appeals clarified that § 15-36-100 establishes procedures for bringing "suits for professional negligence against professionals in twenty-two different areas, including medical doctors." 397 S.C. at 175, 723 S.E.2d at 246. The Court found that § 15-79-125 establishes pre-litigation requirements for only medical malpractice actions. Id. The Ranucci Court ultimately held that the two statutes operate independently of one another and § 15-36-100(C)(1) does not allow a plaintiff an exception to § 15-79-125's requirement that an expert affidavit be filed contemporaneously with a notice of intent to file suit. Id. at 178, 723 S.E.2d at 247.

Here, the Court finds that the Plaintiff's Notice of Intent to File Suit was defective because it was not filed contemporaneously with an expert affidavit. The Court further finds that any exception to the contemporaneous filing espoused in § 15-36-100(C)(1) is not applicable here. The Court further finds that any common knowledge exception does not apply here, because the Plaintiff has sued numerous different health care providers, including a neurosurgeon and an anesthesiologist,

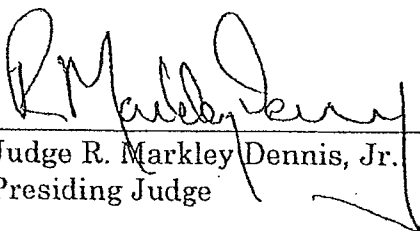
alleging medical negligence and the determination of the merits exceed the bounds of common knowledge.

NOW, THEREFORE, based on the foregoing it is

ORDERED, that the Defendants' Motions to Dismiss be, and hereby are, granted and this action be dismissed as to all Defendants;

AND IT IS SO ORDERED.

June 28, 2013
Charleston, South Carolina



Judge R. Markley Dennis, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Beverly C. Moore-Rowe

Plaintiff(s)

vs.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia Of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing And Management, Inc., and Steven Heath Cobb,

Defendant(s)

(Please Print)

Submitted By: Beverly C. Moore-Rowe

Address: 52 Chadwick Drive; Charleston, S.C. 29407

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 0088

SC Bar #: Pro Se Plaintiff

Telephone #: 843-763-2599

Fax #:

Other: 843-737-0733

E-mail: excommunicated@comcast.net

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 | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20-CP-_____ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☒ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |

- Inmate Petitions**
- ☐ PCR (500)
 - ☐ Mandamus (520)
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlement (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Pendens (750)
 - ☐ Transfer of Structured Settlement Payment Rights Application (760)
 - ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
 - ☐ Judicial Review (810)
 - ☐ Relief (820)
 - ☐ Permanent Injunction (830)
 - ☐ Forfeiture-Petition (840)
 - ☐ Forfeiture—Consent Order (850)
 - ☐ Other (899)

- Appeals**
- ☐ Arbitration (900)
 - ☐ Magistrate-Civil (910)
 - ☐ Magistrate-Criminal (920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDOT (950)
 - ☐ Worker's Comp (960)
 - ☐ Zoning Board (970)
 - ☐ Public Service Commission (990)
 - ☐ Employment Security Comm (991)
 - ☐ Other (999)

- Special/Complex /Other**
- ☐ Environmental (600)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Other (699)
 - ☐ Pharmaceuticals (630)
 - ☐ Unfair Trade Practices (640)
 - ☐ Out-of State Depositions (650)
 - ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
 - ☐ Sexual Predator (510)

Submitting Party Signature: Beverly Moore-Rowe Date: 01/07/2013

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.

FOR MANDATED ADR COUNTIES ONLY

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

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

You are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 0088

NOTICE OF INTENT TO FILE SUIT

FILED
2013 JAN -7 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendants)
_____)

THE PLAINTIFF HEREIN, Beverly C. Moore-Rowe (hereinafter referred to herein as the "**Plaintiff**") hereby submits this Notice of Intent to File Suit pursuant to Section 15-79-125 of the South Carolina Code of Laws of 1976, as amended (hereinafter referred to herein as the "**S.C. Code**").

1. **ADVERSE PARTIES.**

1.1 The Defendant, **Bon Secours-St. Francis Xavier Hospital, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Xavier Hospital, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.2. The Defendant, **Bon Secours St. Francis Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours St. Francis Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.3. The Defendant, **Bon Secours Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a Maryland corporation registered to do business in the State of South Carolina . It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.4. The Defendant, **Roper St. Francis Foundation**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper St. Francis Foundation held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.5. The Defendant, **Bon Secours-St. Francis Health System Foundation, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Health System Foundation, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.6. The Defendant, **Roper Hospital, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper Hospital, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.7. The Defendant, **Byron N. Bailey, M.D.** is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in neurology.

1.8. The Defendant, **Christine Thompson, M.D.**, also known as Christine C. Thompson, M.D., is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in anesthesiology.

1.9. The Defendant, **Tammy McGraw, CRNA**, also known as Tammy McGraw Speicher, CRNA, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.10. The Defendant, **Jeffery S. Wager, CRNA**, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.11. The Defendant, **Charleston Neurosurgical Associates, LLC**, is a South Carolina limited liability company organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.12. The Defendant, **Mt. Pleasant Anesthesia Associates, PA**, is a South Carolina Corporation, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.13. The Defendant, **Charleston Surgery Center Limited Partnership**, doing business as Charleston Surgery Center, is a South Carolina Limited Partnership organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.14. The Defendant, **Nurse Anesthesia Of South Carolina, LLC**, is a South Carolina Limited Liability Company, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.15. The Defendant, **Tricoastal Healthcare Billing And Management, Inc.**, is a South Carolina Corporation organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.16. The Defendant, **Steven Heath Cobb** (hereinafter referred to herein as "**Defendant Student**") is a resident of the State of South Carolina, County of Greenville, at all times relevant herein, was a student nurse anesthetist not then licensed to practice as a nurse anesthetist in the State of South Carolina and not then a Certified Registered Nurse Anesthetist, but was at that time a Student Certified Registered Nurse Anesthetist ("**SCRNA**").

2. A SHORT AND PLAIN STATEMENT OF FACTS SHOWING THAT THE PARTY FILING THE NOTICE OF INTENT IS ENTITLED TO RELIEF.

On January 7, 2010, the Plaintiff, Beverly C. Moore-Rowe, was admitted to Bon Secours-St. Francis Xavier Hospital, Inc. ("**Defendant St. Francis**"), by her physician, Byron N. Bailey, M.D. for anterior cervical spine surgery consisting of anterior cervical discectomy with fusion, as treatment for Plaintiff's neck pain and complaints of bilateral arm numbness and other symptoms.

The Plaintiff met with Tammy McGraw, CRNA ("**Defendant McGraw**"), the Certified Registered Nurse Anesthetist, and at that time Defendant McGraw introduced the Plaintiff to Steven Heath Cobb ("**Defendant Student**"), who was then a Student Certified Registered Nurse Anesthetist. Defendant McGraw requested Plaintiff's permission for Defendant Student to observe Plaintiff's Surgical procedure. The Plaintiff never gave any consent or permission whatsoever, verbally, written or otherwise, for the Defendant Student to administer any medical services, including those normally performed by a Certified Registered Nurse Anesthetist, such as the endotracheal intubation of the Plaintiff as patient. Had the Plaintiff been asked for permission to allow Defendant Student to administer the endotracheal intubation, she would have refused to give such permission.

The Plaintiff specifically stated to Defendant McGraw prior to her surgery that she was a singer with the Symphony Gospel Chorus and Symphony and asked her to please protect the Plaintiff's vocal chords, knowing that she would be receiving general anesthesia endotracheal intubation. Plaintiff also asked Defendant McGraw to make certain Plaintiff received sufficient oxygen.

The Plaintiff had also requested that she have an Anesthesiologist and was relieved to know that Christine Thompson, MD ("**Defendant Thompson**") was the Anesthesiologist for her procedure.

On January 7, 2010, the Defendant Bailey performed the anterior cervical spine surgery (the "**Surgery**") on the Plaintiff in Defendant St. Francis with Defendant Thompson serving as the Plaintiff's Anesthesiologist, and Defendant McGraw serving as Plaintiff's Certified Registered Nurse Anesthetist and Jeffery S. Wager, CRNA ("**Defendant Wager**") also serving as Plaintiff's Certified Registered Nurse Anesthetist.

Without the Plaintiff's prior knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff during her Surgery and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff as patient in her surgery.

The Plaintiff remained in the Defendant Hospital from January 7, 2010 through January 10, 2010, at which time she was referred for rehabilitation services through Defendant Hospital, due to difficulties in swallowing and speech.

After the Surgery, the Plaintiff has suffered from serious and permanent injuries including dizzy spells, blocked right ceratoid, hoarseness in her voice, difficulty with speech, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue changes in her temperament, and other executive physical function problems, which the Plaintiff, under information and belief, is the result of the Surgery, and in particular, the endotracheal intubation.

The Plaintiff began to inquire her physicians and other physicians to determine the cause of her ailments and injuries that began after her Surgery.

As a result of the Surgery, Plaintiff was caused to undergo additional painful and costly medical exams and procedures and has suffered and continues to suffer the serious and permanent injuries and pain and suffering stated above and mental anguish therefrom.

In addition, attached hereto as **Exhibit A**, and incorporated herein by specific reference thereto, is a complete copy of the Complaint that sets forth the factual allegations and legal claims, as well as the identity of the Defendants.

3. ANSWERS TO STANDARD INTERROGATORIES

Attached hereto as **Exhibit B** and incorporated herein by specific reference thereto, are answers to the Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure.

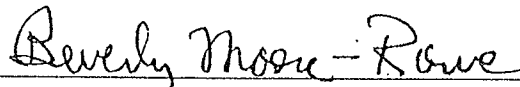
4. AFFIDAVIT OF EXPERT WITNESS.

The Affidavit of the Expert Witness required under S.C. Code Section 15-79-125 is not being provided at this time pursuant to S.C. Code Section 15-36-100(C)(1). The Plaintiff is informed and believes that the applicable statute of limitations on one or more claims alleged in the Complaint, which is attached to this Notice Of Intent to File Suit as **Exhibit A**, will expire within ten (10) days of the date of the filing of the Complaint, and that due to time constraints, an affidavit of an expert could not be prepared. The Plaintiff is informed and believes that S.C. Code Section 15-36-100(C)(1) is applicable to enable the Plaintiff to supplement the pleadings with the required affidavit.

5. **STANDARD INTERROGATORIES DIRECTED TO DEFENDANTS**

Attached hereto as Exhibit C and incorporated herein by specific reference thereto, are Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure, directed to each Defendant.

Respectfully submitted by:



BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: January 7, 2013

EXHIBIT A

Attached to this Exhibit A is a copy of the Plaintiff's Complaint, which is attached hereto and incorporated herein by specific reference thereto.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-_____

SUMMONS

(Medical Negligence)
(Breach of Contract)
(Violation of Right Of Privacy)
(Jury Trial Requested)

Defendants)
_____)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff at her home at 52 Chadwick Drive, Charleston, South Carolina, 29407 within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E:MAIL: Excommunicated @comcast.net

Charleston, South Carolina
Dated: January 7, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-_____

COMPLAINT

(Medical Negligence)
(Breach of Contract)
(Violation of Right Of Privacy)
(Jury Trial Requested)

Defendants)
_____)

THE PLAINTIFF HEREIN, Beverly C. Moore-Rowe (hereinafter referred to herein as the "**Plaintiff**") complaining of the Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare; Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the "**Defendants**"), would respectfully show unto this Court, upon information and belief, that:

1. That the Plaintiff is a citizen and resident of the State of South Carolina, County of Charleston.
2. That upon information and belief, the Defendant, Bon Secours-St. Francis Xavier Hospital, Inc., is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours-St. Francis Xavier Hospital, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital and Bon Secours St. Francis Xavier Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.
3. That upon information and belief, the Defendant, Bon Secours St. Francis Health System, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours-St. Francis Health System, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital and Bon Secours St. Francis Xavier Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

4. That upon information and belief, the Defendant, Bon Secours Health System, Inc., is a corporation organized and existing pursuant to the Laws of the State of Maryland but is registered to do business in the State of South Carolina, County of Charleston. At all relevant times, Bon Secours Health System, Inc. owned, operated and did business as Bon Secours-St. Francis Hospital in Charleston County, South Carolina, and has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

5. That upon information and belief, the Defendant, Roper St. Francis Foundation, is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston. At all relevant times, Roper St. Francis Foundation has been doing business with the other corporate Defendants named herein as Roper St. Francis Healthcare.

6. That upon information and belief, the Defendant, Bon Secours-St. Francis Health System Foundation, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and has been doing business, with the other corporate Defendants as Roper St. Francis Healthcare.

7. That upon information and belief, the Defendant, Roper Hospital, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and has been doing business as Roper St. Francis Healthcare.

8. That upon information and belief, the Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., Bon Secours St. Francis Health System, Inc., Bon Secours Health System, Inc., Roper St. Francis Foundation, Bon Secours-St. Francis Health System Foundation, Inc., and Roper Hospital, Inc., (hereinafter collectively referred to herein as the "Defendant Hospital"), at all times relevant herein, acted by and through its agents, contractors, and employees for the purpose of carrying on its business as a medical healthcare facility and therefore, it is liable for the negligent acts and omissions of its agents, contractors, and employees under the theories of non-delegable duty and respondeat superior.

9. That upon information and belief, the Defendant, Byron N. Bailey, MD, (hereinafter referred to herein as the "Defendant Bailey") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in neurology.

10. That upon information and belief, the Defendant, Christine Thompson, MD, also known as Christine C. Thompson, MD, (hereinafter referred to herein as the "**Defendant Thompson**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in anesthesiology.

11. That upon information and belief, the Defendant, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, (hereinafter referred to herein as the "**Defendant McGraw**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

12. That upon information and belief, the Defendant, Jeffery S. Wager, CRNA, (hereinafter referred to herein as the "**Defendant Wager**") is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

13. That upon information and belief, the Defendant, Charleston Neurosurgical Associates, LLC, hereinafter referred to herein as the "**Defendant Bailey's Group**"), is a limited liability company, organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

14. That upon information and belief, the Defendant, Mt. Pleasant Anesthesia Associates, PA, is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

15. That upon information and belief, the Defendant, Charleston Surgery Center Limited Partnership, doing business as Charleston Surgery Center, (hereinafter collectively referred to herein with Defendant, Mt. Pleasant Anesthesia Associates, PA, as the "**Defendant Thompson's Groups**"), is a South Carolina limited partnership formed pursuant to the Laws of the State of South Carolina, with its principal place of business located in the State of South Carolina, County of Charleston, at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and

employees.

16. That upon information and belief, the Defendant, Nurse Anesthesia Of South Carolina, LLC, hereinafter referred to herein as the "**Defendant McGraw's Group**"), is a limited liability company formed pursuant to the Laws of the State of South Carolina, with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

17. That upon information and belief, the Defendant, Tricoastal Healthcare Billing And Management, Inc., hereinafter referred to herein as the "**Defendant Wager's Group**"), is a corporation organized and existing pursuant to the Laws of the State of South Carolina with its principal place of business located in the State of South Carolina, County of Charleston, and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

18. That upon information and belief, Steven Heath Cobb (hereinafter referred to herein as "**Defendant Student**") is a resident of the State of South Carolina, County of Greenville, at all times relevant herein, was a student nurse anesthetist not then licensed to practice as a nurse anesthetist in the State of South Carolina and not then a Certified Registered Nurse Anesthetist, but was at that time a Student Certified Registered Nurse Anesthetist ("**SCRNA**").

19. That upon information and belief, the Defendant Bailey, at all times relevant herein, was an agent, contractor, or employee of Defendant Bailey's Group acting within the scope of his employment and therefore Defendant Bailey's Group is liable for the acts and omissions of Defendant Bailey.

20. That upon information and belief, the Defendant Thompson, at all times relevant herein, was an agent, contractor, or employee of Defendant Thompson's Groups acting within the scope of her employment and therefore Defendant Thompson's Groups are jointly and severally liable for the acts and omissions of Defendant Thompson.

21. That upon information and belief, the Defendant McGraw, at all times relevant herein, was an agent, contractor, or employee of Defendant McGraw's Group acting within the scope of her employment and therefore Defendant McGraw's Group is liable for the acts and omissions of Defendant McGraw.

22. That upon information and belief, the Defendant Wager, at all times relevant herein, was an agent, contractor, or employee of Defendant Wager's Group acting within the scope of his employment and therefore Defendant

Wager's Group is liable for the acts and omissions of Defendant Wager.

23. That upon information and belief, the health care facility owned by the Defendant Hospital is licensed under the Laws of the State of South Carolina and was required to provide reasonable and prudent care to the Plaintiff.

24. That upon information and belief, the health care facility owned by the Defendant Hospital is accredited through and regulated by the standards of the Joint Commission of Accreditation of Healthcare Organizations (referred to hereinafter as the "**JCAHO**") and was required to provide a standard of care as set forth in JCAHO Rules, Regulations and Policies.

25. That all actions and omissions giving rise to this complaint took place in the State of South Carolina, County of Charleston.

26. That for the reasons set forth above, venue and jurisdiction are properly before this Court.

27. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital were acting within the course and scope of their employment in regard to their care and treatment of Plaintiff.

28. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital, were acting under the direction and supervision of Defendant Bailey; and as to the anesthesiology services provided to the Plaintiff, the employees and agents of the Defendant Hospital, were also acting under the direction and supervision of Defendant Thompson, Defendant McGraw and Defendant Wager.

29. That the Plaintiff is informed and believes that at all times material to this Complaint, the Defendant Student was acting under the direction and supervision of Defendant Bailey, Defendant Thompson, Defendant McGraw and Defendant Wager.

30. That the Plaintiff is informed and believes that at all times material to this Complaint, the employees and agents of the Defendant Hospital, were acting on behalf of the Defendant Hospital in making decisions regarding the care of Plaintiff.

31. That at all times that the Plaintiff was a patient of the Defendants, she relied upon the professional expertise of the Defendants in order to safely undergo and appropriately heal and recover in a timely manner from her ordered procedure.

32. That the Defendant Hospital has the right or power to direct and control the manner in which their employees provide medical care and operate the business of delivering health care for a fee through the business using the trade name Roper St. Francis Healthcare. Additionally, the Defendant Hospital has a non-delegable duty to provide physicians adequately trained and able to provide any necessary and reasonable medical care to patients.

33. That the Defendant Bailey, Defendant Thompson, Defendant Bailey's Group, Defendant Thompson's Groups, Defendant McGraw, Defendant Wager, Defendant McGraw's Group and Defendant Wager's Group (hereinafter collectively referred to herein as the "**Defendant Professionals**") have the right or power to direct and control the manner in which their employees provide medical care and operate the business of delivering health care for a fee through the business using their trade names. Additionally, the Defendant Bailey's Group and the Defendant Thompson's Groups have a non-delegable duty to provide physicians adequately trained and able to provide any necessary and reasonable medical care to their patients. Additionally, the Defendant McGraw's Group and the Defendant Wager's Group have a non-delegable duty to provide Certified Registered Nurse Anesthetists adequately trained and able to provide any necessary and reasonable medical care to their patients.

34. That on or about January 7, 2010, the Plaintiff was admitted to the Defendant Hospital by her physician, Defendant Bailey for anterior cervical spine surgery consisting of anterior cervical discectomy with fusion, as treatment for Plaintiff's neck pain and complaints of bilateral arm numbness.

35. That the Plaintiff met with Defendant McGraw prior to her surgery and at such time Defendant McGraw introduced the Defendant Student to the Plaintiff, and solicited the Plaintiff's verbal consent for Defendant Student to accompany Defendant McGraw for the purpose of observing the surgery, informing Plaintiff that Defendant Student would be only an observer.

36. That the Plaintiff specifically stated to Defendant McGraw prior to her surgery that she was a singer with the Symphony Gospel Chorus and Symphony and to please protect the Plaintiff's vocal chords, knowing that she would be receiving general anesthesia endotracheal intubation, and make certain Plaintiff received sufficient oxygen.

37. That Defendant Thompson was the Anesthesiologist for the Plaintiff in her surgery.

38. That Defendant McGraw was a Certified Registered Nurse Anesthetist ("**CRNA**") for the Plaintiff in her surgery.

39. That Defendant Wager was a Certified Registered Nurse Anesthetist ("**CRNA**") for the Plaintiff in her surgery.

40. That the Defendants failed to inform the Plaintiff or solicit and obtain the Plaintiff's prior consent for the Defendant Student to participate as a nurse anesthetist in the Plaintiff's surgery.

41. That the Plaintiff never gave any consent or permission whatsoever, verbally, written or otherwise, for the Defendant Student to administer any medical services, including those normally performed by a Certified Registered Nurse Anesthetist, such as the endotracheal intubation of the Plaintiff as patient.

42. That if requested, the Plaintiff would have not consented to permitting the Defendant Student to be in attendance of her surgery, except solely as an observer.

43. That the Plaintiff is informed and believes that, without the Plaintiff's knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff as the patient in her surgery.

44. That on or about January 7, 2010, the Defendant Bailey performed the anterior cervical spine surgery on the Plaintiff in the Defendant Hospital with Defendant Thompson serving as the Plaintiff's Anesthesiologist, and Defendant McGraw and Defendant Wager serving as the Plaintiff's Certified Registered Nurse Anesthetists (hereinafter referred to herein as the "Surgery").

45. That the Plaintiff underwent endotracheal intubation in the course of the anesthesiology services provided to Plaintiff by the Defendants in the Surgery.

46. That the Defendants did undertake the duty to render medical care to the Plaintiff in accordance with the prevailing professional standards of care for hospitals, nurses, doctors and medical personnel in the national community.

47. That the Plaintiff remained in the Defendant Hospital from January 7, 2010 through January 10, 2010, at which time she was referred for rehabilitation services through Defendant Hospital, due to difficulties in swallowing.

48. That after the Surgery, the Plaintiff has suffered from serious and permanent injuries including dizzy spells, blocked right carotid, hoarseness in her voice, difficulty with speech, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue changes in her temperament, and other executive physical function problems, which the Plaintiff, under information and belief, is the result of the Surgery, and in particular, the endotracheal intubation.

49. That as a result of the Surgery, Plaintiff was caused to undergo additional painful and costly medical exams and procedures and has suffered and continues to suffer the serious and permanent injuries and pain and suffering stated above and mental anguish therefrom.

**FOR A FIRST CAUSE OF ACTION
(Professional Negligence/Negligence Per Se)**

50. That the Plaintiff reiterates and re-alleges paragraphs one (1) through forty-nine (49) above, as though fully set forth in their entirety herein verbatim, and further alleges:

51. That while the Plaintiff was under the care of the Defendants, the Defendant Professionals and the Defendant Student, departed from the prevailing professional standards of care and treatment of the Plaintiff and were thereby, jointly and severely, negligent, careless, grossly negligent, willful, wanton, reckless, and negligent per se, and acted in violation of the duties owed to the Plaintiff in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. In failing to appropriately treat the Plaintiff's condition;
- b. In failing to properly and adequately monitor Plaintiff during the Surgery and throughout her stay at Defendant Hospital;
- c. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, without the Plaintiff's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, when the Defendant Student was not a licensed Anesthesiologist or a Certified Registered Nurse Anesthetist or licensed Nurse Anesthetist;
- e. In failing to obtain the Plaintiff's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff, including but not limited to the endotracheal incubation procedure;
- f. In inappropriately permitting the administration of the drug, Propofol by persons other than a trained and licensed physician;
- g. In failing to properly and adequately supervise the Defendant Student, medical personnel, staff, employees, and agents of the Defendants with regard to the Plaintiff's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Surgery;
- i. In failing to ensure that the Defendant Bailey and the Defendant Thompson as physicians performed the proper and appropriate medical treatment on the Plaintiff as the Defendants' patient, for which the Defendants are liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;

- j. In failing to provide proper, diligent and timely follow-up care;
- k. In failing to properly treat the Plaintiff as the Defendant's patient;
- l. In failing to provide treatment during the Surgery and after, necessary to prevent material deterioration of the Plaintiff's condition;
- m. In violating the standard, laws and regulations of the United States and the State of South Carolina; and
- n. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure and as the evidence at trial may disclose.

52. That while the Plaintiff was under the care of the Defendants, the Defendant Hospital departed from the prevailing professional standards of care and treatment of the Plaintiff and was thereby, jointly and severely, negligent, careless, grossly negligent, willful, wanton, reckless, and negligent per se, and acted in violation of the duties owed to the Plaintiff in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. In failing to appropriately treat the Plaintiff's condition;
- b. In failing to properly and adequately monitor Plaintiff during the Surgery and throughout her stay at Defendant Hospital;
- c. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, without the Plaintiff's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff during the Surgery, when the Defendant Student was not a licensed Anesthesiologist or a Certified Registered Nurse Anesthetist or a licensed Nurse Anesthetist;
- e. In failing to obtain the Plaintiff's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff, including but not limited to the endotracheal incubation procedure;
- f. In inappropriately permitting the administration of the drug, Propofol by persons other than a trained and licensed physician;
- g. In failing to properly and adequately supervise the Defendant Student, medical personnel, staff, employees, and agents of the Defendants with regard to the Plaintiff's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Surgery;
- i. In failing to have in place proper and adequate policies, procedures and protocols for administration of anesthesia procedures by licensed, experienced and qualified medical professionals, or if such policies were in place, in failing to use due care to enforce them;
- j. In failing to ensure that the Defendant Bailey and the Defendant Thompson as physicians in the Defendant Hospital performed the

proper and appropriate medical treatment on the Plaintiff as the Defendants' patient, for which the Defendant Hospital is liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;

- k. In failing to ensure that the Defendant McGraw and the Defendant Wager as the Certified Registered Nurse Anesthetists in the Defendant Hospital performed the proper and appropriate medical treatment on the Plaintiff as the Defendants' patient, for which the Defendant Hospital is liable as a result of the non-delegable duty of the Defendants and other physicians and medical providers;
- l. In failing to provide proper, diligent and timely follow-up care;
- m. In failing to properly treat the Plaintiff as the Defendant's patient;
- n. In failing to provide treatment during the Surgery and after, necessary to prevent material deterioration of the Plaintiff's condition;
- o. In violating the standard, laws and regulations of the United States and the State of South Carolina; and
- p. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure and as the evidence at trial may disclose.

53. That in rendering medical services to Plaintiff, the Defendants failed to have sufficient medical knowledge and skill or failed to exercise reasonable diligence in the application of their knowledge and skill to Plaintiff's care and Surgery.

54. That, in addition, to the extent that the Defendants have violated their own policies and procedures, or any State or Federal Laws or Regulations or other standards, these standards were specifically enacted for the protection of a class of persons which includes the Plaintiff, and the Defendant's failure to comply with the same constitutes a prima facie case of negligence per se.

55. That the Plaintiff is informed and believes that the applicable statute of limitations on one or more claims alleged in this Complaint will expire within ten (10) days of the date of the filing of this Complaint, and that due to time constraints, an affidavit of an expert could not be prepared, and that Section 15-36-100(C)(1) of the South Carolina Code of Laws of 1976, as amended (hereinafter referred to herein as the "**S.C. Code**") is applicable to enable the Plaintiff to supplement the pleadings with the required affidavit.

56. That the Plaintiff is informed and believes that Defendants' professional negligence in permitting the Defendant Student, who was neither a licensed Anesthesiologist, nor a licensed Nurse Anesthetist nor a Certified Registered Nurse Anesthetist, to perform the endotracheal intubation on the Plaintiff in the Surgery, without the Plaintiff's prior consent, is sufficiently substantial and egregious as to fall within S.C. Code Section 15-36-100(C)(2) as involving

negligence that lies within the common knowledge and experience so that no special learning is needed to evaluate the conduct of the Defendants.

57. That as a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, negligence per se, wanton acts or omissions, and departure from the professional standards of care by the Defendants and the agents and employees of the Defendants, the Plaintiff has incurred serious and permanent personal injury, including, but not limited to, dizzy spells, hoarseness in her voice, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulties with word retrieval, fatigue, expressive aphasia, and other executive physical function problems, in the past and in the future, severe pain and suffering, loss of enjoyment of life, loss of earning capacity and income, medical expenses, physical therapy, speech therapy, mental anguish, permanent impairment of health and physical harm, emotional distress, expenditure of money for medical expenses, therapies and other ancillary medical and health related services.

58. That as a direct and proximate result of the negligent, careless and reckless acts as set forth above, and the injuries and damages to the Plaintiff as set forth above, the Plaintiff is entitled to compensation for such injuries from the Defendants, jointly and severally, through her life expectancy.

**FOR A SECOND CAUSE OF ACTION
(Breach of Contract)**

59. That the Plaintiff reiterates and re-alleges paragraphs one (1) through fifty-eight (58) above, as though fully set forth in their entirety herein verbatim, and further alleges:

60. That the Plaintiff entered into a contract for care with the Defendants.

61. That pursuant to such agreements, Defendants promised to provide medical treatment, aid, assistance and treatment within the applicable standard of care and to follow all State and Federal Laws relating to the care of surgical patients.

62. That in exchange for such promises, the Plaintiff agreed to pay a fee to the Defendants.

63. That these bargained for exchanges constituted contracts.

64. That the Defendants breached these contracts by failing to properly care for, exercise due care of and follow State and Federal Laws relating to the care of the Plaintiff.

65. That the Plaintiff was deprived of the benefit of the bargain and has suffered damages directly flowing from said breach of the kind and nature to arise and flow from such a breach, and is entitled to recover from the Defendants, jointly and severally, compensatory damages for said breach of contract in an amount to be determined at the trial of this matter.

**FOR A THIRD CAUSE OF ACTION
(Violation of Right of Privacy and Violation of HIPAA)
Against Defendant Corporation Only**

66. That the Plaintiff reiterates and re-alleges paragraphs one (1) through sixty-five (65) above, as though fully set forth in their entirety herein verbatim, and further alleges:

67. That, after the Surgery, the Plaintiff contacted other physicians, medical care providers and institutions seeking relief from the injuries and symptoms she suffered from the Surgery and an explanation as to what was the cause of her injuries.

68. That, on or about October 22, 2012, the Plaintiff consulted with physicians and medical care professionals at the Duke University Health System (hereinafter referred to herein as "**Duke**"), in Durham, North Carolina, seeking relief from the injuries and symptoms she suffered from the Surgery and an explanation as to what was the cause of her injuries.

69. That the Duke consultation was based upon a referral issued by Plaintiff's physician, Dr. Stephen Busby (hereinafter referred to herein as "**Busby**") on Plaintiff's behalf.

70. That, the Plaintiff never provided any authorization after her Surgery to the Defendant Hospital for Defendant Hospital to obtain the Plaintiff's medical records from Plaintiff's consultations with Busby and/or Duke, or any physicians and medical providers contacted by the Plaintiff after she was discharged from Defendant Hospital after her Surgery.

71. That the Plaintiff had contacted the risk management department of the Defendant Hospital in the year 2011 or 2012, to inquire and obtain a copy of the Defendant Hospital's written policies and procedures.

72. That, at some time in the year 2012 and after October 22, 2012, the Plaintiff received a telephone call from a person identifying herself as a nurse and attorney working in risk management for Defendant Hospital (hereinafter referred to herein as "**Hospital Risk Management**").

73. That the Hospital Risk Management proceeded to provide the Plaintiff with an unsolicited legal and medical opinion advising Plaintiff that, based upon Hospital Risk Management's review of Plaintiff's medical records, the Plaintiff had no legal claim.

74. That Plaintiff never mentioned commencing this litigation, and had not provided any notice of the same, but is informed and believes that Hospital Risk Management was attempting to discourage the Plaintiff from making any claim for medical malpractice, and inform the Plaintiff that the Defendant Hospital Risk Management had reviewed the Plaintiff's medical records.

75. That in the conversation, Hospital Risk Management disclosed confidential medical information of the Plaintiff, which the Plaintiff realized could only have been obtained from Plaintiff's medical consultations at Duke.

76. That upon inquiry of the Plaintiff, Hospital Risk admitted to the Plaintiff that Hospital Risk Management had accessed and reviewed the Plaintiff's medical records, including the Plaintiff's medical records from the Plaintiff's medical consultations at Duke, through electronic means and the internet by electronically obtaining the medical records of Busby.

77. That the Plaintiff never provided any authorization to the Defendants, to obtain the Plaintiff's medical records from Busby or Duke, and is informed and believes that Defendant Hospital's unauthorized and unwarranted appropriation of the Plaintiff's confidential medical records with Busby and Duke constitutes the wrongful intrusion into the Plaintiff's private activities as well as the unwarranted appropriation and exploitation of the Plaintiff's personality, and further constitutes a blatant and shocking disregard of the Plaintiff's legal right to privacy as to her medical records with Busby and Duke, which South Carolina Law and Federal Law under the Health Information Portability And Accountability Act ("HIPAA") provide.

78. That as a result of the violations of the Plaintiff's right to privacy under South Carolina law and in blatant and shocking disregard of HIPPA, the Plaintiff has suffered extreme emotional distress and mental suffering and outrage for which the Plaintiff is entitled to recover from the Defendant Hospital, compensatory damages for said injury in an amount to be determined at the trial of this matter.

WHEREFORE, the Plaintiff prays for (1) judgment against the Defendants in the sum of actual damages, in a sum sufficient to compensate the Plaintiff for her actual damages, for punitive damages, special damages, and consequential damages in an amount to be determined by the trier of fact; (2) judgment against the Defendant Hospital in the sum of actual damages, in a sum sufficient to compensate the Plaintiff for her actual damages, for punitive damages, special damages, and consequential damages in an amount to be determined by the trier

of fact for the violation of the Plaintiff's right to privacy, in an amount to be determined by the trier of fact; (3) for the costs of this action; and (4) such other and further relief as the Court may deem just and proper.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated @comcast.net

Charleston, South Carolina
Dated: January 7, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-_____

Beverly C. Moore-Rowe,

Plaintiff,

vs.

VERIFICATION

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a)
Christine Thompson, M.D.,)
Charleston Neurosurgical)
Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA,)
Charleston Surgery Center Limited)
Partnership, d/b/a Charleston)
Surgery Center, Tammy McGraw,)
CRNA, also known as Tammy)
McGraw Speicher, CRNA, Nurse)
Anesthesia Of South Carolina,)
LLC, Jeffery S. Wager, CRNA,)
Tricoastal Healthcare Billing And)
Management, Inc., and Steven)
Heath Cobb,)

Defendants)
_____)

PERSONALLY appeared before me, Beverly C. Moore-Rowe, who being duly sworn, deposes and says that she is the Plaintiff herein; that she has read the Complaint and the same is true and correct of her own knowledge, save and except those matters stated herein to be on information and belief, and to those matters she believes them to be true.

Beverly Moore-Rowe
BEVERLY C. MOORE-ROWE

Sworn to before me this Seventh (7th)
day of January, 2013

Teresa D. Bernard
Notary Public for South Carolina

(SEAL)

My Commission Expires:

July 16, 2014



EXHIBIT B

Attached to this Exhibit B are the Plaintiff's answers to Standard Interrogatories as set forth in South Carolina Rules of Civil Procedure 33(b), which is attached hereto and incorporated herein by specific reference thereto.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a)
Christine Thompson, M.D.,)
Charleston Neurosurgical)
Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA,)
Charleston Surgery Center Limited)
Partnership, d/b/a Charleston)
Surgery Center, Tammy McGraw,)
CRNA, also known as Tammy)
McGraw Speicher, CRNA, Nurse)
Anesthesia Of South Carolina,)
LLC, Jeffery S. Wager, CRNA;)
Tricoastal Healthcare Billing And)
Management, Inc., and Steven)
Heath Cobb,)
Defendants)

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) CASE NO. 2013-CP-10-_____

) PLAINTIFF'S ANSWERS TO STANDARD
) INTERROGATORIES

TO: THE Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare (hereinafter all of the previously mentioned corporate Defendants are collectively referred to herein as **"Roper St. Francis Healthcare"** and/or the **"Defendant Hospital"**); Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the **"Defendants"**), the Plaintiff, answering the standard interrogatories of Defendants, states as follows:

1. Give the names and addresses of persons known to the parties or their counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a. **Beverly C. Moore-Rowe (Plaintiff)**
52 Chadwick Drive
Charleston, S.C. 29412
- b. **Arthur Peter Rowe (Plaintiff's husband)**
52 Chadwick Drive
Charleston, S.C. 29412
- c. **Marie Martin, friend**
46 Martin's Path
Charleston, S.C. 29414
- d. **Medical professionals and office personnel of Mount Pleasant Manor Care, LLC**
921 Bowman Road
Mount Pleasant, S.C. 29464

- e. Medical professionals and office personnel of Roper St. Francis Healthcare
2095 Henry Tecklenburg Drive
Charleston, SC 29414
- f. Dr. Byron Bailey, M.D. Defendant
Charleston Neurosurgical Associates, LLC
2145 Henry Tecklenburg Drive
Charleston, S.C. 29414
- g. Dr. Christine C. Thompson, M.D. Defendant
Charleston Surgery Center Limited Partnership
2690 Lake Park Drive
North Charleston, S.C. 29406
- h. Tammy McGraw Speicher, CRNA, Defendant
Nurse Anesthesia Of South Carolina, LLC
2095 Henry Tecklenburg Drive
Charleston, S.C. 29414
- i. Jeffery S. Wager, CRNA, Defendant
Tricoastal Healthcare Billing And Management, Inc.
9263 Medical Plaza Drive; Suite B
Charleston, S.C. 29406
- j. Steven Heath Cobb, CRNA, Defendant
701 Grove Road
Greenville, S.C. 29465-4295
- k. John H. Lucas, IV, MD, Physician
Charleston Neurology Associates
9313 Medical Plaza Drive; Suite 310
Charleston, S.C. 29406
- l. L. Randolph Waid, Ph.D, Licensed Psychologist
The Oaks Business Center
1459 Stuart Englas Boulevard
Suite 204-A
Mount Pleasant, S.C. 29406
- m. Troy Marlow, M.D., Radiologist
TriCounty Radiology Associates
1975-H Magwood Road
Charleston, SC 29414

- n. Dr. Thomas S. Dozier, M.D., Otolaryngology
Charleston ENT Associates, L.L.C.
1849 Savage Road
Charleston, S.C. 29407
- o. Lucinda A. Halstead, M.D.
Speech and Language Pathology
Medical University Of South Carolina
Charleston, S.C. 29403
- p. Megan Witt, M.D. (Physician)
University Internal Medicine
Medical University of South Carolina.
Charleston, S.C. 29403
- q. Donald Fox, M.D. (Physician)
University Internal Medicine
Medical University of South Carolina.
Charleston, S.C. 29403
- r. R. Sidney G. Smith, M.D.
Charleston Endoscopy Center
1962 Charlie Hall Boulevard
Charleston, S.C. 29414
- s. Dr. Steven C. Busby, M.D.
16 Windermere Boulevard; Suite B
Charleston, S.C. 29407
- t. Dr. Natalie Steele Bradford, M.D
MUSC Department Of Internal Medicine
169 Ashley Avenue; Suite 202
Charleston, S.C. 29402
- u. Bruce M. Elliott, MD, FACS
Division of Vascular Surgery
96 Jonathan Lucas Street
Charleston, S.C. 29425
- v. Kelly Crisp, M.A., CCC-SLP
Duke University Medical Center
Division of Speech Pathology and Audiology
2301 Erwin Road
Durham, N.C. 27705

- w. Tamara N. Bowman, ANP
Mount Pleasant Manor Care, LLC
921 Bowman Road
Mount Pleasant, S.C. 29464
- x. Thomas B. Cruden, M.D.
Mount Pleasant Manor Care, LLC
921 Bowman Road
Mount Pleasant, S.C. 29464
- y. Such other individuals who may be revealed during the discovery process.

No Statements have been obtained at this time.

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

ANSWER:

MEDICAL RECORDS OF:

- a. Roper St. Francis Healthcare - 12/19/2009, 01/04/2010, 01/07/2010 -01/12/2010, 01/13/2010, 01/31/2010,
- b. Medical University of South Carolina: 06/24/2010
- c. Medical University of South Carolina Radiology: Dr. Rajesh Thampy, 06/29/2010; Dr. Robert Egbert: 01/16/2011, 11/16/2011; Dr. Stetson Bickley: 11/29/2011; Dr. Robert Egbert: 01/20/2012.
- d. Medical University of South Carolina Evelyn Trammell Institute for Voice & Swallowing, Dr. Thomas S. Dozier, M.D., 06/16/2010, 08/02/2010, 08/18/2010, 08/24/2010, 09/21/2011.
- e. Medical University of South Carolina, University Internal Medicine, Dr. Megan Witt, M.D. 10/04/2010, 10/14/2010, 06/20/2011, 08/30/2010, 11/08/2011, 11/18/2011, 11/29/2011, Natalie Steele Bradford, M.D. 05/08/2012.
- f. Medical University of South Carolina, Dr. Lucinda A. Halstead, M.D., Otolaryngology Head and Neck Surgery, 11/08/2011, 11/29/2011, 12/15/2011.

g. Medical University of South Carolina, East Cooper SEI Ophthalmology, Dr. Narendra Patel, M.D. 04/03/2012, 09/04/2012

h. Medical University of South Carolina, Speech and Language Pathology, Kate Humphries, M.S., CF-SLP: 06/30/2011, 11/08/2011, 12/08/2011.

i. Medical University of South Carolina, Bruce M. Elliott, M.D., FACS, Vascular Surgery Division, 05/16/2012

j. Medical University of South Carolina Neurology, 01/20/2012.

k. Charleston Endoscopy Center, R. Sidney G. Smith, M.D. 09/18/2012.

l. TriCounty Radiology Associates, John H. Lucas, IV, M.D., 10/12/2010, 04/21/2011.

m. Wesley Drive Imaging Center, Andrew K. Anderson, M.D., Radiologist, 03/23/2010.

n. Speech Therapy Evaluation, Dixie Barkand, MACCC, SLP, 03/04/2011

o. Windermere Family Medicine and Urgent Care, Dr. Stephen C. Busby, M.D. 06/03/2010, 06/15/2010.

p. Charleston Neurology Associates, LLC, John H. Lucas, IV, M.D. 09/23/2010, 12/14/2010, 05/05/2011.

q. L. Randolph Waid, Ph.D., Licensed Clinical Psychologist, 06/29/2011.

r. Duke University Medical Center, Department of Speech Pathology and Audiology, Kelly Crisp, M.A., CCC-SLP, 10/22/2010.

s. Mount Pleasant Manor, LLC 01/12/2010 through 01/31/2010

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

ANSWER:

a. See Physicians and medical care providers listed in Answer 1, subparagraph d through y, and Answer 2 above. This interrogatory will be answered in more detail at a later time.

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

ANSWER:

This Interrogatory is not applicable to the Plaintiff.

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

As a result of the Defendants' negligence, carelessness and recklessness, in allowing the Defendant Student to perform the endotracheal intubation, the Plaintiff, Beverly C. Moore-Rowe, suffered permanent damage to her vocal chords in which they remain separated, hoarseness of voice, difficulty speaking, difficulty swallowing, requiring speech therapy and pathology. The Plaintiff has also suffered from dizzy spells, blocked right carotid artery, difficulty with speech, shortness of breath, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue, changes in her temperament, and other executive physical function problems. The Plaintiff is informed and believes that the before mentioned problems are the result of the Defendants' negligence, carelessness and recklessness in the Surgery, and in the endotracheal intubation, in which she suffered nerve damage and oxygen deprivation. As a result, the Plaintiff has undergone multiple medical exams, hospital exams, and medical procedures. The Plaintiff spent time in rehabilitation at Mount Pleasant Manor, LLC from the date of discharge from Roper St. Francis Healthcare on January 12, 2010 through January 31, 2010. The costs associated with those medical exams and procedures are not known at this time. This information will be provided at a later time.

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

ANSWER:

The name and address of the expert witness whom the party proposes to use as a witness at the trial of this case is not available at this time but will be provided at a later date.

7. For each person known to the parties or their 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 witnesses.

ANSWER:

It is anticipated that among other things, the Plaintiff's husband, Arthur Peter Rowe, and the Plaintiff's friend, Marie Martin, will testify in accordance with their recollections of the events as they occurred, including conversations they had with various health care professionals and/or employees of the Defendants. The Plaintiff's husband will also testify concerning the effect this incident has had on his wife, the Plaintiff, Beverly C. Moore-Rowe, and himself as her husband.

It is anticipated that the health care professionals and/or employees of the Defendants, and the Defendants who are individuals and health care providers, will testify in accordance with their recollections and notations in the medical chart of the Plaintiff, Beverly C. Moore-Rowe.

It is anticipated that the health care professionals and/or employees consulted by the Plaintiff, Beverly C. Moore-Rowe, who are not Defendants, will testify in accordance with their recollections and notations in their medical records of the Plaintiff, Beverly C. Moore-Rowe, and her injuries.

8. [Defendants only.] If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER:

This Interrogatory is not applicable to the Plaintiff.

9. Please state whether the Plaintiff is currently or has applied to become a Medicare recipient. Please state whether the Plaintiff has applied for or is currently receiving social security benefits.

If the response is yes to either of the above questions, please state the dates when the Plaintiff began receiving their benefits or expects to receive their benefits.

ANSWER:

The Plaintiff, Beverly C. Moore-Rowe is a recipient of Medicare and social security benefits. Her Medicare coverage, Part A and Part B, began on August 1, 1997.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff

52 Chadwick Drive

Charleston, South Carolina 29407

Telephone: (843) 763-2599; (843) 737-0733

E-mail: Excommunicated @comcast.net

Charleston, South Carolina

Dated: January 7, 2013

EXHIBIT C

Attached to this Exhibit C are Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure, directed to each Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a)
Christine Thompson, M.D.,)
Charleston Neurosurgical)
Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA,)
Charleston Surgery Center Limited)
Partnership, d/b/a Charleston)
Surgery Center, Tammy McGraw,)
CRNA, also known as Tammy)
McGraw Speicher, CRNA, Nurse)
Anesthesia Of South Carolina,)
LLC, Jeffery S. Wager, CRNA,)
Tricoastal Healthcare Billing And)
Management, Inc., and Steven)
Heath Cobb,)

Defendants

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-_____

STANDARD INTERROGATORIES
FROM PLAINTIFF PURSUANT TO
SCRCP 33(b)

TO: THE Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare; Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare; Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare (hereinafter all of the previously mentioned corporate Defendants are collectively referred to herein as **"Roper St. Francis Healthcare"** and/or the **"Defendant Hospital"**); Byron N. Bailey, M.D.; Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.; Charleston Neurosurgical Associates, LLC; Mt. Pleasant Anesthesia Associates, PA; Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA; Nurse Anesthesia Of South Carolina, LLC; Jeffery S. Wager, CRNA; Tricoastal Healthcare Billing And Management, Inc.; and Steven Heath Cobb, (hereinafter all of the before named Defendants are collectively referred to herein as the **"Defendants"**):

THE PLAINTIFF, BEVERLY C. MOORE-ROW (hereinafter referred to herein as the **"Plaintiff"**) propound the following Interrogatories to the Defendants pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure. Please take notice that a copy of your Answers to said Interrogatories must be served upon the Plaintiff within thirty (30) days from the date of service hereof.

1. Give the names and addresses of persons known to the parties or their counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of all photographs, plats, sketches, or other prepared documents in possession of the party, that relate to the claim or defense in the case.
3. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.
4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.
6. List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of the case.
7. For each person known to the parties or their 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 witnesses.
8. **[Defendants only.]** If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

Beverly Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: January 7, 2013

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-10-00088

Plaintiff(s)

VS.

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Defendant(s)

Check box above indicating submitting party

<u>Name, SC Bar No. and Address of Plaintiff's Attorney</u> Beverly C. Moore-Rowe, Pro Se 52 Chadwick Drive Charleston, SC 29407 Telephone: _____ fax: _____ e-mail: _____ other: _____	<u>Name, SC Bar No. and Address of Defendant's Attorney</u> Christine Kent Toporek SC Bar #: _____ Address: Young Clement Rivers, LLP Post Office Box 993 Charleston, SC 29402-0993 Telephone: (843) 720-5402 fax: (843) 579-2946 e-mail: ctoporek@yrcrlaw.com
☒ MOTION HEARING REQUESTED (attach <i>written</i> motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (COMPLETE SECTIONS II and III)	
SECTION I: HEARING INFORMATION	
Nature of Motion: Motion to Dismiss Estimated Time Needed: 20 minutes Court Reporter Needed?: ☒ YES ☐ NO	
SECTION II: MOTION TYPE	
☒ Written Motion Attached ☐ Form Motion - I hereby move for relief or action by the Court as set forth in the attached proposed order.	
Dated: _____ Signature of Attorney for ☐ Plaintiff(s) ☒ Defendant(s)	
SECTION III: MOTION FEE	
☒ PAID - AMOUNT \$ _____ ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect	

☐ Indigent Status ☐ State Agency w. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, <i>SCRCP</i>) ☐ Proposed order submitted at request of the Court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order ☐ Other: _____	JUDGE: _____ CODE: _____ DATE: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ (print name)	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BEVERLY C. MOORE-ROWE,

PLAINTIFF,

vs.

BON SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., D/B/A BON
SECOURS ST. FRANCIS XAVIER
HOSPITAL, BON SECOURS ST.
FRANCIS HOSPITAL AND ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS ST. FRANCIS HEALTH
SYSTEM, INC., D/B/A BON SECOURS
ST. FRANCIS XAVIER HOSPITAL,
BON SECOURS ST. FRANCIS
HOSPITAL AND ROPER ST. FRANCIS
HEALTHCARE, BON SECOURS
HEALTH SYSTEM, INC., D/B/A BON
SECOURS ST. FRANCIS HOSPITAL
AND ROPER ST. FRANCIS
HEALTHCARE, ROPER ST. FRANCIS
FOUNDATION, D/B/A ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS-ST. FRANCIS HEALTH
SYSTEM FOUNDATION, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
ROPER HOSPITAL, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
BYRON N. BAILEY, M.D., CHRISTINE
C. THOMPSON, M.D., A/K/A
CHRISTINE THOMPSON, M.D.,
CHARLESTON NEUROSURGICAL
ASSOCIATES, LLC, MT. PLEASANT
ANESTHESIA ASSOCIATES, P.A.,
CHARLESTON SURGERY CENTER
LIMITED PARTNERSHIP, D/B/A
CHARLESTON SURGERY CENTER,
TAMMY MCGRAW, CRNA, ALSO
KNOWN AS TAMMY MCGRAW

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-00088

Notice of Intent

2013 MAR 13 PM 4:06
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

BON SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., D/B/A BON SECOURS
ST. FRANCIS XAVIER HOSPITAL, BON
SECOURS ST. FRANCIS HOSPITAL AND
ROPER ST. FRANCIS HEALTHCARE,
BON SECOURS ST. FRANCIS HEALTH
SYSTEM, INC., D/B/A BON SECOURS ST.
FRANCIS XAVIER HOSPITAL, BON
SECOURS ST. FRANCIS HOSPITAL AND
ROPER ST. FRANCIS HEALTHCARE,
BON SECOURS HEALTH SYSTEM, INC.,
D/B/A BON SECOURS ST. FRANCIS
HOSPITAL AND ROPER ST. FRANCIS
HEALTHCARE, ROPER ST. FRANCIS
FOUNDATION, D/B/A ROPER ST.
FRANCIS HEALTHCARE, BON
SECOURS-ST. FRANCIS HEALTH
SYSTEM FOUNDATION, INC., D/B/A
ROPER ST. FRANCIS HEALTHCARE,
ROPER HOSPITAL, INC., D/B/A ROPER
ST. FRANCIS HEALTHCARE'S MOTION
TO DISMISS PLAINTIFF'S NOTICE OF
INTENT TO FILE SUIT

SPEICHER, CRNA, NURSE)
 ANESTHESIA OF SOUTH CAROLINA,)
 LLC, JEFFERY S. WAGER, CRNA,)
 TRICOASTAL HEALTHCARE)
 BILLING AND MANAGEMENT, INC.,)
 AND STEVEN HEATH COBB,)
)
 DEFENDANTS.)
 _____)

TO: BEVERLY C. MOORE-ROWE, PRO SE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the improperly named Defendants, Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital And Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital And Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare (hereinafter "Defendants"), by and through their undersigned attorneys, will move before this Honorable Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, at a time and place set by the Court, for an Order dismissing the Plaintiff's Notice of Intent to File Suit on the grounds that: Plaintiff failed to comply with the statutory requirements set forth under S.C. Code Ann. §15-79-125 for filing a medical malpractice cause of action.

SUMMARY OF LAW

"Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-

100.” S.C. Code Ann. §15-79-125(A). S.C. Code Ann. §15-79-125 and S.C. Code Ann. §15-36-100 operate independently of one another, except that S.C. Code Ann. §15-79-125 relies on the provisions of S.C. Code Ann. §15-36-100 concerning the preparation and content of a medical expert affidavit. Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), reh’g denied (Mar. 15, 2012). As it relates to the content of the affidavit, the affidavit “must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B).

In Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), reh’g denied (Mar. 15, 2012), the plaintiff filed a Notice of Intent to File Suit in a medical malpractice action naming Dr. Crain as a defendant. In her complaint, the plaintiff claimed that due to time constraints she was prevented from contemporaneously filing an affidavit of a medical expert as required by South Carolina Code §15-79-125(A). Id. In response, Dr. Crain filed a Motion to Dismiss the Notice of Intent for failing to file an expert witness’s affidavit along with her Notice. Id. Forty-five days after filing her Notice of Intent to File Suit (and after the defendant filed a Motion to Dismiss) the plaintiff supplemented her pleadings with the affidavit of a medical expert. Id. The circuit court dismissed the complaint and the plaintiff appealed.

The issue before the Court of Appeals in Ranucci turned on the proper application of S.C. Code Ann. §§15-79-125 and 15-36-100. The Court found that each statute governs a distinct time period during the litigation process, with §15-79-125 governing “the process that commences with the filing of a Notice of Intent to File Suit and ends with pre-litigation mediation.” Ranucci, 397 S.C. at 176. In that regard, S.C. Code Ann. §15-79-125(A) imposes two requirements on the affidavit: (1) that it be filed at the same time as the Notice of Intent to File Suit; and (2) that it comply with the affidavit requirements of S.C. Code Ann. §15-36-100. The court found that only

the provisions governing the preparation and content of the affidavit were invoked by S.C. Code Ann. §15-79-125(A). Id. This section (S.C. Code Ann. §15-79-125) is silent as to any procedures for challenging an affidavit filed with a Notice of Intent and the court found that “this silence denotes those provisions do not apply to affidavits filed in compliance with section 15-79-125.” As such, the plaintiff’s arguments that provisions of S.C. Code Ann. §15-36-100 allowed her to file the affidavit late were unpersuasive. Id. at 178. The court expressly held that the provisions of S.C. Code §15-36-100 “do not permit a potential plaintiff to file her expert witness’s affidavit after she files her Notice of intent to File Suit. Id. at 179.

ARGUMENT

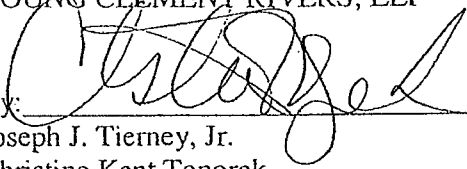
In the above captioned matter, on January 7, 2013 the Plaintiff filed a Notice of Intent to File Suit alleging medical malpractice against these Defendants. The Plaintiff did not contemporaneously file the affidavit of an expert witness with her Notice of Intent as required by S.C. Code Ann. §15-79-125. Plaintiff alleges in her Complaint that the applicable statute of limitations would expire within 10 days of filing and due to such time constraints the affidavit of an expert could not be prepared. *See* Notice of Intent, ¶4. The Ranucci court expressly held that the provisions related to filing the expert affidavit late do not apply to a Notice of Intent to File Suit. As set forth in detail above, failure to contemporaneously file an expert affidavit is grounds for dismissal pursuant to the holding of the court in Ranucci, *supra*. As the Plaintiff has filed a Notice of Intent to File Suit alleging medical negligence without contemporaneously filing the affidavit of a medical expert, these Defendants respectfully request that this Court dismiss Plaintiff’s Notice of Intent and all claims against them, under South Carolina Rules of Civil Procedure Rule 12(b)(6), in accordance with S.C. Code §15-79-125 and the decision by the Court of Appeals of South Carolina in Ranucci v. Crain.

CONCLUSION

WHEREFORE, for the reasons set forth above, these Defendants pray for an Order of this court dismissing the Plaintiff's Notice of Intent to File Suit.

This Motion may be supported by applicable law, the arguments of counsel, and any other material the Court may receive.

YOUNG CLEMENT RIVERS, LLP

By: 

Joseph J. Tierney, Jr.

Christine Kent Toporek

P.O. Box 993, Charleston, SC 29402

(843) 720-5402; ctoporek@ycrlaw.com

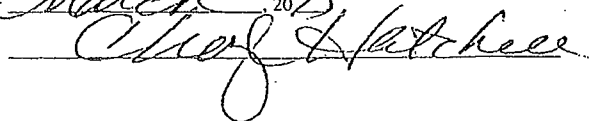
Attorneys for the improperly named Defendants,
Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a
Bon Secours St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital And Roper St. Francis
Healthcare, Bon Secours St. Francis Health System,
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,
Bon Secours St. Francis Hospital And Roper St.
Francis Healthcare, Bon Secours Health System,
Inc., d/b/a Bon Secours St. Francis Hospital and
Roper St. Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis Healthcare,
Bon Secours-St. Francis Health System Foundation,
Inc., d/b/a Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis Healthcare

Charleston, South Carolina

Dated: 3/12/2013

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 12 day of

March, 2013


STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe

☐ Plaintiff

v.

Bon Secours-St. Francis Xavier Hospital, Inc., et al,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-10-00088

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Beverly C. Moore-Rowe (Pro Se), Bar No.

Address:

52 Chadwick Drive, Charleston, SC 29407

phone: (843) 763-2599 fax:

e-mail: excommunicated@comcast.net other: (843)

737 0733

Defendant's Attorney:

Andrew S. Halio, Bar No. 2459

Address:

Post Office Box 747

Charleston, SC 29402-0747

phone: 577-5200 fax: 577-7468

e-mail: haliolaw@bellsouth.net other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Andrew S. Halio
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 15, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2013-CP-10-00088

Beverly C. Moore-Rowe,

Plaintiff,

vs.

MOTION TO DISMISS

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a)
Bon Secours St. Francis Xavier Hospital, Bon)
Secours St. Francis Hospital and Roper St. Francis)
Healthcare, Bon Secours St. Francis Health System,)
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,)
Bon Secours St. Francis Hospital and Roper St.)
Francis Healthcare, Bon Secours Health System,)
Inc., d/b/a Bon Secours St. Francis Hospital and)
Roper St. Francis Healthcare, Roper St. Francis)
Foundation, d/b/a Roper St. Francis Healthcare,)
Bon Secours-St. Francis Health System Foundation,)
Inc., d/b/a Roper St. Francis Healthcare, Roper)
Hospital, Inc., d/b/a Roper St. Francis Healthcare,)
Byron N. Bailey, M.D., Christine C. Thompson,)
M.D., a/k/a Christine Thompson, M.D., Charleston)
Neurosurgical Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA, Charleston Surgery)
Center Limited Partnership, d/b/a Charleston)
Surgery Center, Tammy McGraw, CRNA, also)
Known as Tammy McGraw Speicher, CRNA,)
Nurse Anesthesia of South Carolina, LLC,)
Jeffery S. Wager, CRNA, Tricoastal Healthcare)
Billing And Management, Inc., and Steven Heath)
Cobb,)

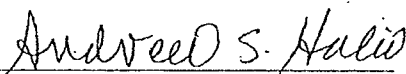
Defendants.

FILED
2013 MAR 15 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Pursuant to Rule 12 (b) (6) and (7), S.C.R.C.P., The Defendant, Steven Heath Cobb,
moves the Court for an order dismissing the Notice of Intent to File Suit on the following
grounds:

1. At the time of the incident, he was a student at the Medical University of South Carolina ("MUSC") acting an agent of MUSC at the time of the incident and was covered by the South Carolina Tort Claims Act, which requires that a lawsuit be brought against the governmental entity only.
2. Only a civil lawsuit can be brought against MUSC under the Tort Claims Act, which Plaintiff has failed to plead and with which Plaintiff has failed to comply.
3. To the extent applicable to a Tort Claims Act defendant, Plaintiff has failed to comply with the statutory requirements set forth in S.C. Code §15-79-125 for filing a medical malpractice action by failing to contemporaneously file an affidavit of an expert witness subject to the affidavit requirements established in §15-36-100.

HALIO & HALIO
Attorneys for Defendant Steven Heath Cobb


ANDREW S. HALIO
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
(843) 577-5200

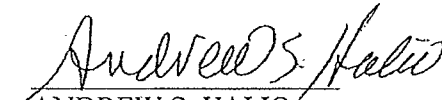
March 15, 2013
Charleston, S.C.

CERTIFICATION

This is to certify that the undersigned attorneys did this date serve the Motion to Dismiss upon the parties and attorneys below listed by mailing a copy of the same to his/their address, postage prepaid on March 15, 2013:

Beverly C. Moore-Rowe
52 Chadwick Drive
Charleston, SC 29407

Joseph J. Tierney, Jr., Esq.
Christine Toporek, Esq.
Post Office Box 993
Charleston, SC 29402


ANDREW S. HALIO

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 MAR 15 AM 11:56

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe

Plaintiff,

vs.

Charleston Surgery Center, et. al.

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-00088

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Beverly C. Moore-Rowe, Bar No. _____ Address: 52 Chadwick Drive Charleston, SC 29407 Phone: (843) 763-2599 Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Jack G. Gresh, Esq., Bar No. 75188 Address: Hall Booth Smith, P.C. 40 Calhoun Street, Suite 550 Charleston, SC 29401 Phone: (843) 720-3460 Fax: (843) 720-3458 E-mail: jgresh@hallboothsmith.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss Estimated Time Needed: 15 min Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. 3/26/2013 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-10-0088

Beverly C. Moore-Rowe,
Plaintiff,

v.

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis Healthcare, Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, P.A., Charleston
Surgery Center Limited Partnership, d/b/a
Charleston Surgery Center, Tammy
McGraw, CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse Anesthesia
Of South Carolina, LLC, Jeffrey S. Wager,
CRNA, Tricoastal Healthcare Billing And
Management, Inc., and Steven Heath Cobb,

Defendants.

**DEFENDANT CHARLESTON SURGERY
CENTER LIMITED PARTNERSHIP d/b/a
CHARLESTON SURGERY CENTER'S
MOTION TO DISMISS**

FILED
2013 MAR 27 PM 4:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: Beverley C. Moore-Rowe, *pro se* Plaintiff:

Pursuant to S.C.R.C.P. 12(b)(6) and S.C. Code Ann § 15-36-100(E), Defendant
Charleston Surgery Center Limited Partnership d/b/a Charleston Surgery Center (hereinafter

referred to as "This Defendant") moves this Court for an Order dismissing with prejudice all causes of action enumerated within Plaintiff's Complaint.

As grounds for this Motion, the Defendants will show that Plaintiff's Notice of Intent to File Suit¹ is alleging medical malpractice against the Defendant. See Notice of Intent to File Suit, *generally*.

Defendants' Motion to Dismiss is predicated on well-established South Carolina law governing medical malpractice actions, that is compliance with South Carolina's Medical Malpractice Reform Act of 2005 S.C. Code Ann. §15-79-110 *et. seq.* (hereinafter "The Act"), S.C. Code Ann. § 15-36-100, and S.C. Code Ann. § 15-79-125 . The Act applies to this case and controls its disposition.

Failure to Comply with The Act

The Act became effective for all suits alleging medical negligence arising after July 1, 2005. The alleged medical negligence arose on or after November of 2007, therefore Plaintiffs must comply with The Act, including S.C. Code Ann. § 15-36-100, which requires a contemporaneous affidavit from an expert specifying at least one act or omission of Defendants. The statute specifically states "Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100." As it relates to the content of the affidavit, the affidavit "must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. S.C. Code Ann. § 15-36-100(B).

¹ Attached as an exhibit to the Notice of intent to File Suit was a Complaint. To the extent the Complaint was properly filed, this Motion to Dismiss is in response.

Plaintiff failed to comply with the Act as they failed to attach any affidavit to their Notice of Intent to File Suit.

In Rannuci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), reh'g denied (March 15, 2012), the plaintiff filed a notice of Intent to File Suit in a medical malpractice action naming Dr. Crain as a defendant. In her complaint, the plaintiff claimed that due to time constraints she was prevented from contemporaneously filing an affidavit of a medical expert as required by South Carolina Code §15-79-125(A). Id. In response, Dr. Crain filed a motion to Dismiss the Notice of Intent for failing to file an expert witness's affidavit along with her notice. Id. Forty-Five days after filing her notice of Intent to File Suit (and after the defendant filed a motion to Dismiss) the plaintiff supplemented her pleadings with the affidavit of a medical expert. Id. The circuit court dismissed the complaint and the plaintiff appealed.

When, as here, a defendant challenges the requirement of an expert affidavit, the defendant must file a motion to dismiss contemporaneously with its initial responsive pleading alleging, with specificity, the deficiencies of the expert affidavit filed with the Complaint. S.C. Code Ann. § 15-36-100(E). To that end, the Defendant would show that they are healthcare providers to whom this section requires a sufficient affidavit. See S.C. Code Ann. § 15-36-100(G)(9).

Plaintiff's failure to attach an affidavit is a fatal error that warrants a dismissal with prejudice of their Complaint. See Ranucci v. Crain; and Barnes v. Seigler, 2012 U.S. Dist. LEXIS 10523 (D.S.C. Jan. 30, 2012).

Conclusion

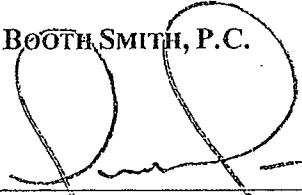
Defendant's Motion is based upon the South Carolina Rules of Civil Procedure, upon the common and statutory laws of South Carolina, and upon a Memorandum of Law to be filed in

support prior to the Motion being called for hearing, and such other and further argument or information as may be properly presented to the Court.

Upon these grounds, the Defendants move the Court to dismiss all causes of action enumerated within Plaintiff's Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action.

Respectfully submitted this 16 day of March, 2013 in Charleston, South Carolina.

HALL BOOTH SMITH, P.C.



Jack G. Gresh, S.C. Bar No. 75188
40 Calhoun Street, Suite 550
Charleston, South Carolina 29401
Phone: (843) 720-3460
Fax: (843) 720-3458
Email: jgresh@hallboothsmith.com

*Attorney for Defendant Charleston Surgery
Center Limited Partnership, d/b/a Charleston
Surgery Center*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th of March, 2013, a true copy of this Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center's Motion to Dismiss was served upon counsel of record by mailing a copy properly addressed with sufficient postage affixed thereto as follows:

Ms. Beverly Moore-Rowe
52 Chadwick Drive
Charleston, SC 29407

Pro Se Plaintiff

Joseph J. Tierney, Jr.
Christine Kent Toporek
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402-0993

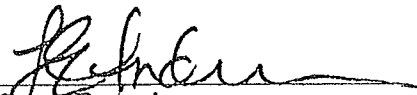
Attorneys for Defendant Bon Secours

Andrew S. Halio
Halio & Halio
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747

Attorney for Defendant Steven Heath Cobb

FILED
2013 MAR 27 PM 4:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

By:


Sarah E. Anderson
Hall Booth Smith, P.C.
40 Calhoun Street, Suite 550
Charleston, SC 29401
Phone: (843) 720-3460
Fax: (843) 720-3458
Email: sanderson@hallboothsmith.com

Legal Assistant to Jack G. Gresh

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

☐ Plaintiff

v.

Bon Secours-St. Francis Xavier Hospital, Inc., D/B/A

Bon Secours St. Francis Xavier Hospital, Et Al.,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-10-00088

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Beverly C. Moore-Rowe, Pro Se, Bar No.

Address:

52 Chadwick Drive, Charleston, SC 29407

phone: 843-763-2599 fax:

e-mail: other:

Defendant's Attorney:

Fred W (Trey) Suggs Iii, Bar No. 70222

Address:

P.O. Box 10529, Greenville, SC 29603

phone: 864-349-2616 fax: 864-349-0303

e-mail: tsuggs@roccassidy.com other:

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

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Dismiss

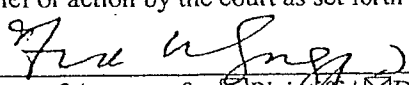
Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 26, 2013

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Beverly C. Moore-Rowe,)
Plaintiffs,)
vs.)
Bon Secours-St. Francis Xavier Hospital,)
Inc., d/b/a Bon Secours St. Francis)
Xavier Hospital, Bon Secours St. Francis)
Hospital and Roper St. Francis Healthcare,)
Bon Secours St. Francis Health System,)
Inc., d/b/a Bon Secours St. Francis Xavier)
Hospital, Bon Secours St. Francis Hospital)
and Roper St. Francis Healthcare, Bon)
Secours Health System, Inc., d/b/a Bon)
Secours St. Francis Hospital and Roper St.)
Francis Healthcare, Roper St. Francis)
Foundation, d/b/a Roper St. Francis)
Healthcare, Bon Secours-St. Francis Health)
System Foundation, Inc. d/b/a Roper St.)
Francis Healthcare, Roper Hospital, Inc.)
d/b/a Roper St. Francis Healthcare. Byron N.)
Bailey, M.D., Christine C. Thompson, M.D.,)
a/k/a Christine Thompson, M.D., Charleston)
Neurosurgical Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA, Charleston)
Surgery Center Limited Partnership, d/b/a)
Charleston Surgery Center, Tammy)
McGraw, CRNA a/k/a Tammy McGraw)
Speicher, CRNA, Nurse Anesthesia of)
South Carolina, LLC, Jeffery S. Wager,)
CRNA, Tricoastal Healthcare Billing and)
Management, Inc., and Steven Heath Cobb,)
Defendants.)

IN THE COURT OF COMMON PLEAS

C. A. No. 2013-CP-10-00088

**DEFENDANTS, BON SECOURS HEALTH
SYSTEM, INC., BON SECOURS ST.
FRANCIS HOSPITAL, AND BON SECOURS
ST. FRANCIS HEALTH SYSTEM
FOUNDATION, INC.'S, NOTICE OF
MOTION AND MOTION TO DISMISS**

[Signature]

JULIE J. ARMSTRONG
CLERK OF COURT

2013 APR -1 AM 11:50

FILED

The Defendants, Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc., hereby move this Court for an order to dismiss this action and show the Court as follows:

FACTS

The Plaintiff, Beverly C. Moore-Rowe, filed a Notice of Intent to File Suit alleging medical malpractice on January 7, 2013, attached hereto as "Exhibit A." Attached as an exhibit to the Notice was also a draft Complaint. The Plaintiff alleges professional negligence/negligence per se related to medical care and treatment provided to her. In her Notice of Intent, the Plaintiff states that an affidavit of an expert witness is not being provided at the time due to time constraints associated with the applicable statute of limitations. She writes, "The Plaintiff is informed and believes that S.C. Code Section 15-36-100 (C)(1) is applicable to enable the Plaintiff to supplement the pleadings with the required affidavit."

ARGUMENT

As acknowledged in the Complaint accompanying the Notice of Intent, this is a medical malpractice lawsuit. South Carolina Code Section 15-79-125 provides the statutory requirements for filing a medical malpractice cause of action. It states as follows: "Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the Plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100." S.C. Code § Section 15-79-125 (A). Because the Plaintiff failed to file an expert affidavit contemporaneously with her Notice of Intent to File Suit, these Defendants respectfully request that this Court dismiss the Plaintiff's Notice of Intent to File Suit and all claims against them.

This motion is based upon the South Carolina Rules of Civil Procedure, the statutory and case law of South Carolina, and any such affidavits, documents, or memoranda that may be filed prior to the hearing on this motion.

(SIGNATURE ON FOLLOWING PAGE)

ROE CASSIDY COATES & PRICE, P.A.



Fred W. Suggs, III (SC Bar No. 70222)

P. O. Box 10529

Greenville, SC 29603

P: (864) 349-2600

F: (864) 349-0303

*Attorneys for Defendants, Bon Secours Health System,
Inc., Bon Secours St. Francis Hospital, Bon Secours St.
Francis Health System Foundation, Inc.*

Greenville, South Carolina

March 25, 2013

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Beverly C. Moore-Rowe

Plaintiff(s)

vs.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia Of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing And Management, Inc., and Steven Heath Cobb,

Defendant(s)

(Please Print)

Submitted By: Beverly C. Moore-Rowe

Address: 52 Chadwick Drive; Charleston, S.C. 29407

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 00088

SC Bar #: Pro Se Plaintiff

Telephone #: 843-763-2599

Fax #:

Other: 843-737-0733

E-mail: excommunicated@comcast.net

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 | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☒ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |

SCCA / 234 (01/2011)

Page 1 of 3

PLAINTIFF'S
EXHIBIT

A

- Inmate Petitions**
- ☐ PCR (500)
 - ☐ Mandamus (520)
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlement (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Pendens (750)
 - ☐ Transfer of Structured Settlement Payment Rights Application (760)
 - ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
 - ☐ Judicial Review (810)
 - ☐ Relief (820)
 - ☐ Permanent Injunction (830)
 - ☐ Forfeiture-Petition (840)
 - ☐ Forfeiture-Consent Order (850)
 - ☐ Other (899)

- Appeals**
- ☐ Arbitration (900)
 - ☐ Magistrate-Civil (910)
 - ☐ Magistrate-Criminal (920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDDOT (950)
 - ☐ Worker's Comp (960)
 - ☐ Zoning Board (970)
 - ☐ Public Service Commission (990)
 - ☐ Employment Security Comm (991)
 - ☐ Other (999)

- Special/Complex/Other**
- ☐ Environmental (600)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Other (699)
 - ☐ Pharmaceuticals (630)
 - ☐ Unfair Trade Practices (640)
 - ☐ Out-of-State Depositions (650)
 - ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
 - ☐ Sexual Predator (610)

Submitting Party Signature: Beverly Moore-Rowe Date: 01/07/2013

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.

FOR MANDATED ADR COUNTIES ONLY

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

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

You are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

vs.

Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours St. Francis Health System,
Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon
Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon
Secours Health System, Inc.,
d/b/a Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St.
Francis Health System Foundation,
Inc., d/b/a Roper St. Francis
Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.,
Charleston Neurosurgical
Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston
Surgery Center, Tammy McGraw,
CRNA, also known as Tammy
McGraw Speicher, CRNA, Nurse
Anesthesia Of South Carolina,
LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing And
Management, Inc., and Steven
Heath Cobb,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 06088

NOTICE OF INTENT TO FILE SUIT

2013 JAN -7 PM 2:38
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

FILED

Defendants)
_____)

THE PLAINTIFF HEREIN, Beverly C. Moore-Rowe (hereinafter referred to herein as the "**Plaintiff**") hereby submits this Notice of Intent to File Suit pursuant to Section 15-79-125 of the South Carolina Code of Laws of 1976, as amended (hereinafter referred to herein as the "**S.C. Code**").

1. **ADVERSE PARTIES.**

1.1 The Defendant, **Bon Secours-St. Francis Xavier Hospital, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Xavier Hospital, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.2. The Defendant, **Bon Secours St. Francis Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours St. Francis Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.3. The Defendant, **Bon Secours Health System, Inc.**, d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, is a Maryland corporation registered to do business in the State of South Carolina. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours Health System, Inc., held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.4. The Defendant, **Roper St. Francis Foundation**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper St. Francis Foundation held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.5. The Defendant, **Bon Secours-St. Francis Health System Foundation, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Bon Secours-St. Francis Health System Foundation, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.6. The Defendant, **Roper Hospital, Inc.**, d/b/a Roper St. Francis Healthcare, is a South Carolina corporation. It operates a hospital in Charleston County, S.C.

At all relevant times, the Defendant, Roper Hospital, Inc. held itself out to the public, including the Plaintiff and her husband, Arthur Peter Rowe, that it was a well-equipped, full service hospital, located at 2095 Henry Tecklenburg Drive, Charleston, SC 29414.

1.7. The Defendant, **Byron N. Bailey, M.D.** is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in neurology.

1.8. The Defendant, **Christine Thompson, M.D.**, also known as Christine C. Thompson, M.D., is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a physician licensed to practice medicine in the State of South Carolina, with special qualifications in anesthesiology.

1.9. The Defendant, **Tammy McGraw, CRNA**, also known as Tammy McGraw Speicher, CRNA, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.10. The Defendant, **Jeffery S. Wager, CRNA**, is a resident of the State of South Carolina, County of Charleston, at all times relevant herein, was a Certified Registered Nurse Anesthetist ("**CRNA**") licensed to practice in the State of South Carolina, with special qualifications in anesthesiology.

1.11. The Defendant, **Charleston Neurosurgical Associates, LLC**, is a South Carolina limited liability company organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional organization organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.12. The Defendant, **Mt. Pleasant Anesthesia Associates, PA**, is a South Carolina Corporation, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.13. The Defendant, **Charleston Surgery Center Limited Partnership**, doing business as Charleston Surgery Center, is a South Carolina Limited Partnership organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.14. The Defendant, **Nurse Anesthesia Of South Carolina, LLC**, is a South Carolina Limited Liability Company, organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.15. The Defendant, **Tricoastal Healthcare Billing And Management, Inc.**, is a South Carolina Corporation organized pursuant to the Laws of the State of South Carolina, with its principal place of business in the County of Charleston and State of South Carolina; and at all times relevant herein, was a professional association organized and existing in the State of South Carolina and doing business in the County of Charleston by and through its agents, contractors, and employees.

1.16. The Defendant, **Steven Heath Cobb** (hereinafter referred to herein as "**Defendant Student**") is a resident of the State of South Carolina, County of Greenville, at all times relevant herein, was a student nurse anesthetist not then licensed to practice as a nurse anesthetist in the State of South Carolina and not then a Certified Registered Nurse Anesthetist, but was at that time a Student Certified Registered Nurse Anesthetist ("**SCRNA**").

2. A SHORT AND PLAIN STATEMENT OF FACTS SHOWING THAT THE PARTY FILING THE NOTICE OF INTENT IS ENTITLED TO RELIEF.

On January 7, 2010, the Plaintiff, Beverly C. Moore-Rowe, was admitted to Bon Secours-St. Francis Xavier Hospital, Inc. ("Defendant St. Francis"), by her physician, Byron N. Bailey, M.D. for anterior cervical spine surgery consisting of anterior cervical discectomy with fusion, as treatment for Plaintiff's neck pain and complaints of bilateral arm numbness and other symptoms.

The Plaintiff met with Tammy McGraw, CRNA ("Defendant McGraw"), the Certified Registered Nurse Anesthetist, and at that time Defendant McGraw introduced the Plaintiff to Steven Heath Cobb ("Defendant Student"), who was then a Student Certified Registered Nurse Anesthetist. Defendant McGraw requested Plaintiff's permission for Defendant Student to observe Plaintiff's Surgical procedure. The Plaintiff never gave any consent or permission whatsoever, verbally, written or otherwise, for the Defendant Student to administer any medical services, including those normally performed by a Certified Registered Nurse Anesthetist, such as the endotracheal intubation of the Plaintiff as patient. Had the Plaintiff been asked for permission to allow Defendant Student to administer the endotracheal intubation, she would have refused to give such permission.

The Plaintiff specifically stated to Defendant McGraw prior to her surgery that she was a singer with the Symphony Gospel Chorus and Symphony and asked her to please protect the Plaintiff's vocal chords, knowing that she would be receiving general anesthesia endotracheal intubation. Plaintiff also asked Defendant McGraw to make certain Plaintiff received sufficient oxygen.

The Plaintiff had also requested that she have an Anesthesiologist and was relieved to know that Christine Thompson, MD ("Defendant Thompson") was the Anesthesiologist for her procedure.

On January 7, 2010, the Defendant Bailey performed the anterior cervical spine surgery (the "Surgery") on the Plaintiff in Defendant St. Francis with Defendant Thompson serving as the Plaintiff's Anesthesiologist, and Defendant McGraw serving as Plaintiff's Certified Registered Nurse Anesthetist and Jeffery S. Wager, CRNA ("Defendant Wager") also serving as Plaintiff's Certified Registered Nurse Anesthetist.

Without the Plaintiff's prior knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff during her Surgery and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff as patient in her surgery.

The Plaintiff remained in the Defendant Hospital from January 7, 2010 through January 10, 2010, at which time she was referred for rehabilitation services through Defendant Hospital, due to difficulties in swallowing and speech.

After the Surgery, the Plaintiff has suffered from serious and permanent injuries including dizzy spells, blocked right ceratoid, hoarseness in her voice, difficulty with speech, shortness of breath, displaced and separated vocal cords, swallowing difficulties, expressive aphasia, burning pain in the right side of tongue, short term memory loss, speech difficulty with word retrieval, fatigue changes in her temperament, and other executive physical function problems, which the Plaintiff, under information and belief, is the result of the Surgery, and in particular, the endotracheal intubation.

The Plaintiff began to inquire her physicians and other physicians to determine the cause of her ailments and injuries that began after her Surgery.

As a result of the Surgery, Plaintiff was caused to undergo additional painful and costly medical exams and procedures and has suffered and continues to suffer the serious and permanent injuries and pain and suffering stated above and mental anguish therefrom.

In addition, attached hereto as Exhibit A, and incorporated herein by specific reference thereto, is a complete copy of the Complaint that sets forth the factual allegations and legal claims, as well as the identity of the Defendants.

3. ANSWERS TO STANDARD INTERROGATORIES

Attached hereto as Exhibit B and incorporated herein by specific reference thereto, are answers to the Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure.

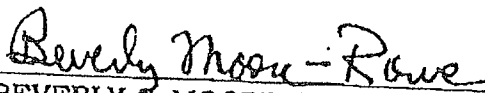
4. AFFIDAVIT OF EXPERT WITNESS.

The Affidavit of the Expert Witness required under S.C. Code Section 15-79-125 is not being provided at this time pursuant to S.C. Code Section 15-36-100(C)(1). The Plaintiff is informed and believes that the applicable statute of limitations on one or more claims alleged in the Complaint, which is attached to this Notice Of Intent to File Suit as Exhibit A, will expire within ten (10) days of the date of the filing of the Complaint, and that due to time constraints, an affidavit of an expert could not be prepared. The Plaintiff is informed and believes that S.C. Code Section 15-36-100(C)(1) is applicable to enable the Plaintiff to supplement the pleadings with the required affidavit.

5: **STANDARD INTERROGATORIES DIRECTED TO DEFENDANTS**

Attached hereto as Exhibit C and incorporated herein by specific reference thereto, are Standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure, directed to each Defendant.

Respectfully submitted by:


BEVERLY C. MOORE-ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733
E-mail: Excommunicated@comcast.net

Charleston, South Carolina
Dated: January 7, 2013

EXHIBIT A

Attached to this Exhibit A is a copy of the Plaintiff's Complaint, which is attached hereto and incorporated herein by specific reference thereto.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Beverly V. Moore-Rowe,)

Plaintiffs,)

vs.)

Bon Secours-St. Francis Xavier Hospital,)
Inc., d/b/a Bon Secours St. Francis)
Xavier Hospital, Bon Secours St. Francis)
Hospital and Roper St. Francis Healthcare,)
Bon Secours St. Francis Health System,)
Inc., d/b/a Bon Secours St. Francis Xavier)
Hospital, Bon Secours St. Francis Hospital)
and Roper St. Francis Healthcare, Bon)
Secours Health System, Inc., d//b/a Bon)
Secours St. Francis Hospital and Roper St.)
Francis Healthcare, Roper St. Francis)
Foundation, d/b/a Roper St. Francis)
Healthcare, Bon Secours-St. Francis Health)
System Foundation, Inc. d/b/a Roper St.)
Francis Healthcare, Roper Hospital, Inc.)
d/b/a Roper St. Francis Healthcare. Byron N.)
Bailey, M.D., Christine C. Thompson, M.D.,)
a/k/a Christine Thompson, M.D., Charleston)
Neurosurgical Associates, LLC, Mt. Pleasant)
Anesthesia Associates, PA, Charleston)
Surgery Center Limited Partnership, d/b/a)
Charleston Surgery Center, Tammy)
McGraw, CRNA a/k/a Tammy McGraw)
Speicher, CRNA, Nurse Anesthesia of)
South Carolina, LLC, Jeffery S. Wager,)
CRNA, Tricoastal Healthcare Billing and)
Management, Inc., and Steven Heath Cobb,)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2013-CP-10-00088

CERTIFICATE OF SERVICE

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 APR -1 AM 11:50

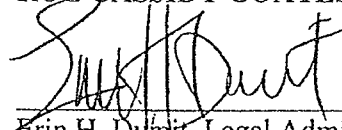
FILED

The undersigned hereby certifies that a copy of the foregoing Defendants, Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc.'s Notice of Motion and Motion to Dismiss was served upon Plaintiff,

Pro Se in the above-entitled action this 28nd day of March, 2013 by depositing the same in an envelope in the United States Mail with sufficient postage thereon, addressed as follows:

Beverly C. Moore-Rowe
52 Chadwick Drive
Charleston, SC 29407

ROE CASSIDY COATES & PRICE, P.A.

A handwritten signature in black ink, appearing to read "Erin H. Dunit", is written over a horizontal line.

Erin H. Dunit, Legal Admin Asst to
Fred W. "Trey" Suggs III, and
Ella S. Barbery

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

☐ Plaintiff,

Versus

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a
Bon Secours St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St. Francis Healthcare,
Bon Secours St. Francis Health System, Inc., d/b/a Bon
Secours St. Francis Xavier Hospital, et al.

☒ Defendants.

check box above indicating submitting party

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 13-CP-10-00088

) DEFENDANT BYRON N. BAILEY, M.D. AND
) CHARLESTON NEUROSURGICAL ASSOCIATES,
) LLC'S NOTICE OF MOTION AND MOTION TO
) DISMISS

Pro Se Plaintiff:

Beverly C. Moore-Rowe
52 Chadwick Dr.
Charleston, SC 29407
Phone: (843) 763-2599; (843) 737-0733
Email: Excommunicated@comcast.net

Defendant's attorney:

Darren K. Sanders, Esquire (S.C. Bar No. 68296)
Buyck & Sanders Law Firm, LLC
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Phone: (843) 377-1400; Fax: (843) 377-1403
Email: dks@buyckfirm.com

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

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Dismiss

Estimated Time Needed: 20 minutes

Court Reporter Needed: YES ☒/ NO ☐

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order –

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendants

4/2/13
Date submitted

SECTION III: Motion Fee

- ☒ PAID – AMOUNT: \$25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE

CODE: _____

DATE: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED-AMOUNT DUE: _____

\\MAINSERVER\Case Files\30.15 Beverly Rowe v. Bailey\Motions & Orders\Motion slip (MTD).doc

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Beverly C. Moore-Rowe,	)	C/A No. 13-CP-10-00088
	)	
Plaintiff,	)	
	)	DEFENDANT BYRON N. BAILEY, M.D.
Versus	)	AND CHARLESTON NEUROSURGICAL
	)	ASSOCIATES, LLC'S NOTICE OF
	)	MOTION AND MOTION TO DISMISS
Bon Secours-St. Francis Xavier Hospital, Inc.,	)	
d/b/a Bon Secours St. Francis Xavier Hospital,	)	
Bon Secours St. Francis Hospital and Roper St.	)	
Francis Healthcare, Bon Secours St. Francis	)	
Health System, Inc., d/b/a Bon Secours St.	)	
Francis Xavier Hospital, Bon Secours St.	)	
Francis Hospital and Roper St. Francis	)	
Healthcare, Bon Secours Health System, Inc.,	)	
d/b/a Bon Secours St. Francis Hospital and	)	
Roper St. Francis Healthcare, Roper St. Francis	)	
Foundation, d/b/a Roper St. Francis	)	
Healthcare, Bon Secours-St. Francis Health	)	
System Foundation, Inc., d/b/a Roper St.	)	
Francis Healthcare, Roper Hospital, Inc., d/b/a	)	
Roper St. Francis Healthcare, Byron N. Bailey,	)	
M.D., Christine C. Thompson, M.D., a/k/a	)	
Christine Thompson, M.D., Charleston	)	
Neurosurgical Associates, LLC, Mt. Pleasant	)	
Anesthesia Associates, PA, Charleston Surgery	)	
Center Limited Partnership, d/b/a Charleston	)	
Surgery Center, Tammy McGraw, CRNA, also	)	
known as Tammy McGraw Speicher, CRNA,	)	
Nurse Anesthesia of South Carolina, LLC,	)	
Jeffery S. Wager, CRNA, Tricoastal	)	
Healthcare Billing and Management, Inc., and	)	
Steven Heath Cobb,	)	
	)	
Defendants.	)	

FILED
2013 APR -3 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT

TO: BEVERLY C. MOORE-ROWE, PRO SE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendants, Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC (hereinafter "these Defendants"), will move the Court in ten days or as soon thereafter as counsel may be heard for an Order dismissing the Notice of Intent to File Suit and all Exhibits attached to the Notice of Intent to File Suit filed in the above-referenced matter pursuant to the South Carolinas Rules of Civil Procedure including Rules 12(b)(1) and

12(b)(6), the Alternative Dispute Resolution Rules, and S.C. Code Ann. Sections 15-79-125 and 15-36-100.

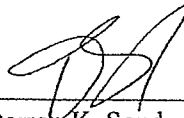
On January 7, 2013, the Plaintiff filed a Notice of Intent to File Suit alleging injuries as a result of medical malpractice against multiple healthcare providers including these Defendants. Exhibit A to the Notice of Intent to File Suit is a Summons and Complaint. This exhibit does not contain a civil action number. All causes of action asserted against these Defendants are alleged to have arisen from medical malpractice. The Notice of Intent to File Suit was not filed contemporaneously with an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-79-125. The mandatory contemporaneous filing requirement has also been established by Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (2012). Exhibit A also did not include an affidavit of an expert witness pursuant to S.C. Code Section 15-36-100.

Given the failure by Plaintiff to comply with the requirements of S.C. Code Ann. Section 15-79-125 by contemporaneously filing an affidavit of an expert witness along with the Notice of Intent to File Suit, the Notice of Intent to File Suit should be dismissed. Furthermore, the Summons and Complaint that is attached as an exhibit to the Notice of Intent to File Suit was not accompanied by an expert affidavit. These Defendants respectfully move the Court for a dismissal of the Notice of Intent to File Suit and all accompanying exhibits.

Additionally, this matter should now be dismissed because the requisite statute of limitations has expired. Furthermore, the Plaintiff's causes of action alleged against this Defendant in the Exhibits to the Notice of Intent to File Suit fail to state a claim upon which relief can be granted. As a result, the Notice of Intent to File Suit and all Exhibits including the Summons and Complaint should be dismissed pursuant to Rules 12(b)(1) and 12(b)(6), SCRPC.

These Defendants reserve the right to submit a memorandum of law at or before the time of the hearing on this motion.

BUYCK & SANDERS LAW FIRM, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 377-1403
Email: dks@buyckfirm.com



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

Attorneys for the Defendants
Byron N. Bailey, M.D. and
Charleston Neurosurgical Associates, LLC

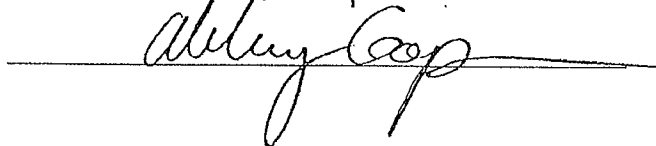
4/2, 2013
Mt. Pleasant, South Carolina

\\MAINSERVER\Case Files\30.15 Rowe v. Bailey\Beverly C. Moore-Rowe\Motions & Orders\MTD.doc

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 2 day of April, 2013.



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

BEVERLY C. MOORE-ROWE)

Plaintiff,)

vs.)

BON SECOURS-ST. FRANCIS XAVIER)
HOSPITAL, INC., d/b/a BON SECOURS ST.
FRANCIS XAVIER HOSPITAL, ETAL)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-00088

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Beverly C. Moore-Rowe, Pro Se, Bar No. _____
Address:
52 Chadwick Drive, Charleston, SC 29407
Phone: 843-763-2599 Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Jonathan Dunlap, Bar No. 73778
Address:
Batten Lee, 4141 Parklake Avenue, Suite 350,
Raleigh, NC 27612
Phone: 919-439-2221 Fax: 919-780-5382
E-mail: jdunlap@battenlee.com Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion to Strike or in the Alternative Motion to Dismiss

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

4-11-13
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69; SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-00088

Beverly C. Moore-Rowe,

Plaintiff,

v.

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, et al.

Defendants.

NOTICE OF MOTION AND
MOTION TO STRIKE OR IN
THE ALTERNATIVE MOTION
TO DISMISS

FILED
13 APR 15 PM 4:25
CLERK OF COURT
J. ARMSTRONG

TO: Beverly C. Moore-Rowe, Pro-Se Plaintiff:

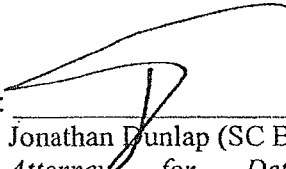
You will please take notice that the Defendants Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, by and through their undersigned counsel, will move the Court to Strike the above referenced action pursuant to S.C. Code Ann. §§ 15-79-125, 15-36-100, as well as Rule 12(f) of the South Carolina Rules of Civil Procedure, and Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), or, in the alternative, a Motion to Dismiss pursuant to the above authorities as well as Rules 12(b)(1), 12(b)(6), and 12(c) of the South Carolina Rules of Civil Procedure.

The basis of said motion is that the Plaintiff has failed to contemporaneously file an affidavit of an expert witness with her Notice of Intent to File Suit or the accompanying exhibits. By statute and by case law, such an omission requires dismissal of the Notice of Intent as well as the accompanying documents. This matter should also

be dismissed because the Plaintiff has failed to support a claim upon which relief can be granted and the requisite statute of limitations has expired.

This the 11th day of April, 2013.

BATTEN LEE PLLC

By: 

Jonathan Dunlap (SC Bar No. 73778)
*Attorney for Defendants Nurse
Anesthesia of South Carolina, LLC,
Jeffery S. Wager, CRNA, Tammy
McGraw, CRNA, also known as Tammy
McGraw Speicher, CRNA*
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612
Telephone: (919) 439-2221
Facsimile: (919) 780-5382

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, properly addressed as follows:

Beverly C. Moore-Rowe, *Pro Se Plaintiff*
52 Chadwick Drive
Charleston, South Carolina 29407

Christine Kent Toporek
Joseph J. Tierney, Jr.
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402-0993

*Attorneys for Defendants Bon Secours-St. Francis
Xavier Hospital, Inc., d/b/a Bon Secours St. Francis
Xavier Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon Secours St.
Francis Health System, Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon Secours St. Francis
Hospital and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon Secours St.
Francis Hospital and Roper St. Francis Healthcare,
Roper St. Francis Foundation, d/b/a Roper St.
Francis Healthcare, Bon Secours-St. Francis
Health System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc., d/b/a
Roper St. Francis Healthcare*

Fred W. (Trey) Suggs, III
Roe Cassidy Coates & Price, P.A.
Post Office Box 10529
Greenville, SC 29603

*Attorneys for Defendants Bon Secours Health
System, Inc., Bon Secours St. Francis Hospital, Bon
Secours St. Francis Health System Foundation, Inc.*

Andrew S. Halio
Halio & Halio
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
Attorneys for Defendant Steven Heath Cobb

2013 APR 15 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT

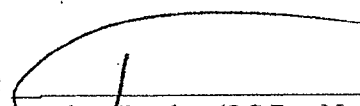
FILED

Jack G. Gresh
40 Calhoun Street, Suite 550
Charleston, SC 29401
*Attorneys for Defendants Charleston Surgery
Center, Charleston Surgery Center Limited
Partnership*

Darren K. Sanders
Hugh W. Buyck
Buyck & Sanders Law Firm, LLC
757 Johnnie Dodds Blvd., Suite 100
Post Office Box 2424
Mt. Pleasant, SC 29465-2424
*Attorneys for Defendants Byron N. Bailey, M.D.
and Charleston Neurosurgical Associates, LLC*

This the 11th day of April, 2013.

BATTEN LEE PLLC

By: 

Jonathan Dunlap (SC Bar No. 73778)
*Attorney for Defendants Nurse
Anesthesia of South Carolina, LLC,
Jeffery S. Wager, CRNA, and Tammy
McGraw, CRNA, also known as Tammy
McGraw Speicher, CRNA*
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612
Telephone: (919) 439-2221
Facsimile: (919) 780-5382

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

2013-CP-10-0088
AFFIDAVIT OF LISA K. SALADIN, PH.D.

PERSONALLY appeared before me Lisa K. Saladin Ph.D., who first being duly sworn, alleges and says:

1. I have personal knowledge of the matters stated herein.
2. I am Dean of the College of Health Professions (CHP) at the Medical University of South Carolina (MUSC). In my capacity as Dean, I am familiar with Steven Heath Cobb's position as an MUSC nurse anesthetist student in CHP, as well as the relationship between MUSC and Bon Secours St. Francis Health System in which MUSC provided student nurse anesthetists to St. Francis for clinical education and experience.
3. MUSC is a "political subdivision" as defined under Section 15-78-30 (h) of the South Carolina Tort Claims Act.
4. At all pertinent times complained of in the Complaint filed by Beverly Moore-Rowe, Case No. 2013-CP-10-88, and in the Notice of Intent to File Suit filed by Arthur Moore, Case No. 2013-CP-10-90, including January 7, 2010, Steven Heath Cobb was an "agent" of MUSC under the terms, provisions, and definitions of the Tort Claims Act.
5. At all times complained of in the Complaint and the Notice of Intent, Steven Heath Cobb was covered by an insurance policy issued by the South Carolina Insurance Reserve Fund with limits in conformity with the damages caps in the South Carolina Tort Claims Act.

Lisa K. Saladin
Lisa K. Saladin

SWORN to before me this 28th
day of March, 2013

Paula C. Butler
Notary Public for South Carolina

My Commission Expires: February 10, 2015

FILED
2013 APR 16 AM 11:45
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
)

Beverly C. Moore-Rowe

CASE NO. 2013-CP-10-00088

☐ Plaintiff(s),
)
)

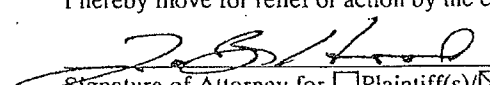
MOTION TO DISMISS

Versus
)
)
)

Bon Secours-St. Francis Xavier Hospital, Inc., at al.

☒ Defendant(s).
)

check box above indicating submitting party

Plaintiff's attorney: Beverly C. Moore-Rowe 52 Chadwick Drive Charleston, SC 29407 Ph: (843) 763-2599 / 737-0733 E: excommunicated@comcast.net		Defendant's attorney: James B. Hood (SC #70212) HOOD LAW FIRM, LLC 172 Meeting Street / P.O. Box 1508 Charleston, SC 29402 P: (843) 577-4435 / F: (843) 722-1630 E: Info@hoodlaw.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Motion to Dismiss</u> Estimated Time Needed: <u>20 Minutes</u> Court Reporter Needed: YES ☒ / NO ☐			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order – I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff(s) / ☒ Defendant(s) <u>4/22/13</u> Date submitted			
SECTION III: Motion Fee			
☒ PAID – AMOUNT: <u>\$25</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ DATE: _____	
CLERK'S VERIFICATION			
Collected by: _____ (print name)			<u>DATE FILED</u>
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED-AMOUNT DUE: _____			

IN THE COURT OF COMMON PLEAS

)

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) C/A No. 2013-CP-10-00088

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pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, at a time and place set by the Court, for an Order dismissing the Plaintiff's Notice of Intent to File Suit on the grounds that Plaintiff failed to comply with the statutory requirements set forth under S.C. Code Ann. §15-79-125 for filing a medical malpractice cause of action.

On January 7, 2013 the Plaintiff filed a Notice of Intent to File Suit alleging medical malpractice against this Defendant and others. The Plaintiff did not contemporaneously file an expert affidavit. In Paragraph 4 of her Notice of Intent, Plaintiff alleges that the applicable statute of limitations would expire within 10 days of filing and, due to such time constraints, an expert affidavit could not be prepared but would be supplemented pursuant to S.C. Code Ann. §15-36-100(C)(1).

LAW/ANALYSIS

"Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100" S.C. Code Ann. §15-79-125(A).

South Carolina Code § 15-36-100 enumerates certain requirements for filing complaints in actions for damages based on professional negligence including subsection B which requires the plaintiff to file an expert affidavit contemporaneously with the complaint. Subsection (C)(1) provides an exception to the contemporaneous affidavit requirement when the applicable statute of limitations will expire within 10 days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert affidavit could not be prepared. Subsection (C)(1) allows the plaintiff 45 days to supplement the complaint with an expert affidavit.

In Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), the Court of Appeals discussed whether the exception to contemporaneously filing an expert affidavit with a complaint found in § 15-36-100(C)(1) applied to § 15-79-125(A) and the filing of a notice of intent. In Ranucci, the plaintiff filed a notice of intent to file suit in a medical malpractice action naming Dr. Crain as a defendant. Id. at 169-170, 723 S.E.2d at 243. The plaintiff's notice of intent claimed that, due to time constraints, she was prevented from contemporaneously filing an expert affidavit as required by §15-79-125(A) and indicated that she would supplement her notice of intent with an expert affidavit within 45 days. Id. at 170, 723 S.E.2d at 243. In response, Dr. Crain filed a motion to dismiss the notice of intent for failing to contemporaneously file an expert affidavit. Id. Subsequently, and within forty-five days of filing her notice of intent to file suit, the plaintiff supplemented her pleading with an expert affidavit. Id.

The issue before the Court of Appeals in Ranucci turned on the proper application of S.C. Code Ann. § 15-79-125 and § 15-36-100. Id. at 175, 723 S.E.2d at 246. The Court found that § 15-36-100 establishes procedures for bringing "suits for professional negligence against professionals in twenty-two different areas, including medical doctors." Id. The Court found that § 15-79-125 establishes pre-litigation requirements for only medical malpractice actions. Id. The Court ultimately held that the two statutes operate independently of one another and § 15-36-100(C)(1) does not allow a plaintiff an exception to § 15-79-125's requirement that an expert affidavit be filed contemporaneously with a notice of intent to file suit. Id. at 178, 723 S.E.2d at 247.

Here, Plaintiff failed to contemporaneously file an expert affidavit with her Notice of Intent to File Suit. Accordingly, her Notice of Intent is improper under § 15-79-125 and must be dismissed. Further, Plaintiff's argument that she is entitled to 45 days to supplement her Notice of Intent with an expert affidavit under §15-36-100(C)(1) is misplaced and directly contradicted by Ranucci.

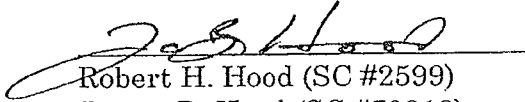
Finally, even if §15-36-100(C)(1) did apply to allow the Plaintiff to supplement her Notice of Intent with an expert affidavit within 45 days of filing, that 45 day time period has expired. Plaintiff filed her Notice of Intent on January 7, 2013. As of the date of this filing, the Plaintiff has not filed an expert affidavit in an attempt to supplement her pleading. The 45 day window has closed and the Plaintiff's Notice of Intent must be dismissed.

CONCLUSION

WHEREFORE, for the reasons set forth above, this Defendants prays for an Order of this court dismissing the Plaintiff's Notice of Intent to File Suit.

This Motion may be supported by applicable law, the arguments of counsel, and any other material the Court may receive.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com


Robert H. Hood (SC #2599)
James B. Hood (SC #70212)
Jeffrey M. Bogdan (SC #76354)

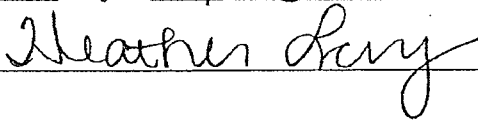
Attorneys for the Defendant
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.

4/22, 2013
Charleston, 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, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 22 day of April, 2013.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BEVERLY C. MOORE-ROWE

Plaintiff,

vs.

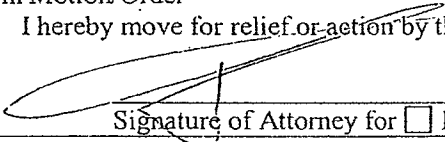
BON SECOURS-ST. FRANCIS XAVIER
HOSPITAL, INC., d/b/a BON SECOURS ST.
FRANCIS XAVIER HOSPITAL, ETAL

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-00088

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Beverly C. Moore-Rowe, Pro Se, Bar No. _____ Address: 52 Chadwick Drive, Charleston, SC 29407 Phone: 843-763-2599 Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Jonathan Dunlap, Bar No. 73778 Address: Batten Lee, 4141 Parklake Avenue, Suite 350, Raleigh, NC 27612 Phone: 919-439-2221 Fax: 919-780-5382 E-mail: jdunlap@battenlee.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Strike or in the Alternative Motion to Dismiss re: Defendants Jeffery S. Wager and Tammy McGraw Speicher			
Estimated Time Needed: _____		Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
		5-28-13	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00			
☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse or Abuse and Neglect			
☐ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	
☐ Other: _____		Date: _____	

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-00088

Beverly C. Moore-Rowe,

Plaintiff,

v.

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, et al.,

Defendants.

**NOTICE OF WITHDRAWAL OF
MOTION TO STRIKE OR IN THE
ALTERNATIVE MOTION TO
DISMISS AS TO DEFENDANTS
WAGER AND SPEICHER ONLY**

FILED
2013 MAY 31 PM 2:00
JULIE J. ARMSTRONG
CLERK OF COURT

TO: Beverly C. Moore-Rowe, Pro-Se Plaintiff:

You will please take notice that the Defendants Jeffery S. Wager, CRNA, and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, hereby withdraw their Motion to Strike or in the Alternative Motion to Dismiss filed on April 15, 2013 and currently scheduled for a hearing on May 31, 2013.

On April 15, 2013, Nurse Anesthesia of South Carolina, LLC and these two Defendants filed a Motion to Strike or in the Alternative a Motion to Dismiss based on the defects in the Plaintiff's Notice of Intent to File Suit. It has recently come to Counsel's attention, however, that there has been insufficient service of process on Defendants Wager and Speicher in this matter. Defendants Wager and Speicher therefore withdraw their motions on the issue of the defects in the Plaintiff's Notice of Intent to File Suit prior to having the issue heard or decided on by the Court, so that they may first bring their jurisdictional objections to the Court's attention. Defendants Wager and Speicher will bring their jurisdictional objections in a separate Motion.

This Notice of Withdrawal does not affect the Motion of Nurse Anesthesia of South Carolina, LLC, who does not contest service and wishes to be heard during the May 31, 2013 hearing on the issue of the Plaintiff's defective Notice of Intent to File Suit.

This the 28th day of May, 2013.

BATTEN LEE PLLC

By: _____

Jonathan Dunlap (SC Bar No. 73778)
*Attorney for Defendants Nurse Anesthesia of
South Carolina, LLC, Jeffery S. Wager, CRNA,
Tammy McGraw, CRNA, also known as Tammy
McGraw Speicher, CRNA*
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612
Telephone: (919) 439-2221
Facsimile: (919) 780-5382

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, properly addressed as follows:

Beverly C. Moore-Rowe, *Pro Se Plaintiff*
52 Chadwick Drive
Charleston, South Carolina 29407

Christine Kent Toporek
Joseph J. Tierney, Jr.
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402-0993

Attorneys for Defendants Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare

Fred W. (Trey) Suggs, III
Roe Cassidy Coates & Price, P.A.
Post Office Box 10529
Greenville, SC 29603
Attorneys for Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, Bon Secours St. Francis Health System Foundation, Inc.

Andrew S. Halio
Halio & Halio
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
Attorneys for Defendant Steven Heath Cobb

FILED
2013 MAY 31 PM 2:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

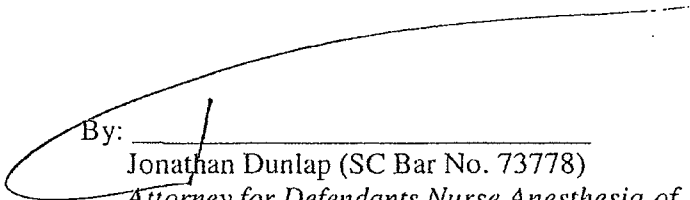
Jack G. Gresh
40 Calhoun Street, Suite 550
Charleston, SC 29401
*Attorneys for Defendants Charleston Surgery Center,
Charleston Surgery Center Limited Partnership*

Darren K. Sanders
Hugh W. Buyck
Buyck & Sanders Law Firm, LLC
757 Johnnie Dodds Blvd., Suite 100
Post Office Box 2424
Mt. Pleasant, SC 29465-2424
*Attorneys for Defendants Byron N. Bailey, M.D.
and Charleston Neurosurgical Associates, LLC*

Robert H. Hood
James B. Hood
Jeffrey M. Bogdan
Hood Law Firm, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
*Attorneys for Defendant Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D.*

This the 28th day of May, 2013.

BATTEN LEE PLLC

By: 

Jonathan Dunlap (SC Bar No. 73778)
*Attorney for Defendants Nurse Anesthesia of
South Carolina, LLC, Jeffrey S. Wager, CRNA,
and Tammy McGraw, CRNA, also known as
Tammy McGraw Speicher, CRNA*
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612
Telephone: (919) 439-2221
Facsimile: (919) 780-5382

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-00088

Beverly C. Moore-Rowe,

Plaintiff,

v.

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, et al.,

Defendants.

MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION TO
STRIKE OR IN THE
ALTERNATIVE MOTION TO
DISMISS

FILED
JAN 31 PM 2:10
CLERK OF COURT
J. ARTHUR STRONG

NOW COMES THE DEFENDANT, Defendant Nurse Anesthesia of South Carolina, LLC, and submits this Memorandum of Law in support of its Motion to Strike or in the Alternative Motion to Dismiss.

BACKGROUND

In 2005, the South Carolina legislature took measures to curb the number of frivolous medical malpractice lawsuits driving up the costs of healthcare in this state. Accordingly, the legislature codified a rule which requires a prospective medical malpractice plaintiff to first have his or her case evaluated by a medical expert and agree that it does actually involve an act of medical negligence. S.C. Code § 15-79-125 and § 15-36-100(B). The expert must be willing to sign an affidavit in support of the case which must be simultaneously filed along with the prospective plaintiff's Notice of Intent to file a malpractice lawsuit. Id.

In this matter, the Plaintiff filed a Notice of Intent to file a medical malpractice action, but she failed to simultaneously file the required Affidavit of Merit from an expert witness. The omission of this Affidavit of Merit requires dismissal of the Notice of Intent

action under S.C. Code § 15-79-125, as clarified in Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), as well as under S.C. R. Civ. P. 12(b)(6) and 12 (f).

RELEVANT FACTS

On January 7, 2013, the Plaintiff filed a Notice of Intent to File Suit alleging medical malpractice against a number of parties, including the above referenced Defendant. In her Notice, the Plaintiff concedes that she did not simultaneously file the Affidavit of Merit as required by S.C. Code § 15-79-125. (Notice of Intent, ¶ 4). Rather, the Plaintiff argues that a companion statute, S.C. Code § 15-36-100(C)(1), allows her to supplement her Notice with the Affidavit of Merit up to 45 days after filing the Notice. Id. Since that time, the Plaintiff has had 141 days to supplement her Notice, and the Plaintiff has failed to do so.

ARGUMENT

The question of law posed here involves the relationship between two different statutes. First is the medical malpractice specific “Notice of Intent” statute, S.C. Code § 15-79-125. This statute requires a prospective plaintiff to file a Notice of Intent prior to filing a formal malpractice lawsuit and then engage in an early resolution process. Id. The Notice of Intent statute *requires*, as a threshold matter, that the plaintiff file an Affidavit of Merit of a medical expert simultaneously with the initiating documents. Id. (“...the plaintiff *shall contemporaneously* file a Notice of Intent to File Suit and an affidavit of an expert witness...”)(emphasis added).

The second statute involved in this matter applies to *all* professional malpractice actions, the “general malpractice statute.” S.C. Code § 15-36-100. This general

malpractice statute also requires an Affidavit of Merit to be filed simultaneously with a *Complaint* in any professional negligence claim. It includes a description of the content of the affidavit as well as procedural instruction concerning non-medical malpractice, professional negligence claims.

The relationship between these two statutes is as follows. The Notice of Intent statute refers to the general malpractice statute for a description of the *content* requirements for a medical malpractice Affidavit of Merit.

Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, **subject to the affidavit requirements established in Section 15-36-100...**

S.C. Code § 15-79-125 (A) (emphasis added). The *content* requirements of the Affidavit of Merit are outlined in § 15-36-100 (A) & (B).

In requesting that the simultaneous filing requirement be waived, the Plaintiff is urging the court to interpret the Notice of Intent's reference to the general malpractice statute to *also* include the *procedural* provisions of the general malpractice statute: specifically § 15-36-100 (C) which would allow her 45 days of additional time to file the Affidavit of Merit. The reference in the Notice of Intent statute, however, is restricted to the *content* parts and not the *procedural* parts of the general malpractice statute. The court of appeals has clarified this specific point in the case of Ranucci v. Crain, infra.

1. The Notice of Intent statute does not incorporate the extension of time provided in the general malpractice statute according to the court in Ranucci v. Crain

The Plaintiff's premise is that the Notice of Intent statute's reference to the general malpractice statute contemplates more than a reference to the *content* requirements of the Affidavit of Merit. She urges that this reference also includes a

procedural element of the general malpractice statute, listed under § 15-36-100 (C), which allows for an extension of time to file the Affidavit of Merit. This extension of time provision provides a plaintiff 45 extra days to supplement with an Affidavit of Merit where, due to time constraints and an impending statute of limitations, the Affidavit could not be prepared on time.

The court of appeals has recently rejected precisely this argument in Ranucci v. Crain, 397 S.C. 168, 169, 723 S.E.2d 242 (Ct. App. 2012), reh'g denied (Mar. 15, 2012). The plaintiff in Ranucci filed a medical malpractice Notice of Intent but failed to file the required expert affidavit until 45 days later. Id. 397 S.C. at 243, 723 S.E.2d at 170. The plaintiff in Ranucci, just like the Plaintiff here, argued that the Notice of Intent statute's reference to the general malpractice statute also included the general malpractice statute's timing provisions listed under subparagraph C. The court of appeals in Ranucci, however, unambiguously rejected this argument.

...[T]he legislature clearly intended the two statutes to operate independently of one another and in distinct time frames, with the specific exception that they share the criteria for preparing affidavits of expert witnesses....The affidavit requirements invoked by section 15-79-125 govern only authorship and content. **They do not permit a potential plaintiff to file her expert witness's affidavit after she files her Notice of Intent to File Suit.**

Id., 397 S.C. at 177-78, 723 S.E.2d at 247. (Emphasis added).

The Ranucci case is directly on point with the issue presented here. Simply stated, a medical malpractice Affidavit of Merit *must be filed simultaneously* with a Notice of Intent, no exceptions. Id. Because the Plaintiff did not file her expert's affidavit simultaneously with her Notice of Intent, the Court should dismiss her Notice of Intent in accordance with the court's holding in Ranucci.

2. Even if the Notice of Intent statute does incorporate by reference the extension of time of the general malpractice statute, the Plaintiff has not met the extension provided.

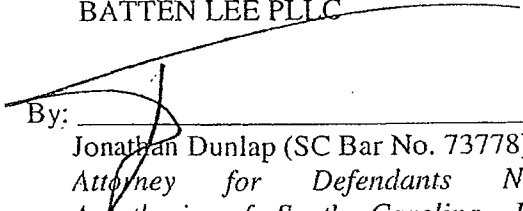
In the alternative, even if the Court does find the Plaintiff is entitled to the extension of time she claims, her action must still be dismissed. The extension of time described in §15-36-100 would only provide the Plaintiff with 45 days to supplement her Notice of Intent to File Suit with an Affidavit of Merit. The Plaintiff filed her Notice of Intent on January 7, 2013. Her alleged 45 day grace period would have expired on February 21, 2013. The Plaintiff is well beyond this date but has not supplemented her Notice of Intent with an Affidavit of Merit. Accordingly, the Court must dismiss the Plaintiff's Notice of Intent to file suit.

CONCLUSION

The Plaintiff in this matter has not complied with the legislatively mandated requirement to file an Affidavit of Merit of an expert physician simultaneous with her Notice of Intent action. Her claim that she is entitled to an extension of time is directly refuted by the court in Ranucci. Even if she were entitled to an extension of time, she is beyond the 45 days provided by statute to perfect her filing. Accordingly, the Defendant respectfully moves this Court to dismiss this action.

This 28th day of May, 2013

BATTEN LEE PLLC

By: 

Jonathan Dunlap (SC Bar No. 73778)
Attorney for Defendants Nurse
Anesthesia of South Carolina, LLC,

*Jeffery S. Wager, CRNA, Tammy
McGraw, CRNA, also known as Tammy
McGraw Speicher, CRNA*
4141 Parklake Ave
Suite 350
Raleigh, NC 27612
Telephone: (919) 439-2221
Facsimile: (919) 780-5382

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, properly addressed as follows:

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Charleston, South Carolina 29407

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Joseph J. Tierney, Jr.
Young Clement Rivers, LLP
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Charleston, SC 29402-0993

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Xavier Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon Secours St.
Francis Health System, Inc., d/b/a Bon Secours St.
Francis Xavier Hospital, Bon Secours St. Francis
Hospital and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon Secours St.
Francis Hospital and Roper St. Francis Healthcare,
Roper St. Francis Foundation, d/b/a Roper St.
Francis Healthcare, Bon Secours-St. Francis
Health System Foundation, Inc., d/b/a Roper St.
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Roper St. Francis Healthcare*

Fred W. (Trey) Suggs, III
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FILED
2013 MAY 31 PM 2:10
CLERK OF COURT
BY J. ARMSTRONG

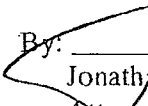
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*Attorneys for Defendant Christine C. Thompson,
M.D., a/k/a Christine Thompson, M.D.*

This 28 day of May, 2013.

BATTEN LEE PLLC

By:  _____
Jonathan Dunlap (SC Bar No. 73778)
*Attorney for Defendants Nurse
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Jeffery S. Wager, CRNA, Tammy
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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Beverly C. Moore,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-CP-10-0088
	)	
Bon Secours - St. Francis Xavier	)	
Hospital, <i>et al</i>	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 31, 2013, before The Honorable R. Markley Dennis, Jr. in Courtroom 3E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Beverly Moore-Rowe
Mr. Rowe

.... Appearing *Pro Se*

Jeff Bogdan, Esq.
HOOD LAW FIRM

Andrew Halio, Esq.
HALIO LAW FIRM

Jonathon Dunlap, Esq.
BATTEN LEE LAW FIRM

Trey Suggs, Esq.
ROE CASSIDY

...Appearing for Defendants

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: The next one is another
2 Motion to dismiss, Rowe-Moore versus Bon
3 Scours.

4 All right, if everyone will -- are you
5 Beverly Moore-Rowe?

6 MS. ROWE: Rowe.

7 THE COURT: Rowe. I'm sorry. Excuse
8 me for mispronouncing your name. I
9 apologize, Ms. Rowe. You are the plaintiff
10 in this matter?

11 MS. ROWE: I am.

12 THE COURT: Thank you, ma'am.
13 Okay, all of y'all identify yourself --
14 there are multiple defendants?

15 MR. BOGDAN: Yes, Your Honor. I'm
16 Jeff Bogdan from the Hood Law Firm. I
17 represent Christine Thompson, M.D. There
18 have been numerous defendants served in
19 this case.

20 THE COURT: Okay.

21 MR. BOGDAN: We all have similar
22 Motions.

23 THE COURT: So they are Motions to
24 Dismiss?

25 MR. BOGDAN: Right.

1 THE COURT: And they look to be based
2 on -- well, just glancing at the first
3 memorandum -- based on some technical
4 issues, filings that are required.

5 MR. BOGDAN: Correct.

6 THE COURT: So it is based on the
7 pleadings alone?

8 MR. BOGDAN: Correct. And there could
9 be some unique arguments but ---

10 THE COURT: Oh, I understand that.
11 But the statute requires certain things to
12 be done, as well, which would not require
13 me to go outside the pleadings themselves.

14 MR. BOGDAN: Correct. So we have
15 decided amongst ourselves that I am going
16 to take the lead ----

17 THE COURT: That will be fine.

18 MR. BOGDAN: --- and argue for every-
19 body. Then if anybody has anything to add,
20 they'll get up and do that.

21 THE COURT: All right. Ms. Rowe,
22 what I'm going to do is I'm going to hear
23 all the parties at one time. They are
24 similar in nature. Then at the end of
25 that, I will give you an opportunity to

1 respond to that.

2 MS. ROWE: Thank you.

3 THE COURT: You are very welcome.
4 Please proceed. Thank you. Whomever.

5 MR. BOGDAN: Your Honor, this is
6 actually two separate actions that were
7 filed, one by Ms. Beverly Moore-Rowe and
8 one by her husband, I believe that it's
9 Peter Rowe -- or Arthur Rowe.

10 Both are based on medical malpractice,
11 a cervical spine surgery that was performed
12 January 7th, 2010.

13 Beverly Moore-Rowe filed her Notice of
14 Intent exactly three years later, January
15 the 7th, 2013. She did not attach an expert
16 affidavit. Your Honor, clearly Rule 15-79-
17 125 says that an expert affidavit has to be
18 filed contemporaneously with a Notice of
19 Intent.

20 In her Notice of Intent she did argue
21 that Section 15-36-100 allowed her an
22 exception to supplement ---

23 THE COURT: Which is ---

24 MR. BOGDAN: Actually to supplement
25 her affidavit at a later time ---

1 THE COURT: I gotcha.

2 MR. BOGDAN: --- to add an expert's
3 affidavit.

4 THE COURT: That's right.

5 MR. BOGDAN: The plain language of
6 15-79-125 says that the affidavit has to be
7 filed contemporaneously. Since an expert's
8 affidavit was not filed contemporaneously,
9 we have moved to dismiss the Notice of
10 Intent.

11 THE COURT: Okay.

12 MR. BOGDAN: The exception in 15-36-
13 100 does not apply. That section addresses
14 what has to be included in that expert
15 affidavit, and specifically says that that
16 expert affidavit has to be filed
17 contemporaneously with a Complaint, not a
18 Notice of Intent in med mal case.

19 The Court of Appeals has addressed
20 this very issue in *Renuchi* ---

21 THE COURT: Yeah.

22 MR. BOGDAN: --- and found that
23 exception did not apply to the Notice of
24 Intent.

25 THE COURT: That's correct.

1 MR. BOGDAN: Your Honor, for those
2 reasons all of the defendants move to
3 dismiss Beverly Moore-Rowe's Notice of
4 Intent in this case.

5 THE COURT: Okay.

6 MR. BOGDAN: As to her husband,
7 he actually filed a Complaint, not a Notice
8 of Intent. The Complaint is for loss of
9 consortium based on the underlying alleged
10 medical negligence.

11 THE COURT: Okay.

12 MR. BOGADN: Your Honor, that --
13 since it is a medical negligence case, it
14 had to be preceded by a Notice of Intent
15 pursuant to the statute. It was not
16 preceded by a Notice of Intent. Therefore
17 the Complaint was not properly filed.

18 Secondly, even if there was no
19 requirement for the Notice of Intent, he
20 would have had to file an expert affidavit
21 with his Complaint, which -- as with his
22 wife's, there was no expert affidavit
23 attached to his Complaint. Therefore, his
24 Complaint also must be dismissed along with
25 his wife's Notice of Intent.

1 THE COURT: Thank you, sir. Does
2 anyone else wish to supplement the
3 argument?

4 MR. HALIO: Your Honor, ---

5 THE COURT: Mr. Halio?

6 MR. HALIO: I represent MUSC. We're
7 in a slightly different position than the
8 private position, but it is our contention
9 that there is nothing in the frivolous
10 civil proceedings actions statute that
11 exempts the requirement of filing of an
12 affidavit when you bring a medical
13 malpractice action against MUSC. So we
14 would join in the Motion.

15 We also have provided the Court with
16 an affidavit indicating that Steven Heath
17 Cobb, who is the student registered nurse
18 anesthetist who has been sued in this case
19 is subject to the -- is covered by the
20 South Carolina Tort Claims Act, under the
21 definition of the Tort Claims Act is
22 considered to be an employee or agent of
23 MUSC at the time. If the Court were to
24 decide not to dismiss it based on the
25 failure to file the Affidavit and with the

1 naming of the wrong entity, we would
2 suggest that MUSC would have to be
3 substituted for Mr. Cobb. Thank you, Your
4 Honor.

5 THE COURT: Thank you. Anyone else?

6 MR. DUNLAP: Very briefly.

7 THE COURT: Yes?

8 MR. DUNLAP: Your Honor, for the
9 record, I am Jon Dunlap with the law firm
10 of Batten Lee. I am here today in this
11 hearing only on behalf of Nurse Anesthesia
12 South Carolina, LLC.

13 While we do represent Jeffrey S. Wager
14 and Tammy McGraw Speicher, we are not
15 appearing on their behalf in this hearing,
16 because it is our position that they have
17 not been properly served.

18 THE COURT: Okay. All right. Thank
19 you. Anyone else?

20 MR. SUGGS: Judge, I am Trey Suggs.
21 I am here on behalf of Bon Secours Health
22 System, Bon Secours St. Francis Xavier
23 Hospital, and Bon Secours Health System
24 Foundation, Inc. We join in the arguments
25 that have already been made. Thank you,

1 Your Honor.

2 THE COURT: All right. Thank you.
3 All right. Mr. and Mrs. Rowe, I will be
4 happy to hear from you now.

5 MS. ROWE: Judge Dennis, is it okay
6 if I sit?

7 THE COURT: It is certainly okay.

8 MS. ROWE: Thank you very much.

9 THE COURT: You're welcome.

10 MS. ROWE: I brought some documents.
11 The first one that I am going to present is
12 the consent for surgery. There was nothing
13 in the Consent that allowed any information
14 to tell me that they were going to allow a
15 student nurse ---

16 THE COURT: Ma'am, this is critical.
17 That may at certain stages will have,
18 certainly, some relevance but it doesn't
19 have anything to do today with the Motion
20 that is pending.

21 MS. ROWE: Okay.

22 THE COURT: The Motion that is
23 pending is a very technical Motion that --
24 it is really a legal issue. As counsel has
25 cited -- I've read the case on numerous

1 times, Oddly enough in the last six
2 months, I think that I have had two where I
3 have had to dismiss them because the case
4 that he cited says exactly that. There is
5 not -- in fact it was -- I think in that
6 case that they later did obtain an
7 affidavit but the Court said "no." You
8 have to strictly comply with the statute.
9 The Legislature has set forth what had to
10 be done, and it can't be waived.

11 MS. ROWE: Okay. Your Honor, ---

12 THE COURT: That is what we have to
13 address.

14 MS. ROWE: --- the Legislature has
15 established a law that makes it almost
16 impossible for a regular citizen to make a
17 medical malpractice case regardless of
18 their injuries, because of the twenty to
19 thirty thousand dollar payout that has to
20 go to pay an expert witness.

21 THE COURT: Oh, I'm -- Ma'am, I --
22 I practiced law for twenty-one years and I
23 did some medical malpractice. I am well
24 aware of the expense of a plaintiff's case.
25 I am well aware of the difficulty of

1 bringing a case. The Legislature chose to
2 do that, not just for the medical
3 profession but -- this, I think, applies
4 strictly to the medical profession. But
5 from the standpoint of -- the affidavit
6 really applies to any professional lawsuit,
7 as I understand it.

8 The reason for that -- that is not
9 anything new. Do you know that South
10 Carolina is really kind of on the tail-end
11 for that one? North Carolina has had that
12 in place for years, because I had a clerk
13 years ago that took the Bar in North
14 Carolina, as well, and that's -- that's
15 been the requirement to bring a medical
16 malpractice in North Carolina for a long
17 time. It's a logical thing, because it's
18 critical -- except in very limited areas,
19 you have to have an expert. As a lawyer,
20 I never filed a Complaint until I had one.
21 You just -- you just can't. You just can't
22 afford to.

23 So I appreciate your position and your
24 frustration but, unfortunately, that
25 doesn't persuade ---

1 MS. ROWE: In negligence, *per se*, my
2 understanding was that you could bring a
3 case without ---

4 THE COURT: In negligence *per se*
5 there is a limited exception, or common
6 knowledge perception, maybe. But even then
7 you still can't get by the problem that you
8 have with respect to what the Court has
9 said. You have to file it. In this case,
10 I don't think that it's going to be common
11 knowledge, from what I've read. So ---

12 MS. ROWE: I tried to get an
13 affidavit of merit and I tried to get a
14 medical expert and I was unable to do that.

15 THE COURT: Thank you, ma'am. And,
16 Mr. Rowe, you have don't have an affidavit
17 with yours either, sir?

18 MS. ROWE: He's not going to be able
19 to hear. He's almost totally deaf.

20 THE COURT: Well, he doesn't have an
21 affidavit. Based on the statements and
22 arguments and the memoranda submitted and
23 the affidavits, I am granting the Motion to
24 Dismiss. If you will prepare the
25 appropriate Order, each client, I will be

1 happy to sign them.

2 Good luck to you, ma'am. You have a
3 right to appeal this. Once the Order is
4 served upon you, you have thirty days in
5 which to file your Notion of Intent to
6 appeal.

7 MS. ROWE: Thank you very much.

8 THE COURT: Thank you, Ms. Rowe. Have
9 a great day.

10 MS. ROWE: I hope you do, too.

11 THE COURT: Thank you.

12 MR. BOGDAN: You want separate Orders
13 from everybody?

14 THE COURT: I will defer to y'all.
15 If one can incorporate it, I don't have a
16 problem with one covering -- I will let
17 y'all decide what you want to do among
18 yourselves. Thank you very much. Y'all
19 have a great day.

20 MR. SUGGS: Thank you, Judge.

21 THE COURT: Yes, sir. Thank you all.

22 (HEARING CONCLUDED)

23

24

25

Page 138 of 166



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

R. Markley Dennis, Jr.
Judge

2013-CP-10-0088

FILED
2013 JUN 18 AM 10:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY *ASB*

Post Office Box 1800
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mdennisj@sccourts.org

June 13, 2013

Beverly C. Moore-Rowe
52 Chadwick Drive
Charleston, SC 29407

RE: Beverly C. Moore-Rowe vs. Bon Secours-St. Francis Xavier Hospital, Inc., et al
2013-CP-10-0088
Arthur Peter Rowe vs. Bon Secours-St. Francis Xavier Hospital, Inc., et al
2013-CP-10-0090

Dear Ms. Moore-Rowe,

I am in receipt of your correspondence mailed to my attention on May 25, 2013. I must advise you that despite the fact that your letter is marked personal and confidential, it is still considered ex parte communication with the Court and must be shared with all involved parties.

By copying this correspondence to the Charleston County Clerk of Court, I am asking them to please file this letter and your attached correspondence with the above referenced cases. Please note that I am also copying all counsel of record.

Cordially,

Kamila Szymczynska-Sas
KSS/

Enclosure: Correspondence from Beverly C. Moore-Rowe mailed 5/25/13

Cc: Charleston County Clerk of Court ✓
Jonathan Hopkins Dunlap
Jack G. Gresh
Andrew S. Halio
James Bernard Hood

Darren Kent Sanders
Fred W. Suggs, III
Christine Kent Toporek

Beverly C. Moore-Rowe
52 Chadwick Drive
Charleston, S.C. 29407
(843) 737-0733

PERSONAL & CONFIDENTIAL

Kamila Czymczynska-Sas, Law Clerk
The Honorable Judge Markley R. Dennis, Jr.
P.O. Box 1800
Moncks Corner, S.C. 29461

RE: Request for Recusal to Hear Motions

Plaintiffs: Beverly C. Moore-Rowe ("Beverly") & Arthur Peter Rowe ("Peter")

Beverly C. Moore-Rowe vs. Bon Secours-St Francis Xavier Hospital, Inc.,
et al

Charleston County Civil Action No.: 2013-CP10-00088;

Arthur Peter Rowe vs. Bon Secours-St Francis Xavier Hospital, Inc., et al
Charleston County Civil Action No.: 2013-CP10-00090

Dear Ms. Czymczynska-Sas:

I understand that I must not communicate directly with the Honorable Judge Dennis except in Court. This is an extremely sensitive matter that must be communicated discreetly and I am not aware of any other way to do so other than through this letter. My husband, Peter and I are the Plaintiffs in the above-referenced actions filed in the Court. I am informed that Judge Dennis is scheduled to hear the Motions in these matters on May 31, 2013. With all due respect for Judge Dennis, I am respectfully requesting that Judge Dennis please recuse himself in these proceedings. I am making this request based upon information provided to me by attorneys, who previously represented me in legal proceedings that were brought before Judge Dennis as Judge.

I had become aware of certain improprieties taking place at my Church. When I attempted to bring it to the attention of the Church, the Church officials excommunicated me. I thereafter commenced my own Lawsuit against the Church, [**"Beverly Christine Moore v. Holy Trinity Church, The Protestant Episcopal Church in the Diocese of South Carolina, The Protestant Episcopal Church, AKA The Episcopal Church USA and The Foreign And Domestic Missionary Society, Charleston County Ninth**

Circuit Court of Common Pleas 2007-CP-10-243]. I thereafter hired Geoffrey H. Waggoner, Esquire and his offices.

My motivation for bringing the lawsuit was not to benefit myself financially. My goal was to expose the improprieties and to prevent the offenders from repeating their offenses. I was aware that the Church's goal was to keep the improprieties private. The church officials intended to continue providing a safe harbor for the perpetrator, as they had apparently done for decades. I feared for future victims, knowing that such offenders tend to repeat their offenses and I wanted them stopped.

I realize that the awards in most civil lawsuits are limited to financial recoveries. A criminal case was proceeding in this matter as well. One of my Attorneys, Geoffrey Waggoner, did state in correspondence to me that the Attorneys must be in charge of the manner in which the litigation is handled. I did make it clear to them however that I wanted to be present for all Hearings and conferences. Later I discovered that my attorneys did not honor my wishes.

I felt I was unreasonably pressured into agreeing to mediation and thereafter threatened by my Attorneys, when they informed me that they would withdraw as my Attorneys, if I did not agree to go to mediation accept the decisions, and their purposed outcome of the mediation. I realized that I could not proceed to trial without legal representation. The end result was a settlement with me as the Plaintiff receiving a net amount of approximately \$70,000.00, which I have always been reluctant to touch. I was told by my attorney's that the only thing that would be sealed was the dollar amount of the settlement.

I was extremely upset when my Attorneys informed me that the record was sealed and that I was prohibited from publicly speaking about the matter. I was not told of this hearing in which the records were supposedly sealed until after the mediation and settlement was agreed upon by my attorneys. My very purpose for bringing the lawsuit was to prevent further offenses by the same offenders. My purpose had been frustrated. The perpetrator is no longer at Holy Trinity. He did move on but he just went across the bridge to James Island, where he now attends St James Episcopal Church. According to the Priest he has been welcomed as a "repented sinner."

When I met with my Attorneys at their offices for final settlement, they informed me that I was not allowed to remove any of the files' contents from the offices, because Judge Dennis had sealed the Church's discovery records under a "**Protective Order**". This was the first time that my Attorneys informed me of the Hearing and their receipt of any of the Church's secrete

records(Interrogatories for Discovery). I had requested to see the Church records but my Attorneys denied me access stating that special permission must be obtained from the Court. I was eventually allowed to view the Church records in my attorney's offices on September 24, 2008, but only after I signed an Agreement not to disclose them. My Attorneys informed me that I would be in contempt if I revealed the contents.

One of my Attorneys informed me that she had been present in the Courtroom when "Judge Dennis", acting on his own volition, sealed the records and then recused himself after sealing the records. She also disclosed to me that "Judge Dennis's son would be working for Nexsen Pruet", the Law Firm that was defending the Church, which was the reason for his recusal. When I inquired about the "Protective Order" sealing the case, my Attorney informed me that Judge Dennis had issued that Order sealing the case on his own volition. Based upon what my Attorney informed me, I lost confidence in the integrity of our Judicial System, the Judicial Process and in Judge Dennis. My Attorney's statements about the Hearing and the Court's action sealing the record convinced me that Judge Dennis had a conflict of interest in my proceedings or was simply acting impartially to my detriment.

The Office of the Clerk of Court has never been able to provide me with a copy of the Protective Order signed by Judge Dennis. The only Protective Order on file is a certain Order issued by the Honorable Judge Roger Young on October 12, 2008, which appears to be a Consent Order issued at the end of the case. The cover letter to the Honorable Judge Roger Young dated October 8, 2008 from Nexsen Pruet indicates the Order to be a proposed Confidentiality Order to which all counsel had consented. My attorneys never told or included me in the decision to seal these records. A copy of that letter and Order are enclosed. In addition, on September 19, 2008, a Stipulation of Dismissal was filed with the Court informing the Court that the Parties had resolved the case.

I was so disappointed in the way that the record was sealed, that I refused to retrieve the check from the Waggoner Law Firm. When my former Attorneys began contacting me about the check, I eventually accepted it but I have been reluctant to touch the funds.

When a request was made for a copy of the Protective Order signed by Judge Dennis in my case, the Waggoner Law Firm provided a copy of the enclosed Order signed by the Honorable Judge Roger Young.

I trusted my Attorneys and believed that they would be honest and truthful with me. Accordingly, I have always wanted to ask Judge Dennis why he

chose to issue an Order sealing the record on his own volition especially in light of the fact that child sex abuse in a church, would be of public interest, because it involves the safety of children, and children in a church.

Due to Judge Dennis being the Judge assigned to hear the Motions in these proceedings, I am compelled to bring this matter to the Judge's attention. Based upon the information previously provided to me by my Attorneys in the prior proceedings, I am afraid to appear before Judge Dennis as a party litigant in any legal proceedings. If Judge Dennis did not issue an Order sealing the record in my prior proceedings on his own volition, then both Judge Dennis and I have been greatly wronged and I apologize to Judge Dennis. In any event, I apologize to the Court and to Judge Dennis for having to bring this matter to the attention of the Court at this time.

Under the circumstances, I thought it best to inform you of my concerns and fears and allow you to communicate with Judge Dennis and give him the opportunity to recuse himself from these proceedings and possibly inquire as to the former proceedings.

Thank you for your consideration in this matter.

With kind regards, I am

Sincerely yours,

Beverly C. Moore-Rowe

Beverly C. Moore-Rowe

Beverly Moore - Rowe
52 Chadwick Dr
Charleston SC 29407

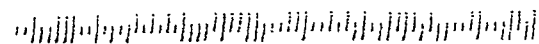
CHARLESTON SC 294

25 MAY 2013 PM 2 L



Kamila Czymczynska - Sec, Law Clerk
The Honorable Judge Markley R. Dennis, Jr.
PO Box 1800
Monks Corner, SC 29461

2946181800



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

HONORABLE R. MARKLEY DENNIS, JR.
CIRCUIT COURT JUDGE

CASE NO. 2013-CP-10-00088

FILED
2013 AUG -2 PM 12:42
JULIE L. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

BEVERLY C. MOORE-ROWE Plaintiff/Appellant,

vs.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC.; D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; ROPER ST. FRANCIS FOUNDATION; D/B/A ROPER ST. FRANCIS HEALTHCARE; BON SECOURS-ST FRANCIS HEALTH SYSTEM FOUNDATION, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; ROPER HOSPITAL, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; BYRON N. BAILEY, M.D.; CHRISTINE C. THOMPSON, M.D., A/K/A CHRISTINE THOMPSON, M.D.; CHARLESTON NEUROSURGICAL ASSOCIATES, LLC; MT. PLEASANT ANESTHESIA ASSOCIATES, PA; CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, D/B/A CHARLESTON SURGERY CENTER; TAMMY MCGRAW, CRNA, ALSO KNOWN AS TAMMY MCGRAW SPEICHER, CRNA; NURSE ANESTHESIA OF SOUTH CAROLINA, LLC; JEFFERY S. WAGER, CRNA; TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC.; AND STEVEN HEATH COBB Defendants/Respondents,

NOTICE OF APPEAL

Beverly C. Moore-Rowe, the Appellant herein, appeals the Order of the Honorable Judge R. Markley Dennis, Jr., filed with the Clerk of Court for

Charleston County on July 3, 2013, dismissing the lawsuit of the Appellant. The Order was postmarked as mailed on July 3, 2013. The Appellant received the Order on Saturday, July 6, 2013.

Beverly C. Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se
Plaintiff/Appellant
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733

Charleston, South Carolina

Dated: August 1, 2013

Legal Counsel of Record:

Darren Kent Sanders, Esquire
Buyck & Sanders Law Firm, LLC
P.O. Box 2424
Mount Pleasant, S.C. 29465-2424
Attorney for Defendants/Respondents: Byron N. Bailey, M.D. and Charleston
Neurosurgical Associates LLC
Telephone: (843) 377-1400
E-mail: dks@buyckfirm.com

Fred W. Suggs, III, Esquire
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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Fax: (864) 235-4754
E-mail: fred.suggs@odnss.com
Attorney for Defendant/Respondents: Bon Secours Health Systems, Inc.,
Bon Secours St. Francis Health System Foundation, Inc., Bon Secours St.
Francis Health System, Inc., Bon Secours St. Francis Healthcare, Bon
Secours St. Francis Hospital, Roper St. Francis Healthcare, Bon Secours St.
Francis Xavier Hospital,

Jack Gordon Gresh, Esquire
Hall, Booth, Smith & Slover, P.C.
40 Calhoun Street, Suite 550
Charleston, S.C. 29401
Telephone (843) 883-7412
E-mail: jgresh@hbss.net
Attorney for Defendants/Respondents: Charleston Surgery Center &
Charleston Surgery Center Limited Partnership

Andrew Steven Halio, Esquire
Halio & Halio, PA
PO Box 747
Charleston S.C. 29402-0747
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Attorney for Defendant/Respondent, Steven Heath Cobb

Jonathan Hopkins Dunlap, Esquire
Batten Lee, PLLC
4141 Parklake Avenue; Suite 350
Raleigh, N.C. 276120
Telephone: (919) 439-2231
E-mail: jdunlap@battenlee.com
Attorney for Defendants/Respondents: Tammy McGraw, CRN also known as
Tammy McGraw Speicher, CRN, Nurse Anesthesia Of South Carolina, LLC,
and Jeffery S. Wager, CRN.

John Anthony Dunlap, Esquire
Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C.
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PO Box 1508
Charleston S.C. 29402-1508
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E-mail: james.hood@hoodlaw.com
Attorney for Defendant/Respondent: Christine C. Thompson, M.D., also
known as Christine Thompson, M.D.

Christine Kent Toporek, Esquire
PO Box 993
Charleston, S.C. 29402
Telephone: (843) 720-5402
E-mail: ctoporek@ycrlaw.com
Attorney for Defendants/Respondents: Tricoastal Healthcare Billing And
Management Inc.; Bon Secours St. Francis Xavier Hospital, Inc., d/b/a/ Bon
Secours St. Francis Xavier Hospital and Roper St. Francis Healthcare; Roper
St. Francis Foundation, d/b/a Roper St. Francis Healthcare and Roper
Hospital, Inc., d/b/a Roper St. Francis Healthcare

Mt. Pleasant Anesthesia Associates, P.A.
Charles Weinheimer, M.D., Registered Agent
c/o East Cooper Regional Medical Center
1200 Johnnie Dodds Boulevard
Mount Pleasant, S.C. 29464

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

HONORABLE R. MARKLEY DENNIS, JR.
CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2013-CP-10-00088

FILED
2013 AUG -2 PM 12:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

BEVERLY C. MOORE-ROWE,..... Plaintiff/Appellant,

vs.

BON SECOURS-ST. FRANCIS XAVIER HOSPITAL, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS ST. FRANCIS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS XAVIER HOSPITAL, BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; BON SECOURS HEALTH SYSTEM, INC., D/B/A BON SECOURS ST. FRANCIS HOSPITAL AND ROPER ST. FRANCIS HEALTHCARE; ROPER ST. FRANCIS FOUNDATION, D/B/A ROPER ST. FRANCIS HEALTHCARE; BON SECOURS-ST FRANCIS HEALTH SYSTEM FOUNDATION, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; ROPER HOSPITAL, INC., D/B/A ROPER ST. FRANCIS HEALTHCARE; BYRON N. BAILEY, M.D.; CHRISTINE C. THOMPSON, M.D., A/K/A CHRISTINE THOMPSON, M.D.; CHARLESTON NEUROSURGICAL ASSOCIATES, LLC; MT. PLEASANT ANESTHESIA ASSOCIATES, PA; CHARLESTON SURGERY CENTER LIMITED PARTNERSHIP, D/B/A CHARLESTON SURGERY CENTER; TAMMY MCGRAW, CRNA, ALSO KNOWN AS TAMMY MCGRAW SPEICHER, CRNA; NURSE ANESTHESIA OF SOUTH CAROLINA, LLC; JEFFERY S. WAGER, CRNA; TRICOASTAL HEALTHCARE BILLING AND MANAGEMENT, INC.; AND STEVEN HEATH COBB,..... Defendants/Respondents,

AFFIDAVIT OF MAILING

PERSONALLY appeared before me, Beverly C. Moore-Rowe, who, being duly sworn, deposes and says that on the First (1st) day of August, 2013, a copy of the attached Notice of Appeal was placed in an envelope, with first class postage prepaid, and addressed and mailed to the following at the following addresses:

The Honorable Julie J. Armstrong, Clerk Of Court
Charleston County Court of Common Pleas
100 Broad Street; Suite 106
Charleston, S.C. 29401

Darren Kent Sanders, Esquire
Buyck & Sanders Law Firm, LLC
P.O. Box 2424
Mount Pleasant, S.C. 29465-2424

Attorney for Defendant/Respondents: Byron N. Bailey, M.D. and Charleston
Neurosurgical Associates LLC

Fred W. Suggs, III, Esquire
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
P.O. Box 10529
Greenville, S.C. 29603

Attorney for Defendants/Respondents: Bon Secours Health Systems, Inc.,
Bon Secours St. Francis Health System Foundation, Inc., Bon Secours St.
Francis Health System, Inc., Bon Secours St. Francis Healthcare, Bon
Secours St. Francis Hospital, a/k/a Bon Secours St. Francis Xavier Hospital,
Inc., and Roper St. Francis Healthcare

Jack Gordon Gresh, Esquire
Hall, Booth, Smith & Slover, P.C.
40 Calhoun Street, Suite 550
Charleston, S.C. 29401

Attorney for Defendants/Respondents: Charleston Surgery Center &
Charleston Surgery Center Limited Partnership

Andrew Steven Halio, Esquire
Halio & Halio, PA
PO Box 747
Charleston S.C. 29402-0747

Attorney for Defendant/Respondent, Steven Heath Cobb

Jonathan Hopkins Dunlap, Esquire

Batten Lee, PLLC

4141 Parklake Avenue; Suite 350

Raleigh, N.C. 276120

Telephone: (919) 439-2231

E-mail: jdunlap@battenlee.com

Attorney for Defendants/Respondents: Tammy McGraw, CRN also known as Tammy McGraw Speicher, CRN, Nurse Anesthesia Of South Carolina, LLC, and Jeffery S. Wager, CRN.

John Anthony Dunlap, Esquire

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C.

1100 Poydras Street, Suite 3100

New Orleans, LA 70163

James Bernard Hood, Esquire

Hood Law Firm, LLC

PO Box 1508

Charleston S.C. 29402-1508

Attorney for Defendant/Respondent: Christine C. Thompson, M.D., also known as Christine Thompson, M.D.

Christine Kent Toporek, Esquire

PO Box 993

Charleston, S.C. 29402

Attorney for Defendants/Respondents: Tricoastal Healthcare Billing And Management Inc., Bon Secours St. Francis Xavier Hospital, Inc., d/b/a/ Bon Secours St. Francis Xavier Hospital and Roper St. Francis Healthcare; Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare and Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare

No Attorney of Record:

Mt. Pleasant Anesthesia Associates, P.A.

Charles Weinheimer, M.D., Registered Agent

c/o East Cooper Regional Medical Center

1200 Johnnie Dodds Boulevard

Mount Pleasant, S.C. 29464

Beverly C. Moore-Rowe

BEVERLY C. MOORE-ROWE, Pro Se
Plaintiff/Appellant
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733

SWORN to before me this First (1st)
day of August.

Teresa D. Bernard

Notary Public for South Carolina

My Commission expires:

July 16, 2014



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Beverly C. Moore-Rowe and Arthur Peter Rowe

CASE NO.

~~2013-CP-10-00090-8~~ 2013-CP-10-00088

☐ Plaintiff(s),

Versus

ORDER

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a
Bon Secours St. Francis Xavier Hospital, Bon
Secours St. Francis Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis Health System,
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,
et al.

☒ Defendant(s).

check box above indicating submitting party

Pro Se Plaintiff: Beverly C. Moore-Rowe Arthur Peter Rowe 52 Chadwick Drive Charleston, SC 29407		Defendant's attorney: Jeffrey M. Bogdan (SC #76354) Hood Law Firm, LLC 172 Meeting Street, P.O. Box 1508 Charleston SC 29402 Phone: (843) 577-1207; Fax: (843) 722-1630 Email: Jeffrey.Bogdan@hoodlaw.com	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: Minutes _____ Court Reporter Needed: YES ☐ / NO ☐			
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order – I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff(s) / ☒ Defendant(s)		Date submitted _____	
SECTION III: Motion Fee			
☐ PAID – AMOUNT: _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE: 2060 DATE: 6-28-2013	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		DATE FILED _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED-AMOUNT DUE: _____			

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-00088 CP-Charleston

FILED

Beverly C. Moore-Rowe

2013 JUL -3 PM 3:03

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis Healthcare, Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA, Charleston
Surgery Center Limited Partnership, d/b/a
Charleston Surgery Center, Tammy McGraw,
CRNA, also known as Tammy McGraw
Speicher, CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath Cobb

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jeffrey M. Bogdan (SC #76354)

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify
arbitration award; ☐ Other

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR
ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment
by the Court:

ORDER INFORMATION

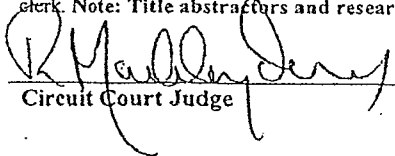
This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2060
Judge Code

6-28-2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only—Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically

requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Beverly C. Moore-Rowe,

Plaintiff,

Versus

Bon Secours-St. Francis Xavier Hospital,
Inc., d/b/a Bon Secours St. Francis
Xavier Hospital, Bon Secours St. Francis
Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis
Health System, Inc., d/b/a Bon Secours
St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St.
Francis Healthcare, Bon Secours Health
System, Inc., d/b/a Bon Secours St.
Francis Hospital and Roper St. Francis
Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis
Health System Foundation, Inc., d/b/a
Roper St. Francis Healthcare, Roper
Hospital, Inc., d/b/a Roper St. Francis
Healthcare, Byron N. Bailey, M.D.,
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt.
Pleasant Anesthesia Associates, PA,
Charleston Surgery Center Limited
Partnership, d/b/a Charleston Surgery
Center, Tammy McGraw, CRNA, also
known as Tammy McGraw Speicher,
CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath
Cobb,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-10-00088

ORDER

FILED
2013 JUL -3 PM 3:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before the Court on Motions to Dismiss filed by all
Defendants. A hearing was held on May 31, 2013. The Plaintiff appeared *pro se*.
Jeffrey Michael Bogdan, Esquire appeared on behalf of the Defendant Christine C.

rmog/1

Thompson, M.D., a/k/a Christine Thompson, M.D.; Fred W. Suggs, III, Esquire appeared on behalf of Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc.; Shawn T. Pinkston, Esquire appeared on behalf of Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Darren K. Sanders, Esquire appeared on behalf of Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC; Andrew S. Halio, Esquire appeared on behalf of Defendant Steven Heath Cobb; Jonathan Dunlap, Esquire appeared on behalf of Nurse Anesthesia of South Carolina, LLC; Christine Kent Toporek, Esquire appeared on behalf of Defendants Bon Secours St. Francis Xavier Hospital d/b/a Bon Secours St. Francis Xavier Hospital, Roper St. Francis Healthcare, Roper St. Francis Foundation d/b/a Roper St. Francis Healthcare, and Roper Hospital Inc. d/b/a Roper St. Francis Healthcare. Memoranda of law were submitted by the parties and incorporated into the record and oral arguments were entertained. After having reviewed the pleadings and having considered the arguments and legal memoranda of the parties, I grant the Defendants' Motions to Dismiss on the grounds that the Plaintiff failed to file an expert affidavit contemporaneously with her Notice of Intent to File Suit as mandated by South Carolina Code Section 15-79-125.

FACTS

The Plaintiff filed a Notice of Intent to File Suit on January 7, 2013 alleging medical negligence arising out of a January 7, 2010 cervical spine surgery. Plaintiff failed to contemporaneously file an expert affidavit with her Notice of Intent. Plaintiff asserted in her Notice of Intent that S.C. Code § 15-36-100(C)(1) allowed her to supplement her pleading with an expert affidavit.

Each Defendant then filed separate Motions to Dismiss the Plaintiff's Notice of Intent to File Suit based on her failure to contemporaneously file an expert affidavit.

Defendants Jeffery S. Wager, CRNA and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA have pending Motions to Dismiss based on insufficient service of process in this action. As such, these parties did not enter an appearance at this hearing. Their pending Motions to Dismiss have been rendered moot by this Order.

STANDARD ON DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004) aff'd 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). An expert affidavit filed pursuant to South Carolina Code Section 15-36-100 is a pleading for the purpose of the circuit court's evaluation of motions and

the merits of the plaintiff's case. Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), cert. pending.

PROCEDURAL REQUIREMENTS TO BRING A PROFESSIONAL NEGLIGENCE ACTION

This is a medical malpractice action and therefore is governed by the procedural requirement set forth in South Carolina Code Sections 15-79-125 and 15-36-100. These procedural statutes apply independently of one another as "each statute governs a distinct time period during the litigation process, and those time periods are consecutive." Id. at 176, 723 S.E.2d at 246. "Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suit and ends with prelitigation mediation. If the parties are unable to resolve their dispute through mediation, section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit." Id. In the instant case, the Plaintiff failed to comply with the filing requirements of section 15-79-125.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code Section 15-79-125 establishes the prelitigation requirements for medical malpractice actions. Id. Section 15-79-125(A) states, in pertinent part, "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100" S.C. Code Ann. §15-79-125(A). "This provision imposes two requirements on the affidavit, that it be filed at the same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100." Ranucci, 397 S.C. at 176, 723 S.E.2d at 246.

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South Carolina Code § 15-36-100 enumerates certain requirements for filing complaints in actions for damages based on professional negligence including subsection B which requires the plaintiff to file an expert affidavit contemporaneously with the complaint. Subsection (C)(1) of §15-36-100 provides an exception to the contemporaneous affidavit requirement when the applicable statute of limitations will expire within 10 days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert affidavit could not be prepared. Subsection 15-36-100(C)(1) allows the plaintiff 45 days to supplement the complaint with an expert affidavit.

In Ranucci, the Court of Appeals clarified that § 15-36-100 establishes procedures for bringing "suits for professional negligence against professionals in twenty-two different areas, including medical doctors." 397 S.C. at 175, 723 S.E.2d at 246. The Court found that § 15-79-125 establishes pre-litigation requirements for only medical malpractice actions. Id. The Ranucci Court ultimately held that the two statutes operate independently of one another and § 15-36-100(C)(1) does not allow a plaintiff an exception to § 15-79-125's requirement that an expert affidavit be filed contemporaneously with a notice of intent to file suit. Id. at 178, 723 S.E.2d at 247.

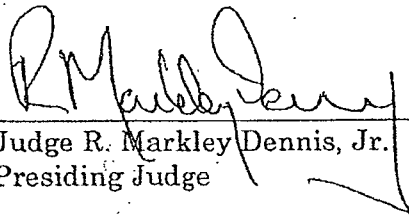
Here, the Court finds that the Plaintiff's Notice of Intent to File Suit was defective because it was not filed contemporaneously with an expert affidavit. The Court further finds that any exception to the contemporaneous filing espoused in § 15-36-100(C)(1) is not applicable here. The Court further finds that any common knowledge exception does not apply here, because the Plaintiff has sued numerous different health care providers, including a neurosurgeon and an anesthesiologist,

alleging medical negligence and the determination of the merits exceed the bounds of common knowledge.

NOW, THEREFORE, based on the foregoing it is .

ORDERED, that the Defendants' Motions to Dismiss be, and hereby are, granted and this action be dismissed as to all Defendants;

AND IT IS SO ORDERED.

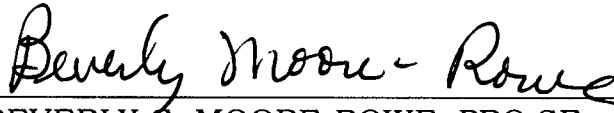


Judge R. Markley Dennis, Jr.
Presiding Judge

June 28, 2013
Charleston, South Carolina

17. Certificate of Appellant

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

A handwritten signature in cursive script, reading "Beverly Moore-Rowe", is written over a horizontal line.

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November 13, 2014