

21501

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

C.A. NO. 2013-CP10-00090
CT. APP. NO.: 2013-001682

ORIGINAL

RECEIVED

NOV 17 2014

SC Court of Appeals

ARTHUR PETER 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

JAN161940

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✓ Attention: Christine Kent Toporek, Esquire

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-0090

Arthur Peter 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), SCRCF; ☐ Rule 41(a), SCRCF (Vol. Nonsuit); ☐ Rule 43(k), SCRCF (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCF; ☐ 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 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 :

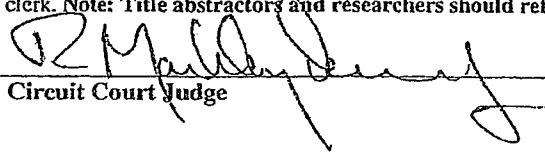
INFORMATION FOR THE JUDGMENT INDEX

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-10-00090 & ~~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

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-10-00090 CP-Charleston

FILED

Arthur Peter Rowe

2013 JUL -3 PM 3:02

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

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

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, 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

Arthur Peter 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-10-00090

ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUL -3 PM 3:02

FILED

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.

RM08/11

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; 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 (1) the Plaintiff failed to file a Notice of Intent to File Suit and an expert affidavit prior to filing his Complaint as mandated by South Carolina Code Section 15-79-125; and (2) the Plaintiff failed to file an expert affidavit with his Complaint as mandated by South Carolina Code Section 15-36-100.

FACTS

The Plaintiff filed a Complaint on January 7, 2013 alleging one cause of action for loss of consortium based on the alleged medical negligence arising out of a January 7, 2010 cervical spine surgery performed on his wife, Beverly Moore-Rowe.¹ Plaintiff failed to file a Notice of Intent to File Suit prior to filing his Complaint and failed to contemporaneously file an expert affidavit with his Complaint. Numerous Defendants filed Motions to Dismiss based on these procedural failures. Defendants Nurse Anesthesia of South Carolina, LLC, 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, Defendants Jeffery S. Wager and Tammy McGraw Speichers did not enter an appearance at this hearing. Nurse Anesthesia of South Carolina only entered an appearance in the phase of this hearing dedicated to the action of Beverly C. Moore-Rowe. 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.

¹ Plaintiff's wife filed a Notice of Intent to File Suit on the same day the Plaintiff filed his Complaint. C/A No. 2013-CP-10-00088. The Defendants in that case, which are the same Defendants in this case, filed Motions to Dismiss Plaintiff's wife's Notice of Intent. Those Motions were heard and granted at the same time as the Motions to Dismiss in this case.

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 and section 15-36-100.

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.

Plaintiff's Complaint alleging loss of consortium is a civil action alleging injury as a result of medical malpractice. See Creighton v. Coligny Plaza Limited Partnership, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability for the spouse's injuries, as well as damages to the plaintiff resulting from the spouse's injury."). Because the Plaintiff's spouse's injuries are alleged to be the result of medical negligence, the Plaintiff's Complaint alleges his injury as a result of medical negligence. Accordingly, the Plaintiff was required to comply with the provisions of § 15-79-125(A). By failing to file a Notice of Intent to File Suit and an expert affidavit before filing his Complaint, Plaintiff failed to comply with § 15-79-125(A) and, therefore, the Court find his Complaint is procedurally inappropriate. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-79-125.

SOUTH CAROLINA CODE SECTION 15-36-100 BARS THIS ACTION

The Plaintiff also failed to file an expert affidavit contemporaneously with his Complaint as required by South Carolina Code Section 15-36-100. South Carolina Code Section 15-36-100 establishes the procedures for commencing suits for professional negligence, including medical malpractice. Ranucci, 397 S.C. at 173, 723 S.E.2d at 244. Section 15-36-100 "requires the plaintiff to craft a viable complaint supported by the sworn testimony of a qualified expert witness. Because an affidavit filed pursuant to this section is a 'part of the complaint,' it is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case." Id. at 178, 723 S.E.2d at 247.

RMDH/5

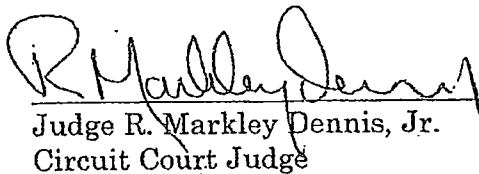
Plaintiff's Complaint is an action for damages based on professional negligence. All of the named Defendants are professional health care providers. Accordingly, Plaintiff was required to comply with §15-36-100 in filing his Complaint. Plaintiff failed to so comply when he filed his Complaint without an expert affidavit. Section 15-36-100(C)(1) does provide an exception allowing a Plaintiff to supplement the complaint with an expert affidavit within 45 days of filing. Plaintiff failed to argue that this exception applied. Further, Plaintiff's Complaint was filed January 7, 2013 and the Plaintiff failed to file an expert affidavit within 45 days. Finally, 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. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-36-100(C)(1).

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.
Circuit Court Judge

rm09/6

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Arthur Peter 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: Arthur Peter Rowe

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

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 00090

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

Judgments/Settlements

Administrative Law/Relief

Appeals

SCCA / 234 (01/2011)

- | | | | |
|--|---|---|--|
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture—Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex /Other | | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Other (999) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (510) | | |

Submitting Party Signature:

AP Rowe
AP Rowe

Date: 01/07/2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, 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

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 00090

Arthur Peter Rowe,

Plaintiff,

vs.

SUMMONS

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,

(Loss of Consortium)
(Jury Trial Requested)

FILED
2013 JAN -7 PM 2:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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.

APR 2 2013

ARTHUR PETER ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733

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- 00090

Arthur Peter Rowe,

Plaintiff,

vs.

COMPLAINT

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,

(Loss of Consortium)
(Jury Trial Requested)

FILED
2013 JAN -7 PM 2:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendants)
_____)

THE PLAINTIFF HEREIN, Arthur Peter 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 the Plaintiff has been legally married to Beverly C. Moore-Rowe, as his wife (hereinafter referred to herein as the "**Plaintiff's Wife**"), since prior to January 7, 2010.
3. 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.
4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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**").

20. 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.

21. 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.

22. 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.

23. 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.

24. 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's Wife.

25. 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.

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

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

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 within the course and scope of their employment in regard to their care and treatment of Plaintiff's Wife.

29. That the Plaintiff 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's Wife, the employees and agents of the Defendant Hospital, were also acting under the direction and supervision of Defendant Thompson, Defendant McGraw and Defendant Wager.

30. 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.

31. 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's Wife.

32. That at all times that the Plaintiff's Wife 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.

33. 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.

34. 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.

35. That on or about January 7, 2010, the Plaintiff's Wife 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 Wife's neck pain and complaints of bilateral arm numbness.

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

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

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

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

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

41. That the Plaintiff's Wife 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's Wife as patient.

42. That if requested, the Plaintiff's Wife 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 Wife's knowledge or consent, the Defendants permitted the Defendant Student to perform nurse anesthetist medical services and procedures on the Plaintiff's Wife and permitted the Defendant Student to perform the endotracheal intubation of the Plaintiff's Wife 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's Wife in the Defendant Hospital with Defendant Thompson serving as the Plaintiff's Wife's Anesthesiologist, and Defendant McGraw and Defendant Wager serving as the Plaintiff's Wife's Certified Registered Nurse Anesthetists (hereinafter referred to herein as the "Surgery").

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

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

47. That the Plaintiff's Wife 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's Wife 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's Wife, 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's Wife 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, and resulting in loss of consortium to the Plaintiff.

50. That the injuries and damages to the Plaintiff as a result of injuries inflicted upon the Plaintiff's Wife while the Plaintiff's Wife was under the care of the Defendants, were proximately due to and caused by the Defendant Professionals and the Defendant Student, and their departure from the prevailing professional standards of care and treatment of the Plaintiff's Wife and 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's Wife 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 Wife's condition;
- b. In failing to properly and adequately monitor Plaintiff's Wife 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's Wife during the Surgery, without the Plaintiff's Wife's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff's Wife 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 Wife's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff's Wife, 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 Wife's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Wife'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's Wife 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's Wife 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 Wife'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.

51. That the injuries and damages to the Plaintiff as a result of injuries inflicted upon the Plaintiff's Wife while the Plaintiff's Wife was under the care of the Defendants, were proximately due to and caused by the Defendant Hospital's departure from the prevailing professional standards of care and treatment of the Plaintiff's Wife and the Defendant Hospital's, jointly and severely, negligence, carelessness, gross negligence, willfulness, wantonness, recklessness, and negligence per se, and action in violation of the duties owed to the Plaintiff's Wife 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 Wife's condition;
- b. In failing to properly and adequately monitor Plaintiff's Wife 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's Wife during the Surgery, without the Plaintiff's Wife's prior written consent;
- d. In inappropriately allowing the Defendant Student to perform the endotracheal incubation of the Plaintiff's Wife 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 Wife's prior written consent for the Defendant Student to perform any anesthesiology services for Plaintiff's Wife, 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 Wife's care;
- h. In failing to properly utilize medical equipment to minimize, reduce or prevent complications from Plaintiff's Wife'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's Wife 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's Wife 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's Wife 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 Wife'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.

52. That in rendering medical services to Plaintiff's Wife, 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 Wife's care and Surgery.

53. 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's Wife, and the Defendant's failure to comply with the same constitutes a prima facie case of negligence per se.

54. 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's Wife to supplement the pleadings with the required affidavit.

55. 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's Wife in the Surgery, without the Plaintiff's Wife'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.

56. 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's Wife 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 or 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, and resulting in loss of consortium to the Plaintiff.

57. 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's Wife as set forth above, the Plaintiff is entitled to compensation for loss of consortium from the Defendants, jointly and severally.

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 his actual damages, for punitive damages, special damages, and consequential damages in an amount to be determined by the trier of fact; (2) for the costs of this action; and (3) such other and further relief as the Court may deem just and proper.



ARTHUR PETER ROWE, Pro Se Plaintiff
52 Chadwick Drive
Charleston, South Carolina 29407
Telephone: (843) 763-2599; (843) 737-0733

Charleston, South Carolina
Dated: January 7, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Arthur Peter 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- 00090

VERIFICATION

FILED
2013 JAN -7 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendants)
_____)

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

AP Rowe

ARTHUR PETER ROWE

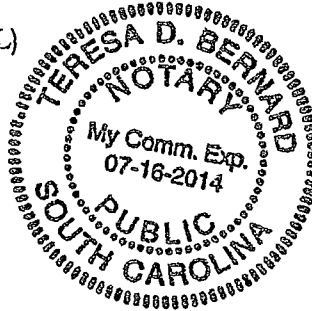
Sworn to before me this Seventh (7th)
day of January, 2013

Teresa D. Bernard

(SEAL)

Notary Public for South Carolina

My Commission Expires July 16, 2014



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

ARTHUR PETER ROWE,) CASE NO. 2013-CP-10-00090

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)
SPEICHER, CRNA, NURSE)

ANSWER OF 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 TO
PLAINTIFF'S COMPLAINT

FILED
2013 MAR 12 PM 12:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

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 "Hospital Defendants"), by and through their undersigned attorneys respond to the allegations in Plaintiff's Complaint as follows:

1. Any allegation in Plaintiff's Complaint not hereinafter admitted, denied or otherwise modified is expressly denied and strict proof demanded thereof.
2. Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 1 and 2 of Plaintiff's Complaint and therefore denies the same.
3. Responding to Paragraphs 3, 4, 5, 6, 7 and 8 of Plaintiff's Complaint, the proper name for Defendant is CareAlliance Health Services d/b/a Bon Secours St. Francis Xavier Hospital, Inc. Hospital Defendant admits only that it is an entity organized and existing under the laws of the State of South Carolina doing business in Charleston County. Hospital Defendant

Code Ann. §33-56-170(a) and therefore, is not subject to a claim for punitive damages and is only subject to a judgment for actual damages in an amount not to exceed Three Hundred Thousand and 00/100 Dollars (\$300,000.00). Defendant denies the remaining allegations in Paragraphs 3, 4, 5, 6, 7 and 8 of Plaintiff's Complaint.

4. Hospital Defendant denies the allegations set forth in Paragraph 9 of Plaintiff's Complaint as these allegations call for a legal conclusion.

5. The allegations set forth in Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Plaintiff's Complaint are directed to parties other than Hospital Defendant and Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Plaintiff's Complaint and therefore denies the same.

6. Hospital Defendant denies the allegations set forth in Paragraphs 24, 25, 26, 27, 28, 29, 30 and 31 of Plaintiff's Complaint as these allegations call for a legal conclusion.

7. Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 32 of Plaintiff's Complaint and therefore denies the same.

8. Hospital Defendant denies the allegations set forth in Paragraph 33 of Plaintiff's Complaint as these allegations call for a legal conclusion.

9. The allegations set forth in Paragraph 34 of Plaintiff's Complaint are directed to parties other than Hospital Defendant and Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 34 of Plaintiff's Complaint and therefore denies the same.

10. Responding to the allegations contained in Paragraphs 35, 36, 37, 38, 39, 40 and 41 of Plaintiff's Complaint, Hospital Defendant craves reference to Ms. Moore-Rowe's hospital charts and medical records for a more complete summary of Ms. Moore-Rowe's medical care and treatment, and Hospital Defendant denies any allegation inconsistent with the records. Hospital Defendants further deny any allegations in Paragraphs 35, 36, 37, 38, 39, 40 and 41 of Plaintiff's Complaint intended to allege liability or a deviation from the standard of care against Hospital Defendants.

11. Hospital Defendant is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 42 of Plaintiff's Complaint and therefore denies the same.

12. Responding to the allegations contained in Paragraphs 43, 44 and 45 of Plaintiff's Complaint, Hospital Defendant craves reference to Ms. Moore-Rowe's hospital charts and medical records for a more complete summary of Ms. Moore-Rowe's medical care and treatment, and Hospital Defendant denies any allegation inconsistent with the records. Hospital Defendants further deny any allegations in Paragraphs 43, 44 and 45 of Plaintiff's Complaint intended to allege liability or a deviation from the standard of care against Hospital Defendants.

13. Hospital Defendant denies the allegations set forth in Paragraph 46 of Plaintiff's Complaint as these allegations call for a legal conclusion.

14. Responding to the allegations contained in Paragraph 47 of Plaintiff's Complaint, Hospital Defendant craves reference to Ms. Moore-Rowe's hospital charts and medical records for a more complete summary of Ms. Moore-Rowe's medical care and treatment, and Hospital Defendant denies any allegation inconsistent with the records. Hospital Defendants further deny

any allegations in Paragraph 47 of Plaintiff's Complaint intended to allege liability or a deviation from the standard of care against Hospital Defendants.

15. Hospital Defendant denies the allegations set forth in Paragraphs 48, 49, 50 (including all subparts), 51 (including all subparts), 52 and 53 of Plaintiff's Complaint and demands strict proof thereof.

16. Hospital Defendant denies the allegations set forth in Paragraphs 54 and 55 of Plaintiff's Complaint as these allegations call for a legal conclusion.

17. Hospital Defendant denies the allegations set forth in Paragraphs 56 and 57 of Plaintiff's Complaint and demands strict proof thereof.

18. Hospital Defendant denies Plaintiff's prayer for judgment and damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

Hospital Defendant states that pursuant to S.C. Code Ann. §33-56-170 and §33-56-180, their liability is limited to \$300,000 actual damages as a protected "charitable organization" and is not subject to a claim for punitive damages.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Hospital Defendants under South Carolina Rules of Civil Rule 12(b)(6) and therefore should be stricken.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

The Plaintiff has failed to comply with S.C. Code Ann. §§15-79-125 and 15-36-100 and therefore Plaintiff's Complaint should be dismissed.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Joint and several liability does not apply to Hospital Defendant to the extent it is less than fifty percent at fault in accordance with S.C. Code Ann. §15-38-15.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

The Plaintiff's cause of action is barred by the applicable Statute of Limitations.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Hospital Defendant would affirmatively state that at all times it complied with the applicable standard of care.

**FUTHER ANSWERING AND FOR A
FURTHER AFFIRMATIVE DEFENSE**

There was no negligence, recklessness, gross negligence or wantonness on the part of Hospital Defendant which proximately caused or contributed to Plaintiffs' alleged injuries.

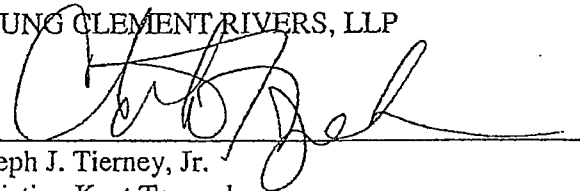
**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Hospital Defendant does not waive any defense that whatever injury or damage that was suffered by the Plaintiff was the proximate result of the intervening negligence, recklessness, willfulness and wantonness of parties other than Hospital Defendant (should the discovery process reveal this), barring Plaintiff from recovery from Hospital Defendant.

WHEREFORE, HAVING FULLY ANSWERED SAID COMPLAINT, Hospital Defendant prays as follows:

1. That their Liability for Actual Damages be limited to \$300,000;
2. That Punitive Damages be stricken;
3. That the Plaintiff's Complaint be dismissed, and that Hospital Defendant be granted its costs, expenses, and a reasonable attorney's fee for defending this action; and
4. For such other relief as this Court deems just and proper.

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

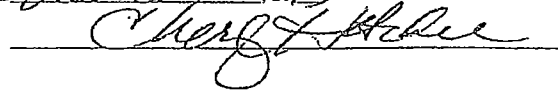
Attorneys for the Attorneys for the improperly
named Defendants Bon Secours-St. Francis Xavier
Hospital, Inc., d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital and
Roper St. Francis Healthcare, Bon Secours St.
Francis Health System, Inc., d/b/a Bon Secours St.
Francis Xavier 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 12th day of
March, 2013



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Charleston

CASE NO.: 2013-CP-10-00090

Arthur Peter 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, 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, Jeffery S.
Wager, CRNA, Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath Cobb

☒

Defendant(s)

Check box above indicating submitting party

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

<u>Name, SC Bar No. and Address of Plaintiff's Attorney</u>		<u>Name, SC Bar No. and Address of Defendant's Attorney</u>	
Telephone: _____ fax: _____		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@ycrlaw.com	
e-mail: _____ other: _____			
☒ 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 \$ 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect			

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ARTHUR PETER 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
SPEICHER, CRNA, NURSE

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-00090

FILED
2013 MAR 13 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

MOTION TO DISMISS ON BEHALF OF
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'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT

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

TO: ARTHUR PETER 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 Complaint on the grounds that: (1) 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; and (2) Plaintiff failed to comply with S.C. Code Ann. §15-36-100.

PROCEDURAL BACKGROUND

The above captioned action was filed on January 7, 2013. The Plaintiff's wife, Beverly C. Moore-Rowe, contemporaneously and separately filed a Notice of Intent to File Suit (C.A. #2013-CP-10-00088) in which she alleges medical negligence. Mrs. Rowe did not contemporaneously file

the affidavit of a medical expert. The Defendants have filed a Motion to Dismiss the Plaintiff's Notice of Intent for failure to comply with S.C. Code Ann. §15-79-125, and specifically for her failure to contemporaneously file the affidavit of a medical expert.

SUMMARY OF LAW

1. Loss Of Consortium

The above named Plaintiff has filed a claim for loss of consortium. In the Complaint, the Plaintiff alleges that due to the medical negligence of the Defendants during an anterior cervical spine surgery and contemporaneous endotracheal intubation performed on his wife, Beverly C. Moore-Rowe, his wife has suffered a serious and permanent personal injury. See Complaint, ¶¶ 48, 49, 50, 51, 52, 53 and 55. He further alleges that the serious and permanent personal injury suffered by his wife has deprived him of her services, society and companionship and that he is entitled to damages for such losses. See Complaint, ¶¶ 56 and 57.

In order to prevail in an action for loss of consortium, a Plaintiff must prove: (1) the liability of the defendant for the spouses injuries; and (2) damages to the plaintiff resulting from the spouses injuries. See Creighton v. Coligny Plaza Limited Partnership, 334 S.C. 96, 512 S.E.2d 510 (Ct. App. 1998). A loss of consortium claim is an independent claim in South Carolina. Id. However, if there is no tort committed against the impaired spouse then a loss of consortium claim cannot exist. Id. In the matter before this court, the Plaintiff must establish medical negligence on the part of these Defendants with regard to medical care provided to his wife in order to succeed on his claim for consortium. Therefore, the Plaintiff's Complaint should be subject to the requirements of S.C. Code Ann. §§15-79-125 and 15-36-100, which govern medical negligence actions.

2. Notice of Intent to File Suit

“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.

3. Filing Requirements For Medical Negligence Actions

S.C. Code Ann. §15-36-100 “establishes the procedure of commencing suits for professional negligence against professionals in twenty-two different areas.” Ranucci, *supra*. This section requires the plaintiff “to craft a viable complaint supported by the sworn testimony of a qualified expert witness.” Id. “Because an affidavit filed pursuant to this section is ‘part of the complaint’, it is a pleading for the purpose of the circuit court’s evaluation of motions and the merits of the Plaintiff’s case.” Id.

“[T]he plaintiff must file as part of the complaint an affidavit of an expert witness which 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). “The contemporaneous filing requirement of subsection (B) does not apply to

any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.” S.C. Code Ann. §15-36-100(C)(1). When an affidavit is not filed contemporaneously due to time constraints, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. S.C. Code Ann. §15-36-100(C)(1). “If an affidavit is not filed within the period specified in this subsection...and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. §15-36-100(C)(1).

ARGUMENT

1. Plaintiff’s Complaint Should Be Dismissed For Failure To Comply With S.C. Code Ann. §15-79-125

In the above captioned matter, on January 7, 2013 the Plaintiff filed a Complaint for loss of consortium. In an action for loss of consortium, a plaintiff must prove the liability of the defendant for the spouse’s injuries. Therefore, in order to succeed on his claim, Plaintiff must establish medical negligence on the part of these Defendants and other parties, with regard to care provided to his wife, Beverly C. Moore-Rowe. To that end, Plaintiff’s Complaint is replete with allegations of medical negligence related to the care and treatment provided to his wife. (As an example, ¶50 of the Plaintiff’s Complaint sets forth several alleged negligent acts and/or omissions of the Defendants with regard to the care provided to his wife.) However, the Plaintiff did not comply with the pre-litigation requirements set forth in S.C. Code Ann. §15-79-125 in that Plaintiff has not filed a Notice of Intent to File Suit accompanied by the affidavit of an expert witness as required by S.C. Code Ann. §15-79-125. Instead, Plaintiff alleges in his 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* Complaint, ¶54.

As is explained in detail above, the Ranucci court expressly held that the provisions of S.C. Code 15-36-100 related to filing the expert affidavit late do not apply to a Notice of Intent to File Suit. Failure to contemporaneously file an expert affidavit is grounds for dismissal pursuant to the holding of the court in Ranucci, supra. The Plaintiff must establish medical negligence to succeed on his loss of consortium claim and has filed what is essentially a Complaint alleging medical negligence. However, Plaintiff failed to comply with S.C. Code Ann. §15-79-125, including the contemporaneous filing and mediation requirements. Wherefore, Defendants respectfully request that this Court dismiss Plaintiff's Complaint 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.

2. In The Alternative, Plaintiff's Complaint Should Be Dismissed For Failure To Comply With S.C. Code Ann. §15-36-100

If the court determines the Plaintiff's Complaint is not subject to dismissal for failure to comply with S.C. Code Ann. §15-79-125, then in the alternative, Defendants pray for an order dismissing the case for failure to comply with S.C. Code Ann. §15-36-100.

The Plaintiff filed his Complaint in the above captioned matter on January 7, 2013. The Complaint contains numerous allegations of medical negligence that are beyond the ambit of common knowledge. However, the Plaintiff did not contemporaneously file the affidavit of an expert witness as required by S.C. Code Ann. §15-36-100. Plaintiff alleges in his 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* Complaint ¶54. If Plaintiff's

contention is correct, the deadline to submit the expert affidavit was February 21, 2013. However, as of the date of this motion, Plaintiff has not supplemented his pleadings with an expert affidavit.

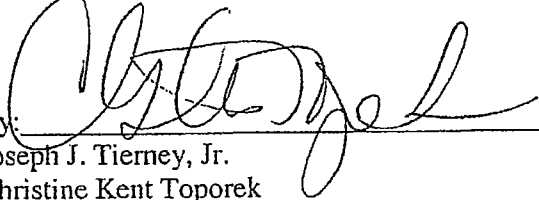
The statutes are clear that in a professional negligence action “[i]f an affidavit is not filed within the period specified in this subsection...and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. §15-36-100(C)(1). As such, these Defendants respectfully request that this Court dismiss Plaintiff’s Complaint and all claims against them, under South Carolina Rules of Civil Procedure Rule 12(b)(6), in accordance with S.C. Code §15-36-100 on account of Plaintiff’s failure to timely file an expert affidavit.

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@yclaw.com

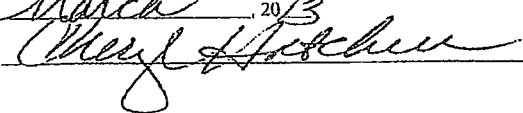
Attorneys for the improperly named Defendants Bon
Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon
Secours-St. Francis Xavier Hospital, Bon Secours
St. Francis Hospital and Roper St. Francis
Healthcare, Bon Secours St. Francis Health System,
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,
Bon 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 13th day of

March, 2013


STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Rowe,

☐ Plaintiff

v.

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

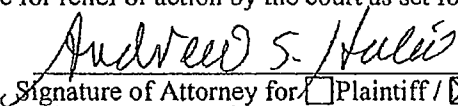
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-10-00090

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Arthur 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.			
 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			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2013-CP-10-00090

Arthur Peter 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 this action as to him 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 the lawsuit be brought against the governmental entity only.
2. This action can only be brought against MUSC under the Tort Claims Act, which Plaintiff has failed to plead.
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. §15-79-110, *et seq.* for filing a medical malpractice action by failing to file a Notice of Intent to file suit, an affidavit of an expert witness subject to the affidavit requirements established in §15-36-100, and answers to standard interrogatories. Although captioned as a "loss of consortium" action, this action is a medical malpractice action seeking damages for loss of consortium.

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 their addresses, postage prepaid on March 15, 2013:

Arthur Peter 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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter 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-10-0090

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Arthur Peter 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@roecassidy.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 22, 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)

Arthur Peter 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-10-0090

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

2013 MAR 25 PM 1:42
JULIE J. ARMSTRONG
CLERK OF COURT

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, Arthur Peter Rowe (hereinafter "Rowe"), filed a Summons and Complaint alleging loss of consortium on January 7, 2013. Mr. Rowe's wife, Beverly C. Moore-Rowe, filed a separate Notice of Intent to file suit on January 7, 2013, attached hereto as exhibit "A". The allegations in this Complaint are identical to those in Ms. Moore-Rowe's Notice of Intent to File Suit. Rowe did not file a Notice of Intent to File Suit prior to filing the Summons and Complaint. The Defendants file this Motion to Dismiss based upon the Plaintiff's failure to comply with the applicable procedural requirements of South Carolina law with respect to medical malpractice actions.

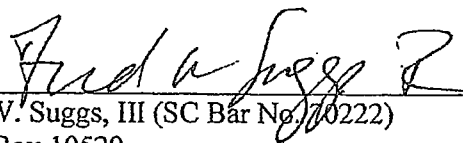
ARGUMENT

This is a medical malpractice lawsuit. The Plaintiff seeks recovery of damages for loss of consortium due to alleged medical malpractice committed against his wife, Mrs. Moore-Rowe. Thus, the underlying allegations in this Complaint meet the definition of medical malpractice and are governed by South Carolina Code Section 15-79-125. This statute requires that the Plaintiff initiate a civil action alleging medical malpractice by contemporaneously filing a Notice of Intent to File Suit and an affidavit of an expert witness. *S.C. Code Ann. Section 15-79-125 (A)*. Because the Plaintiff failed to file a Notice of Intent to File Suit and an affidavit of an expert witness prior to filing a Summons and Complaint, this lawsuit must be dismissed.

This motion is based upon the South Carolina Rules of Civil Procedure, the statutory and case law of South Carolina, and 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 15, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Arthur Peter 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-10-0090

CERTIFICATE OF SERVICE

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 MAR 25 PM 1:42

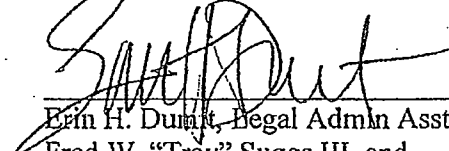
FILED

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 Plaintiffs'

attorney in the above-entitled action this 22nd day of March, 2013 by depositing the same in an envelope in the United States Mail with sufficient postage thereon, addressed as follows:

Arthur Peter Rowe
52 Chadwick Drive
Charleston, SC 29407

ROE CASSIDY COATES & PRICE, P.A.

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

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

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-10-0090

Arthur Peter 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
ANSWER TO THE PLAINTIFF'S
COMPLAINT**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 MAR 27 PM 4:47

FILED

TO: Arthur Peter Rowe, *pro se* Plaintiff:

COMES NOW Defendant Charleston Surgery Center Limited Partnership d/b/a Charleston Surgery Center (hereinafter referred to as "This Defendant"), by and through its undersigned counsel, and in response to the Complaint of the Plaintiff, Arthur Peter Rowe (hereinafter referred to

as "Plaintiff"), and subject to this Defendant's Motion to Dismiss filed contemporaneously herewith would allege unto this Honorable Court as follows:

1. This Defendant denies each and every allegation contained in the Plaintiff's Complaint not specifically admitted herein.

2. This Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 1 and 2 of the Plaintiff's Complaint and, therefore, denies the same.

3. The allegations contained in Paragraphs 3, 4, 5, 6, 7, 8, 9, and 10 of the Plaintiff's Complaint are not directed at this Defendant and, therefore, require no response. To the extend said paragraphs require a response from this Defendant, this Defendant denies the same.

4. Because Plaintiff's wife, Beverly Moore-Rowe, has never been a patient of Charleston Surgery Center, this Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint and, therefore, denies the same.

5. The allegations contained in Paragraph 12, 13, 14, and 15 of the Plaintiff's Complaint are not directed at this Defendant and, therefore, require no response. To the extend said paragraphs require a response from this Defendant, this Defendant denies the same.

6. In response to the allegations contained in Paragraph 16 of the Plaintiff's Complaint, this Defendant admits only so much that allege that Charleston Surgery Center is a limited partnership operating and existing under the laws of South Carolina with its primary place of business in Charleston County, South Carolina. This Defendant denies as written all remaining and inconsistent allegations contained in said paragraph.

7. The allegations contained in Paragraphs 17, 18, 19, and 20 of the Plaintiff's Complaint are not directed at this Defendant and, therefore, require no response. To the extent said paragraphs require a response from this Defendant, this Defendant denies the same.

8. This Defendant denies the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

9. The allegations contained in Paragraphs 22, 23, 24, and 25 of the Plaintiff's Complaint are not directed at this Defendant and, therefore, require no response. To the extent said paragraphs require a response from this Defendant, this Defendant denies the same.

10. This Defendant denies the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

11. This Defendant denies the allegations contained in Paragraph 27 of the Plaintiff's Complaint.

12. The allegations contained in Paragraph 28, 29, 30, and 31 of the Plaintiff's Complaint are not directed at this Defendant and, therefore, require no response. To the extent same can be read as referring to or relating to this Defendant it is denied.

13. This Defendant denies the allegations contained in Paragraph 32 of the Plaintiff's Complaint.

14. The allegations contained in Paragraph 33 of the Plaintiff's Complaint are not directed at this Defendant and, therefore, require no response. To the extent said paragraph requires a response from this Defendant, this Defendant denies the same.

15. This Defendant denies the allegations contained in Paragraph 34 of the Plaintiff's Complaint.

16. Because Plaintiff's wife, Beverly Moore-Rowe, has never been a patient of Charleston Surgery Center, this Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 35, 36, 37, 38, and 39 of the Plaintiff's Complaint and, therefore, denies the same.

17. This Defendant denies the allegations contained in Paragraph 40 of the Plaintiff's Complaint.

18. The allegations contained in Paragraphs 41 and 42 of the Plaintiff's Complaint are not directed at this Defendant and, therefore, require no response. To the extent said paragraphs require a response from this Defendant, this Defendant denies the same.

19. This Defendant denies the allegations contained in Paragraph 43 of the Plaintiff's Complaint.

20. Because Plaintiff's wife, Beverly Moore-Rowe, has never been a patient of Charleston Surgery Center, this Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 44 of the Plaintiff's Complaint and, therefore, denies the same.

21. This Defendant denies the allegations contained in Paragraph 45 of the Plaintiff's Complaint.

22. This Defendant denies the allegations contained in Paragraph 46 of the Plaintiff's Complaint

23. Because Plaintiff's wife, Beverly Moore-Rowe, has never been a patient of Charleston Surgery Center, this Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 47, 48, and 49 of the Plaintiff's Complaint and, therefore, denies the same.

24. This Defendant denies the allegations contained in Paragraph 50 including subparts (a) through (n) of the Plaintiff's Complaint.

25. Because Plaintiff's wife, Beverly Moore-Rowe, has never been a patient of Charleston Surgery Center, this Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 51 including subparts (a) through (p) of the Plaintiff's Complaint and, therefore, denies the same.

26. This Defendant denies the allegations contained in Paragraphs 52 and 53 of the Plaintiff's Complaint.

27. Paragraph 54 of the Plaintiff's Complaint contains conclusions of law to which no response is required from this Defendant. To the extent said paragraph requires a response from this Defendant, this Defendant denies the same.

28. This Defendant denies the allegations contained in Paragraphs 55, 56, and 57 of the Plaintiff's Complaint.

29. This Defendant denies any and all remaining allegations contained in the Plaintiff's Complaint, including, but not limited to, the Plaintiff's prayer for relief.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State A Claim)

34. Plaintiff's Complaint fails to state a valid cause of action against this Defendant and must be dismissed.

FOR A SECOND AFFIRMATIVE DEFENSE
(Compliance with Standards of Care)

35. At all times relevant to the matters set forth in the Complaint, this Defendant complied with the generally accepted standards of care applicable to it under the same or similar circumstances at that time, and as a result thereof, this Defendant is in no way liable for the matters set forth in the Complaint.

FOR A THIRD AFFIRMATIVE DEFENSE
(Negligence of Others)

36. Any injury or damages as alleged in the Complaint were due to and caused solely by the actions of others and were not due to or caused by any negligence or act attributable to this Defendant, and as a result thereof, this Defendant are in no way liable to the Plaintiffs for the matters set forth in the Complaint.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

37. An award or assessment of punitive or exemplary damages against this Defendant as prayed for by the Plaintiff in this Complaint would violate this Defendant's constitutional rights under the Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the Double Jeopardy clause of the Fifth Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and this Defendant pleads such constitutional provisions as a complete defense to any claim for punitive damages.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

38. An award of punitive damages under South Carolina law against this Defendant would violate the 5th, 6th, and 14th Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that:

- a) The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;
- b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c) Any award of punitive damages based upon the wealth of the defendants violates due process guarantees;
- d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

- f) The Plaintiff's claim for punitive damages violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based on the wealth of the Defendants.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Assumption of the Risk)

39. Plaintiff's claims are barred to the extent that Plaintiff expressly or impliedly assumed some or all of the risks that were the proximate cause of Plaintiff's alleged damages and voluntarily encountered the risk with an understanding and appreciate of the nature and extent of the risks and was willing to accept such risk.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(No Proximate Cause)

40. That, even if this Defendant were negligent, as alleged in the Complaint, which is specifically denied, the negligence of or attributable to this Defendant is not a direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

41. That the injury or damage allegedly suffered by the Plaintiff, if any, was due to, and caused by, and was the proximate result of the intervening and superseding negligence, willfulness, wantonness, and reckless of the Plaintiff and/or others, and such constitutes a complete defense to Plaintiff's claims.

FOR A NINTH AFFIRMATIVE DEFENSE
(Natural Disease Process)

42. That this Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to, caused and occasioned by the natural disease process over which this Defendant had no control and as such, this Defendant pleads such a natural disease process as a complete bar to this action.

FOR A TENTH AFFIRMATIVE DEFENSE
(Non-Economic Damages Award)

43. No award for non-economic damages shall exceed the statutory limits contained in a Non-Economic Damages Award Act of 2005, S.C. Code Ann. § 15-32-200, et. seq. This Defendant is a health care provider as defined by S.C. Code Ann. § 15-32-210 and pursuant to 15-32-220 of the Non-Economic Damages Award Act of 2005, any potential recovery of non-economic damages is limited to the amount stated therein.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Failure to Comply with S.C. Code § 15-36-100)

44. Plaintiff failed to comply with S.C. Code 15-36-100 which states that in a medical malpractice case, a plaintiff must contemporaneously file an affidavit from an expert specifying at least one act or omission of Defendants.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Failure to Name Proper Defendant)

45. Plaintiff failed to sue the proper defendant because this defendant owed no duty to the plaintiff, they did not breach their duty, and they did not have a relationship with the plaintiff.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Incorporation)

46. This Defendant hereby incorporates and asserts all defenses, counterclaims, set-offs, and credits pled by other parties to this action, to include any pleadings filed after this Answer, and

specifically, without limitation, all defenses, counterclaims, set-offs, and credits pled to Plaintiff's claims, to the extent not inconsistent with its Answer herein and its denial of liability of any kind.

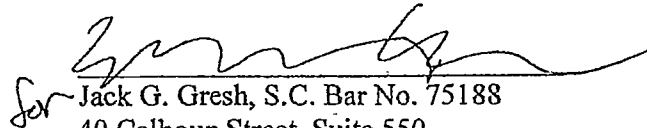
FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

47. This Defendant reserves any additional affirmative defenses as may be revealed or become available to them during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint herein, this Defendant prays that the same be dismissed with costs and for such other further relief as the Court may deem proper.

Respectfully submitted this 26th day of March, 2013 in Charleston, South Carolina.

HALL BOOTH SMITH, P.C.


for 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 21st of March, 2013, a true copy of this Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center's Answer to the Plaintiff's Complaint was served upon counsel of record by mailing a copy properly addressed with sufficient postage affixed thereto as follows:

Mr. Arthur Peter Rowe
52 Chadwick Drive
Charleston, SC 29407

Pro Se Plaintiff

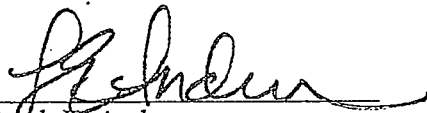
Joseph J. Tierney, Jr.
Christine Kent Toporek
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402-0993

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

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

FILED
2013 MAR 27 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Arthur Peter Rowe)

Plaintiff,)

vs.)

Charleston Surgery Center, et. al.)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-00090

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Arthur Peter 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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

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 ☐ 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-10-0090

Arthur Peter 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 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: Arthur Peter 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, this Defendant will show that Plaintiff's Complaint pleads loss of consortium. See Complaint, *generally*. Which arose from his wife's medical malpractice claim. See Plaintiff Beverly Moore-Rowe's Notice of Intent, *generally*.

Defendant's 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") and S.C. Code Ann. § 15-36-100 . 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 the Plaintiff 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 the Defendant. The statute specifically states "the plaintiff *must* file as part of the complaint an affidavit of an expert witness which *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." (emphasis added). The Plaintiff failed to comply with the Act as they failed to attach any affidavit to their Complaint.

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 Defendants would show that they, as licensed

medical doctors and employer of the same, are healthcare providers to whom this section requires a sufficient affidavit. See S.C. Code Ann. § 15-36-100(G)(9).

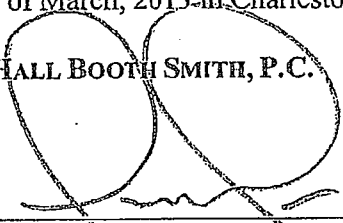
Plaintiff's failure to attach an affidavit is a fatal error that warrants a dismissal with prejudice of their Complaint. See Ranucci v. Crain, 397 S.C. 168 (S.C. Ct. App. 2012); and Barnes v. Seigler, 2012 U.S. Dist. LEXIS 10523 (D.S.C. Jan. 30, 2012).

Conclusion

This 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, this Defendant moves 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 26th 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 23rd 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:

Mr. Arthur Peter Rowe
52 Chadwick Drive
Charleston, SC 29407

Pro Se Plaintiff

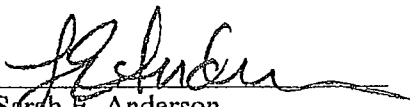
Joseph J. Tierney, Jr.
Christine Kent Toporek
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402-0993

Attorneys for Defendant Bon Secours

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

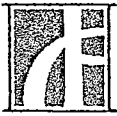
Attorney for Defendant Steven Heath Cobb

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

FILED
2013 MAR 27 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



Roe Cassidy
Coates & Price PA

V. Clark Price
(864) 349-2604
cprice@roecassidy.com

2013-CP-10-0090

MARCH 25, 2013

The Hon. Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, #106
Charleston, SC 29401

Re: *Arthur Peter Rowe v. Bon Secours – St. Francis Xavier Hospital, Inc., d/b/a
Bon Secours St. Francis Xavier Hospital, et al.*
C. A. No. 2013-CP-10-0090
RCCP # 1171.0020

Dear Clerk Armstrong:

Enclosed, please find "Exhibit A" which should be attached to the Notice of Motion and Motion to Dismiss which was sent last week for filing in the above-referenced mater.

Thank you.

Very truly yours,

Erin H. Dunn, Legal Admin. Asst. to
Fred W. (Trey) Suggs III and
Ella S. Barbery

/ehd
Enclosures

FILED
2013 MAR 27 PM 1:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY

1052 North Church Street
Greenville SC 29601

PO Box 10529
Greenville SC 29603

p 864 349 2600
f 864 349 0303

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Beverly C. Moore-Rowe

Plaintiff(s)

vs.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 00088

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

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 |

SCCA / 234 (01/2011)

Page 1 of

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)
 - ☐ 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 SCRCF, 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 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 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

Arthur Peter 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

NINTH JUDICIAL CIRCUIT

C/A No. 13-CP-10-00090

**DEFENDANT BYRON N. BAILEY, M.D.
AND CHARLESTON NEUROSURGICAL
ASSOCIATES, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 APR -3 PM 1:53

FILED

TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

COMES NOW, the Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC (hereinafter "these Defendants") by and through their undersigned attorneys answering the Plaintiff's Complaint subject to their Motion to Dismiss as follows:

1. These Defendants deny each and every allegation of the Plaintiff's Complaint which is not hereinafter specifically admitted.

2. These Defendants lack sufficient information to admit or deny Paragraphs 1 and 2 of the Plaintiff's Complaint.

3. Paragraphs 3, 4, 5, 6, 7, 8, and 9 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

4. Answering Paragraph 10 of the Plaintiff's Complaint, these Defendants admit Dr. Bailey is a resident of Charleston County, South Carolina, that he is a physician licensed to practice medicine in South Carolina and that he is a board certified neurosurgeon.

5. Paragraphs 11, 12, and 13 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

6. Answering Paragraph 14 of the Plaintiff's Complaint, these Defendants admit Charleston Neurosurgical Associates, LLC was originally established as a limited liability company in the State of South Carolina. At the time of the events described within the Complaint, the Defendant Dr. Bailey was employed by a charitable entity and not by Charleston Neurosurgical Associates, LLC. Accordingly, the Defendant Charleston Neurosurgical Associates, LLC should be dismissed from this lawsuit.

7. Paragraphs 15, 16, 17, 18, and 19 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

8. These Defendants deny Paragraphs 20 of the Plaintiff's Complaint.

9. Paragraphs 21, 22, 23, 24, and 25 of the Plaintiff's Complaint refer to or apply to parties other than these Defendants. Accordingly, no responses are required by these Defendants to these Paragraphs. To the extent responses are required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answers to these Paragraphs by the parties referenced for a complete and accurate response to these Paragraphs on behalf of those parties.

10. Answering Paragraph 26 of the Plaintiff's Complaint, these Defendants admit the allegations set forth within the Complaint occurred in Charleston County, South Carolina. These Defendants deny the allegations as set forth within this Answer.

11. Answering Paragraph 27 of the Plaintiff's Complaint, these Defendants admit venue is appropriate in this action but deny the Court has jurisdiction over this matter as set forth within this Answer due to the Plaintiff's failure to file a Notice of Intent to File Suit and an expert affidavit.

12. Paragraph 28 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and

treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

13. These Defendants deny Paragraphs 29 and 30 of the Plaintiff's Complaint.

14. Paragraph 31 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

15. Answering Paragraph 32 of the Plaintiff's Complaint, these Defendants admit all care and treatment provided to the Plaintiff's wife complied with the standard of care in all respects.

16. Paragraph 33 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

17. Answering Paragraph 34 of the Plaintiff's Complaint, these Defendants admit all care and treatment provided to the Plaintiff's wife complied with the standard of care in all respects. These Defendants deny all conclusions of law set forth within this Paragraph.

18. Answering Paragraphs 35, 36, 37, 38, 39, 40, and 41 of the Plaintiff's Complaint, these Defendants refer to the medical records related to the the Plaintiff's wife care and treatment and to the testimony of the healthcare providers referenced for a complete and accurate recitation of the care rendered. Additionally, all allegations of these Paragraphs that are inconsistent with these Defendants' defense that all care and treatment provided by these Defendants to the Plaintiff's wife complied with the standard of care in all respects are denied.

19. These Defendants deny Paragraph 42 of the Plaintiff's Complaint.

20. Answering Paragraphs 43, 44, and 45 of the Plaintiff's Complaint, these Defendants refer to the medical records related to the the Plaintiff's wife care and treatment and to the testimony of the healthcare providers referenced for a complete and accurate recitation of the care rendered. Additionally, all allegations of these Paragraphs that are inconsistent with these Defendants' defense that all care and treatment provided by these Defendants to the Plaintiff's wife complied with the standard of care in all respects are denied.

21. Answering Paragraph 46 of the Plaintiff's Complaint, these Defendants admit all of the care and treatment they rendered to the Plaintiff's wife complied with the standard of care as it is defined by the law of the State of South Carolina in all respects.

22. Paragraph 47 of the Plaintiff's Complaint refers to or applies to parties other than these Defendants. Accordingly, no response is required by these Defendants to this Paragraph. To the extent a response is required, these Defendants answer all of their care and treatment of Ms. Moore-Rowe complied with the appropriate standard of care in all respects; therefore, the Plaintiff is not entitled to any recovery against these Defendants. Further, these Defendants refer to the answer to this Paragraph by the parties referenced for a complete and accurate response to this Paragraph on behalf of those parties.

23. These Defendants deny Paragraphs 48, 49, 50 including all subparts (a) through (n), 51 including all subparts (a) through (p), 52 and 53 of the Plaintiff's Complaint.

24. Answering Paragraph 54 of the Plaintiff's Complaint, these Defendants deny that the Plaintiff or his wife are allowed pursuant to South Carolina law to file actions against these Defendants without an expert affidavit. Accordingly, this action should be dismissed.

25. These Defendants deny Paragraphs 55, 56, and 57 of the Plaintiff's Complaint.

26. These Defendants deny the Plaintiff is entitled to the relief requested within his Prayer for Relief.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THESE DEFENDANTS ALLEGE:

(No Deviation from Standard of Care)

27. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 26 above as if fully repeated herein verbatim.

28. That the care and treatment administered by these Defendants to the Plaintiff's wife conformed to and was in full compliance with the standard of care. All care and treatment administered by these Defendants to the Plaintiff's wife was within acceptable medical standards and methods, and, at no time pertinent hereto, did these Defendants deviate from any medical standard while caring for or tending to the Plaintiff's wife. Consequently, the Plaintiff is barred from recovery against these Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THESE DEFENDANTS ALLEGE:

(No Proximate Cause)

29. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 28 above as if fully repeated herein verbatim.

30. That, even if these Defendants were negligent, as alleged in the Complaint, which is specifically denied, the negligence of these Defendants was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore the Defendants are not liable for any damages allegedly sustained.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Failure to State a Claim)

31. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 30 above as if fully repeated herein verbatim.

32. The allegations contained in Complaint fail in their entirety to state a claim upon which relief may be granted against these Defendants. As a result, this matter should be dismissed against these Defendants pursuant to Rule 12(b)(6), SCRPC.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Charitable Immunity)

33. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 32 above as if fully repeated herein verbatim.

34. The Defendant Dr. Bailey is an "employee" or "agent" of a 501(c)(3) corporation and/or a 501(c)(3) corporation which operates exclusively for benevolent, educational, scientific and charitable purposes. The Defendant Dr. Bailey is entitled to the protections set forth in the limitations of liability referenced in the S.C. Code Ann. § 33-56-180(A) of the 1976 Code of Laws of South Carolina as amended, all provisions of the South Carolina Solicitation of Charitable Funds Act S.C. Code Ann. § 33-56-10, et. seq., and/or the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et. seq. which limits recovery against a charitable Defendant and its employees/agents. The Defendant Dr. Bailey further answers they are exempt from a claim of punitive damages as claimed within the Complaint. As an employee of a charitable organization as defined by Chapter 56 of Title 33 of the South Carolina Code of Laws (1976 as amended) and pursuant to said statutory scheme, recovery against the agents/employees of a charitable entity for any tortuous act or omission is specifically limited to actual damages in a specified amount not to exceed the limitations set forth within the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq. and

the Defendant Dr. Bailey pleads said statutory scheme as a bar and/or limitation to recovery by the Plaintiff against him in this action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Punitive Damages Unconstitutional)

35. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 34 above as if fully repeated herein verbatim.

36. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate these Defendants' constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Limitation on liability/Noneconomic Damage Awards Act)

37. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 36 above as if fully repeated herein verbatim.

38. All provisions and subparts including but not limited to all limitations on noneconomic damage awards set forth within the South Carolina Noneconomic Damage Awards Act of 2005 S.C. Code Ann. § 15-32-200, et. seq. apply to this action. These Defendants deny liability as set forth within this Answer. However, these Defendants answer the limitations set forth within § 15-32-220 apply to this action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Application of S.C. Code Ann. § 15-38-15)

39. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 38 above as if fully repeated herein verbatim.

40. These Defendants hereby reserve the right to seek all remedies, rights and privileges available pursuant to S.C. Code Ann. § 15-38-15. That, upon information and belief,

even if these Defendants were negligent as described in the Complaint, which is specifically denied, these Defendants were less than fifty percent liable for the total fault alleged. Accordingly, joint and several liability should not apply to this action and each Defendant should be held liable only for the percentage of fault, which is specifically denied, to be determined by the trier of fact.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Statute of Limitations)

41. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 40 above as if fully repeated herein verbatim.

42. The Plaintiff failed to commence properly this action within the requisite statute of limitations. Accordingly, the Court lacks jurisdiction over the subject matter of this action and these Defendants should be dismissed.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:

43. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 42 above as if fully repeated herein verbatim.

44. The Plaintiff did not comply with the Medical Malpractice Reform Act and all applicable provisions of South Carolina law in filing and/or commencing this action. Additionally, the Plaintiff has failed to file a Notice of Intent to File Suit pursuant to S.C. Code Section 15-79-125 and an expert affidavit as required by S.C. Code Section 15-36-100. Accordingly, this case should be dismissed.

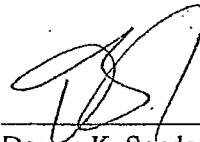
FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Reservation and Non-Waiver)

45. These Defendants reallege and incorporate by reference all of their responses in Paragraphs 1 through 44 above as if fully repeated herein verbatim.

46. These Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE having answered all of the allegations of the Plaintiff's Complaint and asserting these affirmative defenses herein subject to their Motion to Dismiss, these Defendants hereby move the Court for a dismissal of all claims, for costs and fees associated with the defense of this action, and for such other relief as the Court deems appropriate.

BUYCK & SANDERS LAW FIRM, LLC
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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

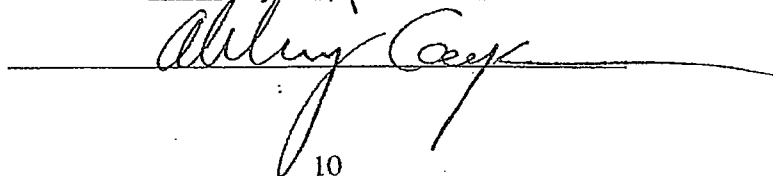
4/2, 2013
Mt. Pleasant, South Carolina

\\MAINSERVER\Case Files\30.16 Arthur Rowe v. Bailey\Pleadings & Discovery\Answer.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.



10

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 13-CP-10-00090

)

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

.....

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1

\\MAINSERVER\Case Files\30.16 Arthur Rowe v. Bailey\Motions & Orders\Motion slip (MTD).doc

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Arthur Peter 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

) NINTH JUDICIAL CIRCUIT

) C/A No. 13-CP-10-00090

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

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 APR -3 PM 1:53

FILED

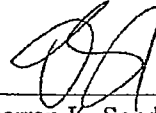
TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

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 Summons and Complaint filed in the above-referenced matter pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP and S.C. Code Ann. Sections 15-79-125 and 15-36-100.

The Plaintiff alleges injury in the form of loss of consortium related to allegations of medical malpractice concerning medical care rendered to his wife, Beverly Moore-Rowe. Ms. Moore-Rowe has filed a Notice of Intent to File Suit alleging medical malpractice against these Defendants in a filing bearing civil action number 2013-CP-10-0088. It is the position of these Defendants that because the cause of action clearly arose after July 1, 2005 and because the Plaintiff alleges injury in this action as the result of medical malpractice in the form of loss of consortium, the Plaintiff was required to comply with the pre suit requirements set forth in S.C. Code Section 15-79-125 prior to moving forward with a Summons and Complaint. Moving forward with a Notice of Intent to File Suit is necessary because in order to prove his cause of action for loss of consortium, the Plaintiff must prove liability of these Defendants for his wife's injuries. The Plaintiff did not file a Notice of Intent to File Suit pursuant to S.C. Code Section 15-79-125. Furthermore, the Plaintiff has failed to provide an expert witness affidavit pursuant to S.C. Code Section 15-36-100. Accordingly, this matter should be dismissed with prejudice pursuant to S.C. Code Sections 15-79-125, 15-36-100 and South Carolina Rules of Civil Procedure Rules 12(b)(1) and 12(b)(6).

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

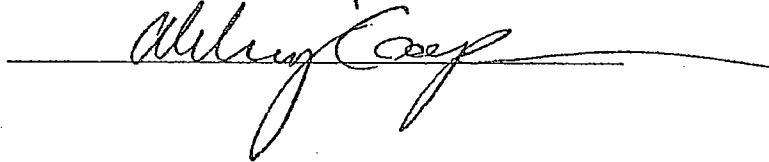
Mt. Pleasant, South Carolina

\\MAINSERVER\Case Files\30.16 Arthur Rowe v. Bailey\Motions & Orders\MTD (Loss of Consortium).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)

2013-CP-10-0090
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 11:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
)

Arthur Peter Rowe,

CASE NO. 2013-CP-10-00090

☐ 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: Arthur Peter 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 ☐ 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: _____ (print name) ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED-AMOUNT DUE: _____	
DATE FILED	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS

Arthur Peter Rowe,

Plaintiff,

Versus

) C/A No. 2013-CP-10-00090

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.

DEFENDANT CHRISTINE C.
THOMPSON, M.D. A/K/A CHRISTINE
THOMPSON, M.D.'S NOTICE OF
MOTION AND MOTION TO DISMISS

FILED
2013 APR 22 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

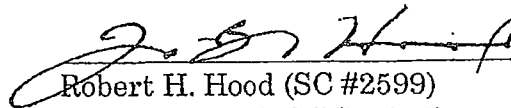
TO: ARTHUR PETER ROWE, PRO SE PLAINTIFF:

PLEASE TAKE NOTICE THAT the Defendant, Christine C. Thompson,
M.D., a/k/a Christine Thompson, M.D. (hereinafter "this Defendant"), will move
before this Honorable Court, at a time and place set by the Court, for an Order

dismissing the Plaintiff's Complaint. This Motion is based on the grounds that the Plaintiff failed to file a Notice of Intent to File Suit and as required by S.C. Code § 15-79-125 or an expert witness affidavit as part of the Plaintiff's Complaint as required by S.C. Code § 15-36-100.

This Motion is supported by statutory and common law of the state of South Carolina and other applicable authority and may be supported by a memorandum of law or other supporting material as permitted under the South Carolina Rules of Civil Procedure.

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)

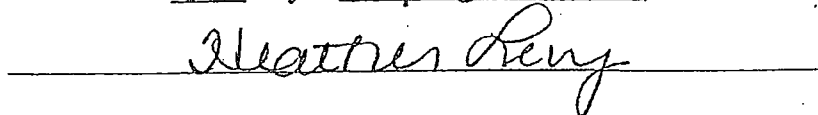
Attorneys for the Defendant
Christine C. Thompson, M.D., a/k/a
Christine Thompson, M.D.

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)

ARTHUR PETER 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-10-00090

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Arthur Peter 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

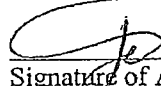
Nature of Motion: Motion to Dismiss

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

5-23-13

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

ARTHUR PETER 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, 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-10-00090

NOTICE OF MOTION
AND
MOTION TO DISMISS

FILED
2013 MAY 28 PM 1:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOTICE OF MOTION AND MOTION TO DISMISS

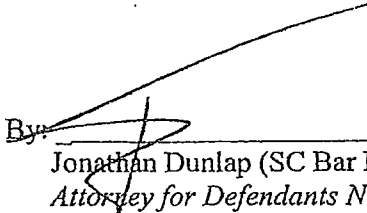
You will please take notice that the Defendants, Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA ("Defendants"), by and through their undersigned counsel, will move the Court to dismiss the above referenced action pursuant to Rule 12(4) for insufficiency of process and Rule 12(5) for insufficiency of service of process of the South Carolina Rules of Civil Procedure.

This Motion is based on the Plaintiff's failure to timely and effectively perfect service of the Summons on them in accordance with Rule 3(a)(2) and Rules 4(d)(1) & d(3). More specifically, the Plaintiff has attempted to serve Defendant Tammy McGraw, CRNA, more than 120 days after the running of the applicable statute of limitations. Plaintiff has failed to serve Defendant Nurse Anesthesia of South Carolina, LLC or Defendant Jeffery S. Wager at all.

Defendants appear in this matter solely for the purposes of contesting jurisdiction due to defects with the Plaintiff's service of process. See, Dunbar v. Vandermore, 295 S.C. 493, 495, 369 S.E.2d 150, 151 (Ct. App. 1988) (holding that a defendant does not waive jurisdictional issues by making an appearance in a matter); Maybin v. Northside Corr. Ctr., 891 F.2d 72, 73 (4th Cir. 1989) (holding, under South Carolina law, a Defendant does not waive service of process related defenses merely because it alerts the Court to jurisdictional defects).

This the 23rd 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

13-CP-10-90

CERTIFICATE OF SERVICE

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

Arthur Peter 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 28 PM 1:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

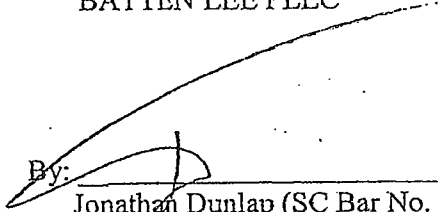
Jack G. Gresh
40 Calhoun Street, Suite 550
Charleston, SC 29401
*Attorneys for Defendants Charleston Surgery Center,
Charleston Surgery Center Limited Partnership*

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 23rd 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	)	
	)	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 128 of 156

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-10-00090

FILED
2013 AUG -2 PM 12:43
JULIE J. ARMSTRONG
CLERK OF COURT

ARTHUR PETER 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

Arthur Peter 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.

Arthur Peter Rowe

ARTHUR PETER 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

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Francis Xavier Hospital,

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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-10-00090

FILED
2013 AUG -2 PM 12:43
JULIE J. ARISTRONG
CLERK OF COURT

ARTHUR PETER 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, Arthur Peter 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

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Neurosurgical Associates LLC

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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

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Charleston Surgery Center Limited Partnership

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

Christine Kent Toporek, Esquire
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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
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Mount Pleasant, S.C. 29464

Arthur Peter Rowe

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

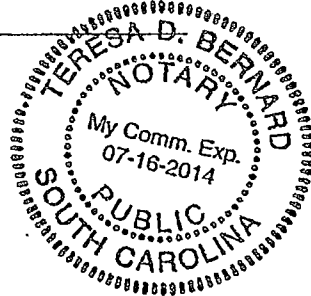
SWORN to before me this First (1st)
day of August.

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 & ~~2013-CP-10-00089~~

☐ 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: <u>2060</u> DATE: <u>6-28-2013</u>
--	---

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-10-00090 CP-Charleston

FILED

Arthur Peter 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:

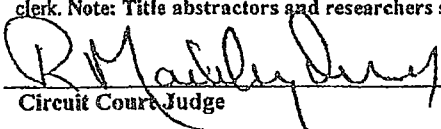
ORDER INFORMATION

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

6-18-2013
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

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

Arthur Peter 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-10-00090

ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUL -3 PM 3:02

FILED

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.

RM08/11

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; 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 (1) the Plaintiff failed to file a Notice of Intent to File Suit and an expert affidavit prior to filing his Complaint as mandated by South Carolina Code Section 15-79-125; and (2) the Plaintiff failed to file an expert affidavit with his Complaint as mandated by South Carolina Code Section 15-36-100.

FACTS

The Plaintiff filed a Complaint on January 7, 2013 alleging one cause of action for loss of consortium based on the alleged medical negligence arising out of a January 7, 2010 cervical spine surgery performed on his wife, Beverly Moore-Rowe.¹ Plaintiff failed to file a Notice of Intent to File Suit prior to filing his Complaint and failed to contemporaneously file an expert affidavit with his Complaint. Numerous Defendants filed Motions to Dismiss based on these procedural failures. Defendants Nurse Anesthesia of South Carolina, LLC, 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, Defendants Jeffery S. Wager and Tammy McGraw Speichers did not enter an appearance at this hearing. Nurse Anesthesia of South Carolina only entered an appearance in the phase of this hearing dedicated to the action of Beverly C. Moore-Rowe. 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.

¹ Plaintiff's wife filed a Notice of Intent to File Suit on the same day the Plaintiff filed his Complaint. C/A No. 2013-CP-10-00088. The Defendants in that case, which are the same Defendants in this case, filed Motions to Dismiss Plaintiff's wife's Notice of Intent. Those Motions were heard and granted at the same time as the Motions to Dismiss in this case.

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 plaintiffs 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 and section 15-36-100.

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.

Plaintiff's Complaint alleging loss of consortium is a civil action alleging injury as a result of medical malpractice. See Creighton v. Coligny Plaza Limited Partnership, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability for the spouse's injuries, as well as damages to the plaintiff resulting from the spouse's injury."). Because the Plaintiff's spouse's injuries are alleged to be the result of medical negligence, the Plaintiff's Complaint alleges his injury as a result of medical negligence. Accordingly, the Plaintiff was required to comply with the provisions of § 15-79-125(A). By failing to file a Notice of Intent to File Suit and an expert affidavit before filing his Complaint, Plaintiff failed to comply with § 15-79-125(A) and, therefore, the Court find his Complaint is procedurally inappropriate. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-79-125.

SOUTH CAROLINA CODE SECTION 15-36-100 BARS THIS ACTION

The Plaintiff also failed to file an expert affidavit contemporaneously with his Complaint as required by South Carolina Code Section 15-36-100. South Carolina Code Section 15-36-100 establishes the procedures for commencing suits for professional negligence, including medical malpractice. Ranucci, 397 S.C. at 173, 723 S.E.2d at 244. Section 15-36-100 "requires the plaintiff to craft a viable complaint supported by the sworn testimony of a qualified expert witness. Because an affidavit filed pursuant to this section is a 'part of the complaint,' it is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case." Id. at 178, 723 S.E.2d at 247.

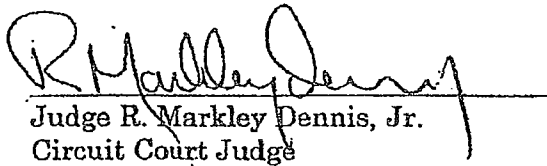
Plaintiff's Complaint is an action for damages based on professional negligence. All of the named Defendants are professional health care providers. Accordingly, Plaintiff was required to comply with §15-36-100 in filing his Complaint. Plaintiff failed to so comply when he filed his Complaint without an expert affidavit. Section 15-36-100(C)(1) does provide an exception allowing a Plaintiff to supplement the complaint with an expert affidavit within 45 days of filing. Plaintiff failed to argue that this exception applied. Further, Plaintiff's Complaint was filed January 7, 2013 and the Plaintiff failed to file an expert affidavit within 45 days. Finally, 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. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-36-100(C)(1).

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.
Circuit Court Judge

rm09/6



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

R. Markley Dennis, Jr.
Judge

2013-CP-10-0090

Post Office Box 1800
300 B California Avenue
Moncks Corner, SC 29461-1800
Phone: (843) 719-4435
Fax: (843) 719-4599
mdennisj@sccourts.org

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

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,

A handwritten signature in cursive script that reads "Beverly C. Moore-Rowe".

Beverly C. Moore-Rowe

Beverly Moore - Rowe
52 Chadwick Dr
Charleston SC 29407

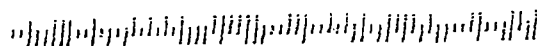
CHARLESTON SC 294

25 MAY 2013 PM 2 L



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

2946131600



18. 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.

Arthur Peter Rowe

ARTHUR PETER ROWE, PRO SE
52 Chadwick Drive
Charleston, South Carolina 29407
Phone: (843) 737-0733

November 13, 2014