

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SEP 10 2014

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

J. C. Nicholson, Circuit Court Judge

Case No. 2013-CP-10-03054  
Appellate Case No. 2014-000252

Willie Preston, individually and as the Personal Representative of the Estate of Martha Preston,  
Deceased .....Appellant,

v.

Surgical Care Affiliates, LLC; Charleston Surgery Center, L.P.; Laura Bilancione, R.N.; Coastal  
Anesthesia Associates; and Christine Thompson, MD.....Defendants,

Of Whom

Coastal Anesthesia Associates is the, ..... Respondent,

**RECORD ON APPEAL**

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-03054

Willie Preston, individually and as the Personal  
Representative of the Estate of Martha Preston,  
Deceased

Coastal Anesthesia Associates; and Christine  
Thompson, MD

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James B. Hood (SC #70212)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(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

Judge Code

Date

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, Deceased,

Plaintiff,

Versus

Surgical Care Affiliates, LLC,  
Charleston Surgery Center, L.P.; Laura  
Bilancione, R.N.; Coastal Anesthesia  
Associates; and Christine Thompson,  
M.D.,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-10-03054

**ORDER DENYING DEFENDANT  
COASTAL ANESTHESIA  
ASSOCIATES, LLC'S<sup>1</sup> MOTION TO  
DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION AND  
GRANTING DEFENDANT'S MOTION  
TO SET ASIDE ENTRY OF DEFAULT**

THIS MATTER comes before the Court on Defendant Coastal Anesthesia Associates, LLC's (hereinafter "Coastal Anesthesia") Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the Alternative, to Set Aside the Entry of Default. Based upon the motions and briefs submitted, accompanying exhibits and affidavits, arguments of counsel, and after carefully considering all of the same, the Court hereby denies Coastal Anesthesia's Motion to Dismiss for Lack of Subject Matter Jurisdiction and grants Coastal Anesthesia's Motion to Set Aside Entry of Default.

### FACTS

This is a medical malpractice action filed against the above-named defendants, wherein Plaintiff alleges that Defendants were negligent in performing his wife's knee surgery and her subsequent treatment in April of 2012. On November 13, 2012, Plaintiff filed a Notice of Intent naming as defendants Surgical Affiliates, LLC, Charleston Surgery Center, L.P., Nurse Doe, Christine Thompson, M.D. (hereinafter "Dr. Thompson") and ABC Anesthesia Group. (See Defendant's Exhibit 1, Plaintiff's Notice of Intent to File Suit, 2012-CP-10-7413, hereinafter

<sup>1</sup> Improperly identified as "Coastal Anesthesia Associates."

"Notice of Intent"). Notably, Plaintiff did not name Coastal Anesthesia as a party to the Notice of Intent.

Current counsel for Coastal Anesthesia filed a Notice of Appearance on behalf of Dr. Thompson, but not on behalf of Coastal Anesthesia and not on behalf of ABC Anesthesia Group. (See Defendant's Exhibit 2). On December 10, 2012, Plaintiff filed certificates of service evidencing service on Surgical Care Affiliates, LLC, Charleston Surgery Center, L.P., and Dr. Thompson. (See Exhibit 3, Certificates of Service). The Plaintiff did not serve Coastal Anesthesia with the Notice of Intent. (See Defendant's Exhibits 4 and 5, Affidavits of Randall Kerns, M.D. ("Dr. Kerns") and Wendy B. Sanders, MBA CMPE CANPC ("Sanders")), as Plaintiff did not know its identity.

 A pre-suit mediation occurred on April 1, 2013, and James Hood of Hood Law Firm, LLC attended on behalf of Dr. Thompson; Chad McGowan of McGowan, Hood, & Felder attended for Plaintiff, and Jack Gresh of Hall, Booth, Smith P.C. attended on behalf of the Defendant nurse and surgery center. The mediation ended with the parties at an impasse. (See Exhibit 6, Mediation Results Form). Neither "ABC Surgical Group" nor Coastal Anesthesia participated in pre-suit mediation. After mediation Mr. Hood identified the Anesthesia Group as Coastal Anesthesia.

On May 24, 2013, Plaintiff restyled his caption and filed his Complaint, naming, for the first time, Coastal Anesthesia. On July 8, 2013, Plaintiff attempted service of the Complaint on Coastal Anesthesia via certified mail return receipt requested to Coastal's registered agent Randall Kerns, M.D. Jody Hawkins signed for the Complaint. (See Defendant's Exhibit 7). However, I find that Jody Hawkins is not, has never been, and was not on July 8, 2013 an employee, agent or representative of Coastal Anesthesia. (See Defendant's Exhibit 4, Aff. of Sanders). Ms. Hawkins is, and was on July 8, 2013, an employee, agent or representative of Charleston Surgery Center, L.P., one of the Defendants who has settled this case with the Plaintiff. Id.

On September 23, 2013, Coastal Anesthesia filed an Answer to Plaintiff's Complaint. Plaintiff filed his Application for Default Judgment and Request for a Damages Hearing on September 26, 2013. This Court entered an Order of Default on November 25, 2013. On December 5, 2013, Coastal Anesthesia filed this Motion to Dismiss for lack of subject matter jurisdiction, or in the alternative, to Set Aside the Entry of Default. At the hearing, the court sua sponte amended the Order of Default filed on November 25, 2013, with the consent of the parties at the hearing, and subsequently issued an amended order to reflect an entry of default rather than a default judgment.

### LAW AND ANALYSIS

A. Failure to Comply with South Carolina Code § 15-79-125 Does Not Affect This Court's Subject Matter Jurisdiction

Coastal Anesthesia contends that this court lacks subject matter jurisdiction over the Complaint, as the Plaintiff failed to comply with the Notice of Intent process set forth in S.C. Code Ann. § 15-79-125. Subject matter jurisdiction "refers to a court's constitutional or statutory power to adjudicate a case." Johnson v. S. Carolina Dep't of Prob., Parole, & Pardon Servs., 379 S.C. 279, 284 (2007).

S.C. Code Ann. § 15-79-125 limits the circuit court's ability to hear a medical malpractice suit until the substantive pre-litigation requirements set forth in the statute have been fully fulfilled. Prior to filing a summons and complaint, a plaintiff must "contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness." S.C. Code Ann. § 15-79-125(A). The Notice of Intent "must name all adverse parties as defendants" and is required to "be served upon all named defendants." Id. Following Service of the Notice of Intent, "[w]ithin ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference . . . ." § 15-79-125(C). A plaintiff may only file a summons and complaint after the parties are unable to reach a resolution at pre-suit mediation. § 15-79-125(E).

This court finds that while failure to comply with the Notice of Intent procedures under § 15-79-125 may lead to dismissal of a complaint, it was not the legislative intent to completely deprive the circuit court of subject matter jurisdiction over the action.

**THEREFORE**, this court denies Coastal Anesthesia's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

**B. Coastal Anesthesia Demonstrated Good Cause Warranting Relief from Entry of Default**

Rule 55(c) of the South Carolina Rules of Civil Procedure provides that a court may set aside an entry of default where "good cause exists." Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). The decision whether to grant relief from an entry of default is solely within the sound discretion of the trial court. Id. The trial court should consider the following factors in deciding whether good cause exists: 1) the timing of the motion for relief; 2) whether the defendant has a meritorious defense; and 3) the degree of prejudice to the Plaintiff if relief is granted. Id. at 465, 381 S.E.2d 499, 501-02.

Good cause is a relatively low standard compared to the more rigorous standard applied to setting aside default judgments pursuant to Rule 60(b), SCRPC. See Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263, 266 (2009) ("The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRPC, while the standard is more rigorous for granting relief from a default judgment under Rule 60(b), SCRPC"). The defaulting party should also "provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

This court finds that Coastal Anesthesia has shown good cause and should be granted relief from the entry of default. A review of the Wham factors supports a finding that the Entry of Default should be set aside. As to the first factor, the timing of the motion for relief, the Order Entering Judgment against Coastal Anesthesia was filed on November 25, 2013. As the Clerk's

office was closed for the Thanksgiving holiday, Coastal Anesthesia filed a Motion to Set Aside Default Judgment on December 5, 2013. No significant events have taken place in this case since the court entered default judgment, and therefore, Coastal Anesthesia meets the timing element of good cause.

As to the second factor, a meritorious defense, the claim against Coastal Anesthesia is premised upon the alleged vicarious liability of Dr. Thompson. Therefore, the defenses raised in her Answer (Defendant's Exhibit 9) and affidavit are sufficient to satisfy the meritorious defense requirement. (See Defendant's Exhibit 14, Affidavit of Dr. Thompson).

As to the third factor, the degree of prejudice to Plaintiff, this lawsuit was very recently filed and thus far only written discovery has been exchanged. Therefore, the delay in time does not prejudice the Plaintiff, and allowing this case to proceed will not prejudice the Plaintiff.



As Coastal Anesthesia explained in its Motion to Set Aside Entry of Default, at no point in time did Dr. Kerns, Ms. Sanders, or anyone else authorized to receive process on behalf of Coastal Anesthesia, ever receive service of a Notice of Intent to File Suit naming Coastal Anesthesia as a party to the Notice of Intent. At no point in time did Plaintiff or Plaintiff's counsel contact Dr. Kerns, Ms. Sanders, or anyone else authorized to receive service on behalf of Coastal Anesthesia, to make Coastal Anesthesia aware that Plaintiff intended to include it as a party to the Notice of Intent.

Additionally, service of Summons and the Complaint on Coastal Anesthesia was insufficient under Rule 4, SCRCP. The Plaintiff argued in its Memorandum in Opposition to this motion that Coastal Anesthesia waived any objections to improper service by failing to raise these objections in its Answer to Plaintiff's Complaint, or in a timely motion made pursuant to Rule 12, SCRCP. Plaintiff points to Rule 12(h)(1), SCRCP, which states that an insufficiency of service of process defense is waived if a party fails to raise the defense in a pre-answer motion or in the answer. However, as this court entered default against Coastal Anesthesia, and Coastal Anesthesia did not have the permission of the Plaintiff or the leave of court to answer the

Plaintiff's Complaint, the answer submitted by Coastal Anesthesia was null and cannot act to waive a defense of insufficiency of service of process. The court further concludes that it would not serve the interests of justice to permit a plaintiff to hold a defendant in default based upon the date an answer was filed, when no entry of default was entered, and simultaneously conclude that certain defenses were waived because not asserted in the untimely answer. Therefore, Coastal Anesthesia may properly object to the sufficiency of service as a basis to set aside the entry of default.

Corporations, such as Coastal Anesthesia, may be served by delivering the summons and complaint to "an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 4(d)(3), SCRCPP. Service was improper in this case as Jody Hawkins signed for the Complaint, which Plaintiff had sent via regular mail to Coastal's registered agent Dr. Kerns, who is not, never has been, and was not on July 8, 2013 an employee, agent or representative of Coastal Anesthesia. Ms. Hawkins is an employee of Charleston Surgery Center, L.P., one of the Defendants who has settled this case with the Plaintiff. Plaintiff contends that Ms. Hawkins delivered the summons and complaint to Dr. Kerns and therefore effected personal service on him under Rule 4(d), SCRCPP. However, under Rule 4(c), SCRCPP, service may not be made by "a party to the action" upon another party. As an employee and agent of Charleston Surgery Center, L.P., another Defendant in this case as of July 8, 2013, Ms. Hawkins was unable to serve Coastal Anesthesia. Therefore, service on Coastal Anesthesia was improper under Rule 4, SCRCPP.

In light of the fact that Coastal Anesthesia had not been named in the Notice of Intent and was not properly served with the Complaint, Dr. Kerns, with knowledge of the lawsuit against Dr. Thompson, could reasonably conclude that no further actions were needed on the part of Coastal Anesthesia. Because Dr. Thompson was in the process of defending the lawsuit, and given the fact that the only avenue of recovery against Coastal Anesthesia is premised upon the alleged vicarious liability (or non-delegable duty of care) of its independent contractor Dr.

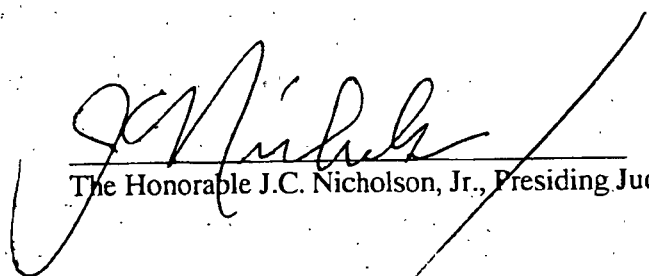
Thompson, it was reasonable for Dr. Kerns to conclude that her defenses applied equally to Coastal Anesthesia. Further, Coastal Anesthesia was not given the opportunity to participate in the mandatory pre-suit mediation process.

The interests of justice would be best served by setting aside default, as they require compliance with SCRCR Rule 4 in order to apprise a party of a pending action. Furthermore, Plaintiff failed to follow the requirements set forth under § 15-79-125 with respect to Coastal Anesthesia, and as such, Coastal Anesthesia never received proper notice of Plaintiff's potential suit against it or an opportunity to participate in pre-suit mediation, as is required by South Carolina statutes. Therefore, the interests of justice will be served by setting aside default and allowing the case to be resolved on the merits. Finally, the policy of the law favors bringing trials on the merits whenever possible.

This court finds that Coastal Anesthesia has adequately provided an explanation for the default and provided reasons why vacating the entry of default serves the interests of justice.

**THEREFORE**, Coastal Anesthesia has met all of the elements of good cause and this Court grants Defendant's motion to set aside the Entry of Default. Coastal Anesthesia will have 30 days upon proper service of the Summons and Complaint to Answer or otherwise responsively plead to the Complaint.

4/15, 2014  
Charleston, South Carolina

  
The Honorable J.C. Nicholson, Jr., Presiding Judge



## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-3054

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

PLAINTIFF(S)

Surgical Care Affiliates, LLC, Charleston  
Surgery Center, LP, Laura Bilancione,  
RN, Coastal Anesthesia Associates, and  
Christine Thompson, MD,

DEFENDANT(S)

Submitted by: \_\_\_\_\_

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

## DISPOSITION TYPE (CHECK ONE)

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

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

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Court's order of November 25, 2013, states that the Plaintiff is entitled to a Judgment of Default. This is scrivener's error and should have stated that the Plaintiff is entitled to an entry of default pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, rather than a default judgment. Therefore, this order supersedes the order of November 25, 2013.

## 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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                          |                                          |                                                          |

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

2117  
Judge Code

Date

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

C. A. No: 13-CP- 10-03054

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased

Plaintiffs,

vs.

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

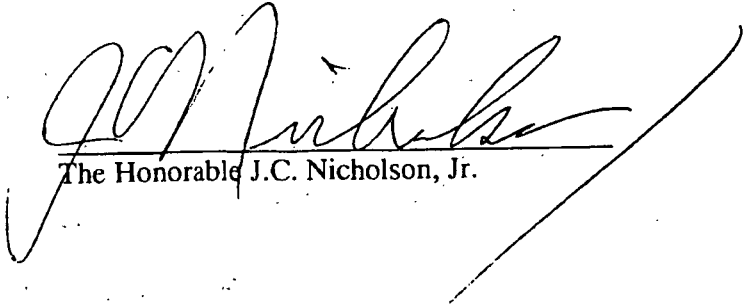
Defendants.

ORDER ENTERING DEFAULT  
JUDGEMENT AGAINST  
COASTAL ANESTHESIA  
ASSOCIATES

FILED  
2013 NOV 25 PM 3:41  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

This matter is before the Court on Plaintiff's Motion for Entry of Default Judgment. Summons and Complaint against Coastal Anesthesia Associates was filed by Plaintiff on May 24, 2013. Counsel for Plaintiff served a copy of the filed Summons and Complaint on Defendant Coastal Anesthesia's registered agent on July 8, 2013.

Defendant Coastal Anesthesia Associates failed to answer, make an appearance, or otherwise respond to Plaintiff's Complaint within thirty (30) days of service. Pursuant to Rule 55, SCRCF, Plaintiff is entitled to a Judgment by Default. The Court therefore ORDERS that Plaintiff be granted judgment by default on liability against Defendant Coastal Anesthesia Associates.

  
The Honorable J.C. Nicholson, Jr.

11/21, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

v.

Surgical Care Affiliates, LLC, Charleston  
Surgery Center, LP, Laura Bilancione, RN,  
Coastal Anesthesia Associates, and Christine  
Thompson, MD,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2013-CP-10-3054

**ORDER APPROVING SETTLEMENT**

2013 NOV -4 AM 9:59  
JULIE J. ARNOLD  
CLERK OF COURT  
BY \_\_\_\_\_

This matter comes before the Court on the Petition of Willie Preston, Personal Representative of the Estate of Martha Preston, deceased ("Petitioner"). Willie Preston, both individually and as Personal Representative, caused a wrongful death action (negligence) and survival action to be filed against the above-named Defendants in the Charleston County Court of Common Pleas, under Civil Action No. 2013-CP-10-3054, as a result of injuries Martha Preston sustained while being treated by the Defendants. Petitioner seeks to have this Court approve the settlement he has reached with Defendants Surgical Care Affiliates, LLC, Charleston Surgery Center, LP, and Laura Bilancione, RN ("Settling Defendants"). Settling Defendants deny liability of any kind or nature. Petitioner represents that he is Martha Preston's husband.

Settling Defendants have offered to pay the sum of One Million and no/100 Dollars (\$1,000,000.00) to the Petitioner to resolve any and all claims.

Of the total One Million and no/100 Dollars (\$1,000,000.00), the Petitioner has agreed to pay an attorney's fee in the amount of Four Hundred Thousand and no/100 Dollars (\$400,000.00), representing forty percent (40%) of the total sum, plus costs of litigation in the

amount of Eleven Thousand Four Hundred Twenty-Eight and 52/100 Dollars (\$11,428.52). All sums set forth herein constitute damages on account of personal injuries arising from an occurrence within the meaning of § 104(a)(2) of the Internal Revenue Code of 1986, as amended. Petitioner seeks to allocate the proceeds as follows: thirty-five percent (35%) to the loss of consortium claim, fifty-five percent (55%) to the wrongful death claim, and ten percent (10%) to the survival claim.

This settlement is only as to the Settling Defendants, and is not a settlement or release applicable to any other potentially liable party.

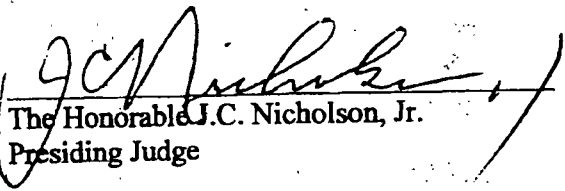
Upon full consideration of this matter, it appears to the Court that the settlement proposals outlined hereinabove and in the Petition to Approve Settlement are fair and just and in the best interests of the parties.

IT IS ORDERED, ADJUDGED AND DECREED that the settlement proposal set forth hereinabove is approved.

IT IS ORDERED, ADJUDGED AND DECREED that upon approval of this settlement, that this case is dismissed with prejudice against the Settling Defendants, Surgical Care Affiliates, LLC, Charleston Surgery Center, LP, and Laura Bilancione, RN, only.

Finally, the Court authorizes the Petitioner to execute an appropriate release and to dismiss any action against the Settling Defendants, with prejudice.

AND IT IS SO ORDERED.

  
The Honorable J.C. Nicholson, Jr.  
Presiding Judge

Charleston, South Carolina  
NOVEMBER 4, 2013

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

CASE NO: 2012-CP-10-7413

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

vs.

Surgical Care Affiliates, LLC; Charleston  
Surgery Center, LP; Jane Doe, RN; ABC  
Anesthesia Group; and Christine Thompson,  
MD,

Defendants.

**MEDIATION RESULTS FORM**

BY

JUDIE J. ARMSTRONG  
CLERK OF COURT

2013 APR -3 PM 12:40

FILED

**(THIS FORM TO BE COMPLETED BY MEDIATOR WITHIN 10 DAYS OF  
CONCLUSION OF THE CONFERENCE, WHETHER OR NOT AGREEMENT WAS  
REACHED BY THE PARTIES)**

1. Mediated settlement conferences were held before me on April 1, 2013.
2. As a result of these conferences, this case should be considered (*please check one*):

☐ Fully Settled (*please check one*):

☐ by Consent Judgment, to be filed by \_\_\_\_\_ or,  
(Name of Designee)

☐ by Voluntary Dismissal, to be filed by \_\_\_\_\_  
(Name of Designee)

☐ Partially Settled, with agreement of the Parties on the following issues:

(*Attach separate sheet if necessary*):

☒ At an impasse. The mediation session was productive and there is the possibility  
that further discussion over settlement options could lead to an agreement.

- ☐ In need of further mediation. (I ☒ am/ ☐ am not willing to mediate this case further.
- ☐ Continued (Date) \_\_\_\_\_.
3. Plaintiff ☒ was/ ☐ was not present.  
Defendants ☒ were/ ☐ were not present. (Dr. Thompson was not present)
4. Other participants were:
- ☒ attorney for plaintiff.
  - ☒ attorney for defendant.
  - ☒ representatives for insurance carrier (For Surgical Care Assn)
  - ☐ guardian ad litem \_\_\_\_\_.
  - ☐ experts \_\_\_\_\_.
  - ☐ others \_\_\_\_\_.
5. This case was co-mediated with \_\_\_\_\_.
6. Choice of the mediator was by:
- ☒ Stipulation.
  - ☒ Court Order.
7. The total number of hours spent in mediation was: 5 hours.
8. The total mediator fees were \$ 3000.00.
9. Further comments of the mediator:

Date: April 1, 2013

Signature of Mediator: \_\_\_\_\_  
Print Name of Mediator: Thomas J. Wills

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

CASE NO: 2013-CP-10-3054

Willie Preston, individually and as the )  
Personal Representative of the Estate of )  
Martha Preston, deceased, )  
 )  
Plaintiff, )

vs. )

**MEDIATION RESULTS FORM**

Surgical Care Affiliates, LLC; Charleston )  
Surgery Center, LP; Laura Bilancione, RN; )  
Coastal Anesthesia Associates, and )  
Christine Thompson MD, )  
 )  
Defendants. )

(THIS FORM TO BE COMPLETED BY MEDIATOR WITHIN 10 DAYS OF  
CONCLUSION OF THE CONFERENCE, WHETHER OR NOT AGREEMENT WAS  
REACHED BY THE PARTIES)

FILED  
2013 OCT -2 PM 4:15  
JULIE J. AMSTRONG  
CLERK OF COURT

1. Mediated settlement conferences were held before me on September 23, 2013.
2. As a result of these conferences, this case should be considered (*please check one*):

☐ Fully Settled (*please check one*):

☐ by Consent Judgment, to be filed by \_\_\_\_\_ or,  
(Name of Designee)

☐ by Voluntary Dismissal, to be filed by \_\_\_\_\_  
(Name of Designee)

☒ Partially Settled, with agreement of the Parties on the following issues:

Settled as to Defendants' Surgical Care Affiliates, LLC; Charleston Surgery Center, LP; and Laura Bilancione, RN, only. Defendants Coastal Anesthesia Associates & Dr. Christine Thompson remain defendants

☐ At an impasse. The mediation session was productive and there is the possibility that further discussion over settlement options could lead to an agreement.

☐ In need of further mediation. (I \_\_\_ am/\_\_\_ am not willing to mediate this case further.

☐ Continued (Date) \_\_\_\_\_.

3. Plaintiff ☒ was/☐ was not present.

Defendants ☒ were/☒ were not present.

Not present Defendants Coastal Anesthesia Associates & Dr. Christine Thompson

4. Other participants were:

- ☒ attorney for plaintiff.
- ☒ attorney for defendants (Surgical Care Affiliates, LLC; Charleston Surgery Center & Laura Bilancione only)
- ☒ representatives for insurance carrier \_\_\_\_\_.
- ☐ guardian ad litem \_\_\_\_\_.
- ☐ experts \_\_\_\_\_.
- ☐ others \_\_\_\_\_.

5. This case was co-mediated with \_\_\_\_\_.

6. Choice of the mediator was by:

- ☐ Stipulation
- ☒ Court Order.

7. The total number of hours spent in mediation was: 6.0 hours.

8. The total mediator fees were \$2,850.00.

9. Further comments of the mediator:

Date: September 23, 2013

Signature of Mediator: \_\_\_\_\_

Print Name of Mediator: Thomas J. Wills



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as PR of  
the Estate of Martha Preston, Deceased

Plaintiff,

v.

Surgical Center Affiliates, LLC,  
Charleston Surgery Center, LP, Nurse  
Doe, Christine Thompson, MD, and ABC  
Anesthesia Group,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 12-CP-10-7413

NOTICE OF INTENT TO FILE SUIT

2012 NOV 13 PM 4:08  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

Pursuant to S.C. Code Ann. 15-79-125, Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is Plaintiff's short and plain statement of the facts. Attached as Exhibits B and C are affidavits from expert witnesses delineating at least one negligent act or omission which would allow the Plaintiff to recover damages from Defendants in this case. Attached as Exhibit D are answers to Standard Interrogatories as set forth in S.C.R.C.P. 33 (b).



Chad A. McGowan  
Ashley Creech  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, South Carolina 29732  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

Rock Hill, South Carolina

November 9, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

v.

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Laura Bilancione,  
R.N.; Coastal Anesthesia Associates; and  
Christine Thompson, M.D.

Defendants.

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in  
this action, a copy of which is served upon you, and to serve a copy of your Answer to  
the Complaint on the subscriber at his office at 1539 Health Care Drive, Rock Hill, South  
Carolina, 29732, within thirty (30) days of service, exclusive of the date of service; and if  
you fail to Answer the Complaint within that time, judgment by default will be rendered  
against you for the relief demanded in the Complaint.

MCGOWAN HOOD & FELDER, LLC

  
Chad A. McGowan  
Ashley White Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

May 22, 2013.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No: 13-CP- 10-3054

SUMMONS

2013 MAY 24 PM 4:21  
JULIE J. ARHISTROM  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

C. A. No: 13-CP-

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased )

Plaintiffs, )

Complaint for Damages  
(Jury Trial Demanded)

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

Defendants. )

FILED  
2013 MAY 24 PM 4:21  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

The Plaintiff, by and through his undersigned counsel, for a Complaint against the  
Defendants, does hereby allege as follows:

**PARTIES**

**Plaintiff**

1. The Plaintiff, Willie Preston, is the duly appointed Personal Representative of the estate of Martha Preston. At all times relevant hereto, Willie Preston was the husband of Martha Preston. He brings these claims as PR for wrongful death and survival, and on behalf of himself for loss of consortium. Plaintiff is a citizen and resident of Charleston County, South Carolina.

**Defendants**

2. Defendant Surgical Care Affiliates, LLC is a corporation organized and existing under a state's laws other than South Carolina and maintains an agent and/or joint venture in Charleston County, SC known as the Charleston Surgical Center, LP in Charleston County,

South Carolina. At all times relevant hereto, Surgical Care Affiliates, LLC was a joint venture, principal or agent, with the entity employing certain nurses and other medical staff at the Charleston Surgical Center who at all times relevant hereto, were employees acting within the scope of their employment.

3. Defendant Charleston Surgery Center LP, is a South Carolina limited partnership and is an agent, principal or joint venturer with Surgical Affiliates, LLC. Charleston Surgery Center maintains its principal place of business in Charleston County, SC and was the employer of certain nurses and other medical providers that treated Mrs. Preston on April 18, 2012.

4. Defendant Laura Bilancione, RN was the registered nurse who was in charge of Mrs. Preston's post operative care, and is the same person who signed Pages CSC-024 and CSC-025 of the medical records. This defendant is also believed to be the same person who administered the dilaudid and other drugs to Mrs. Preston. Nurse Bilancione is believed to be a citizen and resident of Charleston County, SC and was at all times working within the course and scope of her employment.

5. Defendant Christine Thompson, MD is a physician licensed by the state of South Carolina and holds herself out to the public as a specialist in the field of anesthesiology. At all times relevant hereto, Defendant Thompson was acting within the scope of her employment and/or contract with Coastal Anesthesia Associates, Charleston Surgical Center, LP, or Surgical Affiliates, LLC. Defendant Thompson is a citizen and resident of Charleston County, SC.

#### **FACTUAL ALLEGATIONS**

6. On April 18, 2012, Mrs. Preston went to the Charleston Surgery Center for an out patient knee surgery. The procedure was supposed to take well less than a day, and Mrs. Preston was to be returned home without staying in any medical facility overnight.

7. After this procedure, Mrs. Preston was sent from the Operating Room to the Post Anesthesia Care Unit ('PACU'). Dr. Thompson ordered, among other things, "Dilaudid 0.2 mg IV prn pain, may repeat every 5 minutes up to 2 mg IV or 4 mg IV." CSC 024. Both Dr. Thompson and Nurse Doe signed this order.

8. Nurse Bilancione administered the following medications to Mrs. Preston:

Dilaudid 1 mg IV at 9:02

Dilaudid 1 mg IV at 9:06

Dilaudid 1 mg IV at 9:21

Dilaudid 1 mg IV at 9:28

Phenergan 6.25 mg IV at 9:42

Percocet 1 by mouth at 9:42

9. The dilaudid administered by the nurse was in excess of the physician's order and the nurse therefore was below the prevailing and accepted medical standard of care.

10. Nurses have an obligation to follow doctor's orders unless in their professional judgment doing so would put the patient at risk. In that case, Nurses are expected to follow-up on their concerns either with the physician or through their chain of command. It is never appropriate for a nurse to give 4 doses of dilaudid, 1 mg EACH, when an order reads that the maximum per dose is 0.2 mg.

11. Further, Charleston Surgery Center and Surgery Center Affiliates had policies and procedures in place dictating when a patient could safely be discharged. The Defendants used a scoring system, that provided that a patient must score at least a 16 on a scale from 16-18. Mrs. Preston scored only a 13, and was discharged anyway.

12. As a back-up to this system, the physician, in this case Defendant Thompson, was

supposed to evaluate the patient and the patient's chart to sign off on the patient being fit for discharge. Dr. Thompson signed a statement that she had assessed Mrs. Preston and found her fit for discharge. See, Anesthesia Record, CSC-021. This is shocking as Mrs. Preston at that time was under the influence of 4 mg of dilaudid, Phenergan, and Percocet, and the effects of those drugs was profound. Mrs. Preston could not walk or stay awake from the heavy medications. Dr. Thompson never reviewed the patient's chart to determine if her order was followed or to determine if Mrs. Preston could safely be discharged. If she had, she would not have discharged Mrs. Preston.

13. Dr. Thompson had a duty and obligation to assess Mrs. Preston prior to her discharge as well as to review her medical chart from the PACU. Dr. Thompson further had a duty and obligation to perform this assessment in a competent manner. Dr. Thompson failed on both accounts.

14. Mrs. Preston was sent home in the care of her husband who did his level best to care for her. Mrs. Preston was falling asleep while walking to her bedroom from her car. Mr. Preston regularly checked on her, and the last time he checked on her, before lunch time, Mrs. Preston was found to be not breathing.

15. Mr. Preston called 911 and started to do CPR on his wife. EMS arrived and took over care of Mrs. Preston, ultimately taking her to MUSC in Charleston.

16. Mrs. Preston was determined to be brain dead at MUSC from the lack of oxygen to her brain and she passed on April 23, 2012.

17. The cause of death was determined to be "probable mixed drug toxicity with fentanyl, promethazine, hydromorphone, oxycodone, and midazolam." In other words, Mrs. Preston died from the drugs she was given at the Charleston Surgery Center.

18. As a direct and proximate result of the acts and/or omissions of Defendants, Mrs. Preston did not receive proper treatment in a timely fashion. With proper, standard of care medicine, Mrs. Preston would not have suffered and would have not have died when she did and would have had a normal life expectancy.

19. The injuries to and death of Mrs. Preston were the direct and proximate result of and was caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and medical staff under similar circumstances and thereby rendered inappropriate medical care to Mrs. Preston by deviating from and falling below the prevailing and acceptable standards of care in one or more of the following particulars, as follows:

AS TO DEFENDANT Nurse Doe, Charleston Surgery Center LP, and Surgery Center Affiliates, LLC:

- 
- a. In failing to properly follow the physician's orders;
  - b. In giving too much medication;
  - c. In failing to properly assess Mrs. Preston;
  - d. In discharging Mrs. Preston under the circumstances;
  - e. In failing to properly follow the policies and procedures in place for discharge assessment; and
  - f. In such other ways as may be shown at trial

AS TO DEFENDANTS Thompson and Coastal Anesthesia Associates

- g. In failing to review the medical chart of the patient at the time Defendant Thompson certified that Mrs. Preston was fit for discharge;
- h. In failing to properly assess Mrs. Preston at the time of her discharge;
- i. In allowing Mrs. Preston to be discharged;
- j. In failing to realize that the nurse grossly violated her order by giving 1 mg doses of dilaudid when the order called for no more than 0.2 mg at a time; and
- k. In such other ways as may be shown at trial.

ATTACHED to the Notice of Intent, all of which is incorporated herein by reference, and attached to this Complaint are affidavits of qualified experts who will testify to at least one breach of the standard of care by the Defendants in this matter.

#### **FOR A FIRST CAUSE OF ACTION**

##### **(SURVIVAL ACTION)**

20. Plaintiff reiterates paragraphs 1-19 above as if set forth verbatim herein.

21. As a direct and proximate result of the negligence, carelessness, gross negligence, ~~recklessness and departure from the professional standards of care by Defendants, Mrs. Preston~~ suffered from severe debilitating injuries which resulted in her permanent injury and disability, and conscious pain and suffering, as a result of which Mrs. Preston is entitled to recover a sum to compensate her estate for her conscious pain and suffering, medical expenses, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

#### **FOR A SECOND CAUSE OF ACTION**



**(Wrongful Death)**

22. Plaintiff reiterates paragraphs 1-21 as if set forth verbatim herein.

23. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Preston suffered from severe debilitating injuries which resulted in her death, and thus the negligence was the cause of the loss of the support, aid, society, comfort, and companionship of her heirs at law. The estate is therefore entitled to recover from defendants a sum of money to compensate the heirs at law for the medical expenses, funeral expenses, mental anguish, loss of earnings capacity, and loss for the aid, society, comfort, and companionship of the decedent. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

**FOR A THIRD CAUSE OF ACTION**

**(Loss of Consortium)**

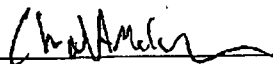
---

24. Plaintiff reiterates paragraphs 1-23 as if set forth verbatim herein.

25. Plaintiff Willie Preston, as the husband of Mrs. Mrs. Davis, has suffered a loss of consortium as a result of the actions and inactions of defendants. He is therefore entitled to an award of damages to compensate her for her loss of the society, comfort, companionship, support, and good offices of his wife. Further, the Defendants' actions in this case have been reckless and/or grossly negligent and thus Plaintiff Andrew Strong is additionally entitled to an award of punitive damages to punish and deter these defendants and others like them.

WHEREFORE, Plaintiffs, respectfully pray for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to

be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law.

  
Chad A. McGowan  
Ashley Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

John Hughes Cooper  
1476 Ben Sawyer Blvd, Suite 7  
Mt. Pleasant, SC 29464  
843-883-9099  
843-883-9335 (Fax)

Rock Hill, South Carolina

May 17, 2013  
22

PLAINTIFF DEMANDS A JURY TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2013-CP-10-3054

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

v.

Surgical Care Affiliates, LLC, Charleston  
Surgery Center, LP, Laura Bilancione, RN,  
Coastal Anesthesia Associates, and Christine  
Thompson, MD,

Defendants.

ACCEPTANCE OF SERVICE

**TO: CHAD A. MCGOWAN, ESQUIRE, AND ASHLEY CREECH, ESQUIRE,  
ATTORNEYS FOR PLAINTIFF**

This is to certify that Jack G. Gresh and Elizabeth Schwartz Corn of Hall Booth Smith, P.C., as attorneys for the Defendants, Surgical Care Affiliates, LLC, Charleston Surgery Center, LP, and Laura Bilancione, RN, accept service of the Summons and Complaint in the above-captioned matter on this 21<sup>st</sup> day of June, 2013 in Charleston, South Carolina.

**HALL BOOTH SMITH, P.C.**

Jack G. Gresh, SC Bar No. 75188  
Elizabeth S. Corn, SC Bar No. 71120  
40 Calhoun Street, Suite 550  
Charleston, SC 29401  
Phone: 843.720.3460  
Fax: 843.720.3458  
Email: jgresh@hallboothsmith.com  
ecorn@hallboothsmith.com

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2013-CP-10-3054

Willie Preston, individually and as the )  
Personal Representative of the Estate of )  
Martha Preston, deceased, )

Plaintiff, )

v. )

Surgical Care Affiliates, LLC, Charleston )  
Surgery Center, LP, Laura Bilancione, RN, )  
Coastal Anesthesia Associates, and Christine )  
Thompson, MD, )

Defendants. )

**DEFENDANTS', SURGICAL CARE  
AFFILIATES, LLC, CHARLESTON  
SURGERY CENTER, LP, AND LAURA  
BILANCIONE, RN, ANSWER TO  
PLAINTIFF'S COMPLAINT**

**TO: CHAD A. MCGOWAN, ESQUIRE, AND ASHLEY CREECH, ESQUIRE,  
ATTORNEYS FOR PLAINTIFF**

COMES NOW the Defendants, Surgical Care Affiliates, LLC, Charleston Surgery Center, LP, and Laura Bilancione, RN (hereinafter referred to as "these Defendants"), by and through their undersigned counsel, and in response to the Plaintiff's Complaint would allege unto this Honorable Court as follows:

1. These Defendants deny each and every allegation contained in Plaintiff's Complaint not specifically admitted herein.

2. These Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 1 of Plaintiff's Complaint, and therefore deny the same.

3. In response to the allegations contained in Paragraph 2 of Plaintiff's Complaint, these Defendants admit only that Defendant Surgical Care Affiliates, LLC is a corporation organized and existing under a state's laws other than the State of South Carolina and maintains a registered

agent within the State of South Carolina. These Defendants further admit that Defendant Surgical Care Affiliates, LLC conducted business within Charleston County, South Carolina. These Defendants deny all remaining and inconsistent allegations contained in said paragraph.

4. In response to the allegations contained in Paragraph 3 of Plaintiff's Complaint, these Defendants admit that Charleston Surgery Center, LP is a South Carolina Limited Partnership and maintains a principal place of business in Charleston County, South Carolina. These Defendants further admit that Martha Preston received treatment at Charleston Surgery Center, LP on April 18, 2012, and would refer to the medical records for a description of the same. These Defendants deny all remaining and inconsistent allegations contained in said paragraph.

5. In response to the allegations contained in Paragraph 4 of Plaintiff's Complaint, these Defendants admit only that Defendant Laura Bilancione, RN is a registered nurse and a citizen and resident of Charleston County, South Carolina. These Defendants would refer to the medical records for a full and complete description of the care and treatment provided to Martha Preston. These Defendants deny all remaining and inconsistent allegations contained in said paragraph.

6. In response to the allegations contained in Paragraph 5 of Plaintiff's Complaint, these Defendants deny that Defendant Thompson is an employee/agent of Charleston Surgery Center, LP or Surgical Care Affiliates, LLC. These Defendants are without sufficient knowledge or information to either admit or deny any remaining and inconsistent allegations contained in said paragraph.

#### **AS TO FACTUAL ALLEGATIONS**

7. In response to the allegations contained in Paragraphs 6, 7, and 8 of Plaintiff's Complaint, these Defendants would crave reference to the medical records to provide a full and complete description of the care and treatment provided to Martha Preston. These Defendants deny any

and all allegations inconsistent with the medical records and the information contained therein. These Defendants deny any and all remaining and inconsistent allegations contained in said paragraph.

8. In response to the allegations contained in Paragraph 9 of Plaintiff's Complaint, these Defendants would crave reference to the medical records for a full and complete description of the care and treatment provided to Martha Preston. These Defendants deny any and all allegations inconsistent with the medical records and the information contained therein. These Defendants deny any and all remaining and inconsistent allegations contained in said paragraph.

9. Paragraph 10 of Plaintiff's Complaint states conclusions of law to which no response is required. To the extent a response is required, these Defendants deny the allegations contained in said paragraph.

10. In response to the allegations contained in Paragraph 11 of Plaintiff's Complaint, these Defendants would crave reference to the medical records and the cited policies and procedures. These Defendants deny any and all inconsistent allegations contained in Plaintiff's Complaint.

11. Paragraphs 12 and 13 of Plaintiff's Complaint contain allegations that are not directed at these Defendants and state conclusions of law to which no response is required from these Defendants. To the extent a response is required, these Defendants deny the allegations contained in said paragraph.

12. These Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 14, 15, and 16 of Plaintiff's Complaint, and therefore deny the same.

13. These Defendants deny the allegations contained in Paragraphs 17 and 18 of Plaintiff's Complaint.

14. These Defendants deny the allegations contained in Paragraph 19 of Plaintiff's Complaint, including all subparts.

**AS TO THE FIRST CAUSE OF ACTION**  
**(Survival Action)**

15. As to Paragraph 20 of Plaintiff's Complaint, these Defendants repeat and reallege all prior paragraphs above as if fully set forth herein verbatim.

16. These Defendants deny the allegations contained in Paragraph 21 of Plaintiff's Complaint as stated and demand strict proof thereof.

**AS TO THE SECOND CAUSE OF ACTION**  
**(Wrongful Death)**

17. In response to the allegations contained in Paragraph 22 of Plaintiff's Complaint, these Defendants repeat and reallege all prior paragraphs above as if fully set forth herein verbatim.

18. These Defendants deny the allegations contained in Paragraph 23 of Plaintiff's Complaint as stated and demand strict proof thereof.

**AS TO THE THIRD CAUSE OF ACTION**  
**(Loss of Consortium)**

19. In response to the allegations contained in Paragraph 24 of Plaintiff's Complaint, these Defendants repeat and reallege all prior paragraphs above as if fully set forth herein verbatim.

20. These Defendants deny the allegations contained in Paragraph 25 of Plaintiff's Complaint as stated and demand strict proof thereof. Further, Paragraph 25 of Plaintiff's Complaint appears to refer to individuals not involved in this action.

21. These Defendants deny all remaining allegations contained in Plaintiff's Complaint, including but not limited to the Plaintiff's prayer for relief and the unnumbered "WHEREFORE" paragraph.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Failure to State a Claim)**

22. One or more of the Plaintiff's Causes of Action fails to state facts sufficient to constitute a cause of action against these Defendants, and therefore, should be dismissed under Rule 12(b)(6).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Negligent Acts and Omissions of Others)**

23. Plaintiff's claims, if any, are the result of negligent acts and omissions of other entities over whom these Defendants had no control, barring Plaintiff's claims against these Defendants.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Intervening/Superseding Negligence of Others)**

24. 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 as such constitutes a complete defense to Plaintiff's claims.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Lack of Proximate Cause)**

25. These Defendants allege that any acts or omissions on their part, which acts and omissions are denied, were not the proximate cause of the Plaintiff's injuries and/or death.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Compliance with Standard of Care)**

26. These Defendants allege that at all times, any act or omission attributed to them was in compliance with the applicable standard of care.



**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Punitive Damages)**

27. An award or assessment of punitive or exemplary damages against these Defendants as prayed for by the Plaintiff in his Complaint would violate these Defendants' 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 these Defendants plead such constitutional provisions as a complete defense to any claim for punitive damages.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Punitive Damages)**

28. An award of punitive damages under South Carolina law against these Defendants 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 these 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 these Defendants.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Non-Economic Damages Award)**

29. 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. These Defendants are health care providers 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.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Limitation of Punitive Damages)**

30. Any punitive damages awarded in this case would be subject to the limitations described in S.C. Code § 15-32-530.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Set-Off)**

31. These Defendants would assert that to the extent the Plaintiff receives compensation for injuries complained of in Plaintiff's Complaint from any other party to this action and/or any other source, these Defendants are entitled to a set-off of that amount for any damages that may or may not be assessed to these Defendants.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Incorporation)**

32. These Defendants hereby incorporate and assert 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.

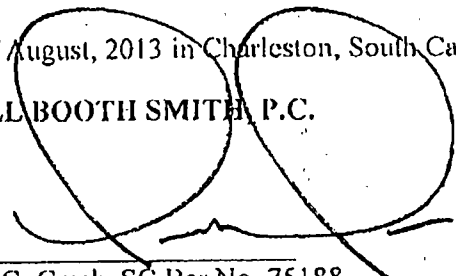
**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE**  
**(Reservation and Non-Waiver)**

33. These Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully answered the Plaintiff's Complaint, these Defendants pray that the same be dismissed with costs and for such other and further relief as the Court may deem proper.

Respectfully submitted this 6<sup>th</sup> day of August, 2013 in Charleston, South Carolina.

**HALLBOOTH SMITH, P.C.**

  
\_\_\_\_\_  
Jack G. Gresh, SC Bar No. 75188  
Elizabeth Schwartz Corn, SC Bar No. 71120  
40 Calhoun Street, Suite 550  
Charleston, South Carolina 29401  
Phone: 843.720.3460  
Fax: 843.720.3458  
Email: jgresh@hallboothsmith.com  
ecorn@hallboothsmith.com

*Attorneys for Defendants Surgical Care  
Affiliates, LLC, Charleston Surgery Center,  
LP, and Laura Bilancione, RN*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2013-CP-10-3054

Willie Preston, individually and as the )  
Personal Representative of the Estate of )  
Martha Preston, deceased, )

Plaintiff, )

v. )

Surgical Care Affiliates, LLC, Charleston )  
Surgery Center, LP, Laura Bilancione, RN, )  
Coastal Anesthesia Associates, and Christine )  
Thompson, MD, )

Defendants. )

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 1<sup>st</sup> day of August, 2013, a true copy of *Defendants', Surgical Care Affiliates, LLC, Charleston Surgery Center, LP, and Laura Bilancione, RN, Answer to Plaintiff's Complaint* was served upon counsel by mailing a copy properly addressed with sufficient postage affixed thereto as follows:

Chad A. McGowan, Esq.  
Ashley Creech, Esq.  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732

-and-

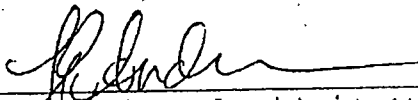
John Hughes Cooper, Esq.  
John Hughes Cooper, P.C.  
1476 Ben Sawyer Blvd, Suite 7  
Mt. Pleasant, SC 29464

*Attorneys for Plaintiff*

Robert H. Hood, Esq.  
James B. Hood, Esq.  
Jeffrey M. Bogdan, Esq.  
Hood Law Firm, LLC  
172 Meeting Street  
Post Office Box 1508  
Charleston, SC 29402

*Attorneys for Christine Thompson, MD*

By:

  
Sarah P. Anderson, Legal Assistant to  
Jack G. Gresh and Elizabeth Schwartz Corn  
Phone: 843.720.3477  
Email: sanderson@hallboothsmith.com

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

Willie Preston, individually and as PR of  
the Estate of Martha Preston, deceased,

CA FILE NO.: 13-CP-10-3054

Plaintiff,

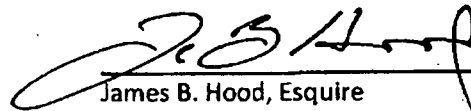
vs.

ACKNOWLEDGEMENT OF SERVICE

Surgical Center Affiliates, LLC, Charleston )  
Surgery Center, LP, Laura Bilancione, RN; )  
Coastal Anesthesia Associates; and )  
Christine Thompson, MD )  
Defendants.

I, James Hood, Esquire, hereby accepts service of the Summons and Complaint on this

4 day of June, 2013



James B. Hood, Esquire  
Hood Law Firm  
172 Meeting Street  
Charleston, SC 29401

Attorney for Christine Thompson, MD

IN THE COURT OF COMMON PLEAS

)

11

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)

)

(

5

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-

5. Paragraphs 9, 10, and 11 of the Plaintiff's Complaint contain allegations that are not directed at this Defendant and state conclusions of law. Therefore, no response is required from this Defendant. To the extent a response is required, this Defendant craves reference to the cited policies and procedures as well as Martha Preston's medical records and denies all inconsistent allegations contained in Paragraphs 9, 10, and 11 of the Plaintiff's Complaint.

6. This Defendant denies the allegations contained in Paragraphs 12 and 13 of the Plaintiff's Complaint.

7. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 14, 15 and 16 of the Plaintiff's Complaint, and therefore denies the same.

8. This Defendant denies the allegations contained in Paragraphs 17 and 18 of the Plaintiff's Complaint.

9. This Defendant denies the allegations contained in Paragraph 19 of the Plaintiff's Complaint. Subparagraphs a - f of Paragraph 19 of the Plaintiff's Complaint are not directed at this Defendant and contain conclusions of law and, therefore, no response is required from this Defendant. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs a - f of the Paragraph 19 of the Plaintiff's Complaint. Subparagraphs g - k of Paragraph 19 of the Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs g - k of the Paragraph 19 of the Plaintiff's Complaint.

**AS TO THE FIRST CASE OF ACTION**  
**(Survival Action)**

10. In response to Paragraph 20 of the Plaintiff's Complaint, this Defendant re-asserts and re-alleges her responses to Paragraphs 1 – 19 of the Plaintiff's Complaint as if fully restated herein.

11. Paragraph 21 of the Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

**AS TO THE SECOND CASE OF ACTION**  
**(Wrongful Death)**

12. In response to Paragraph 22 of the Plaintiff's Complaint, this Defendant re-asserts and re-alleges her responses to Paragraphs 1 – 21 of the Plaintiff's Complaint as if fully restated herein.

13. Paragraph 23 of the Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

**AS TO THE THIRD CASE OF ACTION**  
**(Loss of Consortium)**

14. In response to Paragraph 24 of the Plaintiff's Complaint, this Defendant re-asserts and re-alleges her responses to Paragraphs 1 – 23 of the Plaintiff's Complaint as if fully restated herein.

15. Paragraph 25 of the Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is



required, this Defendant denies the allegations contained in Paragraph 25 of the Plaintiff's Complaint.

16. This Defendant denies the WHEREFORE clause of the Plaintiff's Complaint such being the remaining allegations contained in the Plaintiff's Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(No Deviation from the Standard of Care)**

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

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(No Proximate Cause)**

18. That, even if this Defendant was negligent, as alleged in the Plaintiff's Complaint, which is specifically denied, the negligence of this Defendant is not the direct and proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

19. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's 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,**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

20. This Defendant would plead the requirements for an award of punitive damages as set forth by the Supreme Court of the United States in the case of State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003) as defenses to this claim and would specifically assert that they are entitled to summary judgment on punitive damages and if denied to bifurcated trial.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Noneconomic Damage Awards)**

21. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina 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 Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Limitation of Punitives)**

22. Any punitive damages awarded in this case would be subject to the limitations described in S.C. Code §15-32-530.

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

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

WHEREFORE, having fully answered the Plaintiff's Complaint, and having asserted these affirmative defenses, the Defendant, Christine Thompson, MD prays that the Plaintiff's Complaint be dismissed with prejudice and that she be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

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 Thompson, MD

7/2, 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 3 day of July, 2013.

Heather Perry

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, Deceased,

Plaintiff,

Versus

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Laura Bilancione,  
R.N.; Coastal Anesthesia Associates; and  
Christine Thompson, M.D.,

Defendants.

) IN THE COURT OF COMMON PLEAS  
)  
)

) C/A No. 2013-CP-10-03054  
)  
)

) **DEFENDANT COASTAL**  
) **ANESTHESIA ASSOCIATES, LLC'S<sup>1</sup>**  
) **ANSWER TO PLAINTIFF'S**  
) **COMPLAINT**  
) **(Jury Trial Demanded)**

The Defendant, Coastal Anesthesia Associates, LLC<sup>2</sup> (hereinafter "this Defendant"), by and through its undersigned attorneys, hereby responds to the allegations in Plaintiff's Complaint, subject to all affirmative defenses and motions, as follows:

1. This Defendant denies each and every allegation of Plaintiff's Complaint which is not specifically admitted herein.
2. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 1, 2, 3 and 4 of Plaintiff's Complaint, and therefore denies the same.
3. In response to the allegations contained in Paragraph 5 of Plaintiff's Complaint, this Defendant admits only that Defendant Christine Thompson, M.D. is a physician licensed in the state of South Carolina and that Dr. Thompson is a resident of Charleston County, SC. This Defendant denies all remaining and inconsistent allegations.

<sup>1</sup> Improperly identified as "Coastal Anesthesia Associates."

<sup>2</sup> Improperly identified as "Coastal Anesthesia Associates."

4. In response to the allegations contained in Paragraphs 6, 7, and 8 of Plaintiff's Complaint, this Defendant craves reference to the medical records of Martha Preston to provide a complete and accurate history of her treatment and deny all allegations inconsistent therewith.

5. Paragraphs 9, 10, and 11 of Plaintiff's Complaint contain allegations that are not directed at this Defendant and state conclusions of law. Therefore, no response is required from this Defendant. To the extent a response is required, this Defendant craves reference to the cited policies and procedures as well as Martha Preston's medical records and denies all inconsistent allegations contained in Paragraphs 9, 10, and 11 of Plaintiff's Complaint.

6. This Defendant denies the allegations contained in Paragraphs 12 and 13 of Plaintiff's Complaint.

7. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 14, 15 and 16 of Plaintiff's Complaint, and therefore denies the same.

8. This Defendant denies the allegations contained in Paragraphs 17 and 18 of Plaintiff's Complaint.

9. This Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint. Subparagraphs a - f of Paragraph 19 of Plaintiff's Complaint are not directed at this Defendant and contain conclusions of law and, therefore, no response is required from this Defendant. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs a - f of Paragraph 19 of Plaintiff's Complaint. Subparagraphs g - k of Paragraph 19 of Plaintiff's Complaint and the unnumbered sentence appearing after subparagraph k of

Paragraph 19 of Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs g – k of Paragraph 19 of Plaintiff's Complaint and the unnumbered sentence appearing after subparagraph k of Paragraph 19 of Plaintiff's Complaint.

**AS TO THE FIRST CASE OF ACTION**  
**(Survival Action)**

10. In response to Paragraph 20 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 – 19 of Plaintiff's Complaint as if fully restated herein.

11. Paragraph 21 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

**AS TO THE SECOND CASE OF ACTION**  
**(Wrongful Death)**

12. In response to Paragraph 22 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 – 21 of Plaintiff's Complaint as if fully restated herein.

13. Paragraph 23 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.

**AS TO THE THIRD CASE OF ACTION**

**(Loss of Consortium)**

14. In response to Paragraph 24 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 – 23 of Plaintiff's Complaint as if fully restated herein.

15. Paragraph 25 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint.

16. This Defendant denies the WHEREFORE clause of Plaintiff's Complaint such being the remaining allegations contained in Plaintiff's Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**

**THIS DEFENDANT ALLEGES:**

**(No Deviation from the Standard of Care)**

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

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**

**THIS DEFENDANT ALLEGES:**

**(No Proximate Cause)**

18. That, even if this Defendant was negligent, as alleged in Plaintiff's Complaint, which is specifically denied, the negligence of this Defendant is not the direct and proximate cause of any injury alleged by Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by Plaintiff.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

19. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's 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,**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

20. This Defendant would plead the requirements for an award of punitive damages as set forth by the Supreme Court of the United States in the case of State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003) as defenses to this claim and would specifically assert that they are entitled to summary judgment on punitive damages and if denied to bifurcated trial.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Noneconomic Damage Awards)**

21. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina 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 Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.



**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Limitation of alleged Punitive Damages)**

22. Any punitive damages awarded in this case would be subject to the limitations described in S.C. Code §15-32-530.

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

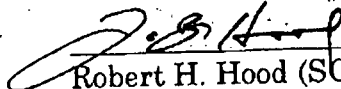
23. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Complaint, and having asserted these affirmative defenses, the Defendant, Coastal Anesthesia Associates, LLC<sup>3</sup>, prays that Plaintiff's Complaint be dismissed with prejudice and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

---

<sup>3</sup> Improperly identified as "Coastal Anesthesia Associates."

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)  
A. Walker Barnes (SC # 78485)

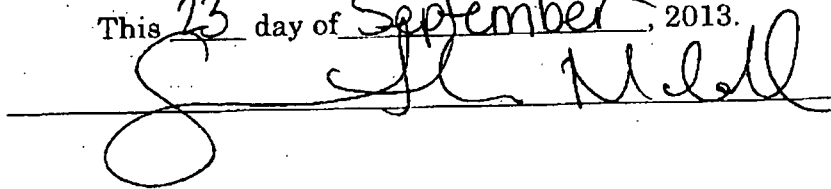
Attorneys for Defendant  
Coastal Anesthesia Associates, LLC<sup>4</sup>

9/27, 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 23 day of September, 2013.



<sup>4</sup> Improperly identified as "Coastal Anesthesia Associates."

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Ashley White Creech  
Rushin C. Foster  
Lara Pettiss Harrill



Whitney Harrison  
Patrick M. Killen  
William A. McKinnon (SC,DC)  
Daniel "Ernie" Peagler  
Robert V. Phillips  
Seth Rose  
James Stephen Welch\* (SC,OK)  
Joseph G. Wright, III\*  
Of Counsel\*

Writer's Email: [ahutchins@mcgowanhood.com](mailto:ahutchins@mcgowanhood.com)

September 24, 2013

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401-2258

**RE: Willie Preston, individually and as PR of the Estate of Martha Preston, deceased v. Surgical Center Affiliates, LLC, Charleston Surgical LP, Laura Bilancione, RN, Coastal Anesthesia Associates; and Christine Thompson, Case No. 13-CP-10-3054**

Dear Ms. Armstrong:

Please find enclosed an original and copy of Application for Default Judgment and Request Hearing in the above referenced case. Please file the original and return the filed copy to me in the enclosed self-addressed stamped envelope.

Please contact me should you have any questions.

Sincerely,

Annie Hutchins Gray  
Paralegal

/ahg  
enclosures

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Willie Preston, individually and as PR of the  
Estate of Martha Preston, deceased

Plaintiff,

vs.

Surgical Center Addilates, LLC, Charleston  
Surgical LP, Laura Bilancione, RN Coastal  
Anesthesia Associates; and Christine  
Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS  
JUDICIAL CIRCUIT

CASE NO.: 13-CP-10-3054

**MOTION AND ORDER INFORMATION**

**FORM AND COVERSHEET**

Plaintiff's Attorney:  
Chad McGowan, Bar No. 9943  
Address:  
1539 Health Care Drive, Rock Hill, SC 29732  
Phone: 803-327-7800 Fax 803-324-1483  
E-mail: cmcgowan@mcgowanhood.com Other:

Defendant's Attorney:

\_\_\_\_\_, Bar No. \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ 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**

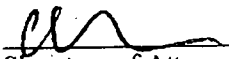
Nature of Motion: \_\_\_\_\_

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

9/24/13  
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 \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$ \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased

Plaintiffs,

vs.

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.;  
Laura Bilancione, R.N.;  
Coastal Anesthesia Associates;  
and Christine Thompson, M.D.

Defendants.

IN THE COURT OF COMMON PLEAS

C. A. No: 13-CP- 10-03054

APPLICATION FOR DEFAULT  
JUDGEMENT AND REQUEST  
FOR DAMAGE HEARING

The Plaintiff, through his undersigned attorney, applies to the Court for a default judgment as to liability against Defendant Coastal Anesthesia Associates ("Coastal Anesthesia") pursuant to Rule 55 of the South Carolina Rules of Civil Procedure and additionally requests a hearing to determine and establish the amount of damages to which Plaintiff is entitled.

Plaintiff Willie Preston, individually and as the personal representative of the Estate of Martha Preston, filed a Summons and Complaint against Defendant Coastal Anesthesia on May 24, 2013. Counsel for Plaintiff served a copy of the filed Summons and Complaint on Defendant Coastal Anesthesia's registered agent on July 8, 2013. See July 8, 2013 Certified Mail Receipt and Address of Registered Agent, attached as Exhibit A. Defendant Coastal Anesthesia failed to answer, make an appearance, or otherwise respond to Plaintiff's Complaint within thirty (30) days of service, as required by Rule 12(a) of the South Carolina Rules of Civil Procedure. See Affidavit of Chad McGowan, attached as Exhibit B.

For these reasons, Plaintiff requests that the Court enter grants Plaintiff Default Judgment as to liability against the Defendant Costal Anesthesia and set a hearing to determine the amount of damages.



---

Chad A. McGowan  
Ashley Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

John Hughes Cooper  
1476 Ben Sawyer Blvd, Suite 7  
Mt. Pleasant, SC 29464  
843-883-9099  
843-883-9335 (Fax)

Rock Hill, South Carolina  
September 24, 2013

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Coastal Anesthesia Associates LLC  
Registered Agent: Randall Kerns  
2690 Lake Park Drive  
N. Charleston, SC 29406

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Jody Hawkins*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

*Jody Hawkins*

C. Date of Delivery

*7-8-13*

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7011 2970 0001 7071 6786

PS Form 3811, February 2004

Domestic Return Receipt

102695-02-M-1540

U.S. Postal Service

**CERTIFIED MAIL RECEIPT**

(Domestic Mail Only. No Insurance Coverage Provided.)

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage

\$ *2.52*

Certified Fee

*3.10*

Return Receipt Fee  
(Endorsement Required)

*2.55*

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees

\$ *8.17*

Sent to

*Coastal Anesthesia, RA: Randall Kerns*

Street, Apt. No.,

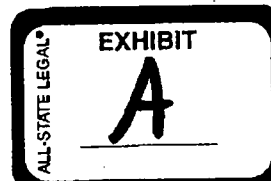
*2690 Lake Park Dr.*

or PO Box No.

City, State, ZIP+4

*N. Charleston, SC 29406*

BY  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2013 JUL 29 PM 2:07





STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

C. A. No: 13-CP- 10-03054

Willie Preston, individually and as the )  
Personal Representative of the )  
Estate of Martha Preston, deceased )

Plaintiffs, )

vs. )

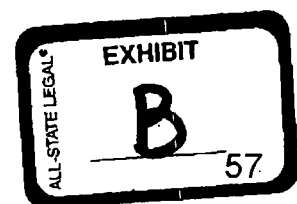
Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

Defendants. )  
\_\_\_\_\_ )

**AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR DEFAULT  
JUDGEMENT AND REQUEST  
FOR DAMAGE HEARING**

I, Chad McGowan being duly sworn, depose and state as follows:

1. My name is Chad McGowan and I am over eighteen (18) years of age. I make this affidavit on personal knowledge.
2. Willie Preston retained our firm to represent himself and the estate of Martha Preston in a lawsuit against certain defendants, including Coastal Anesthesia Associates, LLC.
3. Our firm filed a Summons and Complaint against Defendant Coastal Anesthesia Associates, LLC on May 24, 2013.
4. Our firm served a copy of the filed Summons and Complaint on Coastal Anesthesia Associates, LLC on July 8, 2013



5. Attached as Exhibit A to this affidavit is a true copy of the return receipt we received showing that we served Costal Anesthesia Associates, LLC's registered agent Randall E. Kerns with the filed Summons and Complaint on July 8, 2013.
6. Thirty days have passed since service, and Coastal Anesthesia Associates, LLC has not answered, made an appearance, or otherwise responded to Plaintiff's Complaint.

FURTHER THE AFFIANT SAYETH NOT.



Chad McGowan

Subscribed to and sworn before me  
this 24<sup>th</sup> day of September, 2013

  
Notary Public for the State of South Carolina

My Commission Expires:

|                                                                                                    |
|----------------------------------------------------------------------------------------------------|
| ANNIE H. GRAY<br>Notary Public, State of South Carolina<br>My Commission Expires November 29, 2016 |
|----------------------------------------------------------------------------------------------------|





Charleston County  
Circuit Court Case Details  
Public Index

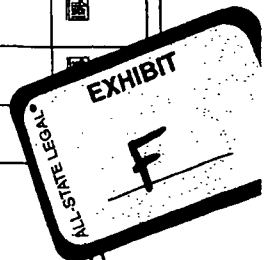


[Charleston County Home Page](#) [Circuit Court Home Page](#) [Scheduling Home Page](#) [Scheduling](#)

Switch View

| Willie Preston , plaintiff, et al VS Surgical Care Affiliates LLC , defendant, et al |               |                   |                                           |                    |            |
|--------------------------------------------------------------------------------------|---------------|-------------------|-------------------------------------------|--------------------|------------|
| Case Number:                                                                         | 2013CP1003054 | Court Agency:     | Common Pleas                              | Filed Date:        | 05/24/2013 |
| Case Type:                                                                           | Common Pleas  | Case Sub Type:    | Medical Malpract 220                      | File Type:         | Jury       |
| Status:                                                                              | Pending       | Assigned Judge:   | Clerk Of Court C P, G S, And Family Court | Disposition Judge: |            |
| Disposition:                                                                         |               | Disposition Date: |                                           |                    |            |
| Original Source Doc:                                                                 |               | Original Case #:  |                                           |                    |            |
| Judgment Number:                                                                     | 2013CP1003054 | Court Roster:     |                                           |                    |            |

| Case Parties                   | Judgments                                                    | Tax Map Information | Associated Cases                 | Actions          | Financials       |           |
|--------------------------------|--------------------------------------------------------------|---------------------|----------------------------------|------------------|------------------|-----------|
| Name                           | Description                                                  | Type                | Motion Roster                    | Begin Date       | Completion Date  | Documents |
|                                | Affidavit/Affidavit of Jody Hawkins & crt/srv                | Filing              |                                  | 12/13/2013-13:30 |                  |           |
| Coastal Anesthesia Associates  | Motion/Motion Filing Fee                                     | Filing              |                                  | 12/05/2013-16:29 |                  |           |
| Hood, James Bernard            | Motion/Dismiss or Set Aside Default by defendant, crt/srv    | Motion              | MOTIONS ROSTER - JUDGE NICHOLSON | 12/05/2013-11:23 |                  |           |
| Coastal Anesthesia Associates  | Memo in Support of Motion to Dismiss or Set Aside, crt/srv   | Filing              |                                  | 12/05/2013-09:19 |                  |           |
| Preston, Willie                | Order-entering default judg against Coastal Anesthesia Assoc | Order               |                                  | 11/25/2013-09:27 |                  |           |
| McGowan, Chad Alan             | Roster/Notice of Motions Roster Publication Sent             | Action              |                                  | 11/14/2013-08:42 |                  |           |
| Gresh, Jack G                  | Roster/Notice of Motions Roster Publication Sent             | Action              |                                  | 11/14/2013-08:42 |                  |           |
| Cooper, John Hughes            | Roster/Notice of Motions Roster Publication Sent             | Action              |                                  | 11/14/2013-08:42 |                  |           |
| Hood, James Bernard            | Roster/Notice of Motions Roster Publication Sent             | Action              |                                  | 11/14/2013-08:42 |                  |           |
|                                | Order/Judgment as to certain defnts                          | Order               |                                  | 11/07/2013-10:48 |                  |           |
| Preston, Willie                | Judgment/Judgment                                            | Judgment            |                                  | 11/07/2013-10:47 |                  |           |
| Bilancione, Laura R N          | Judgment/Judgment                                            | Judgment            |                                  | 11/07/2013-10:47 |                  |           |
| Charleston Surgical Center L P | Judgment/Judgment                                            | Judgment            |                                  | 11/07/2013-10:47 |                  |           |
| Preston, Willie                | Judgment/Judgment                                            | Judgment            |                                  | 11/07/2013-10:47 |                  |           |
| Preston, Willie                | Judgment/Judgment                                            | Judgment            |                                  | 11/07/2013-10:47 |                  |           |
| Surgical Care Affiliates LLC   | Judgment/Judgment                                            | Judgment            |                                  | 11/07/2013-10:47 |                  |           |
| Preston, Willie                | Order/Order approving settlement as to certain defnts        | Order               |                                  | 11/04/2013-15:22 |                  |           |
| Preston, Willie                | Motion/Motion Filing Fee                                     | Filing              |                                  | 10/25/2013-16:41 |                  |           |
| McGowan, Chad Alan             | Roster/Notice of Motions Roster Publication Sent             | Action              |                                  | 10/23/2013-11:57 |                  |           |
| Hood, James Bernard            | Roster/Notice of Motions Roster Publication Sent             | Action              |                                  | 10/23/2013-11:57 |                  |           |
| Gresh, Jack G                  | Roster/Notice of Motions Roster Publication Sent             | Action              |                                  | 10/23/2013-11:57 |                  |           |
| Preston, Willie                | Motion/Motion For Scheduling Purposes Only (SETTLE)          | Motion              |                                  | 10/23/2013-11:56 | 11/04/2013-11:56 |           |
|                                | Mediation Results Form                                       | Filing              |                                  | 10/02/2013-11:32 |                  |           |
| Preston, Willie                | Motion/Motion Filing Fee                                     | Filing              |                                  | 09/26/2013-16:34 |                  |           |
| McGowan, Chad Alan             | Motion/Application for Default Judgment etc by plntff, srv   | Motion              |                                  | 09/26/2013-13:27 |                  |           |
| Coastal Anesthesia Associates  | Answer/Answer to Complaint, jury trial demanded & crt/srv    | Filing              |                                  | 09/23/2013-12:12 |                  |           |
|                                | Answer/Answer of certain defendants to Complaint, crt/srv    | Filing              |                                  | 08/09/2013-14:22 |                  |           |
| Thompson, Christine M D        |                                                              | Filing              |                                  |                  |                  |           |



|                         |                                     |        |  |                  |  |                                                                                     |
|-------------------------|-------------------------------------|--------|--|------------------|--|-------------------------------------------------------------------------------------|
|                         | Service/Acknowledgment Of Service   |        |  | 07/29/2013-09:42 |  |  |
|                         | Service/Acceptance Of Service       | Filing |  | 07/29/2013-09:40 |  |  |
| Thompson, Christine M D | Answer/Answer to Complaint, crt/srv | Filing |  | 07/03/2013-08:38 |  |  |
| Preston, Willie         | Summons & Complaint                 | Filing |  | 05/24/2013-16:05 |  |  |

CMSWeb 6.1  
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|                                           |   |                                                 |
|-------------------------------------------|---|-------------------------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS                    |
|                                           | ) |                                                 |
| COUNTY OF CHARLESTON                      | ) |                                                 |
| Willie Preston, individually and as the   | ) | C/A No. 2013-CP-10-03054                        |
| Personal Representative of the Estate of  | ) |                                                 |
| Martha Preston, Deceased,                 | ) |                                                 |
| Plaintiff,                                | ) |                                                 |
|                                           | ) | <b>DEFENDANT COASTAL</b>                        |
| Versus                                    | ) | <b>ANESTHESIA ASSOCIATES, LLC'S<sup>1</sup></b> |
|                                           | ) | <b>MOTION TO DISMISS FOR LACK</b>               |
|                                           | ) | <b>OF SUBJECT MATTER</b>                        |
| Surgical Care Affiliates, LLC, Charleston | ) | <b>JURISDICTION, OR IN THE</b>                  |
| Surgery Center, L.P.; Laura Bilancione,   | ) | <b>ALTERNATIVE, TO SET ASIDE</b>                |
| R.N.; Coastal Anesthesia Associates; and  | ) | <b>ENTRY OF DEFAULT</b>                         |
| Christine Thompson, M.D.,                 | ) |                                                 |
| Defendants.                               | ) |                                                 |

TO: CHAD A. MCGOWAN, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 15-79-125 and Rules 4, 5, 6(b), 55, 60 of the South Carolina Rules of Civil Procedure ("SCRCF"), Defendant Coastal Anesthesia Associates, LLC (hereinafter "this Defendant"), hereby moves this Honorable Court at a time and place to be set for an Order dismissing Plaintiff's Complaint against this Defendant for lack of subject matter jurisdiction or, in the alternative, to set aside the Entry of Default and retroactively enlarge the time for this Defendant to Answer Plaintiff's Summons and Complaint. In support of this Motion, this Defendant incorporates the affidavits of Randall Kerns, M.D. ("Dr. Kerns"), Defendant Christine Thompson, M.D. ("Dr. Thompson") and Wendy B. Sanders, MBA CMPE CANPC ("Sanders") (See Exhibits 1, 2 and 3) and further state as follows:

1. Plaintiff never named or served this Defendant with the Notice of Intent entitled Willie Preston, individually and as PR of the Estate of Martha Preston, Deceased – Versus – Surgical Center Affiliates, LLC, Charleston Surgery

<sup>1</sup> Improperly identified as "Coastal Anesthesia Associates."

Center, LP, Nurse Doe, Christine Thompson, MD, and ABC Anesthesia Group with a Civil Action No. 2012-CP-10-7413 in the Court of Common Pleas for the County of Charleston, South Carolina (hereinafter "Notice of Intent") filed on November 13, 2012.

2. For this reason alone, this Court should dismiss the above-captioned Complaint against this Defendant because this Court lacks subject matter jurisdiction over this Defendant.

3. Furthermore, Plaintiff never properly served this Defendant with the above-captioned Complaint. (See Exhibits 1 and 3, Affs. of Kerns and Sanders).

4. For this reason alone, this Court should deny Plaintiff's Motion for Entry of Default and set aside the Entry of Default filed by this Court on November 25, 2013.

5. This matter is a medical malpractice lawsuit filed pursuant to S.C. Code Ann. § 15-79-125 ("§ 15-79-125").

6. § 15-79-125 limits the circuit court's ability to hear a medical malpractice suit and deprives it of subject matter jurisdiction until the substantive pre-litigation requirements set forth in the statute have been fully fulfilled by Plaintiff.

7. In contravention of the requirements of § 15-79-125, Plaintiff failed to name this Defendant as a party to the Notice of Intent filed on November 13, 2012, as demonstrated by a review of the caption of the Notice of Intent.

8. Plaintiff never moved to amend the Notice of Intent to name this Defendant as a party.

9. In contravention of the requirements of S.C. Code Ann. § 15-79-125, Plaintiff failed to properly serve this Defendant with the Notice of Intent. (See Exhibits 1 and 3, Affs. of Kerns and Sanders).

10. In contravention of the requirements of § 15-79-125, this Defendant was not involved in the pre-suit mediation held with all other parties on April 1, 2013, and Plaintiff failed to give this Defendant the opportunity to participate in any other pre-suit mediation with Plaintiff. Id.

11. Without (a) properly naming this Defendant as a party to the Notice of Intent, (b) properly serving the Notice of Intent on this Defendant and (c) actually including this Defendant in pre-suit mediation, Plaintiff attempted to serve this Defendant with the Complaint on July 8, 2013.

12. Plaintiff attempted to serve the Complaint on July 8, 2013 upon Jody Hawkins. (See Exhibit 4).

13. Jody Hawkins is not, has never been and was not on July 8, 2013 an employee, agent or representative of this Defendant. (See Exhibit 3, Aff. of Sanders).

14. Upon information and belief, Jody Hawkins is and was on July 8, 2013 an employee, agent or representative of Charleston Surgery Center, L.P, one of the Defendants named in the Notice of Intent and Complaint who has settled this case with Plaintiff.

15. The Complaint was the first time Plaintiff actually named this Defendant as a party to any action, and, as demonstrated above and in the accompanying affidavits, Plaintiff failed to properly serve upon this Defendant both the Notice of Intent and the Complaint.



16. As such, the Complaint against this Defendant was filed in complete violation of the requirements set forth in S.C. Code Ann. § 15-79-125 for all medical malpractice actions, and this Court is without subject matter jurisdiction to hear the allegations against this Defendant, and this Defendant respectfully requests that the case be dismissed against it for lack of subject matter jurisdiction.

17. Despite Plaintiff's failure to properly serve this Defendant with either the Notice of Intent or the Complaint (or name this Defendant at all in the Notice of Intent), or otherwise comply with the most basic requirements under South Carolina law, in an abundance of caution, this Defendant filed an Answer to Plaintiff's Complaint on September 23, 2013.

18. Subsequently, Plaintiff improperly sought a Default Judgment against this Defendant and an Entry of Default was entered by this Court on November 25, 2013.

19. In the event this Court refrains from dismissing the case against this Defendant for lack of subject matter jurisdiction, good cause exists for this Court to set aside this default pursuant to Rule 55(c) of the SCRCR.

20. This case is still in its initial stages, as the Order Entering Judgment against this Defendant was just filed on November 25, 2013, and this motion has been filed as soon as possible.

21. This Defendant has raised several meritorious defenses to Plaintiff's claims, including the fact that Plaintiff's only avenue for recovery against this Defendant is under a theory of alleged vicarious liability (or non-delegable duty of care) of its independent contractor Dr. Thompson, and both this Defendant and Dr. Thompson assert that at all times relevant to this case, Dr. Thompson acted

according to the relevant standards of care in her care and treatment of Martha Preston. (See Exhibits 1 and 2, Affs. of Kerns and Thompson).

22. Plaintiff will not be prejudiced by the Court setting aside the Entry of Default because the case only recently began, and because the only way to recover from this Defendant is through the alleged vicarious liability (or non-delegable duty of care) of its independent contractor Dr. Thompson and, as Dr. Thompson is still in the case, Plaintiff will have to wait for a final determination of any alleged liability on the part of Dr. Thompson before attempting to recover from this Defendant.

23. In the event this Court refrains from dismissing the case against this Defendant for lack of subject matter jurisdiction and does not set aside the Entry of Default pursuant to Rule 55(c) of the SCRCP, this Defendant also meets the more stringent requirements under Rule 60(b) of the SCRCP for this Court to set aside the Entry of Default, as there is mistake and/or excusable neglect, and any judgment against this Defendant in this case is void for lack of subject matter jurisdiction.

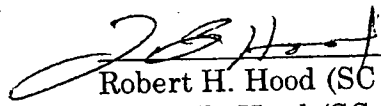
24. Should the Court not dismiss the allegations against this Defendant for the above-stated reasons, good cause exists pursuant to Rule 6(b) of the SCRCP for this Court to retroactively enlarge the time for this Defendant to Answer Plaintiff's Summons and Complaint through September 23, 2013 and allow this Defendant's Answer filed that day to stand.

This Motion is supported by the affidavits of Sanders and Drs. Kerns and Thompson, a memorandum of law being contemporaneously filed, as well as the applicable laws, statutes and SCRCP. The undersigned hereby certifies and affirms, in accordance with Rule 11 of the SCRCP, that consultation with opposing

counsel was attempted in good faith in order to resolve the subject Motion, and no agreement has been reached.

WHEREFORE, Defendant Coastal Anesthesia Associates, LLC moves that the Court grant an Order Dismissing Plaintiff's Complaint against this Defendant for lack of subject matter jurisdiction, or, in the alternative, Setting Aside the Entry of Default and retroactively enlarging the time for this Defendant to Answer Plaintiff's Summons and Complaint.

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)  
A. Walker Barnes (SC # 78485)

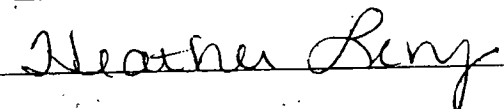
Attorneys for Defendant  
Coastal Anesthesia Associates, LLC<sup>2</sup>

12/5, 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 5 day of Dec, 2013.



<sup>2</sup> Improperly identified as "Coastal Anesthesia Associates."

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, Deceased,

Plaintiff,

Versus

Surgical Care Affiliates, LLC,  
Charleston Surgical Center, L.P.; Laura  
Bilancione, R.N.; Coastal Anesthesia  
Associates, LLC<sup>1</sup>; and Christine  
Thompson, MD,

Defendants.

) IN THE COURT OF COMMON PLEAS

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) C/A No. 2013-CP-10-03054

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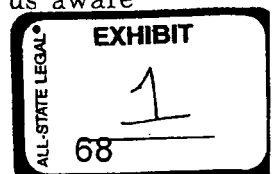
)

)

**AFFIDAVIT OF  
RANDALL KERNS, M.D.**

PERSONALLY APPEARED BEFORE ME Randall Kerns, M.D., who after  
being sworn, states as follows:

1. My name is Randall Kerns, M.D.
2. I am over the age of eighteen (18) and am competent to make the following statements.
3. I am a physician licensed to practice in the state of South Carolina.
4. I am the managing physician for Coastal Anesthesia Associates, LLC ("Coastal") with offices located in North Charleston, South Carolina.
5. I am the registered agent to receive service of process for Coastal.
6. At no point in time did I, nor anyone else authorized to receive service of process on behalf of Coastal, receive service of a Notice of Intent to File Suit naming Coastal as a defendant.
7. At no point in time did Plaintiff or Plaintiff's counsel contact me, or anyone else authorized to receive service on behalf of Coastal, to make us aware



that Plaintiff intended to include Coastal as a defendant in the case titled Willie Preston, individually and as PR of the Estate of Martha Preston, Deceased – Versus – Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD, and ABC Anesthesia Group with a Civil Action No. 2012-CP-10-7413 in the Court of Common Pleas for the County of Charleston, South Carolina (hereinafter “Notice of Intent”).

8. At no point in time did I, nor anyone else authorized to receive service of process on behalf of Coastal, receive notification of a scheduled pre-suit mediation conference with Plaintiff and the other Defendants in this case.

9. Coastal did not have the opportunity to engage in any pre-suit mediation conference with Plaintiff.

10. Coastal has yet to have any mediation conference with Plaintiff.

11. The first notice Coastal received of any pending litigation by Plaintiff against Coastal came in the form of Plaintiff's Complaint filed May 24, 2013.

12. Coastal received attempted service of the Complaint in the above-referenced case via Certified Mail from Plaintiff on July 8, 2013.

13. The Complaint named Christine Thompson, M.D. (“Dr. Thompson”) as a Defendant.

14. Dr. Thompson is an independent contractor whose medical services are retained by Coastal.

15. Dr. Thompson was working as an independent contractor on behalf of Coastal in April of 2012 and at all times relevant to the Complaint filed in the above-referenced case.

---

<sup>1</sup> Improperly identified as “Coastal Anesthesia Associates.”

16. Dr. Thompson, as an independent contractor of Coastal, provided medical care and treatment to Martha E. Preston in April of 2012.

17. At all times during her care and treatment of Martha E. Preston, Dr. Thompson possessed and exercised the requisite amount of medical training, competency and skill ordinarily and customarily possessed and exercised by physicians under similar circumstances.

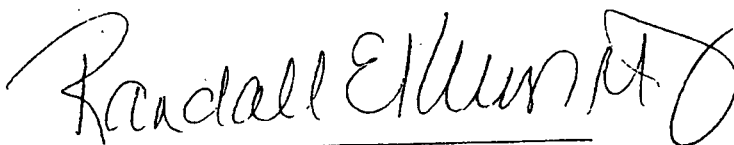
18. At all times during her care and treatment of Martha E. Preston, Dr. Thompson acted in full compliance with the prevailing and accepted standards of care.

19. No act or omission performed (or not performed) during the medical treatment of Martha E. Preston by Dr. Thompson was the direct and proximate cause of any of the injuries alleged by Plaintiff in the Complaint.

20. Because its independent contractor acted in full compliance with the prevailing and accepted standards of care in her care and treatment of Martha E. Preston, Coastal acted in full compliance with the prevailing and accepted standards of care in its treatment of Martha E. Preston.

21. Coastal denies any liability to Plaintiff in the above-referenced case.

FURTHER AFFIANT SAYETH NOT!



Randall Kerns, M.D.

SWORN TO AND SUBSCRIBED before me  
this 4<sup>TH</sup> day of DECEMBER, 2013

Clarence A. Games  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 3/21/2022

IN THE COURT OF COMMON PLEAS

)

;

C/A No. 2013-CP-10-03054

1

1

5

Plaintiff, )

•

## Versus

**Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Laura Bilancione, R.N.;  
Coastal Anesthesia Associates; and Christine  
Thompson, MD,**

Defendants.)

1. My name is Christine Thompson, M.D.

2. I am over the age of eighteen (18) and am competent to make the following statement.

3. I am a physician licensed to practice in the state of South Carolina.

4. I practice medicine and have an independent contractor relationship with Coastal Anesthesia Associates, LLC ("Coastal") which has offices located in North Charleston, South Carolina.

5. I have examined and reviewed the allegations made in the Complaint that was filed on May 24, 2013 by Plaintiff in the above-referenced case.

6. I provided medical care and treatment to Martha E. Preston in April of 2012.

7. I had an independent contractor relationship with Coastal during my care and treatment of Martha E. Preston in April of 2012.

8. At all times during my care and treatment of Martha E. Preston, I possessed and exercised the requisite amount of medical training, competency and skill ordinarily and customarily possessed and exercised by physicians under similar circumstances.

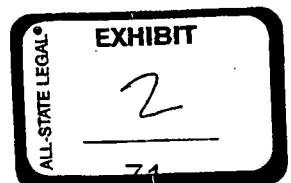
9. At all times during my care and treatment of Martha E. Preston, I acted in full compliance with the prevailing and accepted standards of care.

10. I deny that I deviated from the prevailing and accepted standards of care at any time during my care and treatment of Martha E. Preston.

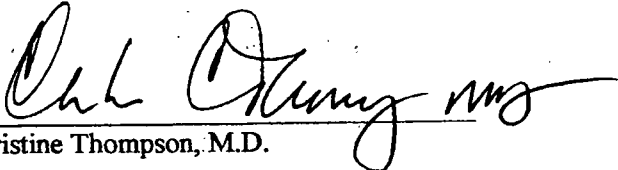
11. I deny that any of the medical care and treatment that I provided to Martha E. Preston was inappropriate.

12. I deny that I was negligent in any way during my care and treatment of Martha E. Preston.

13. I further deny that any of the medical care or treatment that I provided to Martha E. Preston was the direct and proximate cause of any of the injuries alleged by Plaintiff in the Complaint.



FURTHER AFFIANT SAYETH NOT!

  
Christine Thompson, M.D.

SWORN TO AND SUBSCRIBED before me  
this 4<sup>TH</sup> day of DECEMBER, 2013

Clarence A. James 31/21/2022

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES:



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, Deceased,

Plaintiff,

Versus

Surgical Care Affiliates, LLC,  
Charleston Surgical Center, L.P.; Laura  
Bilancione, R.N.; Coastal Anesthesia  
Associates, LLC<sup>1</sup>; and Christine  
Thompson, MD,

Defendants.

) IN THE COURT OF COMMON PLEAS

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) C/A No. 2013-CP-10-03054

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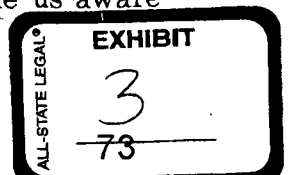
)

**AFFIDAVIT OF  
WENDY B. SANDERS, MBA CMPE  
CANPC**

PERSONALLY APPEARED BEFORE ME Wendy B. Sanders, MBA CMPE  
CANPC, who after being sworn, states as follows:

1. My name is Wendy B. Sanders, MBA CMPE CANPC.
2. I am over the age of eighteen (18) and am competent to make the following statements.
3. I am an employee of Trident Anesthesia Group, LLC ("Trident").
4. In my role as an employee of Trident, I am the administrator/office manager for the above-named Defendant Coastal Anesthesia Associates, LLC ("Coastal") with offices located in North Charleston, South Carolina.
5. At no point in time did I, nor anyone else authorized to receive service of process on behalf of Coastal, receive service of a Notice of Intent to File Suit naming Coastal as a defendant.
6. At no point in time did Plaintiff or Plaintiff's counsel contact me, or anyone else authorized to receive service on behalf of Coastal, to make us aware

<sup>1</sup> Improperly identified as "Coastal Anesthesia Associates."



that Plaintiff intended to include Coastal as a defendant in the case titled Willie Preston, individually and as PR of the Estate of Martha Preston, Deceased – Versus – Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD, and ABC Anesthesia Group with a Civil Action No. 2012-CP-10-7413 in the Court of Common Pleas for the County of Charleston, South Carolina (hereinafter “Notice of Intent”).

7. At no point in time did I, nor anyone else authorized to receive service of process on behalf of Coastal, receive notification of a scheduled pre-suit mediation conference with Plaintiff and the other Defendants in this case.

8. Coastal did not have the opportunity to engage in any pre-suit mediation conference with Plaintiff.

9. Coastal has yet to conduct any mediation conference with Plaintiff.

10. On July 8, 2013, Plaintiff attempted to serve upon a person named Jody Hawkins a Complaint in the above-captioned matter.

11. I do not personally know Jody Hawkins, but I can attest to the fact that Jody Hawkins is not, has never been and was not on July 8, 2013 an employee, agent or representative of Coastal.

12. Upon information and belief, Jody Hawkins is and was on July 8, 2013 an employee, agent or representative of Charleston Surgical Center, L.P, one of the Defendants who has settled this case with Plaintiff.

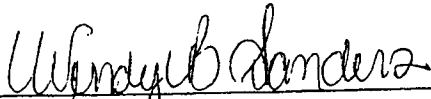
13. The Complaint named Christine Thompson, M.D. (“Dr. Thompson”) as a Defendant.

14. Dr. Thompson is an independent contractor whose medical services are retained by Coastal.

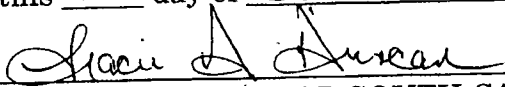
15. Dr. Thompson was working as an independent contractor on behalf of Coastal in April of 2012 and at all times relevant to the Complaint filed in the above-referenced case.

16. Dr. Thompson, as an independent contractor of Coastal, provided medical care and treatment to Martha E. Preston in April of 2012.

FURTHER AFFIANT SAYETH NOT!

  
Wendy B. Sanders, MBA CMPE CANPC

SWORN TO AND SUBSCRIBED before me  
this 4<sup>th</sup> day of December, 2013

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 6/27/2018

# SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Coastal Anesthesia Associates PC  
Registered Agent: Randall Kerns  
2690 Lake Park Drive  
N. Charleston, SC 29406

# COMPLETE THIS SECTION ON DELIVERY

A. Signature Judy Hawkins ☒ Agent ☐ Addressee  
B. Received by (Printed Name) Judy Hawkins C. Date of Delivery 7-8-13  
D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.  
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number  
(Transfer from service label)

7011 2970 0001 7071 6786

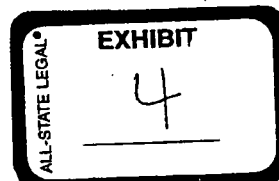
PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

| U.S. Postal Service                                          |         |
|--------------------------------------------------------------|---------|
| CERTIFIED MAIL RECEIPT                                       |         |
| (Domestic Mail Only, No Insurance Coverage Provided)         |         |
| For delivery information visit our website at www.usps.com   |         |
| OFFICIAL USE                                                 |         |
| Postage                                                      | \$ 2.52 |
| Certified Fee                                                | 3.10    |
| Return Receipt Fee<br>(Endorsement Required)                 | 2.55    |
| Restricted Delivery Fee<br>(Endorsement Required)            |         |
| Total Postage & Fees                                         | \$ 8.17 |
| Sent to <u>Coastal Anesthesia, PC: Randall Kerns</u>         |         |
| Street, Apt. No.,<br>or PO Box No. <u>2690 Lake Park Dr.</u> |         |
| City, State, ZIP+4 <u>N. Charleston SC 29406</u>             |         |

FILED  
2013 JUL 29 PM 2:07  
JULIE J. ARMSTRONG  
CLERK OF COURT



|                                           |   |                                                 |
|-------------------------------------------|---|-------------------------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS                    |
|                                           | ) |                                                 |
| COUNTY OF CHARLESTON                      | ) |                                                 |
| Willie Preston, individually and as the   | ) | C/A No. 2013-CP-10-03054                        |
| Personal Representative of the Estate of  | ) |                                                 |
| Martha Preston, Deceased,                 | ) |                                                 |
| Plaintiff,                                | ) | <b>MEMORANDUM IN SUPPORT OF</b>                 |
|                                           | ) | <b>DEFENDANT COASTAL</b>                        |
| Versus                                    | ) | <b>ANESTHESIA ASSOCIATES, LLC'S<sup>1</sup></b> |
|                                           | ) | <b>MOTION TO DISMISS FOR LACK</b>               |
| Surgical Care Affiliates, LLC, Charleston | ) | <b>OF SUBJECT MATTER</b>                        |
| Surgery Center, L.P.; Laura Bilancione,   | ) | <b>JURISDICTION OR, IN THE</b>                  |
| R.N.; Coastal Anesthesia Associates; and  | ) | <b>ALTERNATIVE, TO SET ASIDE</b>                |
| Christine Thompson, M.D.,                 | ) | <b>ENTRY OF DEFAULT</b>                         |
| Defendants.                               | ) |                                                 |

COMES NOW Defendant Coastal Anesthesia Associates, LLC (hereinafter "this Defendant"), by and through its undersigned counsel, pursuant to S.C. Code Ann. § 15-79-125 and Rules 4, 5, 6(b), 55, and 60 of the South Carolina Rules of Civil Procedure ("SCRCP"), and submits this Memorandum in Support of its Motion to Dismiss Plaintiff's Complaint against this Defendant for lack of subject matter jurisdiction, or in the alternative, to Set Aside the Entry of Default and retroactively enlarge the time for this Defendant to Answer Plaintiff's Summons and Complaint. In support of its Motion, this Defendant would state as follows:

### **FACTS**

This is a medical malpractice action filed against the above-named Defendants wherein Plaintiff alleges that Defendants were negligent in performing his wife's knee surgery and her subsequent treatment in April of 2012. On November 13, 2012, Plaintiff filed a Notice of Intent naming as defendants Surgical Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson M.D. (hereinafter "Dr. Thompson") and ABC Anesthesia Group. (See Exhibit 1,

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<sup>1</sup> Improperly identified as "Coastal Anesthesia Associates."

Plaintiff's Notice of Intent to File Suit, 2012-CP-10-7413, hereinafter "Notice of Intent"). Notably, Plaintiff failed to name this Defendant as a party to the Notice of Intent.

Counsel for this Defendant filed a Notice of Appearance on behalf of Dr. Thompson, but not on behalf of this Defendant, as this Defendant was not named in the Notice of Intent. (See Exhibit 2). On December 10, 2012, Plaintiff filed Certificates of Service evidencing service on Surgical Care Affiliates, LLC, Charleston Surgery Center, LP and Dr. Thompson. (See Exhibit 3, Certificates of Service). In addition to failing to name this Defendant as a party to his Notice of Intent, Plaintiff failed to properly serve this Defendant with the Notice of Intent. (See Exhibits 4 and 5, Affidavits of Randall Kerns, M.D. ("Dr. Kerns") and Wendy B. Sanders, MBA CMPE CANPC ("Sanders").

A pre-suit mediation occurred on April 1, 2013 and James B. Hood of Hood Law Firm, LLC attended via telephone on behalf of Dr. Thompson; Chad McGowan of McGowan, Hood, & Felder attended for Plaintiff and Jack Gresh of Hall, Booth, Smith P.C. attended on behalf of the Defendant nurse and surgery center. The mediation ended with the parties at an impasse. (See Exhibit 6, Mediation Results Form). Notably, because it was not named or properly served with the Notice of Intent, neither "ABC Surgical group" nor this Defendant participated in pre-suit mediation.

On May 24, 2013, Plaintiff restyled his caption and filed his Complaint, naming – for the first time – this Defendant. Because Plaintiff failed to (a) name this Defendant in his Notice of Intent, (b) properly serve this Defendant with the Notice of Intent, (c) allow this Defendant to participate in the mandatory pre-suit

mediation conducted on April 1, 2013 or (d) properly serve this Defendant with the Complaint, this Court lacks subject matter jurisdiction over this Defendant and Plaintiff's Complaint should be dismissed against this Defendant.

On July 8, 2013, Plaintiff attempted service of the Complaint on this Defendant via Certified Mail. However, Plaintiff's attempted service of the Complaint upon this Defendant was clearly deficient for two reasons. First, as stated above and throughout this Defendant's Motion and Memorandum, this Defendant was never named nor properly served with the Notice of Intent, nor did this Defendant participate in the mandatory pre-suit mediation process. Second, Plaintiff failed to properly serve this Defendant with the Complaint. Plaintiff attempted to serve this Defendant with the Complaint by serving Jody Hawkins. (See Exhibit 7). However, Jody Hawkins is not, has never been and was not on July 8, 2013 an employee, agent or representative of this Defendant. (See Exhibit 5, Aff. of Sanders). Upon information and belief, Jody Hawkins is and was on July 8, 2013 an employee, agent or representative of Charleston Surgery Center, L.P, one of the Defendants who has settled this case with Plaintiff. Id.

In his Complaint, the only theory of recovery against this Defendant is premised upon the alleged vicarious liability (or non-delegable duty of care) of its independent contractor Dr. Thompson (See Exhibit 8, Plaintiff's Complaint).

Dr. Thompson filed her Answer on June 3, 2013. (See Exhibit 9). Plaintiff has never asserted that Dr. Thompson's Answer was untimely filed. In spite of Plaintiff's failure to (a) name this Defendant in his Notice of Intent, (b) properly serve this Defendant with the Notice of Intent, (c) allow this Defendant to participate in the mandatory pre-suit mediation or (d) properly serve this

Defendant with the Complaint, in an abundance of caution, this Defendant filed an Answer to Plaintiff's Complaint on September 23, 2013. (See Exhibit 10, this Defendant's Answer). Both Answers of Dr. Thompson and this Defendant contain several meritorious defenses and affirmative defenses.

Plaintiff conducted an additional mediation on September 23, 2013 with all Defendants in this case other than this Defendant and Dr. Thompson. All Defendants except for this Defendant and Dr. Thompson settled with Plaintiff, and this Court approved the same on November 4, 2013. (See Exhibit 11).

After this Defendant had filed an Answer to Plaintiff's Complaint, Plaintiff filed his Application for Default Judgment and Request for a Damages Hearing on September 26, 2013. (See Exhibit 12). This Court entered an Order of Default on November 25, 2013. (See Exhibit 13). This Defendant files the accompanying affidavits and Memorandum in Support of its Motion to Dismiss Plaintiff's Complaint against this Defendant for lack of subject matter jurisdiction, or in the alternative, to Set Aside the Entry of Default and retroactively enlarge the time for this Defendant to Answer Plaintiff's Summons and Complaint.

### ARGUMENT

Plaintiff's Application for Default Judgment and Request for a Damages Hearing should be denied, and Plaintiff's Complaint against this Defendant should be dismissed for lack of subject matter jurisdiction due to Plaintiff's failure to comply with S.C. Code § 15-79-125. In the alternative, this Court should Set Aside Plaintiff's Entry of Default because good cause exists. In the event this Court does not dismiss Plaintiff's Complaint against this Defendant, this Defendant requests



that this Court retroactively enlarge the amount of time for this Defendant to Answer Plaintiff's Complaint.

**A. This Court Lacks Subject Matter Jurisdiction Because of Plaintiff's Failure to Comply with the Requirements of S.C. Code § 15-79-125.**

Because Plaintiff failed to fulfill the pre-litigation requirements set forth under S.C. Code Ann. § 15-79-125, Plaintiff's Complaint against this Defendant should be dismissed.

Subject matter jurisdiction "refers to a court's constitutional or statutory power to adjudicate a case." Johnson v. S. Carolina Dep't of Prob., Parole, & Pardon Servs., 372 S.C. 279, 284 (2007). "The Legislature has the authority to limit the subject matter jurisdiction of a court that it has created." Howard v. S. Carolina Dep't of Corr., 399 S.C. 618, 627 (2012). Moreover, "[a] court lacking subject matter jurisdiction . . . has no authority to act regardless of the geographical location or consent of the litigants." Dove v. Gold Kist, Inc., 314 S.C. 235, 238 (1994).

S.C. Code Ann. § 15-79-125 limits the circuit court's ability to hear a medical malpractice suit and deprives it of subject matter jurisdiction until the substantive pre-litigation requirements set forth in the statute have been fully fulfilled. Prior to filing a summons and complaint, a plaintiff must "contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness." S.C. Code Ann. § 15-79-125(A). The Notice of Intent "must name all adverse parties as defendants" and is required to "be served upon all named defendants." Id. (emphasis added). Following Service of the Notice of Intent, "[w]ithin ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference . . . ." Id. § 15-79-125(C).

(emphasis added). A plaintiff may only file a summons and complaint after the parties are unable to reach a resolution at pre-suit mediation. Id. § 15-79-125(E).

The Supreme Court recently interpreted the intent of the legislature when passing S.C. Code Ann. § 15-79-125 as serving “to provide an informal and expedient method of culling prospective medical malpractice cases by fostering the settlement of potentially meritorious claims and discouraging the filing of frivolous claims.” Ross v. Waccamaw Cmty. Hosp., 404 S.C. 56, 63, 744 S.E.2d 547, 550 (2013). When a plaintiff correctly follows the requirements for service a Notice of Intent and affidavit, this provides “notice to potential defendants of the claim and qualifies potential plaintiffs and defendants to engage in prelitigation discovery.” Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012).

In this case, Plaintiff completely failed to follow the requirements set forth under § 15-79-125 with respect to this Defendant, and as such, this Defendant never received proper notice of Plaintiff’s potential suit against it or an opportunity to participate in pre-suit mediation, as is required by South Carolina statutes. The language of the statute plainly requires that a plaintiff “name all adverse parties as defendants” in the Notice of Intent. S.C. Code Ann. § 15-79-125 (emphasis added). Plaintiff failed to name this Defendant in the Notice of Intent.

Naming a generic “ABC Anesthesia Group” is no substitute for actually naming this Defendant, as it does not provide clear notice of an impending claim. Moreover, at no point did Plaintiff ever seek to amend his Notice of Intent to actually include this Defendant. In fact, the first time that this Defendant was actually named as a defendant was in Plaintiff’s Complaint on May 23, 2013, in complete disregard of the requirements of § 15-79-125.

Furthermore, Plaintiff never served this Defendant with a copy of the Notice of Intent naming this Defendant as a party, as is required by the statute. (See Exhibits 4 and 5, Affs. of Kerns and Sanders). The statute unequivocally states that the Notice of Intent "must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure." S.C. Code Ann. § 15-79-125(A) (emphasis added). Yet, at no point did Plaintiff ever deliver a copy of the Notice of Intent to an officer, a managing or general agent, or any other agent authorized to receive service of process of this Defendant, naming this Defendant as a party to the Notice of Intent. See Rule 4(d)(3), SCRPC.

Moreover, this Defendant was not given the opportunity to participate in pre-suit mediation with Plaintiff. (See Exhibits 4 and 5, Affs. of Kerns and Sanders). Pre-suit mediation was held on April 1, 2013, with all other parties in attendance except for this Defendant. By not giving this Defendant a chance to mediate these claims prior to filing suit, Plaintiff contradicted the intent of the legislature in passing § 15-79-125. In fact, the statute itself only allows a suit *after* "the matter cannot be resolved through mediation." S.C. Code Ann. § 15-79-125(E). There was no mediation between this Defendant and Plaintiff, and accordingly, any suit filed by Plaintiff against this Defendant was improperly filed in violation of the pre-litigation requirements of § 15-79-125.

Therefore, because Plaintiff failed to follow the requirements set forth in S.C. Code Ann. § 15-79-125, the suit against this Defendant should be dismissed for lack of subject matter jurisdiction. Furthermore, as previously stated, this Defendant was never properly served with the Complaint. (See Exhibit 5, Aff. of Sanders).

Therefore, Plaintiff's Application for Default Judgment and Request for a Damages Hearing were improperly filed, and this Court's Entry of Default should be set aside.

**B. Good Cause Exists to Set Aside the Entry of Default.**

In the instant case, Plaintiff is applying for Default Judgment pursuant to Rule 55(b)(2) of the SCRPC and concurrently requesting a damages hearing. Plaintiff also sought an Order of Default pursuant to Rule 55 of the SCRPC, which the Court has entered.

Rule 55(c) of the SCRPC gives the trial court discretion to set aside an entry of default. Roberson v. S. Fin. of South Carolina, Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005). Rule 55(c) provides that a court may set aside an entry of default where "good cause" exists. "In deciding whether good cause exists, the trial court should consider the following factors: (1) the timing of the defendant's motion for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263, 266 (2009) (citing the Wham factors discussed in Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)).

Good cause is a relatively low standard compared to the much more rigorous standard applied to setting aside default judgments pursuant to Rule 60(b), SCRPC. See id. ("The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRPC, while the standard is more rigorous for granting relief from a default judgment under Rule 60(b), SCRPC").

The defaulting party should also "provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice."

Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

As explained in the affidavits of Dr. Kerns and Wendy Sanders (Exhibits 4 and 5), Dr. Kerns is the managing partner of this Defendant and Ms. Sanders serves as this Defendant's administrator/office manager. At no point in time did Dr. Kerns, Ms. Sanders, or anyone else authorized to receive service of process on behalf of this Defendant, ever receive service of a Notice of Intent to File Suit naming this Defendant as a party to the Notice of Intent. At no point in time did Plaintiff or Plaintiff's counsel contact Dr. Kerns, Ms. Sanders, or anyone else authorized to receive service on behalf of this Defendant, to make this Defendant aware that Plaintiff intended to include this Defendant as a party to the Notice of Intent.

At no point in time did Dr. Kerns, Ms. Sanders, or anyone else authorized to receive service of process on behalf of this Defendant, receive notification of a scheduled pre-suit mediation conference with Plaintiff and the other Defendants in this case.

On July 8, 2013, Plaintiff attempted to serve upon a person named Jody Hawkins the Complaint in this matter. Ms. Hawkins is not, has never been and was not on July 8, 2013 an employee, agent or representative of this Defendant. Upon information and belief, Ms. Hawkins is and was on July 8, 2013 an employee, agent or representative of Charleston Surgical Center, L.P, one of the Defendants who has settled this case with Plaintiff.

In light of the fact that this Defendant had not been named in the Notice of Intent and this Defendant was not properly served with the Complaint, Dr. Kerns, with knowledge of the lawsuit against Dr. Thompson, believed that no further

actions were needed on the part of this Defendant. Dr. Kerns believed that because Dr. Thompson was in the process of defending herself in the lawsuit, her defense applied equally to this Defendant. Dr. Kerns reasonably believed that this Defendant was not even involved in any lawsuit.

In the event this Court refrains from dismissing the case against this Defendant for lack of subject matter jurisdiction, good cause exists for this Court to set aside this default pursuant to Rule 55(c) of the SCRPC. The interests of justice will be served because it will allow this lawsuit to be determined based on its merits. In addition, and as shown above, Plaintiff has failed to comply with South Carolina's medical malpractice statutes.

#### **1) Timing**

The Order Entering Judgment against Coastal Anesthesia Associates was filed on November 25, 2013. As the Clerk's office was closed for the Thanksgiving holiday, this Defendant is filing the instant Motion to Set Aside as quickly as reasonably possible. Additionally, no significant events have taken place in this case since Plaintiff filed his Application for Default Judgment. Furthermore, despite Plaintiff's improper attempts to serve this Defendant with the Complaint, this Defendant filed an Answer to the Complaint before Plaintiff even filed his Application for Default Judgment and Request for a Damages Hearing. Therefore, this Defendant meets the timing element of good cause.

#### **2) Meritorious Defense**

"To establish that he has a meritorious defense, a complainant need not show that he would prevail on the merits, but only that his defense is meritorious."

McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008) affd, 395 S.C. 85, 716 S.E.2d 887 (2011).

A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.

Micronics, Inc. v. S. Carolina Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001).

In the instant case, this Defendant has raised several meritorious defenses in its Answer and affirmative defenses. In addition, as the only real avenue of recovery against this Defendant is premised upon the alleged vicarious liability (or non-delegable duty of care) of its independent contractor Dr. Thompson, the defenses raised in her Answer (Exhibit 9) and affidavit should be considered as well. (See Exhibit 14, Affidavit of Dr. Thompson).

As this is a medical malpractice lawsuit, the single most important issue is whether any defendant deviated from the standard of care. This Defendant and Dr. Thompson have both raised the affirmative defense that they did not deviate from the standard of care. (See Exhibits 4, 9, 10 and 14). They have also asserted the defense that their actions were not the proximate cause of harm. Id. Therefore, this Defendant has showed it has a meritorious defense.

### **3) Degree of Prejudice**

Courts favor settling disputes on their merits unless the degree of prejudice against a party is so great as to hold otherwise. Williams v. Watkins, 384 S.C. 319, 327, 681 S.E.2d 914, 918 (Ct. App. 2009). When analyzing the degree of prejudice, South Carolina courts take a practical approach and look at what actions have been

done in the case. Id. Where little discovery and investigation has occurred, courts are less likely to find that the degree of prejudice is high. Id.

The instant lawsuit was very recently filed. The Complaint was filed in July of this year, and only written discovery has been exchanged. No depositions have been taken, nor have expert witnesses been identified. On July 3, 2013, Dr. Thompson served on Plaintiff four sets of discovery requests. On August 14, 2013, Dr. Thompson served on Plaintiff an additional discovery request. To date, Dr. Thompson has not received Plaintiff's responses to any of these discovery requests, and no extension was asked for or granted. Plaintiff's responses to the discovery requests served on July 3 were due on August 4, 2013. Plaintiff's responses to the discovery requests served on August 14 were due on September 15, 2013. Plaintiff has given no explanation as to why he has failed to respond to Dr. Thompson's discovery requests. Plaintiff should therefore not be allowed to claim any prejudice from allowing this Defendant to respond to the substantive allegations of the Complaint, while at the same time failing to respond to basic discovery requests served by Dr. Thompson, a party Plaintiff does not even argue is in default.

Allowing this Defendant's Answer to stand will cause no delay, nor will it cause any prejudice to Plaintiff. Moreover, as the alleged vicarious liability (or non-delegable duty of care) of this Defendant's independent contractor Dr. Thompson is Plaintiff's only theory of recovery against this Defendant, Plaintiff's recovery against this Defendant is completely contingent upon a finding of liability on the part of Dr. Thompson. Dr. Thompson is still a party to this suit and has denied that she deviated from the standard of care in her care and treatment of Martha Preston. Thus, Plaintiff will have to wait for a final determination of any alleged



liability on the part of Dr. Thompson before attempting to recover from this Defendant. As such, Plaintiff is unable to show that any prejudice will result from setting aside the Entry of Default.

This Defendant has met all of the elements of good cause; therefore, this Court should set aside the Entry of Default and deny Plaintiff's Application for Default Judgment.

**C. This Defendant is Also Entitled to Relief Under Rule 60.**

In the event this Court refrains from dismissing the case against this Defendant for lack of subject matter jurisdiction and does not set aside the Entry of Default pursuant to Rule 55(c) of the SCRCP, this Defendant also meets the more stringent requirements under Rule 60(b) for SCRCP for this Court to set aside the Entry of Default. Rule 60 provides that "the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . [or] (4) the judgment is void . . . Rule 60(b), S.C.R.C.P. A defaulting party must also meet the above factors for good cause as well.

**1) Mistake and Excusable Neglect**

"In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: (1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010).

As the majority of these factors were explored above, this section will simply highlight some of the key facts. In the instant case, a Notice of Intent was

filed naming Dr. Thompson as a Defendant. This Defendant was not named or served with the Notice of Intent and was not properly served with the Complaint. This Defendant's managing partner and office manager/administrator reasonably believed that this Defendant was not involved in the lawsuit other than tangentially through its independent contractor Dr. Thompson.

## **2) Judgment is Void**

"The definition of 'void' under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Linda Mc Co., Inc. v. Shore, 375 S.C. 432, 438, 653 S.E.2d 279, 282 (Ct. App. 2007) aff'd as modified, 390 S.C. 543, 703 S.E.2d 499 (2010).

Here, Plaintiff failed to follow the substantive requirements of S.C. Code Ann. § 15-79-125 as to this Defendant. These requirements grant this Court subject matter jurisdiction over the dispute. Therefore, any order filed against this Defendant in this case is void for lack of subject matter jurisdiction. Moreover, by failing to follow the substantive rules of the statute, Plaintiff has also failed to provide this Defendant with proper notice and due process, thereby making any judgment against this Defendant similarly void. Therefore, this Defendant is entitled to relief under Rule 60 of the SCRCP.

### **D. Good Cause Exists to Enlarge the Time for this Defendant to File an Answer.**

Should the Complaint not be dismissed as to this Defendant for lack of subject matter jurisdiction, good cause exists for the Court to retroactively enlarge the time for this Defendant to file an Answer. Rule 6(b) of the South Carolina Rules of Civil Procedure allows courts to extend the time period for a party to file an

Answer "for good cause shown." Rule 6(b), SCRCP. Plaintiff failed to follow the pre-litigation requirements of S.C. Code Ann. § 15-79-125 and did not give this Defendant an opportunity to participate in pre-suit mediation. One requirement under § 15-79-125 is that all adverse parties be served in accordance with the South Carolina Rules of Civil Procedure. S.C. Code Ann. § 15-79-125. The SCRCP require that papers, such as a Notice of Intent, be served on organizations like this Defendant by serving "an officer, a managing or general agent, or . . . any other agent authorized by appointment or by law to receive service of process . . . ." Rule 4(d)(3), SCRCP. Nonetheless, Plaintiff failed to ever serve a copy of the Notice of Intent on this Defendant naming this Defendant as a party to the suit, as is required by S.C. Code Ann. § 15-79-125. (See Exhibits 4 and 5).

Furthermore, Plaintiff never properly served this Defendant with the Complaint, rather serving the Complaint on a person who has never been an employee, agent or representative of this Defendant. As such, because of Plaintiff's improper attempted service, no subject matter jurisdiction ever existed over this Defendant, and good cause exists for this Court to retroactively extend the time for this Defendant to file an Answer to Plaintiff's Complaint through September 23, 2013.

### CONCLUSION

For the foregoing reasons, this Defendant respectfully requests that the Court grant this Defendant's its Motion to Dismiss Plaintiff's Complaint against this Defendant for lack of subject matter jurisdiction, or in the alternative, to Set Aside the Entry of Default and retroactively enlarge the time for this Defendant to Answer Plaintiff's Summons and Complaint.

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)  
A. Walker Barnes (SC # 78485)

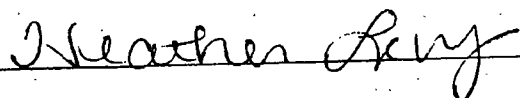
Attorneys for Defendant  
Coastal Anesthesia Associates, LLC<sup>2</sup>

12/5, 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 5 day of Dec, 2013.

  
\_\_\_\_\_

<sup>2</sup> Improperly identified as "Coastal Anesthesia Associates."

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as PR of  
the Estate of Martha Preston, deceased

Plaintiff(s)

vs.

Surgical Center Affiliates, LLC, Charleston  
Surgery Center, LP, Nurse Doe, Christine  
Thompson, MD, and ABC Anesthesia Group

Defendant(s)

Submitted By: Chad McGowan

Address: 1539 Health Care Drive, Rock Hill, SC 29732

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

12-CP - 10-7413

SC Bar #: 9943

Telephone #: 803-327-7800

Fax #: 803-328-5656

Other:

E-mail: cmcgowan@mcgowanhood.com

NOTE: The coversheet 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 coversheet 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**  
☐ Construction (100)  
☐ Debt Collection (110)  
☐ Employment (120)  
☐ General (130)  
☐ Breach of Contract (140)  
☐ Other (199)

- Torts - Professional Malpractice**  
☐ Dental Malpractice (200)  
☐ Legal Malpractice (210)  
☐ Medical Malpractice (220)  
Previous Notice of Intent Case #  
20-CP-  
☒ Notice/ File Med Mal (230)  
☐ Other (299)

- Torts - Personal Injury**  
☐ Assault/Slander/Libel (300)  
☐ Conversion (310)  
☐ Motor Vehicle Accident (320)  
☐ Premises Liability (330)  
☐ Products Liability (340)  
☐ Personal Injury (350)  
☐ Wrongful Death (360)  
☐ Other (399)

- Real Property**  
☐ Claim & Delivery (400)  
☐ Condemnation (410)  
☐ Foreclosure (420)  
☐ Mechanic's Lien (430)  
☐ Partition (440)  
☐ Possession (450)  
☐ Building Code Violation (460)  
☐ Other (499)

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

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

- 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)

- 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 Comm. (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)

- ☐ Confession of Judgment (770)  
☐ Petition for Workers Compensation Settlement Approval (780)  
☐ Other (799)

Submitting Party Signature: \_\_\_\_\_

Date: 11/9/12



Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous SCCA / 234 (04/2012)

Page 1 of 3



**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 210<sup>th</sup> 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

Willie Preston, individually and as PR of  
the Estate of Martha Preston, Deceased

Plaintiff,

v.

Surgical Center Affiliates, LLC,  
Charleston Surgery Center, LP, Nurse  
Doe, Christine Thompson, MD, and ABC  
Anesthesia Group,

Defendants.

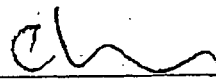
IN THE COURT OF COMMON PLEAS

Civil Action No: 12-CP-10-7413

NOTICE OF INTENT TO FILE SUIT

FILED  
JULIE J. ARMSTRONG  
CLERK OF COURT  
23 NOV 13 PM 4:03

Pursuant to S.C. Code Ann. 15-79-125, Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is Plaintiff's short and plain statement of the facts. Attached as Exhibits B and C are affidavits from expert witnesses delineating at least one negligent act or omission which would allow the Plaintiff to recover damages from Defendants in this case. Attached as Exhibit D are answers to Standard Interrogatories as set forth in S.C.R.C.P. 33 (b).

  
Chad A. McGowan  
Ashley Creech  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, South Carolina 29732  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

Rock Hill, South Carolina

November 9, 2012





principal or agent, with the entity employing certain nurses and other medical staff at the Charleston Surgical Center who at all times relevant hereto, were employees acting within the scope of their employment.

3. Defendant Charleston Surgery Center LP, is a South Carolina limited partnership and is an agent, principal or joint venturer with Surgical Affiliates, LLC. Charleston Surgery Center maintains its principal place of business in Charleston County, SC and was the employer of certain nurses and other medical providers that treated Mrs. Preston on April 18, 2012.

4. Defendant Nurse Jane Done, RN was the registered nurse who was in charge of Mrs. Preston's post operative care, and is the same person who signed Pages CSC-024 and CSC-025 of the medical records. This defendant is also believed to be the same person who administered the dilaudid and other drugs to Mrs. Preston. Nurse Doe is believed to be a citizen and resident of Charleston County, SC and was at all times working within the course and scope of her employment.

5. Defendant Christine Thompson, MD is a physician licensed by the state of South Carolina and holds herself out to the public as a specialist in the field of anesthesiology. At all times relevant hereto, Defendant Thompson was acting within the scope of her employment with Charleston Surgical Center, LP or Surgical Affiliates, LLC, and/or her practice that plaintiff calls ABC Anesthesia Group at this time. Defendant Thompson is a citizen and resident of Charleston County, SC.

#### **FACTUAL ALLEGATIONS**

6. On April 18, 2012, Mrs. Preston went to the Charleston Surgery Center for an outpatient knee surgery. The procedure was supposed to take well less than a day, and Mrs. Preston was to be returned home without staying in any medical facility overnight.

7. After this procedure, Mrs. Preston was sent from the Operating Room to the Post Anesthesia Care Unit ("PACU"). Dr. Thompson ordered, among other things, "Dilaudid 0.2 mg IV prn pain, may repeat every 5 minutes up to 2 mg IV or 4 mg IV." CSC 024. Both Dr. Thompson and Nurse Doe signed this order.

8. Nurse Doe administered the following medications to Mrs. Preston:

Dilaudid 1 mg IV at 9:02

Dilaudid 1 mg IV at 9:06

Dilaudid 1 mg IV at 9:21

Dilaudid 1 mg IV at 9:28

Phenergan 6.25 mg IV at 9:42

Percocet 1 by mouth at 9:42

9. The dilaudid administered by the nurse was in excess of the physician's order and the nurse therefore was below the prevailing and accepted medical standard of care.

10. Nurses have an obligation to follow doctor's orders unless in their professional judgment doing so would put the patient at risk. In that case, Nurses are expected to follow-up on their concerns either with the physician or through their chain of command. It is never appropriate for a nurse to give 4 doses of dilaudid, 1 mg EACH, when an order reads that the maximum per dose is 0.2 mg.

11. Further, Charleston Surgery Center and Surgery Center Affiliates had policies and procedures in place dictating when a patient could safely be discharged. The Defendants used a scoring system, that provided that a patient must score at least a 16 on a scale from 16-18. Mrs. Preston scored only a 13, and was discharged anyway.

12. As a back-up to this system, the physician, in this case Defendant Thompson, was

supposed to evaluate the patient and the patient's chart to sign off on the patient being fit for discharge. Dr. Thompson signed a statement that she had assessed Mrs. Preston and found her fit for discharge. See, Anesthesia Record, CSC-021. This is shocking as Mrs. Preston at that time was under the influence of 4 mg of dilaudid, Phenergan, and Percocet, and the effects of those drugs was profound. Mrs. Preston could not walk or stay awake from the heavy medications. Dr. Thompson never reviewed the patient's chart to determine if her order was followed or to determine if Mrs. Preston could safely be discharged. If she had, she would not have discharged Mrs. Preston.

13. Dr. Thompson had a duty and obligation to assess Mrs. Preston prior to her discharge as well as to review her medical chart from the PACU. Dr. Thompson further had a duty and obligation to perform this assessment in a competent manner. Dr. Thompson failed on both accounts.

14. Mrs. Preston was sent home in the care of her husband who did his level best to care for her. Mrs. Preston was falling asleep while walking to her bedroom from her car. Mr. Preston regularly checked on her, and the last time he checked on her, before lunch time, Mrs. Preston was found to be not breathing.

15. Mr. Preston called 911 and started to do CPR on his wife. EMS arrived and took over care of Mrs. Preston, ultimately taking her to MUSC in Charleston.

16. Mrs. Preston was determined to be brain dead at MUSC from the lack of oxygen to her brain and she passed on April 23, 2012.

17. The cause of death was determined to be "probable mixed drug toxicity with fentanyl, promethazine, hydromorphone, oxycodone, and midazolam." In other words, Mrs. Preston died from the drugs she was given at the Charleston Surgery Center.

18. As a direct and proximate result of the acts and/or omissions of Defendants, Mrs. Preston did not receive proper treatment in a timely fashion. With proper, standard of care medicine, Mrs. Preston would not have suffered and would have not have died when she did and would have had a normal life expectancy.

19. The injuries to and death of Mrs. Preston were the direct and proximate result of and was caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and medical staff under similar circumstances and thereby rendered inappropriate medical care to Mrs. Preston by deviating from and falling below the prevailing and acceptable standards of care in one or more of the following particulars, as follows:

AS TO DEFENDANT Nurse Doe, Charleston Surgery Center LP, and Surgery Center Affiliates, LLC:

- a. In failing to properly follow the physician's orders;
- b. In giving too much medication;
- c. In failing to properly assess Mrs. Preston;
- d. In discharging Mrs. Preston under the circumstances;
- e. In failing to properly follow the policies and procedures in place for discharge assessment; and
- f. In such other ways as may be shown at trial

AS TO DEFENDANTS Thompson and ABC Anesthesia Group

- g. In failing to review the medical chart of the patient at the time Defendant Thompson certified that Mrs. Preston was fit for discharge;
- h. In failing to properly assess Mrs. Preston at the time of her discharge;
- i. In allowing Mrs. Preston to be discharged;
- j. In failing to realize that the nurse grossly violated her order by giving 1 mg doses of dilaudid when the order called for no more than 0.2 mg at a time; and
- k. In such other ways as may be shown at trial.

ATTACHED to the Notice of Intent, all of which is incorporated herein by reference, and attached to this Complaint are affidavits of qualified experts who will testify to at least one breach of the standard of care by the Defendants in this matter.

#### **FOR A FIRST CAUSE OF ACTION**

##### **(SURVIVAL ACTION)**

20. Plaintiff reiterates paragraphs 1-19 above as if set forth verbatim herein.

21. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Preston suffered from severe debilitating injuries which resulted in her permanent injury and disability, and conscious pain and suffering, as a result of which Mrs. Preston is entitled to recover a sum to compensate her estate for her conscious pain and suffering, medical expenses, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

#### **FOR A SECOND CAUSE OF ACTION**

**(Wrongful Death)**

22. Plaintiff reiterates paragraphs 1-21 as if set forth verbatim herein.

23. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Preston suffered from severe debilitating injuries which resulted in her death, and thus the negligence was the cause of the loss of the support, aid, society, comfort, and companionship of her heirs at law. The estate is therefore entitled to recover from defendants a sum of money to compensate the heirs at law for the medical expenses, funeral expenses, mental anguish, loss of earnings capacity, and loss for the aid, society, comfort, and companionship of the decedent. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

**FOR A THIRD CAUSE OF ACTION**

**(Loss of Consortium)**

24. Plaintiff reiterates paragraphs 1-23 as if set forth verbatim herein.

25. Plaintiff Willie Preston, as the husband of Mrs. Mrs. Davis, has suffered a loss of consortium as a result of the actions and inactions of defendants. He is therefore entitled to an award of damages to compensate her for her loss of the society, comfort, companionship, support, and good offices of his wife. Further, the Defendants' actions in this case have been reckless and/or grossly negligent and thus Plaintiff Andrew Strong is additionally entitled to an award of punitive damages to punish and deter these defendants and others like them.

WHEREFORE, Plaintiffs, respectfully pray for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to

be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law.

---

Chad A. McGowan  
Ashley Creech  
McGowan, Hood, & Felder, LLC  
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Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

John Hughes Cooper  
1476 Ben Sawyer Blvd, Suite 7  
Mt. Pleasant, SC 29464  
843-883-9099  
843-883-9335 (Fax)

Rock Hill, South Carolina

November \_\_, 2012

**PLAINTIFF DEMANDS A JURY TRIAL**



STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Willie Preston as the Personal  
Representative of the Estate of Martha  
Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P.; Jane Doe, R.N.; )  
ABC Anesthesia Group; and Christine )  
Thompson, M.D. )

Defendants. )

IN THE COURT OF COMMON PLEAS

C. A. No: 12-CP-

AFFIDAVIT

TERESA A. SOLLITTO, R.N.

(S.C. Code Ann. §15-36-100)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY  
SWORN, AND SAYS AS FOLLOWS:

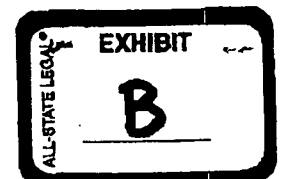
1. I am professional registered nurse. My clinical practice involves recovering all age groups and all types of surgeries from different types of anesthesia. My education, training and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care which should have been rendered to Martha Preston in this case.

2. My nursing practice is located primarily in Boston, Massachusetts. I have been practicing for more than twenty (20) years.

3. I am familiar with the standard of care of what a reasonably prudent nurse would do or not do in providing care to patients, including the type of care rendered to Martha Preston. I am familiar with the breaches of the standard of care which can occur and result in harm to a patient similar to the situation involving Martha Preston.

4. I have reviewed the medical records of Martha Preston which consisted in part of records from Charleston Surgical Center, MUSC which include the autopsy, toxicology report, Coroner's report and death certificate. The records I reviewed are the type documents which I would consider in rendering an expert nursing opinion in this case.

5. It is my opinion, within a reasonable degree of nursing certainty that the Defendants and/or their employees, agents or nurses committed negligent acts or omissions in their care and



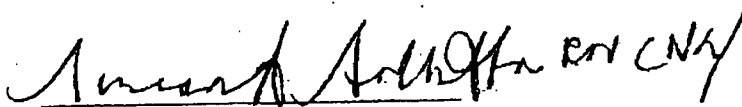
treatment of Martha Preston. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by the Defendants and/or their employees, agents or nurses, are as follows:

- Failing to follow physician's order as to the administration of Dilaudid;
- Failing to recognize the totality of the situation and ensuring safe and reasonable care which required further time to recover prior to discharge;
- Discharging Mrs. Preston home in the face of not meeting discharge criteria.

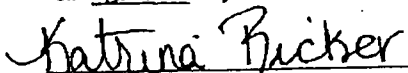
6. Further, it is my opinion to a reasonable degree of nursing certainty that the actions or inactions of the Defendants and/or their employees, agents or nurses contributed to the injuries and damages which led to Martha Preston death.

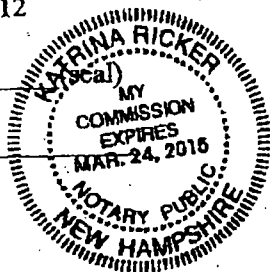
7. The factual basis for my opinion about the breaches of the standard of care by the Defendants at this time are the medical records of Martha Preston. The factual basis of my opinions may be supplemented at a later time.

8. This affidavit is given in compliance with South Carolina Code of Laws §§15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
TERESA A. SOLLITTO, R.N.

Sworn to and signed before me  
this 29 day of October 2012

  
Notary Public  
My Commission Expires: \_\_\_\_\_



## TERESA A. SOLLITTO

52 Sanborn Street, # 204  
Reading, MA 01867

(339) 234-1387  
tsollitt@bidmc.harvard.edu

### EXPERIENCE:

8/84 to Present **BETH ISRAEL DEACONESS MEDICAL CENTER, Boston, MA**

**Clinical Nurse (IV) Post Anesthesia Care Unit** (3/93 to Present)

- Primary/associate nurse in 23 bay unit, open 24/7. Level 1 Trauma.
- Presenter, patient care rounds in multi-disciplinary setting.
- Preceptor for new staff.
- Perform Unit Resource role: coordinate patient flow, manage staffing patterns and collaborate with anesthesia, surgical and inpatient staff.
- Staff Scheduler for 52 nurses.
- Instructor, American Heart Association ACLS and BLS
- Member of hospital-wide Professional Nurse Advancement Program
- Co-coordinator, Peer Review process.
- Member, Practice and Quality/Safety committees; responsible for quarterly chart audits, staff Education.

**Interim Manager** (8/98 to 12/98)

**Clinical Nurse (IV), Surgical Intensive Care Unit** (1/97 to 5/97)

- Primary/associate nurse in 12 bed intensive care unit.
- Patient population included cardiothoracic, neurosurgical and multi-system trauma.

**Clinical Nurse (IV) Collaborative Medical-Surgical Unit** (2/89 to 3/93)

- Primary/associate nurse on 14 bed unit.
- Co-developed Peer Review Program; provided consultation on program to other units.
- Nurse for a Day preceptor, Physician for a Day participant; provided orientation for new staff, students.
- MALS Instructor for hospital.
- Arrest Call Coordinator; handled responses hospital-wide.
- Coordinated and conducted unit-base review sessions on emergency care.
- Active participant on various task forces and committees, including: Picker Commonwealth Group Project, B.I. Professional Nurse Advancement Program, B.I. Product Standards and Evaluation Committee, 7North Steering Group Committee and Unit-Based Primary Nurse Task Force.
- Critical incident rounds representative.
- Advanced from Clinical Nurse III (3/91).

**Management Internship** (8/91 to 3/92)

- Assumed temporary management of 14 bed med-surg unit to cover LOA.
- Responsibilities included budgeting, scheduling and staffing issues.

**Clinical Advisor** (10/87 to 2/89)

- Clinical, educational and administrative resource for nurses occupying 17 patient-care units.
- Continued to provide support (25% of time) to Surgical Unit.

**TERESA A. SOLLITTO (page 2)**

**Clinical Nurse (II) Surgical Unit (3/86 to 10/87)**

- Primary/associate nurse responsible for coordinating multi-disciplinary care of patients.
- 24 hour accountability for interventions.
- Active in various committees, including: B.I. Pharmacy Committee, Unit-Based Documentation Task Force, Unit-Based Quality Improvement Committee and B.I. Patient Education Committee.
- Primary Nurse Rounds Presenter and Preceptor for new staff.
- Advanced from Clinical Nurse II (8/84 to 3/86).

**EDUCATION:**

**UNIVERSITY OF NEW HAMPSHIRE, Durham, NH**  
**1984 Bachelor of Science, Nursing**

**PRESENTATIONS:**

Sedation Lecture, Harvard Medical School, CME  
"What is a Nurse," Harvard Medical School  
"Cultivating a Community of Scholars," Northeastern University  
"Professional Nursing Practice" and "Patient Confidentiality"  
Choose Nursing Orientation Program  
Documentation Lecture at Orientation

**CERTIFICATIONS,  
AFFILIATIONS  
& AWARDS:**

Recipient, "Edward and Marilyn Schwartz Award" for overall excellence in nursing practice.  
Advanced Cardiac Life Support  
Basic Cardiac Life Support  
IV infusion therapy; phlebotomy  
Boston Athletic Association, Medical Support, Boston Marathon  
Participant/runner (2008, 2009, 2010)

**REFERENCES:**

Available upon request

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston as the Personal  
Representative of the Estate of Martha  
Preston, deceased

Plaintiffs,

vs.

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Jane Doe, R.N.;  
ABC Anesthesia Group; and Christine  
Thompson, M.D.

Defendants.

IN THE COURT OF COMMON PLEAS

C. A. No: 12-CP-

AFFIDAVIT

ALAN LISBON, M.D.

(S.C. Code Ann. §15-36-100)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY  
SWORN, AND SAYS AS FOLLOWS:

1. I am a Medical Doctor. I am board certified in Anesthesiology with a subspecialty in Critical Care Medicine. My clinical practice involves the care and treatment of people who require all levels of anesthesia for surgeries and/or procedures. My education, training, and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care provided to Martha Preston in this case.

2. My practice is located primarily in Boston, Massachusetts. I have been a practicing physician for more than twenty (20) years.

3. I am familiar with the standard of care of what a reasonably prudent physician would do or not do in providing care to patients, including the type of care rendered to Martha Preston. I am familiar with the breaches of the standard of care which can occur and result in harm to a patient similar to the situation involving Martha Preston.

4. I have reviewed the medical records of Martha Preston which consisted in part of records from Charleston Surgical Center, MUSC which include the autopsy, toxicology report, Coroner's report and death certificate. The records I reviewed are the type documents which I would consider in rendering an expert medical opinion in this case.



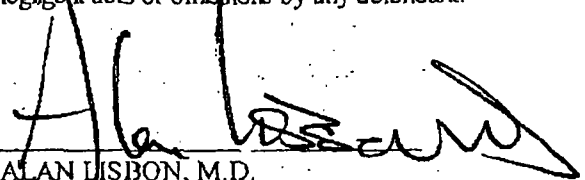
5. It is my opinion, within a reasonable degree of nursing certainty that the Defendants and/or their employees, agents or nurses committed negligent acts or omissions in their care and treatment of Martha Preston. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by the Defendants and/or their employees, agents or nurses, are as follows:

- Failing to follow physician's orders, by the PACU nurse in administering excessive doses of Dilaudid;
- Failing to recognize the totality of the situation and ensuring safe and reasonable care which required further time to recover prior to discharge, by both the PACU nurse and the physician; and
- Discharging Mrs. Preston home in the face of not meeting discharge criteria.

6. Further, it is my opinion to a reasonable degree of medical certainty that the actions or inactions of the Defendants and/or their employees, agents or nurses contributed to the injuries and damages which led to Martha Preston death.

7. The factual basis for my opinion about the breaches of the standard of care by the Defendants at this time are the medical records of Martha Preston. The factual basis of my opinions may be supplemented at a later time.

8. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
ALAN LISBON, M.D.

Sworn to and signed before me  
this 31 day of October 2012

 (seal)  
Notary Public  
My Commission Expires: 1-16-15

## CURRICULUM VITAE

Date Prepared: May 5, 2010

### **PART I: General Information:**

Name: Alan Lisbon, MD

Office Address: Department of Anesthesia and Critical Care  
Beth Israel Deaconess Medical Center, EC 470  
One Deaconess Road  
Boston, Massachusetts 02215

Home Address: Two Cross Street  
Dover, Massachusetts 02830

E-Mail: [alison@bidmc.harvard.edu](mailto:alison@bidmc.harvard.edu) FAX: (617) 754-2735

Place of Birth: Worcester, Massachusetts

### **Education:**

|      |                         |                                        |
|------|-------------------------|----------------------------------------|
| 1972 | B.S. (with Distinction) | Cornell University                     |
| 1976 | M.D.                    | New York University School of Medicine |

### **Postdoctoral Training:**

#### **Internship and Residencies:**

|           |                      |                                  |
|-----------|----------------------|----------------------------------|
| 1976-1977 | Surgical Internship  | Beth Israel Hospital, Boston, MA |
| 1977-1980 | Anesthesia Residency | Beth Israel Hospital, Boston, MA |

### **Licensure and Certification:**

|      |                                                   |
|------|---------------------------------------------------|
| 1977 | Diplomate, National Board of Medical Examiners    |
| 1977 | Massachusetts Medical License                     |
| 1980 | Diplomate, American Board of Anesthesiology       |
| 1986 | Diplomate, American Board of Anesthesiology       |
|      | Special Qualifications in Critical Care Medicine  |
| 2001 | Recertification, American Board of Anesthesiology |
| 2009 | Recertification, American Board of Anesthesiology |

Alan Lisbon, MD

**Academic Appointments:**

|           |                                                             |                                         |
|-----------|-------------------------------------------------------------|-----------------------------------------|
| 1976-1977 | Clinical Fellow in Surgery                                  | Harvard Medical School                  |
| 1977-1980 | Clinical Fellow in Anaesthesia                              | Harvard Medical School                  |
| 1980-1984 | Instructor in Anaesthesia                                   | Harvard Medical School                  |
| 1984-2002 | Assistant Professor of Anaesthesia                          | Harvard Medical School                  |
| 2001-     | Clinical Professor,<br>Cardiopulmonary and Exercise Science | Northeastern University<br>(non-voting) |
| 2002-     | Associate Professor of Anaesthesia                          | Harvard Medical School                  |

**Hospital Appointments:**

|           |                           |                                                    |
|-----------|---------------------------|----------------------------------------------------|
| 1980-1985 | Assistant Anesthetist     | Beth Israel Hospital, Boston, MA                   |
| 1985-1995 | Associate Anesthetist     | Beth Israel Hospital, Boston, MA                   |
| 1993-     | Consultant in Anaesthesia | Children's Hospital, Boston, MA                    |
| 1993-1996 | Associate Surgeon         | Beth Israel Hospital, Boston, MA                   |
| 1995-1996 | Anesthetist               | Beth Israel Hospital, Boston, MA                   |
| 1996-     | Associate Surgeon         | Beth Israel Deaconess Medical Center<br>Boston, MA |
| 1996-     | Anesthetist               | Beth Israel Deaconess Medical Center<br>Boston, MA |

**Hospital and Health Care Organization Service Responsibilities:**

|           |                                                                 |                                      |
|-----------|-----------------------------------------------------------------|--------------------------------------|
| 1980-1985 | Associate Director, Respiratory-Surgical<br>Intensive Care Unit | Beth Israel Hospital                 |
| 1980-2002 | Member, Cardiac Anesthesia Team                                 | Beth Israel Hospital                 |
| 1985-1996 | Co-Director, Respiratory-Surgical Intensive<br>Care Unit        | Beth Israel Hospital                 |
| 1996-2006 | Medical Director, Respiratory Care                              | Beth Israel Deaconess Medical Center |
| 1996-     | Co-Director, Surgical ICU's                                     | Beth Israel Deaconess Medical Center |

**Major Administrative Responsibilities:**

|           |                                                                              |                                      |
|-----------|------------------------------------------------------------------------------|--------------------------------------|
| 1990-1996 | Director, Critical Care Fellowship                                           | Beth Israel Hospital                 |
| 1991-1996 | Chief, Division of Critical Care                                             | Beth Israel Hospital                 |
| 1996-2003 | Chief, Division of Critical Care                                             | Beth Israel Deaconess Medical Center |
| 1996-2007 | Director, Critical Care Fellowship                                           | Beth Israel Deaconess Medical Center |
| 2003-2009 | Vice Chairman for Critical Care                                              | Beth Israel Deaconess Medical Center |
| 2006-2009 | Acting Chair<br>Department of Anesthesia, Critical Care<br>and Pain Medicine | Beth Israel Deaconess Medical Center |
| 2009-     | Executive Vice Chair                                                         |                                      |



Alan Lisbon, MD  
Major Committee Assignments:

National

|       |                                                                                                         |                    |
|-------|---------------------------------------------------------------------------------------------------------|--------------------|
| 1995- | American Board of Anesthesiology<br>(Senior Examiner 2005 - )                                           | Associate Examiner |
| 2002- | Food and Drug Administration<br>Anesthesia and Respiratory Therapy<br>Devices Panel (Chair 2003 - 2008) |                    |

Medical School

|           |                                           |                                                |
|-----------|-------------------------------------------|------------------------------------------------|
| 1987-     | Respiratory Therapy<br>Advisory Committee | Northeastern University                        |
| 1989-1996 | Standing Committee on<br>Human Studies    | Harvard Medical School                         |
| 1996-1998 | Human Studies Committee                   | Harvard University Health<br>Services          |
| 1996-     | Respiratory Therapy<br>Program            | Medical<br>Director<br>Northeastern University |

Beth Israel Hospital/ Beth Israel Deaconess Medical Center

|            |                                                                                                               |          |
|------------|---------------------------------------------------------------------------------------------------------------|----------|
| 1984-1996  | Emergency Room Committee                                                                                      |          |
| 1986-      | Critical Care Committee<br>Co-Chair (1991-1992)<br>Co-Chair (1997-1998)                                       |          |
| 1988-      | Committee on Clinical Investigations (IRB)<br>Secretary (1988-1998)<br>Co-Chair (1998-1999)<br>Chair (1999- ) |          |
| 1988-1999  | Committee on Infectious Disease                                                                               |          |
| 1990-2000  | Tissue Committee                                                                                              |          |
| 1991-1996  | Medical Staff Council                                                                                         |          |
| 1994-1996  | Medical Executive<br>Committee                                                                                |          |
| 1995-1996  | Critical Care Committee                                                                                       | Co-Chair |
| 1995-1998  | Operative and Invasive<br>Procedures Committee                                                                |          |
| 1996- 2000 | Medical Staff Council                                                                                         |          |
| 1996-1998  | Anesthesia and Critical Care<br>Pharmacy Subcommittee                                                         | Co-Chair |
| 1998-2000  | Clinical Information Systems<br>Steering Committee                                                            |          |
| 1998-2006  | Benefits Advisory Committee                                                                                   |          |

Alan Lisbon, MD

|           |                                                            |       |
|-----------|------------------------------------------------------------|-------|
| 1998-2000 | Harvard Medical Faculty Physicians Resuscitation Committee | Chair |
| 1998-2009 | Physician's Organization Board of Directors                |       |
| 1998-2005 | Physician's Organization Managed Care Steering Committee   |       |
| 2001-2005 | Clinical Research Strategy Committee                       |       |
| 2002-     | OR Executive Committee (Co-Chair 2006 - 2009)              |       |
| 2004-2005 | Graduate Medical Education Committee                       |       |
| 2007-2009 | Clinical Information Steering Committee                    |       |
| 2007-     | Volume and Operations Committee                            |       |
| 2010-     | Harvard Medical Faculty Physicians Board of Directors      |       |

Department

|           |                                                      |                                |
|-----------|------------------------------------------------------|--------------------------------|
| 1984-2000 | Clinical Competence Committee                        |                                |
| 1985-2000 | Quarterly Review Committee                           |                                |
| 1988-     | Resident Selection Committee                         |                                |
| 1988-     | Peer Review Committee                                |                                |
| 1991-     | Beth Israel Anesthesia Foundation Board of Directors | Secretary President 2007, 2008 |
| 1992-     | Division Directors Committee                         |                                |
| 1995-2005 | Grand Rounds Conferences                             | Coordinator                    |
| 1996-     | Curriculum Committee                                 |                                |
| 1996-     | Clinical Practice Committee                          |                                |

**Alan Lisbon, MD**  
**Professional Societies**

|           |                                                           |                    |
|-----------|-----------------------------------------------------------|--------------------|
| 1976-     | American Medical Association                              |                    |
| 1977-     | Massachusetts Society of Anesthesiologists                |                    |
| 2003-     | Governmental Affairs Committee                            |                    |
| 2003-     | Ethical Practice and Standards of Care Committee          |                    |
| 1977-     | American Society of Anesthesiologists                     |                    |
| 1996-1997 | Subcommittee on Critical Care                             |                    |
| 1980-     | American Board of Anesthesiology                          |                    |
| 1981-     | Society of Critical Care Medicine                         |                    |
| 1992      | Consensus Development Committee                           | Delegate           |
| 1992-1996 | House of Chapters                                         | Secretary          |
| 1993      | New England Chapter                                       | Vice President     |
| 1994-1995 | New England Chapter                                       | President          |
| 1996      | New England Chapter                                       |                    |
| 1998-2002 | Anesthesia Section, Advisory Board                        |                    |
| 2000-2001 | Outreach Committee                                        |                    |
| 2010-     | Billing and Oversight Committee                           |                    |
| 1982-     | Massachusetts Medical Society                             |                    |
| 1990-1998 | New England Regional Critical Care Society                |                    |
| 1991      |                                                           | Program Director   |
| 1992-1998 |                                                           | Board of Directors |
| 1991-     | American Society of Critical Care Anesthesiologists       |                    |
| 1993-1998 | Resident Education Committee                              |                    |
| 1998-     | Practice and Training Committee                           |                    |
| 1994-     | American College of Chest Physicians                      | Elected Fellow     |
| 1995-2004 | Steering Committee on Critical Care                       |                    |
| 1996-1997 | Steering Committee on Critical Care                       | Chair              |
| 1997-1999 | Program Committee                                         |                    |
| 1998-2002 | Health & Science Policy Committee                         |                    |
| 2002-2004 | Nominations Committee                                     |                    |
| 2005-     | Credentials Committee                                     |                    |
| 1995-2000 | International Trauma Anesthesia and Critical Care Society |                    |
| 1996-     | American College of Critical Care Medicine                | Elected Fellow     |

Alan Lisbon, MD

**Editorial Boards**

**Editorial Boards**

2000- Clinical Medicine and Research

**Ad hoc reviewer**

1988- Critical Care Medicine

1990- New England Journal of Medicine

1994- Chest

1999- Mayo Clinic Proceedings

**Award and Honors**

1972

Tau Beta Pi, Cornell University

1972

Eta Kappa Nu, Cornell University

2006, 2007, 2009

Boston Magazine - "Best Doctors"

Alan Lisbon, MD

## **Part II: Research, Teaching, and Clinical Contributions**

### **A. Narrative**

My most important contributions lie in four main areas: clinical care, teaching, the research environment, and administration.

#### **Clinical Leadership and Innovation**

Both Israel Deaconess Medical Center has been home to me for almost 30 years, first as a surgical intern and then as an anesthesia resident. As a clinician, I have focused on providing cutting-edge care of critically ill patients, and anesthetics for large, complicated cases. I have guided, taught, learned from, and collaborated with medical staff members who daily manage very delicate and critical interactions with patients and their families.

For the first 25 years of my career, I worked in the operating rooms as a cardiac anesthesiologist and also in the general ORs administering anesthetic care for complex cases. Staff requests for my services have factored strongly in my clinical caseload, bringing professional challenges across a wide spectrum of illness and disease. I am experienced in the safe and efficient management of the operating rooms of a tertiary/quaternary medical center.

As Co-Director of the Surgical ICUs for the past 20 years, I have been responsible for general administration, policy development, and quality of care within those units on both BIDMC campuses. During this time, the anesthesia critical care program at BIDMC has developed into one of the leading programs in the country. Recent initiatives include the introduction of widespread use of echo and ultrasound technology in the ICU. We have developed and instituted clinical guidelines for the ICUs over the past two years that have greatly lessened the incidence of iatrogenic infections, including reduction of central line infections and reduction of ventilator-associated pneumonia by 50 percent. I have personally championed the development of a robust program in clinical research.

I served as Chair of the FDA panel on Anesthesia and Respiratory devices. In addition, I have served as President of the New England Society of Critical Care and as a member of multiple national committees for the specialty. My committee memberships include the Health, Science and Policy Committee for the ACCP, which is responsible for writing national guidelines on clinical care.

Alan Lisbon, MD

### Teaching

I have lectured extensively throughout the United States and abroad on a wide range of topics related to critical care and anesthesia. It has been particularly satisfying for me to write many chapters on the care of critically ill and cardiac surgical patients, and I have recently co-edited a book on procedures and techniques for critically ill patients.

For the past 12 years, I have served as an oral board examiner for the American Board of Anesthesia.

For the past 10 years, it has been my responsibility to convene weekly Anesthesia Grand Rounds, the major CME program for our department. The speakers are well-known experts from throughout the US and abroad. As Chair of the Anesthesia Complications meetings (M&M), I have the opportunity each week to teach and learn about the unexpected challenges of difficult cases. These events provide a forum for penetrating analysis and constructive feedback, and for building (and modeling) confidence and humility among staff and residents.

Medical education is at the forefront of everything we do at BIDMC, and I relish this shared work and its proud tradition. I teach critical care fellows, residents, and medical students both the fundamentals and the intricacies of critical care and clinical anesthesia.

Throughout the year, I mentor and supervise 24 medical students, 18 anesthesia residents, 10 emergency medicine residents, and 12 surgery residents who rotate through the Surgical ICUs. Our Critical Care Fellowship is nationally renowned and highly competitive. I have trained 31 critical care fellows over the past 16 years. Each year, I am proud to see our Fellows secure outstanding positions at prominent institutions, and by so doing, validate their exceptional training. I am particularly proud that the BIDMC Anesthesia Critical Care Program is considered among the most prestigious in the country. I train our 56 anesthesia residents in the provision of anesthetics for a wide spectrum of surgical disease, and am active as a mentor and counselor for these residents.

### Research

BIDMC has the fourth largest hospital-based research program in the United States, with some 1,300 protocols under consideration each year. My own clinical trials have focused on ICU therapies, critical care practices, diagnostic testing, and monitoring devices. Being an investigator has taught me about the unique challenges of conducting research in an academic setting and also has led me to promote research at BIDMC. For the past 10 years, I have managed the Committee on Clinical Investigation (the IRB) and its 50 board members (three boards), and have chaired two meetings of the full Board as well as two Continuing Review meetings each month.

Alan Lisbon, MD

During my tenure, the IRBs at Beth Israel Hospital and the New England Deaconess Hospital merged in 1996, creating a single BIDMC IRB. This merger necessitated a systemic revamping of all policies and standard operating procedures, which resulted in our becoming a model of efficient and assiduous ethical and scientific review. Research revenues have grown, and submissions of new protocols have increased steadily.

Today, we have a staff of 14 dedicated IRB professionals processing submissions and offering internal quality improvement audits.

Our IRB currently boasts the fastest turnaround time (from protocol submission to approval) in Boston. I have become solidly versed in regulatory matters and developed an understanding and respect for the complicated path a clinical trial must take to reach approval.

As Chair of the CCI, I have worked closely with every division of every department at BIDMC over the years, developing considerable goodwill in the process. In my role, I have strived to develop and support a culture befitting a great research institution, and feel privileged to have done so for BIDMC.

#### Administration

Anesthesia is by definition a collaborative service in support of other departments. We have met or exceeded the demands of the surgical and other procedural services for creative and dynamic partnerships across disciplines. For example, 2006/2007 witnessed clinical innovations in expanding overnight coverage on the East Campus, coverage in the GI suite, inception of regional block scheduling (with a resulting increase in use), and increased use of ultrasound for regional anesthesia. Recently, we have supported growth in cardiovascular surgery by assuming management of these extremely complicated patients in the new Cardiovascular ICU.

Anesthesia has seen solid financial growth and expansion during the past year that I served as acting Chair of the department. Our Anesthesia Residency recently received the ACGME five-year accreditation, the highest level attainable. We are currently in the process of reorganizing and relocating the Arnold Pain Center to an off-campus site, which entails major logistical challenges. New programs, such as the development of echocardiography training and education services, and expansion to the GI suite, have offered the Anesthesia service new ways to connect with other departments within and outside the institution and have fostered overall growth in surgical specialties.

I have encouraged opportunities for interdepartmental integration as Acting Chair. Our patients are the direct beneficiaries but the anesthesia and critical care staff also reaps the benefits from a strong, positive relationship with the other specialties. Our departmental productivity has improved, with increases in surgical volume and increases in academic, educational, and administrative responsibilities.

Alan Lisbon, MD

**B. Funding Information**

1988-1992 NIH

PI

Development and testing of a portable oxygen-enricher for inhalation therapy

1990-1993 Optex Company

PI

Testing of an intra-arterial blood gas optode

1996-1997 Baxter Edwards

PI

Feedback control and hemodynamics

1996-1998 DXTEK

PI

Development of a non-invasive blood pressure device

1998-2000 Discovery Labs

PI

KL-4 surfactant in ARDS (Multicenter)

1998-2001 Ortho Biotech

PI

Use of erythropoietin in the ICU (Multicenter)

1999 ICOS Corp

PI

A Phase 2b study to evaluate the safety and efficacy of recombinant platelet activating factor acetylhydrolase (rPAF-AH) for the prevention of acute respiratory distress syndrome in patients with severe sepsis or severe traumatic injuries (Multicenter)

1999-2000 Novartis

PI

Multiple dose safety, tolerability, pharmacokinetics, and pharmacodynamics of PMX 622 in patients with severe SIRS and evidence of infection (Multicenter)

1999 Zeneca

PI

Therapeutic intervention with propofol versus standard ICU sedation; Control of patients with asthma, seizures, intracranial hypertension, and other disease states requiring mechanical ventilation

1999-2000 Chiron

PI

Recombinant tissue factor pathway inhibitor sepsis patients. A multicenter, single blind, placebo controlled, randomized, dose escalation study

1999-2000 Lilly

PI

A Phase III study to determine the efficacy and safety for recombinant human activated protein C in severe sepsis (Multicenter)



Alan Liebon, MD  
2005

DXTEK

PI

Evaluation of Non-Invasive blood pressure device

### C. Report of Current Research Activities

**Multiple Urgent Sepsis Therapies** - A trial investigating outcomes in septic patients using standard therapies

**Epivent** - A trial studying the use of esophageal and pleural pressures to guide therapy in ARDS

### D. Report of Teaching

#### 1. Local contributions

##### a. Medical School courses

1980- Surgery Course 500M.1b, Surgical Core Clerkship, Harvard Medical School  
Preceptor for 6-12 students/year, 1 week/student

1980- Respiratory-Surgical Intensive Care, Harvard Medical School Course  
503M.1. Preceptor for 4-7 medical students/year, 1 month/student

1980-1984 Emergency Medical Care, Harvard Medical School Course 705.J.  
Lecture 2 hrs/year, 50 students

1982-2005 Clinical Seminar-II, Course RTH 1414, Northeastern University,  
Lecturer and seminar leader. 12 students/year, 12 hours/year

##### b. Graduate medical courses

1980- SICU Rounds-Resident Lectures. Daily lectures to fellows, residents and  
medical students in Surgical ICU, 72 hours/year

1982-1996 Instructor, Advanced Trauma Life Support, American College of Surgeons

1992-1994 Instructor, Advanced Cardiac Life Support

1993- Department of Anesthesia and Critical Care Grand Rounds and  
Visiting Professor Lecture Series organizer for 60-70 attending staff, fellows  
and residents, 52 hours/year

1996- Instructor, Fundamentals of Critical Care Support (basics of critical care  
support for non-critical care physicians)

Alan Lisbon, MD  
1997-

Complications Meeting (Mortality & Morbidity)  
Department of Anesthesia, Critical Care and Pain Medicine, Beth Israel  
Deaconess Medical Center  
Moderator of weekly departmental Q/A meeting. 60-70 attendings, fellows, and  
resident staff, 52 hrs/yr.

c. Local invited presentations

- 1994 Withdrawal of Therapy, Grand Rounds, Hebrew Rehabilitation Center for the  
Aged, Jamaica Plain, MA
- 1999 Debunking Myths in the ICU, Anesthesia Grand Rounds, Massachusetts  
General Hospital, Boston, MA
- 2004 High Altitude Illness, Brigham and Women's Hospital  
Anesthesia Grand Rounds, Boston, MA
- 2008 Disaster Management: Ethical Aspects of Intensive Care Provision  
Anesthesia Grand Rounds, Brigham & Women's Hospital, Boston, MA

d. Continuing medical education courses

- 1991 Discontinuation of Life Support  
Harvard Anesthesia Review Course, Boston, MA
- 1992 Withdrawal of Life Support  
Harvard Medical School Anesthesia Review and Update  
Boston, MA
- 1992 CPR Not Indicated, Meta-Ethics Conference, Harvard Medical School,  
Boston, MA
- 1993 The Use of Dopamine a Renal Vasodilator, Second Annual Critical Care  
Symposium, Boston, MA
- 1993 Recent Advances in Critical Care  
Harvard Medical School Anesthesia Review and Update  
Boston, MA
- 1994 Withdrawal of Therapy  
Harvard Medical School Anesthesia Review and Update  
Boston, MA
- 1994 Use of Neuromuscular Blocking Agents in the ICU  
5<sup>th</sup> Annual Educational Meeting, New England Chapter

Alan Lisbon, MD  
1997-

Complications Meeting (Mortality & Morbidity)  
Department of Anesthesia, Critical Care and Pain Medicine, Beth Israel  
Deaconess Medical Center  
Moderator of weekly departmental Q/A meeting. 60-70 attendings, fellows, and  
resident staff, 52 hrs/yr.

c. Local invited presentations

- 1994 Withdrawal of Therapy, Grand Rounds, Hebrew Rehabilitation Center for the  
Aged, Jamaica Plain, MA
- 1999 Debunking Myths in the ICU, Anesthesia Grand Rounds, Massachusetts  
General Hospital, Boston, MA
- 2004 High Altitude Illness, Brigham and Women's Hospital  
Anesthesia Grand Rounds, Boston, MA
- 2008 Disaster Management: Ethical Aspects of Intensive Care Provision  
Anesthesia Grand Rounds, Brigham & Women's Hospital, Boston, MA

d. Continuing medical education courses

- 1991 Discontinuation of Life Support  
Harvard Anesthesia Review Course, Boston, MA
- 1992 Withdrawal of Life Support  
Harvard Medical School Anesthesia Review and Update  
Boston, MA
- 1992 CPR Not Indicated, Meta-Ethics Conference, Harvard Medical School,  
Boston, MA
- 1993 The Use of Dopamine as a Renal Vasodilator, Second Annual Critical Care  
Symposium, Boston, MA
- 1993 Recent Advances in Critical Care  
Harvard Medical School Anesthesia Review and Update  
Boston, MA
- 1994 Withdrawal of Therapy  
Harvard Medical School Anesthesia Review and Update  
Boston, MA
- 1994 Use of Neuromuscular Blocking Agents in the ICU  
5<sup>th</sup> Annual Educational Meeting, New England Chapter

Alan Lisbon, MD

Society of Critical Care Medicine, Worcester, MA

1997

Renal Dose Dopamine in the ICU – Does It Work?  
Society of Critical Care Medicine, Controversies in Critical Care  
Boston, MA

1998

Debunking Myths in the ICU  
Harvard Medical School Anesthesia Review and Update  
Boston, MA

1999

The Pulmonary Artery Catheter in Critical Care, Harvard Respiratory and  
Critical Care Course, Cambridge, MA

1999

Ethics in the Intensive Care Unit, Respiratory Care Review Course Beth  
Israel Deaconess Medical Center, Boston, MA

2006

Update in Resuscitation and Critical Care, Update in  
Anesthesia, Brewster, MA

2006

Ethics of Disaster Management in the ICU, Update in  
Anesthesia, Brewster, MA

2006

Catecholamines and splanchnic blood flow  
Harvard Review of Trauma and Critical Care, Boston, MA

2007

The IRB – Facilitating your Research, Distinguishing  
yourself as a Clinical Investigator, Cambridge, MA

2007

The right vasopressor at the right dose  
Harvard Review of Trauma and Critical Care, Boston, MA

2008

Ethical Aspects of Disaster Management  
Harvard Anesthesia Review Course, Boston, MA

2009

Sepsis Panel  
Harvard Review of Trauma & Critical Care

2010

Ethical Aspects of Disaster Management  
Harvard Anesthesia Review Course, Boston, MA

Alan Lisbon, MD

e. Advisory and supervisory responsibilities

- 1990-2007 BIDMC Critical Care Fellowship -- Program Director for Anesthesia Critical Care training program for 2 fellows/year including program development, mentoring, and supervision
- 1980-2003 Cardiac Anesthesia Fellows and Residents - Worked closely in operating rooms teaching and supervising cardiac anesthesia fellows and residents
- 1980 - BIDMC Anesthesia Residents -- Including supervision, lectures, teaching at bedside and in OR, mentoring, and preparation for board exams

f. Teaching leadership roles

- 1985 - Surgical Critical Care -- as director of the SICU organized and established the teaching curriculum, lecture series and evaluation tools for fellows, residents, and medical students.
- 1993-2005 Grand Rounds BIDMC Dept of Anesthesia and Critical Care - responsible for organization of grand rounds program for department.
- 1997 - Complications meeting (morbidity & mortality) BIDMC Department of Anesthesia and Critical Care - responsible for leading discussion and analyzing interesting cases and untoward events in department at weekly departmental meeting. Component of our department and hospital QA program.
- 1997-1999 Program Committee, American College of Chest Physicians -- member of committee that organized curriculum and program for annual meeting of ACCP.
- 1995 - Associate Examiner, American Board of Anesthesiology -- serve as oral examiner on a yearly basis since 1995 for national board certification body. Developed questions for written and oral board exams.
- 1996 - Medical Director Respiratory Care Program, Northeastern University curriculum development and teaching of respiratory therapy practitioners.

Alan Lisbon, MD  
g. Trainees

| <u>Year</u> | <u>Fellow</u>          | <u>Current Position</u>                                                                                                                                   |
|-------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1991-1993   | Ewan Cameron, MD       | Attending Anesthesiologist,<br>Lahey Clinic, Burlington, MA<br>Assistant Clinical Professor of Anesthesiology<br>Tufts University School of Medicine      |
| 1993-1994   | Peter Stone, MD        | Consultant in Anaesthesia & Intensive Care Medicine<br>York Hospital, England                                                                             |
| 1993-1994   | Sarah Neilly, MD       | Staff Physician<br>Holmes Regional Medical Center, Melbourne, FL<br>eICU Health First Corporation, Rockledge, FL                                          |
| 1993-1994   | Donna McRitchie, MD    | Surgeon<br>North Shore General Hospital<br>Toronto, Canada                                                                                                |
| 1993-1994   | Bradford Carson, MD    | Assistant Attending Anesthesiologist,<br>Hospital for Special Surgery, Clinical Assistant<br>Professor of Anesthesiology<br>Weill Cornell Medical College |
| 1994-1995   | Nanette Schwann, MD    | Thomas Jefferson University Hospital,<br>Philadelphia, PA                                                                                                 |
| 1995-1996   | Venkat Patla, MD       | Anesthesiologist<br>Inova Fairfax Hospital, Falls Church, VA                                                                                              |
| 1995-1996   | Pankaj Nayyar, MD      | Staff Anesthesiologist<br>Miriam Hospital, Providence RI<br>Instructor in Anesthesia<br>Brown Medical School                                              |
| 1995-1996   | Michael Yaffe, MD, PhD | Howard S. & Linda B. Stern<br>Associate Professor of Biology<br>Center for Cancer Research<br>Massachusetts Institute of Technology<br>Cambridge, MA      |
| 1996-1997   | Linda Yee, MD          | Vancouver, WA                                                                                                                                             |
| 1996-1997   | Mehmood Durrani, MD    | Cardiac Anesthesiologist<br>Havertown Anesthesia Associates<br>Havertown, PA                                                                              |
| 1997-1998   | Jeffrey Kane, MD       | Attending Anesthesiologist<br>Lahey Clinic, Burlington, MA<br>Assistant Clinical Professor of Anesthesiology<br>Tufts University School of Medicine       |
| 1998-1999   | Debra Szeluga, PhD, MD | Medical Director, Post-Anesthesia Recovery Unit<br>Assistant Program Director in Anesthesiology<br>University of Iowa Medical Center, Iowa City           |

Alan Lisbon, MD

1998-1999 Philip Devina, MD

1998-1999 Grace Kim, MD

1999-2000 Ata Murat Kaynar, MD

1999-2000 Daniel Talmor, MD

2000-2001 Ruben Azocar, MD

2000-2001 Margaret Hudlin, MD

2001-2002 Jian Yu, MD

2001-2002 Frank Ramadori, MD

2002-2003 Pranay Kanake, MD

2003-2004 Abdul Barakat, MD

2004-2005 Burak Alptekin, MD

2004-2005 Todd Sarge, MD

2004-2005 Cathy Dudick, MD

2005-2006 Andrew Miller, MD

2005-2006 Konstantin Balonov, MD

Associate Professor of Anesthesiology and Critical Care, University of Iowa, College of Medicine  
Chief, Critical Care Anesthesia

Long Island Jewish Medical Center

Anesthesiologist

Brigham and Women's Hospital, Boston, MA

Instructor in Anaesthesia, Harvard Medical School

Program Director, Anesthesiology Critical Care

Fellowship, University of Pittsburgh Medical Center

Assistant Professor, University of Pittsburgh, School of Medicine, PA

Vice-Chair for Critical Care, Beth

Israel Deaconess Medical Center, Boston, MA,

Associate Professor of Anaesthesia, Harvard Medical School

Residency Program Director, Boston Medical Center

Assistant Professor, Boston University School of Medical Center, Boston, MA

Physician Quality Officer, University of Massachusetts Medical Center, Worcester, MA

Assistant Professor, University of Massachusetts Medical School

Staff Anesthesiologist, Rouge Valley Centenary Hospital, Toronto, Ontario, Canada

Assistant Professor, McGill University Health Centre Montreal, Quebec, Canada

Staff Anesthesiologist, Baystate Medical Center Springfield, MA

Chief, Department of Anesthesia

Director of Surgical ICU

Landmark Medical Center, Woonsocket, RI

Co-Director of Pain Medicine

New Jersey Sport and Spine

Program Director, Critical Care Fellowship,

Beth Israel Deaconess Medical Center, Boston, MA

Instructor in Anaesthesia

Harvard Medical School

Medical Director of Trauma/Surgical ICU, Assistant

Director of Trauma, Clinical Assistant Professor of Surgery,

UMDNJ-Robert Wood Johnson Medical School

Staff Anesthesiologist

Brigham & Women's Hospital, Boston, MA

Resident in Anesthesia

Boston University Medical Center, Boston, MA

Alan Lisbon, MD

2006-2007

Jana Hudcova, MD

Associate Director, Surgical Critical Care

Lahey Clinic, Burlington, MA

Assistant Clinical Professor of Anesthesiology

Tufts University School of Medicine

Staff Anesthesiologist

Beth Israel Deaconess Medical Center, Boston, MA

Instructor in Anaesthesia

Harvard Medical School

Critical Care Fellow

Beth Israel Deaconess Medical Center, Boston, MA

Staff Anesthesiologist, Boston University Medical

Center, Boston, MA

Staff Anesthesiologist, University of Vermont Medical

Center, Burlington, MA

2006-2007

Achikam Grinberg, MD

2007-2008

Michael Young, MD

2008-2009

Gerardo Rodriguez, MD

2008-2009

Stephen P. Bender, MD



Alan Lisbon, MD

**2. Regional Contributions**

- |      |                                                                                                                                                                        |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1991 | Sepsis in the ICU Patient, Anesthesia Grand Rounds,<br>Baystate Medical Center, Springfield, MA                                                                        |
| 1991 | Postoperative Cardiac Care, Anesthesia Grand Rounds,<br>Baystate Medical Center, Springfield, MA                                                                       |
| 1992 | Withdrawal of Therapy, UMASS Medical<br>Center Grand Rounds, Worcester, MA                                                                                             |
| 1994 | Withdrawal of Therapy, Tufts University<br>Medical School,<br>Department of Anesthesia Grand Rounds,<br>Boston, MA                                                     |
| 1999 | The Surgical ICU Experience: Controlling<br>Costs and Preop Management Strategies<br>Cambridge Health Resources & the New England<br>Educational Institute, Boston, MA |
| 2002 | Two New Drugs for the ICU, Anesthesia<br>Grand Rounds<br>Boston University Medical Center, Boston, MA                                                                  |
| 2002 | High Altitude Illness, Anesthesia Grand<br>Rounds, University of Massachusetts<br>Medical Center, Worcester, MA                                                        |
| 2003 | Pulmonary Artery Catheters are Useful in<br>the Perioperative Period, MA Anesthesia<br>Council on Education<br>Spring Meeting, Boston, MA                              |
| 2008 | High Altitude Illness, 31 <sup>st</sup> Baystate Anesthesia<br>Symposium, Springfield, MA                                                                              |

Alan Lisbon, MD

3. National Contributions

1986 Lecturer

Perioperative management of thyroid disease,  
management of the geriatric patient  
undergoing anesthesia  
University of Kansas  
Kansas City, KS

1993 Lecturer

Recovery of the Cardiac Surgical Patient -  
Shortening the Length of Stay  
American College of Chest Physicians  
Annual Meeting, Orlando, FL

1994 Lecturer

Withdrawal of Therapy, Dartmouth-  
Hitchcock Medical Center,  
Medicine Grand Rounds, Lebanon, NH

1994 Lecturer

The Use of Dopamine in the Intensive Care  
Unit  
American College of Chest Physicians  
Annual Meeting, New Orleans, LA

1994 Lecturer

A History of Computers in Critical Care  
American College of Chest Physicians  
Annual Meeting, New Orleans, LA

1995 Lecturer

Digitalis Belongs in Your Garden, Not in  
Your ICU  
(Treatment of Atrial Fibrillation in the  
Critically Ill)  
American College of Chest Physicians Annual  
Meeting, New York, NY

1997 Discoussant

Scientific Session on Nitric Oxide  
American Society of Anesthesiologists  
San Diego, CA

1997 Lecturer

Sedation and Paralysis in the ICU: When is  
Enough, Enough?  
American College of Chest Physicians  
Annual Meeting, New Orleans, LA

Alan Lisbon, MD

- |      |          |                                                                                                                                         |
|------|----------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 1997 | Lecturer | Integration of Two Large CareVue Installations in a Newly Merged Organization, Hewlett-Packard CareVue Users Group Meeting, Orlando, FL |
| 1999 | Lecturer | Year in Review: Critical Care American College of Chest Physicians Annual Meeting, Chicago, IL                                          |
| 1999 | Lecturer | The Use of Dopamine in the ICU ICU Frontiers Conference, Phoenix, AZ                                                                    |
| 2000 | Lecturer | Year in Review: Critical Care Anesthesia Society of Critical Care Medicine Annual Meeting, Orlando, FL                                  |
| 2000 | Lecturer | Critical Care 2000; The Year in Review, American Society of Critical Care Anesthesiology Meeting, San Francisco, CA                     |
| 2000 | Lecturer | Are Cost Containment Activities Research? ASA 2000 Cost Containment Panel, ASA Annual Meeting, San Francisco, CA                        |
| 2001 | Lecturer | Year in Review - Anesthesia, Society of Critical Care Medicine Annual Meeting San Francisco, CA                                         |
| 2001 | Lecturer | Physiology of Hypotensive Renal Injury Society of Critical Care Annual Meeting San Francisco, CA                                        |
| 2001 | Lecturer | Norepinephrine Improves Outcome in Septic Shock, Conundrums in Critical Care Vail, CO                                                   |
| 2001 | Lecturer | Anesthesia Problems in the ICU, American College of Chest Physicians Annual Meeting Philadelphia, PA                                    |
| 2001 | Lecturer | Post-operative Care of the Cardiac Surgical Patient, American College of Chest Physicians Annual Meeting, Philadelphia, PA              |

Alan Lisbon, MD

2003 Lecturer

Literature Review: 2002  
Society of Critical Care Medicine  
Annual Meeting, San Antonio, TX

2004 Lecturer

High Altitude Illness, Dartmouth Medical  
School, Hanover, NH

2006 Lecturer

Acute cardiac ischemia; what influences  
outcome?

American Society of Anesthesia Annual  
Meeting, Chicago, IL

2006 Lecturer

The electronic ICU: does it make a  
difference? American College of Chest  
Physicians Annual Meeting, Salt Lake City, UT

2007 Lecturer

Do rapid response teams make a difference?  
American Society of Anesthesia Annual  
Meeting, San Francisco, CA

#### Leadership Roles

1981 Moderator

Scientific Session on High Frequency  
Ventilation, III World  
Congress on Intensive Care and Critical Care  
Medicine, Washington, D.C.

1988 Invited Expert

United States Congress, Subcommittee on  
Human Resources and Intergovernmental  
Relations - Regulation of midazolam

1995 Moderator

Scientific Session on ARDS-Early  
Interventions  
American College of Chest Physicians, New  
York, NY

1999 Moderator

Scientific Session, American Society of  
Critical Care Anesthesiology, Dallas, TX

2000 Moderator

What's New in Post-operative Care of the  
Cardiac Surgical Patient? Chest 2000  
San Francisco, CA

2004 Moderator

Weaning from Mechanical Ventilation.  
CHEST, ACCP, Annual Meeting  
Seattle, WA

Alan Lisbon, MD

2004 Moderator

ICU Diagnostics and Therapeutics. CHEST,  
ACCP, Annual Meeting, Seattle, WA

2004 Moderator

Proteomics, Genomics and Economics.  
CHEST, ACCP, Annual Meeting, Seattle, WA

2007 Moderator

Central venous catheters, CHEST, ACCP  
Annual Meeting, Chicago, IL

2008 Moderator

Preventing infections with central venous  
lines, CHEST, ACCP Annual Meeting  
Philadelphia, PA

4. International contributions

1995 Lecturer

Clinical Use of Short Acting Beta Blockers  
Seoul National University, Seoul Korea

1995 Lecturer

Acute Respiratory Failure in the Critically Ill  
Adult, World Federation Society of Anesthesiology  
Riga Refresher Course, Riga, Latvia

1995 Lecturer

Clinical Aspects of Renal Protection  
World Federation Society of Anesthesiology  
Riga Refresher Course, Riga, Latvia

1998 Lecturer

Debunking Myths in the ICU.  
XIX World Congress on Diseases of the Chest  
Toronto, Canada

1998 Lecturer

Year in Review: Critical Care  
XIX World Congress on Diseases of the Chest,  
Toronto, Canada

2000 Lecturer

Dopexamine, Dobutamine, and Dopamine  
Increase Splanchnic Perfusion: What is the  
Evidence? Clinical Conundrums in Critical Care  
St. Thomas, United States Virgin Islands

2006 Lecturer

Update in Resuscitation, Review & Update on  
Anesthesia, Peking University, Beijing China

2006 Lecturer

Use of Alpha-2 agonists, Review & Update on  
Anesthesia, Peking University, Beijing China

Alan Lisbon, MD

2006 Lecturer

Clinical Trials and Tribulations, Royal College of Anesthetists, London, England

2006 Lecturer

Ethics of Disaster Management in the ICU  
Royal College of Anesthetists, London, England

2008 Lecturer

Ethics of Disaster Management, 14<sup>th</sup> World Congress of Anaesthesiologists, Cape Town, South Africa

2008 Course Director

Practicum in Critical Care, Harvard Medical School Duf-  
Center, Dubai, UAE

Lectures: Newer drugs for sedation  
New concepts in resuscitation  
Rapid response teams – Do they make a  
difference?

2008 Course Director

HMS, DC, Dubai UAE

Ethics in research

Lecture: Ethics in research: the role of the IRB

2009 Course Director

2<sup>nd</sup> Harvard and Peking University  
Anesthesia Review Course, Beijing, China

#### **E. Visiting Professorships**

1993 Visiting Professor

Oxford University, Oxford, England

1993 Visiting Professor

Australian and New Zealand College of  
Anesthetists

1994 Visiting Professor

WFSA, St. Petersburg, Russia

1994 Visiting Professor

Dartmouth Hitchcock Medical Center,  
Department of Medicine, Lebanon, NH

1995 Visiting Professor

Hong Kong College of Anesthesiology  
Pamela Youde Neithersole Eastern Hospital  
Hong Kong

1998 Visiting Professor

St. Luke's-Roosevelt Hospital  
New York, NY

2003 Visiting Professor

Ryder Trauma Center, Jackson  
Memorial Hospital, Miami, Florida

Alan Liebon, MD

2004 Visiting Professor

Weill Medical College, Cornell University  
New York, NY

2005 Visiting Professor

New York University School of Medicine  
New York, NY

**F. Report of Clinical Activities**

1980 - 2003 Cardiac Surgical Team - Provision of anesthetics to patients undergoing cardiac surgery, one day/week

1980 - Director and member, Surgical ICU Team - Care of patients in trauma, surgical and cardiovascular ICUs, two weeks/month

1980 - General operating room staff - Anesthetic care of patients undergoing surgical procedures four days/month

## PART III: BIBLIOGRAPHY

### Original Articles:

1. Moss IR, Lisbon A, Levine JF, Wald A. The effects of increased intracranial pressure on respiratory function. *Proc. 2nd Symposium on Intracranial Pressure*. Berlin: Springer-Verlag; 1975:315-316.
2. Stein JM, Lisbon A. Pulmonary hemorrhage from pulmonary artery catheterization treated with endobronchial intubation. *Anesthesiology* 1981; 55:698-699.
3. duMoulin GC, Paterson DG, Hedley-Whyte J, Lisbon A. Aspiration of gastric bacteria in antacid treated patient: a frequent cause of post-operative colonization of the airway. *Lancet* 1982; 1:242-245.
4. Zamani AA, Kido DK, Morris JH, Lisbon A, Wang AM. Permeability of the blood-brain barrier to different doses of diatrizoate meglumine-60. *Am J Neuroradiology* 1982; 3:631-634.
5. Skillman JJ, Lisbon A, Long PC, Silen W. (R)-15-methyl prostaglandin E2 does not prevent gastrointestinal bleeding in seriously ill patients. *Am J Surg* 1984; 147:451-455.
6. Maslow A, Lisbon A. Anesthetic considerations in patients with mitochondrial dysfunction. *Anesth Analg* 1993; 76:884-886.
7. Cameron E, Lisbon A, Moorman R, Young JD. Prolonged neuromuscular blockade with pipecuronium in a patient with renal deficiency. *European J Anaesth* 1994; 11:237-239.
8. Nayyar P, Lisbon A. Non-operating room emergency airway management and endotracheal intubation practices: A survey of anesthesiology program directors. *Anesth Analg* 1997; 85:62-68.
9. Adelson-Mitty J, Fink MP, Lisbon A. The value of lumbar puncture in the evaluation of critically ill, non-immunosuppressed, surgical patients: a retrospective analysis of 70 cases. *Intensive Care Med* 1997; 23:749-752.
10. Cohn WB, Selke FW, Sirois C, Lisbon A, Johnson RG. Surgical intensive care unit recidivism after cardiac operations. *Chest* 1999; 116:688-692.
11. Marik PE, Varon J, Lisbon A, Reich HS. Physicians' own preferences to the limitation and withdrawal of life sustaining therapy. *Resuscitation* 1999; 42:197-201.



Alan Lisbon, MD

12. Heard SO, Lisbon A, Toth I, Ramasubramanian R. An evaluation of a new continuous blood pressure monitoring system in critically ill patients. *J Clin Anesth* 2000; 12:509-518.
13. Creswell LL, Alexander JC Jr, Ferguson TB Jr, Lisbon A, Fleisher LA. Intraoperative interventions: American College of Chest Physicians guidelines for the prevention and management of postoperative atrial fibrillation after cardiac surgery. *Chest* 2005 28S-35S.
14. Shapiro NI, Howell MD, Talmor D, Nathanson LA, Lisbon A, Wolfe RE, Weiss JW. Serum lactate as a predictor of mortality in emergency department patients with infection. *An Emerg Med.*, 2005, 524-8.
15. Shapiro NI, Howell M, Talmor D, Lahey D, Ngo L, Buras J, Wolfe RE, Weiss JW, Lisbon A. Implementation and outcomes of the Multiple Urgent Sepsis Therapies (MUST) protocol. *Crit Care Med.* 2006; 34(4): 1025-32.
16. Talmor D, Sarge T, O'Donnell C, Ritz R, Malhotra A, Lisbon A, Loring SH. Esophageal and transpulmonary pressures in acute respiratory failure. *Crit Care Med.* 2006; 34(5): 1389-94.
17. Balanov K, Miller AD, Lisbon A, Kaynar AM. A novel method of continuous measurement of head of bed elevation in ventilated patients. *Intensive Care Med.* 2007; 33(6):1050-4.
18. Talmor D, Greenberg D, Howell M, Lisbon A, Novack V, Shapiro NI. The Costs and Cost-Effectiveness of an Integrated Sepsis Treatment Protocol. *Crit Care Med.* 2008; 36 (4) 1168-74.
19. Hoit DA, Schirmer CM, Weller SJ, Lisbon A, Edlow JA, Malek A. Angiographic Detection of Carotid and Vertebral Arterial Injury in the High-Energy Blunt Trauma Patient. *Journal of Spinal Disorders and Techniques.* 2008; 21 (4):259-66.
20. Talmor D, Sarge T, Malhotra A, O'Donnell CR, Ritz R, Lisbon A, Novack V, Loring SH. Mechanical Ventilation Guided by Esophageal Pressure in Acute Lung Injury. *N Engl J Med.* 2008; 359 (20) 2095-2104.

**Reviews, Chapters, and Editorials:**

1. Lisbon A, Geiger K, Hall SV, Malhotra IV. Respiratory Distress. In: May HL, editor. *Emergency Medicine*. New York: John Wiley; 1983. p. 61-94.
2. Comunale ME, Lisbon A. Post-operative care of the cardiac surgical patient. In: DiNardo J, Schwartz MJ, editors. *A Manual of Cardiac Anesthesia*. East Norwalk: Appleton-Century-Crofts; 1990. P.313-326.

Alan Lisbon, MD

3. **Lisbon A.** The role of the ICU. In: Eichhorn JH, editor. *Improving Anesthesia Outcome. Problems in Anesthesia*. Philadelphia: Lippincott; 1991. Vol.5, No.2, p. 258-264.
4. **Lisbon A, Vander Salm TJ, Visner MS.** Management of the postoperative cardiac surgical patient. In: Rippe J, Irwin R, Fink M, Cerro F, editors. *Intensive Care Medicine*, 3<sup>rd</sup> ed. Boston: Little, Brown and Company; 1995. p. 1764-1781.
5. **Mathews J, Lisbon A.** Lactate metabolism in the critically ill patient. *Current Opinion in Critical Care* 1995;1:267-271.
6. **Lisbon A.** [Review of] *Principles and Practice of Anesthesiology*, 2<sup>nd</sup> Ed., Longnecker EI, Tinker JH, Morgan CB, Jr., editors. St. Louis: Mosby; 1997. *Anesth Analg* 1998; 86:1340.
7. **Lisbon A, Fink MP.** Adrenal function and ruptured abdominal aortic aneurysm: Keeping the hormones in check. *Intensive Care Medicine* 1998; 24:100-101.
8. **Lisbon A.** [Review of] *Anesthesia and Transplantation*. Sharpe MD, Gelb AW, editors. Boston: Butterworth-Heinemann; 1999. *Journal of Intensive Care Medicine* 1999; 14:293.
9. **Szeluga DJ, Lisbon A.** Transport of the Critically Ill. *Anesthesiology Resident's Guide to Learning in the Intensive Care Unit*. American Society of Critical Care Anesthesiologists; 1999.
10. **Corwin H.L., Lisbon A.** Renal Dose Dopamine: Long on Conjecture, Short on Fact. *Critical Care Med* 2000; 28:1657-1658.
11. **Lisbon A, Vander Salm TJ, Visner MX.** Management of the Postoperative Cardiac Surgical Patient. In: Irwin RS, Cerro FB, Rippe JM, editors. *Irwin and Rippe's Intensive Care Medicine*. Philadelphia: Lippincott-Raven; 1999. P.1828-1844.
12. **Fink MD, Lisbon A.** Cardiovascular Failure. In: Feliciano DV, Moore EE, Mattox KL, editors. *Trauma*. 4<sup>th</sup> ed. Stamford: McGraw-Hill Co.; 2000. p.1287-1305.
13. **Lisbon A, Fink MP.** Post- Cardiac Surgery Management. In: Kruse JA, Fink MP, Carlson RW, editors. *Saunders Manual of Critical Care*. Philadelphia: Saunders; 2003. p. 500-503.
14. **Lisbon A.** Post-Peripheral Vascular Bypass Management. In: Kruse JA, Fink MP, Carlson RW, editors. *Saunders Manual of Critical Care*. Philadelphia: Saunders; 2003. p. 504-506.
15. **Lisbon A.** Dopexamine, dobutamine, dopamine increase splanchnic blood flow: What is the evidence? *Chest* 2003; 123: 460S-463S.
16. **Azocar R, Lisbon A.** Captaining the ship during a storm: Who should care for the critically ill? *Chest* 2001; 120: 694-696.

Alan Lisbon, MD

17. Lisbon A. [Review of] *Critical Care Medicine – Perioperative Management*. 2<sup>nd</sup> ed. Murray MJ, Coursin DB, Pearl RG, Prough DS, editors. Philadelphia: Lippincott, Williams and Wilkins; 2002. *Journal of Intensive Care Medicine*. 2003; 18: 110-111.
18. Lisbon A. Cardiovascular Failure. In: Moore EE, Mattox KL, Feliciano DV, editors. *Trauma Manual*. 4<sup>th</sup> ed. New York: McGraw-Hill. 2003; p. 460-465.
19. Puyo CA, Lisbon A. Management of the Postoperative Cardiac Surgical Patient. In: Irwin RS, Rippe JM, editors. *Irwin and Rippe's Intensive Care Medicine*. Philadelphia: Lippincott, Williams and Wilkins. 2003; p.1637-1651.
20. Waxman A, Ward N, Taylor T, Lilly C, Lisbon A, Hill N, Nasraway S, Heard S, Howard C, Levy M. Roundtable debate: Controversies in the management of the septic patient – desperately seeking consensus. *Critical Care* 2004; 8 (DOI 10.1186/cc 2940).
21. Talmor, DS, Lisbon A., Management of the Postoperative Cardiac Surgical Patient. In: *Textbook of Critical Care*, 5<sup>th</sup> edition. Fink MP, Abraham E, Vincent JL, Kochanek, editors. Elsevier 2005; p. 1955-1957.
22. Karthik S, Lisbon A. Low-Dose Dopamine in the Intensive Care Unit. *Semin Dial* 2006; 19:465-71.
23. Sarge TD, Lisbon A. Perioperative Management of the General Thoracic Surgery Patient. In: Newman M, Fleisher LA, Fink MP. *Perioperative Medicine: Managing for Outcome*. Saunders Elsevier, 2008; p. 503-511.
24. Dudick C, Lisbon A. Management of the Post-operative Cardiac Surgical Patient. In: Irwin RS, Rippe JM, editors. *Irwin and Rippe's Intensive Care Medicine*. 6<sup>th</sup> edition. Philadelphia: Lippincott, Williams and Wilkins; 2008; p. 1740 – 1754.
25. Young M, Lisbon A. Critical Care of the Pregnant Patient. In: *Obstetric Anesthesia: Principles and Clinical Perspectives*. Hess PE, Oriol NE, Wu X, editors. Peoples Medical Publishing House, Beijing, China (In Press).
26. Karthik S, Lisbon A. Cardiopulmonary Resuscitation in Obstetric Patients. In: *Obstetric Anesthesia: Principles and clinical Perspectives*. Hess PE, Oriol NE, Wu X editors. Peoples Medical Publishing House, Beijing, China (In Press).
27. Subramaniam B, Lisbon A. Hyperglycemia. In: Editors: Cohn S. *Acute care surgery and trauma. Evidence Based Practice*. Informa Healthcare, USA; 2009; 503-8.
28. Nadig SN, Lisbon A. Surgical Critical Care. In *Handbook of Surgical Care*. Lippincott, (In Press).

Alan Lisbon, MD

29. Shafiq S, Lisbon A. Management of the Post-operative Cardiac Surgical Patient. In: Irwin RS, Rippe JM, editors. Irwin and Rippe's Intensive Care Medicine. 7<sup>th</sup> edition. Philadelphia: Lippincott, Williams and Wilkins( In press)

#### Books, Monographs and Textbooks:

1. Lisbon A, editor. Anesthetic Considerations in Setting up a New Medical Facility. Boston: Little, Brown; 1981.
2. Barnes TA, editor, Lisbon A, consulting editor. Respiratory Care Practice. Chicago: Year Book Medical; 1988.
3. Section Editor. In: Irwin RS, Rippe JM, editors. Irwin and Rippe's Intensive Care Medicine. 6<sup>th</sup> edition. Philadelphia: Lippincott, Williams and Wilkins; 2008.
4. Irwin RS, Rippe JM, Lisbon A, Heard SO, Procedures and Techniques in Intensive Care Medicine. 4<sup>th</sup> edition. Philadelphia, Lippincott, Williams and Wilkins; 2008.
5. Section Editor. In: Irwin RS, Rippe JM, editors. Irwin and Rippe's Intensive Care Medicine. 7<sup>th</sup> edition. Philadelphia: Lippincott, Williams and Wilkins( In press)
6. Irwin RS, Rippe JM, Lisbon A, Heard SO, Procedures and Techniques in Intensive Care Medicine. 5<sup>th</sup> edition. Philadelphia, Lippincott, Williams and Wilkins( In press)

#### Clinical Communications:

1. Ross MJ, Sakoulas G, Manning WJ, Cohn WE, Lisbon A. *Corynebacterium jeikeium* native valve endocarditis following femoral access for coronary angiography. Clin Infect Dis 2001; 32(7): E120-121.
2. Azocar RJ, Talmor D, Kaynar AM, Lisbon A. Persistent hypoxemia after diagnosis and treatment of pulmonary thromboembolism. J Clin Anesth 2001; 13: 588-91.
3. Azocar RJ, Lisbon A. Extra vigilance required. BMJ 2002; 325:1505.
4. Azocar RJ, Narang P, Talmor D, Lisbon A, Kaynar AM. Persistent left superior vena cava identified after cannulation of right subclavian vein. Anesth Analg 2002; 95:305-307.
5. Alptekin B, Tran DT, Lisbon A, Kaynar AM. Bedside ultrasonography in the differential diagnosis of pulmonary pathologies in the intensive care unit. J Clin Anesth 2006; 18(7):534-6.

Alan Lisbon, MD

**Abstracts (last 5 years):**

1. Shapiro NI, Nathanson LA, Howell M, Talmor D, Lisbon A, Wolfe RE, Weiss JW. Lactate Predicts Death in Emergency Department Patients with Infection. SAEM Research Forum, 2004, Orlando, FL.
2. Shapiro NS, Howell M, Talmor D, Lander O, Buras J, Lisbon A, Wolfe RE, Weiss JW. The Implementation of a Sepsis Team: A Preliminary Report. SAEM Research Forum, 2004, Orlando FL.
3. Lisbon A, Talmor D, Kaynar M, Barakat A. A Diagnostic Dilemma in the Differential Diagnosis of Post-Traumatic Neurological Deficit. CHEST 2004; 126:969S.
4. Stewart MQ, Brown GE, Bissonnette SA, Talmor D, Lisbon A, Yaffe MB. The Molecular Basis of Neutrophil Priming and its Role in Host Tissue Damage. 13<sup>th</sup> Gordon Research Conference on Phagocytes, 2005, New London, CT.
7. Talmor D, Greenberg D, Howell M, Donnino M, Lahey D, Wolfe R, Lisbon A, Weiss JW, Shapiro, N. Cost-Effectiveness Analysis of an Integrated Sepsis Protocol. Acad Emerg Med, 2006: Vol 13, Sup5; 561-562.
6. Miller AD, Balonov K, Sarge, T, Lisbon A, Kaynar, M. Purulent Pericardial Tamponade as a Complication of a Ruptured Hepatic Cyst. Chest, 2006; p. 316S
7. Hudcova J, Lisbon A. Rhabdomyolysis with compartment syndrome after combined kidney and pancreas transplant. FL, March 2007, 81<sup>st</sup> IARS Congress, Orlando.

**Media Appearances**

- |      |                       |                                                                                            |
|------|-----------------------|--------------------------------------------------------------------------------------------|
| 1992 | Television guest      | McNeil Lehrer Report, "Condition Critical: The American Health Care Forum", PBS television |
| 2004 | Television commentary | 48 Hours Investigates, CBS Television                                                      |

**Newsletters**

1. Lisbon A, Hess P. Guidelines in Research. Society of Obstetric Anesthesia and Gerontology Newsletter, Spring 2004.
2. Young M, Lisbon A. A case for Dexmedetomidine. Critical Connections, February 2008.
3. Lisbon A. Ethics in Research. The Role of the IRB. Middle East Health Magazine. (January 2009)
4. Sarge T, Lisbon A. Anesthesia Q&A, The Boston Channel, October 2008 (web based)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as PR of  
the Estate of Martha Preston, Deceased,

Plaintiff,

v.

Surgical Center Affiliates, LLC,  
Charleston Surgery Center, LP, Nurse  
Doe, Christine Thompson, MD, and ABC  
Anesthesia Group

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No: 11-CP-\_\_\_\_\_

**RESPONSE TO STANDARD  
INTERROGATORIES**

TO: ALL DEFENDANTS:

**RESPONSES TO STANDARD INTERROGATORIES**

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

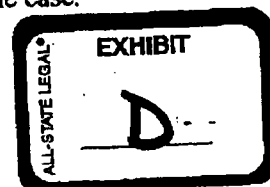
**RESPONSE:**

Willie Preston(Husband)  
c/o Plaintiff's counsel

Medical Providers of Martha Preston  
As revealed in the medical records

All treating physicians and nurses

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



1

**RESPONSE: Medical Records from:**

MUSC

Charleston Surgery Center,

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

**RESPONSE: Please see medical records.**

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

**RESPONSE: None known.**

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

**RESPONSE: Medical bills from all medical providers  
Funeral Expenses  
Damages relating to Willie Preston's Loss of Consortium  
Loss of Household Services**

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

**RESPONSE: Alan Lisbon, MD  
See CV and Affidavit**

**Teresa Sollitto, RN  
See CV and Affidavit**

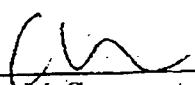
7) For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

**RESPONSE:**

The family members will testify to their knowledge of the facts, the injuries suffered by, and death of Martha Preston.

The medical providers are expected to testify in accord with their medical records.

**MCGOWAN HOOD & FELDER, LLC**

  
Chad A. McGowan  
Ashley White Creech  
McGowan, Hood, and Felder  
1539 Health Care Drive  
Rock Hill, SC 29732  
(803) 327-7800  
(803) 328-5656 Facsimile

November 9, 2012  
Rock Hill, South Carolina.



**HOOD**  
**LAW FIRM**  
LLC

JAMES B. HOOD  
Partner  
DIRECT DIAL: (843) 577-1223  
EMAIL: james.hood@hoodlaw.com

February 8, 2013

Chad A. McGowan, Esquire  
McGowan, Hood, & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732

Re: Estate of Martha E. Preston v. Christine Thompson, MD  
C/A No. 2012-CP-10-7413 (NOI), Charleston CP  
HLF File No. 242.148

Dear Chad:

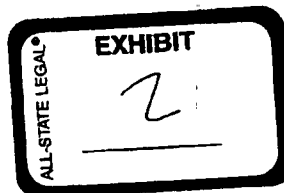
Enclosed for service please find the Notice of Appearance of Counsel on behalf of Defendant Christine Thompson, M.D. which will be filed with the Court in the above-referenced case. Should you have any questions, please do not hesitate to contact me.

Kind regards,

Yours truly,

  
James B. Hood

JBH/sam  
Enclosure(s)



COPY

IN THE COURT OF COMMON PLEAS

)

) C/A No. 2012-CP-10-7413

## NOTICE OF APPEARANCE

***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 8 day of February, 2013.

Heather Ling

2012-CV-10-7413

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                    |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                          |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | <p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>[Signature]</i></p>                               |  |
| <p>1. Article Addressed to:</p> <p>James Hood, Esq.<br/>Hood Law Firm<br/>172 Meeting Street<br/>Charleston, SC 29401</p>                                                                                                                                                                                                        |  | <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery</p>                                                                                |  |
| <p>2. Article Number (Transfer from service label)</p> <p>7011 2970 0001 7073 2106</p>                                                                                                                                                                                                                                           |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> |  |
| <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>                |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>                                                                                    |  |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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| Postage                                        | \$ 2.70 |
| Certified Fee                                  | 2.95    |
| Return Receipt Fee (Endorsement Required)      | 2.35    |
| Restricted Delivery Fee (Endorsement Required) |         |
| Total Postage & Fees                           | \$ 8.00 |

Sent To: James Hood, Esq.  
Street, Apt. No., or PO Box No.: 172 Meeting Street  
City, State, ZIP+4: Charleston SC 29401

PS Form 3800, August 2005 See Reverse for Instructions

7011 2970 0001 7073 2106

ROCK HILL, SC, CHERRY ROAD STA 29132  
NOV 19 2012  
USPS

**FILED**

DEC 10 2012  
JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.



# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Ashley White Creech  
Christy M. DeLuca (SC,IL)  
Lara Pettis Harrill



Patrick M. Killen  
William A. McKinnon (SC,DC)  
Daniel "Ernie" Peagler  
Robert V. Phillips  
Seth Rose  
James Stephen Welch\* (SC,OK)  
Jay F. Wright  
Joseph G. Wright, III\*  
Of Counsel

Writer's Email: ahutchins@mcgowanhood.com

November 19, 2012

## Certified Mail

James B. Hood, Esquire  
Hood Law Firm  
172 Meeting Street  
Charleston, SC 29401

RE: Willie Preston, individually and as PR of the Estate of Martha Preston, deceased v. Surgical Center-Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD and ABC Anesthesia Group  
Case No. 12-CP-10-7413

Dear James:

Please find enclosed the Notice of Intent in the above referenced case.

If you have any questions please feel free to contact our office.

Sincerely,

Annie Hutchins Gray  
Paralegal

/ahg  
enclosures

1539 Health Care Drive, Rock Hill, SC 29732 · Tel: 803-327-7800 · Fax: 803-328-5656  
Rock Hill · Columbia · Anderson · Sumter  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

2012-CK-10-7413

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                    |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                             |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | <p>A. Signature<br/> <b>X</b> Pam Johnson <span style="float: right;"><input type="checkbox"/> Agent<br/><input type="checkbox"/> Addressee</span></p>                                                                                                                                                        |  |
| <p>1. Article Addressed to:</p> <p>Surgical Care Affiliates, LLC<br/>           Registered Agent: CT Corporation<br/>           2 Office Park Court, Ste. 103<br/>           Columbia, SC 29223</p>                                                                                                                              |  | <p>B. Received by (Printed Name)<br/> <b>Pam Johnson</b></p> <p>C. Date of Delivery<br/> <b>11-21</b></p>                                                                                                                                                                                                     |  |
|                                                                                                                                                                                                                                                                                                                                  |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>           If YES, enter delivery address below: <input type="checkbox"/> No</p>                                                                                                                                            |  |
|                                                                                                                                                                                                                                                                                                                                  |  | <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> |  |
|                                                                                                                                                                                                                                                                                                                                  |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>                                                                                                                                                                                                                                       |  |
| <p>2. Article Number<br/>           (Transfer from service label)</p>                                                                                                                                                                                                                                                            |  | <p>7011 2970 0001 7073 2083</p>                                                                                                                                                                                                                                                                               |  |
| <p>PS Form 3811, February 2004 Domestic Return Receipt 102695-02-M-1540</p>                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                               |  |

U.S. Postal Service  
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|                                                |         |
|------------------------------------------------|---------|
| Postage                                        | \$ 2.70 |
| Certified Fee                                  | 2.95    |
| Return Receipt Fee (Endorsement Required)      | 2.35    |
| Restricted Delivery Fee (Endorsement Required) |         |
| Total Postage & Fees                           | \$ 8.00 |

Sent To: Surgical Care Affiliates, LLC  
 Street, Apt. No. or PO Box No.: 2 Office Park Court, Ste. 103  
 City, State, ZIP+4: Columbia SC 29223

PS Form 3800, August 2006 See Reverse for Instructions

**FILED**

DEC 10 2012

JULIE J. ARMSTRONG  
 CLERK, C.P. & G.S.

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
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Daniel "Ernie" Peagler  
Robert V. Phillips  
Seth Rose  
James Stephen Welch (SC,OK)  
Jay F. Wright  
Joseph G. Wright, III  
Of Counsel

Writer's Email: [ahutchins@mcgowanhood.com](mailto:ahutchins@mcgowanhood.com)

November 19, 2012

## Certified Mail

Surgical Care Affiliates, LLC  
Registered Agent: CT Corporation  
2 Office Park Court  
Suite 103  
Columbia, SC 29223

RE: Willie Preston, individually and as PR of the Estate of Martha Preston, deceased v. Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD and ABC Anesthesia Group  
Case No. 12-CP-10-7413

Please find enclosed the Notice of Intent in the above referenced case.

If you have any questions please feel free to contact our office.

Sincerely,

Annie Hutchins Gray  
Paralegal

/ahg  
enclosures

1539 Health Care Drive, Rock Hill, SC 29732 · Tel: 803-327-7800 · Fax: 803-328-5656  
Rock Hill · Columbia · Anderson · Sumter  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

2012-04-10-1413

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                    |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | <p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent<br/><input type="checkbox"/> Addressee</span></p> <p><b>X</b> <u>Pam Johnson</u></p>                                                                                                                                                                                                                                      |  |
| <p>1. Article Addressed to:</p> <p>Charleston Surgery Center, LP<br/>Registered Agent: CT Corporation<br/>2 Office Park Court<br/>Ste. 103<br/>Columbia, SC 29223</p>                                                                                                                                                      |  | <p>B. Received by (Printed Name) <u>Pam Johnson</u></p> <p>C. Date of Delivery <u>11-21</u></p>                                                                                                                                                                                                                                                                                                      |  |
| <p>2. Article Number: <u>7011 2970 0001 7073 2090</u></p> <p>(Transfer from service)</p>                                                                                                                                                                                                                                   |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p>                                                                                                                                                                                                                                              |  |
| <p>PS Form 3811, February 2004</p>                                                                                                                                                                                                                                                                                         |  | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.<br/>           4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes         </p> |  |

102585-02-M-1540

1011 2970 0001 7073 2090

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| For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a> . |         |
| OFFICIAL USE                                                                                   |         |
| Postage                                                                                        | \$ 2.70 |
| Certified Fee                                                                                  | 2.95    |
| Return Receipt Fee (Endorsement Required)                                                      | 2.35    |
| Restricted Delivery Fee (Endorsement Required)                                                 |         |
| Total Postage & Fees                                                                           | \$ 8.00 |

|                                 |                                  |
|---------------------------------|----------------------------------|
| Sent To                         |                                  |
| Charleston Surgery Center, LP   |                                  |
| Street, Apt. No., or PO Box No. | CT Corp 2 Office Park Ct Ste 103 |
| City, State, ZIP+4              | Columbia SC 29223                |

PS Form 3800, August 2006 See Reverse for Instructions

FILED

DEC 10 2012  
JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.



# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)

S. Randall Hood

John G. Felder, Jr.

W. Jones Andrews, Jr.

Jordan C. Calloway

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William A. McKinnon (SC,DC)

Daniel "Ernie" Peagler

Robert V. Phillips

Seth Rose

James Stephen Welch\* (SC,OK)

Jay F. Wright

Joseph G. Wright, III\*

Of Counsel

Writer's Email: [ahutchins@mcgowanhood.com](mailto:ahutchins@mcgowanhood.com)

November 19, 2012

## Certified Mail

Charleston Surgery Center, LP  
Registered Agent: CT Corporation  
2 Office Park Court  
Suite 103  
Columbia, SC 29223

RE: Willie Preston, individually and as PR of the Estate of Martha Preston, deceased v. Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD and ABC Anesthesia Group  
Case No. 12-CP-10-7413

Please find enclosed the Notice of Intent in the above referenced case.

If you have any questions please feel free to contact our office.

Sincerely,

Annie Hutchins Gray  
Paralegal

/ahg  
enclosures

1539 Health Care Drive, Rock Hill, SC 29732 · Tel: 803-327-7800 · Fax: 803-328-5656  
Rock Hill · Columbia · Anderson · Sumter  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Ashley White Creech  
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Daniel "Ernie" Peagler  
Robert V. Phillips  
Seth Rose  
James Stephen Welch\* (SC,OK)  
Jay F. Wright  
Joseph G. Wright, III\*  
Of Counsel

Writer's Email: [ahutchins@mcgowanhood.com](mailto:ahutchins@mcgowanhood.com)

December 6, 2012

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401-2258

**RE: Willie Preston, individually and as PR of the Estate of Martha Preston, deceased v. Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD, and ABC Anesthesia Group  
Case No. 12-CP-10-7413**

Dear Ms. Armstrong:

Please find enclosed an original and copy of Certified Mail cards for the service of the Notice of Intent in the above referenced case. Please file the original and return the filed copy to me in the enclosed self-addressed stamped envelope.

Please contact me should you have any questions.

Sincerely,

Annie Hutchins Gray  
Paralegal

/ahg  
enclosures

1539 Health Care Drive, Rock Hill, SC 29732 • Tel: 803-327-7800 • Fax: 803-328-5656  
Rock Hill • Columbia • Anderson • Sumter  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

Willie Preston, individually and as the ) C/A No. 2013-CP-10-03054  
Personal Representative of the Estate of )  
Martha Preston, Deceased, )

ALL-STATE LEGAL • EXHIBIT  
4  
155

that Plaintiff intended to include Coastal as a defendant in the case titled Willie Preston, individually and as PR of the Estate of Martha Preston, Deceased – Versus – Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD, and ABC Anesthesia Group with a Civil Action No. 2012-CP-10-7413 in the Court of Common Pleas for the County of Charleston, South Carolina (hereinafter “Notice of Intent”).

8. At no point in time did I, nor anyone else authorized to receive service of process on behalf of Coastal, receive notification of a scheduled pre-suit mediation conference with Plaintiff and the other Defendants in this case.

9. Coastal did not have the opportunity to engage in any pre-suit mediation conference with Plaintiff.

10. Coastal has yet to have any mediation conference with Plaintiff.

11. The first notice Coastal received of any pending litigation by Plaintiff against Coastal came in the form of Plaintiff's Complaint filed May 24, 2013.

12. Coastal received attempted service of the Complaint in the above-referenced case via Certified Mail from Plaintiff on July 8, 2013.

13. The Complaint named Christine Thompson, M.D. (“Dr. Thompson”) as a Defendant.

14. Dr. Thompson is an independent contractor whose medical services are retained by Coastal.

15. Dr. Thompson was working as an independent contractor on behalf of Coastal in April of 2012 and at all times relevant to the Complaint filed in the above-referenced case.

---

<sup>1</sup> Improperly identified as “Coastal Anesthesia Associates.”

16. Dr. Thompson, as an independent contractor of Coastal, provided medical care and treatment to Martha E. Preston in April of 2012.

17. At all times during her care and treatment of Martha E. Preston, Dr. Thompson possessed and exercised the requisite amount of medical training, competency and skill ordinarily and customarily possessed and exercised by physicians under similar circumstances.

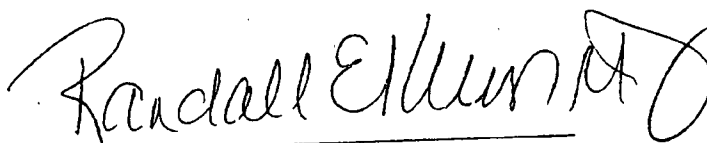
18. At all times during her care and treatment of Martha E. Preston, Dr. Thompson acted in full compliance with the prevailing and accepted standards of care.

19. No act or omission performed (or not performed) during the medical treatment of Martha E. Preston by Dr. Thompson was the direct and proximate cause of any of the injuries alleged by Plaintiff in the Complaint.

20. Because its independent contractor acted in full compliance with the prevailing and accepted standards of care in her care and treatment of Martha E. Preston, Coastal acted in full compliance with the prevailing and accepted standards of care in its treatment of Martha E. Preston.

21. Coastal denies any liability to Plaintiff in the above-referenced case.

FURTHER AFFIANT SAYETH NOT!



Randall Kerns, M.D.

SWORN TO AND SUBSCRIBED before me  
this 4<sup>TH</sup> day of DECEMBER, 2013

Clarence A. James  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 3/21/2022

) IN THE COURT OF COMMON PLEAS

)

) C/A No. 2013-CP-10-03054

)

5

;

•

•

- 



that Plaintiff intended to include Coastal as a defendant in the case titled Willie Preston, individually and as PR of the Estate of Martha Preston, Deceased – Versus – Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Nurse Doe, Christine Thompson, MD, and ABC Anesthesia Group with a Civil Action No. 2012-CP-10-7413 in the Court of Common Pleas for the County of Charleston, South Carolina (hereinafter “Notice of Intent”).

7. At no point in time did I, nor anyone else authorized to receive service of process on behalf of Coastal, receive notification of a scheduled pre-suit mediation conference with Plaintiff and the other Defendants in this case.

8. Coastal did not have the opportunity to engage in any pre-suit mediation conference with Plaintiff.

9. Coastal has yet to conduct any mediation conference with Plaintiff.

10. On July 8, 2013, Plaintiff attempted to serve upon a person named Jody Hawkins a Complaint in the above-captioned matter.

11. I do not personally know Jody Hawkins, but I can attest to the fact that Jody Hawkins is not, has never been and was not on July 8, 2013 an employee, agent or representative of Coastal.

12. Upon information and belief, Jody Hawkins is and was on July 8, 2013 an employee, agent or representative of Charleston Surgical Center, L.P, one of the Defendants who has settled this case with Plaintiff.

13. The Complaint named Christine Thompson, M.D. (“Dr. Thompson”) as a Defendant.

14. Dr. Thompson is an independent contractor whose medical services are retained by Coastal.

15. Dr. Thompson was working as an independent contractor on behalf of Coastal in April of 2012 and at all times relevant to the Complaint filed in the above-referenced case.

16. Dr. Thompson, as an independent contractor of Coastal, provided medical care and treatment to Martha E. Preston in April of 2012.

FURTHER AFFIANT SAYETH NOT!

Wendy B. Sanders  
Wendy B. Sanders, MBA CMPE CANPC

SWORN TO AND SUBSCRIBED before me  
this 4<sup>th</sup> day of December, 2013

Shari A. Duran  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 6/27/2018



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
CASE NO: 2012-CP-10-7413

Willie Preston, individually and as the )  
Personal Representative of the Estate of )  
Martha Preston, deceased, )

Plaintiff, )

vs. )

Surgical Care Affiliates, LLC; Charleston )  
Surgery Center, LP; Jane Doe, RN; ABC )  
Anesthesia Group; and Christine Thompson, )  
MD, )

Defendants. )

**MEDIATION RESULTS FORM**

2013 APR -3 PM 12:40  
WILLIE J. ARMSTRONG  
CLERK OF COURT

FILED

(THIS FORM TO BE COMPLETED BY MEDIATOR WITHIN 10 DAYS OF  
CONCLUSION OF THE CONFERENCE, WHETHER OR NOT AGREEMENT WAS  
REACHED BY THE PARTIES)

1. Mediated settlement conferences were held before me on April 1, 2013.
2. As a result of these conferences, this case should be considered (*please check one*):

☐ Fully Settled (*please check one*):

☐ by Consent Judgment, to be filed by \_\_\_\_\_ or,  
(Name of Designee)

☐ by Voluntary Dismissal, to be filed by \_\_\_\_\_  
(Name of Designee)

☐ Partially Settled, with agreement of the Parties on the following issues:

(*Attach separate sheet if necessary*):

- ☒ At an impasse. The mediation session was productive and there is the possibility  
that further discussion over settlement options could lead to an agreement.



- ☐ In need of further mediation. (I ☒ am/ ☐ am not willing to mediate this case further.
- ☐ Continued (Date) \_\_\_\_\_.
3. Plaintiff ☒ was/ ☐ was not present.  
Defendants ☒ were/ ☐ were not present. (Dr. Thompson was not present)
4. Other participants were:
- ☒ attorney for plaintiff.
  - ☒ attorney for defendant.
  - ☒ representatives for insurance carrier (For Surgical Care A.S.A.)
  - ☐ guardian ad litem \_\_\_\_\_.
  - ☐ experts \_\_\_\_\_.
  - ☐ others \_\_\_\_\_.
5. This case was co-mediated with \_\_\_\_\_.
6. Choice of the mediator was by:
- ☒ Stipulation
  - ☒ Court Order.
7. The total number of hours spent in mediation was: 5 hours.
8. The total mediator fees were \$ 3000.00.
9. Further comments of the mediator:

Date: April 1, 2013

Signature of Mediator: \_\_\_\_\_

Print Name of Mediator: Thomas J. Wills

# WMA

WILLS MASSALON & ALLEN LLC

97 Broad Street • Charleston, SC 29401 • Post Office Box 859 • Charleston, SC 29402  
Phone: 843-727-1144 • Fax: 843-727-7696 • [www.wmalawfirm.net](http://www.wmalawfirm.net)  
April 1, 2013

Direct Dial: 843-793-6038

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

RE: Willie Preston, individually and as the Personal Representative of the Estate of Martha Preston, deceased v. Surgical Care Affiliates, LLC; Charleston Surgery Center, LP; Jane Doe, RN; ABC Anesthesia Group; and Christine Thompson, MD  
Mediation Date: April 1, 2013  
Our File No.: 613-54  
Case No.: 2012-CP-10-7413

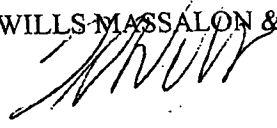
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Mediation Results Report regarding the above referenced matter. Please file the original and return a file stamped copy to me in the self addressed, stamped envelope provided.

If you have any questions, please do not hesitate to call.

Respectfully,

WILLS MASSALON & ALLEN LLC

  
Thomas J. Wills  
[twills@wmalawfirm.net](mailto:twills@wmalawfirm.net)

TJW/kap

Enclosures

**SENDER: COMPLETE THIS SECTION**

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Coastal Anesthesia Associates LLC  
Registered Agent: Randall Kene  
2690 Lake Park Drive  
N. Charleston, SC 29406

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature Jody Hawkins ☒ Agent ☐ Addressee  
B. Received by (Printed Name) Jody Hawkins  
C. Date of Delivery 7-8-13  
D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.  
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number  
(Transfer from service label)

7011 2970 0001 7071 6786

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

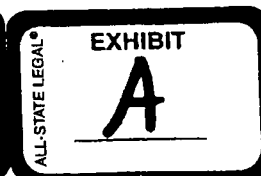
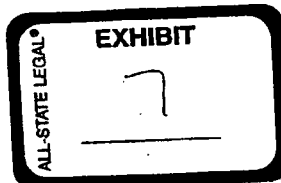
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| Postage                                        | \$ 7.52 |
| Certified Fee                                  | 3.10    |
| Return Receipt Fee (Endorsement Required)      | 2.55    |
| Restricted Delivery Fee (Endorsement Required) |         |
| Total Postage & Fees                           | \$ 8.17 |

Sent to Coastal Anesthesia, LLC: Randall Kene  
Street Apt. No. 2690 Lake Park Dr.  
City, State, ZIP+4 N. Charleston, SC 29406

FILED  
2013 JUL 29 PM 2:07  
JULIE J. ARMSTRONG  
CLERK OF COURT





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

**FOR MANDATED ADR COUNTIES ONLY**

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

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> 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

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

v.

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Laura Bilancione,  
R.N.; Coastal Anesthesia Associates; and  
Christine Thompson, M.D.

Defendants.

TO: THE DEFENDANTS ABOVE NAMED:

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Civil Action No: 13-CP-10-3054

SUMMONS

2013 MAY 24 PM 4:18  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in  
this action, a copy of which is served upon you, and to serve a copy of your Answer to  
the Complaint on the subscriber at his office at 1539 Health Care Drive, Rock Hill, South  
Carolina, 29732, within thirty (30) days of service, exclusive of the date of service; and if  
you fail to Answer the Complaint within that time, judgment by default will be rendered  
against you for the relief demanded in the Complaint.

MCGOWAN HOOD & FELDER, LLC

  
Chad A. McGowan  
Ashley White Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

May 23, 2013.



STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

Defendants. )

IN THE COURT OF COMMON PLEAS

C. A. No: 13-CP-10-3054

Complaint for Damages  
(Jury Trial Demanded)

2013 MAY 24 PM 4:18  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

The Plaintiff, by and through his undersigned counsel, for a Complaint against the  
Defendants, does hereby allege as follows:

### PARTIES

#### Plaintiff

1. The Plaintiff, Willie Preston, is the duly appointed Personal Representative of the estate of Martha Preston. At all times relevant hereto, Willie Preston was the husband of Martha Preston. He brings these claims as PR for wrongful death and survival, and on behalf of himself for loss of consortium. Plaintiff is a citizen and resident of Charleston County, South Carolina.

#### Defendants

2. Defendant Surgical Care Affiliates, LLC is a corporation organized and existing under a state's laws other than South Carolina and maintains an agent and/or joint venture in Charleston County, SC known as the Charleston Surgical Center, LP in Charleston County,

South Carolina. At all times relevant hereto, Surgical Care Affiliates, LLC was a joint venture, principal or agent, with the entity employing certain nurses and other medical staff at the Charleston Surgical Center who at all times relevant hereto, were employees acting within the scope of their employment.

3. Defendant Charleston Surgery Center LP, is a South Carolina limited partnership and is an agent, principal or joint venturer with Surgical Affiliates, LLC. Charleston Surgery Center maintains its principal place of business in Charleston County, SC and was the employer of certain nurses and other medical providers that treated Mrs. Preston on April 18, 2012.

4. Defendant Laura Bilancione, RN was the registered nurse who was in charge of Mrs. Preston's post operative care, and is the same person who signed Pages CSC-024 and CSC-025 of the medical records. This defendant is also believed to be the same person who administered the dilaudid and other drugs to Mrs. Preston. Nurse Bilancione is believed to be a citizen and resident of Charleston County, SC and was at all times working within the course and scope of her employment.

5. Defendant Christine Thompson, MD is a physician licensed by the state of South Carolina and holds herself out to the public as a specialist in the field of anesthesiology. At all times relevant hereto, Defendant Thompson was acting within the scope of her employment and/or contract with Coastal Anesthesia Associates, Charleston Surgical Center, LP, or Surgical Affiliates, LLC. Defendant Thompson is a citizen and resident of Charleston County, SC.

#### **FACTUAL ALLEGATIONS**

6. On April 18, 2012, Mrs. Preston went to the Charleston Surgery Center for an out patient knee surgery. The procedure was supposed to take well less than a day, and Mrs. Preston was to be returned home without staying in any medical facility overnight.

7. After this procedure, Mrs. Preston was sent from the Operating Room to the Post Anesthesia Care Unit ('PACU'). Dr. Thompson ordered, among other things, "Dilaudid 0.2 mg IV prn pain, may repeat every 5 minutes up to 2 mg IV or 4 mg IV." CSC 024. Both Dr. Thompson and Nurse Doe signed this order.

8. Nurse Bilancione administered the following medications to Mrs. Preston:

Dilaudid 1 mg IV at 9:02

Dilaudid 1 mg IV at 9:06

Dilaudid 1 mg IV at 9:21

Dilaudid 1 mg IV at 9:28

Phenergan 6.25 mg IV at 9:42

Percocet 1 by mouth at 9:42

9. The dilaudid administered by the nurse was in excess of the physician's order and the nurse therefore was below the prevailing and accepted medical standard of care.

10. Nurses have an obligation to follow doctor's orders unless in their professional judgment doing so would put the patient at risk. In that case, Nurses are expected to follow-up on their concerns either with the physician or through their chain of command. It is never appropriate for a nurse to give 4 doses of dilaudid, 1 mg EACH, when an order reads that the maximum per dose is 0.2 mg.

11. Further, Charleston Surgery Center and Surgery Center Affiliates had policies and procedures in place dictating when a patient could safely be discharged. The Defendants used a scoring system, that provided that a patient must score at least a 16 on a scale from 16-18. Mrs. Preston scored only a 13, and was discharged anyway.

12. As a back-up to this system, the physician, in this case Defendant Thompson, was

supposed to evaluate the patient and the patient's chart to sign off on the patient being fit for discharge. Dr. Thompson signed a statement that she had assessed Mrs. Preston and found her fit for discharge. See, Anesthesia Record, CSC-021. This is shocking as Mrs. Preston at that time was under the influence of 4 mg of dilaudid, Phenergan, and Percocet, and the effects of those drugs was profound. Mrs. Preston could not walk or stay awake from the heavy medications. Dr. Thompson never reviewed the patient's chart to determine if her order was followed or to determine if Mrs. Preston could safely be discharged. If she had, she would not have discharged Mrs. Preston.

13. Dr. Thompson had a duty and obligation to assess Mrs. Preston prior to her discharge as well as to review her medical chart from the PACU. Dr. Thompson further had a duty and obligation to perform this assessment in a competent manner. Dr. Thompson failed on both accounts.

14. Mrs. Preston was sent home in the care of her husband who did his level best to care for her. Mrs. Preston was falling asleep while walking to her bedroom from her car. Mr. Preston regularly checked on her, and the last time he checked on her, before lunch time, Mrs. Preston was found to be not breathing.

15. Mr. Preston called 911 and started to do CPR on his wife. EMS arrived and took over care of Mrs. Preston, ultimately taking her to MUSC in Charleston.

16. Mrs. Preston was determined to be brain dead at MUSC from the lack of oxygen to her brain and she passed on April 23, 2012.

17. The cause of death was determined to be "probable mixed drug toxicity with fentanyl, promethazine, hydromorphone, oxycodone, and midazolam." In other words, Mrs. Preston died from the drugs she was given at the Charleston Surgery Center.

18. As a direct and proximate result of the acts and/or omissions of Defendants, Mrs. Preston did not receive proper treatment in a timely fashion. With proper, standard of care medicine, Mrs. Preston would not have suffered and would have not have died when she did and would have had a normal life expectancy.

19. The injuries to and death of Mrs. Preston were the direct and proximate result of and was caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and medical staff under similar circumstances and thereby rendered inappropriate medical care to Mrs. Preston by deviating from and falling below the prevailing and acceptable standards of care in one or more of the following particulars, as follows:

AS TO DEFENDANT Nurse Doe, Charleston Surgery Center LP, and Surgery Center Affiliates, LLC:

- a. In failing to properly follow the physician's orders;
- b. In giving too much medication;
- c. In failing to properly assess Mrs. Preston;
- d. In discharging Mrs. Preston under the circumstances;
- e. In failing to properly follow the policies and procedures in place for discharge assessment; and
- f. In such other ways as may be shown at trial

AS TO DEFENDANTS Thompson and Coastal Anesthesia Associates

- g. In failing to review the medical chart of the patient at the time Defendant Thompson certified that Mrs. Preston was fit for discharge;
- h. In failing to properly assess Mrs. Preston at the time of her discharge;
- i. In allowing Mrs. Preston to be discharged;
- j. In failing to realize that the nurse grossly violated her order by giving 1 mg doses of dilaudid when the order called for no more than 0.2 mg at a time; and
- k. In such other ways as may be shown at trial.

ATTACHED to the Notice of Intent, all of which is incorporated herein by reference, and attached to this Complaint are affidavits of qualified experts who will testify to at least one breach of the standard of care by the Defendants in this matter.

#### **FOR A FIRST CAUSE OF ACTION (SURVIVAL ACTION)**

20. Plaintiff reiterates paragraphs 1-19 above as if set forth verbatim herein.

21. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Preston suffered from severe debilitating injuries which resulted in her permanent injury and disability, and conscious pain and suffering, as a result of which Mrs. Preston is entitled to recover a sum to compensate her estate for her conscious pain and suffering, medical expenses, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

#### **FOR A SECOND CAUSE OF ACTION**

**(Wrongful Death)**

22. Plaintiff reiterates paragraphs 1-21 as if set forth verbatim herein.

23. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Preston suffered from severe debilitating injuries which resulted in her death, and thus the negligence was the cause of the loss of the support, aid, society, comfort, and companionship of her heirs at law. The estate is therefore entitled to recover from defendants a sum of money to compensate the heirs at law for the medical expenses, funeral expenses, mental anguish, loss of earnings capacity, and loss for the aid, society, comfort, and companionship of the decedent. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

**FOR A THIRD CAUSE OF ACTION**

**(Loss of Consortium)**

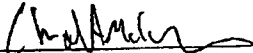
24. Plaintiff reiterates paragraphs 1-23 as if set forth verbatim herein.

25. Plaintiff Willie Preston, as the husband of Mrs. Mrs. Davis, has suffered a loss of consortium as a result of the actions and inactions of defendants. He is therefore entitled to an award of damages to compensate her for her loss of the society, comfort, companionship, support, and good offices of his wife. Further, the Defendants' actions in this case have been reckless and/or grossly negligent and thus Plaintiff Andrew Strong is additionally entitled to an award of punitive damages to punish and deter these defendants and others like them.

WHEREFORE, Plaintiffs, respectfully pray for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to

be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law.

---

  
Chad A. McGowan  
Ashley Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

John Hughes Cooper  
1476 Ben Sawyer Blvd, Suite 7  
Mt. Pleasant, SC 29464  
843-883-9099  
843-883-9335 (Fax)

Rock Hill, South Carolina

May 17, 2013  
22

PLAINTIFF DEMANDS A JURY TRIAL



STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

C. A. No: 12-CP-

Willie Preston as the Personal  
Representative of the Estate of Martha  
Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P.; Jane Doe, R.N.; )  
ABC Anesthesia Group; and Christine )  
Thompson, M.D. )

Defendants. )

**AFFIDAVIT**

**TERESA A. SOLLITTO, R.N.**  
(S.C. Code Ann. §15-36-100)

**PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY  
SWORN, AND SAYS AS FOLLOWS:**

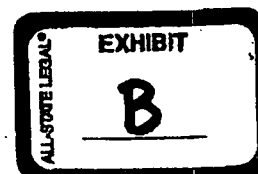
1. I am professional registered nurse. My clinical practice involves recovering all age groups and all types of surgeries from different types of anesthesia. My education, training and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care which should have been rendered to Martha Preston in this case.

2. My nursing practice is located primarily in Boston, Massachusetts. I have been practicing for more than twenty (20) years.

3. I am familiar with the standard of care of what a reasonably prudent nurse would do or not do in providing care to patients, including the type of care rendered to Martha Preston. I am familiar with the breaches of the standard of care which can occur and result in harm to a patient similar to the situation involving Martha Preston.

4. I have reviewed the medical records of Martha Preston which consisted in part of records from Charleston Surgical Center, MUSC which include the autopsy, toxicology report, Coroner's report and death certificate. The records I reviewed are the type documents which I would consider in rendering an expert nursing opinion in this case.

5. It is my opinion, within a reasonable degree of nursing certainty that the Defendants and/or their employees, agents or nurses committed negligent acts or omissions in their care and



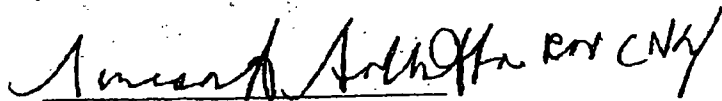
treatment of Martha Preston. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by the Defendants and/or their employees, agents or nurses, are as follows:

- Failing to follow physician's order as to the administration of Dilaudid;
- Failing to recognize the totality of the situation and ensuring safe and reasonable care which required further time to recover prior to discharge;
- Discharging Mrs. Preston home in the face of not meeting discharge criteria.

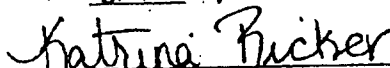
6. Further, it is my opinion to a reasonable degree of nursing certainty that the actions or inactions of the Defendants and/or their employees, agents or nurses contributed to the injuries and damages which led to Martha Preston death.

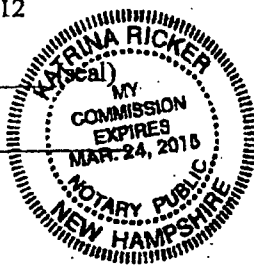
7. The factual basis for my opinion about the breaches of the standard of care by the Defendants at this time are the medical records of Martha Preston. The factual basis of my opinions may be supplemented at a later time.

8. This affidavit is given in compliance with South Carolina Code of Laws §§15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
TERESA A. SOLLITTO, R.N.

Sworn to and signed before me  
this 29 day of October 2012

  
Notary Public  
My Commission Expires: \_\_\_\_\_



## TERESA A. SOLLITTO

52 Sanborn Street, # 204  
Reading, MA 01867

(339) 234-1387  
tsollitt@bidmc.harvard.edu

### EXPERIENCE:

8/84 to Present **BETH ISRAEL DEACONESS MEDICAL CENTER, Boston, MA**

**Clinical Nurse (IV) Post Anesthesia Care Unit** (3/93 to Present)

- Primary/associate nurse in 23 bay unit, open 24/7: Level I Trauma.
- Presenter, patient care rounds in multi-disciplinary setting.
- Preceptor for new staff.
- Perform Unit Resource role: coordinate patient flow, manage staffing patterns and collaborate with anesthesia, surgical and inpatient staff.
- Staff Scheduler for 52 nurses.
- Instructor, American Heart Association ACLS and BLS
- Member of hospital-wide Professional Nurse Advancement Program
- Co-coordinator, Peer Review process.
- Member, Practice and Quality/Safety committees; responsible for quarterly chart audits, staff Education.

**Interim Manager** (8/98 to 12/98)

**Clinical Nurse (IV), Surgical Intensive Care Unit** (1/97 to 5/97)

- Primary/associate nurse in 12 bed intensive care unit.
- Patient population included cardiothoracic, neurosurgical and multi-system trauma.

**Clinical Nurse (IV) Collaborative Medical-Surgical Unit** (2/89 to 3/93)

- Primary/associate nurse on 14 bed unit.
- Co-developed Peer Review Program; provided consultation on program to other units.
- Nurse for a Day preceptor; Physician for a Day participant; provided orientation for new staff, students.
- MALS Instructor for hospital.
- Arrest Call Coordinator; handled responses hospital-wide.
- Coordinated and conducted unit-base review sessions on emergency care.
- Active participant on various task forces and committees, including: Picker Commonwealth Group Project, B.I. Professional Nurse Advancement Program, B.I. Product Standards and Evaluation Committee, 7North Steering Group Committee and Unit-Based Primary Nurse Task Force.
- Critical incident rounds representative.
- Advanced from Clinical Nurse III (3/91).

**Management Internship** (8/91 to 3/92)

- Assumed temporary management of 14 bed med-surg unit to cover LOA.
- Responsibilities included budgeting, scheduling and staffing issues.

**Clinical Advisor** (10/87 to 2/89)

- Clinical, educational and administrative resource for nurses occupying 17 patient-care units.
- Continued to provide support (25% of time) to Surgical Unit.

**TERESA A. SOLLITTO (page 2)**

**Clinical Nurse (III) Surgical Unit (3/86 to 10/87)**

- Primary/associate nurse responsible for coordinating multi-disciplinary care of patients.
- 24 hour accountability for interventions.
- Active in various committees, including: B.I. Pharmacy Committee, Unit-Based Documentation Task Force, Unit-Based Quality Improvement Committee and B.I. Patient Education Committee.
- Primary Nurse Rounds Presenter and Preceptor for new staff.
- Advanced from Clinical Nurse II (8/84 to 3/86).

**EDUCATION:**

**UNIVERSITY OF NEW HAMPSHIRE, Durham, NH**  
1984 Bachelor of Science, Nursing

**PRESENTATIONS:**

Sedation Lecture, Harvard Medical School, CME  
"What is a Nurse," Harvard Medical School  
"Cultivating a Community of Scholars," Northeastern University  
"Professional Nursing Practice" and "Patient Confidentiality"  
Choose Nursing Orientation Program  
Documentation Lecture at Orientation

**CERTIFICATIONS,  
AFFILIATIONS  
& AWARDS:**

Recipient, "Edward and Marilyn Schwartz Award" for overall excellence in nursing practice.  
Advanced Cardiac Life Support  
Basic Cardiac Life Support  
IV infusion therapy; phlebotomy  
Boston Athletic Association, Medical Support, Boston Marathon  
Participant/runner (2008, 2009, 2010)

**REFERENCES:**

Available upon request

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

C. A. No: 12-CP-

Willie Preston as the Personal )  
Representative of the Estate of Martha )  
Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P.; Jane Doe, R.N.; )  
ABC Anesthesia Group; and Christine )  
Thompson, M.D. )

Defendants. )

AFFIDAVIT

ALAN LISBON, M.D.

(S.C. Code Ann. §15-36-100)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY  
SWORN, AND SAYS AS FOLLOWS:

1. I am a Medical Doctor. I am board certified in Anesthesiology with a subspecialty in Critical Care Medicine. My clinical practice involves the care and treatment of people who require all levels of anesthesia for surgeries and/or procedures. My education, training, and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care provided to Martha Preston in this case.

2. My practice is located primarily in Boston, Massachusetts. I have been a practicing physician for more than twenty (20) years.

3. I am familiar with the standard of care of what a reasonably prudent physician would do or not do in providing care to patients, including the type of care rendered to Martha Preston. I am familiar with the breaches of the standard of care which can occur and result in harm to a patient similar to the situation involving Martha Preston.

4. I have reviewed the medical records of Martha Preston which consisted in part of records from Charleston Surgical Center, MUSC which include the autopsy, toxicology report, Coroner's report and death certificate. The records I reviewed are the type documents which I would consider in rendering an expert medical opinion in this case.



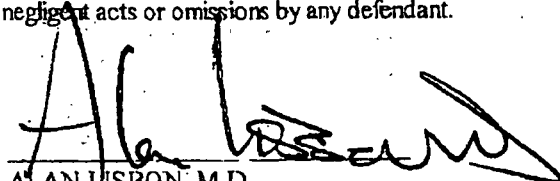
5. It is my opinion, within a reasonable degree of nursing certainty that the Defendants and/or their employees, agents or nurses committed negligent acts or omissions in their care and treatment of Martha Preston. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by the Defendants and/or their employees, agents or nurses, are as follows:

- Failing to follow physician's orders, by the PACU nurse in administering excessive doses of Dilaudid;
- Failing to recognize the totality of the situation and ensuring safe and reasonable care which required further time to recover prior to discharge, by both the PACU nurse and the physician; and
- Discharging Mrs. Preston home in the face of not meeting discharge criteria.

6. Further, it is my opinion to a reasonable degree of medical certainty that the actions or inactions of the Defendants and/or their employees, agents or nurses contributed to the injuries and damages which led to Martha Preston death.

7. The factual basis for my opinion about the breaches of the standard of care by the Defendants at this time are the medical records of Martha Preston. The factual basis of my opinions may be supplemented at a later time.

8. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
ALAN LISBON, M.D.

Sworn to and signed before me  
this 31 day of October 2012

 (seal)  
Notary Public  
My Commission Expires: 1-16-15

## CURRICULUM VITAE

Date Prepared: May 5, 2010

### **PART I: General Information**

Name: Alan Lisbott, MD

Office Address: Department of Anesthesia and Critical Care  
Beth Israel Deaconess Medical Center, CG 470  
One Deaconess Road  
Boston, Massachusetts 02215

Home Address: Two Cross Street  
Dorset, Massachusetts 02030

E-Mail: [alisbott@bidmc.harvard.edu](mailto:alisbott@bidmc.harvard.edu) FAX: (617) 754-7735

Place of Birth: Worcester, Massachusetts

### **Education:**

|      |                         |                                        |
|------|-------------------------|----------------------------------------|
| 1972 | B.S. (with Distinction) | Cornell University                     |
| 1976 | M.D.                    | New York University School of Medicine |

### **Postdoctoral Trainings:**

#### **Internship and Residencies:**

|           |                      |                                  |
|-----------|----------------------|----------------------------------|
| 1976-1977 | Surgical Internship  | Beth Israel Hospital, Boston, MA |
| 1977-1980 | Anesthesia Residency | Beth Israel Hospital, Boston, MA |

### **Licensure and Certification:**

|      |                                                                                                 |
|------|-------------------------------------------------------------------------------------------------|
| 1979 | Diplomate, National Board of Medical Examiners                                                  |
| 1977 | Massachusetts Medical License                                                                   |
| 1980 | Diplomate, American Board of Anesthesiology                                                     |
| 1986 | Diplomate, American Board of Anesthesiology<br>Special Qualifications in Critical Care Medicine |
| 2001 | Recertification, American Board of Anesthesiology                                               |
| 2009 | Recertification, American Board of Anesthesiology                                               |

Alan Lisbon, MD

**Academic Appointments:**

|           |                                                             |                                         |
|-----------|-------------------------------------------------------------|-----------------------------------------|
| 1976-1977 | Clinical Fellow in Surgery                                  | Harvard Medical School                  |
| 1977-1980 | Clinical Fellow in Anaesthesia                              | Harvard Medical School                  |
| 1980-1984 | Instructor in Anaesthesia                                   | Harvard Medical School                  |
| 1984-2002 | Assistant Professor of Anaesthesia                          | Harvard Medical School                  |
| 2001-     | Clinical Professor,<br>Cardiopulmonary and Exercise Science | Northeastern University<br>(non-voting) |
| 2002-     | Associate Professor of Anaesthesia                          | Harvard Medical School                  |

**Hospital Appointments:**

|           |                          |                                                    |
|-----------|--------------------------|----------------------------------------------------|
| 1980-1985 | Assistant Anesthetist    | Beth Israel Hospital, Boston, MA                   |
| 1985-1995 | Associate Anesthetist    | Beth Israel Hospital, Boston, MA                   |
| 1993-     | Consultant in Anesthesia | Children's Hospital, Boston, MA                    |
| 1993-1996 | Associate Surgeon        | Beth Israel Hospital, Boston, MA                   |
| 1995-1996 | Anesthetist              | Beth Israel Hospital, Boston, MA                   |
| 1996-     | Associate Surgeon        | Beth Israel Deaconess Medical Center<br>Boston, MA |
| 1996-     | Anesthetist              | Beth Israel Deaconess Medical Center<br>Boston, MA |

**Hospital and Health Care Organization Service Responsibilities:**

|           |                                                                 |                                      |
|-----------|-----------------------------------------------------------------|--------------------------------------|
| 1980-1985 | Associate Director, Respiratory-Surgical<br>Intensive Care Unit | Beth Israel Hospital                 |
| 1980-2002 | Member, Cardiac Anesthesia Team                                 | Beth Israel Hospital                 |
| 1985-1996 | Co-Director, Respiratory-Surgical Intensive<br>Care Unit        | Beth Israel Hospital                 |
| 1996-2006 | Medical Director, Respiratory Care                              | Beth Israel Deaconess Medical Center |
| 1996-     | Co-Director, Surgical ICU's                                     | Beth Israel Deaconess Medical Center |

**Major Administrative Responsibilities:**

|           |                                                                              |                                      |
|-----------|------------------------------------------------------------------------------|--------------------------------------|
| 1990-1996 | Director, Critical Care Fellowship                                           | Beth Israel Hospital                 |
| 1991-1996 | Chief, Division of Critical Care                                             | Beth Israel Hospital                 |
| 1996-2003 | Chief, Division of Critical Care                                             | Beth Israel Deaconess Medical Center |
| 1996-2007 | Director, Critical Care Fellowship                                           | Beth Israel Deaconess Medical Center |
| 2003-2009 | Vice Chairman for Critical Care                                              | Beth Israel Deaconess Medical Center |
| 2006-2009 | Acting Chair<br>Department of Anesthesia, Critical Care<br>and Pain Medicine | Beth Israel Deaconess Medical Center |
| 2009-     | Executive Vice Chair                                                         |                                      |



Alan Lisbon, MD

**Major Committee Assignments:**

**National**

|       |                                                                                                         |                    |
|-------|---------------------------------------------------------------------------------------------------------|--------------------|
| 1995- | American Board of Anesthesiology<br>(Senior Examiner 2005 - )                                           | Associate Examiner |
| 2002- | Food and Drug Administration<br>Anesthesia and Respiratory Therapy<br>Devices Panel (Chair 2003 - 2008) |                    |

**Medical School**

|           |                                           |                                                |
|-----------|-------------------------------------------|------------------------------------------------|
| 1987-     | Respiratory Therapy<br>Advisory Committee | Northeastern University                        |
| 1989-1996 | Standing Committee on<br>Human Studies    | Harvard Medical School                         |
| 1996-1998 | Human Studies Committee                   | Harvard University Health<br>Services          |
| 1996-     | Respiratory Therapy<br>Program            | Medical<br>Director<br>Northeastern University |

**Beth Israel Hospital/ Beth Israel Deaconess Medical Center**

|            |                                                                                                               |          |
|------------|---------------------------------------------------------------------------------------------------------------|----------|
| 1984-1996  | Emergency Room Committee                                                                                      |          |
| 1986-      | Critical Care Committee<br>Co-Chair (1991-1997)<br>Co-Chair (1997-1998)                                       |          |
| 1988-      | Committee on Clinical Investigations (IRB)<br>Secretary (1988-1998)<br>Co-Chair (1998-1999)<br>Chair (1999- ) |          |
| 1988-1999  | Committee on Infectious Disease                                                                               |          |
| 1990-2000  | Tissue Committee                                                                                              |          |
| 1991-1996  | Medical Staff Council                                                                                         |          |
| 1994-1996  | Medical Executive<br>Committee                                                                                |          |
| 1995-1996  | Critical Care Committee                                                                                       | Co-Chair |
| 1995-1998  | Operative and Invasive<br>Procedures Committee                                                                |          |
| 1996- 2000 | Medical Staff Council                                                                                         |          |
| 1996-1998  | Anesthesia and Critical Care<br>Pharmacy Subcommittee                                                         | Co-Chair |
| 1998-2000  | Clinical Information Systems<br>Steering Committee                                                            |          |
| 1998-2006  | Benefits Advisory Committee                                                                                   |          |

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|           |                                                            |       |
|-----------|------------------------------------------------------------|-------|
| 1998-2000 | Harvard Medical Faculty Physicians Resuscitation Committee | Chair |
| 1998-2009 | Physician's Organization Board of Directors                |       |
| 1998-2005 | Physician's Organization Managed Care Steering Committee   |       |
| 2001-2005 | Clinical Research Strategy Committee                       |       |
| 2002-     | OR Executive Committee (Co-Chair 2006 - 2009)              |       |
| 2004-2005 | Graduate Medical Education Committee                       |       |
| 2007-2009 | Clinical Information Steering Committee                    |       |
| 2007-     | Volume and Operations Committee                            |       |
| 2010-     | Harvard Medical Faculty Physicians Board of Directors      |       |

**Department**

|           |                                                      |                                |
|-----------|------------------------------------------------------|--------------------------------|
| 1984-2000 | Clinical Competence Committee                        |                                |
| 1985-2000 | Quarterly Review Committee                           |                                |
| 1988-     | Resident Selection Committee                         |                                |
| 1988-     | Peer Review Committee                                |                                |
| 1991-     | Beth Israel Anesthesia Foundation Board of Directors | Secretary President 2007, 2008 |
| 1992-     | Division Directors Committee                         |                                |
| 1995-2005 | Grand Rounds Conferences                             | Coordinator                    |
| 1996-     | Curriculum Committee                                 |                                |
| 1996-     | Clinical Practice Committee                          |                                |

**Alan Lisbon, MD**  
**Professional Societies**

|           |                                                           |                    |
|-----------|-----------------------------------------------------------|--------------------|
| 1976-     | American Medical Association                              |                    |
| 1977-     | Massachusetts Society of Anesthesiologists                |                    |
| 2003-     | Governmental Affairs Committee                            |                    |
| 2003-     | Ethical Practice and Standards of Care Committee          |                    |
| 1977-     | American Society of Anesthesiologists                     |                    |
| 1996-1997 | Subcommittee on Critical Care                             |                    |
| 1980-     | American Board of Anesthesiology                          |                    |
| 1981-     | Society of Critical Care Medicine                         |                    |
| 1992      | Consensus Development Committee                           | Delegate           |
| 1992-1996 | House of Chapters                                         | Secretary          |
| 1993      | New England Chapter                                       | Vice President     |
| 1994-1995 | New England Chapter                                       | President          |
| 1996      | New England Chapter                                       |                    |
| 1998-2002 | Anesthesia Section, Advisory Board                        |                    |
| 2000-2001 | Outreach Committee                                        |                    |
| 2010-     | Billing and Oversight Committee                           |                    |
| 1982-     | Massachusetts Medical Society                             |                    |
| 1990-1998 | New England Regional Critical Care Society                |                    |
| 1991      |                                                           | Program Director   |
| 1992-1998 |                                                           | Board of Directors |
| 1991-     | American Society of Critical Care Anesthesiologists       |                    |
| 1993-1998 | Resident Education Committee                              |                    |
| 1998-     | Practice and Training Committee                           |                    |
| 1994-     | American College of Chest Physicians                      | Elected Fellow     |
| 1995-2004 | Steering Committee on Critical Care                       |                    |
| 1996-1997 | Steering Committee on Critical Care                       | Chair              |
| 1997-1999 | Program Committee                                         |                    |
| 1998-2002 | Health & Science Policy Committee                         |                    |
| 2002-2004 | Nominations Committee                                     |                    |
| 2005-     | Credentials Committee                                     |                    |
| 1995-2000 | International Trauma Anesthesia and Critical Care Society |                    |
| 1996-     | American College of Critical Care Medicine                | Elected Fellow     |

Alan Lisbon, MD

**Editorial Boards**

**Editorial Boards**

2000- Clinical Medicine and Research

**Ad hoc reviewer**

1988- Critical Care Medicine

1990- New England Journal of Medicine

1994- Chest

1999- Mayo Clinic Proceedings

**Award and Honors**

1972

Tau Beta Pi, Cornell University

1972

Eta Kappa Nu, Cornell University

2006, 2007, 2009

Boston Magazine - "Best Doctors"

Alan Lisbon, MD

## **Part II: Research, Teaching, and Clinical Contributions**

### **A. Narrative**

My most important contributions lie in four main areas: clinical care, teaching, the research environment, and administration.

#### **Clinical Leadership and Innovation**

Both Israel Deaconess Medical Center has been home to me for almost 30 years, first as a surgical intern and then as an anesthesia resident. As a clinician, I have focused on providing cutting-edge care of critically ill patients, and anesthetics for large, complicated cases. I have guided, taught, learned from, and collaborated with medical staff members who daily manage very delicate and critical interactions with patients and their families.

For the first 25 years of my career, I worked in the operating rooms as a cardiac anesthesiologist and also in the general ORs administering anesthetic care for complex cases. Staff requests for my services have factored strongly in my clinical caseload, bringing professional challenges across a wide spectrum of illness and disease. I am experienced in the safe and efficient management of the operating rooms of a tertiary/quaternary medical center.

As Co-Director of the Surgical ICUs for the past 20 years, I have been responsible for general administration, policy development, and quality of care within those units on both BIDMC campuses. During this time, the anesthesia critical care program at BIDMC has developed into one of the leading programs in the country. Recent initiatives include the introduction of widespread use of echo and ultrasound technology in the ICU. We have developed and instituted clinical guidelines for the ICUs over the past two years that have greatly lessened the incidence of iatrogenic infections, including reduction of central line infections and reduction of ventilator-associated pneumonia by 50 percent. I have personally championed the development of a robust program in clinical research.

I served as Chair of the FDA panel on Anesthesia and Respiratory devices. In addition, I have served as President of the New England Society of Critical Care and as a member of multiple national committees for the specialty. My committee memberships include the Health, Science and Policy Committee for the ACCP, which is responsible for writing national guidelines on clinical care.

### Teaching

I have lectured extensively throughout the United States and abroad on a wide range of topics related to critical care and anesthesia. It has been particularly satisfying for me to write many chapters on the care of critically ill and cardiac surgical patients, and I have recently co-edited a book on procedures and techniques for critically ill patients.

For the past 12 years, I have served as an oral board examiner for the American Board of Anesthesia.

For the past 10 years, it has been my responsibility to convene weekly Anesthesia Grand Rounds, the major CME program for our department. The speakers are well-known experts from throughout the US and abroad. As Chair of the Anesthesia Complications meetings (M&M), I have the opportunity each week to teach and learn about the unexpected challenges of difficult cases. These events provide a forum for penetrating analysis and constructive feedback, and for building (and modeling) confidence and humility among staff and residents.

Medical education is at the forefront of everything we do at BIDMC, and I relish this shared work and its proud tradition. I teach critical care fellows, residents, and medical students both the fundamentals and the intricacies of critical care and clinical anesthesia.

Throughout the year, I mentor and supervise 24 medical students, 18 anesthesia residents, 10 emergency medicine residents, and 12 surgery residents who rotate through the Surgical ICUs. Our Critical Care Fellowship is nationally renowned and highly competitive. I have trained 31 critical care fellows over the past 16 years. Each year, I am proud to see our Fellows secure outstanding positions at prominent institutions, and by so doing, validate their exceptional training. I am particularly proud that the BIDMC Anesthesia Critical Care Program is considered among the most prestigious in the country. I train our 56 anesthesia residents in the provision of anesthetics for a wide spectrum of surgical disease, and am active as a mentor and counselor for these residents.

### Research

BIDMC has the fourth largest hospital-based research program in the United States, with some 1,300 protocols under consideration each year. My own clinical trials have focused on ICU therapies, critical care practices, diagnostic testing, and monitoring devices. Being an investigator has taught me about the unique challenges of conducting research in an academic setting and also has led me to promote research at BIDMC. For the past 10 years, I have managed the Committee on Clinical Investigation (the IRB) and its 50 board members (three boards), and have chaired two meetings of the full Board as well as two Continuing Review meetings each month.

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During my tenure, the IRBs at Beth Israel Hospital and the New England Deaconess Hospital merged in 1996, creating a single BIDMC IRB. This merger necessitated a systemic revamping of all policies and standard operating procedures, which resulted in our becoming a model of efficient and assiduous ethical and scientific review. Research revenues have grown, and submissions of new protocols have increased steadily.

Today, we have a staff of 14 dedicated IRB professionals processing submissions and offering internal quality improvement audits.

Our IRB currently boasts the fastest turnaround time (from protocol submission to approval) in Boston. I have become solidly versed in regulatory matters and developed an understanding and respect for the complicated path a clinical trial must take to reach approval.

As Chair of the CCI, I have worked closely with every division of every department at BIDMC over the years, developing considerable goodwill in the process. In my role, I have strived to develop and support a culture befitting a great research institution, and feel privileged to have done so for BIDMC.

#### Administration

Anesthesia is by definition a collaborative service in support of other departments. We have met or exceeded the demands of the surgical and other procedural services for creative and dynamic partnerships across disciplines. For example, 2006/2007 witnessed clinical innovations in expanding overnight coverage on the East Campus, coverage in the GI suite, inception of regional block scheduling (with a resulting increase in use), and increased use of ultrasound for regional anesthesia. Recently, we have supported growth in cardiovascular surgery by assuming management of these extremely complicated patients in the new Cardiovascular ICU.

Anesthesia has seen solid financial growth and expansion during the past year that I served as acting Chair of the department. Our Anesthesia Residency recently received the ACGME five-year accreditation, the highest level attainable. We are currently in the process of reorganizing and relocating the Arnold Pain Center to an off-campus site, which entails major logistical challenges. New programs, such as the development of echocardiography training and education services, and expansion to the GI suite, have offered the Anesthesia service new ways to connect with other departments within and outside the institution and have fostered overall growth in surgical specialties.

I have encouraged opportunities for interdepartmental integration as Acting Chair. Our patients are the direct beneficiaries but the anesthesia and critical care staff also reap the benefits from a strong, positive relationship with the other specialties. Our departmental productivity has improved, with increases in surgical volume and increases in academic, educational, and administrative responsibilities.

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**B. Funding Information**

1988-1992 NIH

PI Development and testing of a portable oxygen-enricher for inhalation therapy

1990-1993 Optex Company

PI Testing of an intra-arterial blood gas optode

1996-1997 Baxter Edwards

PI Feedback control and hemodynamics

1996-1998 DXTRK

PI Development of a non-invasive blood pressure device

1998-2000 Discovery Labs

PI KL-4 surfactant in ARDS (Multicenter)

1998-2001 Ortho Biotech

PI Use of erythropoietin in the ICU (Multicenter)

1999 ICOS Corp

PI A Phase 2b study to evaluate the safety and efficacy of recombinant platelet activating factor acetylhydrolase (rPAF-AH) for the prevention of acute respiratory distress syndrome in patients with severe sepsis or severe traumatic injuries (Multicenter)

1999-2000 Novartis

PI Multiple dose safety, tolerability, pharmacokinetics, and pharmacodynamics of PMX 622 in patients with severe SIRS and evidence of infection (Multicenter)

1999 Zeneca

PI Therapeutic intervention with propofol versus standard ICU sedation; Control of patients with asthma, seizures, intracranial hypertension, and other disease states requiring mechanical ventilation

1999-2000 Chiron

PI Recombinant tissue factor pathway inhibitor sepsis patients. A multicenter, single blind, placebo controlled, randomized, dose escalation study

1999-2000 Lilly

PI A Phase III study to determine the efficacy and safety for recombinant human activated protein C in severe sepsis (Multicenter)



Alan Lisbon, MD  
2005

DXTEK

PI

Evaluation of Non-Invasive blood pressure device

### C. Report of Current Research Activities

**Multiple Urgent Sepsis Therapies** - A trial investigating outcomes in septic patients using standard therapies

**Epivent** - A trial studying the use of esophageal and pleural pressures to guide therapy in ARDS

### D. Report of Teaching

#### 1. Local contributions

##### a. Medical School courses

1980-        Surgery Course 500M.1b, Surgical Core Clerkship, Harvard Medical School  
Preceptor for 6-12 students/year, 1 week/student

1980-        Respiratory-Surgical-Intensive Care, Harvard Medical School Course  
503M.1. Preceptor for 4-7 medical students/year, 1 month/student

1980-1984   Emergency Medical Care, Harvard Medical School Course 705.J.  
Lecture 2 hrs/year, 50 students

1982-2005   Clinical Seminar II, Course RTH 1414, Northeastern University,  
Lecturer and seminar leader. 12 students/year, 12 hours/year

##### b. Graduate medical courses

1980-        SICU Rounds-Resident Lectures. Daily lectures to fellows, residents and  
medical students in Surgical ICU. 72 hours/year

1982-1996   Instructor, Advanced Trauma Life Support, American College of Surgeons

1992-1994   Instructor, Advanced Cardiac Life Support

1993-        Department of Anesthesia and Critical Care Grand Rounds and  
Visiting Professor Lecture Series organizer for 60-70 attending staff, fellows  
and residents, 52 hours/year

1996-        Instructor, Fundamentals of Critical Care Support (basics of critical care  
support for non-critical care physicians)

Alan Liebon, MD  
1997-

Complications Meeting (Mortality & Morbidity)  
Department of Anesthesia, Critical Care and Pain Medicine, Beth Israel  
Deaconess Medical Center  
Moderator of weekly departmental Q/A meeting. 60-70 attendings, fellows, and  
resident staff, 52 hrs/yr.

c. Local invited presentations

- |      |                                                                                                                                     |
|------|-------------------------------------------------------------------------------------------------------------------------------------|
| 1994 | Withdrawal of Therapy, Grand Rounds, Hebrew Rehabilitation Center for the<br>Aged, Jamaica Plain, MA                                |
| 1999 | Debunking Myths in the ICU, Anesthesia Grand Rounds, Massachusetts<br>General Hospital, Boston, MA                                  |
| 2004 | High Altitude Illness, Brigham and Women's Hospital<br>Anesthesia Grand Rounds, Boston, MA                                          |
| 2008 | Disaster Management: Ethical Aspects of Intensive Care Provision<br>Anesthesia Grand Rounds, Brigham & Women's Hospital, Boston, MA |

d. Continuing medical education courses

- |      |                                                                                                                    |
|------|--------------------------------------------------------------------------------------------------------------------|
| 1991 | Discontinuation of Life Support<br>Harvard Anesthesia Review Course, Boston, MA                                    |
| 1992 | Withdrawal of Life Support<br>Harvard Medical School Anesthesia Review and Update<br>Boston, MA                    |
| 1992 | CPR Not Indicated, Meta-Ethics Conference, Harvard Medical School,<br>Boston, MA                                   |
| 1993 | The Use of Dopamine a Renal Vasodilator, Second Annual Critical Care<br>Symposium, Boston, MA                      |
| 1993 | Recent Advances in Critical Care<br>Harvard Medical School Anesthesia Review and Update<br>Boston, MA              |
| 1994 | Withdrawal of Therapy<br>Harvard Medical School Anesthesia Review and Update<br>Boston, MA                         |
| 1994 | Use of Neuromuscular Blocking Agents in the ICU<br>5 <sup>th</sup> Annual Educational Meeting, New England Chapter |

Alan Liebon, MD  
1997-

Complications Meeting (Mortality & Morbidity)  
Department of Anesthesia, Critical Care and Pain Medicine, Beth Israel  
Deaconess Medical Center  
Moderator of weekly departmental Q/A meeting. 60-70 attendings, fellows, and  
resident staff, 52 hrs/yr.

c. Local invited presentations

- 1994      Withdrawal of Therapy, Grand Rounds, Hebrew Rehabilitation Center for the  
                 Aged, Jamaica Plain, MA
- 1999      Debunking Myths in the ICU, Anesthesia Grand Rounds, Massachusetts  
                 General Hospital, Boston, MA
- 2004      High Altitude Illness, Brigham and Women's Hospital  
                 Anesthesia Grand Rounds, Boston, MA
- 2008      Disaster Management: Ethical Aspects of Intensive Care Provision  
                 Anesthesia Grand Rounds, Brigham & Women's Hospital, Boston, MA

d. Continuing medical education courses

- 1991      Discontinuation of Life Support  
                 Harvard Anesthesia Review Course, Boston, MA
- 1992      Withdrawal of Life Support  
                 Harvard Medical School Anesthesia Review and Update  
                 Boston, MA
- 1992      CFR Not Indicated, Meta-Ethics Conference, Harvard Medical School,  
                 Boston, MA
- 1993      The Use of Dopamine as a Renal Vasodilator, Second Annual Critical Care  
                 Symposium, Boston, MA
- 1993      Recent Advances in Critical Care  
                 Harvard Medical School Anesthesia Review and Update  
                 Boston, MA
- 1994      Withdrawal of Therapy  
                 Harvard Medical School Anesthesia Review and Update  
                 Boston, MA
- 1994      Use of Neuromuscular Blocking Agents in the ICU  
                 5<sup>th</sup> Annual Educational Meeting, New England Chapter

Alan Lisbon, MD

Society of Critical Care Medicine, Worcester, MA

- 1997 Renal Dose Dopamine in the ICU – Does It Work?  
Society of Critical Care Medicine, Controversies in Critical Care  
Boston, MA
- 1998 Debunking Myths in the ICU  
Harvard Medical School Anesthesia Review and Update  
Boston, MA
- 1999 The Pulmonary Artery Catheter in Critical Care, Harvard Respiratory and  
Critical Care Course, Cambridge, MA
- 1999 Ethics in the Intensive Care Unit, Respiratory Care Review Course Beth  
Israel Deaconess Medical Center, Boston, MA
- 2006 Update in Resuscitation and Critical Care, Update in  
Anesthesia, Brewster, MA
- 2006 Ethics of Disaster Management in the ICU, Update in  
Anesthesia, Brewster, MA
- 2006 Catecholamines and splanchnic blood flow  
Harvard Review of Trauma and Critical Care, Boston, MA
- 2007 The IRB – Facilitating your Research, Distinguishing  
yourself as a Clinical Investigator, Cambridge, MA
- 2007 The right vasopressor at the right dose  
Harvard Review of Trauma and Critical Care, Boston, MA
- 2008 Ethical Aspects of Disaster Management  
Harvard Anesthesia Review Course, Boston, MA
- 2009 Sepsis Panel  
Harvard Review of Trauma & Critical Care
- 2010 Ethical Aspects of Disaster Management  
Harvard Anesthesia Review Course, Boston, MA

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e. Advisory and supervisory responsibilities

- 1990-2007 BIDMC Critical Care Fellowship -- Program Director for Anesthesia Critical Care training program for 2 fellows/year including program development, mentoring, and supervision
- 1980-2003 Cardiac Anesthesia Fellows and Residents - Worked closely in operating rooms teaching and supervising cardiac anesthesia fellows and residents
- 1980 - BIDMC Anesthesia Residents -- Including supervision, lectures, teaching at bedside and in OR, mentoring, and preparation for board exams

f. Teaching leadership roles

- 1985 - Surgical Critical Care -- as director of the SICU organized and established the teaching curriculum, lecture series and evaluation tools for fellows, residents, and medical students.
- 1993-2005 Grand Rounds BIDMC Dept of Anesthesia and Critical Care - responsible for organization of grand rounds program for department.
- 1997 - Complications meeting (morbidity & mortality) BIDMC Department of Anesthesia and Critical Care - responsible for leading discussion and analyzing interesting cases and untoward events in department at weekly departmental meeting. Component of our department and hospital QA program.
- 1997-1999 Program Committee, American College of Chest Physicians -- member of committee that organized curriculum and program for annual meeting of ACCP.
- 1995 - Associate Examiner, American Board of Anesthesiology -- serve as oral examiner on a yearly basis since 1995 for national board certification body. Developed questions for written and oral board exams.
- 1996 - Medical Director Respiratory Care Program, Northeastern University curriculum development and teaching of respiratory therapy practitioners.

Alan Lisbon, MD  
g. Trainees

| <u>Year</u> | <u>Fellow</u>          | <u>Current Position</u>                                                                                                                                   |
|-------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1991-1993   | Ewan Cameron, MD       | Attending Anesthesiologist,<br>Lahey Clinic, Burlington, MA<br>Assistant Clinical Professor of Anesthesiology<br>Tufts University School of Medicine      |
| 1993-1994   | Peter Stone, MD        | Consultant in Anaesthesia & Intensive Care Medicine<br>York Hospital, England                                                                             |
| 1993-1994   | Sarah Nelly, MD        | Staff Physician<br>Holmes Regional Medical Center, Melbourne, FL<br>eICU Health First Corporation, Rockledge, FL                                          |
| 1993-1994   | Donna McRitchie, MD    | Surgeon<br>North Shore General Hospital<br>Toronto, Canada                                                                                                |
| 1993-1994   | Bradford Carson, MD    | Assistant Attending Anesthesiologist,<br>Hospital for Special Surgery, Clinical Assistant<br>Professor of Anesthesiology<br>Weill Cornell Medical College |
| 1994-1995   | Nanette Schwann, MD    | Thomas Jefferson University Hospital,<br>Philadelphia, PA                                                                                                 |
| 1995-1996   | Venkat Patla, MD       | Anesthesiologist<br>Inova Fairfax Hospital, Falls Church, VA                                                                                              |
| 1995-1996   | Pankaj Nayyar, MD      | Staff Anesthesiologist<br>Miriam Hospital, Providence RI<br>Instructor in Anesthesia<br>Brown Medical School                                              |
| 1995-1996   | Michael Yaffe, MD, PhD | Howard S. & Linda B. Stern<br>Associate Professor of Biology<br>Center for Cancer Research<br>Massachusetts Institute of Technology<br>Cambridge, MA      |
| 1996-1997   | Linda Yee, MD          | Vancouver, WA                                                                                                                                             |
| 1996-1997   | Mehmood Durrani, MD    | Cardiac Anesthesiologist<br>Havertown Anesthesia Associates<br>Havertown, PA                                                                              |
| 1997-1998   | Jeffrey Kane, MD       | Attending Anesthesiologist<br>Lahey Clinic, Burlington, MA<br>Assistant Clinical Professor of Anesthesiology<br>Tufts University School of Medicine       |
| 1998-1999   | Debra Szeluga, PhD, MD | Medical Director, Post-Anesthesia Recovery Unit<br>Assistant Program Director in Anesthesiology<br>University of Iowa Medical Center, Iowa City           |

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1998-1999 Philip Devine, MD  
 1998-1999 Grace Kim, MD  
 1999-2000 Ata Murat Kaynar, MD  
 1999-2000 Daniel Talmor, MD  
 2000-2001 Ruben Azocar, MD  
 2000-2001 Margaret Hudlin, MD  
 2001-2002 Jian Yu, MD  
 2001-2002 Frank Ramadori, MD  
 2002-2003 Pranay Kanake, MD  
 2003-2004 Abdul Barakat, MD  
 2004-2005 Burak Alptekin, MD  
 2004-2005 Todd Sarge, MD  
 2004-2005 Cathy Dudick, MD  
 2005-2006 Andrew Miller, MD  
 2005-2006 Konstantin Balonov, MD

Associate Professor of Anesthesiology and Critical Care, University of Iowa, College of Medicine  
 Chief, Critical Care Anesthesia  
 Long Island Jewish Medical Center  
 Anesthesiologist  
 Brigham and Women's Hospital, Boston, MA  
 Instructor in Anesthesia, Harvard Medical School  
 Program Director, Anesthesiology Critical Care Fellowship, University of Pittsburgh Medical Center  
 Assistant Professor, University of Pittsburgh, School of Medicine, PA  
 Vice-Chair for Critical Care, Beth Israel Deaconess Medical Center, Boston, MA, Associate Professor of Anesthesia, Harvard Medical School  
 Residency Program Director, Boston Medical Center  
 Assistant Professor, Boston University School of Medical Center, Boston, MA  
 Physician Quality Officer, University of Massachusetts Medical Center, Worcester, MA  
 Assistant Professor, University of Massachusetts Medical School  
 Staff Anesthesiologist, Rouge Valley Centenary Hospital, Toronto, Ontario, Canada  
 Assistant Professor, McGill University Health Centre Montreal, Quebec, Canada  
 Staff Anesthesiologist, Baystate Medical Center Springfield, MA  
 Chief, Department of Anesthesia  
 Director of Surgical ICU  
 Landmark Medical Center, Woonsocket, RI  
 Co-Director of Pain Medicine  
 New Jersey Sport and Spine  
 Program Director, Critical Care Fellowship, Beth Israel Deaconess Medical Center, Boston, MA  
 Instructor in Anesthesia  
 Harvard Medical School  
 Medical Director of Trauma/Surgical ICU, Assistant Director of Trauma, Clinical Assistant Professor of Surgery, UMDNJ-Robert Wood Johnson Medical School  
 Staff Anesthesiologist  
 Brigham & Women's Hospital, Boston, MA  
 Resident in Anesthesia  
 Boston University Medical Center, Boston, MA

Alan Lisbon, MD

2006-2007

Jana Hudcova, MD

Associate Director, Surgical Critical Care  
Labey Clinic, Burlington, MA

Assistant Clinical Professor of Anesthesiology

Tufts University School of Medicine

Staff Anesthesiologist

Beth Israel Deaconess Medical Center, Boston, MA

Instructor in Anaesthesia

Harvard Medical School

Critical Care Fellow

Beth Israel Deaconess Medical Center, Boston, MA

Staff Anesthesiologist, Boston University Medical

Center, Boston, MA

Staff Anesthesiologist, University of Vermont Medical  
Center, Burlington, MA

2006-2007

Achikam Grinberg, MD

2007-2008

Michael Young, MD

2008-2009

Gerardo Rodriguez, MD

2008-2009

Stephen P. Bender, MD



Alan Lisbon, MD

**2. Regional Contributions**

- |      |                                                                                                                                                                        |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1991 | Sepsis in the ICU Patient, Anesthesia Grand Rounds,<br>Baystate Medical Center, Springfield, MA                                                                        |
| 1991 | Postoperative Cardiac Care, Anesthesia Grand Rounds,<br>Baystate Medical Center, Springfield, MA                                                                       |
| 1992 | Withdrawal of Therapy, UMASS Medical<br>Center Grand Rounds, Worcester, MA                                                                                             |
| 1994 | Withdrawal of Therapy, Tufts University<br>Medical School,<br>Department of Anesthesia Grand Rounds,<br>Boston, MA                                                     |
| 1999 | The Surgical ICU Experience: Controlling<br>Costs and Preop Management Strategies<br>Cambridge Health Resources & the New England<br>Educational Institute, Boston, MA |
| 2002 | Two New Drugs for the ICU, Anesthesia<br>Grand Rounds<br>Boston University Medical Center, Boston, MA                                                                  |
| 2002 | High Altitude Illness, Anesthesia Grand<br>Rounds, University of Massachusetts<br>Medical Center, Worcester, MA                                                        |
| 2003 | Pulmonary Artery Catheters are Useful in<br>the Perioperative Period, MA Anesthesia<br>Council on Education<br>Spring Meeting, Boston, MA                              |
| 2008 | High Altitude Illness, 31 <sup>st</sup> Baystate Anesthesia<br>Symposium, Springfield, MA                                                                              |

Alan Lisbon, MD

3. National Contributions

1986 Lecturer

Perioperative management of thyroid disease,  
management of the geriatric patient  
undergoing anesthesia  
University of Kansas  
Kansas City, KS

1993 Lecturer

Recovery of the Cardiac Surgical Patient -  
Shortening the Length of Stay  
American College of Chest Physicians  
Annual Meeting, Orlando, FL

1994 Lecturer

Withdrawal of Therapy, Dartmouth-  
Hitchcock Medical Center,  
Medicine Grand Rounds, Lebanon, NH

1994 Lecturer

The Use of Dopamine in the Intensive Care  
Unit  
American College of Chest Physicians  
Annual Meeting, New Orleans, LA

1994 Lecturer

A History of Computers in Critical Care  
American College of Chest Physicians  
Annual Meeting, New Orleans, LA

1995 Lecturer

Digitalis Belongs in Your Garden, Not in  
Your ICU  
(Treatment of Atrial Fibrillation in the  
Critically Ill)  
American College of Chest Physicians Annual  
Meeting, New York, NY

1997 Discussant

Scientific Session on Nitric Oxide  
American Society of Anesthesiologists  
San Diego, CA

1997 Lecturer

Sedation and Paralysis in the ICU: When is  
Enough, Enough?  
American College of Chest Physicians  
Annual Meeting, New Orleans, LA

Alan Liebon, MD

1997 Lecturer

Integration of Two Large CareVue  
Installations in a Newly Merged  
Organization, Hewlett-Packard CareVue  
Users Group Meeting, Orlando, FL

1999 Lecturer

Year in Review: Critical Care  
American College of Chest Physicians  
Annual Meeting, Chicago, IL  
The Use of Dopamine in the ICU  
ICU Frontiers Conference, Phoenix, AZ

1999 Lecturer

Year in Review: Critical Care Anesthesia  
Society of Critical Care Medicine Annual  
Meeting, Orlando, FL

2000 Lecturer

Critical Care 2000; The Year in Review,  
American Society of Critical Care  
Anesthesiology Meeting,  
San Francisco, CA

2000 Lecturer

Are Cost Containment Activities Research?  
ASA 2000 Cost Containment Panel, ASA Annual  
Meeting, San Francisco, CA

2000 Lecturer

2001 Lecturer

Year in Review - Anesthesia, Society of  
Critical Care Medicine Annual Meeting  
San Francisco, CA

2001 Lecturer

Physiology of Hypotensive Renal Injury  
Society of Critical Care Annual Meeting  
San Francisco, CA

2001 Lecturer

Norepinephrine Improves Outcome in  
Septic Shock, Conundrums in Critical Care  
Vail, CO

2001 Lecturer

Anesthesia Problems in the ICU, American  
College of Chest Physicians Annual Meeting  
Philadelphia, PA

2001 Lecturer

Post-operative Care of the Cardiac Surgical  
Patient, American College of Chest Physicians  
Annual Meeting, Philadelphia, PA

Alan Lisbon, MD

2003 Lecturer

Literature Review: 2002  
Society of Critical Care Medicine  
Annual Meeting, San Antonio, TX

2004 Lecturer

High Altitude Illness, Dartmouth Medical  
School, Hanover, NH

2006 Lecturer

Acute cardiac ischemia; what influences  
outcome?  
American Society of Anesthesia Annual  
Meeting, Chicago, IL

2006 Lecturer

The electronic ICU: does it make a  
difference? American College of Chest  
Physicians Annual Meeting, Salt Lake City, UT

2007 Lecturer

Do rapid response teams make a difference?  
American Society of Anesthesia Annual  
Meeting, San Francisco, CA

#### Leadership Roles

1981 Moderator

Scientific Session on High Frequency  
Ventilation, III World  
Congress on Intensive Care and Critical Care  
Medicine, Washington, D.C.

1988 Invited Expert

United States Congress, Subcommittee on  
Human Resources and Intergovernmental  
Relations - Regulation of midazolam

1995 Moderator

Scientific Session on ARDS-Early  
Interventions  
American College of Chest Physicians, New  
York, NY

1999 Moderator

Scientific Session, American Society of  
Critical Care Anesthesiology, Dallas, TX

2000 Moderator

What's New in Post-operative Care of the  
Cardiac Surgical Patient? Chest 2000  
San Francisco, CA

2004 Moderator

Weaning from Mechanical Ventilation.  
CHEST, ACCP, Annual Meeting  
Seattle, WA

Alan Lisbon, MD

2004 Moderator

ICU Diagnostics and Therapeutics. CHEST,  
ACCP, Annual Meeting, Seattle, WA

2004 Moderator

Proteomics, Genomics and Economics.  
CHEST, ACCP, Annual Meeting, Seattle, WA

2007 Moderator

Central venous catheters, CHEST, ACCP  
Annual Meeting, Chicago, IL

2008 Moderator

Preventing infections with central venous  
lines, CHEST, ACCP Annual Meeting  
Philadelphia, PA

#### 4. International contributions

1995 Lecturer

Clinical Use of Short Acting Beta Blockers  
Seoul National University, Seoul Korea

1995 Lecturer

Acute Respiratory Failure in the Critically Ill  
Adult, World Federation Society of Anesthesiology  
Riga Refresher Course, Riga, Latvia

1995 Lecturer

Clinical Aspects of Renal Protection  
World Federation Society of Anesthesiology  
Riga Refresher Course, Riga, Latvia

1998 Lecturer

Debunking Myths in the ICU.  
XIX World Congress on Diseases of the Chest  
Toronto, Canada

1998 Lecturer

Year in Review: Critical Care  
XIX World Congress on Diseases of the Chest,  
Toronto, Canada

2000 Lecturer

Dopexamine, Dobutamine, and Dopamine  
Increase Splanchnic Perfusion: What is the  
Evidence? Clinical Conundrums in Critical Care  
St. Thomas, United States Virgin Islands

2006 Lecturer

Update in Resuscitation, Review & Update on  
Anesthesia, Peking University, Beijing China

2006 Lecturer

Use of Alpha-2 agonists, Review & Update on  
Anesthesia, Peking University, Beijing China

Alan Liebon, MD

2006 Lecturer

2006 Lecturer

2008 Lecturer

2008 Course Director

2008 Course Director

2009 Course Director

#### **E. Visiting Professorships**

1993 Visiting Professor

1993 Visiting Professor

1994 Visiting Professor

1994 Visiting Professor

1995 Visiting Professor

1998 Visiting Professor

2003 Visiting Professor

Clinical Trials and Tribulations, Royal College  
of Anaesthetists, London, England

Ethics of Disaster Management in the ICU  
Royal College of Anaesthetists, London, England

Ethics of Disaster Management, 14<sup>th</sup> World Congress of  
Anaesthesiologists, Cape Town, South Africa

Practicum in Critical Care, Harvard Medical School Dut-  
Center, Dubai, UAE

Lectures: Newer drugs for sedation  
New concepts in resuscitation  
Rapid response teams - Do they make a  
difference?

HMS, DC, Dubai UAE

Ethics in research

Lecture: Ethics in research: the role of the IRB

2<sup>nd</sup> Harvard and Peking University  
Anesthesia Review Course, Beijing, China

Oxford University, Oxford, England

Australian and New Zealand College of  
Anaesthetists

WFSA, St. Petersburg, Russia

Dartmouth Hitchcock Medical Center,  
Department of Medicine, Lebanon, NH

Hong Kong College of Anesthesiology  
Pamela Youde Nethersole Eastern Hospital  
Hong Kong

St. Luke's-Roosevelt Hospital  
New York, NY

Ryder Trauma Center, Jackson  
Memorial Hospital, Miami, Florida

Alan Lisbon, MD

2004 Visiting Professor

Weill Medical College, Cornell University  
New York, NY

2005 Visiting Professor

New York University School of Medicine  
New York, NY

**F. Report of Clinical Activities**

1980 - 2003 Cardio Surgical Team - Provision of anesthetics to patients undergoing cardiac surgery, one day/week

1980 - Director and member, Surgical ICU Team - Care of patients in trauma, surgical and cardiovascular ICUs, two weeks/month

1980 - General operating room staff - Anesthetic care of patients undergoing surgical procedures four days/month

### PART III: BIBLIOGRAPHY

#### Original Articles:

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2. Stein JM, Lisbon A. Pulmonary hemorrhage from pulmonary artery catheterization treated with endobronchial intubation. *Anesthesiology* 1981; 55:698-699.
3. duMoulin GC, Paterson DG, Hedley-Whyte J, Lisbon A. Aspiration of gastric bacteria in antacid treated patient: a frequent cause of post-operative colonization of the airway. *Lancet* 1982; 1:242-245.
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Alan Lisbon, MD

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#### Reviews, Chapters, and Editorials:

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Alan Lisbon, MD

3. Lisbon A. The role of the ICU. In: Eichhorn JH, editor. Improving Anesthesia Outcome. Problems in Anesthesia. Philadelphia: Lippincott; 1991. Vol.5, No.2, p. 258-264.
4. Lisbon A, Vander Salm TJ, Visner MS. Management of the postoperative cardiac surgical patient. In: Rippe J, Irwin R, Fink M, Cerro F, editors. Intensive Care Medicine, 3<sup>rd</sup> ed. Boston: Little, Brown and Company; 1995. p. 1764-1781.
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11. Lisbon A, Vander Salm TJ, Visner-MX. Management of the Postoperative Cardiac Surgical Patient. In: Irwin RS, Cerro FB, Rippe JM, editors. Irwin and Rippe's Intensive Care Medicine. Philadelphia: Lippincott-Raven; 1999. P.1828-1844.
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23. Sarge TD, Lisbon A. Perioperative Management of the General Thoracic Surgery Patient. In: Newman M, Fleisher LA, Fink MP. *Perioperative Medicine: Managing for Outcome*. Saunders Elsevier, 2008; p. 503-511.
24. Dudick C, Lisbon A. Management of the Post-operative Cardiac Surgical Patient. In: Irwin RS, Rippe JM, editors. *Irwin and Rippe's Intensive Care Medicine*. 6<sup>th</sup> edition. Philadelphia: Lippincott, Williams and Wilkins; 2008; p. 1740 – 1754.
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6. Irwin RS, Rippe JM, Lisbon A, Heard SO, Procedures and Techniques in Intensive Care Medicine. 5<sup>th</sup> edition. Philadelphia, Lippincott, Williams and Wilkins( In press)

#### Clinical Communications:

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2. Azocar RJ, Talmor D, Kaynar AM, Lisbon A. Persistent hypoxemia after diagnosis and treatment of pulmonary thromboembolism. J Clin Anesth 2001; 13: 588-91.
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**Media Appearances**

- |      |                       |                                                                                            |
|------|-----------------------|--------------------------------------------------------------------------------------------|
| 1992 | Television guest      | McNeil Lehrer Report, "Condition Critical: The American Health Care Forum", PBS television |
| 2004 | Television commentary | 48 Hours Investigates, CBS Television                                                      |

**Newsletters**

1. Lisbon A, Hess P. Guidelines in Research. Society of Obstetric Anesthesia and Gerontology Newsletter, Spring 2004.
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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, Deceased,

Plaintiff,

Versus

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Laura Bilancione,  
R.N.; Coastal Anesthesia Associates; and  
Christine Thompson, MD,  
Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-10-03054

DEFENDANT CHRISTINE  
THOMPSON, MD'S ANSWER

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

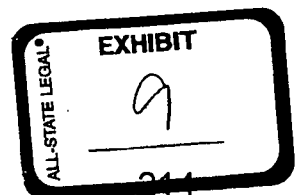
2013 JUL -3 PM 3:01

FILED

TO: CHAD A. MCGOWAN, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Christine Thompson, MD (hereinafter "this Defendant"), by and through her undersigned attorneys, hereby responds to the allegations in the Plaintiff's Complaint subject to all affirmative defenses and motions as follows:

1. This Defendant denies each and every allegation of the Plaintiff's Complaint which is not specifically admitted herein.
2. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 1, 2, 3 and 4 of the Plaintiff's Complaint, and therefore denies the same.
3. In response to the allegations contained in Paragraph 5 of the Plaintiff's Complaint, this Defendant admits only that she is a physician licensed in the state of South Carolina and that she is a resident of Charleston County, SC. This Defendant denies all remaining and inconsistent allegations.
4. In response to the allegations contained in Paragraphs 6, 7, and 8 of the Plaintiff's Complaint, this Defendant craves reference to the medical records of Martha Preston to provide a complete and accurate history of her treatment and deny all allegations inconsistent therewith.



5. Paragraphs 9, 10, and 11 of the Plaintiff's Complaint contain allegations that are not directed at this Defendant and state conclusions of law. Therefore, no response is required from this Defendant. To the extent a response is required, this Defendant craves reference to the cited policies and procedures as well as Martha Preston's medical records and denies all inconsistent allegations contained in Paragraphs 9, 10, and 11 of the Plaintiff's Complaint.

6. This Defendant denies the allegations contained in Paragraphs 12 and 13 of the Plaintiff's Complaint.

7. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 14, 15 and 16 of the Plaintiff's Complaint, and therefore denies the same.

8. This Defendant denies the allegations contained in Paragraphs 17 and 18 of the Plaintiff's Complaint.

9. This Defendant denies the allegations contained in Paragraph 19 of the Plaintiff's Complaint. Subparagraphs a - f of Paragraph 19 of the Plaintiff's Complaint are not directed at this Defendant and contain conclusions of law and, therefore, no response is required from this Defendant. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs a - f of the Paragraph 19 of the Plaintiff's Complaint. Subparagraphs g - k of Paragraph 19 of the Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs g - k of the Paragraph 19 of the Plaintiff's Complaint.

**AS TO THE FIRST CASE OF ACTION**  
**(Survival Action)**

10. In response to Paragraph 20 of the Plaintiff's Complaint, this Defendant re-asserts and re-alleges her responses to Paragraphs 1 - 19 of the Plaintiff's Complaint as if fully restated herein.

11. Paragraph 21 of the Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

**AS TO THE SECOND CASE OF ACTION**  
**(Wrongful Death)**

12. In response to Paragraph 22 of the Plaintiff's Complaint, this Defendant re-asserts and re-alleges her responses to Paragraphs 1 - 21 of the Plaintiff's Complaint as if fully restated herein.

13. Paragraph 23 of the Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

**AS TO THE THIRD CASE OF ACTION**  
**(Loss of Consortium)**

14. In response to Paragraph 24 of the Plaintiff's Complaint, this Defendant re-asserts and re-alleges her responses to Paragraphs 1 - 23 of the Plaintiff's Complaint as if fully restated herein.

15. Paragraph 25 of the Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is



required, this Defendant denies the allegations contained in Paragraph 25 of the Plaintiff's Complaint.

16. This Defendant denies the WHEREFORE clause of the Plaintiff's Complaint such being the remaining allegations contained in the Plaintiff's Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(No Deviation from the Standard of Care)**

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

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(No Proximate Cause)**

18. That, even if this Defendant was negligent, as alleged in the Plaintiff's Complaint, which is specifically denied, the negligence of this Defendant is not the direct and proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

19. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's 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,**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

20. This Defendant would plead the requirements for an award of punitive damages as set forth by the Supreme Court of the United States in the case of State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003) as defenses to this claim and would specifically assert that they are entitled to summary judgment on punitive damages and if denied to bifurcated trial.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Noneconomic Damage Awards)**

21. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina 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 Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Limitation of Punitives)**

22. Any punitive damages awarded in this case would be subject to the limitations described in S.C. Code §15-32-530.

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

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

WHEREFORE, having fully answered the Plaintiffs Complaint, and having asserted these affirmative defenses, the Defendant, Christine Thompson, MD prays that the Plaintiff's Complaint be dismissed with prejudice and that she be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

HOOD LAW FIRM, LLC  
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Robert H. Hood (SC #2599)  
James B. Hood (SC #70212)  
Jeffrey M. Bogdan (SC #76354)

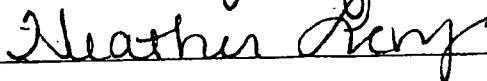
Attorneys for the Defendant  
Christine Thompson, MD

7/2, 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 3 day of July, 2013.



IN THE COURT OF COMMON PLEAS

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4. In response to the allegations contained in Paragraphs 6, 7, and 8 of Plaintiff's Complaint, this Defendant craves reference to the medical records of Martha Preston to provide a complete and accurate history of her treatment and deny all allegations inconsistent therewith.

5. Paragraphs 9, 10, and 11 of Plaintiff's Complaint contain allegations that are not directed at this Defendant and state conclusions of law. Therefore, no response is required from this Defendant. To the extent a response is required, this Defendant craves reference to the cited policies and procedures as well as Martha Preston's medical records and denies all inconsistent allegations contained in Paragraphs 9, 10, and 11 of Plaintiff's Complaint.

6. This Defendant denies the allegations contained in Paragraphs 12 and 13 of Plaintiff's Complaint.

7. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 14, 15 and 16 of Plaintiff's Complaint, and therefore denies the same.

8. This Defendant denies the allegations contained in Paragraphs 17 and 18 of Plaintiff's Complaint.

9. This Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint. Subparagraphs a - f of Paragraph 19 of Plaintiff's Complaint are not directed at this Defendant and contain conclusions of law and, therefore, no response is required from this Defendant. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs a - f of Paragraph 19 of Plaintiff's Complaint. Subparagraphs g - k of Paragraph 19 of Plaintiff's Complaint and the unnumbered sentence appearing after subparagraph k of

Paragraph 19 of Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs g - k of Paragraph 19 of Plaintiff's Complaint and the unnumbered sentence appearing after subparagraph k of Paragraph 19 of Plaintiff's Complaint.

**AS TO THE FIRST CASE OF ACTION**  
**(Survival Action)**

10. In response to Paragraph 20 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 - 19 of Plaintiff's Complaint as if fully restated herein.

11. Paragraph 21 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

**AS TO THE SECOND CASE OF ACTION**  
**(Wrongful Death)**

12. In response to Paragraph 22 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 - 21 of Plaintiff's Complaint as if fully restated herein.

13. Paragraph 23 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.

**AS TO THE THIRD CASE OF ACTION**

**(Loss of Consortium)**

14. In response to Paragraph 24 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 – 23 of Plaintiff's Complaint as if fully restated herein.

15. Paragraph 25 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint.

16. This Defendant denies the WHEREFORE clause of Plaintiff's Complaint such being the remaining allegations contained in Plaintiff's Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**

**THIS DEFENDANT ALLEGES:**

**(No Deviation from the Standard of Care)**

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

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**

**THIS DEFENDANT ALLEGES:**

**(No Proximate Cause)**

18. That, even if this Defendant was negligent, as alleged in Plaintiff's Complaint, which is specifically denied, the negligence of this Defendant is not the direct and proximate cause of any injury alleged by Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by Plaintiff.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

19. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's 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.**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

20. This Defendant would plead the requirements for an award of punitive damages as set forth by the Supreme Court of the United States in the case of State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003) as defenses to this claim and would specifically assert that they are entitled to summary judgment on punitive damages and if denied to bifurcated trial.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(Noneconomic Damage Awards)**

21. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina 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 Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.



**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(Limitation of alleged Punitive Damages)**

22. Any punitive damages awarded in this case would be subject to the limitations described in S.C. Code §15-32-530.

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

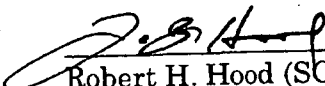
23. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Complaint, and having asserted these affirmative defenses, the Defendant, Coastal Anesthesia Associates, LLC<sup>3</sup>, prays that Plaintiff's Complaint be dismissed with prejudice and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

---

<sup>3</sup> Improperly identified as "Coastal Anesthesia Associates."

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)  
A. Walker Barnes (SC # 78485)

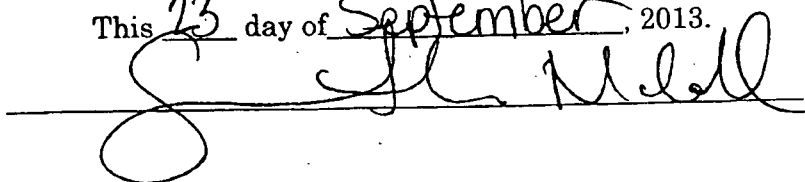
Attorneys for Defendant  
Coastal Anesthesia Associates, LLC<sup>4</sup>

9/27, 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 23 day of September, 2013.



<sup>4</sup> Improperly identified as "Coastal Anesthesia Associates."

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2013-CP-10-3054

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

v.

Surgical Care Affiliates, LLC, Charleston  
Surgery Center, LP, Laura Bilancione, RN,  
Coastal Anesthesia Associates, and Christine  
Thompson, MD,

Defendants.

**ORDER APPROVING SETTLEMENT**

FILED  
2013 NOV -4 AM 9:59  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter comes before the Court on the Petition of Willie Preston, Personal Representative of the Estate of Martha Preston, deceased ("Petitioner"). Willie Preston, both individually and as Personal Representative, caused a wrongful death action (negligence) and survival action to be filed against the above-named Defendants in the Charleston County Court of Common Pleas, under Civil Action No. 2013-CP-10-3054, as a result of injuries Martha Preston sustained while being treated by the Defendants. Petitioner seeks to have this Court approve the settlement he has reached with Defendants Surgical Care Affiliates, LLC, Charleston Surgery Center, LP, and Laura Bilancione, RN ("Settling Defendants"). Settling Defendants deny liability of any kind or nature. Petitioner represents that he is Martha Preston's husband.

Settling Defendants have offered to pay the sum of One Million and no/100 Dollars (\$1,000,000.00) to the Petitioner to resolve any and all claims.

Of the total One Million and no/100 Dollars (\$1,000,000.00), the Petitioner has agreed to pay an attorney's fee in the amount of Four Hundred Thousand and no/100 Dollars (\$400,000.00), representing forty percent (40%) of the total sum, plus costs of litigation in the



amount of Eleven Thousand Four Hundred Twenty-Eight and 52/100 Dollars (\$11,428.52). All sums set forth herein constitute damages on account of personal injuries arising from an occurrence within the meaning of § 104(a)(2) of the Internal Revenue Code of 1986, as amended. Petitioner seeks to allocate the proceeds as follows: thirty-five percent (35%) to the loss of consortium claim, fifty-five percent (55%) to the wrongful death claim, and ten percent (10%) to the survival claim.

This settlement is only as to the Settling Defendants, and is not a settlement or release applicable to any other potentially liable party.

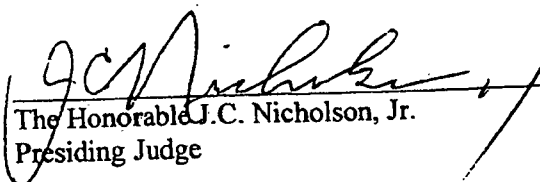
Upon full consideration of this matter, it appears to the Court that the settlement proposals outlined hereinabove and in the Petition to Approve Settlement are fair and just and in the best interests of the parties.

IT IS ORDERED, ADJUDGED AND DECREED that the settlement proposal set forth hereinabove is approved.

IT IS ORDERED, ADJUDGED AND DECREED that upon approval of this settlement, that this case is dismissed with prejudice against the Settling Defendants, Surgical Care Affiliates, LLC, Charleston Surgery Center, LP, and Laura Bilancione, RN, only.

Finally, the Court authorizes the Petitioner to execute an appropriate release and to dismiss any action against the Settling Defendants, with prejudice.

AND IT IS SO ORDERED.

  
The Honorable J.C. Nicholson, Jr.  
Presiding Judge

Charleston, South Carolina  
NOVEMBER 4, 2013

STATE OF SOUTH CAROLINA )

COUNTY OF Charleston )

Willie Preston, individually and as PR of the  
Estate of Martha Preston, deceased

Plaintiff, )

vs. )

Surgical Center Addilates, LLC, Charleston  
Surigical LP, Laura Bilancione, RN Coastal  
Anesthesia Associates; and Christine  
Thompson,

Defendant. )

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ JUDICIAL CIRCUIT

CASE NO.: 13-CP-10-3054

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

Chad McGowan, Bar No. 9943

Address:

1539 Health Care Drive, Rock Hill, SC 29732

Phone: 803-327-7800 Fax 803-324-1483

E-mail: cmcgowan@mcgowanhood.com Other: \_\_\_\_\_

Defendant's Attorney:

\_\_\_\_\_, Bar No. \_\_\_\_\_

Address:

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_ 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: \_\_\_\_\_

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

9/24/13

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: \_\_\_\_\_

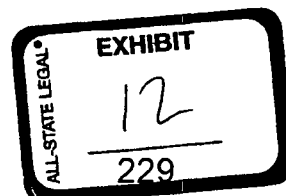
JUDGE'S SECTION

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

☐ Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_



**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$ \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

Defendants. )

IN THE COURT OF COMMON PLEAS

C. A. No: 13-CP- 10-03054

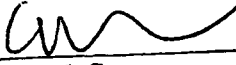
APPLICATION FOR DEFAULT  
JUDGEMENT AND REQUEST  
FOR DAMAGE HEARING

FILED  
2013 SEP 26 PM 2:35  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

The Plaintiff, through his undersigned attorney, applies to the Court for a default judgment as to liability against Defendant Coastal Anesthesia Associates ("Coastal Anesthesia") pursuant to Rule 55 of the South Carolina Rules of Civil Procedure and additionally requests a hearing to determine and establish the amount of damages to which Plaintiff is entitled.

Plaintiff Willie Preston, individually and as the personal representative of the Estate of Martha Preston, filed a Summons and Complaint against Defendant Coastal Anesthesia on May 24, 2013. Counsel for Plaintiff served a copy of the filed Summons and Complaint on Defendant Coastal Anesthesia's registered agent on July 8, 2013. See July 8, 2013 Certified Mail Receipt and Address of Registered Agent, attached as Exhibit A. Defendant Coastal Anesthesia failed to answer, make an appearance, or otherwise respond to Plaintiff's Complaint within thirty (30) days of service, as required by Rule 12(a) of the South Carolina Rules of Civil Procedure. See Affidavit of Chad McGowan, attached as Exhibit B.

For these reasons, Plaintiff requests that the Court enter grants Plaintiff Default Judgment as to liability against the Defendant Costal Anesthesia and set a hearing to determine the amount of damages.

  
Chad A. McGowan  
Ashley Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

John Hughes Cooper  
1476 Ben Sawyer Blvd, Suite 7  
Mt. Pleasant, SC 29464  
843-883-9099  
843-883-9335 (Fax)

Rock Hill, South Carolina  
September 24, 2013



# SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Coastal Anesthesia Associates LLC  
Registered Agent: Randall Kerns  
2690 Lake Park Drive  
N. Charleston, SC 29406

2. Article Number

(Transfer from service label)

7011 2970 0001 7071 6786

PS Form 3811, February 2004

# COMPLETE THIS SECTION ON DELIVERY

A. Signature

Jody Hawkins

☒ Agent

☐ Addressee

B. Received by (Printed Name)

Jody Hawkins

C. Date of Delivery

7-8-13

D. Is delivery address different from item 1?

☐ Yes

☐ No

If YES, enter delivery address below:

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

# U.S. Postal Service CERTIFIED MAIL RECEIPT

(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

# OFFICIAL USE

Postage

\$ 7.52

Certified Fee

3.10

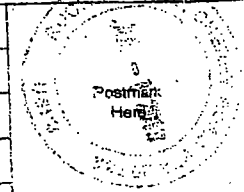
Return Receipt Fee  
(Endorsement Required)

2.55

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees

\$ 8.17



Sent To

Coastal Anesthesia, EA: Randall Kerns

Street, Apt. No.,

or P.O. Box No. 2690 Lake Park Dr

City, State, ZIP+4

N. Charleston, SC 29406

PS Form 3811, AUGUST 2004

FILED  
2013 JUL 29 PM 2:07  
JULIE J ARMSTRONG  
CLERK OF COURT



STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

Defendants. )

IN THE COURT OF COMMON PLEAS

C. A. No: 13-CP- 10-03054

**AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR DEFAULT  
JUDGEMENT AND REQUEST  
FOR DAMAGE HEARING**

I, Chad McGowan being duly sworn, depose and state as follows:

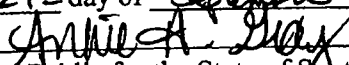
1. My name is Chad McGowan and I am over eighteen (18) years of age. I make this affidavit on personal knowledge.
2. Willie Preston retained our firm to represent himself and the estate of Martha Preston in a lawsuit against certain defendants, including Coastal Anesthesia Associates, LLC.
3. Our firm filed a Summons and Complaint against Defendant Coastal Anesthesia Associates, LLC on May 24, 2013.
4. Our firm served a copy of the filed Summons and Complaint on Coastal Anesthesia Associates, LLC on July 8, 2013



5. Attached as Exhibit A to this affidavit is a true copy of the return receipt we received showing that we served Costal Anesthesia Associates, LLC's registered agent Randall E. Kerns with the filed Summons and Complaint on July 8, 2013.
6. Thirty days have passed since service, and Coastal Anesthesia Associates, LLC has not answered, made an appearance, or otherwise responded to Plaintiff's Complaint.

FURTHER THE AFFIANT SAYETH NOT.

  
Chad McGowan

Subscribed to and sworn before me  
this 24<sup>th</sup> day of September, 2013  
  
Notary Public for the State of South Carolina

My Commission Expires:

|                                                                                                    |
|----------------------------------------------------------------------------------------------------|
| ANNIE H. GRAY<br>Notary Public, State of South Carolina<br>My Commission Expires November 29, 2016 |
|----------------------------------------------------------------------------------------------------|

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)

S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Ashley White Creech  
Ruskin C. Foster  
Lara Pettiss Harrill



Whitney Harrison

Patrick M. Killen

William A. McKinnon (SC,DC)

Daniel "Ernie" Peagler

Robert V. Phillips

Seth Rose

James Stephen Welch\* (SC,OK)

Joseph G. Wright, III\*  
Of Counsel\*

Writer's Email: [ahutchins@mcgowanhood.com](mailto:ahutchins@mcgowanhood.com)

September 24, 2013

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401-2258

**RE: Willie Preston, individually and as PR of the Estate of Martha Preston,  
deceased v. Surgical Center Affiliates, LLC, Charleston Surgical LP, Laura  
Bilancione, RN, Coastal Anesthesia Associates; and Christine Thompson,  
Case No. 13-CP-10-3054**

Dear Ms. Armstrong:

Please find enclosed an original and copy of Application for Default Judgment and Request Hearing in the above referenced case. Please file the original and return the filed copy to me in the enclosed self-addressed stamped envelope.

Please contact me should you have any questions.

Sincerely,

Annie Hutchins Gray  
Paralegal

/ahg  
enclosures

1539 Health Care Drive, Rock Hill, SC 29732 · Tel: 803-327-7800 · Fax: 803-324-1483  
Rock Hill · Columbia · Anderson · Sumter  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

Defendants. )

IN THE COURT OF COMMON PLEAS

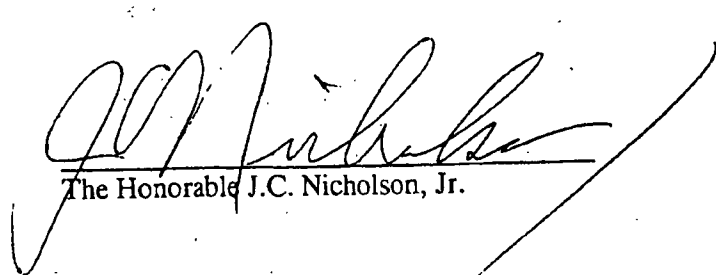
C. A. No: 13-CP- 10-03054

ORDER ENTERING DEFAULT  
JUDGEMENT AGAINST  
COASTAL ANESTHESIA  
ASSOCIATES

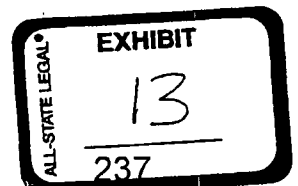
FILED  
2013 NOV 25 PM 3:41  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

This matter is before the Court on Plaintiff's Motion for Entry of Default Judgment. Summons and Complaint against Coastal Anesthesia Associates was filed by Plaintiff on May 24, 2013. Counsel for Plaintiff served a copy of the filed Summons and Complaint on Defendant Coastal Anesthesia's registered agent on July 8, 2013.

Defendant Coastal Anesthesia Associates failed to answer, make an appearance, or otherwise respond to Plaintiff's Complaint within thirty (30) days of service. Pursuant to Rule 55, SCRPC, Plaintiff is entitled to a Judgment by Default. The Court therefore ORDERS that Plaintiff be granted judgment by default on liability against Defendant Coastal Anesthesia Associates.

  
The Honorable J.C. Nicholson, Jr.

11/21, 2013



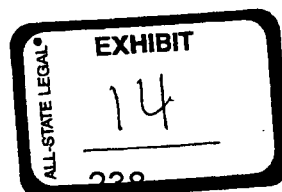
STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF CHARLESTON )  
Willie Preston, individually and as the Personal ) C/A No. 2013-CP-10-03054  
Representative of the Estate of Martha Preston, )  
Deceased, )  
 )  
Plaintiff, )  
 )

**AFFIDAVIT OF  
CHRISTINE THOMPSON, M.D.**

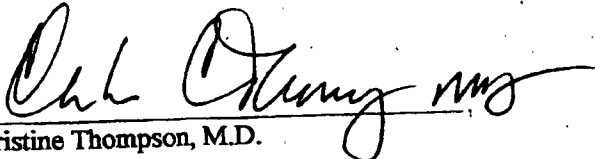
Versus )  
 )  
Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P.; Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; and Christine )  
Thompson, MD, ))  
 )  
Defendants. )

PERSONALLY APPEARED BEFORE ME Christine Thompson, M.D., who after being sworn, states as follows:

1. My name is Christine Thompson, M.D.
2. I am over the age of eighteen (18) and am competent to make the following statement.
3. I am a physician licensed to practice in the state of South Carolina.
4. I practice medicine and have an independent contractor relationship with Coastal Anesthesia Associates, LLC ("Coastal") which has offices located in North Charleston, South Carolina.
5. I have examined and reviewed the allegations made in the Complaint that was filed on May 24, 2013 by Plaintiff in the above-referenced case.
6. I provided medical care and treatment to Martha E. Preston in April of 2012.
7. I had an independent contractor relationship with Coastal during my care and treatment of Martha E. Preston in April of 2012.
8. At all times during my care and treatment of Martha E. Preston, I possessed and exercised the requisite amount of medical training, competency and skill ordinarily and customarily possessed and exercised by physicians under similar circumstances.
9. At all times during my care and treatment of Martha E. Preston, I acted in full compliance with the prevailing and accepted standards of care.
10. I deny that I deviated from the prevailing and accepted standards of care at any time during my care and treatment of Martha E. Preston.
11. I deny that any of the medical care and treatment that I provided to Martha E. Preston was inappropriate.
12. I deny that I was negligent in any way during my care and treatment of Martha E. Preston.
13. I further deny that any of the medical care or treatment that I provided to Martha E. Preston was the direct and proximate cause of any of the injuries alleged by Plaintiff in the Complaint.



14. I deny any liability to Plaintiff in the above-referenced case.  
FURTHER AFFIANT SAYETH NOT!

  
Christine Thompson, M.D.

SWORN TO AND SUBSCRIBED before me  
this 4TH day of DECEMBER, 2013

Clarence A. James 3/21/2022

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES:

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

C. A. No: 13-CP- 10-03054

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC,  
Charleston Surgical Center, L.P;  
Laura Bilancione, R.N.;  
Coastal Anesthesia Associates;  
and Christine Thompson, M.D. )

Defendants. )

PLAINTIFF'S MEMORANDUM  
OF LAW IN OPPOSITION TO  
DEFENDANT COASTAL  
ANESTHESIA ASSOCIATES, LLC'S  
MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION,  
OR IN THE ALTERNATIVE, TO SET  
ASIDE ENTRY OF DEFAULT

BY

JULIE L. ARMSTRONG  
CLERK OF COURT

2013 DEC 20 PM 1:00

FILED

Plaintiff Willie Preston, individually and as the Personal Representative of the Estate of Martha Preston, through his attorney, respectfully submits Plaintiff's Memorandum of Law in Opposition to Defendant Coastal Anesthesia Associates, LLC's ("Coastal") Motion to Dismiss for Lack of Subject Matter Jurisdiction, or in the Alternative, to Set Aside Entry of Default.

### INTRODUCTION

Plaintiff pursuant to Rule 4 of the South Carolina Rules of Civil Procedure (SCRPC) served his Summons and Complaint on Defendant Coastal. Coastal failed to answer in a timely fashion and in its late Answer did not allege insufficiency of service of process. In an effort to remedy its failure to contest sufficiency of process, thereby waiving such an objection, Coastal alleges for the first time in its Motion to Dismiss for Lack of Subject Matter Jurisdiction there was improper service of Plaintiff's Notice of Intent to File Suit and Summons and moved in the Alternative to Set aside Entry of Default.



Neither improper service nor compliance with South Carolina's Notice of Intent statute affects this Court's subject matter jurisdiction. Further, any alleged non-compliance with South Carolina's Notice of Intent Statute has no bearing on Coastal's failure to respond timely to Plaintiff's Summons and Complaint. Because Coastal waived its Rule 12 defenses based on lack of improper service, it is prohibited from using this defense as grounds for dismissal or to set aside entry of default. Accordingly, this Court should deny Defendant's Motion and Enter Default Judgment against Coastal and in enter judgment favor of Plaintiff.

### **FACTS**

Plaintiff Willie Preston filed a Notice of Intent to File suit against Surgical Care Affiliates, LLC; Charleston Surgery Center, L.P.; Nurse Doe; ABC Anesthesia Group; and Christine Thompson, MD on November 9, 2012. *See* Notice of Intent to File Suit, attached as **Ex. A**. On April 1, 2013, the parties held a pre-suit mediation. In that mediation, Attorney Jamie Hood appeared on behalf of Christine Thompson, MD. Plaintiff believed Mr. Hood also appeared on behalf of Coastal Anesthesia Associates, as he later identified ABC Anesthesia Group as Coastal, and no one at mediation indicated that Coastal was not present. *See* Affidavit of Chad McGowan, attached as **Ex. B**.

After an unsuccessful pre-suit mediation, Mr. Hood declined to accept service on behalf of Coastal. **Ex. B**. Accordingly, on May 24, 2013, Plaintiff filed a Summons and Complaint against all Defendants, and served Coastal's Registered Agent, Randall Kerns at the address stated on the South Carolina Secretary of State's website. *See* Summons and Complaint attached as **Exhibit C**; Registered Agent Information attached as **Exhibit D**; and Proof of Service, attached as **Exhibit E**. Thirty-days passed without Coastal answering or otherwise appearing in the case. The Parties participated in mediation on September 23, 2014. During mediation, Joe Costi, an

insurance adjuster for the malpractice carrier for Defendant Charleston Surgical Center called Chad McGowan, Plaintiff's counsel, and stated that Coastal was in default. **Ex. B.** Plaintiff subsequently filed an Application for Default, which was sent on September 24, 2013, and filed by the Clerk of Court on September 26, 2013. See Public Records Index attached as **Exhibit F.** Mr. Hood apparently filed an Answer on Coastal's behalf on September 23, 2013, but Plaintiff did not receive the Answer and was not aware it had been sent until September 27, 2013. See **Ex. B** and Coastal's Answer attached as **Exhibit G.** In its Answer, Coastal did not allege that it had not been properly served with Plaintiff's Complaint.

### **ARGUMENT**

#### **1. Any Alleged Failure to Comply with South Carolina Code § 15-79-125 Does Not Affect This Court's Subject Matter Jurisdiction and Is Not Properly Before This Court on a Motion to Set Aside Entry of Default**

Coastal argues this Court lacks subject matter jurisdiction over the Complaint because Plaintiff failed to serve Coastal with a Notice of Intent to File Suit and because Coastal did not participate in the Notice of Intent Process. Subject matter jurisdiction is "the power of a court to hear and determine cases of the general class to which the proceedings in question belong. *Dove v. GoldKist, Inc.*, 314 S.C. 234, 442 S.E.2d 598 (1994) (internal citation omitted). Tort suits are within the circuit court's jurisdiction. See *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). Because Plaintiff's Complaint, on its face, alleges a tort, as required under the statute, it is not subject to dismissal for lack of subject matter jurisdiction. *Id.*

In *Ross v. Waccamaw Community Hospital*, 404 S.C. 56, 744 S.E.2d 547 (2013), the South Carolina Supreme Court, noted that the pre-suit notice of intent requirements of S.C. Code § 15-79-125 were "not intended to place limitations on the circuit court's subject matter jurisdiction. Indeed, the plain language subsection (D) refutes such an interpretation, as it

unambiguously acknowledges the circuit court's jurisdiction to enforce that section's provisions without limitation. . .” The *Ross* court also noted that “statutes in derogation of the common law are to be strictly construed. Under this rule, a statute restricting the common law will not be extended beyond the clear intent of the legislature. Statutes subject to this rule include those which limit a claimant’s right to bring suit.” *Id.* (internal citations and quotations omitted) (emphasis added). Had the legislature intended dismissal for lack of subject matter jurisdiction to be the remedy for failure to comply with the requirements of S.C. Code § 15-79-125, it could have expressly provided this remedy, but failed to do so. Accordingly, Coastal’s argument that Plaintiff failed to comply with the Notice of Intent Process is not properly before the Court. Rather, it is an improper attempt to argue the merits of the underlying lawsuit after the entry of default.

However, any alleged deficiencies in compliance with the Notice of Intent statute are harmless error as Coastal had an opportunity to meaningfully participate in pre-suit mediation. Plaintiff filed its Notice of Intent on November 9, 2012, which named all Defendants, including “ABC Anesthesia Group.” **Ex. A.** On April 1, 2013, the parties participated in a pre-suit mediation with Tom Wills serving as mediator. Both Coastal and Dr. Thompson’s attorney from the Hood Law Firm participated by telephone. **Ex. B.** At no point in the mediation did anyone state that Coastal was not present or represented. **Ex. B.** Subsequent to the unsuccessful mediation, Jamie Hood, from the Hood Law Firm identified ABC Anesthesia Group as Coastal, but declined to accept service of the Summons and Complaint on Coastal’s behalf. **Ex. B.** Mr. Hood, however, did prepare and file the Answer filed by Coastal.

## **2. Coastal Has Waived Any Arguments that It was Not Properly Served**

Coastal also argues that this Court lacks Subject Matter Jurisdiction to hear Plaintiff's claims because it was not served properly with Plaintiff's Summons and Complaint. Def.'s Mot. to Dismiss ¶ 1, ¶ 3. Coastal is erroneously melding an argument of service into one of subject matter jurisdiction. Coastal waived any objections to improper service by failing to raise these objections in its Answer to Plaintiff's Complaint or in a timely motion made pursuant to Rule 12, SCRPC. Furthermore, Plaintiff appropriately served the Summons and Complaint on Coastal.

Coastal's objections to service are untimely and procedurally improper. Coastal filed an Answer to Plaintiff's Complaint on September 23, 2013. Coastal responded to every paragraph of the Complaint and asserted several affirmative defenses but did not assert a defense or objection based on alleged improper service. *Ex. G.* Additionally, Coastal did not file a motion to dismiss based on improper service prior to answering the Complaint. *See* Rule 12(b), SCRPC (permitting pre-answer motion asserting various defenses). For an improper service defense and several other defenses that may be raised in a pre-answer motion, failure to raise the defense in a pre-answer motion or in the answer results in waiver. Rule 12(h)(1), SCRPC. As a result, Coastal has waived any objection to the service it has received in this case. *See Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993) (concluding defendants "waived improper service as a defense to this action by their failure to raise the issue in their answers"); *Unisun Insurance v. Hawkins*, 342 S.C. 537, 541 S.E.2d 559, 561 (Ct. App. 2000).

The fact that Coastal has waived its ability to make a motion to dismiss pursuant to Rule 12(b), SCRPC, is perhaps why it frames its motion as one to Dismiss for Lack of Subject Matter Jurisdiction, which can be contested at any point in litigation. However, even if the Court finds that Plaintiff failed to properly serve Coastal with the Notice of Intent or Summons and

Complaint, improper service does not affect this Court's Subject Matter Jurisdiction. *See Mims ex rel. Mims v. Babcock Center, Inc.*, 399 S.C. 341, 347, 732 S.E.2d 395, 398 (2012) ("Moreover we note that the failure of proper service does not affect the court's subject matter jurisdiction in any event."); *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008) (holding the circuit court erred in ruling it lacked subject matter jurisdiction where the alleged error concerned improper service.).

Nonetheless, Plaintiff's service on Coastal was proper. Rule 4, SCRPC, "confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (quoting *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995)). Fundamentally, the objective of service is "to give notice to the defendant corporation of the proceedings against it." *Mull*, 387 S.C. at 485, 693 S.E.2d at 30 (quoting *Burris Chem., Inc. v. Daniel Constr. Co.*, 251 S.C. 483, 487, 163 S.E.2d 618, 620 (1968)). Accordingly, South Carolina courts have "never required exacting compliance with the rules to effect service of process" so long as the defending party was on notice of the plaintiff's claims. *Colleton Preparatory Acad., Inc. v. Beazer East, Inc.*, 223 F.R.D. 401, 404 (D.S.C. 2004) (quoting *Roche*, 318 S.C. at 209-10, 456 S.E.2d at 899).

Corporations, like Coastal, may be served by delivering the summons and complaint to "an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 4(d)(3), SCRPC. Corporations, like individuals, may be served by certified mail. Rule 4(d)(8), SCRPC. Plaintiff met all of Rule 4's requirements for serving a corporation by certified mail. Plaintiff's mailing was addressed to Randall Kerns, whom Coastal has identified as its registered agent for service. Plaintiff's mailing included a

request for return receipt as required by Rule 4(d)(8). By complying with all rules for certified mail service, Plaintiff is entitled to a presumption that service was proper. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 295, 721 S.E.2d 430, 433 (2012) (quoting *Roche*, 318 S.C. at 211, 456 S.E.2d at 900). If permitted to attack service for the purpose of avoiding default or dismissing Plaintiff's suit, Coastal bears the burden of presenting evidence sufficient to overcome this presumption.

Coastal argues that service was improper because Plaintiff "attempted to serve . . . Jody Hawkins." Def.'s Mot. to Dismiss ¶ 12. However, it is clear from the certified mail receipt and accompanying cover letter that service was addressed to Randall Kerns, Coastal's registered agent for service. Jody Hawkins signed the certified mail document, expressly representing herself as Randall Kerns's agent. Coastal bears the burden of establishing that Jody Hawkins was an "unauthorized person." *Makawi*, 396 S.C. at 295, 721 S.E.2d at 433 (quoting Rule 4(d)(8), SCRPC).

While Coastal attempts to meet its burden of showing improper service with the affidavits of Dr. Kerns and Wendy Sanders<sup>1</sup>, Coastal makes no effort to explain why Ms. Hawkins expressly represented herself as Dr. Kerns's agent when accepting Plaintiff's certified mailing. This is perhaps because Ms. Hawkins is an agent of Dr. Kerns. It appears Ms. Hawkins has worked at Charleston Surgery Center for over 14 years: *See Linked In Profile for Jennifer Hawkins*, attached as **Exhibit H**. The address provided on the Secretary of State's website for Mr. Kerns also is the same as that of Charleston Surgery Center. **Ex. D**; Charleston Surgery Center-Directions & More, <http://www.charlestonsurgerycenter.com/Directionsandmore>

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<sup>1</sup> Plaintiff has not had an opportunity to explore the claims made in the affidavits Coastal submitted in support of its motion and should be given an opportunity to conduct discovery on this matter to the extent the court considers the affidavits in ruling on the motion. *Makawi*, 396 S.C. at 299, 721 S.E.2d at 435.

(accessed Dec. 16, 2013). Nowhere in Mr. Kerns's affidavit, or in any affidavit presented by the Defendants does Mr. Kerns state that he did not receive actual notice of the Summons and Complaint. Further, the insurance adjuster for Coastal called counsel for Plaintiff and stated that he was in default, implying that he had actual notice and time to reply within the time frames provided by the South Carolina Rules of Civil Procedure. **Ex. B.**

Coastal's current efforts to elevate the form of Rule 4 above the Rule's substantive intent of providing notice is inconsistent with South Carolina's established precedents, which refuse to demand exacting compliance with service rules where the party served clearly had notice of the claims against it.

### **3. Coastal Cannot Show Good Cause Warranting Relief from Entry of Default**

Rule 12(a) of the South Carolina Rules of Civil Procedure provides, "A defendant shall serve his answer within 30 days after the service of the complaint upon him . . ." Coastal failed to answer within 30 days of service, and default was entered. Rule 55(c) of the South Carolina Rules of Civil Procedure provides, "For good cause shown the court may set aside an entry of default. . ." In deciding whether "good cause" exists, the offering of a valid reason for the default is necessary before the court may consider the application of Rule 55(c)'s, SCRP, three factors to set aside the default. Rule 55(c), SCRPC, requires the party seeking relief to provide an explanation for default.<sup>2</sup> Upon such explanation, the Court should consider the following factors: 1) the timing of the defendant's motion for relief; 2) whether the defendant has a meritorious defense; and 3) the degree of prejudice to the plaintiff if the relief is granted.

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<sup>2</sup> Although the Court has entered default judgment against Coastal, Plaintiff argues the less stringent "good cause" analysis under Rule 55 as Plaintiff did not provide Defendant with notice of its application for default because when Plaintiff mailed its Application, it had not yet received Coastal's answer. See Nov. 26, 2013 Correspondence from Chad McGowan, attached as **Exhibit I**.

*Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 602, 608, 682 S.E.2d 885, 888 (2009) (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)).

Coastal cannot set forth any valid reason for failing to respond to Plaintiff's Summons and Complaint, because Coastal failed to argue improper service in its Answer and has waived that defense. See Rule 12(h) SCRCP; 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1391 (1990) (Rule 12(h)(1) "advises a litigant to exercise great diligence in challenging personal jurisdiction, venue or service of process. If he wishes to raise [any] of these defenses he must do so at the time he makes his first significant defensive move . . . ."). Coastal is estopped from arguing that it was not properly served in the present motion because it failed to raise that defense in its first appearance, its Answer. See, e.g., *Strickland v. Consolidated Energy Products Company*, 274 S.C. 554, 265 S.E.2d 682 (1980) (upholding trial court's finding that any defect in service of process was waived by defendant's appearance requesting to be allowed to file a later answer after the entry of default); *Myers v. Brown*, 143 Vt. 159, 460 A.2d 254 (Vt. 1983) (Where defendant maintained silence regarding defective service until after entry of default, trial court properly denied motion to set aside default because defective service was a procedural shortcoming waived by defendant's failure to timely raise his objections.); *In re Worldwide Web. Sys., Inc. v. Feltman*, 328 F.3d 1291, 1300 (11th Cir.2003) ("[W]hen a party asserts a Rule 60(b) challenge to a default judgment, absent a compelling showing that we should make an exception to his rule, challenges under rule 60(b)(4) on insufficient service of process grounds are waived if not squarely raised.") (internal citation omitted). Because Coastal has waived any defenses of improper service of process, it has no legitimate reason for failing to respond to Plaintiff's Complaint.



Coastal additionally alleges that good cause exists to set aside default because Plaintiff failed to comply with the pre-suit mediation requirements of South Carolina Code s 15-79-125. However, whether or not Coastal participated in the pre-suit mediation process has no bearing on the fact that Coastal was properly served with a Summons and Complaint and failed to answer it in a timely fashion. This Court should closely examine a defendant's reason for the default to ascertain whether a defendant was "diligent in pursuit of [the] matter" before the entry of default. *Auto Equipment Distributors, Inc. v. Petroleum Equipment and Service, Inc.*, 361 S.E. 2d 895, 896-897 (N.C. Ct. App. 1987). The Court's analysis should be on the Coastal's action before the default. *See Ricks vs. Weinrauch*, 293 S.C. 372, 374, 360 S.E. 2d 535, 536 (Ct. App. 1987). Where the default is a defendant's fault, the court should not reopen the case. *See Brown v. Lifford*, 524 S.E.2d 587, 590 (N.C. Ct. App. 2000) (noting that the "degree of attention or inattention shown by the [d]efendant is 'particularly compelling' as to whether the Defendant was diligent"). In the present case, the fact that Coastal has presented a potential defense to Plaintiff's claims has no bearing on its failure to file a timely answer to Plaintiff's Complaint.

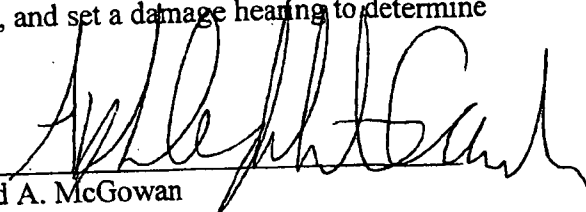
Because Coastal has not met its initial burden of providing a valid reason to justify "good cause," the Court should deny Coastal's motion and need not reach the remaining Rule (55)(c) factors. *See Sundown*, 383 S.C. at 608, 681, S.E.2d at 88 ("The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause."); *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2004) ("[b]ecause we find the master did not err in findings Owens failed to show good cause for failing to answer the complaint, we need not consider the Wham factors.")

#### **4. Coastal Is Not Entitled to Relief from Default Judgment**

A party seeking relief from default judgment must meet the standard provided by Rule 60(b), SCRCP. In the absence of fraud, a void judgment, or newly discovered evidence, relief from a final judgment may be granted only with a showing of "mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1), SCRCP. "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." *Rodriguez v. Gutierrez*, 391 S.C. 323, 331, 705 S.E.2d 94, 99 (Ct. App. 2011) (quoting *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App.1991)). In the present case, Coastal has not and cannot meet this burden. Coastal again alleges only that it was not properly served with the Complaint, a defense that it has clearly waived, and that Plaintiff failed to comply with the requirements of S.C. Code 15-79-125, which, at best, is an affirmative defense to the underlying claim and not properly before the Court when Coastal has no valid reason for filing a late answer.

### CONCLUSION

Because Coastal has not presented any good cause to warrant the set aside the entry of default and because Coastal has waived any and all defenses, Plaintiff respectfully requests that the Court deny Coastal's Motion, enter default judgment, and set a damage hearing to determine the amount of Mr. Preston's damages.



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John Hughes Cooper  
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843-883-9099

843-883-9335 (Fax)

Rock Hill, South Carolina

December 17, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as PR of  
the Estate of Martha Preston, Deceased

Plaintiff,

v.

Surgical Center Affiliates, LLC,  
Charleston Surgery Center, LP, Nurse  
Doe, Christine Thompson, MD, and ABC  
Anesthesia Group,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 12-CP-10-7413

NOTICE OF INTENT TO FILE SUIT

NOV 13 PM 4:08  
JULIE J. ARMSTRONG  
CLERK OF COURT

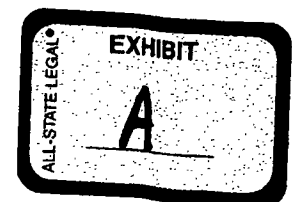
FILED

Pursuant to S.C. Code Ann. 15-79-125, Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is Plaintiff's short and plain statement of the facts. Attached as Exhibits B and C are affidavits from expert witnesses delineating at least one negligent act or omission which would allow the Plaintiff to recover damages from Defendants in this case. Attached as Exhibit D are answers to Standard Interrogatories as set forth in S.C.R.C.P. 33 (b).

  
Chad A. McGowan  
Ashley Creech  
McGowan, Hood & Felder, LLC  
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Rock Hill, South Carolina

November 9, 2012



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as the Personal  
Representative of the Estate of Martha Preston,  
deceased,

Plaintiff,

vs.

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, LP; Laura Bilancione, RN;  
Coastal Anesthesia Associates; and Christine  
Thompson, MD

Defendant(s)

IN THE COURT OF COMMON PLEAS

C. A. NO: 2013-CP-10-03054

**AFFIDAVIT OF CHAD MCGOWAN**

I, Chad A. McGowan, being duly sworn, depose and state as follows:

- 1) I am counsel for Plaintiff, over 18, and make this affidavit on personal knowledge.
- 2) This case involves an overdose of Dilaudid given to one Martha Preston that resulted in her death. Christine Thompson, MD was the anesthesiologist for the procedure that led to this death.
- 3) On August 22, 2012, I wrote to Dr. Thompson regarding the death of Mrs. Preston. EXHIBIT 1. In that letter, I asked a few questions and advised that many doctors receiving such a letter contact their malpractice carrier who would then assign an attorney.
- 4) Shortly thereafter, I received word from Jamie Hood, Esq., that he had been assigned to handle the claim by MedPro, the malpractice insurance carrier for Dr. Thompson and her



practice group. I later learned that the adjuster for the insurance carrier was Joe Costy, who is based out of North Carolina.

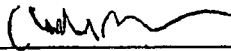
- 5) Around November 9, 2012, I filed a Notice of Intent to File Suit, 12-CP-10-7413, which named all Defendants and "ABC Anesthesia Group." The true name of the anesthesia group was not knowable based on all of the information then available. Also listed in the NOI was "Nurse Doe" as the true identity of Nurse Doe was also unknowable at that time. See, EXHIBIT 2- First Page of NOI.
- 6) The NOI led to the attorney appearances of Jack Gresh, Esq and James Hood, Esq.
- 7) On April, 2013 the parties participated in a pre-suit mediation with Tom Wills serving as mediator. Dr. Thompson's attorney from the Hood Law Firm participated by telephone.
- 8) It was Plaintiff's impression that Dr. Thompson's attorney was also appearing on behalf of "ABC Anesthesia Practice," and no one expressed that the practice was not present or represented. See, EXHIBIT 3.
- 9) After the failed initial mediation, I asked of both Messrs. Gresh and Hood for the proper name of the Defendants ABC Anesthesia Group and Nurse Doe. Mr. Hood identified "Coastal Anesthesia Associates" ("Coastal") as the name of the Anesthesia Group. See, EXHIBIT 4 (email exchange). Additionally, Mr. Gresh identified Nurse Doe. At no time did anyone claim that Coastal Anesthesia Associates did not participate in the NOI process.
- 10) On May 24, 2013, I filed the Summons and Complaint, 13-CP-10-3054, EXHIBIT 5 (Summons only), substituting in the appropriate names of the Defendants. I then sent Acknowledgements of Service on Messrs. Gresh and Hood. Mr. Hood acknowledged service only for Dr. Thompson. As a result, we served by registered mail, return receipt

requested, Coastal's Registered Agent, Randall Kern. EXHIBIT 6. One Jody Hawkins evidently signed for Mr. Kerns on July 8, 2013.

- 11) Some discovery happened thereafter, which then led to mediation on September 23, 2013, again with Tom Wills. While the Hood Law Firm was aware of the mediation and welcome to participate, neither Dr. Thompson, nor Coastal chose to participate.
- 12) During that mediation, while I was sitting in Tom Will's office, Joe Costy of MedPro called my cell phone. That conversation started with Joe Costy telling me he was the adjuster for Coastal and Dr. Thompson. Joe Costy specifically stated "I am in default." Never did Mr. Costy state that Coastal did not go through the NOI process, that service was improper, or that this was anything other than his mistake. In fact, Mr. Costy said he hoped that we got fully paid by other defendants in the case.
- 13) On September 24, we mailed for filing the Application for Default Judgment. That was filed by the Clerk on September 26.
- 14) The day after my phone conversation with Mr. Costy, (September 23, 2013), Mr. Hood mailed his belated Answer, which I assume was filed shortly thereafter. In that Answer, never did Coastal allege:
  - a. Insufficiency of Service of Process
  - b. Failure to Comply with the Notice of Intent Statute
  - c. A lack of subject matter jurisdiction.
- 15) It is notable that:
  - a. Never did Mr. Costy claim that service was improper or that the Notice of Intent process was not properly complied with;

- b. Never did Mr. Costy state that the failure to answer timely was anything other than his mistake;
- c. Mr. Hood and his firm were the attorneys who attended the pre-suit mediation by phone on behalf of the anesthesiologist;
- d. Mr. Hood and his firm refused to acknowledge service on behalf of Coastal (which was of course, their right);
- e. Mr. Hood and his firm ultimately appeared and filed an Answer on behalf of Coastal;
- f. Never did Coastal's Answer allege insufficient service or a failure to participate in the pre-suit process, or a lack of subject matter jurisdiction in the Circuit Court;
- g. Mostly likely, Mr. Costy's file will include all of the pleadings and when they were received starting from the August, 22, 2012 initial letter to Dr. Thompson.

FURTHER THE AFFIANT SAYETH NOT.

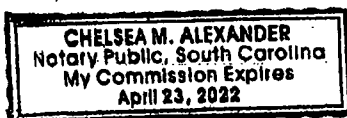
  
Chad A. McGowan

Subscribed to and sworn before me

this 13 day of December, 2013

Chelsea Alexander  
Notary Public for the State of South Carolina

My Commission Expires: 4-23-2022





# McGowan, Hood, & Felder, LLC

W. Jones Andrews, Jr.  
Jordon Calloway  
Susie Campbell  
Ashley Creech  
John G. Felder, Jr.  
Lara Harrell  
S. Randall Hood  
Chad A. McGowan (SC, GA, NC)  
William A. McKinnon (SC, DC)  
Daniel "Ernie" Peagler  
Robert V. Phillips  
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August 22, 2012

Christine Thompson, MD  
949 Shetland Ct.  
Mt. Pleasant, SC 29464

RE: Martha Preston

Dear Dr. Thompson:

I am investigating the death of Mrs. Preston from a drug overdose after a surgery occurring at the Charleston Surgery Center on April 18, 2012.

I write to you because the anesthesiologist is listed as "C. Thompson" (page CSC-22), and you are the only C. Thompson, with a specialty in anesthesiology anywhere close to Charleston. I enclose a copy of the medical records.

The focus of my inquiry is not on the anesthesiology, but rather the PACU orders and care. I would like to speak with you about a particular order and whether a certain order was made by you or someone else. Not to beat around the bush, I need to know:

- 1) Who wrote the Post-Op Anesthesia Orders (CSC-024)
- 2) Who wrote the "or 4 mg IV" after the Dilaudid order.

I generally find it best to make direct inquiries of individuals or their attorneys to get to the bottom of things sooner rather than later. I would hope that you would take this letter in the spirit in which it is intended—a method to simply figure out the facts.

Generally speaking, physicians who receive a letter such as this contact their malpractice carrier and an attorney is assigned to help them even when no one is alleging a physician did anything wrong. I would welcome a call from you or your chosen counsel at your earliest convenience.

Exh 1

Kindest regards.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chad', with a long, horizontal, wavy line extending to the right.

Chad McGowan  
Attorney

CAM/ah

Enc.- Records

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as PR of  
the Estate of Martha Preston, Deceased

Plaintiff,

v.

Surgical Center Affiliates, LLC,  
Charleston Surgery Center, LP, Nurse  
Doe, Christine Thompson, MD, and ABC  
Anesthesia Group,

Defendants.

IN THE COURT OF COMMON PLEAS

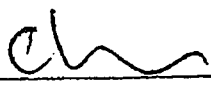
Civil Action No: 12-CP-10-7413

NOTICE OF INTENT TO FILE SUIT

2012 NOV 13 PM 4:08  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

Pursuant to S.C. Code Ann. 15-79-125, Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is Plaintiff's short and plain statement of the facts. Attached as Exhibits B and C are affidavits from expert witnesses delineating at least one negligent act or omission which would allow the Plaintiff to recover damages from Defendants in this case. Attached as Exhibit D are answers to Standard Interrogatories as set forth in S.C.R.C.P. 33 (b).

  
Chad A. McGowan  
Ashley Creech  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, South Carolina 29732  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

Rock Hill, South Carolina

November 9, 2012

Exh 2

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

CASE NO: 2012-CP-10-7413

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

vs.

Surgical Care Affiliates, LLC; Charleston  
Surgery Center, LP; Jane Doe, RN; ABC  
Anesthesia Group; and Christine Thompson,  
MD,

Defendants.

MEDIATION RESULTS FORM

BY JUDGE J. ARMSTRONG  
CLERK OF COURT  
2013 APR -3 PM 12:40

FILED

(THIS FORM TO BE COMPLETED BY MEDIATOR WITHIN 10 DAYS OF  
CONCLUSION OF THE CONFERENCE, WHETHER OR NOT AGREEMENT WAS  
REACHED BY THE PARTIES)

1. Mediated settlement conferences were held before me on April 1, 2013.
2. As a result of these conferences, this case should be considered (*please check one*):
  - ☐ Fully Settled (*please check one*):
    - ☐ by Consent Judgment, to be filed by \_\_\_\_\_ or,  
(Name of Designee)
    - ☐ by Voluntary Dismissal, to be filed by \_\_\_\_\_  
(Name of Designee)
  - ☐ Partially Settled, with agreement of the Parties on the following issues:  
(*Attach separate sheet if necessary*):
  - ☒ At an impasse. The mediation session was productive and there is the possibility  
that further discussion over settlement options could lead to an agreement.

Exhibit 3

- ☐ In need of further mediation. (I ☒ am/ ☐ am not willing to mediate this case further.
- ☐ Continued (Date) \_\_\_\_\_.
3. Plaintiff ☒ was/ ☐ was not present.  
Defendants ☒ were/ ☐ were not present. (Dr. Thompson was not present)
4. Other participants were:
- ☒ attorney for plaintiff.
  - ☒ attorney for defendant.
  - ☒ representatives for insurance carrier (For Surgical Care Assn)
  - ☐ guardian ad litem \_\_\_\_\_.
  - ☐ experts \_\_\_\_\_.
  - ☐ others \_\_\_\_\_.
5. This case was co-mediated with \_\_\_\_\_.
6. Choice of the mediator was by:
- ☒ Stipulation
  - ☒ Court Order.
7. The total number of hours spent in mediation was: 5 hours.
8. The total mediator fees were \$ 3000.00.
9. Further comments of the mediator:

Date: April 1, 2013

Signature of Mediator: \_\_\_\_\_  
Print Name of Mediator: Thomas J. Wills

## **Chad McGowan**

---

**From:** chad mcgowan  
**Sent:** Thursday, April 11, 2013 10:32 AM  
**To:** Jack G. Gresh (JGresh@hallboothsmith.com); james.hood@hoodlaw.com  
**Cc:** shiplaw@jhcooper.com; Ashley Creech  
**Subject:** Preston v. Charleston Surgery Center

Jack and Jamie:

In light of the unsuccessful mediation, I need to file and serve the complaint.

To that end:

- 1) Can you identify the proper Defendants—Jack the nurse at issue, and Jamie the anesthesiology practice?
- 2) Can you accept service?

Thanks.

Chad McGowan  
McGowan, Hood, and Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
803-327-7800  
803-328-5656 (fax)  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

This email is intended only for the recipient to whom it is addressed. No one else has any right to rely upon it for any reason. If you received it in error, please let me know and delete any copies. Thank you.

## **Chad McGowan**

---

**From:** Jamie Hood <james.hood@hoodlaw.com>  
**Sent:** Tuesday, May 07, 2013 1:03 PM  
**To:** chad mcgowan; Jack G. Gresh (JGresh@hallboothsmith.com)  
**Subject:** RE: Preston v. Charleston Surgical Center

Dr. Thompson is self-employed. She does contract work with Coastal Anesthesia Associates through locum tenens but is not an employee.

---

**From:** Chad McGowan [mailto:cmcgowan@mcgowanhood.com]  
**Sent:** Monday, April 29, 2013 1:24 PM  
**To:** Jack G. Gresh (JGresh@hallboothsmith.com); Jamie Hood  
**Subject:** Preston v. Charleston Surgical Center

Counsel:

So I can get the complaint filed properly, please tell me the name of the nurse at issue as well as the anesthesia practice.

Thank you.

Chad McGowan  
McGowan, Hood, and Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
803-327-7800  
803-328-5656 (fax)  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

This email is intended only for the recipient to whom it is addressed. No one else has any right to rely upon it for any reason. If you received it in error, please let me know and delete any copies. Thank you.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

v.

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Laura Bilancione,  
R.N.; Coastal Anesthesia Associates; and  
Christine Thompson, M.D.

Defendants.

TO: THE DEFENDANTS ABOVE NAMED:

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Civil Action No: 13-CP- 10-3054

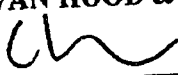
SUMMONS

2013 MAY 24 PM 4:21  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in  
this action, a copy of which is served upon you, and to serve a copy of your Answer to  
the Complaint on the subscriber at his office at 1539 Health Care Drive, Rock Hill, South  
Carolina, 29732, within thirty (30) days of service, exclusive of the date of service; and if  
you fail to Answer the Complaint within that time, judgment by default will be rendered  
against you for the relief demanded in the Complaint.

MCGOWAN HOOD & FELDER, LLC

  
Chad A. McGowan  
Ashley White Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

May 22 2013.

Exh 5



| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                   |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | A. Signature<br><i>Jody Hawkins</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee<br>B. Received by (Printed Name)<br><i>Jody Hawkins</i><br>C. Date of Delivery<br><i>7-8-13</i><br>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If YES, enter delivery address below: |  |
| 1. Article Addressed to:<br><i>Coastal Anesthesia Associates, LLC</i><br><i>Registered Agent: Randall Kerns</i><br><i>2690 Lake Park Drive</i><br><i>N. Charleston, SC 29406</i>                                                                                                                                           |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.<br>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes  |  |
| 2. Article Number<br>(Transfer from service label)                                                                                                                                                                                                                                                                         |  | 7011 2970 0001 7071 6786                                                                                                                                                                                                                                                                                                                                            |  |
| PS Form 3811, February 2004                                                                                                                                                                                                                                                                                                |  | Domestic Return Receipt 102585-02-M-1840                                                                                                                                                                                                                                                                                                                            |  |

| U.S. Postal Service <sup>®</sup>                                                                                                                                             |         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| <b>CERTIFIED MAIL<sup>™</sup> RECEIPT</b><br>(Domestic Mail Only; No Insurance Coverage Provided)                                                                            |         |
| For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>                                                                                 |         |
| <b>OFFICIAL USE</b>                                                                                                                                                          |         |
| Postage                                                                                                                                                                      | \$ 2.52 |
| Certified Fee                                                                                                                                                                | 3.10    |
| Return Receipt Fee<br>(Endorsement Required)                                                                                                                                 | 2.55    |
| Restricted Delivery Fee<br>(Endorsement Required)                                                                                                                            |         |
| Total Postage & Fees                                                                                                                                                         | \$ 8.17 |
| Sent to<br><i>Coastal Anesthesia, LLC: Randall Kerns</i><br>Street, Apt. No.,<br>or PO Box No. <i>2690 Lake Park Dr</i><br>City, State, Zip+4 <i>N. Charleston, SC 29406</i> |         |
| PS Form 3800, August 2006 See Reverse for Instructions                                                                                                                       |         |

Exh. 6

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Ashley White Creech  
Christy M. DeLuca (SC,IL)  
Lara Pettis Harrill



Patrick M. Killen  
William A. McKinnon (SC,DC)  
Daniel "Ernie" Peagler  
Robert V. Phillips  
Seth Rose  
James Stephen Welch\* (SC,OK)  
Jay F. Wright  
Joseph G. Wright, III\*  
Of Counsel

Writer's Email: [ahutchins@mcgowanhood.com](mailto:ahutchins@mcgowanhood.com)

July 1, 2013

Coastal Anesthesia Associates, LLC  
Registered Agent: Randall Kerns  
2690 Lake Park Drive  
N. Charleston, SC 29406

RE: Willie Preston, individually and as PR of the Estate of Martha Preston, deceased v. Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Laura Bilancione, RN, Coastal Anesthesia Associates; and Christine Thompson, MD  
Case No. 13-CP-10-3054

Dear Randall:

Please find enclosed the Summons and Complaint in the above referenced case.

If you have any questions please feel free to contact our office.

Sincerely,

Annie Hutchins Gray  
Paralegal

/ahg  
enclosures

1539 Health Care Drive, Rock Hill, SC 29732 • Tel: 803-327-7800 • Fax: 803-328-5656  
Rock Hill • Columbia • Anderson • Sumter  
[www.mcgowanhood.com](http://www.mcgowanhood.com)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2013-CP-10-3054

Willie Preston, individually and as the )  
Personal Representative of the Estate of )  
Martha Preston, deceased, )

Plaintiff, )

v. )

Surgical Care Affiliates, LLC, Charleston )  
Surgery Center, LP, Laura Bilancione, RN, )  
Coastal Anesthesia Associates, and Christine )  
Thompson, MD, )

Defendants. )

**ACCEPTANCE OF SERVICE**

**TO: CHAD A. MCGOWAN, ESQUIRE, AND ASHLEY CREECH, ESQUIRE,  
ATTORNEYS FOR PLAINTIFF**

This is to certify that Jack G. Gresh and Elizabeth Schwartz Corn of Hall Booth Smith,  
P.C., as attorneys for the Defendants, Surgical Care Affiliates, LLC, Charleston Surgery Center,  
LP, and Laura Bilancione, RN, accept service of the Summons and Complaint in the above-  
captioned matter on this 21<sup>st</sup> day of June, 2013 in Charleston, South Carolina.

**HALL BOOTH SMITH, P.C.**

Jack G. Gresh, SC Bar No. 75188  
Elizabeth S. Corn, SC Bar No. 71120  
40 Calhoun Street, Suite 550  
Charleston, SC 29401  
Phone: 843.720.3460  
Fax: 843.720.3458  
Email: jgresh@hallboothsmith.com  
ecorn@hallboothsmith.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Willie Preston, individually and as PR of  
the Estate of Martha Preston, deceased,

Plaintiff,

vs.

Surgical Center Affiliates, LLC, Charleston  
Surgery Center, LP, Laura Bilancione, RN;  
Coastal Anesthesia Associates; and  
Christine Thompson, MD

Defendants.

IN THE COURT OF COMMON PLEAS

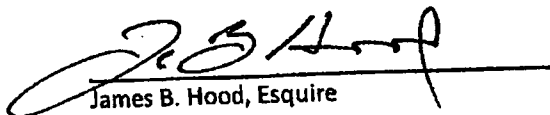
CA FILE NO.: 13-CP-10-3054

ACKNOWLEDGEMENT OF SERVICE

I, James Hood, Esquire, hereby accepts service of the Summons and Complaint on this

4 day of ~~May~~ <sup>June</sup>, 2013

*J.B. Hood*



James B. Hood, Esquire  
Hood Law Firm  
172 Meeting Street  
Charleston, SC 29401

Attorney for Christine Thompson, MD

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Willie Preston, individually and as the  
Personal Representative of the Estate of  
Martha Preston, deceased,

Plaintiff,

v.

Surgical Care Affiliates, LLC, Charleston  
Surgical Center, L.P.; Laura Bilancione,  
R.N.; Coastal Anesthesia Associates; and  
Christine Thompson, M.D.

Defendants.

TO: THE DEFENDANTS ABOVE NAMED:

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Civil Action No: 13-CP- 10-3054

SUMMONS

2013 MAY 24 PM 4:21  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

FILED

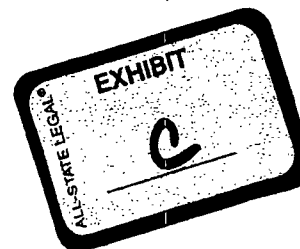
YOU ARE HEREBY SUMMONED and required to Answer the Complaint in  
this action, a copy of which is served upon you, and to serve a copy of your Answer to  
the Complaint on the subscriber at his office at 1539 Health Care Drive, Rock Hill, South  
Carolina, 29732, within thirty (30) days of service, exclusive of the date of service; and if  
you fail to Answer the Complaint within that time, judgment by default will be rendered  
against you for the relief demanded in the Complaint.

MCGOWAN HOOD & FELDER, LLC



Chad A. McGowan  
Ashley White Creech  
McGowan, Hood, & Felder, LLC  
1539 Healthcare Drive  
Rock Hill, South Carolina 29730  
(803) 327-7800  
(803) 328-5656 Facsimile  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)

May 22 2013.



STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Willie Preston, individually and as the  
Personal Representative of the  
Estate of Martha Preston, deceased )

Plaintiffs, )

vs. )

Surgical Care Affiliates, LLC, Charleston )  
Surgical Center, L.P; )  
Laura Bilancione, R.N.; )  
Coastal Anesthesia Associates; )  
and Christine Thompson, M.D. )

Defendants. )

IN THE COURT OF COMMON PLEAS

C. A. No: 13-CP-

Complaint for Damages  
(Jury Trial Demanded)

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2013 MAY 24 PM 4:21

FILED

The Plaintiff, by and through his undersigned counsel, for a Complaint against the  
Defendants, does hereby allege as follows:

**PARTIES**

**Plaintiff**

1. The Plaintiff, Willie Preston, is the duly appointed Personal Representative of the estate of Martha Preston. At all times relevant hereto, Willie Preston was the husband of Martha Preston. He brings these claims as PR for wrongful death and survival, and on behalf of himself for loss of consortium. Plaintiff is a citizen and resident of Charleston County, South Carolina.

**Defendants**

2. Defendant Surgical Care Affiliates, LLC is a corporation organized and existing under a state's laws other than South Carolina and maintains an agent and/or joint venture in Charleston County, SC known as the Charleston Surgical Center, LP in Charleston County,

South Carolina  
**Secretary of State**  
 Mark Hammond

**COASTAL ANESTHESIA ASSOCIATES, LLC**

Note: This online database was last updated on 12/16/2013 6:02:03 PM.  
 See our Disclaimer.

DOMESTIC / FOREIGN: Domestic  
 STATUS: Good Standing  
 STATE OF INCORPORATION: SOUTH CAROLINA  
 / ORGANIZATION: Profit

**REGISTERED AGENT INFORMATION**

REGISTERED AGENT NAME: RANDALL E KERNS  
 ADDRESS: 2690 LAKE PARK DR  
 CITY: N CHARLESTON  
 STATE: SC  
 ZIP: 29406  
 SECOND ADDRESS:  
 FILE DATE: 11/06/1997  
 EFFECTIVE DATE: 11/06/1997  
 DISSOLVED DATE: 12/31/2026

**Corporation History Records**

| CODE         | FILE DATE  | COMMENT                                                       | Document |
|--------------|------------|---------------------------------------------------------------|----------|
| Amendment    | 02/02/2006 | CHANGED REGISTERED AGENT & OFFICE ADDRESS FROM: JOHN PRATT JR |          |
| Amendment    | 02/01/2002 | ANNUAL REPORT-2002 TYE: DEC                                   | Image    |
| Amendment    | 03/16/2001 | ANNUAL REPORT-2001                                            | Image    |
| Amendment    | 03/16/2001 | ANNUAL REPORT-2000                                            | Image    |
| Amendment    | 03/16/2001 | ANNUAL REPORT-1999                                            | Image    |
| Amendment    | 03/16/2001 | ANNUAL REPORT-1998/CH AGT ADD                                 | Image    |
| Domestic LLC | 11/06/1997 | DOMESTIC LIMITED LIABILITY (12/31/2026)                       | Image    |

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.



Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201  
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC  
29201



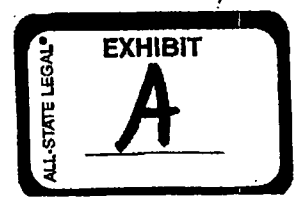
| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                   |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | A. Signature<br><i>Judy Hawkins</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee<br>B. Received by (Printed Name)<br><i>Judy Hawkins</i><br>C. Date of Delivery<br><i>7-8-13</i><br>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No |  |
| 1. Article Addressed to:<br><i>Coastal Anesthesia Associates PA</i><br><i>Registered Agent: Randall Kerns</i><br><i>2690 Lake Park Drive</i><br><i>N. Charleston, SC 29406</i>                                                                                                                                             |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.<br>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes  |  |
| 2. Article Number<br>(Transfer from service label)                                                                                                                                                                                                                                                                         |  | 7011 2970 0001 7071 6786                                                                                                                                                                                                                                                                                                                                            |  |
| PS Form 3811, February 2004                                                                                                                                                                                                                                                                                                |  | Domestic Return Receipt 102595-02-M-1540                                                                                                                                                                                                                                                                                                                            |  |

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**OFFICIAL USE**

|                                                |         |
|------------------------------------------------|---------|
| Postage                                        | 2.52    |
| Certified Fee                                  | 3.10    |
| Return Receipt Fee (Endorsement Required)      | 2.55    |
| Restricted Delivery Fee (Endorsement Required) |         |
| Total Postage & Fees                           | \$ 8.17 |

Sent To  
*Coastal Anesthesia, PA: Randall Kerns*  
Street, Apt. No.,  
or PO Box No. *2690 Lake Park Dr.*  
City, State, ZIP+4  
*N. Charleston, SC 29406*



FILED  
2013 JUL 29 PM 2:07  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**Charleston County  
Circuit Court Case Details  
Public Index**

**JULIE J. ARMSTRONG**

[Chanderson County Home Page](#) [Clerk of Court Home Page](#) [SC Judicial Home Page](#) [Search Tools](#)

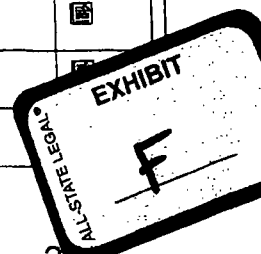
**Switch View**

**Willie Preston , plaintiff, et al VS Surgical Care Affiliates LLC , defendant, et al**

|                             |               |                          |                                           |                           |            |
|-----------------------------|---------------|--------------------------|-------------------------------------------|---------------------------|------------|
| <b>Case Number:</b>         | 2013CP1003054 | <b>Court Agency:</b>     | Common Pleas                              | <b>Filed Date:</b>        | 05/24/2013 |
| <b>Case Type:</b>           | Common Pleas  | <b>Case Sub Type:</b>    | Medical Malpractice 220                   | <b>File Type:</b>         | Jury       |
| <b>Status:</b>              | Pending       | <b>Assigned Judge:</b>   | Clerk Of Court C P, G S, And Family Court |                           |            |
| <b>Disposition:</b>         |               | <b>Disposition Date:</b> |                                           | <b>Disposition Judge:</b> |            |
| <b>Original Source Doc:</b> |               | <b>Original Case #:</b>  |                                           |                           |            |
| <b>Judgment Number:</b>     | 2013CP1003054 | <b>Court Roster:</b>     |                                           |                           |            |

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

| Name                           | Description                                                  | Type     | Motion Roster                    | Begin Date       | Completion Date  | Documents |
|--------------------------------|--------------------------------------------------------------|----------|----------------------------------|------------------|------------------|-----------|
|                                | Affidavit/Affidavit of Jody Hawkins & crt/srv                | Filing   |                                  | 12/13/2013-13:30 |                  |           |
| Coastal Anesthesia Associates  | Motion/Motion Filing Fee                                     | Filing   |                                  | 12/05/2013-16:29 |                  |           |
| Hood, James Bernard            | Motion/Dismiss or Set Aside Default by defendant, crt/srv    | Motion   | MOTIONS ROSTER - JUDGE NICHOLSON | 12/05/2013-11:23 |                  |           |
| Coastal Anesthesia Associates  | Memo in Support of Motion to Dismiss or Set Aside, crt/srv   | Filing   |                                  | 12/05/2013-09:19 |                  |           |
| Preston, Willie                | Order-entering default judg against Coastal Anesthesia Assoc | Order    |                                  | 11/25/2013-09:27 |                  |           |
| McGowan, Chad Alan             | Roster/Notice of Motions Roster Publication Sent             | Action   |                                  | 11/14/2013-08:42 |                  |           |
| Grash, Jack G                  | Roster/Notice of Motions Roster Publication Sent             | Action   |                                  | 11/14/2013-08:42 |                  |           |
| Cooper, John Hughes            | Roster/Notice of Motions Roster Publication Sent             | Action   |                                  | 11/14/2013-08:42 |                  |           |
| Hood, James Bernard            | Roster/Notice of Motions Roster Publication Sent             | Action   |                                  | 11/14/2013-08:42 |                  |           |
|                                | Order/Judgment as to certain defnts                          | Order    |                                  | 11/07/2013-10:48 |                  |           |
| Preston, Willie                | Judgment/Judgment                                            | Judgment |                                  | 11/07/2013-10:47 |                  |           |
| Bilancione, Laura R N          | Judgment/Judgment                                            | Judgment |                                  | 11/07/2013-10:47 |                  |           |
| Charleston Surgical Center L P | Judgment/Judgment                                            | Judgment |                                  | 11/07/2013-10:47 |                  |           |
| Preston, Willie                | Judgment/Judgment                                            | Judgment |                                  | 11/07/2013-10:47 |                  |           |
| Preston, Willie                | Judgment/Judgment                                            | Judgment |                                  | 11/07/2013-10:47 |                  |           |
| Surgical Care Affiliates LLC   | Judgment/Judgment                                            | Judgment |                                  | 11/07/2013-10:47 |                  |           |
| Preston, Willie                | Order/Order approving settlement as to certain defnts        | Order    |                                  | 11/04/2013-15:22 |                  |           |
| Preston, Willie                | Motion/Motion Filing Fee                                     | Filing   |                                  | 10/25/2013-16:41 |                  |           |
| McGowan, Chad Alan             | Roster/Notice of Motions Roster Publication Sent             | Action   |                                  | 10/23/2013-11:57 |                  |           |
| Hood, James Bernard            | Roster/Notice of Motions Roster Publication Sent             | Action   |                                  | 10/23/2013-11:57 |                  |           |
| Grash, Jack G                  | Roster/Notice of Motions Roster Publication Sent             | Action   |                                  | 10/23/2013-11:57 |                  |           |
| Preston, Willie                | Motion/Motion For Scheduling Purposes Only (SETTLE)          | Motion   |                                  | 10/23/2013-11:56 | 11/04/2013-11:56 |           |
|                                | Mediation Results Form                                       | Filing   |                                  | 10/02/2013-11:32 |                  |           |
| Preston, Willie                | Motion/Motion Filing Fee                                     | Filing   |                                  | 09/26/2013-16:34 |                  |           |
| McGowan, Chad Alan             | Motion/Application for Default Judgment etc by plntff, srv   | Motion   |                                  | 09/26/2013-13:27 |                  |           |
| Coastal Anesthesia Associates  | Answer/Answer to Complaint, jury trial demanded & crt/srv    | Filing   |                                  | 09/23/2013-12:12 |                  |           |
|                                | Answer/Answer of certain defendants to Complaint, crt/srv    | Filing   |                                  | 08/09/2013-14:22 |                  |           |
| Thompson, Christine M D        |                                                              | Filing   |                                  |                  |                  |           |



|                         |                                     |        |  |                  |  |                                                                                     |
|-------------------------|-------------------------------------|--------|--|------------------|--|-------------------------------------------------------------------------------------|
|                         | Service/Acknowledgment Of Service   |        |  | 07/29/2013-09:42 |  |  |
|                         | Service/Acceptance Of Service       | Filing |  | 07/29/2013-09:40 |  |  |
| Thompson, Christine M D | Answer/Answer to Complaint, crt/srv | Filing |  | 07/03/2013-08:38 |  |  |
| Preston, Willie         | Summons & Complaint                 | Filing |  | 05/24/2013-16:05 |  |  |

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September 23, 2013

Chad A. McGowan, Esquire  
McGowan, Hood, & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732

Re: Willie Preston, individually and as the Personal Representative of the Estate of Martha Preston, Deceased v. Surgical Care Affiliates, LLC, Charleston Surgical Center, L.P.; Laura Bilancione, R.N.; *Coastal Anesthesia Associates*; and *Christine Thompson, MD*  
C/A No. 2013-CP-10-03054, Charleston CP  
HLF File No. 242.148

Dear Chad:

Enclosed please find the Defendant Coastal Anesthesia Associates, LLC's (incorrectly identified as Coastal Anesthesia Associates) Answer to Plaintiff's Complaint in the above-referenced case, which is being filed with the court. Should you have any questions, please do not hesitate to contact me.

Kind regards,

Yours truly,

  
James B. Hood

JBH/sam

Enclosures

cc: Jack G. Gresh, Esquire



|                                           |   |                                                 |
|-------------------------------------------|---|-------------------------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS                    |
|                                           | ) |                                                 |
| COUNTY OF CHARLESTON                      | ) |                                                 |
| Willie Preston, individually and as the   | ) | C/A No. 2013-CP-10-03054                        |
| Personal Representative of the Estate of  | ) |                                                 |
| Martha Preston, Deceased,                 | ) |                                                 |
| Plaintiff,                                | ) |                                                 |
|                                           | ) | <b>DEFENDANT COASTAL</b>                        |
| Versus                                    | ) | <b>ANESTHESIA ASSOCIATES, LLC'S<sup>1</sup></b> |
|                                           | ) | <b>ANSWER TO PLAINTIFF'S</b>                    |
|                                           | ) | <b>COMPLAINT</b>                                |
| Surgical Care Affiliates, LLC, Charleston | ) | <b>(Jury Trial Demanded)</b>                    |
| Surgical Center, L.P.; Laura Bilancione,  | ) |                                                 |
| R.N.; Coastal Anesthesia Associates; and  | ) |                                                 |
| Christine Thompson, M.D.,                 | ) |                                                 |
| Defendants.                               | ) |                                                 |

The Defendant, Coastal Anesthesia Associates, LLC<sup>2</sup> (hereinafter "this Defendant"), by and through its undersigned attorneys, hereby responds to the allegations in Plaintiff's Complaint, subject to all affirmative defenses and motions, as follows:

1. This Defendant denies each and every allegation of Plaintiff's Complaint which is not specifically admitted herein.
2. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 1, 2, 3 and 4 of Plaintiff's Complaint, and therefore denies the same.
3. In response to the allegations contained in Paragraph 5 of Plaintiff's Complaint, this Defendant admits only that Defendant Christine Thompson, M.D. is a physician licensed in the state of South Carolina and that Dr. Thompson is a resident of Charleston County, SC. This Defendant denies all remaining and inconsistent allegations.

<sup>1</sup> Improperly identified as "Coastal Anesthesia Associates."

<sup>2</sup> Improperly identified as "Coastal Anesthesia Associates."

4. In response to the allegations contained in Paragraphs 6, 7, and 8 of Plaintiff's Complaint, this Defendant craves reference to the medical records of Martha Preston to provide a complete and accurate history of her treatment and deny all allegations inconsistent therewith.

5. Paragraphs 9, 10, and 11 of Plaintiff's Complaint contain allegations that are not directed at this Defendant and state conclusions of law. Therefore, no response is required from this Defendant. To the extent a response is required, this Defendant craves reference to the cited policies and procedures as well as Martha Preston's medical records and denies all inconsistent allegations contained in Paragraphs 9, 10, and 11 of Plaintiff's Complaint.

6. This Defendant denies the allegations contained in Paragraphs 12 and 13 of Plaintiff's Complaint.

7. This Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 14, 15 and 16 of Plaintiff's Complaint, and therefore denies the same.

8. This Defendant denies the allegations contained in Paragraphs 17 and 18 of Plaintiff's Complaint.

9. This Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint. Subparagraphs a - f of Paragraph 19 of Plaintiff's Complaint are not directed at this Defendant and contain conclusions of law and, therefore, no response is required from this Defendant. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs a - f of Paragraph 19 of Plaintiff's Complaint. Subparagraphs g - k of Paragraph 19 of Plaintiff's Complaint and the unnumbered sentence appearing after subparagraph k of

Paragraph 19 of Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations contained in subparagraphs g – k of Paragraph 19 of Plaintiff's Complaint and the unnumbered sentence appearing after subparagraph k of Paragraph 19 of Plaintiff's Complaint.

**AS TO THE FIRST CASE OF ACTION**  
**(Survival Action)**

10. In response to Paragraph 20 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 – 19 of Plaintiff's Complaint as if fully restated herein.

11. Paragraph 21 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

**AS TO THE SECOND CASE OF ACTION**  
**(Wrongful Death)**

12. In response to Paragraph 22 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 – 21 of Plaintiff's Complaint as if fully restated herein.

13. Paragraph 23 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.

**AS TO THE THIRD CASE OF ACTION**

**(Loss of Consortium)**

14. In response to Paragraph 24 of Plaintiff's Complaint, this Defendant re-asserts and re-alleges its responses to Paragraphs 1 – 23 of Plaintiff's Complaint as if fully restated herein.

15. Paragraph 25 of Plaintiff's Complaint states conclusions of law to which this Defendant is not required to respond. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint.

16. This Defendant denies the WHEREFORE clause of Plaintiff's Complaint such being the remaining allegations contained in Plaintiff's Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**

**THIS DEFENDANT ALLEGES:**

**(No Deviation from the Standard of Care)**

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

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**

**THIS DEFENDANT ALLEGES:**

**(No Proximate Cause)**

18. That, even if this Defendant was negligent, as alleged in Plaintiff's Complaint, which is specifically denied, the negligence of this Defendant is not the direct and proximate cause of any injury alleged by Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by Plaintiff.



**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

19. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's 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.**  
**THIS DEFENDANT ALLEGES:**  
**(Punitive Damages Unconstitutional)**

20. This Defendant would plead the requirements for an award of punitive damages as set forth by the Supreme Court of the United States in the case of State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003) as defenses to this claim and would specifically assert that they are entitled to summary judgment on punitive damages and if denied to bifurcated trial.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.**  
**THIS DEFENDANT ALLEGES:**  
**(Noneconomic Damage Awards)**

21. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina 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 Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,**  
**THIS DEFENDANT ALLEGES:**  
**(Limitation of alleged Punitive Damages)**

22. Any punitive damages awarded in this case would be subject to the limitations described in S.C. Code §15-32-530.

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

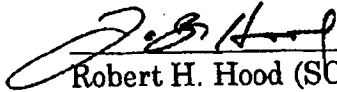
23. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Complaint, and having asserted these affirmative defenses, the Defendant, Coastal Anesthesia Associates, LLC<sup>3</sup>, prays that Plaintiff's Complaint be dismissed with prejudice and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

---

<sup>3</sup> Improperly identified as "Coastal Anesthesia Associates."

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)  
A. Walker Barnes (SC # 78485)

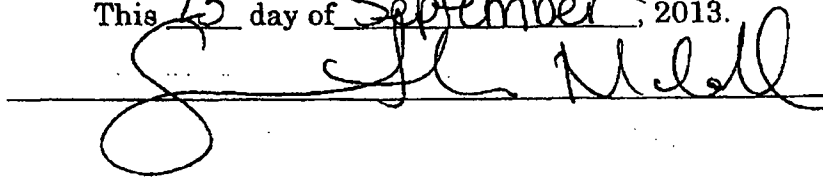
Attorneys for Defendant  
Coastal Anesthesia Associates, LLC<sup>4</sup>

9/27, 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 23 day of September, 2013.



<sup>4</sup> Improperly identified as "Coastal Anesthesia Associates."



## Jody Hawkins

Hawkins Investigations & Adjusting  
Charleston, South Carolina Area Medical Practice

**Join LinkedIn and access Jody Hawkins's full profile. It's free!**

As a LinkedIn member, you'll join 250 million other professionals who are sharing connections, ideas, and opportunities.

- See who you and Jody Hawkins know in common
- Get introduced to Jody Hawkins
- Contact Jody Hawkins directly



### Jody Hawkins's Overview

**Current** administrative assistant at Hawkins Investigations & Adjusting  
Admitting Clerk Charleston Surgery Center at Surgical Care Affiliates  
Admissions Clerk/Scheduler at Charleston Surgery Center

**Past** Receptionist/Patient Registration/Front Office Supervisor at Charleston Neurology Associates  
Receptionist at Dr. William Thompson

**Education** Charleston Southern University  
Trident Technical College  
Kalaheo High School

**Connections** 234 connections

**Websites** Personal Website  
Company Website  
Personal Website

### Jody Hawkins' Experience

#### administrative assistant

##### Hawkins Investigations & Adjusting

May 2006– Present (7 years 8 months)

#### Admitting Clerk Charleston Surgery Center

##### Surgical Care Affiliates

Privately Held; 1001-5000 employees; Hospital & Health Care industry  
December 1999– Present (14 years 1 month)

#### Admissions Clerk/Scheduler

##### Charleston Surgery Center

January 1999– Present (15 years)

Responsible for checking-in patients, answering phones, scheduling surgeries, rescheduling missed and canceled surgeries, message taking, filing, constructing medical charts, entering and verifying demographic insurance and financial information into computer database, posting payments from patients and their insurance companies, and any other general office duties designated by manager.

#### Receptionist/Patient Registration/Front Office Supervisor

##### Charleston Neurology Associates

January 1993– January 1999 (6 years 1 month)

Responsible for checking-in and checking-out patients, maintenance of patient's chart and pertinent medical records. Collected patient co-payments and posted payments. Verified insurance coverage. Answered telephones, greeted the patients, entered patient demographics in computer. Responsible for scheduling patient appointments, chart assembly, and filing. Entered and verified demographic insurance and financial information into computer database.

#### Receptionist

##### Dr. William Thompson

January 1991– January 1993 (2 years 1 month)

Responsible for checking-in and checking-out patients, maintenance of patient's chart and pertinent medical records. Collected patient co-payments and posted payments. Verified insurance coverage. Answered telephones, greeted the patients, entered patient demographics in computer. Responsible for scheduling patient appointments, chart assembly, and filing. Entered and verified demographic insurance and financial information into computer database.

### Jody Hawkins' Courses

#### Associate's degree, Computer Technology: Information Systems Specialist Trident Technical College

- C++ Programming (CPT-233)
- Intro to Java Programming (CPT-236)
- PHP Programming (CPT-283)
- Datum & Javascript (IST-239)
- Database (CPT-242)



- E-Commerce (CPT-220)
- Operating Systems (CPT-257)
- AS/400 Operations (CPT-124)
- Data Communications (IST-220)
- Systems & Procedures (CPT-264)
- Operating System Fundamentals (CPT-255)
- Managerial Communications (MGT-270)
- Microcomputer Spreadsheets (CPT-174)
- Microcomputer Word Processing (CPT-170)
- Complex Computer Applications (CPT-207)
- Computer Systems Management (CPT-209)
- Advanced Microcomputer Apps (CPT-270)
- Microcomputer Database (CPT-172)

#### Computer Science Charleston Southern University

- Applied Networking (COIN332)
- Intro to Mobile Application Development (COIN360)
- Database 419 (COIN419)

#### Jody Hawkins' Skills & Expertise

Customer Service   Microsoft Office   C++   PHP   JavaScript   Notary Public South Carolina   Medical Office Staff   Scheduling  
 Medical Records   SQL   MySQL   Java   Microsoft Word   Microsoft Excel   Microsoft Access   VBScript   Data Entry  
 Small Business   HTML 5   HIPAA

[View All \(28\) Skills](#)

#### Jody Hawkins' Education

**Charleston Southern University**  
 Computer Science  
 2013 – 2014 (expected)

**Trident Technical College**  
 Associate's degree, Computer Technology: Information Systems Specialist  
 2011 – 2012

**Kalaheo High School**  
 1983 – 1986

#### Jody Hawkins' Additional Information

Websites:

- Personal Website
- Company Website
- Personal Website

Groups and Associations: Family Life Weekend To Remember Group: [hawkins.www.familylife.com/weekendtoremember](http://hawkins.www.familylife.com/weekendtoremember) Join my group to get group discount on Weekend To Remember :-)

 Administrative Assistant Office Professionals (All Levels)

 Android Developer Group

 Association of Information Technology Professional

 Boeing Charleston

 Businesses in Charleston SC

 Charleston, SC Jobs

 Charleston, South Carolina Professionals

 IT/Healthcare, EMR, Patient Centered Medical Home - MDclick.com

 Investigation Network

 Investigator Marketing

 Linking Charleston, SC

 Microsoft Office

-  Microsoft Office-Excel, Word, Powerpoint & Outlook
-  National Association Of Investigative Specialists
-  Palmetto Technology Hub
-  Private Investigations Covert Surveillance Equipment
-  Process Servers
-  SD Times: Software Development News
-  The Lowcountry Business Network
-  The Small Business Network - Charleston, SC
-  Trident Technical College Alumni and Friends
-  aftp - No matter how sophisticated the technology, it still takes people!
-  iPhone, Android, iPad, Tablet & Mobile Application Development

Contact Jody for:

- career opportunities
- expertise requests
- getting back in touch
- job inquiries
- reference requests

View Jody Hawkins' full profile to...

- See who you and Jody Hawkins know in common
- Get introduced to Jody Hawkins
- Contact Jody Hawkins directly



Not the Jody Hawkins you were looking for? View more »

---

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# McGOWAN, HOOD, & FELDER, LLC

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Susie Campbell  
Deborah Casey (NC)  
Ashley Creech  
John G. Felder, Jr.  
Lara Harrell  
S. Randall Hood  
Patrick Killen  
Chad A. McGowan (SC, GA, NC)  
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803.327.7800  
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Fax 803.328.5656

Writer's E-mail:  
cmcgowan@mcgowanhood.com

November 26, 2013

The Honorable J.C. Nicholson, Jr.  
100 Broad Street, Ste. 106  
Charleston, SC 29401-2258

RE: Willie Preston, individually and as PR of the Estate of Martha Preston, deceased v. Surgical Center Affiliates, LLC, Charleston Surgery Center, LP, Laura Bilancione, RN, Coastal Anesthesia Associates; and Christine Thompson, MD  
Case No. 13-CP-10-3054

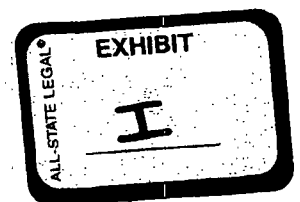
Dear Judge Nicholson:

On September 24, 2013, Plaintiff applied to this Court for default judgment against Coastal Anesthesia Associates and requested a hearing to determine the amount of damages. Because we had not received an answer, we did not provide the Defendant with notice of the motion.

I did have a phone conversation with Mr. Jamie Hood about this matter and in that call we discussed the pending Motion for Entry of Default Judgment.

We subsequently sent your Honor a proposed order granting default judgment as to liability. When we checked the Court's website to see if the order had been entered, we noticed that the Clerk received an Answer from Coastal Anesthesia Associates on September 23, 2013, the day before we filed our motion. We were served a copy of the Answer by Coastal in due course by Mr. Jamie Hood.

Even though we were not served with an Answer at the time we filed our Application for Default, and were unaware that one had been filed at that time, we wanted to bring this matter to the Court's attention to ensure we complied with our obligations under Rule 55.



Please let us know how we should proceed in light of the scheduled hearing to determine the amount of damages scheduled for December 18, 2013. I suspect Coastal will file a Motion for relief from entry of default and/or default judgment. If they do, it might be useful to have that motion resolved before we present our live damages witnesses.

We look forward to hearing from you. I have copied Mr. Jamie Hood on this letter as well.

Kindest regards.

Sincerely,

Chad McGowan  
Attorney for Mr. Preston

CAM

Cc: Jamie Hood, via email, [james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)  
Atty for Coastal



|                                          |   |                              |
|------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS |
|                                          | ) |                              |
| COUNTY OF CHARLESTON                     | ) |                              |
| Willie Preston, individually and as the  | ) | C/A No. 2013-CP-10-03054     |
| Personal Representative of the Estate of | ) |                              |
| Martha Preston, Deceased,                | ) |                              |
|                                          | ) |                              |
| Plaintiff,                               | ) |                              |
|                                          | ) |                              |
| Versus                                   | ) |                              |
|                                          | ) |                              |
| Surgical Care Affiliates, LLC,           | ) | <b>AFFIDAVIT OF</b>          |
| Charleston Surgery Center, L.P.; Laura   | ) | <b>JODY HAWKINS</b>          |
| Bilancione, R.N.; Coastal Anesthesia     | ) |                              |
| Associates, LLC; and Christine           | ) |                              |
| Thompson, MD,                            | ) |                              |
|                                          | ) |                              |
| Defendants.                              | ) |                              |

PERSONALLY APPEARED BEFORE ME Jody Hawkins, who after being sworn, states as follows:

1. My name is Jody Hawkins.
2. I am over the age of eighteen (18) and am competent to make the following statements.
3. I am an employee of Defendant Charleston Surgery Center ("CSC").
4. I am a receptionist for CSC with offices located in North Charleston, South Carolina.
5. At no point in time have I been authorized to receive service of process on behalf of Defendant Coastal Anesthesia Associates, LLC ("Coastal").
6. Upon information and belief, on July 8, 2013, Plaintiff attempted to serve upon me a Complaint in the above-captioned matter naming, among others, Coastal as a Defendant.

7. Although I may have signed a document attempting to certify acceptance of service on behalf of Coastal, I have never been and was not on July 8, 2013 an employee, agent or representative of Coastal.

8. On July 8, 2013, I was an employee, agent or representative of CSC, which had no legal affiliation with Coastal.

9. If I signed any document on July 8, 2013 attempting to evidence service of process upon Coastal of the Complaint in the above-referenced action, that signature was in error, for I was not an employee, agent or representative of Coastal, and I did not have the authority to accept service upon Coastal of any document whatsoever.

FURTHER AFFIANT SAYETH NOT!

Jody Hawkins  
Jody Hawkins

SWORN TO AND SUBSCRIBED before me  
this 12<sup>TH</sup> day of DECEMBER, 2013

Clarence A. Gans  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 3/21/2022

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

Willie Preston, individually )  
and as PR of the Estate of Martha )  
Preston, deceased, )  
Plaintiffs, )  
vs. ) 2013-CP-10-3054  
Surgical Center Affiliates, LLC, )  
et al, )  
Defendants. )

---

TRANSCRIPT OF PROCEEDINGS  
HEARING ON MOTIONS  
HEARD BEFORE JUDGE J.C. NICHOLSON, JR.  
ON DECEMBER 18, 2013

---

ROLAYNE M. VOLPE, CCR, RPR  
Court Reporter for the State of South Carolina at Large  
Post Office Box 342  
Summerville, South Carolina 29484

A P P E A R A N C E S

Attorney for the Plaintiffs:

CHAD ALAN MCGOWAN  
ASHLEY CREECH  
JOHN HUGHES COOPER

Attorneys for the Defendants:

JAMES BERNARD HOOD

Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of Carolina

I N D E X

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| REPORTER'S CERTIFICATE | 46   |

E X H I B I T S

| DESCRIPTION | PAGE |
|-------------|------|
|-------------|------|

(No exhibits were offered or admitted.)

Reported By:

Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

1           The above-styled cause came on for hearing on  
2 the 18th day of December, 2013, at 2:37 p.m., before  
3 Judge J. C. Nicholson, Jr., Resident Judge Retired,  
4 presiding over the Circuit Court for the County of  
5 Charleston, when the following proceedings were had and  
6 entered of record, to wit:

7                           PROCEEDINGS

8           THE COURT: Okay. We've got a Motion to Set  
9 Aside the Judgment; is that correct?

10          MR. HOOD: Yes, your Honor. James Hood on  
11 behalf of Coastal Anesthesia Associates, LLC. It's our  
12 Motion to Dismiss or Alternative to Set Aside the  
13 Default.

14          THE COURT: Okay. I was just looking at this  
15 Order ordering the default judgment on 11-12-13, and it  
16 says that they served Coastal Anesthesia's registered  
17 agent on July the 8th, 2013.

18          Go ahead. Let me hear you. First of all, let  
19 me ask you, do you think you're proceeding under 55 or  
20 60 or both, or how do you want to proceed?

21          MR. HOOD: First, your Honor, we think that  
22 there's subject matter jurisdictional issues, but also  
23 as it relates to your Order, there's never been an entry  
24 of default entered in the case for which a Rule 55(c), I  
25 guess, would have been appropriate. There was no entry

Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

1 of default. The first indication of default was your  
2 Order. And it is framed as a judgment, so to that  
3 extent it may be need to proceed under Rule 60.

4 THE COURT: I think it probably should be  
5 framed as a entry of default. The problem is there's no  
6 form that the court administration has come up with  
7 where you do answer a default. Rule 55 says, When the  
8 affidavit of default is clerical, appropriate parties  
9 shall enter an entry. But there's no specific form that  
10 the court administration has come up with in my opinion.

11 What's your position on whether it should be 55  
12 or 60?

13 MR. MCGOWAN: We don't think it matters. It's  
14 probably legitimately 55 --

15 THE COURT: I think it's probably legitimate  
16 because I really think -- I've heard several of these  
17 things and the issue has really come up -- you know, the  
18 statute was passed years ago where you had the judgment  
19 roll and you go in and write it in. But we don't have  
20 that anymore. It's all electronically. But to my  
21 knowledge, some lawyers have what they refer to as an  
22 entry of -- of default and the clerk signs it. But  
23 there's no approved court administration form that I  
24 know of.

25 I'm of the opinion that this should not say

1 "judgment." It should say "entry of default." Okay? I  
2 think it's appropriate under Rule 55.

3 Now, you've got a subject matter jurisdiction,  
4 I understand, because he did not comply with the statute  
5 as far as free mediation and attempt to settle; is that  
6 correct?

7 MR. HOOD: Yes, your Honor.

8 THE COURT: Let me just ask you a simple  
9 question. I've heard a lot of cases where they come in  
10 and the plaintiff hadn't done that so the court's -- the  
11 defense come in and ask the court to dismiss it. I  
12 don't understand why you say -- I just don't see where  
13 the subject matter jurisdiction has anything to do with  
14 that statute. If they don't comply -- and under your  
15 argument, the court could never dismiss the case because  
16 it wouldn't have subject matter jurisdiction. So it  
17 doesn't make sense to me how you're going to ever  
18 dismiss the case if they don't comply with the statute  
19 if a court doesn't have subject matter jurisdiction.

20 I just -- I'll hear you on that argument, but  
21 it just doesn't make good sense to me.

22 MR. HOOD: I understand. It -- and, your  
23 Honor, it is a little bit confusing, partially because  
24 of the drafting of the statute.

25 But as to that specific issue, I think that the

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1 statute specifies in 15-79-125(D) that a court shall  
2 maintain subject -- or jurisdiction over the above  
3 sections. And what I believe the legislative intent was  
4 to make it clear that the court could enforce the  
5 provisions contained in the statute. And for those  
6 people who don't comply with it and they don't follow  
7 the statutory scheme, once you file your next suit that  
8 gets a new cause of action number, at that point, I  
9 don't believe that there is subject matter jurisdiction.  
10 And the only way to raise it is to bring it to the  
11 court's attention to allow the court to make that  
12 determination, because I do think --

13 THE COURT: If the court doesn't have subject  
14 matter jurisdiction, they can't even hear it. That's  
15 your problem. I think the legislature is telling the  
16 parties that if you don't do it, you're subject to have  
17 your case dismissed. That's the intent of the statute.  
18 It's not the subject matter to -- for taking away  
19 circuit court's subject matter jurisdiction on the case.

20 MR. HOOD: Interestingly, in one of the cases  
21 cited by the Plaintiff though, the Ross versus Waccamaw  
22 Community Hospital case, which is the Supreme Court case  
23 from 2013, the Court does talk about the issue of  
24 subject matter jurisdiction related to this notice of  
25 intent provision. And the reason I think it's

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1 interesting is because what the Court holds is that in  
2 the context of counting the time for conducting the  
3 presuit mediation, that does not in and of itself  
4 deprive the court of subject matter jurisdiction. The  
5 Court did not go so far as to say that the issue of  
6 subject matter jurisdiction is not relevant in the  
7 analysis of this statute.

8           So I thought it was interesting that when  
9 they -- they held in Judge Kittredge's Opinion --  
10 Justice Kittredge, excuse me -- his Opinion where he  
11 says: We conclude that the time period set forth in  
12 Section 15-79-125 was not intended to place limitations  
13 on the court's subject matter jurisdiction.

14           Goes on to say: Thus, we hold that failing to  
15 comply with the 120-day statutory time period is a  
16 nonjurisdictional procedural defect.

17           I interpret that to mean that there can exist  
18 jurisdictional procedural defects in -- where a party  
19 fails to comply with the procedural requirements and  
20 pursues a summons and complaint --

21           THE COURT: Well, that might go to some type of  
22 *in personam* jurisdiction over the parties but not the  
23 court. I mean, if I don't have subject matter  
24 jurisdiction, I can't even hear your motion today.  
25 Period. Subject matter jurisdiction means the court

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1 can't hear it. And I just think that -- I just  
2 really -- you may be right, but I personally think  
3 that's an absurd position to take. I can't hear your  
4 motion today if I don't have subject matter jurisdiction  
5 over this case because he didn't comply with a prefiling  
6 on the -- what do they call it?

7 MR. HOOD: The notice of intent.

8 THE COURT: The notice of intent.

9 And to take it a step further, if somebody  
10 doesn't carry that notice of intent and you come in and  
11 say, Judge, they didn't do it, under your argument, I  
12 can't hear your motion to kick the case out, which I  
13 have done in the past.

14 Maybe you and I are not agreeing on what  
15 subject matter jurisdiction is. Subject matter  
16 jurisdiction means I don't have jurisdiction to hear  
17 anything.

18 MR. HOOD: Right. As far as the class of cases  
19 that the court can hear. And certainly the court is  
20 entitled and the subject matter of medical malpractice  
21 typically is within the jurisdiction of the court. But  
22 what the legislature has done has said only in certain  
23 circumstances can cases be filed as malpractice cases,  
24 and those cases have to comply with this procedural  
25 mechanism.

1           THE COURT: That's right. And it gives the  
2 court authority to dismiss it if they don't comply. It  
3 doesn't take away the court's subject matter  
4 jurisdiction.

5           MR. HOOD: But it couldn't be personal  
6 jurisdiction.

7           THE COURT: Well, yeah. Now, you're  
8 talking about something different there, now. Of  
9 course, *in personam* jurisdiction over the parties, but  
10 that doesn't mean the court loses jurisdiction to hear  
11 the case, and that's what you're telling me.

12          MR. HOOD: It's my interpretation that the only  
13 way to dismiss the -- the Complaint that's filed without  
14 complying with the statute to begin with is through the  
15 subject matter jurisdiction 12(b) procedure, because,  
16 otherwise, there is no mechanism to bring it to the  
17 court's attention.

18          THE COURT: That's right. If the court doesn't  
19 have subject matter jurisdiction, you can't bring it  
20 before the court.

21          MR. HOOD: The issue of subject matter  
22 jurisdiction, the only way it becomes an issue is if  
23 it's raised to the court's attention. And so all of the  
24 jurisprudence or the subject matter jurisdiction  
25 involves the court making a determination that it either

1 has or does not have subject matter jurisdiction. And  
2 in the context of a statute that restricts the circuit  
3 court's ability to hear a -- classic cases, it's my  
4 contention that it lacks subject matter jurisdiction  
5 until those procedural requirements are met and then the  
6 litigant comes to court and can properly file a summons  
7 and complaint.

8 THE COURT: Let me just cut to the chase. That  
9 motion is denied because I disagree with you.

10 MR. HOOD: Okay.

11 THE COURT: The Court has subject matter  
12 jurisdiction. Okay? Otherwise, you couldn't -- I  
13 couldn't hear you -- any motions in your case.

14 MR. HOOD: Okay. Then I would --

15 THE COURT: Okay? And I just -- I think -- I  
16 don't think that's the legislative intent. I don't  
17 think by any stretch of the imagination you're going  
18 to take away the circuit court's subject matter  
19 jurisdiction because he hasn't complied with the  
20 statute. Otherwise, it's not a -- you would never get  
21 it -- the case dismissed. Who's going to hear it?  
22 Supreme Court? In other words, who has jurisdiction to  
23 hear the case if the people don't comply with the  
24 statute? Who would hear it? Who would dismiss it from  
25 the lawsuit? Who? If the circuit court doesn't have

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1 jurisdiction. Magistrate court? Court of appeals?

2 MR. HOOD: No, sir. What I'm suggesting is  
3 that if I'm asking a court to dismiss the notice of  
4 intent, then that subject matter jurisdiction exists  
5 with the court by virtue of Section D of the statute.  
6 But if a party wholesale fails to comply with the  
7 provisions and goes ahead and files a complaint without  
8 filing the notice of intent provisions, the only  
9 mechanism to ask the court to dismiss it at that point  
10 is subject matter jurisdiction for failing to comply  
11 with the procedural requirements much like failing to --

12 THE COURT: That may go to the plaintiff,  
13 but -- didn't do it but I don't think that goes to the  
14 court.

15 MR. HOOD: And I -- apparently, we obviously  
16 were -- I mean, I just take obviously a different  
17 position than --

18 THE COURT: Anyhow, that's denied. Okay?

19 MR. HOOD: Okay.

20 THE COURT: Let me hear you on Rule 55.

21 MR. HOOD: Yes, your Honor. And to the extent  
22 that it -- this can be entertained, the failure to  
23 comply with the procedural requirements under 15-79-125,  
24 is more properly asserted as a motion for personal  
25 jurisdiction then I would request leave to refile that

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1 motion and argue it as a personal jurisdictional issue  
2 rather than --

3 THE COURT: Well, I -- I'll listen to you on  
4 that. Okay. Let me hear you on what's the good cause  
5 why I should set aside the default.

6 MR. HOOD: The pertinent timeline here is the  
7 notice of intent in this case was filed in -- November  
8 13th --

9 THE COURT: The notice of intent to file,  
10 November 13th?

11 MR. HOOD: Yes, sir. 2012.

12 THE COURT: All right.

13 MR. HOOD: Affidavits of service for the notice  
14 of intent were filed on 12-10-2012.

15 THE COURT: Okay.

16 MR. HOOD: The --

17 THE COURT: What was filed on 12-10? I'm  
18 sorry.

19 MR. HOOD: The affidavits of service.

20 THE COURT: Okay. Affidavits of service on  
21 who, now? On Coastal Anesthesia?

22 MR. HOOD: No, sir. Because in the notice of  
23 intent, you'll notice that the entity identified was  
24 not Coastal Anesthesia, but was ABC Anesthesia Group.

25 THE COURT: ABC?

1 MR. HOOD: Anesthesia Group.

2 THE COURT: Are they parties in this case?

3 MR. HOOD: They are not. It is -- from my  
4 understanding, it's a fictional name much like a  
5 John Doe.

6 THE COURT: Okay. I gotcha. Go ahead.

7 MR. HOOD: So the presuit mediation took  
8 place -- well, I filed a notice of appearance on behalf  
9 of Dr. Thompson on February 8th, 2013. The parties,  
10 excluding ABC Anesthesia Group, participated in a  
11 presuit mediation on 4-1 of '13.

12 THE COURT: 4-1 of '13?

13 MR. HOOD: Yes, sir.

14 THE COURT: All right.

15 MR. HOOD: And that resulted in an impasse  
16 and --

17 THE COURT: And you participated on behalf of  
18 who now?

19 MR. HOOD: Dr. Christine Thompson.

20 THE COURT: So you were there, but you didn't  
21 participate on behalf of Coastal?

22 MR. HOOD: No, sir. I was retained to  
23 represent Coastal on September 20th of 2013.

24 THE COURT: Go ahead.

25 MR. HOOD: The Complaint in the case was filed

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1 after the declaration of impasse and the ADR filing on  
2 May the 24th, 2013.

3 THE COURT: May the 24th --

4 MR. HOOD: Yes, sir.

5 THE COURT: -- was when the -- the Complaint  
6 was filed?

7 MR. HOOD: Correct.

8 THE COURT: Okay.

9 MR. HOOD: There were a certificate -- well, a  
10 certified letter was signed on behalf of Coastal  
11 Anesthesia that was named in the Complaint. The  
12 Complaint did not name ABC Anesthesia Group. It named  
13 Coastal Anesthesia. And that return receipt was signed  
14 on July 8th, 2013, by one Jody Hawkins (phonetic).

15 THE COURT: July the 8th, '13?

16 MR. HOOD: Yes, sir.

17 THE COURT: Affidavit of service? Okay.

18 MR. HOOD: It was a certificate of service. It  
19 was served via certified mail.

20 THE COURT: Okay. Certificate of service.  
21 Okay.

22 MR. HOOD: On September 23rd, a second  
23 mediation took place, the surgery center participated  
24 and reached a settlement, which I understand your Honor  
25 approved the settlement terms of that in November.

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1 THE COURT: All right. That was when now?

2 MR. HOOD: September 23rd.

3 THE COURT: Okay. Go ahead.

4 MR. HOOD: And on that day, I filed an answer  
5 on behalf of Coastal Anesthesia Associates, LLC.

6 THE COURT: You filed that September 23rd?

7 MR. HOOD: Yes, sir.

8 THE COURT: All right.

9 MR. HOOD: The Plaintiff filed -- his  
10 application for default was filed September 26th.

11 THE COURT: When did you serve it on the  
12 Plaintiff?

13 MR. HOOD: Same day I filed the --

14 THE COURT: So it was served and filed so  
15 the --

16 MR. HOOD: Well, he's out of town, so it would  
17 have been -- I don't know what day he received it. But  
18 it would have gone via U.S. mail.

19 THE COURT: I mean, my question, did he know  
20 about it before he filed the --

21 MR. HOOD: I think they crossed in the mail.

22 THE COURT: They crossed in the mail. All  
23 right.

24 MR. HOOD: That's my understanding.

25 THE COURT: Okay.

1           MR. HOOD: And then we get the order of default  
2 on 11-25, and I filed my motion for relief ten days  
3 later on 12-5.

4           THE COURT: 11-25 is when you received it?

5           MR. HOOD: Yes, sir. You signed it on the  
6 21st, and I believe it was filed on the 25th.

7           THE COURT: Okay.

8           MR. HOOD: And then I received -- then I filed  
9 my motions for a leave on 12-5.

10          THE COURT: Okay.

11          MR. HOOD: As I mentioned, I was retained to  
12 represent Coastal --

13          THE COURT: You told me you were retained on --

14          MR. HOOD: -- September 20.

15          THE COURT: -- September the 23rd -- well, I  
16 wrote it down. September 20th, right, is when you were  
17 retained?

18          MR. HOOD: Correct. And I filed the answer on  
19 the 23rd.

20          THE COURT: Okay. Tell me about -- what  
21 happened to it when it was served by mail and who was it  
22 served on and what transpired?

23          MR. HOOD: Yes, sir. The -- the summons and  
24 complaint were served to the practice. And Ms. Hawkins  
25 is here, who accepted service. She works at the surgery

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1 center -- she's not an employee of the practice -- the  
2 surgical -- excuse me, the anesthesia group. The  
3 anesthesia group's registered address is the same place  
4 as the surgery center. So she works at the surgery  
5 center, mail comes in, she receives it, she signs off  
6 accepting it, and, you know, signs the certified letter,  
7 giving the receipt back to the postman. In that,  
8 there's a box that says "agent" on it, and it's  
9 checked -- that box is checked. So, you know, we  
10 recognize the Plaintiff's position is they're presuming  
11 that service has been proper because it indicates  
12 "agent."

13 THE COURT: Right.

14 MR. HOOD: When I got involved after the entry  
15 of default by your Honor and began preparing the papers,  
16 I inquired about who this person was. Come to find out,  
17 Ms. Hawkins is not an employee for Coastal Anesthesia.  
18 She's not the registered agent. She's not authorized by  
19 appointment or law to accept service on behalf of  
20 Coastal Anesthesia. And --

21 THE COURT: Is she the receptionist for several  
22 entities there?

23 MR. HOOD: I believe so, your Honor. And we  
24 asked her and submitted to your Honor an affidavit that  
25 she signed regarding her position. And I believe that

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1 is my Exhibit Number -- bear with me. I don't see, your  
2 Honor -- her affidavit was subsequent -- was filed just  
3 after my memorandum was. It's an affidavit of  
4 Ms. Hawkins that -- here, I'll hand a copy of it. Here  
5 it is.

6 (Document is handed to the Judge.)

7 MR. HOOD: And this date is September -- excuse  
8 me, December 12th, 2013.

9 THE COURT: Okay. Thank you, sir. CSC is  
10 Charleston Surgery Center?

11 MR. HOOD: Yes, sir.

12 THE COURT: Okay. Well, what happened to the  
13 summons and complaint after she signed for it?

14 MR. HOOD: Well, we have her. She -- I mean,  
15 she can come testify. But I'm under the impression,  
16 your Honor, that she received it. She doesn't have  
17 specific memory of receiving this, but she does receive  
18 certified letters, and she would put them in the office  
19 -- or whomever it was directed to.

20 THE COURT: Well, does she routinely do that  
21 for both agencies? I mean, the surgical -- Charleston  
22 Surgery Center as well as Coastal?

23 MR. HOOD: Well, she would receive things like  
24 subpoenas for medical records, perhaps, from time to  
25 time. But she's not a registered agent on behalf of

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1 Coastal Anesthesia.

2 THE COURT: Was she the receptionist for all --  
3 were all -- the Surgical Care Of -- Charleston Surgical  
4 and Coastal all in the same facility?

5 MR. HOOD: I think, your Honor, rather  
6 than -- since it's so important, if I could just call  
7 her and she can answer your questions directly.

8 THE COURT: Well, why don't you just -- is she  
9 here?

10 MR. HOOD: She's right here, yes, sir.

11 THE COURT: Well, go talk to her and find out.

12 MR. HOOD: Okay.

13 (Mr. Hood speaks with Ms. Hawkins off the  
14 record.)

15 MR. HOOD: Your Honor, front office staff of  
16 surgery center -- she admits intake -- does the intake  
17 on the patients. She's employed by the surgery center.  
18 She's not an employee of Coastal Anesthesia. Coastal  
19 Anesthesia, the only support staff is the physician  
20 there -- and anesthesiologist there has are certified  
21 nurse/anesthetist. So -- and she doesn't haven't an  
22 official capacity and doesn't have an official role for  
23 the physician.

24 THE COURT: Well, who answers the phone for  
25 Coastal Anesthesia?

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1 MR. HOOD: I have no idea.

2 (Mr. Hood speaks with Ms. Hawkins off the  
3 record.)

4 MR. HOOD: They don't have a separate phone.  
5 line. So if you were trying to call the physician, I  
6 presume -- well, they don't have any direct contact with  
7 patients. If you need an outpatient surgery, you go to  
8 the surgery center. And this is the physician who  
9 provides anesthesia services, so he's just there.

10 THE COURT: Okay.

11 MR. HOOD: But wouldn't be like me picking up  
12 the phone and calling a doctor at his practice to  
13 schedule something.

14 THE COURT: Okay. All right.

15 MR. HOOD: So it's a -- it's a slightly unusual  
16 scenario because it's not as though there's a  
17 receptionist whose job it is to do intake for this  
18 particular person.

19 So she receives a letter. And, you know, it's  
20 our position that under Rule 4, she doesn't qualify as  
21 the -- an appropriate entity to accept service of  
22 process service, so service is not effected. And that  
23 would be good cause for the Court to allow the Defendant  
24 to answer.

25 We do have some other elements that need to be

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1 set out. I mean, first, there is some reference to  
2 confusion about who represented this entity and how --

3 THE COURT: Let me say, I don't think time's an  
4 issue. Okay?

5 MR. HOOD: Okay.

6 THE COURT: The good cause is -- I heard your  
7 good cause. Now, time, I don't think, is an element.  
8 What's your meritorious defense?

9 MR. HOOD: Yes, sir. The anesthesia group, the  
10 only theory of liability against it is one of vicarious  
11 liability for the acts of the physician Christine  
12 Thompson. And so as far as meritorious defense goes,  
13 Dr. Thompson has provided an affidavit that's attached  
14 to our memorandum, as has Dr. Kerns (phonetic), who is  
15 also an anesthesiologist, that her care and treatment at  
16 the time related to this particular incident was within  
17 the standard of care and complied with the standard of  
18 care.

19 She has also filed an answer denying all the  
20 allegations of the Plaintiff's Complaint. That answer  
21 is on her file. It was filed, I believe, sometime in  
22 June, if I'm not mistaken.

23 So for a meritorious defense, we have  
24 the -- the acting Defendant who is defending herself  
25 currently, we have the affidavits supporting in her



1 denials of the allegations contained in the Complaint,  
2 and so I think that's sets forth the meritorious defense  
3 on --

4 THE COURT: Talk to me a little bit about the?]   
5 prejudice upon the Plaintiff if you view any. I'm sure  
6 he can address it more ably. I'm not saying you can't  
7 do it ably, but talk to me about prejudice.

8 MR. HOOD: Yes, sir. Your Honor, we don't  
9 believe that there exists any prejudice in this  
10 particular instance because the only thing that's  
11 transpired is the passage of time. There's no  
12 independent act against the practice itself. So  
13 the ultimate determination of liability for the practice  
14 is going to rest with the Plaintiff proving the alleged  
15 negligent conduct of the physician who is not in  
16 default. So there's no -- no prejudice because of the  
17 timing component.

18 THE COURT: What did they say was the violation  
19 of standard of care and by whom?

20 MR. HOOD: Sure. It was -- the Complaint  
21 alleged that the anesthesiologist, Dr. Thompson, failed  
22 to properly administer pain medications and that the  
23 patient was improperly monitored while in the surgical  
24 center. So they asserted claims against the surgical  
25 center as well as Dr. Thompson.

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1           THE COURT: Now, is Dr. Thompson employed with  
2 Coastal Anesthesia?

3           MR. HOOD: She is not, your Honor. She is an  
4 independent contractor who does work for Coastal  
5 Anesthesiology Associates, LLC, through *Locum Tenens*,  
6 which you've probably heard of at -- an organization  
7 that provides physicians to entities that need them on  
8 an as-needed basis. So she's not a Coastal Anesthesia  
9 Associates employee.

10           So from a meritorious -- and so we have an  
11 issue of agency that's also right for a meritorious  
12 defense, whether she was acting as the agent of Coastal  
13 Anesthesia in this instance or whether she's an  
14 independent contractor and she stands on her own two  
15 feet. So there's a question of fact as to vicarious  
16 liability component.

17           Separately on the prejudice issue, from a  
18 timing standpoint, there's been no issue with regards to  
19 availability, evidence, destruction of evidence,  
20 anything of that nature because of the vicarious nature  
21 of the claim. The parties who are involved have been  
22 involved, and the case has been proceeding since May of  
23 2013.

24           Also, from a -- sort of an ends-of-justice  
25 approach in this case, if a plaintiff -- if a plaintiff

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Willie Preston, et al, versus Surgical Center, et al  
December 18, 2013

1 were to prevail or to keep a default -- have a default  
2 judgment -- receive an award of default for judgment  
3 damages, we would then have to appeal that issue, make a  
4 determination of the validity of that judgment. After  
5 that's determined one way or the other, we would then  
6 come back and try the case on its merits against the  
7 doctor herself, which would be prejudicial to her  
8 because then she would be stuck waiting around for  
9 however long. It would require multiple trials over the  
10 same issue.

11 It would also potentially give rise to a  
12 default judgment for a plaintiff against a defendant  
13 whose only theory is vicarious liability. So there  
14 would be a presumption -- there have to be presumed  
15 negligence on the part of the agent in -- through the  
16 mechanism of default for which that entity would  
17 ultimately bear responsibility and potentially have to  
18 ultimately pay. The problem with that is, then, if that  
19 entity is paying as a result of the alleged negligence  
20 of the doctor, then there's potential ramifications for  
21 the doctor being reported to the --

22 THE COURT: That's a prejudice to you, not the  
23 Plaintiff.

24 MR. HOOD: Excuse me?

25 THE COURT: That's a prejudice to you, not

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1 necessarily the Plaintiff.

2 MR. HOOD: Well, it is --

3 THE COURT: That addresses the ends of justice  
4 part..

5 MR. HOOD: Yes, sir.

6 THE COURT: i understand.

7 MR. HOOD: By way of prejudice, your Honor, we  
8 don't believe that there is any demonstrable prejudice  
9 to the Plaintiff, and we would respectfully ask the  
10 Court to set aside the default, allow us to file an  
11 answer, and, you know, let the case be resolved on its  
12 merits.

13 THE COURT: Okay. Thank you very much,  
14 Mr. Hood. Let me ask you one last question.

15 MR. HOOD: Yes, sir.

16 THE COURT: What does Coastal Anesthesia say  
17 about the summons and complaint? You got any  
18 affidavits -- you may have filed them. I haven't  
19 looked. Do they say they got it? They didn't get it?  
20 Did it go in the trash can? What happened to it?

21 MR. HOOD: It was received but the presumption  
22 was that Dr. Thompson is defending the case and she's  
23 handling it, taking care of it, because the case dealt  
24 with her.

25 We do have the affidavit of Dr. Kerns, I

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1 believe is his name, is in there. And we don't dispute  
2 that this arrived at the location on September -- or,  
3 excuse me, on July 8th. It eventually would have made  
4 it's way back to -- back to the doctor. The point  
5 being, that sort of the official nature of being served  
6 with the summons and complaint was -- was lost --

7 THE COURT: -- was defective to begin with?

8 MR. HOOD: Yes, sir.

9 THE COURT: Okay. Thank you very much.

10 Yes, sir?

11 MR. MCGOWAN: Couple of things, your Honor.

12 Chad McGowan with the Plaintiff.

13 Rule 12(h) says if you don't say "insufficient  
14 service of process" in your answer, it's waived. They  
15 didn't mention it. They didn't amend to mention it.  
16 Under operation of law, any claim of service was  
17 insufficient is waived. Rule 12(h)(1) is very clear in  
18 that regard. And the reason they didn't assert that to  
19 begin with is because it's not true. Service was good.  
20 Ms. Hawkins will tell you that she has been working at  
21 the surgery center for 14 years or so, and her standard  
22 routine practice is to sign for all the certified mail  
23 and deliver to whom it is addressed. She can't  
24 necessarily remember this instant, but will say that her  
25 normal practice is to give it to the -- in the chair or

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1 on the desk of the person to whom it belongs. No one  
2 has said that Dr. Kern didn't get it that same day and  
3 could read it just like anybody else does.

4 Moreover, what's interesting here is that the  
5 insurance company that hired Mr. Hood is the same  
6 insurance company with the same adjustor as for  
7 Dr. Thompson. So Dr. Thompson got involved with Med  
8 Pro, her carrier, and, in fact, had been noticed of this  
9 since September of 2012. Med Pro, Mr. Kosty (phonetic),  
10 hired Mr. Hood to defend it, and Mr. Kosty actually  
11 called me the very day of the mediation and said, I'm in  
12 default. I never assigned it to counsel.

13 Without a good cause, there is no need to talk  
14 about prejudice, there's no need to talk about  
15 meritorious defenses, or anything else. We think the  
16 law is very clear on that. Their only alleged good  
17 cause was insufficient service of process of which,  
18 first of all, is waived under Rule 12(h); and second of  
19 all, as a matter of fact, they did get --

20 THE COURT: Why do you think it's waived?

21 MR. MCGOWAN: Because Rule 12(h) says it. It  
22 says: The defense of lack of jurisdiction over the  
23 person, improper venue, insufficiency of process,  
24 insufficiency of service of process, or that another  
25 action is pending between the same parties for the same

1 claim is waived if omitted from a motion from the  
2 circumstances described in subdivision (g), which there  
3 is no motion.

4 THE COURT: But, I mean, he's not even in the  
5 lawsuit. He's in default. He filed a motion to set the  
6 default aside. I don't see how 12(b) makes it, in this  
7 situation, and waive it. Now, if he had answered,  
8 et cetera, et cetera, et cetera, and didn't raise it, I  
9 would agree with you.

10 MR. MCGOWAN: He did answer.

11 THE COURT: Pardon?

12 MR. MCGOWAN: He did answer.

13 THE COURT: Well, you can't -- it's not a  
14 legitimate answer. I mean, normally when you file a  
15 motion to be relieved of the judgment or separate entry  
16 of default, you normally do file an answer. And I don't  
17 know if that's by a rule or that's just common practice.  
18 But the answer right now is a nullity because he doesn't  
19 have the right to answer without leave of court and  
20 getting it set aside. So I'm not sure I follow your  
21 waiver argument.

22 MR. MCGOWAN: There's the Strickland versus  
23 Consolidated Energy case which says that if you answer  
24 at any point, late or otherwise --

25 THE COURT: I agree. But his answer is not

1 valid. He didn't have the right to answer without leave  
2 of court or your consent --

3 MR. MCGOWAN: Okay.

4 THE COURT: -- is my point to you.

5 MR. MCGOWAN: All right. So then --

6 THE COURT: Is that right, or is that wrong?

7 MR. MCGOWAN: Respectfully, I disagree.

8 THE COURT: I know he filed one. I know he  
9 served it on you. But it's no good. He doesn't have  
10 the right to do that without your consent or without the  
11 leave of court. So if that's the case, it can't  
12 be -- you can't waive it.

13 MR. MCGOWAN: Well, respectfully, I just don't  
14 think -- that's not the way I read the law. I think  
15 that if you choose -- no disrespect, your Honor.

16 THE COURT: I understand. I'm not viewing it  
17 as disrespectful.

18 MR. MCGOWAN: Yes, your Honor.

19 THE COURT: I appreciate your opinion, and I  
20 want to hear it. I'm just debating the issue with you.  
21 Okay?

22 MR. MCGOWAN: Yes, sir.

23 Yeah. But we think that if you answer at any  
24 time, if don't assert it, it's gone. But be that as it  
25 may, as a factual matter, this was good service, and



1 you'll notice nobody ever said -- in fact, Mr. Hood said  
2 Dr. Kern got it that same day --

3 THE COURT: What's your affidavit say as far as  
4 the information you're giving me?

5 MR. MCGOWAN: What do you mean, your Honor?

6 THE COURT: I mean, you're saying -- I assume  
7 you're saying she acted as the receptionist for all pf  
8 them, took the mail, and distributed it --

9 MR. MCGOWAN: We address the green card to the  
10 agent of service, Randall Kern, at that address, which  
11 is on the Secretary of State's website.

12 THE COURT: Right.

13 MR. MCGOWAN: She signed for it. She then gave  
14 it to Dr. Kern.

15 THE COURT: So you think she had the apparent  
16 authority to do it?

17 MR. MCGOWAN: That and actual authority  
18 because, according to her, she'd been there for 14  
19 years, and that's the way she'd done it every time.

20 THE COURT: But what are you presenting to the  
21 Court for this hearing to say that?

22 MR. MCGOWAN: The witness, Ms. Hawkins.

23 THE COURT: Okay. You got an affidavit from  
24 her?

25 MR. MCGOWAN: No, but I have the witness right

1 here, your Honor.

2 THE COURT: Well, I mean --

3 MR. MCGOWAN: She's not my witness. I had to  
4 subpoena her to be here because they produced an  
5 affidavit, and I subpoenaed her to be here in front of  
6 you.

7 THE COURT: Well, I mean, so you're going to  
8 need to take testimony on that issue?

9 MR. MCGOWAN: Well, honestly, I don't think so  
10 because they've never said Dr. Kern didn't get it that  
11 day. And if that's true, then Ms. Hawkins served it for  
12 us on him because she qualifies as someone over the age  
13 18, not an attorney, and not related to the case. So  
14 under Rule 4, she served Dr. Kern. And that's totally  
15 legitimate service. And the truth is he got it that  
16 same day and the insurance company forgot about it,  
17 confused, whatever. That's not good cause. It's just  
18 not.

19 THE COURT: All right. Anything else? I  
20 didn't mean to cut you off. I wasn't trying to cut you  
21 off. Anything else you want to tell me?

22 MR. MCGOWAN: No, sir.

23 THE COURT: You want to address the  
24 jurisdictional argument for the record? I mean, I've  
25 already ruled on it without hearing from you, but I

1 didn't mean to cut you off if you want to address that  
2 issue.

3 MR. MCGOWAN: We agree with you a hundred  
4 percent, Judge.

5 THE COURT: Pardon?

6 MR. MCGOWAN: We agree with you a hundred  
7 percent.

8 THE COURT: Well, obviously you do since I've  
9 already ruled that way, but is there anything you want  
10 to put on the record concerning that particular issue,  
11 is what I'm asking. I don't mean to cut you off.

12 MR. MCGOWAN: No, sir, your Honor.

13 THE COURT: Okay. Thank you very much.

14 (Respite.)

15 (The Judge is speaking with his law clerk off  
16 the record.)

17 THE COURT: Mr. McGowan, let me ask you a  
18 question. I was just looking at Rule 4, and he  
19 referred, I think, to Rule 12; is that correct,  
20 Mr. McGowan?

21 MR. MCGOWAN: Yes, sir. Rule 12(h) is the  
22 waiver part.

23 THE COURT: What I was -- I was looking under  
24 Rule 403, and it talks about "authorized person" because  
25 your argument is that she was the authorized person.

1           And I'll just quote to you what the case says:  
2   An authorized person is an agent of the addressee who  
3   has been specifically authorized in writing by the  
4   addressee to receive his mail.

5           Now, tell me on 12 where you're referring to?  
6   12 what?

7           MR. MCGOWAN: Rule 12(h)(1) says that --

8           THE COURT: -- (h)(1)?

9           MR. MCGOWAN: Yes, sir.

10          THE COURT: All right. Let me find it and  
11   I'll -- I want to see what you're saying, (h)(1). So  
12   your waiver arguments they have answered. So they  
13   waived it.

14          MR. MCGOWAN: Any general appearance of any  
15   kind is a waiver according to the Supreme Court. And  
16   there's a case directly on point on that.

17          THE COURT: Well, isn't that -- aren't most of  
18   those cases about *in personam* jurisdiction where you --  
19   somebody from out of state can come in and make a  
20   special -- you're talking about special appearances, I  
21   presume; right?

22          MR. MCGOWAN: No -- no. This is the Strickland  
23   versus Consolidated Energy case, 274 South Carolina 554.

24          THE COURT: You got a copy of it?

25          MR. MCGOWAN: I do, sir.

1           THE COURT: I'd be glad to look at it for you  
2 if you don't mind if you have a copy of it.

3           (Document is handed to the Judge.)

4           THE COURT: Thank you so very much.

5           MR. MCGOWAN: Yes, sir, your Honor.

6           THE COURT: So your position is that filing a  
7 motion to satisfy the default is a general appearance?

8           MR. MCGOWAN: Well, my position is, when you  
9 file an answer before --

10          THE COURT: I've already covered that argument  
11 with you. I just don't buy that because I don't think  
12 the answer is even effective. It's not valid, and it's  
13 an improper answer --

14          MR. MCGOWAN: Fair enough.

15          THE COURT: -- because he didn't have a right  
16 to do that --

17          MR. MCGOWAN: Fair enough.

18          THE COURT: -- without your consent or without  
19 leave of court. Okay?

20          So my next question is: What is a general  
21 appearance on your case?

22          MR. MCGOWAN: It is that if a defendant by his  
23 appearance asks any relief which can only be granted by  
24 the hypothesis that the Court has jurisdiction of his  
25 person, then he has made a general appearance.

1           And in this case that I just handed up,  
2   Strickland, it was about setting aside a default for  
3   meritorious reasons, good cause, et cetera.

4           THE COURT: Right.

5           MR. MCGOWAN: So that is by definition a  
6   general -- a general appearance to waive under 12(h).  
7   We still respect it, and we think the answer is as well.

8           But even if you don't think there's a waiver,  
9   Ms. Hawkins did, in fact, effect good service on the  
10   corporation.

11           THE COURT: Well, but the -- the other case  
12   says it's got to be in writing, whether she's  
13   authorized. She's not even an employee; she's not an  
14   agent; she's not connected to corporations. And  
15   the -- the case says it's got to be in writing she's  
16   authorized to accept mail.

17           MR. MCGOWAN: Judge, they have to show that  
18   they didn't actually get it. And because -- here's --  
19   here's -- let's assume that we just handed it to  
20   Ms. Hawkins and said, Would you please give this to  
21   Dr. Kern? She has now become our agent of service  
22   because she is the one that served Dr. Kern. And that  
23   is totally legitimate because, as a matter of truth and  
24   fact in this case, she did give it to Dr. Kern. And  
25   she, therefore, was -- personally served Dr. Kern with

1 our summons and complaint because she gave it to him.  
2 That's good service. And nobody here has said that  
3 Dr. Kern didn't get it, that he didn't know what -- that  
4 it was thrown in the garbage. He had it and he did  
5 whatever he did with it. So we've got good personal  
6 service, precommitting certified mail service.

7 (Respite.)

8 (The judge speaks with the law clerk off the  
9 record.)

10 THE COURT: She was an employee of Charleston  
11 Surgery Center; right?

12 MR. MCGOWAN: That is a true statement.

13 THE COURT: All right.

14 MR. MCGOWAN: But it's really not the point of  
15 the matter because --

16 THE COURT: I'm sorry, what?

17 MR. MCGOWAN: It's really not the point because  
18 if she handed it to Dr. Kern, she served it.

19 THE COURT: I understand what you are saying.  
20 Okay? Let me just ask you this about your argument that  
21 she served him.

22 MR. MCGOWAN: Yes, sir.

23 THE COURT: Okay?

24 Rule 4(c) very specifically says: A party to a  
25 lawsuit cannot serve summons and complaints.

1           Now, your argument is saying this lady, who's  
2   an employee of Charleston Surgery Center, who is a party  
3   to a lawsuit, served another party. The rule very  
4   clearly says that can't happen.

5           MR. MCGOWAN: She's not -- she is not  
6   Charleston Surgery Center.

7           THE COURT: But she's an employee of Charleston  
8   Surgery Center.

9           MR. MCGOWAN: I don't think that matters,  
10   Judge. Let's look at the bigger picture. This default  
11   rule is designed to encourage defendants to not sit on  
12   their rights and do nothing.

13          THE COURT: I understand that.

14          MR. MCGOWAN: But that's exactly what they did  
15   here.

16          THE COURT: Okay.

17          MR. MCGOWAN: That's exactly what they did.  
18   And then it's incredibly unfair to hold plaintiffs to  
19   things, I don't know, like statutes of limitations in  
20   saying when the doctor actually got it. He did get it  
21   that day. And I assume Mr. Hood will represent to the  
22   Court that as a matter of truth and fact, Dr. Kern --

23          THE COURT: I think he said he got it.

24          MR. MCGOWAN: Right.

25          THE COURT: That wasn't the issue.



1           MR. MCGOWAN: So what happened was they screwed  
2 this up, and they waited more than six weeks longer than  
3 they should have. And that is not good cause under the  
4 law. So what you'd be doing is rewarding a doctor or  
5 his insurance company -- we don't even know when he sent  
6 it to Joe Kosty at Medical Protective. If they got it,  
7 then there's clearly no good cause.

8           THE COURT: Well, okay. All right. Anything  
9 else?

10          MR. MCGOWAN: No, sir.

11          THE COURT: Appreciate it.

12          Mr. Hood?

13          MR. HOOD: Well, your Honor, I think on  
14 the issue of the service through the agent of the  
15 Codefendant, I don't think that's proper service. And I  
16 think we'd be stretching the bounds of Rule 4 to allow a  
17 certified letter to go to one party and let an employee  
18 of that party hand deliver it to the desk of someone  
19 else and call that personal service. I just don't think  
20 that's what's contemplated --

21          THE COURT: Well, what about his argument -- I  
22 forget the doctor's name, the anesthesia you say  
23 received it, he just ignored it.

24          MR. HOOD: Well --

25          THE COURT: I mean, you know, the case is very

1 clear when someone is negligent and ignoring it, that  
2 courts generally don't let them out -- the courts say  
3 that's not good cause.

4 MR. HOOD: Right. And in a situation where the  
5 conduct is based on the alleged actions of the  
6 independent contractor, Dr. Thompson, who is involved,  
7 who is defending the case, and who is represented, to  
8 him, this issue is her issue and it's being dealt with  
9 by her by me.

10 THE COURT: But that's not what the summons and  
11 complaint say. I mean, he can read, and I'm sure the  
12 Complaint didn't say that.

13 MR. HOOD: Well, I mean, the Complaint -- it  
14 does clearly specify it's a claim of vicarious  
15 liability.

16 THE COURT: Right.

17 MR. HOOD: And so, when you're not having the  
18 formality of being served, you reduce the -- the  
19 heightened sensitivity to the delivery of the document.  
20 That's why sending it via U.S. mail is not adequate.  
21 That's why we require process servers to say, Tag,  
22 you're it, or here's a certified letter. You have to  
23 sign it meaning that there's an affirmative act  
24 acknowledging this very important legal document which  
25 we don't have here. Yes, it is a technicality. But so

1 is trying to hold a party in default when their only  
2 theory against it is vicarious liability and we still  
3 have to litigate the underlying allegations of  
4 negligence against the purported agent.

5           So, you -- you know, from his position, the  
6 Rules say what the Rules say, and if the Plaintiff wants  
7 to declare that there has been some action of -- or some  
8 inaction resulting in default because of that -- some  
9 technicality, the technicality of the timing  
10 requirements, then it's fair for him to rely on a  
11 service being effected in accordance with the Rules  
12 other than holding someone in default without satisfying  
13 Rule 4.

14           And, incidentally, this whole thing came up  
15 because the case was being re-meditated and ultimately  
16 settled on September 23rd that your Honor approved the  
17 settlement of Surgery Center. I didn't attend because  
18 my client, the doctor, believes that she did nothing  
19 wrong. My client --

20           THE COURT: So the case is still pending  
21 against Dr. --

22           MR. HOOD: -- Thompson.

23           THE COURT: -- Thompson.

24           MR. HOOD: Yes, sir. And so we didn't  
25 participate --

1           THE COURT: Is it settled against Surgical  
2 Care?

3           MR. HOOD: It has.

4           THE COURT: And Charleston Surgery Center?

5           MR. HOOD: It has.

6           THE COURT: Okay.

7           MR. HOOD: And I was informed by one of the  
8 other attorneys that the case in its entirety had  
9 resolved and the only reason that this case is still  
10 ongoing is because of this looming default issue. And I  
11 don't think that's just.

12           And so if they have a claim and it's a  
13 legitimate one, the evidence will bear it out and the  
14 juries will do what they're going to do. But let's at  
15 least let it be resolved on the merits for --

16           THE COURT: What about his arguments that she'd  
17 waived it by making a general appearance?

18           MR. HOOD: Well, by making a general  
19 appearance, I think that's an impossible standard  
20 because I can't do anything or contest anything without  
21 leaving something under that theory. The only way for  
22 me to bring anything to your attention is by making an  
23 appearance and bringing it to your attention. So under  
24 that idea, I would be waiving it.

25           And as for the answer issue, I did file an

1 answer. And when I filed an answer, there was no  
2 indication of an entry of default. So when I checked  
3 the clerk's docket, I didn't see that there was an entry  
4 of default or anything so, boom, I fire out an answer.  
5 I don't hear about the actually seeking default until  
6 after the underlying -- until after his -- our stuff  
7 crossed in the mail and I get his paper thereafter. Had  
8 I known they were seeking entry of default, I would not  
9 have filed an answer. I would have set -- done a motion  
10 to set aside entry of default and identified the same  
11 bases that I've identified here. I don't entertain  
12 making plaintiffs jump through the hoop of personal  
13 service if it's not necessary. What you'll see from the  
14 papers is that I contacted the Plaintiff and said, Hey,  
15 I'm representing Dr. Thompson. Go ahead and send me  
16 anything, and I'll accept service of it.

17           And I did. So he doesn't have to pay someone  
18 250 bucks to do it. And so I wouldn't -- and I would  
19 not simply raise a defense of insufficiency of process  
20 if there's no benefit to it, if all it means is the  
21 Plaintiff's lawyers got to go out and hire a process  
22 server.

23           So, you know, in this case, there's -- there's  
24 a whole host --

25           THE COURT: Hold on just a second.

1           What I'm going to do and what she's doing, I've  
2 signed that Order as I've signed a lot of orders that  
3 says "judgment." I'm going to modify the Order and  
4 state it's an entry of default because I really think  
5 that's what it is. It's not a judgment for monetary  
6 damage or anything. So Rule 55 is the Rule I think  
7 applies, not Rule 60. And I'm going to modify that  
8 Order that I signed on your behalf placing them in  
9 default, but I think that's an entry of default. And  
10 I'm -- I'll make that part of the record as soon as she  
11 copies it.

12           Let me say this: I think, number one --  
13 Mr. Hood, if you want to take some notes -- I think  
14 there's a -- good cause has been shown, i.e., as far as  
15 the service is concerned because I don't think it  
16 complies with Rule 4. I don't agree with the argument  
17 that she served the doctor because she was an employee  
18 of another party. I don't think that was appropriate  
19 under Rule 4.

20           Number two, I think the time element in the  
21 other -- the time element, the meritorious defense, and  
22 I see no prejudice to the Plaintiff in granting the  
23 Defendant the right to answer.

24           Now, having said that, also in some cases it  
25 looks at the totality of the circumstances. The

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Official Court Reporter for the State of South Carolina

1    totality of the circumstances in this case is that the  
2    Coastal Anesthesia -- or the Plaintiff has not complied  
3    with the statute which requires mediation prior to  
4    filing a lawsuit against Coastal Anesthesia, and I think  
5    that's the factor in the totality of circumstances that  
6    the Court has to consider in allowing the Defendant in  
7    this case to answer.

8                    And, Mr. Hood, if you will prepare me a  
9    proposed order. Anything else that you think is  
10   appropriate, please run it by the other counsel in case  
11   he has some objection to it.

12                   If you have some objection to the Order, please  
13   let me know, and I'll try to modify it if I think it's  
14   an appropriate objection. Okay?

15                   Thank y'all very much.

16                   (The hearing of this cause concluded at  
17   3:30 p.m. on December 18, 2013.)

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Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

R E P O R T E R ' S   C E R T I F I C A T E

STATE OF SOUTH CAROLINA       )  
                                          ) ss.  
COUNTY OF BERKELEY            )

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR,  
and Registered Professional Reporter, RPR, do hereby  
certify that the transcript of the foregoing proceedings  
accurately reflects the events that occurred before me  
to the best of my ability at the time and place set out  
on the caption hereto, the witnesses having been duly  
cautioned and sworn, or affirmed, to tell the truth, the  
whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,  
related to, nor employed by any of the parties to the  
action in which these proceedings were taken or to any  
attorney or counsel employed by the parties hereto, nor  
financially interested, directly or indirectly, in the  
outcome of this action.

CERTIFIED AND SIGNED on this 11th day of March,  
2014.

\_\_\_\_\_  
ROLAYNE M. VOLPE, CCR, RPR  
Certified Court Reporter and  
Registered Professional Reporter  
Commission Expires: 8/30/2021

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Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina



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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

Case No. 2013-CP-10-03054  
Appellate Case No. 2014-000252

Willie Preston, individually and as the Personal Representative of the Estate of Martha Preston, Deceased. ....Appellant,

v.

Surgical Care Affiliates, LLC; Charleston Surgery Center, L.P.; Laura Bilancione, R.N.; Coastal Anesthesia Associates; and Christine Thompson, MD..... Defendants,

Of Whom

Coastal Anesthesia Associates is the, ..... Respondent,

**CERTIFICATE OF COUNSEL**

The undersign hereby certifies that this Record on Appeal contains all materials proposed to be included by any parties and not any other materials.

*Whitney B. Harrison*

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September 3, 2014