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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2019-CP-21--00777

Appellate Case No.: 2019-002114

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SC Court of Appeals

Dr. Gregory A. May,.....Respondent,

v.

Advanced Cardiology Consultants, P.A., Dr. Lew A. Rowe,
and Theresa Rowe,..... Appellants.

RESPONDENT'S MOTION TO DISMISS

The Respondent, Dr. Gregory A. May, by and through the undersigned counsel hereby moves for an order dismissing the instant Appeal. This motion is based on the provisions of S.C. Code § 14-3-330. It is the Respondent's position that the Order of the Honorable Michael G. Nettles dated October 21, 2019 and the Judge's subsequent Order on November 20, 2019 denying the Appellants' Motion for Reconsideration does not confer jurisdiction as it is not the final order in the underlying action between the parties.

The Respondent's Complaint in the underlying action alleges four (4) causes of action: (1) breach of contract; (2) tortious interference with contract; (3) promissory estoppel; and (4) a

request for declaratory judgment pursuant to S.C. Code Anno. §§ 15-53-10 *et. seq.* The Respondent, Dr. Gregory A. May, was formerly an employee of Advanced Cardiology Consultants, PC. Dr. May and the Practice had entered into a series of employment contracts during Dr. May's 9-10 year period of employment. One of the provisions of the employment contract was a restrictive covenant purporting to limit Dr. May's ability to practice within a 25-mile radius of McLeod Hospital in Florence, South Carolina.


Both the Appellants and Respondent filed Motions for Summary Judgment in the underlying action. The Respondent filed a Motion for Summary Judgment seeking a declaration that the restrictive covenant in the employment agreement was unenforceable. The Appellants sought summary judgment as to all four causes of action, including those actions subject to a jury determination. In his Order of October 21, 2019, Judge Nettles found for the Respondent and determined that the restrictive covenant between the parties was unenforceable. Judge Nettles also denied the Appellants' Motions for Summary Judgment in regards to the remaining causes of action.

There remain three causes of action pending between these parties. The Respondent seeks damages from the Appellants on several theories of recovery. Judge Nettles's rulings in the case do not go to the merits of the Respondent's claims for damages. The viability of the claims for breach of contract do not touch on the existence or validity of the covenant not to compete in any manner. Instead those claims go to specific promises made to Dr. May in the employment agreement which he alleges were violated by the Appellants. (See Complaint, ¶¶ 44 – 53). The Second Cause of Action for tortious interference with contract alleges that the Appellants, Advanced Cardiology Consultants, Dr. Lew Rowe, and Theresa Rowe "intentionally interfered with Dr.

May's potential contractual relations for an improper purpose and by improper means" causing Dr. May immediate and irreparable damages. This cause of action is based on representations which Dr. May alleges were made to him by the Appellants. The elements of this cause of action and the viability of Respondent's claim do not turn on the enforceability of the restrictive covenant. (See Complaint ¶¶ 54 – 72). The Respondent's Third Cause of Action for promissory estoppel rest on Dr. May's contention that the individual Appellants made an unambiguous promise to Dr. May that they would not enforce the covenant not to compete in the event the Respondent secured a job within the restrictive covenant geographical area. (See Complaint ¶ 74). Again, the enforceability of the restrictive covenant does not touch on the Respondent's elements of proof with regards to promissory estoppel.

Based on the foregoing, the Respondent respectfully requests that the Court issue an order dismissing the appeal as untimely in that it is an interlocutory appeal and this Court does not have Appellate jurisdiction to hear this particular matter at this time.

January 21, 2020



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843-662-3258

Attorney for Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT
C/A: 2019-CP-21-_____

Dr. Gregory A. May,)
)
Plaintiff,)
)
vs.)
)
Advanced Cardiology Consultants, P.C.,)
Dr. Lew A. Rowe, and Theresa Rowe,)
)
Defendants.)
_____)

**SUMMONS
(JURY TRIAL REQUESTED)**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices: 248 West Evans Street, P O Box 1909, Florence, South Carolina 29503-1909, Tel. No. (843) 662-3258, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

DATED at Florence, S.C., this 20th day of March, 2019.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: s/Mark W. Buyck, III
Mark W. Buyck, III #011902
PO Box 1909
Florence, S C 29503-1909
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ATTORNEYS FOR PLAINTIFF

8. The Plaintiff has been employed with Dr. Rowe and the Practice since April 22, 2008.

9. The Plaintiff's initial Employment contract was for a period of five (5) years. The parties renewed and executed a second contract for an additional 5-year term.

10. On or about March 30, 2018, Dr. Rowe and the Practice presented Dr. May with a 1-year contract commencing March 30, 2018 and ending on March 31, 2019. (See attached Exhibit "A").

11. The three contracts are identical in all respects other than the duration and include a restrictive covenant which purports to prevent Dr. May from being employed as a cardiologist for a period of two (2) years after termination within a 25 mile radius of McLeod Regional Medical Center, Florence, South Carolina.

12. While employed at the Practice, Dr. May and the other Employed Physicians would cover both McLeod Hospital and Carolinas Hospital in Florence.

13. Dr. May maintained privileges at both hospitals.

14. As of November 1, 2018, the Practice employed five (5) physicians (hereinafter the "Employed Physicians") in addition to the owner, Dr. Rowe.

15. In late October, early November 2018, Dr. Rowe informed the five (5) Employed Physicians of the Practice that he would no longer participate in the call schedule. At that time, the six physicians were covering call at both Carolinas Hospital in Florence as well as the McLeod Hospital in Florence.

16. As a consequence of Dr. Rowe refusing to take any further calls, the call schedule for the remaining Employed Physicians was increased and more frequent. Dr. Rowe stated that he did not plan on hiring another physician at that time.

17. Dr. May had a conversation with Dr. Rowe during which Dr. Rowe indicated that he was no longer interested in hospital practice and was interested in restricting himself to a non-hospital practice.

18. Other Employed Physicians other than Dr. May indicated they too would consider switching to an office practice only business model, thereby threatening Dr. May's future full-time interventional cardiology practice.

19. Dr. May discussed these concerns with Dr. Rowe who then informed him "You can do whatever you want to do; work in the hospital if you want."

20. Within days Dr. May then inquired of Dr. Rowe if he intended to enforce the restrictive covenant contained in the employment agreement in the event Dr. May sought employment at a local hospital. Dr. Rowe indicated that he would not enforce the restrictive covenant contained in the employment agreement.

21. With the assurances of Dr. Rowe, Dr. May initiated discussions with both local hospitals regarding hospital employment opportunities.

22. Dr. May initially contacted McLeod Health regarding employment.

23. After discussing the covenant not to compete, individuals at McLeod Health informed Dr. May that they would not discuss employment opportunities with him unless they were assured in writing that the Practice did not object.

24. On November 15, 2018, Theresa Rowe sent an email to McLeod Health indicating that the Practice did not object to Dr. May pursuing employment opportunities at the hospital.

25. On or about December 26, 2018, the six physicians held a meeting to discuss call coverage. During this meeting, Dr. Rowe informed the Employed Physicians that he was not planning to hire an additional physician to replace him on the call schedule.

26. It was proposed that the Practice drop coverage of Carolinas Hospital, one of the reasons being that calls had become more frequent without Dr. Rowe's participation.

27. Dr. May opposed cancelling the Practice's coverage of Carolinas Hospital; however, Dr. Rowe indicated that he would abide by whatever vote the Employed Physicians made. The remaining Employed Physicians voted to discontinue the Carolinas coverage over Dr. May's objections.

28. Carolinas Hospital maintains a policy that M.D's must participate in call coverage to maintain hospital privileges.

29. Dr. May could not continue call coverage at Carolinas Hospital without the assistance of the fellow physicians of his Practice. He was forced to inform the hospital that he would no longer be able to take call and would therefore have to drop his privileges.

30. On January 14, 2019, Dr. Ng., one of the remaining Employed Physicians, abruptly departed the Practice after being offered a one (1) month renewal of his employment agreement. This left only four (4) physicians to cover call.

31. Dr. May has been practicing in the Florence area for nearly eleven (11) years. He is a Board Certified Cardiologist specializing in interventional cardiology. He has an established doctor-patient relationship with thousands of patients.

32. Many of Dr. May's patients prefer Carolinas Hospital to McLeod Health and he has provided services at both hospitals the entire time he has been with the Practice, until January 1, 2019.

33. The Practice's decision to discontinue call coverage at Carolinas Hospital has deprived patients of Dr. May's care at that facility. The decision also deprives Dr. May full access to his patients as well as limits his ability to perform his professional duties.

34. Based on the representations of Dr. Rowe, Dr. May discussed employment opportunities with Carolinas Hospital.

35. Carolinas Hospital has offered Dr. May a position practicing interventional cardiology conditioned on Dr. Rowe's reducing his promise not to enforce the restrictive covenant to writing.

36. Dr. May contacted Dr. Rowe and informed him of his negotiations with Carolinas Hospital and their indication that they would hire him if the Practice would provide a waiver of the non-compete. Dr. Rowe indicated to Dr. May that he would have the Practice's Office Manager prepare the waiver.

37. Several days later, Dr. May inquired of the hospital whether they had received the waiver. He was informed that they had not.

38. Dr. May then contacted the Practice's Office Manager regarding the status of the waiver and Mrs. Rowe informed Dr. May that the Practice would not provide a waiver.

39. Upon information and belief, Mrs. Rowe had a discussion with a representative of Carolinas Hospital regarding the restrictive covenant and informed them that the employment agreement had a \$500,000 buy-out and requested the hospital's offer.

40. Subsequent to this conversation, Dr. May has learned that the Practice has hired an attorney who has sent a Cease and Desist letter to Carolinas Hospital threatening litigation in the event of any further communications with Dr. May regarding employment.

41. Faced with the diminishment of practice opportunities and the Practice's refusal to honor its promise to release him from the restrictive covenant, Dr. May submitted a 30-day notice to terminate the agreement on March 19, 2019, twelve (12) days prior to the end of the contractual term, but in compliance with the terms of the agreement.

42. A third Employed Physician, Dr. Brady, has tendered his resignation from the Practice effective April 12, 2019.

43. The Practice has notified McLeod Health that it would no longer provide call coverage to that Hospital effective April 1, 2019. As a result of this action, the Practice will not be covering either hospital in Florence. Patients of the Practice will not be seen for either cardiac admission or cardiac consultation at either hospital by the Practice.

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

44. The Plaintiff realleges and reiterates Paragraphs 1 through 44 above as if fully set out herein.

45. Under the terms of the employment agreement, Dr. May's compensation is based on 50% of the collected fees generated by him.

46. In the employment agreement, the Practice promises to provide the physician "such facilities, equipment, and supplies as it deems necessary for physician's performance of his professional duties under this agreement, including... such other facilities and services as are suitable to his position and necessary to the adequate performance of his duties."

47. The employment agreement also requires the physician and the Practice to provide "equitable call coverage."

48. The Practice's decision to refuse call coverage at Carolinas Hospital impairs Dr. May's ability to provide care to his patients and fully practice his profession in the community, disrupting patients' continuity of care, and depriving the public of medical services.

49. The Practice's refusal to provide call coverage to Carolinas Hospital Systems has deprived and hindered Dr. May's ability to care for his patients who prefer Carolinas Hospital, disrupting the continuity of care in treating his patients in an office and hospital setting, and impairing his ability to fully practice his specialty.

50. The Defendants have breached the contract as adequate call coverage is not equitably distributed among the Physicians.

51. The Defendants have breached the contract in that they have not provided Dr. May access to continue his practice at Carolinas Hospital, thereby depriving his patients continuity of care and seriously impairing his earnings potential.

52. The actions described above have and will continue to cause monetary damage to Dr. May including a loss of earning capacity and a loss of income which will extend into the future.

53. Plaintiff seeks actual, consequential, and exemplary damages as a direct and proximate result of the Defendants' breach of the agreement.

**FOR A SECOND CAUSE OF ACTION
(Tortious Interference with Contract)**

54. The Plaintiff realleges and reiterates Paragraphs 1 through 54 above as if fully set out herein.

55. Based on Dr. Rowe's and the Practice's representations, Dr. May has sought alternative employment.

56. Dr. Rowe and the Practice were fully aware that Dr. May was pursuing employment opportunities in the Florence area and even encouraged him to do so.

57. After obtaining an offer from Carolinas Hospital to practice interventional cardiology at its Florence facility, Dr. Rowe informed Dr. May that he would provide the hospital written confirmation that he and the Practice would waive the covenant not to compete contained in the employment agreement.

58. Instead of waiving the provision of the contract, the Practice now demands that Dr. May "buy out his contract" for the sum of \$500,000.

59. The Office Manager of the Practice, the Defendant Theresa Rowe, has indicated to Dr. May that if he would prefer, he could get a loan and purchase the Practice.

60. The Practice, Dr. Rowe, and Theresa Rowe intentionally interfered with Dr. May's potential contractual relations for an improper purpose and by improper means attempting to secure monies from Dr. May. The Defendants' actions in interfering with Dr. May's contractual relationship with Carolinas Hospital has caused Dr. May immediate and irrevocable damages.

61. Dr. May is an 11-year employee of the Practice and has practiced interventional cardiology in the community the entire 11 years. He maintains a home in Florence and has children in elementary and high school.

62. Dr. May's current contract with the Practice and Dr. Rowe expires by its terms on March 31, 2019.

63. The Defendants are fully aware that Dr. May requires privileges at a hospital in order to practice his specialty, interventional cardiology.

64. The Defendants are also fully aware that the time required to obtain privileges at any hospital whether within or without the restrictive area is generally a period of 90 days, a period of time during which Dr. May would be unemployed and his patients would not have access to his services.

65. At the time Dr. May secured an employment offer from Carolinas Hospital, there was ample time for him to begin and complete the credentialing process prior to April 1, 2019.

66. As of the date of this Complaint, there is likely not ample time to receive credentialing at any hospital prior to April 1, 2019.

67. Dr. May will experience a period of unemployment or no fee generation while waiting for credentialing from any future employer. His patients will be deprived of his full range of services during this period.

68. The facts above are all known to the Defendants who are now using the threat of unemployment as essentially a tool to extort funds from Dr. May or Carolinas Hospital in order for the Defendants to release him from the covenant not to compete.

69. As a direct and proximate result of the tortious inference with Plaintiff's employment agreement with Carolinas Hospital, Plaintiff has sustained damages including a loss of earning capacity and a loss of income, which will extend into the future.

70. The Plaintiff has further suffered emotional distress and mental anguish as a result of Defendant's actions.

71. Plaintiff is entitled to an award of actual damages against the Defendants as well as punitive damages against the Defendants for their malicious and bad faith actions in harming Plaintiff, in amounts to be determined by a jury.

72. The Plaintiff is further entitled to an award of reasonable attorney's fees and costs for this action.

**FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)**

73. The Plaintiff realleges and reiterates Paragraphs 1 through 73 above as if fully set out herein.

74. The Defendants made an unambiguous promise to the Plaintiff that they would not enforce the covenant not to compete in the event the Plaintiff secured a job within the restrictive covenant area.

75. Dr. May reasonably relied on the Defendants' promise and searched and obtained alternative employment.

76. The Defendants made the unambiguous promise expecting that Mr. May would rely on the promise in securing alternative employment.

77. It was foreseeable to the Defendants that Dr. May would rely on the promise.

78. Dr. May has sustained injury in reliance on the promise in that the Defendants now demand \$500,000 from him or in the alternative that he experience a prolonged period of unemployment. Further Dr. May has or will suffer other monetary and non-monetary damages, including lost wages and attorney's fees and costs.

**FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment Under SC Code Anno. §§ 15-53-10 et seq.)**

79. The Plaintiff realleges and reiterates Paragraphs 1 through 79 above as if fully set out herein.

80. Based upon the foregoing, the Plaintiff requests that this court enter an Order declaring that the employment agreement between the parties, in particular anything contained therein applying to restriction of the Plaintiff's future employment, is an unenforceable contract at law and that the Defendants' conduct as alleged herein constitutes a breach of the agreement.

81. Further, the Plaintiff requests that he be awarded reasonable attorney's fees and costs in seeking this declaration by the court.

WHEREFORE, the Plaintiff seeks an entry of judgment against the Defendants for all the relief requested herein and to which the Plaintiff may otherwise be entitled, including without limitation:

- (1) Entering judgment in favor of the Plaintiff against the Defendants in the final order;
- (2) Enjoining the Defendants from interfering with the efforts of the Plaintiff to secure alternative employment as well as enjoining them from threatening potential employers with legal action in the event of Dr. May's employment;
- (3) An order declaring the Restrictive Covenants contained in the Parties' Employment Agreement as null and voided by virtue of the Defendants' breach of the Employment Agreement;
- (4) Actual, consequential, and exemplary damages as a direct and proximate result of the Defendants' breach of the Employment Agreement;
- (5) Actual and punitive damages against the Defendants for their malicious and bad faith actions in tortiously harming Plaintiff;

- (6) Any lost wages which the Plaintiff may suffer by virtue of the Defendants' tortious interference with Plaintiff's prospective employment opportunities; and
- (7) Plaintiff is further and entitled to an award of reasonable attorney's fees and costs in this action.

WILLCOX, BUYCK & WILLIAMS, P.A.

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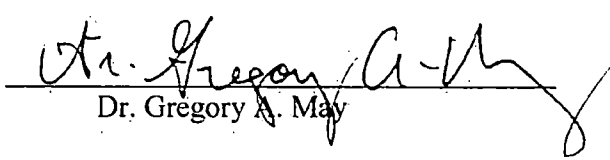
ATTORNEYS FOR PLAINTIFF

Florence, SC
March 20, 2019


STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) **VERIFICATION**

PERSONALLY APPEARED before me, Dr. Gregory A. May, who being first duly sworn, deposes and says:

1. That I am the Plaintiff in the attached lawsuit;
2. That I have read all of the statements contained in the attached legal pleadings;
3. All of the statement and facts alleged in the attached pleadings are true and correct based upon my personal knowledge, except those facts and statements alleged upon information and belief, and concerning those, verily believe them to be true;
4. The attached pleadings were prepared by the law firm of Willcox, Buyck & Williams, P.A., at my request;
5. I have authorized the aforesaid attorneys to file the attached pleadings, to present them to the Court, and to serve the attached pleadings upon the Defendants named therein by whatever process if necessary, and to seek the relief requested in the attached pleadings.


Dr. Gregory A. May

SWORN to before me this
15th day of March, 2019.

 (L.S.)
Print: TROY P. HUMPHRIES
Notary Public in and for State of South Carolina
My Commission Expires: 9/22/2027

STATE OF SOUTH CAROLINA}
EMPLOYMENT AGREEMENT}
COUNTY OF FLORENCE}

THIS AGREEMENT is made this this day of March 30, 2018 by and between **ADVANCED CARDIOLOGY CONSULTANTS, PC**, a professional corporation organized and existing under the laws of the State of South Carolina ("Employer"), and Gregory May, M.D. ("Physician").

The parties hereto, intending to be legally bound hereby, agree upon the following terms of employment of Physician by Employer.

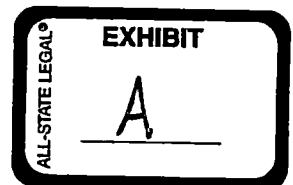
1. **Term.** Physician is hereby employed by Employer for a term of one (1) year commencing March 30, 2018 and ending at midnight March 31, 2019, unless sooner terminated in accordance with the provisions of Paragraph 7. It is contemplated that Physician's employment may be extended beyond March 31, 2019, such extension must be in writing and on such terms as the parties may then agree.

2. **Duties.** The Physician shall perform such professional duties for Employer as may be requested of him by the practice president in keeping with his professional status as a Board Certified cardiologist. The Physician shall do all things reasonably necessary to maintain and improve his professional skills during the term of this Agreement. He shall foster the professional practice of Employer to the best of his professional ethics.

3. **Extent of services.** Physician shall devote his full time and best efforts to the performance of his duties hereunder, including equitable call coverage and shall not engage in any business or perform any services in any capacity other for Employer without the prior written consent of Employer. However, nothing in this Agreement shall prevent the physician from engaging in activities such as investing in stocks, bonds, securities, commodities, real estate and other forms of investment as will not require any services on the part of the physician in the operation of the affairs of the companies in which such investments are made.

Compensation. For all duties to be performed by Physician hereunder, Physician shall be entitled to compensation based solely upon the physician's own collections. Compensation shall generally be payable monthly based upon the preceding month's collections at 50% of the physician's collected fees generated by the physician, subject to applicable federal and state with-holding. The physician receive a bonus, the amount of which shall be proportionate to the total sum collected by the Physician. Such bonus, if any, maybe payable as the employer may determine, but if paid, it shall be paid at least annually.

(a) **Continuing Medical Education.** Employer will reimburse Physician for tuition expenses, up to \$2,000.00, relating to one (1) meeting or seminar each year during the term of his Agreement, attended by Physician for the purposes of continuing medical education (CME). Physician may attend such meeting or seminar upon the prior approval of Employer, which approval shall not unreasonably be withheld. All other expenses relating to such CME shall be Physician's responsibility. It is contemplated that Physician's attendance at such



CME shall not exceed two (2) weeks during the term hereof.

(b) Sick Pay. Inasmuch as Physician's compensation is based upon the preceding month's collections as provided in Paragraph 4, no separate or distinct sick pay will be available to Physician in the event he becomes unable to perform his services hereunder by reason of illness or accident.

(c) Vacation. Physician shall be entitled to 10 working days, regular vacation during the term hereof. This vacation shall be non-cumulative; such vacation shall not interfere with the practice schedules, his commitments to his patients, and obligations to Employer. The time or times during which the vacation is to be taken shall first be approved by the Employer, which approval shall not reasonably be withheld.

(d) Facilities and Services. The Employer shall provide such facilities, equipment and supplies as it deems necessary for physician's performance of his professional duties under this Agreement, including technical and stenographic help and such other facilities and services as are suitable to his position and necessary to the adequate performance of his duties. Physician shall have, maintain and use, when appropriate, an automobile, home telephone, and other facilities needed in connection with his employment under this Agreement, all of which shall be at the physician's expense, unless reimbursement by Employer is approved in advance. Physician shall also, at his expense, carry automobile liability insurance protecting himself and Employer against claims arising out of the use of an automobile in the course of his employment by Employer.

(e) Malpractice Insurance. As of the commencement date of employment, employer agrees to provide Physician with professional liability insurance, commonly called "malpractice insurance" on an "occurrence" basis, with such limits, terms and conditions as is otherwise commonly provided by Employer to or for the benefit of its other professionally licensed employees and physicians; provided, however, that such amounts shall be at least in maximum amounts as are offered by the Joint Underwriters Association and the South Carolina Patient's Compensation Fund, or, if with another insurance company licensed in the State of South Carolina, coverage of at least \$200,000.00 / \$600,000.00 aggregate.

5. Disclosure of Information. During or any time after termination of employment hereunder, The Physician will not, without authorization of Employer, disclose to or use for the benefit of any person, corporation or other entity, or himself, any files or other confidential information concerning the business, methods, operation, financing, services, or Employer "Confidential information" as used herein shall mean information particular to Employer, that is disclosed to employee or known by him as a consequence of his employment by Employer, whether or not pursuant to this Agreement. Confidential information shall include, but not limited to, all information designated by Employer as confidential, or in the future so designated, including financial information, books, records, financial statements, business plans, prices, and credit terms, and contract terms or other business arrangements. The Physician shall keep and maintain appropriate charts, files, and records of all professional services rendered by him under this Agreement, and he shall prepare in connection with these services all reports and correspondence necessary or appropriate in the

circumstance All of these records, reports, claims and correspondence shall belong to the Employer.

6. **Surrender of Books and Records.** Physician acknowledges that all files, patient records and charts, lists, books, records, literature, products, and other materials owned by Employer or used by it in connection with the conduct of its business shall at all times remain the property of Employer, and that upon termination of employment hereunder, irrespective of the time, manner or cause of said termination, physician will surrender to Employer all such files, patient records and charts, lists, books, records, literature, products, and other materials. Employer agrees that, upon any patient's request, copies of patient medical records and charts shall be provided to the patient.

7. **Termination.** Either party may terminate this Agreement with or without cause upon thirty (30) day written notice to the other. Cause shall be deemed to be any one of the following:

- (a) Revocation or suspension of physician's license to practice medicine in the state of South Carolina.
- (b) Dishonesty detrimental to the best interests of Employer.
- (c) Continuing inattention to, or neglect of, the duties to be performed by Physician.
- (d) The death of Physician.
- (e) Participation by Physician in any fraud.
- (f) Imparting any confidential information in violation of this Agreement.

Employer's Authority: The physician agrees to observe and comply with the rules and regulations of the Employer either orally or in writing, respecting performance of his duties and to carry out and to perform orders, directions and policies stated by Employer to him, from time to time, either orally or in writing. Physician specifically understands that Employer shall have final authority over acceptance or refusal of any patient for professional services.

8. **Compensation Upon Termination.** Upon termination of this Agreement for any event described in Subparagraphs (b), (e), or (f) of Paragraph 7, Physician shall not be entitled to receive such compensation beyond the termination date even for services rendered through the date of termination. Any compensation the Physician may be entitled shall be paid within sixty (60) days, of termination, allowing for collection of fees.

9. **Restrictive Covenant; Liquidated Damages.** In the event this Agreement is terminated, whether by lapse of time, completion of term, pursuant to notice, or otherwise, Physician covenants and agrees that he will not become employed by or associated in the capacity of an officer, partner, stockholder, member, director, consultant, independent contractor, advisor or employee of another business entity, engaged in the practice of cardiology, nor will he otherwise engage directly or indirectly in the practice of cardiology, within a twenty-five mile radius of McLeod Regional Medical Center, Florence, South Carolina, for a period of two

years from the date of such termination. Physician also agrees that during the term of this Agreement and for a period of two years thereafter, he will not employ, offer to employ or solicit the employment of any employee of the Employer.

The Employer and Physician acknowledge that in the event the Physician violates the provision of this Paragraph 9, the damages suffered by the Employer would be very difficult, if not impossible, to ascertain. The parties therefore agree that a reasonable estimate of such damages is \$500,000.00 (the "Liquidated Damages"), and the Liquidated Damages shall be due and payable in full to Employer in the event that Physician shall breach the provisions of this Paragraph 9. Employer acknowledges that the payment of the Liquidated Damages by the Physician to the Employer shall be Employer's sole remedy available at law or in equity for Physician's breach of the provisions of this Paragraph 9. Without limiting the generality of the foregoing, the Employer shall have no right to obtain injunctive relief for the Physician's breach of this Paragraph 9. Employer and Physician expressly acknowledge and ratify the provisions contained in this Paragraph 9 and further state that these provisions represent an integral part of their agreement, and that such provisions are fair and reasonable to the undersigned parties and each has a right to rely thereon.

10. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to any particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

11. **Benefits.** This Agreement shall inure to and shall be binding upon the parties hereto, the successors and assigns of Employer, and the heirs and assigns of the Physician; provided, however, that this Agreement may not be assigned without prior written consent of both parties.

12. **Notice.** All notices required to be given under the terms of this Agreement shall be in writing, shall be effective upon receipt, and shall be delivered to the addressee in person or mailed by certified mail, return receipt requested, as follows:

If to Employer, address to:

ADVANCED CARDIOLOGY CONSULTANTS, P.C.
1706 Second Loop Road
Florence, S.C. 29501

If to Physician, address to:

Gregory May, M.D.
2494 Parsons Gate
Florence, S.C. 29501

or such other address as either party shall have designed for notices to be given to him or it in accordance with this Paragraph.

13. **Waiver.** The waiver by either party of any breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any

subsequent breach or violation hereof.

14. **Governing Law.** This Agreement has been negotiated and executed in the State of South Carolina, and the laws of the State of South Carolina shall govern its construction and validity; and jurisdiction and venue of any action to enforce the proceedings hereof or for damages shall lie in the City of Florence, Florence County, South Carolina.

15. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior agreements, understandings, and representations with respect to the subject matter hereof. No change, addition, or amendment shall be made except by written agreement signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESSES: ADVANCED CARDIOLOGY CONSULTANTS,PC

<u>Melissa M Byrd</u>	BY: <u>L.A. Rowe</u>
<u>Dina C. Robinson</u>	Its: President - Lew A. Rowe, M.D.
As to Employer	
<u>Melissa M Byrd</u>	<u>Gregory May</u>
<u>Dina C. Robinson</u>	Gregory May, M.D.
As to Employee	

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2019-CP-21--00777

Appellate Case No.: 2019-002114

RECEIVED
JAN 22 2020
SC Court of Appeals


Dr. Gregory A. May,.....Respondent,

v.

Advanced Cardiology Consultants, P.A., Dr. Lew A. Rowe,
and Theresa Rowe,..... Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing **Respondent's Motion to Dismiss** on the Appellants through their attorneys of record, Allan R. Holmes and Rebecca J. Wolfe, by depositing a copy of same in the United States Mail, postage prepaid, to Post Office Box 938, Charleston, South Carolina 29402 on January 21, 2020.


Mark W. Buyck, III (SC Bar #11902)
248 West Evan Street (29501)
Post Office Box 1909
Florence, South Carolina 29503
843-662-3258

Attorney for Respondent

Mark W. Buyck, Jr.
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Wm. Reynolds Williams♦
Mark W. Buyck, III
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John H. Muench † GA & KY
Tracy L. Wright
J. Scott Kozacki
Walker H. Willcox
Paula A. Sartor
Katherine M. Ryan † AL

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† Additionally Licensed
♦ Certified Mediator

ESTABLISHED 1895

Reply To: Florence

Telephone (843) 662-3258
Fax (843) 662-1342

January 21, 2020

RECEIVED
JAN 22 2020
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Dr. Gregory A. May v. Advanced Cardiology, et al
Appellate Case No.: 2019-002114
Our File No.: 16325.17418

Dear Ms. Kitching:

Enclosed for filing is an original and one copy of the **Respondent's Motion to Dismiss** in the above captioned case. Please time stamp the enclosed copy and return to us in the enclosed self-addressed stamped envelope provided for your convenience. We have also enclosed our firm's check in the amount of \$50.00 for the filing fee of this Motion.

By copy of this letter, we are serving a copy of the above-stated pleadings on Allan R. Holmes and Rebecca J. Wolfe, attorneys for Appellants.

Yours very truly,

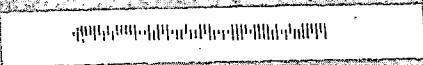


Mark W. Buyck, III
Email: mb3@willcoxlaw.com

MWB, III/tph

Enclosures

Cc: Allan R. Holmes, Esquire
Rebecca J. Wolfe, Esquire



FIRST CLASS MAIL

RECEIVED
JAN 22 2020
SC Court of Appeals

Willcox, Buyck & Williams, P.A. <small>Since 1895</small>	<small>Post Office Box 1409 Florence, SC 29503</small>
TO: The Honorable Jenny Abbott Kitchings Clerk, South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211	