

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

The Honorable R. Scott. Sprouse, Circuit Court Judge

Appellate Case No.: 2019-002009

Jane Doe

Appellant,

v.

Oconee Memorial Hospital, Greenville Health System, Upstate Affiliate
Organization, Kevin Docyk, M.D., Mary Beth Hendricks

Respondents.

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SC Court of Appeals

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2019-002011

Jane Doe

Appellant,

v.

Oconee Memorial Hospital, Greenville Health System, Upstate Affiliate
Organization, Kevin Docyk, M.D., Mary Beth Hendricks

Respondents.

CERTIFICATE OF COUNSEL

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

Courtney C. Atkinson
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August 19, 2020

IN THE COURT OF COMMON PLEAS

CASE NO. 2018CP3700762

Jane Doe
PLAINTIFF(S)

Oconee Memorial Hospital, et al
DEFENDANT(S)

Submitted by: Court

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

When considering a motion to dismiss pursuant to SCRCP 12(b)(6), the Court must consider the pleadings in the light most favorable to the nonmoving party and must not consider matters outside the pleadings. Because the argument Defendants raise invokes matters outside the pleadings, the matter before the Court would be adjudicated more appropriately as a motion for summary judgment. Accordingly, Defendants' motion to dismiss is denied.

ORDER INFORMATIONThis order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

_____ Circuit Court Judge	2752 Judge Code	4/10/19 Date

ELECTRONICALLY FILED - 2019 Apr 11 4:44 PM - OCONEE - COMMON PLEAS - CASE#2018CP3700762

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT	CLERK OF COURT

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.



Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al

Case Number: 2018CP3700762

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2019-04-11 13:48:44 page 4 of 4

IN THE COURT OF COMMON PLEAS

CASE NO. 2018CP3700762

Jane Doe
PLAINTIFF(S)

Oconee Memorial Hospital, et al
DEFENDANT(S)

Submitted by: Court

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

This matter is before the Court pursuant to the Defendants' motion for reconsideration of the Court's prior order denying the Defendants' motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. It is apparent from the filings and arguments of the parties that the Court must consider matters outside of the pleadings in order to properly rule on a motion to dismiss regarding the issue of the statute of limitations. The Court may, under Rule 12(c) SCRCPP, treat a motion to dismiss filed under Rule 12(b)(6) as a summary judgment motion. The hearing in this case was not designated as such and proceeded as a 12(b)(6) motion, without notice to the parties that matters outside of the pleadings would be considered. The Court denies the Defendants' motion to reconsider on all issues except that of the statute of limitations, for which the Court grants a *de novo* hearing, which shall be treated as a motion for summary judgment under rule 12(c). The parties, in accordance with the rule, shall be allowed to present evidence outside of the pleadings for the Court to consider on that issue alone. This order is without prejudice to any future motions for summary judgment on other issues.

ORDER INFORMATIONThis order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge_____
2752**Judge Code**_____
5/08/19**Date**

ELECTRONICALLY FILED - 2019 May 08 4:40 PM - OCONEE - COMMON PLEAS - CASE#2018CP3700762

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

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Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al

Case Number: 2018CP3700762

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2019-05-08 16:15:23 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3700762

Jane Doe
PLAINTIFF(S)

Oconee Memorial Hospital et al
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

After further review of all materials submitted, the Defendant's motion to dismiss is granted. The motion to dismiss is granted on the grounds that the Defendant hospital is a public institution covered under the South Carolina Torts Claim Act and the tort claims were brought outside of the statute of limitations. Defendant is directed to prepare a formal order setting forth findings of fact and applicable law. Copying all counsel. The order shall be prepared within ten (10) days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/17/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al

Case Number: 2018CP3700762

Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2019-10-17 13:33:38 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk, MD; Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762, 2019-CP-37-
0271, and 2018-NI-37-00010***Order Granting Defendants' Motion to
Dismiss***

This matter came before the Court upon Defendants Greenville Health System ("GHS")¹, Upstate Affiliate Organization ("UAO"), Kevin Docyk, MD, and Mary Beth Hendricks's motions to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. After careful reconsideration of all the issues, for the reasons more fully set forth below, I hereby grant Defendants' motions as to all tort causes of action with prejudice.

PROCEDURAL HISTORY

The above referenced actions are Plaintiff's second attempt to assert claims related to the handling of a sexual assault forensic examination kit at Oconee Memorial Hospital ("OMH") on December 5, 2015. In the instant actions, Plaintiff makes essentially the same factual allegations as she did in her prior civil action filed on December 5, 2017 (C.A. No.: 2017-CP-37-00700). In that action, she alleged the facts amounted to: (1) negligence – failure to properly collect and protect evidence; (2) negligence – failure to order necessary tests; (3) gross negligence – failure

¹ Plaintiff identifies Oconee Memorial Hospital as a named defendant in her pleadings; however, Oconee Memorial Hospital is not an independent entity capable of being sued. Rather, at all times relevant to these actions, it was a facility owned and operated by GHS.

to properly collect and protect evidence; (4) gross negligence – failure to order necessary tests; (5) negligent supervision; and (6) intentional infliction of emotional distress (hereinafter “Negligence Action”).

GHS filed a motion to dismiss the Negligence Action on January 10, 2018. A hearing on the motion to dismiss was held on June 4, 2018. Just prior to the start of the hearing, Plaintiff filed a motion to amend her complaint. Plaintiff’s motion did not include a proposed amended complaint, but the motion stated she wished to amend to add defendants and to add two additional causes of action. Plaintiff’s motion did not specify the two new causes of action, but during the motion to dismiss hearing, Plaintiff’s counsel identified the two new causes of action as breach of contract and bailment.

Following the hearing and additional submissions from both parties, the Court issued an Order granting GHS’s motion to dismiss the Negligence Action on July 9, 2018. By way of the Order, the Court dismissed with prejudice the six causes of action set forth in the Negligence Action. However, the Court provided that its ruling was “without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action.” (July 9, 2018 Order, p. 1.) Plaintiff appealed the Order, and that appeal is still pending.

On December 5, 2018, Plaintiff filed the instant actions. In C.A. No. 2018-CP-37-00762, Plaintiff asserted Breach of Contract and Breach of Implied Contract causes of action against Defendants GHS and UAO, and she asserted Bailment and Implied Bailment causes of action against all Defendants (hereinafter “Contract Action”). In C.A. Nos. 2018-NI-37-00010 and 2019-CP-37-0271, Plaintiff asserted medical malpractice claims against all Defendants (hereinafter “Med Mal Action”).

Defendants filed the instant motions to dismiss on December 21, 2018. In their motions,

Defendants argued Plaintiff's medical malpractice claims and bailment claims were barred by the two year statute of limitations pursuant to the Tort Claims Act.² In addition, Defendants argued Plaintiff failed to state facts sufficient to support her contract causes of action.

The motions came before the Court on March 20, 2019. During the hearing, Plaintiff's counsel argued there were questions of fact about whether Defendants were subject to the Tort Claims Act. After taking the matter under advisement, the Court issued a Form 4 Order on April 11, 2019 denying the motions to dismiss on the basis Defendants arguments invoked matters outside of the pleadings. Defendants responded by timely filing a motion to reconsider. On May 8, 2019, the Court issued another Form 4 Order whereby it granted a *de novo* hearing on the statute of limitations issue which would be treated as a motion for summary judgment under Rule 12(c), SCRCF; otherwise, the motion to reconsider was denied.

The *de novo* hearing was held on September 23, 2019. In support of their argument that Plaintiff's medical malpractice and bailment claims were subject to the Tort Claims Act, Defendants submitted a memorandum which included an affidavit from Cynthia Cambron. The affidavit established the following pertinent facts:

1. GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act.
2. In December 2015, and at all times relevant to this action, Oconee Memorial Hospital was one of numerous hospital facilities within the System operated by GHS.

² Defendants also argued Plaintiff's claims were barred by the doctrines of res judicata and/or collateral estoppel, but since the statute of limitations issue is dispositive, the Court need not address that argument.

3. In December 2015, and at all times relevant to this action, Kevin Docyk, MD and Mary Beth Hendricks were employees of GHS pursuant to the Tort Claims.
4. UAO is a 501(c)(3) corporation, so it could not possibly “own” GHS as alleged by Plaintiff. Further, and more importantly, it had nothing to do with the care rendered to Plaintiff on December 5, 2015, as it did not exist as an entity at that time.

In response, Plaintiff did not submit any evidence to the contrary. Rather, Plaintiff filed a memorandum in opposition in which she argued dismissal was inappropriate, because she had not had adequate time to conduct discovery on the statute of limitations issue, and she believed her new claims should relate back to the filing of her Negligence Action. For the reasons stated below, the Court finds Plaintiff’s arguments unavailing.

LEGAL ANALYSIS

As noted above, GHS is a healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq.; therefore, it and its agents and employees, including, Defendants Docyk and Hendricks, are entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. *Murphy v. Richland Mem. Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995), and *Benton v Roger C Peace*, 313 S.C. 520, 443 S.E.2d 537 (1994)). Pursuant to S.C. Code § 15-78-110, the applicable statute of limitations for all tort claims is 2 years.

Plaintiff’s alleged injuries occurred on December 5, 2015. Plaintiff filed the instant actions on December 5, 2018, a full year after the statute of limitations expired in regards to any tort claims. Therefore, all of her tort claims, including her bailment causes of action, are barred

by the applicable statute of limitations. *See Hadfield v. Gilchrist*, 343 S.C. 88, 538 S.E.2d 268 (2000) (holding that, although contractual in nature, “an action for breach of the duty of care by a bailee sounds in tort”).

Plaintiff contends she did not have a reasonable opportunity to conduct discovery on the statute of limitations issue, but it would appear to the Court that Plaintiff made no attempt to conduct any such discovery. Plaintiff knew about the statute of limitations issue since Defendants filed their motions to dismiss in December 2018, yet Plaintiff never sent any discovery requests specific to the issue. On August 19, 2019, a full month before the hearing, Defendants actually offered to produce anything Plaintiff felt she needed for the statute of limitations issue, but Plaintiff chose to ignore Defendants’ offer. Plaintiff had an obligation to establish facts showing there was a genuine issue of material fact, but despite adequate time to discover if any such facts existed, she failed to do so. *See George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 593, 545 S.E.2d 500 (2001) (party opposing a motion for summary judgment may not rest on the mere allegations or denials of her pleadings).

Next, Plaintiff argued her claims should relate back to the filing of her Negligence Action pursuant to Rule 15(c), SCRPC. However, Rule 15 is inapplicable to the instant actions, because Rule 15 applies to amended complaints. The instant actions are not amendments to the Negligence Action complaint; rather, they are distinct and separate actions, and the Court is not aware of any procedure whereby such actions can be converted into amendments of prior actions. Regardless, even if treated as amended complaints, the claims would still be barred by the statute of limitations. It is well established that a complaint cannot be amended to state a new or different cause of action after the statute of limitations has expired. *Scott v. McCain*, 272 S.C. 198, 202, 250 S.E.2d 118, 121 (1978); *Coral Gables v. Palmetto Brick Co.*, 183 S.C. 478,

191 S.E. 337 (1937) (“[A]n amendment which introduces a new or different cause of action and makes a new or different demand does not relate back to the beginning of the action, so as to stop the running of the statute of limitations, but is the equivalent of a fresh suit upon a new cause of action, and the statute continues to run until the amendment is filed.”)

WHEREFORE, for the reasons stated herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that C.A. Nos. 2019-CP-37-0271 and 2018-NI-37-00010 are both hereby dismissed with prejudice.

As to C.A. No.: 2018-CP-37-00762, Plaintiff’s Bailment and Implied Bailment causes of action are hereby dismissed with prejudice. Only Plaintiff’s Breach of Contract and Breach of Implied Contract causes of action remain; however, since those causes of action are not asserted against Defendants Docyk and Hendricks, those defendants are hereby dismissed.

Further, the Court finds Defendant Upstate Affiliate Organization is not a proper party to this action; therefore it is also dismissed.

In sum, all causes of action are hereby dismissed except Plaintiff’s Breach of Contract and Breach of Implied Contract causes of action, which shall proceed against Defendant Greenville Health System only.

Finally, Defendant Greenville Health System’s motion to stay the Contract Action pending resolution of the appeal of the Negligence Action is hereby denied.

AND IT IS SO ORDERED.

The Honorable Judge R. Scott Sprouse
Tenth Judicial Circuit

October __, 2019



Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al

Case Number: 2019CP3700271

Type: Order/Dismissal

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2019-10-31 16:23:41 page 7 of 7

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3700762

Jane Doe
PLAINTIFF(S)

Oconee Memorial Hospital et al
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

After the court's careful consideration, Plaintiff's motion for reconsideration is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/04/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al

Case Number: 2018CP3700762

Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2019-11-04 14:04:33 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital; Greenville Heath
System; Upstate Affiliate Organization; Kevin
Docyk, MD; Mary Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. NO.: 2018-CP-10-_____

NOTICE OF INTENT TO FILE SUIT

PLEASE TAKE NOTICE that Plaintiff in the above-captioned matter, pursuant to SC Code §15-79-125, intends to file suit against the above-named Defendants. The parties must participate in a mediation conference within one hundred twenty (120) days of service of this Notice of Intent to File Suit.

THE PARTIES

1. The plaintiff is a citizen and resident of Oconee County, South Carolina.
2. Defendant Oconee Memorial Hospital (hereinafter “the Hospital”) is a business organization organized and existing under the laws of South Carolina and doing business in Oconee County, South Carolina.
3. Defendant Greenville Health System (hereinafter “GHS”) is a business organization organized and existing under the laws of South Carolina and doing business in Oconee County, South Carolina. GHS is the owner of the Hospital.
4. Defendant Upstate Affiliate Organization (hereinafter “UAO”) is a non-profit organization organized and existing under the laws of South Carolina. UAO is the owner of GHS.

5. Defendant Kevin Docyk, MD, is an emergency room physician working at Oconee Memorial Hospital and, upon information and belief, is a citizen and resident of Oconee County, South Carolina.

6. Defendant Mary Beth Hendricks, is a sexual assault nurse examiner working at Oconee Memorial Hospital and, upon information and belief, is a citizen and resident of Oconee County, South Carolina.

7. Upon information and belief, Defendants had a medical care provider-patient relationship with Plaintiff with a duty to provide her proper care by medical care professionals properly trained, qualified, and competent in the health care services and procedures which she was provided and/or which she required.

STATEMENT OF FACTS

8. In the early morning hours of December 5, 2015, while in Atlanta, Georgia for a dance event, Plaintiff was unknowingly drugged and sexually assaulted by a Georgia resident.

9. Within hours of the above-referenced assault, Plaintiff drove immediately back to South Carolina and reported to her hometown Hospital at approximately 10:30 a.m. on December 5, 2015. While at the Hospital, Plaintiff reported that she had been sexually assaulted and believed that she had also been drugged to various employees of the Hospital, including physician Kevin Docyk, MD, and nurse Mary Beth Hendricks. In so reporting, Plaintiff wanted to know what she had been drugged with and what additional medical care she might require as a result of her drugging and assault.

10. After indicating that she wanted the Hospital to perform a sexual assault forensic examination and get law enforcement involved, Plaintiff was attended by two nurses and physician Docyk. The first nurse, Jane Finfrock, was only present for Plaintiff's initial intake and eventually

turned Plaintiff over to the care of Hendricks, whom Plaintiff understood to be a sexual assault nurse examiner (“SANE”). Hendricks and Docyk then attended to Plaintiff and performed the sexual assault forensic examination, which included both swabs and a blood draw. Following completion of the sexual assault forensic examination, a third Hospital employee came into the examination room and collected the specimens that had been taken by Hendricks, including the blood that had been drawn. Plaintiff was examined by Docyk, who had authority to order any tests that were needed, including the collection and testing of Plaintiff’s blood. Both Docyk and Hendricks, as well as the other Hospital employees who attended to Plaintiff on December 5, 2015, were made aware of Plaintiff’s report that she had been drugged and sexually assaulted.

11. Following the above-referenced procedures and examination, and while still at the Hospital, Plaintiff affirmatively requested that the Hospital report the assault to law enforcement. Accordingly, Hendricks called and reported the assault to the Dekalb County Sheriff’s Office in Georgia, the location of the assault.

12. During that call, the officer advised Hendricks that he was unwilling to come to the Hospital to collect the evidence himself. Upon information and belief, the officer suggested to Hendricks that Plaintiff should take physical possession of the evidence and drive it back to Georgia. While not a party to the phone call, Plaintiff observed Hendricks become upset and heard her advise the officer of her belief that he needed to collect the evidence directly from the Hospital.

13. Following the call with the Dekalb County Sheriff’s Office, neither Hendricks nor anyone else employed by the Hospital made any effort to contact local law enforcement or someone else in the Dekalb County Sheriff’s Office to take custody of the evidence. Hendricks also made no effort to help Plaintiff contact local law enforcement or to pursue other options in securing the evidence and/or transferring it directly to law enforcement. Instead, she simply

advised Plaintiff that Plaintiff would have to personally drive the evidence to the Dekalb County Sheriff's Office.

14. Hendricks then broke the chain of custody in regard to the evidence collected, giving Plaintiff a box that Plaintiff believed to include the entire rape kit, including the blood that was drawn. At the same time, she had Plaintiff sign a sticker on the back of the box to acknowledge her receipt of the box. At no time did Hendricks ever advise Plaintiff that in doing so the chain of custody had been broken for the evidence collected. She also did not advise Plaintiff of the need for the rape kit to be transferred to law enforcement immediately.

15. Plaintiff then left the Hospital and took the sealed box with her. Plaintiff then went to her home where she showered and tried to get some rest before traveling back to Georgia the following day.

16. On December 6, 2015, acting upon the direction and advice of the Hospital nurse, Plaintiff drove to the Dekalb County Sheriff's Office, delivered the box she had been given at the Hospital by Hendricks, and gave the investigating officer her statement regarding the drugging and assault she had endured the day prior.

17. In January of 2016, after some back and forth communications between Plaintiff and the Dekalb County Sheriff's Office, the investigating officer contacted Plaintiff and advised her that it would be several months before his office could examine and test the contents of the rape kit she had personally delivered.

18. A few weeks later, in February of 2016, Plaintiff again heard from the investigating officer, who advised Plaintiff that he had reviewed the contents of her rape kit and that there was no blood sample included in the kit. He further advised Plaintiff that, due to that lack of blood evidence to corroborate Plaintiff's report about the assault that occurred on the morning of

December 5, 2015, he was going to close the case and not proceed further with any action against the Plaintiff's attacker. Moreover, upon information and belief, the fact that there had been a break in the chain of custody for the Plaintiff's rape kit was also considered by the investigating officer in making the decision to close the Plaintiff's case.

19. After receiving that call, Plaintiff was very upset and contacted the Hospital to request a copy of her treatment records from December 5, 2015.

20. When Plaintiff called the Hospital about the missing blood sample, an unidentified Hospital employee, believed to be one of the head nurses, advised Plaintiff that a review of Plaintiff's records from December 5 indicated that Docyk made the decision to not include the blood in the rape kit that Hendricks handed to the Plaintiff on December 5, 2015, despite knowing that Plaintiff had claimed she was drugged, wanted to know with what she had been drugged, and wanted the matter reported to law enforcement. That same nurse advised Plaintiff that the Hospital needed to do better training on evidence collection in assault cases.

21. Defendants directly and vicariously through their agents, servants, contractors, privileged providers, subsidiaries, and employees failed to provide the requisite and adequate care to Plaintiff and thus deviated from the standard of care and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Notice.

22. Attached to this Notice of Intent to Sue is the affidavit of R. Starner Jones, M.D. Dr. Jones is board certified in emergency medicine and public health. As Dr. Jones makes clear in his affidavit, Defendants deviated from the recognized and generally accepted standard of care in one or more of the following particulars:

- (a) Failing to secure and preserve specimens, including blood drawn from Jane Doe.

(b) Handing over custody and control of a rape kit to a patient/victim, which included medical specimens collected by hospital employees, including Dr. Docyk and Nurse Hendricks.

23. The failure of Defendants to follow the recognized and generally accepted standards of care proximately caused significant and permanent injuries and substantial damages to Plaintiff, including severe emotional distress, and an inability to proceed with any investigation into the circumstances around her assault and her attacker.

24. If Plaintiff had received proper medical care and attention from Defendants, she would not have experienced the resulting damages.

25. Therefore, Plaintiff is entitled to judgment for full direct, consequential, and special damages against Defendants in an amount to be determined by a jury, unless the parties can reach a resolution through mediation.

AFFIDAVIT OF STARNER JONES, M.D.

The affidavit of expert R. Starnier Jones, M.D., specifying the negligent acts and omissions claimed and the factual basis for each claim based upon the available evidence at this time is attached pursuant to S.C. Code § 15-36-100 *et seq.*

ANSWERS 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: Jane Doe; the staff and employees of Oconee Memorial Hospital who treated and cared for Jane Doe; the staff of Greenville Health System who treated and cared for Jane Doe; other doctors and/or medical staff who treated or cared for Jane Doe; Dr. Jones.

Other than the affidavit of Dr. Jones, no written or recorded statements have been taken from any of the potential witnesses. Plaintiff reserves the right to supplement this request at a later date.

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.

RESPONSE: Medical records concerning treatment of Ms. Doe.

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: Dr. Kevin Docyk, Oconee Memorial Hospital, Greenville Health System.

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: Unknown at this time.

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

RESPONSE: Plaintiff has sustained damages such as emotional distress, mental anguish, travel expenses and other damages that will be supplemented during discovery and as further damages are identified and quantified.

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: R. Starner Jones, M.D.

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: It is anticipated that all hospital and medical staff and employees listed in Jane Doe's medical records will be able to provide information regarding Jane Doe's medical care and treatment. Dr. Jones will testify about the opinions in his affidavit and respond to any defenses suggested by Defendants. Jane Doe will testify regarding the events leading to her medical care and other services, the expenses and the medical bills and care required by Defendants' actions and fault, and the challenges, including pain and suffering, she faced. She will also testify regarding all elements of damages she incurred.

Plaintiff reserves the right to supplement this response at a later date.

Respectfully submitted,

s/ Hannah Rogers Metcalfe
Courtney C. Atkinson, SC Bar #71992
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(864) 214-3067
Attorneys for Plaintiff

December 5, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital; Greenville Health System; Upstate Affiliate Organization; Kevin Docyk, MD; Mary Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. NO.: 2019-CP-37-_____

**COMPLAINT
(Jury Trial Requested)**

Plaintiff, Jane Doe, complaining of the Defendants, Oconee Memorial Hospital, Greenville Health System, Upstate Affiliate Organization, Kevin Docyk, M.D, and Mary Beth Hendricks, hereby alleges and would show unto this Honorable Court as follows:

1. The plaintiff is a citizen and resident of Oconee County, South Carolina.
2. Defendant Oconee Memorial Hospital (hereinafter “the Hospital”) is a healthcare business organized and existing under the laws of South Carolina and doing business in Oconee County, South Carolina.
3. Defendant Greenville Health System (hereinafter “GHS”) is a healthcare business organized and existing under the laws of South Carolina and doing business in Oconee County, South Carolina. GHS owns and/or operates the Hospital.
4. Defendant Upstate Affiliate Organization (hereinafter “UAO”) is a healthcare organization existing under the laws of South Carolina and doing business in Oconee County, South Carolina. Upon information and belief, UAO owns GHS.

5. Defendant Kevin Docyk, MD (hereinafter “Dr. Docyk”), is an emergency room physician working at Oconee Memorial Hospital and, upon information and belief, is a citizen and resident of Oconee County, South Carolina.

6. Defendant Mary Beth Hendricks (hereinafter “Nurse Hendricks”), is a sexual assault nurse examiner working at Oconee Memorial Hospital and, upon information and belief, is a citizen and resident of Oconee County, South Carolina.

7. Upon information and belief, Oconee Memorial Hospital had the right or power to direct and control Dr. Docyk and Nurse Hendricks of their duties and work as part of that practice.

8. Dr. Docyk held himself out to be, and, upon information and belief, GHS, his employer, held Dr. Docyk out to be a competent medical practitioner, and Jane Doe relied upon this and his medical license. Dr. Docyk and GHS had a doctor-patient relationship with Jane Doe in December 2015.

9. Nurse Hendricks held herself out to be, and, upon information and belief, GHS, her employer, held Nurse Hendrick out to be a competent medical professional, and Jane Doe relied upon this and her nurse training. Nurse Hendricks and GHS had a medical care provider-patient relationship with Jane Doe in December 2015.

10. Defendants GHS, Oconee Memorial Hospital, and Upstate Affiliate Organization held their facility Oconee Memorial Hospital out to Jane Doe and the public as a health care facility capable of providing competent medical care.

11. Upon information and belief, Defendants had a medical care provider-patient relationship with Plaintiff with a duty to provide her proper care by medical care professionals properly trained, qualified, and competent in the health care services and procedures with which she was provided and/or which she required.

12. Upon information and belief, Defendants had a doctor-patient and/or medical care provider-patient relationship with Jane Doe with a duty to provide her proper care by medical care professionals properly trained, qualified, and competent in the health care services and procedures that she was provided and/or which she required.

13. Upon information and belief, GHS had the right and/or power to direct and control Dr. Docyk in the performance of his duties and work for GHS and at the Hospital.

14. This matter arises from medical malpractice by the Defendants, for which they are liable as herein stated, occurring in Oconee County, South Carolina, and that harmed Jane Doe.

15. The Court has jurisdiction of the parties and subject matter of this action. Venue is properly laid in Oconee County.

16. Prior to filing this Complaint, Plaintiff filed a Notice of Intent to File Suit with this same Court in regard to the matters set forth herein and served same on Defendants on December 14, 2018 as required pursuant to S.C. Code §15-79-125.

17. Following service of the above-referenced Notice of Intent to File Suit on Defendants, the parties hereto engaged in mediation on March 11, 2019, as required by S.C. Code §15-79-125, which was not successful.

18. Jurisdiction and venue are properly before this Court.

19. In the early morning hours of December 5, 2015, while in Atlanta, Georgia for a dance event, Plaintiff was drugged and sexually assaulted by a Georgia resident. In fact, after being drugged, Plaintiff regained consciousness to find herself being assaulted in an unidentified car in an unidentified parking garage. Plaintiff eventually got away from her attacker and returned to South Carolina.

20. Within hours of the above-referenced assault, Plaintiff drove immediately back to South Carolina and reported to the Hospital at approximately 10:30 a.m. on December 5, 2015. While at the Hospital, Plaintiff reported that she had been sexually assaulted and believed that she had also been drugged to various employees of the Hospital, including physician Kevin Docyk, MD, and nurse Mary Beth Hendricks. In so reporting, Plaintiff wanted to know what she had been drugged with and what additional medical care she might require as a result of her drugging and assault.

21. After indicating that she wanted the Hospital to perform a sexual assault forensic examination and get law enforcement involved, Plaintiff was attended by two nurses and physician Docyk. The first nurse who attended Plaintiff, Jane Finfrock, was only present for Plaintiff's initial intake and eventually turned Plaintiff over to the care of Hendricks, who represented herself as and whom Plaintiff understood to be a sexual assault nurse examiner ("SANE"). Hendricks and Docyk then attended to Plaintiff and performed the sexual assault forensic examination, which included both vaginal swabs and a blood draw. Docyk and Hendricks provided continued medical care, including the administration of medication and the treatment for Plaintiff's injuries. Following completion of the sexual assault forensic examination, a third Hospital employee came into the examination room and collected the specimens that had been taken by Hendricks, including the blood that had been drawn. Plaintiff was examined by Docyk, who had authority to order any tests that were needed, including the collection and testing of Plaintiff's blood.

22. Both Docyk and Hendricks, as well as the other Hospital employees who attended to Plaintiff on December 5, 2015, were made aware of Plaintiff's report that she had been drugged and sexually assaulted.

23. Following the above-referenced procedures and examination, and while still at the Hospital, Plaintiff affirmatively requested that the Hospital report the assault to law enforcement. Accordingly, Hendricks called and reported the assault to the Dekalb County Sheriff's Office in Georgia, the location of the assault.

24. During that call, the officer advised Hendricks that he was unwilling to come to the Hospital to collect the evidence himself. Upon information and belief, the officer suggested to Hendricks that Plaintiff should take physical possession of the evidence and drive it back to Georgia. While not a party to the phone call, Plaintiff observed Hendricks become upset, seemingly understanding that the officer's request was inappropriate, and heard Hendricks advise the officer of her belief that he needed to collect the evidence directly from the Hospital.

25. Following the call with the Dekalb County Sheriff's Office, neither Hendricks nor anyone else employed by the Hospital made any effort to contact local law enforcement or someone else in the Dekalb County Sheriff's Office to take custody of the evidence. Hendricks also made no effort to help Plaintiff contact local law enforcement or to pursue other options in securing the evidence and/or transferring it directly to law enforcement. Instead, Hendricks, understanding that it was not correct procedure and/or protocol to do so, and a deviation from the standard of care, advised Plaintiff that Plaintiff would have to take personal possession of the medical evidence and personally drive the evidence to the Dekalb County Sheriff's Office.

26. Hendricks, a sexual assault nurse examiner presumably trained in maintenance of proper chain of custody of rape kits, then knowingly broke the chain of custody in regard to the evidence collected, giving Plaintiff a box that Plaintiff believed to include the entire rape kit, including the blood that had been drawn. At the same time, Hendricks had Plaintiff sign a sticker on the back of the box to acknowledge her receipt of the box containing the rape kit.

27. At no time did Hendricks ever advise Plaintiff that in Hendricks giving the evidence to Plaintiff and in Plaintiff accepting physical custody of the evidence that the chain of custody had been broken for the evidence collected. She also did not advise Plaintiff of the need for the rape kit to be transferred to law enforcement immediately or of her option to have local law enforcement collect the evidence and transport it back to Georgia.

28. Plaintiff then left the Hospital and took the sealed box with her as instructed by Hendricks. Plaintiff then went to her home where she showered and tried to get some rest before traveling back to Georgia with the rape kit the following day.

29. On December 6, 2015, acting upon the express direction and advice of Hendricks, Plaintiff drove to the Dekalb County Sheriff's Office in Georgia from Oconee County, delivered the box she had been given at the Hospital by Hendricks, and gave the investigating officer her statement regarding the drugging and assault she had endured the day prior.

30. In January of 2016, after some back and forth communications between Plaintiff and the Dekalb County Sheriff's Office, the investigating officer contacted Plaintiff and advised her that it would be several months before his office could examine and test the contents of the rape kit she had personally delivered.

31. A few weeks later, in February of 2016, Plaintiff again heard from the investigating officer from Dekalb County, who advised Plaintiff that he had reviewed the contents of her rape kit and that there was no blood sample included in the kit. He further advised Plaintiff that, due to that lack of blood evidence to corroborate Plaintiff's report about the assault that occurred on the morning of December 5, 2015, he was going to close the case and not proceed further with any action against the Plaintiff's attacker. Moreover, upon information and belief, the fact that there had been a break in the chain of custody for the Plaintiff's rape kit was also considered by the

investigating officer in making the decision to close the Plaintiff's case and not proceed with investigation and/or prosecution of Plaintiff's attacker.

32. After receiving that call from the investigating officer, Plaintiff was very upset and contacted the Hospital to request a copy of her treatment records from December 5, 2015.

33. When Plaintiff called the Hospital about the missing blood sample, an unidentified Hospital employee, believed to be one of the head nurses, advised Plaintiff that a review of Plaintiff's records from December 5 indicated that Docyk had actually made the decision to not include the blood in the rape kit that Hendricks handed to the Plaintiff on December 5, 2015, despite knowing that Plaintiff had claimed she was drugged, wanted to know with what she had been drugged, and wanted the matter reported to law enforcement. That same nurse advised Plaintiff that the Hospital needed to do better training on evidence collection and handling in sexual assault cases.

34. As a result of Defendants' failure to properly collect and maintain medical specimens and evidence -including blood and other swabs- Plaintiff was unable to ascertain what happened on December 5, 2015, including what substance had been administered to Plaintiff in order to incapacitate her so as to allow her attacker to perpetrate a sexual assault. Plaintiff would have been able to ascertain this information had the blood drawn on December 5, 2015 been properly maintained and analyzed in a laboratory.

35. Defendants' negligence, gross negligence, and reckless disregard for the health, well-being, and rights of Jane Doe caused her to be unable to ascertain the events of December 5, 2015, including verifying her attacker's identity, whether other individuals were involved in the assault, and the substance administered to the Plaintiff to render her unconscious. Plaintiff lost the ability to confirm and confront her assailant, as well as her ability to confirm what substance

she was unlawfully administered on December 5, 2015, and has suffered serious injuries, including emotional distress and suffering.

36. Defendants directly and vicariously through their agents, servants, contractors, privileged providers, subsidiaries, and employees failed to provide the requisite and adequate care to Jane Doe and, thus, deviated from the standard of care and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Complaint.

37. Defendants undertook a duty to render medical care to Plaintiff in accordance with the generally recognized medical practices and procedures and standard of care, which would be exercised by competent medical providers under the same or similar circumstances.

38. All of the actions detailed herein were within the scope and course of Defendants and/or individuals affiliations and/or employment as physicians or hospital employees working at the Hospital, for the purpose of carrying on their business as medical healthcare providers and therefore, Defendants are liable for the negligent acts and omissions of the Defendants and other hospital staff, respectively, under the theories of non-delegable duty and *respondent superior*.

39. As a result of the physician-patient relationship or medical provider-patient relationship between the parties, Defendants had a duty to use reasonable care, skill, and learning in regard to the examination and treatment provided to Plaintiff that a prudent physician, hospital, or hospital employee would use under like circumstances.

40. Defendants directly and vicariously through their agents, servants, contractors, privileged providers, subsidiaries, and employees failed to provide the requisite and adequate medical care to Plaintiff on December 5, 2015 and, thus, deviated from the recognized and generally accepted standard of care in one or more of the following particulars:

- (a) Failing to secure and preserve specimens, including blood drawn from Jane Doe;

(b) Handing over custody and control of a rape kit to a patient/victim, which included medical specimens collected by hospital employees, including physician Docyk and nurse Hendricks;

(c) Failing to maintain custody and control over the rape kit of Jane Doe until such time as it could be transferred directly to law enforcement; and

(d) Failing to transfer custody and control of the rape kit to law enforcement.

(e) Failing to properly train employees regarding the collection, preservation and chain of custody of medical evidence for patients reporting sexual assault(s) to Defendants;

(f) Failing to properly supervise employees regarding the collection, preservation and chain of custody of medical evidence for patients reporting sexual assault(s) to Defendants;

(g) Failing to enact appropriate procedures and protocols regarding the collection, preservation and chain of custody of medical evidence for patients reporting sexual assault(s) to Defendants;

(h) Failing to preserve the blood collected and, upon information and belief, ordering the destruction of said specimen; and

(i) Failing to test the blood collected.

41. The failure of Defendants to follow the recognized and generally accepted standards of care proximately caused significant and permanent injuries and substantial damages to Jane Doe, including emotional distress; and

42. As a direct and proximate result of Defendants' failure to follow the recognized and generally accepted standards of care, Jane Doe sustained serious and permanent injuries.

43. As a direct and proximate result of the negligent, willful, wanton, and reckless acts, as well as the gross negligence of Defendants, Plaintiff sustained significant and permanent injuries and substantial damages, including severe emotional distress, an inability to proceed with any investigation into the circumstances around her assault and her attacker and the ability to know and receive appropriate medical treatment for her injuries and/or physical well-being.

44. If Plaintiff had received proper medical care and attention from Defendants, she would not have experienced the resulting injuries and damages.

45. Because Defendants' acts and omissions were willful, wanton, and grossly negligent, Jane Doe is entitled to punitive damages. .

47. Therefore, Plaintiff is entitled to judgment for full direct, consequential, and special damages, including punitive damages, against Defendants in an amount to be determined by a jury.

WHEREFORE, the Plaintiff prays for an award of damages against Defendants for actual and consequential damages, punitive damages, attorneys' fees and costs, and for any such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Hannah Rogers Metcalfe

Hannah Rogers Metcalfe, SC Bar #73046

Courtney C. Atkinson, SC Bar #71992

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Attorneys for Plaintiff

May 10, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk, MD; Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762 and 2018-NI-
37-00010

Defendants' Motion to Dismiss

PLEASE TAKE NOTICE that at such time and place as set by the Court, Defendants Greenville Health System (“GHS”)¹, Upstate Affiliate Organization, Kevin Docyk, MD, and Mary Beth Hendricks will move pursuant to Rule 12(b)(6), SCRPC, for an order dismissing the above referenced actions. As set forth in more detail below, the medical malpractice claims asserted in Plaintiff’s Notice of Intent to File Suit (“NOI”) are barred pursuant to the doctrines of res judicata and/or collateral estoppel and are also barred by the applicable statute of limitations. In addition, Plaintiff’s Complaint fails to state facts sufficient to constitute a cause of action against Defendants and/or the claims are barred by the applicable statute of limitations.

I. PROCEDURAL HISTORY

The instant Complaint and NOI are Plaintiff’s second attempt to assert claims related to Defendants’ handling of a sexual assault forensic examination kit following her alleged rape in Atlanta, Georgia on December 5, 2015. In the instant actions, Plaintiff makes essentially the

¹ Plaintiff identifies Oconee Memorial Hospital as a named defendant in her Complaint; however, Oconee Memorial Hospital is not an independent entity capable of being sued. Rather, it is a facility owned and operated by GHS.

same factual allegations as she did in her prior civil action filed on December 5, 2017 (C.A. No.: 2017-CP-37-00700). In that action, she alleged the facts amounted to: (1) negligence – failure to properly collect and protect evidence; (2) negligence – failure to order necessary tests; (3) gross negligence – failure to properly collect and protect evidence; (4) gross negligence – failure to order necessary tests; (5) negligent supervision; and (6) intentional infliction of emotional distress.

GHS filed a motion to dismiss the Complaint on January 10, 2018. A hearing on the motion to dismiss was held on June 4, 2018. Just prior to the start of the hearing, Plaintiff filed a motion to amend her complaint. Plaintiff's motion did not include a proposed amended complaint, but the motion stated she wished to amend to add defendants and to add two additional causes of action. Plaintiff's motion did not specify the two new causes of action, but during the motion to dismiss hearing, Plaintiff's counsel identified the two new causes of action as breach of contract and bailment.

Following the hearing and additional submissions from both parties, the Court issued an Order granting GHS's motion to dismiss on July 9, 2018. By way of the Order, the Court dismissed with prejudice the six causes of action set forth in Doe's complaint. However, the Court provided that its ruling was "without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action." (July 9, 2018 Order, p. 1.) Plaintiff appealed the Order, and that appeal is still pending.

II. PLAINTIFF'S MEDICAL MALPRACTICE CLAIM IS BARRED BY THE DOCTRINES OF RES JUDICATA AND/OR COLLATERAL ESTOPPEL

Plaintiff's NOI should be dismissed on the basis that her medical malpractice claim is barred pursuant to the doctrine of res judicata and/or collateral estoppel. See Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (Under the doctrine of res judicata, a litigant is barred

from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit, while collateral estoppel, also known as issue preclusion, prevents a party from re-litigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.)

This Court's July 9, 2018 Order unambiguously dismissed Plaintiff's negligence claims with prejudice. Medical malpractice is merely a specific form of negligence. *See Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 758 S.E.2d 501 (2014). Just as with any other form of negligence, to assert a claim for medical malpractice, Plaintiff must allege facts sufficient to establish that a duty was owed, the duty was breached, and the breached proximately caused Plaintiff's injuries. *See Willis v. Wu*, 362 S.C. 146,154, 607 S.E.2d 63, 67 (2004) (discussing elements of a medical malpractice action while referring to it as "a negligence action against a physician or other health care provider.") Calling it "medical malpractice" instead of "negligence" does not change the fact that the elements are the same, nor does it change the fact that this Court has already determined as a matter of law that no duty existed. If no duty existed under a general negligence theory, one is not created just because Plaintiff now chooses to refer to her negligence claim as a medical malpractice claim.

III. PLAINTIFF'S TORT CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS

As already correctly noted by this Court, at all times relevant to this action, Oconee Memorial Hospital was owned and operated by, the governmental entity known as Greenville Health System, a healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended), and it and its agents and employees are, therefore, entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. *See Order*, p.

8, citing *Murphy v. Richland Mem. Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995), and *Benton v Roger C Peace*, 313 S.C. 520, 443 S.E.2d 537 (1994)). Pursuant to S.C. Code § 15-78-110, the applicable statute of limitations for all tort claims is 2 years.

Plaintiff's alleged injuries occurred on November 5, 2015. Plaintiff filed the instant actions on November 5, 2018, a full year after the statute of limitations expired in regards to any tort claims. Therefore, all of her tort claims, including her bailment cause of action, are barred by the applicable statute of limitations. *See Hadfield v. Gilchrist*, 343 S.C. 88, 538 S.E.2d 268 (2000) (holding that, although contractual in nature, "an action for breach of the duty of care by a bailee sounds in tort").

IV. LAW DOES NOT RECOGNIZE AN IMPLIED CONTRACT IN THE CONTEXT OF MEDICAL SERVICES

For her second cause of action, Plaintiff alleges "Breach of Implied Contract," though she provides no factual basis for her conclusory statement that the "Hospital Defendants made various representations, written agreements, oral agreements, and/or contracts with Plaintiff." Regardless, while it appears Plaintiff is merely attempting to recast her negligence claims as ones sounding in contract to get around the aforementioned legal issues, her implied contract claim still fails as a matter of law, because the law does not recognize a breach of implied contract in the context of medical services. *Banks v. Medical Univ.*, 314 S.C. 376, 444 S.E.2d 519 (1994) (absent an express contract, an action against a healthcare provider rests in tort, not contract).

V. PLAINTIFF DOES NOT ALLEGE FACTS SUFFICIENT TO ESTABLISH THE EXISTENCE OF AN EXPRESS CONTRACTUAL DUTY

Plaintiff makes the conclusory allegation that "the Hospital Defendants entered into a contract with her whereby they agreed to provide certain services, including the collection, safekeeping, storage, protection, maintenance, and proper transfer to law enforcement, of

specific medical specimens obtained from Plaintiff's body." See *Charleston County Sch. Dist. v. S.C. State Ports Auth.*, 283 S.C. 48, 50, 320 S.E.2d 727, 729 (Ct. App. 1984) (In ruling on a motion to dismiss, the Court is to consider only the alleged facts and is not to consider the inferences or conclusions of law drawn by the Plaintiff from the facts.) However, Plaintiff has not pled facts sufficient to establish each of the elements of a breach of contract cause of action. See *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 363 S.E.2d 691 (1988) (Each element of a cause of action must be alleged, and a complaint that omits an element fails to state a claim and must be dismissed.)

Other than her conclusory statement, Plaintiff has failed to plead any facts sufficient to establish that an express contract existed. Plaintiff has an obligation to make allegations in good faith. See Rule 11, SCRCP. If an express contract was actually entered into, Plaintiff should be capable of pleading some basic facts sufficient to establish the elements of a breach of contract cause of action, such as: the date of the contract; whether the contract was written or oral; and, who, on behalf of Defendants, entered into the alleged agreement with Plaintiff. Since no such facts are alleged, the only reasonable inference that can be drawn is Plaintiff and Defendant never entered into an express contract whereby Defendants explicitly warranted the services related to the sexual assault examination kit.

VI. PLAINTIFF'S CURRENT ACTIONS ARE JUST ANOTHER ATTEMPT TO ASSERT A SPOILIATION OF EVIDENCE CAUSE OF ACTION

In dismissing her prior Complaint, this Court interpreted Plaintiff's allegations as an attempt to assert a negligent spoliation of evidence cause of action. (Order, p. 5.) Whether Plaintiff calls it breach of contract, negligence, or spoliation of evidence, the substance of the claim is the same in that Plaintiff is alleging GHS had a duty to properly maintain the blood samples in the sexual assault examination kit, and GHS's alleged failure to do that caused

Plaintiff harm, notably the alleged inability to pursue a criminal action against her attacker. Regardless of what she calls it, such a claim is simply not cognizable under South Carolina law. *See Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 714 S.E.2d 537 (2011); *Austin v. Beaufort County Sheriff's Office*, 377 S.C. 31, 659 S.E.2d 122 (2008).

WHEREFORE, for the reasons stated herein, Defendants respectfully request the Court enter an order dismissing both actions with prejudice and for any such further relief as the Court may deem just and proper.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Attorneys for Defendants

Dated: December 21, 2018
Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk, MD; Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762 and 2018-NI-
37-00010***Supplemental Memorandum in Support of
Defendants' Motion to Dismiss***

Defendants' Motion to Dismiss came before the Court on March 20, 2019. While Plaintiff did not file a memorandum in opposition to the motion, Plaintiff's counsel did make several arguments during the course of the hearing. Defendants do not wish to repeat their previous arguments¹, but rather, are filing this memorandum to address some of the specific issues raised during the hearing.

I. Plaintiff's prior complaint does not qualify as a verified claim

During the hearing, Plaintiff argued she extended the two-year statute of limitations for her tort claims to three years by the filing of her complaint in the prior action. In essence, Plaintiff argued her prior complaint amounted to a verified claim pursuant to S.C. Code § 15-78-80 of the Tort Claims Act; however, there is a distinction between a verified claim and a complaint filed in a civil action. This is obvious from the clear and unambiguous wording of the Act. See S.C. Code § 15-78-90 (stating that a claimant may file a civil action without filing a

¹ Defendants hereby incorporate by reference all arguments set forth in their December 21, 2018 Motion to Dismiss as well as all arguments set forth in any motions or memorandums filed by Defendants in the previous action, C.A. No. 2017-CP-37-00700.

verified claim; however, if a verified claim is filed, claimant must fulfill certain requirements before a civil action can be filed).

Nevertheless, even if that were not the case, Plaintiff's prior complaint failed to meet the rigid requirements of a verified claim. *Pollard v. County of Florence*, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994) (the verified claims procedure found in § 15-78-80 of the South Carolina Tort Claims Act must be strictly complied with in order to trigger the 3-year limitations period). Plaintiff's prior complaint arguably failed to adhere to the requirements of § 15-78-80 in several respects, but without question, Plaintiff failed to file and serve the complaint upon Defendants within one year of the incident as required by S.C. Code § 15-78(d).² As a result, even if Plaintiff's prior complaint could be considered an attempt to file a verified claim, it was not done appropriately, and thus, did not extend the statute of limitations.

II. Plaintiff's claims do not relate back to the filing of the original complaint

During the hearing, Plaintiff pointed to the Supreme Court's recent decision in *Skydive Myrtle Beach, Inc. v. Horry County*, as support for her argument that this Court erred when it granted Defendant's motion to dismiss without first ruling on her motion to amend. Plaintiff contended that since this Court erred, it should now treat her current complaint as an "amended complaint." However, *Skydive* is distinguishable from the instant case. Most notably, in *Skydive*, the trial court dismissed the entire case with prejudice. Here, however, this Court's Order only dismissed the causes of action alleged in Plaintiff original complaint and specifically left open the possibility for Plaintiff to file a new complaint alleging new and different causes of action. Thus, *Skydive* does not clearly establish any error on this Court's part.

Regardless, whether this Court erred is not at issue in the instant action. This is a motion

² Plaintiff's filed her Complaint in CA 2017-CP-37-00700 exactly two years after the events in question on December 5, 2017, and served Defendants on December 21, 2017.

to dismiss Plaintiff's current actions. She did not file her current actions as amendments to her prior action, and Defendants are not aware of any legal procedure whereby her instant actions can be converted to amendments of the prior action. This Court has already denied Plaintiff's motion to reconsider the order dismissing the prior action, and any potential errors, including the alleged failure to consider Plaintiff's motion to amend, is currently on appeal. Plaintiff is certainly free to argue the applicability of *Skydive* to the Court of Appeals, but it should have no bearing on this Court's ruling on the instant motion.

Nevertheless, even if Plaintiff had been allowed to file an amended complaint, any new tort causes would have been barred by the statute of limitations. It is well established that a complaint cannot be amended to state a new or different cause of action after the statute of limitations has expired. *Scott v. McCain*, 272 S.C. 198, 202, 250 S.E.2d 118, 121 (1978); *Coral Gables v. Palmetto Brick Co.*, 183 S.C. 478, 191 S.E. 337 (1937) ("[A]n amendment which introduces a new or different cause of action and makes a new or different demand does not relate back to the beginning of the action, so as to stop the running of the statute of limitations, but is the equivalent of a fresh suit upon a new cause of action, and the statute continues to run until the amendment is filed.") When Plaintiff filed her motion to amend on June 4, 2018, the two-year statute of limitations had expired for any new tort causes of action.

Thus, to the extent Plaintiff argues her current medical malpractice and bailment causes of action are new and different claims from her prior negligence causes of action, they would both be barred by the statute of limitations. To the extent she argues they really aren't different from her negligence claims and therefore should relate back, the claims would be barred by the doctrine of res judicata and/or collateral estoppel.³ Either way, Plaintiff's new tort claims should

³ If Plaintiff's claims are similar enough to her negligence claims to relate back under Rule 15, SCRCp, then they should fail for the same reasons her negligence claims failed – there was not duty owed. As with her negligence

be dismissed.

III. Defendants are subject to the Tort Claims Act

In an attempt to get around the statute of limitations, Plaintiff has again argued she believes there is a question of fact about whether Defendants should be subject to the Tort Claims Act due to the recent change in management of Oconee Memorial. This is nothing but a red herring on Plaintiff's part in an attempt to create a dispute that simply does not exist. As Defendants pointed out when Plaintiff made this very same argument in opposition to the motion to dismiss the prior action, Greenville Health System's agreement with Upstate Affiliate Organization (now known as Prisma Health) in October 2016 is irrelevant to this action. UAO is not a defendant to this action. There are no allegations against it. Therefore, whether UAO or Prisma Health is subject to the Tort Claims Act is irrelevant.

The named defendant is Greenville Health System, which has countless times been judicially determined to be a governmental entity for purposes of the Tort Claims Act, including by this very Court. In its July 9, 2018 Order dismissing Plaintiff's prior action, this Court correctly held that, at all times relevant to this action, Oconee Memorial Hospital was owned and operated by the governmental entity known as Greenville Health System, a healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended), and it and its agents and employees were, therefore, entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. See Order, p. 8, citing *Murphy v. Richland Mem. Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995), and *Benton v Roger C Peace*, 313 S.C. 520, 443 S.E.2d 537 (1994)). Consequently, that issue has been decided, and Plaintiff is collaterally

claims, Plaintiff's current causes of action are just another attempt to assert a spoliation of evidence claim, which does not exist under South Carolina law.

estopped from contesting it again in this action. *Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E. 2d 482, 486 (2009) (“Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in a prior action.”)

WHEREFORE, for the reasons stated herein as well as those set forth in Defendants’ prior motions and memorandums, Defendants respectfully request the Court enter an order dismissing both actions with prejudice and for any such further relief as the Court may deem just and proper.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Attorneys for Defendants

Dated: March 25, 2019
Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville Health
System; Upstate Affiliate Organization;
Kevin Docyk, MD; Mary Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762
2018-NI-37-00010***Motion for Reconsideration and/or Motion to
Stay Actions Pending Resolution of Appeal***

Defendants, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, hereby move the Court for reconsideration of its April 10, 2019 Form 4 Orders denying Defendants' Motions to Dismiss the above referenced actions. In the Orders, the Court held Defendants' arguments invoked matters outside the pleadings, which could not be considered by the Court on a 12(b)(6) motion. For the reasons stated herein, Defendants respectfully contend the Court erred in its holding by contradicting its July 9, 2018 Order.

Defendants respectfully disagree with the Court's holding, and contend they have not asked the Court to consider any facts outside of those pled in the Complaint. Rather, Defendants have merely asked the Court to consider the prior procedural history of the case, and in particular, the Court's July 9, 2018 Order dismissing Plaintiff's prior action in which she alleged essentially the exact same facts as she alleges in the current actions. It is well established the Court may consider court documents and other public records when ruling on a motion to dismiss.¹

¹ Public records are one of the exceptions to the rule that generally a court may not consider anything outside the four corners of the complaint when deciding a motion to dismiss. See Witthohn v. Fed. Ins. Co., 164 F. App'x 395, 396 (4th Cir. 2006) ("court may consider official public records, documents central to plaintiff's claim, and documents sufficiently referred to in the complaint so long as the authenticity of these documents is not disputed"); see also Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (Since the South Carolina Rules of Civil Procedure are based upon the Federal Rules, South Carolina courts may look to federal courts for guidance in interpreting the South Carolina Rules)

The Court's current Orders, especially the Order denying Defendants' motion to dismiss Plaintiff's NOI, are irreconcilable with the Court's July 9, 2018 Order. The July 9, 2018 Order dismissed Plaintiff's tort claims on several grounds, which the Court appears to disregard in its current Orders.

First, the Court previously found the hospital owed no legal duty to Plaintiff in regards to the sexual assault examination kit. In filing her new actions, Plaintiff has not pled any new significant facts. Therefore, if no legal duty was owed in her prior tort actions, there should be no legal duty owed in her current tort actions. This is especially true in regards to her medical malpractice action, which is nothing more than a specific form of negligence. It is inconceivable to Defendants how Plaintiff's medical malpractice action would not be barred by the doctrine of res judicata or collateral estoppel.

Second, the Court previously interpreted Plaintiff's claims as an attempt to assert a negligent spoliation of evidence claim. While Plaintiff has asserted different causes of action, the essence of her claims have not changed. She is still claiming she was damaged by the hospital's handling of evidence, specifically the alleged misplacement of her blood sample. Therefore, it is still an attempt to assert a spoliation of evidence claim, which the Court previously correctly ruled was not a cognizable cause of action under South Carolina law.

Third, the Court previously found Plaintiff failed to assert a cognizable injury. Specifically, the Court found the only reasonable inference which could be drawn from the pleadings was Plaintiff endured only emotional distress, which was not recoverable under the circumstances. Again, in her new actions, Plaintiff has not pled any additional facts upon which the Court could reasonably interpret her damages any differently. To interpret the current actions differently, at least in regards to the tort claims, would be irreconcilable with the Court's prior Order.

Finally, the Court previously held GHS to be a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act. Therefore, it has already been judicially

determined that GHS and its employees are entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act, including, but not limited to, the applicable statute of limitations, which in this case would be two years. With that in mind, the Court need look no further than the facts alleged in Plaintiff's current actions to determine Plaintiff's tort claims are barred by the applicable statute of limitations.

Finally, contrary to the Court's April 10, 2019 Orders, it is actually Plaintiff who has repeatedly asked the Court to consider matters not contained within the pleadings. For example, during the hearing, Plaintiff's counsel orally argued some of the "damages" Plaintiff allegedly sustained, but none of those alleged "damages" are pled within the four corners of the Complaint or the NOI. While addressing the breach of contract claims, Plaintiff's counsel referenced numerous documents Plaintiff signed at the hospital, but none of those documents are specifically referenced in the Complaint. Finally, Plaintiff's counsel also attempted to make an issue out of the fact that Oconee Memorial is now operated by Prisma Health, but Prisma Health is not a defendant in these actions, nor are there any allegations which suggest Prisma Health should be a defendant.

Wherefore, for the reasons stated herein, Defendants respectfully request the Court reconsider its April 10, 2019 Orders and revise the Orders to be consistent with the Court's July 9, 2018 Order. Defendants contend the only way to reconcile the orders is for the Court to dismiss Plaintiff's current actions in their entirety, or at a minimum, dismiss the tort actions.

The fact that Plaintiff has appealed the July 9, 2018 Order dismissing her negligence and intentional infliction of emotional distress claims is all the more reason the Court should at least reconsider dismissing Plaintiff's current tort actions. Should the Court decide to do so, Plaintiff could then appeal that ruling as well, which for the reasons stated above present the same legal issues and questions as her prior action. For the sake of judicial economy, those issues should be decided on appeal at one time rather than potentially two separate appeals. And to the extent the Court may not be inclined to dismiss the tort causes of action, Defendants would ask the Court withhold a final

ruling on that issue until the appeal is decided to avoid the possibility of conflicting rulings of law.

Regardless, to the extent the Court is unwilling to dismiss Plaintiff's actions in their entirety, Defendants request the actions be stayed for the sake of judicial economy pending the resolution of Plaintiff's appeal of the prior action. It is uncertain how long the appellate process may take. To avoid the possibility of litigating this case and the legal issues contained therein more than once, it is necessary to stay the current actions until such time as there is a final resolution of the appeal of the prior action.

Respectfully submitted,

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Attorneys for Defendants

Dated: April 17, 2019
Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville Health
System;

Defendant.

IN THE COURT OF COMMON PLEAS

CA No.: 2018-NI-37-00010

CA No.: 2018-CP-37-00762

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION FOR RECONSIDERATION
AND/OR MOTION TO STAY ACTIONS
PENDING RESOLUTION OF APPEAL**

Plaintiff Jane Doe, by and through her undersigned counsel, hereby submits this Memorandum in Opposition to Defendants' Motion for Reconsideration and/or Motion to Stay Actions Pending Resolution of Appeal in regard to the Court's April 11, 2019 Order denying Defendants' Motions to Dismiss. Plaintiff disagrees with Defendants' Motion for Reconsideration for the following reasons:

1. The April 11, 2019 Order is supported by the various facts and arguments presented to the Court at the hearing on Defendants' Motions to Dismiss on March 20, 2019.
2. The April 11, 2019 Order appropriately found that Defendants' Motions to Dismiss and the arguments raised in support thereof invoke matters outside of Plaintiff's Complaint, including, but not limited to, Greenville Health System's alleged status as a governmental entity under the South Carolina Tort Claims Act.
3. The Court's July 9, 2018 Order, dismissing Plaintiff's previous action against Defendants, does not bar and/or estop Plaintiff's new and distinct claims in the instant actions, as the July 9, 2018 Order expressly states that it was being granted "without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action." As set forth in Plaintiff's Complaint/Notice of

Intent (NOI) and as argued on March 20, 2019, Plaintiff's current actions allege new and distinct claims against Defendants than were alleged in the previous action, including breach of contract, bailment and medical malpractice.

4. None of Plaintiff's claims in the instant actions seek damages for spoliation of evidence as claimed by Defendants.
5. Plaintiff's Complaint and NOI properly allege claims for damages against Defendants under the applicable pleading standard. To the extent that Defendants wish to argue the specifics and/or the veracity of said damages, that is a matter wholly outside the allegations set forth in Plaintiff's Complaint/NOI and not properly addressed pursuant to a motion to dismiss.
6. The fact that Plaintiff has an appeal pending as to the dismissal of her previous action against Defendants, yet another matter wholly outside the allegations of Plaintiff's Complaint/NOI raised for the first time in Defendants' Motion for Reconsideration, does not provide a basis for dismissing or staying the instant action, which includes causes of action separate and distinct from those asserted in the previous action. While Defendants contend that the Court should dismiss the instant actions so that "Plaintiff could appeal that ruling as well" and "those issues should be decided on appeal at one time rather than two potentially separate emails," Defendants cite to no law supporting dismissal of a properly pled complaint on such grounds. Additionally, and to the extent that Plaintiff's current appeal is successful in overturning dismissal of the previous action, the cases could certainly be consolidated for purposes of judicial economy.

For all those reasons set forth above, Plaintiff contends that Defendants' Motion for Reconsideration and/or Motion to Stay Actions Pending Resolution of Appeal should be denied and that the Court's April 11, 2019 Order should be upheld as filed.

s/Courtney C. Atkinson

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Attorneys for Plaintiff

April 22, 2019

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Jane Doe,

C.A. No.: 2019-CP-37-00271

Plaintiff,

vs.

ANSWER

Oconee Memorial Hospital; Greenville Health System; Upstate Affiliate Organization; Kevin Docyk, MD; Mary Beth Hendricks,

(Jury Trial Demanded)

Defendants.

Defendants Oconee Memorial Hospital, Greenville Health System, Upstate Affiliate Organization, Kevin Docyk, MD, and Mary Beth Hendricks (collectively hereinafter “these Defendants), answering Plaintiff’s Complaint, would hereby show the Court¹:

FOR A FIRST DEFENSE

1. The allegations of Paragraph 1 are admitted upon information and belief.
2. Defendants deny the allegations of Paragraph 2 and would show that at all times relevant to this action Oconee Memorial Hospital (“OMH”) was not an independent entity, but rather, was one of Greenville Health System’s (“GHS”) healthcare facilities.
3. In response to Paragraph 3, GHS states that it is a governmental entity and health care facility pursuant to the South Carolina Tort Claims Act § 15-78-10 et seq., and it denies any allegations inconsistent therewith. GHS further admits that at all times relevant to this action, it owned and/or operated numerous hospitals and healthcare facilities in the Upstate of South Carolina, including OMH.

¹ Defendants are filing this Answer out of an abundance of caution as it is unclear from the Court’s May 8, 2019 Order whether a final decision has been rendered on Defendants’ motion to dismiss Plaintiff’s NOI. In filing this Answer, Defendants do not waive, but rather incorporate herein by reference, all arguments and relevant portions of their motion to dismiss and all memorandums filed in support thereof, including Defendants’ Motion for Reconsideration and/or Motion to Stay Actions Pending Resolution of Appeal.

4. In response to Paragraph 4, Prisma Health-Upstate, formerly known as Upstate Affiliate Organization (“UAO”), would admit only that it is a nonprofit 501(c)(3) corporation organized under the laws of South Carolina, and it denies any allegations inconsistent therewith. UAO specifically denies the allegation that it owns GHS. UAO would further show that it is an improper party to this action as it did not exist in December 2015, and it had nothing to do with the services rendered to Plaintiff at OMH on December 5, 2015.
5. In response to Paragraph 5, Defendants admit that at all times relevant to this action, Kevin Docyk, MD worked at OMH as an employee of GHS pursuant to the Tort Claims Act. Defendants deny the remaining allegations of Paragraph 5, and would show that Docyk is a resident of Pickens County.
6. In response to Paragraph 6, Defendants admit only that Mary Beth Hendricks was at all times relevant to this action a nurse working at OMH as an employee of GHS pursuant to the Tort Claims Act. Defendants deny the remaining allegations of Paragraph 6 and would show that Hendricks is a resident of Pickens County.
7. The allegations of Paragraph 7 are denied as worded. Further responding, Defendants would admit only that Dr. Docyk and Nurse Hendricks were employees of GHS pursuant to the Tort Claims Act.
8. Defendants deny the allegations of Paragraph 8 to the extent it is alleged that Dr. Docyk made any direct representations to Plaintiff regarding his qualifications while Plaintiff was a patient in the OMH ED on December 5, 2015. Defendants are without sufficient information to admit or deny what Plaintiff may have “relied upon” while seeking medical care at OMH; therefore, the allegation is denied and strict proof is demanded thereof. Defendants would admit that Dr. Docyk had a doctor-patient relationship with Plaintiff on December 5, 2015; however,

Defendants deny any allegation or implication that the doctor-patient relationship created a duty owed to Plaintiff in regards to the sexual assault examination kit.

9. Defendants deny the allegations of Paragraph 9 to the extent it is alleged that Nurse Hendricks made any direct representations to Plaintiff regarding her qualifications while Plaintiff was a patient in the OMH ED on December 5, 2015. Defendants are without sufficient information to admit or deny what Plaintiff may have “relied upon” while seeking medical care at OMH; therefore, the allegation is denied and strict proof is demanded thereof. Defendants would admit that Nurse Hendricks had a medical provider relationship with Plaintiff on December 5, 2015; however, Defendants deny any allegation or implication that the relationship created a duty owed to Plaintiff in regards to the sexual assault examination kit.
10. Defendants deny the allegations of Paragraph 10 as worded. Defendants would specifically show that UAO did not exist at the time; therefore it was not capable of making any representations regarding OMH.
11. Paragraph 11 states a legal conclusion to which no response is required. Should a response be required, Defendants deny the allegations to the extent they are inconsistent with the laws of South Carolina and/or inapplicable to the facts of this case.
12. Paragraph 12 states a legal conclusion to which no response is required. Should a response be required, Defendants deny the allegations to the extent they are inconsistent with the laws of South Carolina and/or inapplicable to the facts of this case.
13. In response to Paragraph 13, Defendants admit only that Dr. Docyk was an employee of GHS for purposes of the Tort Claims Act. Defendants deny the allegations of Paragraph 13 to the extent it is alleged or implied that GHS had direct control over the way Dr. Docyk performed his duties as an emergency medicine physician.
14. Defendants deny the allegations of Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required.
16. Defendants generally admit the allegations of Paragraph 16.
17. Defendants generally admit the allegations of Paragraph 17.
18. Paragraph 18 states a legal conclusion to which no response is required.
19. Defendants are without sufficient information to admit or deny the allegations of Paragraph 19; therefore, the allegations are denied, and strict proof is demanded thereof.
20. In response to Paragraph 20, Defendants admit only that Plaintiff presented to the OMH Emergency Department in the morning hours of December 5, 2015 where she reported she had been sexually assaulted to members of the ED staff, including Defendants Docyk and Hendricks. Defendants defer to Plaintiff's medical records, which are incorporated herein by reference, for the details of her ED visit, and Defendants deny any allegations inconsistent therewith. Defendants specifically deny that Plaintiff reported she believed she had been drugged.
21. Defendants generally deny the allegations of Paragraph 21 as worded, and would defer to Plaintiff's medical record for the details of her ED visit. Further responding, Defendants would show that while speaking with nurse Finrock, Plaintiff initially refused law enforcement and rape crisis notification. Later, while being cared for by Defendant Hendricks, Plaintiff changed her mind and decided she wished to notify law enforcement. Defendants are without sufficient information to know what Plaintiff may have believed, but Defendants specifically deny that anyone ever represented to Plaintiff that Hendricks was SANE certified.
22. In response to Paragraph 22, Defendants admit only that Plaintiff stated she had been sexually assaulted after having several drinks with people she knew in Atlanta. Defendants deny Plaintiff ever stated she believed she had been drugged.

23. Defendants deny the allegations of Paragraph 23 as worded; rather, Defendants admit only that evidence was collected for the sexual assault examination kit after Plaintiff decided she wanted to report the alleged sexual assault to law enforcement. Defendants also admit that Nurse Hendricks, after speaking with several other law enforcement agencies, eventually was directed to and spoke with Officer Tirado, a sexual assault officer in the Dekalb County Police Department.
24. In response to the allegations of Paragraph 24, Defendants admit only that despite Nurse Hendricks objections, Officer Tirado advised that no one from his office was going to come to South Carolina to get the sexual assault examination kit; rather, he insisted upon Nurse Hendricks giving the kit to Plaintiff and having Plaintiff return to Dekalb County with the kit to file a report. Defendants would further show that Nurse Hendricks put Plaintiff on the phone with Officer Tirado, who, upon information and belief, relayed those instructions directly to Plaintiff.
25. Defendants generally deny the allegations of Paragraph 25. Further responding, Defendants would show that Nurse Hendricks spoke to several law enforcement agencies before eventually being directed to Officer Tirado. Each of the preceding law enforcement agencies, including the Oconee County Sheriff's Department, told Nurse Hendricks there was nothing they could do since they did not have jurisdiction over the alleged assault. Defendants specifically deny any allegation or implication that Nurse Hendricks owed a duty to Plaintiff in regards to the handling of the sexual assault examination kit.
26. In response to Paragraph 26, Defendants admit only that Nurse Hendricks, pursuant to Officer Tirado's instructions, turned over possession of the sexual assault examination kit to Plaintiff and had Plaintiff sign a chain of custody form acknowledging that she had assumed possession of the kit. Plaintiff's allegation that Nurse Hendricks "broke the chain of custody" is a legal

conclusion to which no response is required; however, Defendants deny the allegation to the extent it is inconsistent with the laws of South Carolina and/or inapplicable to the facts of this case. Defendants again deny any allegation that Nurse Hendricks was SANE certified.

27. Defendants generally deny the allegations of Paragraph 27 as worded. Defendants specifically deny the allegation that the chain of custody was broken. Defendants also specifically deny the allegation that Plaintiff was not advised to return to Georgia immediately. Finally, Defendants deny the allegation that local law enforcement was available to transport the sexual assault examination kit to Georgia.
28. In response to Paragraph 28, Defendants admit only that Plaintiff left OMH with the sealed kit. Defendants are without sufficient information to admit or deny the remaining allegations of Paragraph 28, other than to admit, upon information and belief, that Plaintiff eventually returned to Georgia and met with Officer Tirado.
29. Defendants deny the allegations of Paragraph 29 as worded. Specifically, Defendants deny the allegation that Plaintiff acted at the direction and advice of Nurse Hendricks or any other OMH employee; rather, Defendants would show that Plaintiff acted pursuant to Officer Tirado's instructions. Upon information and belief, Defendants also deny the allegation that Plaintiff told Officer Tirado she believed she had been drugged.
30. Defendants are without sufficient information to admit or deny the allegations of Paragraph 30; therefore, the allegations are denied and strict proof is demanded thereof.
31. Defendants are without sufficient information to admit or deny the allegations of Paragraph 31; therefore, the allegations are denied and strict proof is demanded thereof.
32. In response to Paragraph 32, Defendants admit only that Plaintiff did request a copy of her medical records. Defendants are without sufficient information to admit or deny the remaining allegations.

33. Defendants deny the allegations of Paragraph 33 and demand strict proof thereof.
34. Defendants deny the allegations of Paragraph 34 and demand strict proof thereof.
35. Defendants deny the allegations of Paragraph 35 and demand strict proof thereof.
36. Defendants deny the allegations of Paragraph 36 and demand strict proof thereof.
37. Paragraph 37 states a legal conclusion to which no response is required. Should a response be required, Defendants deny the allegations to the extent they are inconsistent with the laws of South Carolina and/or inapplicable to the facts of this case. Defendants specifically deny a duty of care was owed to Plaintiff in regards to the sexual assault examination kit.
38. Paragraph 38 states a legal conclusion to which no response is required. Should a response be required, Defendants deny the allegations to the extent they are inconsistent with the laws of South Carolina and/or inapplicable to the facts of this case.
39. Paragraph 39 states a legal conclusion to which no response is required. Should a response be required, Defendants deny the allegations to the extent they are inconsistent with the laws of South Carolina and/or inapplicable to the facts of this case. Defendants specifically deny a duty of care was owed to Plaintiff in regards to the sexual assault examination kit.
40. Defendants deny the allegations of Paragraph 40, including all subparts therein.
41. Defendants deny the allegations of Paragraph 41 and demand strict proof thereof.
42. Defendants deny the allegations of Paragraph 42 and demand strict proof thereof.
43. Defendants deny the allegations of Paragraph 43 and demand strict proof thereof.
44. Defendants deny the allegations of Paragraph 44 and demand strict proof thereof.
45. Defendants deny the allegations of Paragraph 45.
46. Defendants deny the allegations of Paragraph 46 (misidentified as Paragraph 47 in the Complaint).

47. Defendants deny each and every other allegation, including Plaintiff's Prayer for Relief, not heretofore expressly explained, modified or admitted.

FOR A SECOND DEFENSE

48. Defendants reassert and incorporate herein by reference the relevant and consistent portions of the First Defense set forth above.

49. GHS is a governmental entity and health care facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended). GHS and its employees, including Defendants Docyk and Hendricks are, therefore, entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act.

50. Pursuant to S.C. Code § 15-78-70, Defendants Docyk and Hendricks should not be individually named and should be dismissed from this action as individual defendants.

51. Defendants allege that Plaintiff's claims for actual damages are either governed or limited by the provisions of § 15-78-120(a) of the South Carolina Tort Claims Act.

52. Defendants allege that Plaintiff may not recover punitive damages in accordance with § 15-78-120(b) of the South Carolina Tort Claims Act.

53. Defendants reserve, retain and do not waive any and all applicable and available rights, defenses, privileges, limitations and immunities afforded under the doctrine of sovereign immunity as is retained by the Act.

54. While UAO again asserts that it is not a proper party to this action, UAO would show that it is a nonprofit charitable organization as that term is defined in S.C. Code Ann. § 33-56-170. Accordingly, it and its agents are entitled to all rights, privileges, defenses, limitations and immunities afforded by the statute and the doctrine of charitable immunity, as retained by the Charitable Immunity Statute, S.C. Code Ann. § 33-56-180 et seq.

FOR A THIRD DEFENSE

55. Defendants reassert and incorporate herein by reference the relevant and consistent portions of the First and Second Defenses set forth above.
56. Defendants would show that the damages claimed by Plaintiff, to the extent there were any, were directly and proximately caused by the acts of an independent, intervening or superseding individual(s) or entity(ies) thereby barring any recovery from Defendants.

FOR A FOURTH DEFENSE

57. Defendants reassert and incorporate herein by reference the relevant and consistent portions of the First, Second, and Third Defenses set forth above.
58. Defendants would show that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action; therefore, Plaintiff may not recover herein.
59. Defendants would show that Plaintiff's cause of action is barred by the applicable statute of limitations and, therefore, Plaintiff may not recover herein.
60. Defendants incorporate herein by reference all grounds for dismissal as set forth in Defendants' Motion to Dismiss Plaintiff's Notice of Intent, including all memorandums filed in support of said motion.

WHEREFORE, having answered, Defendants pray that they be dismissed from this action, with costs, and for such other and further relief as this Court may deem just and proper.

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Respectfully submitted by,

s/Kenneth N. Shaw

Kenneth N. Shaw (S.C. Bar # 77859)
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Attorneys for Defendants

July 1, 2019

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk, MD; Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. Nos.: 2018-CP-37-00762 and 2019-CP-
37-0271 and 2018-NI-37-00010

***Supplemental Memorandum in Support of
Defendants' Motion to Dismiss/Motion for
Summary Judgment***

Pursuant to the Court's May 8, 2019 Order converting Defendants' Motion to Dismiss into a motion for summary judgment pursuant to Rule 12(C), SCRCPP, Defendants' hereby submit this memorandum in support of dismissal of all tort claims on statute of limitations grounds.¹

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Calvert v. House Beautiful Paint and Decorating Ctr., Inc., 313 S.C. 494, 443 S.E.2d 398 (1994). In ruling on a motion for summary judgment, the evidence should be viewed in the light most favorable to the non-moving party. However, "[i]t is not sufficient [to defeat a motion for summary judgment] that one create an inference which is not reasonable or an issue of fact that is not genuine." Shuler v. Tuomey Reg'l Med. Ctr., 313 S.C. 225, 227, 437 S.E.2d 128, 129

¹ Defendants hereby incorporate by reference all arguments set forth in their December 21, 2018 Motion to Dismiss, their March 25, 2019 Supplemental Memorandum in Support of Defendants' Motion to Dismiss, their April 17, 2019 Motion for Reconsideration and/or Motion to Stay Actions Pending Resolution of Appeal, as well as all arguments set forth in any motions or memorandums filed by Defendants in the previous related action, C.A. No. 2017-CP-37-00700.

(S.C. Ct. App. 1993). A party opposing a motion for summary judgment may not rest on the mere allegations or denials of her pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 593, 545 S.E.2d 500 (2001).

UNDISPUTED FACTS

I. GHS is the only proper defendant

Defendant Greenville Health System (“GHS”), formerly known as Greenville Hospital System Board of Trustees and now known as Greenville Health Authority, was established by the General Assembly of South Carolina in 1947 by Act No. 432 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina. (Cynthia Cambron Aff., ¶ 3, attached hereto as Exhibit 1.) It is a public body and a body corporate and politic which is authorized pursuant to Act 432 to construct and operate health care facilities, borrow money and secure such borrowings by a pledge of its revenues, and do all things necessary or convenient to meet the health care needs of the communities it serves. (Id. at ¶ 4.) As such, as previously recognized by this Court in its July 9, 2018 Order, GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended), and it and its agents and employees are, therefore, entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. Murphy v. Richland Mem. Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995), and Benton v Roger C Peace, 313 S.C. 520, 443 S.E.2d 537 (1994)).

At all times relevant to this action, Oconee Memorial Hospital (“OMH”) was one of numerous hospital facilities operated by GHS. (Cambron Aff., ¶ 6.) Wherefore, all relevant

services provided to Plaintiff and any acts or omissions related to those services would be solely the responsibility of GHS and subject to the Tort Claims Act.

II. Kevin Docyk, MD and Mary Beth Hendricks were employees of GHS

In December 2015, and at all times relevant to this action, Kevin Docyk, MD and Mary Beth Hendricks were employees of GHS pursuant to the Tort Claims Act. (Cambron Aff., ¶ 7.) As such, they are entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act, including the applicable two-year statute of limitations. In addition, pursuant to S.C. Code § 15-78-70, they should not have been individually named and should be dismissed from this action as individual defendants.

III. Upstate Affiliate Organization is not a proper defendant to this action

When Plaintiff filed her initial Complaint (C.A. No.: 2017-CP-37-00700) in December 2017, she named only Oconee Memorial Hospital and Greenville Health System as defendants. In responding to the Complaint, Greenville Health System (“GHS”) never suggested it was an improper defendant or that a real party in interest had not been named.² After the Court granted Defendants’ motion to dismiss the first action, Plaintiff inexplicably added Upstate Affiliate Organization (“UAO”) as a defendant when she filed her new actions. Without any apparent factual basis, Plaintiff alleged UAO was “the owner of GHS.” (Compl. ¶ 4.)

UAO is a 501(c)(3) corporation, which was incorporated in February 2016. (Cynthia Cambron Aff., ¶ 8, attached hereto as Exhibit 1.) As previously discussed, GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act. It is inconceivable how a corporation can own a governmental entity.

Nevertheless, UAO did not even exist when Plaintiff was treated at Oconee Memorial

² It only pointed out that Oconee Memorial Hospital was a GHS facility rather than a distinct and separate entity capable of being sued.

Hospital (“OMH”) on December 5, 2015. UAO had nothing to do with OMH until October 1, 2016 when UAO entered into a long-term contractual agreement with GHS whereby UAO assumed operations of the facilities within the GHS System. (Cambron Aff., ¶ 9.) Since at all times relevant to these actions, GHS was the only entity responsible for providing healthcare services at OMH, UAO is not a proper defendant to this action and should be dismissed.

CONCLUSIONS OF LAW

In light of the undisputed facts, it is clear Plaintiff’s tort claims are subject to the Tort Claims Act and the limitations set forth therein. Pursuant to S.C. Code § 15-78-110, the applicable statute of limitations for all tort claims is 2 years. Plaintiff’s alleged injuries occurred on December 5, 2015. Plaintiff filed the instant actions on December 5, 2018, a full year after the statute of limitations expired in regards to any tort claims. Therefore, all of her tort claims, including her bailment cause of action, are barred by the applicable statute of limitations. See Hadfield v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (2000) (holding that, although contractual in nature, “an action for breach of the duty of care by a bailee sounds in tort”).

WHEREFORE, for the reasons stated herein as well as those set forth in Defendants’ prior motions and memorandums, Defendants respectfully request the Court enter an order dismissing C.A. No. 2019-CP-37-0271 in its entirety with prejudice and dismissing all tort claims in C.A. No. 2018-CP-37-00762 with prejudice and for any such further relief as the Court may deem just and proper.

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Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/Kenneth N. Shaw

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Attorneys for Defendants

Dated: September 16, 2019
Greenville, SC

Exhibit 1

ELECTRONICALLY FILED - 2019 Sep 16 4:16 PM - OCONEE - COMMON PLEAS - CASE#2019CP3700271

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
Jane Doe,	)	C. A. No. 2018-CP-37-00762
	)	C.A. No. 2018-NI-37-00010
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF CYNTHIA CAMBRON
	)	
Oconee Memorial Hospital;	)	
Greenville Health System; Upstate	)	
Affiliate Organization; Kevin	)	
Docyk, MD; Mary Beth Hendricks,	)	
	)	
Defendants.	)	
	)	

The Affiant, being duly sworn, deposes and states as follows:

1. My name is Cynthia Cambron. I am currently employed by Prisma Health in the capacity of Vice President and Deputy General Counsel.
2. In December 2015, I was employed by Greenville Health System ("GHS") in the capacity of Deputy General Counsel.
3. GHS, formerly known as Greenville Hospital System Board of Trustees and now known as Greenville Health Authority, was established by the General Assembly of South Carolina in 1947 by Act No. 432 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina.
4. GHS is a public body and a body corporate and politic which is authorized pursuant to Act 432 to construct and operate health care facilities, borrow money and secure such borrowings by a pledge of its revenues, and do all things necessary or convenient to meet the health care needs of the communities it serves. As such, GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended), and it and its agents and employees are, therefore,

entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. *Murphy v. Richland Mem. Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995), and *Benton v Roger C Peace*, 313 S.C. 520, 443 S.E.2d 537 (1994)).

5. In December 2015, and at all times relevant to this action, GHS and certain entities affiliated with GHS comprised the System (the “System”). The System was one of the largest integrated, multi-hospital systems in the Carolinas.
6. In December 2015, and at all times relevant to this action, Oconee Memorial Hospital (“OMH”) was one of numerous hospital facilities within the System operated by GHS.
7. In December 2015, and at all times relevant to this action, Kevin Docyk, MD and Mary Beth Hendricks were employees of GHS pursuant to the Tort Claims.
8. Upstate Affiliate Organization (“UAO”), a 501(c)(3) corporation, was incorporated in February 2016.
9. On October 1, 2016, GHS entered into a long-term contractual relationship with UAO whereby UAO assumed operations of the facilities within the System. UAO did not purchase GHS; however, the contractual agreement allowed UAO to continue to operate the System facilities using the Greenville Health System name. To avoid confusion, GHS changed its name to Greenville Health Authority.
10. Prisma Health, a 501(c)(3) corporation, was incorporated in August 2017.
11. In November 2017, UAO entered into a partnership with Palmetto Health to create a new, not-for-profit health care company as part of Prisma Health. Subsequently, UAO changed its name to Prisma Health-Upstate.

12. Prisma Health-Upstate now operates all of the facilities within the System, including Oconee Memorial Hospital; however, in December 2015, and at all times relevant to this action, OMH was owned and operated by GHS, the governmental entity.

THE AFFIANT FURTHER STATETH NOT.


Cynthia Cambron

Sworn and subscribed to me,
This 14th day of May, 2019.

Lamen Vance
Notary for the State of
South Carolina
Commission Expires : 7/19/23

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk; Mary Beth
Hendricks,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

C.A. No.: 2018-NI-37-00010

C.A. No.: 2019-CP-37-00271

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Jane Doe, by and through her undersigned counsel, respectfully submits this Memorandum in Opposition to Defendant's Motion for Summary Judgment in both of the matters referenced above. The Court should deny Defendants' Motion, including all relief requested thereby, for the reasons set forth herein.

PROCEDURAL HISTORY

Currently pending before the Court are two separate actions filed by Plaintiff against Defendants, all of which arise out of the same set of facts and conduct detailed more fully in the pleadings filed by Plaintiff in this matter. The action bearing case number 2018-CP-37-00762 involves various common law causes of action and the action bearing case number 2018-NI-37-00010 involves various claims for medical malpractice. Plaintiff instituted both of the above-captioned actions on December 5, 2018, by filing a Complaint, including claims against Defendants for breach of contract, breach of implied contract, bailment and implied bailment, and a Notice if Intent to File Suit and related Affidavit in regard to Plaintiff's claims for medical malpractice. On December 10, 2018, Defendants' counsel indicated that he had been authorized to accept service of Plaintiff's Summons and

Complaint and Notice of Intent to File Suit, both of which were served on Plaintiff's counsel on December 14, 2018. Thereafter, counsel for the Defendants filed a Notice of Appearance in both actions on December 21, 2018, followed immediately by Defendants' Motion to Dismiss both actions. A hearing on that Motion was scheduled for March 20, 2019 and counsel for both parties provided argument on Defendants' Motion.

The Court entered an Order on April 11, 2019, denying Defendants' Motion to Dismiss on grounds that the issues raised thereby involved factual issues outside of the initial pleadings and were not properly before the Court on a motion to dismiss. Defendants then filed a Motion for Reconsideration and/or Motion to Stay Actions Pending Resolution of Appeal on April 17, 2019, arguing various grounds, including Defendants' argument that Plaintiff's claims were barred by the statute of limitations.⁸ The Court subsequently entered an Order on May 8, 2019, denying Defendants' Motion for Reconsideration on all grounds other than as to Defendants' argument regarding the applicable statute of limitations. The Court's May 8, 2019 Order further noted that the statute of limitations issues required the Court to consider matters outside of the pleadings and that the Court should hold a *de novo* hearing thereon, which would be treated as a motion for summary judgment. In specific regard thereto, the May 8th Order also provided that "(t)he parties...shall be allowed to present evidence outside of the pleadings for the Court to consider on that issue alone." On August 23, 2019, Plaintiff was notified that a hearing on Defendants' Motion, as converted to a motion for summary judgment, had been scheduled for September 23, 2019.

Concurrent with the timeline set forth above, Plaintiff served Defendants with her first set of discovery requests, including her First Set of Interrogatories and First Set of Requests for Production, on January 17, 2019. Thereafter, on April 17, 2019, when

⁸ Plaintiff previously filed a separate action against Defendants alleging various causes of actions that was dismissed by this Court on July 9, 2018. That case is currently on appeal to the South Carolina Court of Appeals.

Defendants still had not responded to Plaintiff's initial discovery requests, Plaintiff's counsel contacted Defendants' counsel regarding Defendants' overdue discovery responses. Defendants' counsel objected to the discovery requests the following day, arguing that Defendants were not required to respond to Plaintiff's requests until 15 days after filing an answer and they were not required to serve responses until after filing their answer. Notwithstanding, Defendants filed their Answer on May 15, 2019 but still provided no responses to Plaintiff's initial discovery requests.⁹ On August 16, 2019, almost seven months after she served initial requests on Defendants, Plaintiff was forced to file a Motion to Compel. Thereafter, and even understanding that the hearing scheduled for September 23, 2019 is set to be heard as a summary judgment, Defendants continued to object to providing any discovery responses until September 17, 2019, on which date Defendants finally served initial responses to Plaintiff's discovery requests – less than a week prior to the afore-mentioned summary judgment hearing. Plaintiff has not had the time and/or opportunity to conduct any follow-up discovery on Defendants, including with regard to the same issues to be addressed at the hearing.

STANDARD OF REVIEW

Summary judgment is a “drastic remedy.” *Schmidt v. Courtney*, 357 S.C. 310, 318, 592 S.E.2d 326, 331 (Ct. App. 2003). Therefore, it “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)). “Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue

⁹ Rule 33(a), S.C.R.C.P., actually provides that a defendant has 45 days from date of service of a summons and complaint to answer discovery requests. Contrary to Defendants' representation, it does not allow a defendant to refuse to respond to discovery until 15 days after filing an answer.

of material fact such that the moving party must prevail as a matter of law.” *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769 (2011) (citing Rule 56(c), SCRCF).

The party who moves for summary judgment “has the burden of clearly establishing the absence of a genuine issue of material fact.” *Singleton v. Sherer*, 377 S.C. 185, 202, 659 S.E.2d 196, 197 (Ct. App. 2008). In determining whether any genuine issues of material fact exist, “the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party.” *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.” *BPS, Inc. v. Worthy*, 362 S.C. 319, 325, 608 S.E.2d 155, 159 (Ct. App. 2005). “[S]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.” *Coastal States Bank v. Hanover Homes of South Carolina, LLC*, 408 S.C. 510, 516, 759 S.E.2d 152, 156 (Ct. App. 2014).

Summary judgment may be granted only upon an adequate record after the non-moving party has been afforded an opportunity for discovery necessary to develop facts essential to the opposition of the motion. *United States v. Bernard*, 941 F.2d 1207 (4th Cir. 1991), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986). Discussing same, the U.S. Supreme Court has specifically noted that summary judgment is inappropriate until the parties have had “adequate time for discovery...” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1982). The South Carolina Supreme Court, recognizing that summary judgment is only appropriate when the parties have been afforded “adequate time for discover” on the relevant issues, has similarly noted that “(s)ummary judgment is not appropriate where further inquiry into the facts of a case is desirable to clarify the application of the law.” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661

S.E.2d 791, 796 (2008); *citing Middleborough Horizontal Prop. Regime Council of Co-Owners & Montedison S.p.a.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995).

ARGUMENT

Defendants' Motion to Dismiss, which was previously denied on all grounds except for Defendants' argument regarding the statute of limitations, is now before the Court as a motion for summary judgment. Plaintiff contends that summary judgment on those grounds should be denied as premature and as not supported by the disputed facts in this case.

I. Defendants' Motion for Summary Judgment is Premature.

"Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). In regard thereto, the South Carolina Supreme Court has expressly and clearly noted that "(s)ummary judgment is not appropriate where further inquiry into the facts of a case is desirable to clarify the application of the law." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008); *citing Middleborough Horizontal Prop. Regime Council of Co-Owners & Montedison S.p.a.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995). "[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a 'fishing expedition.'" *Id.* Rule 56(f) of the South Carolina Rules of Civil Procedure further provides that a court may refuse to rule upon a motion for summary judgment until such time as discovery and depositions may be taken. *See* S.C.R.C.P. 56(c).

In the instant action, and as demonstrated by the procedural history of this case and the affidavit of Plaintiff, attached hereto as **Exhibit A**, Plaintiff has not had a full and fair opportunity for adequate discovery. More specifically, Plaintiff has had no opportunity to

conduct any discovery and other meaningful inquiry into a key allegation made by Defendants in support of their motion to dismiss/motion for summary judgment on grounds that Plaintiff's claims are barred by the applicable statute of limitations - that *all* Defendants, including Greenville Health System (hereinafter "GHS"), are "a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act." That claim is key to Defendants' argument that the South Carolina Tort Claims Act's two-year statute of limitations is applicable to Plaintiff's claims in the above-captioned action and bars these actions as not having been filed within that applicable period of time. Accordingly, Plaintiff is entitled to the opportunity to conduct full and fair discovery into that issue before Defendants' motion for summary judgment is ripe for adjudication.

As detailed above, Plaintiff served Defendants with her first basic discovery requests on January 17, 2019. Those requests included Plaintiff's First Set of Interrogatories, Requests for Production, and Requests to Admit to Defendants, collectively attached hereto as **Exhibit B**. Defendants served their responses to Plaintiff's Requests to Admit on January 24, 2019, attached hereto as **Exhibit C**, but served no other responses whatsoever to Plaintiff's other requests until September 17, 2019, less than a week prior to the hearing on Defendants' converted motion of summary judgment. *See* Affidavit of Amy Rutters, attached hereto as **Exhibit D**. In fact, just weeks prior to the hearing on their motion, Defendants continued to argue they should not be required to engage in any discovery until after their motion for summary judgment was ruled upon. *See* Electronic Correspondence with Defendants' Counsel, dated August 27, 2019 and attached hereto as **Exhibit E**. Any such argument flies directly in the face of established South Carolina law providing that summary judgment is appropriate only after the nonmoving party has been provided an adequate opportunity for discovery and where further inquiry is not required to

delve into the application of law, including Defendants' claim that the South Carolina Tort Claims Act, including its two-year statute of limitations, is applicable in this matter.

Given that Defendants have only just now provided their responses to Plaintiff's initial requests regarding the basic facts at issue in this case, Plaintiff has not yet had an opportunity to dig into Defendants' claim that Defendants are a "governmental entity." In fact, Defendants raised no such claim until after Plaintiff served her first discovery requests in this matter in January of 2019. Since that time, Defendants have refused to participate in discovery such that Plaintiff has had a fully and fair opportunity to serve additional discovery requests aimed at delving into the true status of Defendant GHS and, accordingly, whether or not the South Carolina Tort Claims Act and its two-year statute of limitations is applicable to this matter. Since further inquiry is needed into that particular topic, summary judgment thereon is not ripe for adjudication at this time and Defendants' converted motion should be denied until such time as full and fair discovery can be had thereon.

II. Plaintiff's Claims Are Not Barred By The Statute of Limitations.

To the extent the Defendants seek summary judgment on the basis that Plaintiff's claims are barred by the statute of limitations, Plaintiff respectfully contends that the statute of limitations does not bar these actions because they relate back to the original action filed by the Plaintiffs on December 5, 2017. Defendants contend that there is a two-year statute of limitations that applies to Plaintiff's claims because the Defendants are a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* (1976, as amended), and it and its agents and employees are, therefore, entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. *See* Defendants Memorandum in Support of Motion for Summary Judgment, at 2 (citing *Murphy*

v. Richland Mem. Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995). If Defendant is correct, a two-year statute of limitations applies. Plaintiff's claims relate to conduct that occurred on December 5, 2015. On December 5, 2017, Plaintiff filed her original complaint against GHS asserting causes of action for negligence, gross negligence, negligent supervision, and intentional infliction of emotional distress. *See Exhibit F*. Plaintiff then filed a motion to amend her complaint on June 4, 2018. The proposed amendments included "two additional causes of action for breach of contract and bailment". *See Exhibit G*. At the hearing on the motion to dismiss, counsel for the Plaintiff explained that she "went ahead and preemptively filed a motion to amend to allege the cause of action for breach of contract because there is this contractual relationship, as well as an action for bailment because there is a constructive and contractual bailment situation here where her blood is being given to the hospital for safekeeping and the hospital is compensated for that." *See Exhibit H*.

Rule 15(a) provides that when a party asks to amend her pleading, "leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCF. "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citing *Jarrell v. Seaboard Sys. R.R., Inc.*, 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987)). "Rule 15(a) is substantially the same as the Federal Rule," Rule 15(a), SCRCF notes, and the Supreme Court of the United States has referred to the Rule's "freely given" provision as a "mandate" that "is to be heeded," *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222, 226 (1962). The *Foman* Court continued:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the

amendment, futility of amendment, etc.—the leave sought should, as the rules require, be “freely given.”

Id. (citing Fed. R. Civ. P. 15(a)); accord *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988).

Prior to the hearing on Defendant’s motion to dismiss the December 5, 2017 action, Plaintiff filed her motion to amend her complaint. Had the court granted Plaintiff’s motion, the actions currently pending before the court and subject to Defendant’s motion for summary judgment would have been included in the prior action. Unfortunately, the court did not conduct argument on Plaintiff’s motion to amend and did not rule on the motion. Rather, in a footnote, the circuit court simply acknowledged the motion to amend had been filed, but stated:

In ruling on Defendant’s 12(b)(6) motion, the Court was constrained by the facts alleged in Plaintiff’s Complaint. The Court notes that approximately one hour prior to the hearing on June 4, 2018, and without any prior notice to Defendant, Plaintiff electronically filed a motion to amend her complaint. While Plaintiff’s counsel briefly mentioned the motion to amend during the hearing, the merits of Plaintiff’s motion were not properly before the Court and were not discussed. Further, the Court could not consider the merits of Plaintiff’s motion to amend even it were inclined to do so, because no proposed amended complaint was ever submitted to the Court.

See July 9, 2018 Order, attached hereto as **Exhibit I**.

In this case, this court never considered Plaintiff’s motion to amend. While the South Carolina Supreme Court has consistently held that a circuit court’s ruling on a Rule 15 motion to amend is within its discretion, a court’s failure to exercise its discretion is itself an abuse of discretion. *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (quoting *Samples v. Mitchell*, 329 S.C. 105, 114, 495 S.E.2d 213, 218 (Ct. App. 1997)). Under Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it. Instead, the circuit court denied the motion to amend based solely on the fact that it was filed shortly

before the hearing on Defendants' motion to dismiss. The court's failure to grant Plaintiff's motion to amend is currently on appeal along with the court's grant of Defendant's motion to dismiss.

While the circuit court did not grant Plaintiff's motion to amend, it did dismiss Plaintiff's original complaint "without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action." See **Exhibit I**. Thus, the court appears to indicate that Plaintiff may bring in a separate action the additional claims that she sought to include by way of a motion to amend. For these reasons, Plaintiff respectfully contends that the claims now pending before the Court, which were the subject of Plaintiff's motion to amend, should relate back to the original action. South Carolina Rule of Civil Procedure 15(c) provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Rule 15(c), SCRCP.

The Defendants argument seems to be that the Plaintiff cannot now bring these new actions as provided in the court's order because the statute of limitations has passed. This argument is without merit. As noted, the claims asserted in the current pleadings "arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings", as such, the new action "relates back to the date of the original pleading."

Plaintiff's new claims arose out of the conduct previously set forth in the original 2017 complaint. The factual circumstances of the claims currently before the court have already been set out in the original 2017 complaint. No new information is required to assert those claims. The Defendants were aware of the facts and the asserted claims. Therefore, under the principles espoused by Rule 15(c), the complaints relate back to the date of the original pleading that was filed within the statute of limitations. *See also Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1995) (purpose of Rule 15(c) is to salvage causes of action otherwise barred by statute of limitations). As such, Defendants' motion for summary judgment on the grounds that Plaintiff's claims are barred by the statute of limitations should be denied.

CONCLUSION

Therefore, for all those reasons stated herein, as well as those reasons articulated by counsel in previous memoranda submitted in this action and by way of argument at the previous hearings before the Court on this same issue, the Plaintiff respectfully requests that the Defendants' Motion to Dismiss Plaintiff's claims as barred by the statute of limitations for Summary Judgment be denied.

Respectfully submitted,

s/ Courtney C. Atkinson

Courtney C. Atkinson, SC Bar #71992

Hannah Rogers Metcalfe, S.C. Bar #73046

Metcalfe & Atkinson, LLC

1395 S. Church Street

Greenville, South Carolina 29605

Telephone: (864) 214-2319

Facsimile: (864) 214-3067

Attorneys for Plaintiff

September 19, 2019
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jane Doe

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville Health
System; Upstate Affiliate Organization; Kevin
Docyk; Mary Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUIDICAL CIRCUIT

C.A. No.: 2018-CP-37-00762

AFFIDAVIT OF JANE DOE

I, Jane Doe, being over the age of eighteen years of age who being duly sworn, deposes and says:

1. I am the Plaintiff in the above-captioned action, in which I am named as Jane Doe. My Complaint included the name Jane Doe in Order to protect my privacy in this matter.

2. I have made claims in this action that the Defendants acted improperly in regard to treatment and other matters that occurred on or after December 5, 2015, on which date I went to Oconee Memorial Hospital (hereafter "the Hospital") for medical treatment and other assistance after being sexually assaulted in Atlanta, Georgia.

3. I initially filed a lawsuit against Defendants Oconee Memorial Hospital and Greenville Health System on December 5, 2017. That action was dismissed while I had a motion to amend my complaint pending, and it is my understanding that dismissal of that action is currently on appeal before the South Carolina Court of Appeals.

4. On December 5, 2018, I filed another complaint, alleging different claims against Defendants, and a notice of intent to file a medical malpractice action against Defendants, all arising out of the same facts at issue in the action referenced in Paragraph 3 above.

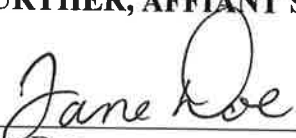
5. On December 21, 2018, Defendants' filed a motion to dismiss both of my currently pending actions. I understand that a hearing for Defendants' motion has been set for September 23, 2019.

6. On January 17, 2019, my attorneys served Defendants' counsel my initial requests for discovery in this case. I am informed that my attorneys just received responses to those requests on September 18, 2019.

7. I believe that I have not had a full and fair opportunity to engage in adequate discovery in this case and am requesting that the Court deny Defendants' motions and permit me an opportunity to conduct discovery on all relevant issues in this case.

8. This affidavit is accurate and true to the best of my personal knowledge.

FURTHER, AFFIANT SAYETH NOT.


Jane Doe

SWORN and SUBSCRIBED TO
This 19th day of September, 2019

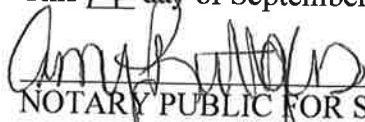

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3/22/21

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiffs,

vs.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Doyck, M.D, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-37-00762

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS**

TO: KENNETH SHAW, ESQUIRE, ATTORNEY FOR DEFENDANTS:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the undersigned attorney for the Plaintiff hereby requests that you serve upon said counsel within thirty (30) days answers to the following interrogatories. The following interrogatories shall be deemed to continue from the time of service until the time of the trial of the case so that information sought which comes to the knowledge of Defendants, after answers to interrogatories have been submitted, shall be transmitted to the undersigned.

INSTRUCTIONS AND DEFINITIONS

A. In answering these interrogatories, furnish all information that is available to Defendants, including information that is in the possession of Defendants' attorneys, investigators for his attorneys, independent accountants, officers, employees or agents, and not merely information from Defendants' own records or knowledge.

B. If Defendants cannot answer any of the following interrogatories in full, answer to the extent possible, specifying the reasons why they are unable to answer the

remainder, and provide whatever information they have concerning the unanswered portions.

C. After each response to each of the following interrogatories, identify each person who participated in the preparation of, or was consulted about, the answer to the interrogatory.

D. If any document or portion thereof is or will be withheld because of a claim of privilege or work product:

- (a) state the basis on which the privilege is or will be claimed;
- (b) state the author of the document;
- (c) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (d) state the date of the document; and
- (e) state the general subject matter of the document or portion thereof for which the privilege is claimed.

E. The term "document" shall mean all written, printed, typed, recorded, transcribed, punched, taped or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of Defendant, including but not limited to, all writings, letters, minutes, bulletins, correspondence, telegrams, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, interoffice communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, invoices, graphs, photographs, slides, moving pictures, videotapes, film

negatives, drafts, data sheets, data compilations, computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into usable form or any other tangible thing which records information in any way. The term “document” also means each copy which is not identical to the original, whether by notations on the copy or otherwise.

F. The term “identify” or “identity” when used with respect to an individual shall mean to state the name and present or last known home and business address and phone numbers of each such person, and, if that individual has ever been employed by Defendants, affiliated or associated with Defendants or rendered any service to Defendants, so indicate and state the nature and time period of such employment, affiliation, association or service. Once a person has been fully identified in your answer, such person may be identified thereafter by name alone.

G. Whenever Defendants’ response to an interrogatory mentions a person, set forth with specificity the following information with respect to each such person:

- (a) name and last known home address and telephone number;
- (b) business or other relationship of such person to Defendants, if any; and
- (c) position and title that person presently has and the position and title held by that person at the time referred to in the interrogatory.

H. When used with respect to a corporation, “identify” or “identity” shall mean to state the corporation’s full name, the address of its principal place of business, the state of incorporation, and the corporation’s principal activity or activities. When used with respect to a person other than an individual or a corporation, “identify” or “identity” means

to state its official name or designation and the address of its principal place of business; identify all partners or members; and state the principal activities or such entity.

I. “Identify” or “identity”, with reference to documents, means to state the title of the document, if any, the date of the document or the date it was prepared, the identity of the author or authors, the recipients of the documents (including copies thereof), the type of document, and a description of the subject matter of the document. If any document that Defendants are asked to identify is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in Defendants’ possession, custody or control, state the disposition which was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

J. “Person” means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; partnership; association; governmental body, agency or subdivision; committee, commission or other organization or entity.

K. “Concerning” includes referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, exchanges of written or recorded information, face-to-face meetings, and telephone conversations.

L. “Communication” or “communications” includes any written or oral communication of all kinds including, but not limited to, letters, telegraphs, exchanges of written or recorded information, face-to-face meetings, and telephone conversations.

M. The terms “identify” or “identity” with respect to a communication requires that you state (a) the date of the communication; (b) its type (*e.g.*, letter, phone call, or face-to-face meeting), (c) the identity and role of each participant (see definition of “identify” with respect to persons, above), (d) its place, if a face-to-face meeting, and (e) the identity of each document constituting or reflecting the communication (see definition of “identify” with respect to documents, above), and (f) the substance of the communication in detail.

N. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

O. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

P. The terms “rape kit” or “SAFE kit” include all forms of sexual assault forensic examinations.

INTERROGATORIES TO DEFENDANTS

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.

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.

3. 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.

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

5. 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.

6. Identify all internal policies, procedures, and protocols at Oconee Memorial Hospital (the Hospital) and/or all other Greenville Hospital System (GHS) owned or operated facilities, whether written or otherwise, regarding or in any way related to the collection of forensic evidence from sexual assault victims or "rape kits."

7. Set forth a list of all policies, procedures, and protocols provided to sexual assault nurse examiners ("SANE's") at the Hospital and/or all other GHS owned or operated facilities.

8. Set forth a list of all materials used for the purpose of training SANE nurses or any other employees, staff, independent contractors, agents, or representatives at the Hospital and/or all other GHS owned or operated facilities regarding the collection of rape kits and/or dealing with victims, alleged victims, or suspected victims of sexual assault.

9. List all policies, procedures, and protocols regarding the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence from victims, alleged victims, or suspected victims of sexual crimes at the Hospital and/or all other GHS owned or operated facilities.

10. Provide the number of victims, alleged victims, or suspected victims of sexual crimes received and/or examined within the last five (5) years by the Hospital and/or all other GHS owned or operated facilities, itemized by year and individual facility.

11. For all victims, alleged victims, or suspected victims of sexual crimes who checked in or reported to any GHS owned or operated facility in the time period specified in Interrogatory No. 10, list the number of such persons who were either denied or refused treatment. For each of those instances please provide:

- a. Date of the denial or refusal of treatment;
- b. The particular facility where the denial or refusal occurred; and,
- c. An explanation of why the individual was denied or refused treatment.

12. Identify any and all lawsuits and previous claims of whatever type brought against the Hospital and/or any GHS owned or operated facility by any victim, alleged victim, or suspected victim of sexual crimes within the last ten (10) years. As to each such claim/lawsuit identified, please identify the case number and state whether it is settled, dismissed, or currently pending.

13. Provide a list of all employees, staff, independent contractors, agents, or representatives at the Hospital from the last five (5) years who have been trained as SANE nurses.

14. List all training of any type given to any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility in regard to the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence compliant with State and Federal law.

15. Provide a list of all trainings, requirements and/or certifications that SANE nurses employed at the Hospital and/or any other GHS owned or operated facility are required to complete or obtain.

16. Identify any and all other instance(s) whereby any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility gave possession of a rape kit to a victim, alleged victim, or suspected victim of a sexual crime instead of giving possession of the rape kit directly to the appropriate legal authority or law enforcement.

17. Identify any and all other instance(s) whereby any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility advised and/or recommended to a victim, alleged victim, or suspected victim of a sexual crime that the victim personally transport the rape kit to the appropriate legal authority.

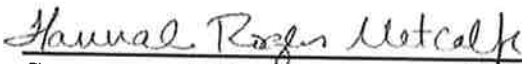
18. Identify the dates of any and all other instance(s) in which the Hospital or any other GHS owned or operated facility reported an alleged sexual assault or crime to law enforcement and was advised that law enforcement was either unwilling or unable to take possession of a rape kit. For each and every such instance identified, explain in detail how the situation was handled or resolved by the Hospital and/or any other GHS owned or operated facility.

19. Identify any and all policies of the Hospital and/or GHS regarding how to handle law enforcement refusal to personally retrieve rape kits.

20. Identify any and all policies of the Hospital and/or GHS regarding or in any way related to when blood evidence is to be collected from a victim, alleged victim, or suspected victim of a sexual crime.

21. Identify any and all policies and training used by the Hospital and/or all other GHS owned or operated facilities to ensure compliance with the South Carolina Attorney General's protocols regarding sexual assault forensic examinations, the collection of evidence pertaining to sexual assault(s) and the handling, retention, protection, storage, safeguarding, and transfer of any and all such evidence collected.

22. If the Defendants are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.


 Courtney C. Atkinson, SC Bar #71992
 Hannah Rogers Metcalfe, SC Bar #73046
 Metcalfe & Atkinson, LLC
 1395 S. Church Street
 Greenville, SC 29605
 (864) 214-2319
 (864) 214-3067
Attorneys for Plaintiff

January 17, 2019
 Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiffs,

vs.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Doyck, M.D, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-37-00762

**PLAINTIFF'S FIRST SET OF
REQUEST FOR PRODUCTION TO
DEFENDANTS**

TO: KENNETH SHAW, ESQUIRE, ATTORNEY FOR DEFENDANTS:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the undersigned attorneys for Plaintiffs hereby request that Defendants produce the documents and things identified below for examination, inspection and copying at the offices Metcalfe & Atkinson LLC, 1395 S. Church Street, Greenville, South Carolina, or some other mutually convenient place agreed to by the parties within 30 days after the date of service of these requests or any earlier date specified by the Court.

These requests are continuing, and Defendants are obligated to produce all documents responsive to these requests, including such documents as they become available to Defendants or of which Defendants become aware after their response hereto is served.

INSTRUCTIONS AND DEFINITIONS

A. In responding to these requests, produce all documents which are in the custody, possession, or control of the Defendants, including documents which are in the custody, possession, or control of the Defendants' attorneys, investigators for the Defendants' attorneys, independent accountants, agents, or any person acting on behalf of or in concert with Defendants or with any of these persons, and not merely documents from the Defendants' own files or records.

B. If the Defendants cannot respond to any of the following requests in full, respond to the extent possible, specifying the reasons why the party is unable to respond in full, and provide whatever information the party has concerning the unprovided documents or portions of documents, including the source or sources from which the documents or portions thereof may be obtained.

C. If documents requested are not reasonably available to Defendants in precisely the form requested, or for the particular date or period specified, but could be produced in a modified form and/or for a slightly different date or period, please respond to that request in such modified form or for such different date or period.

D. If any document which is responsive to a request is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefore. If any such document is no longer in existence or no longer in Defendants' possession, custody or control, state the disposition that was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person(s)

performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

E. If any document or portion thereof is or will be withheld because of a claim of privilege or work product:

- (1) state the basis on which the privilege is or will be claimed;
- (2) state the author of the document;
- (3) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (4) state the date of the document; and
- (5) state the general subject matter of the document or portion thereof for which the privilege is claimed.

F. The term "document" shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped or graphic matter of every type and description, including computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of Defendants, including but not limited to, all writings, letters, minutes, bulletins, correspondence, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intraoffice communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, photographs, drafts, data sheets, data compilations,

computer data sheets, computer data compilations, worksheets, statistics, speeches or other writings, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into usable form, or any other tangible thing which records information in any way. The term "document" shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the possession or control of the Defendants if it is within the possession or control of any of the Defendants' attorneys, investigators for the Defendants' attorneys, independent accountants, agents, or any person acting on behalf of or in concert with Defendants or with any of these persons, or otherwise under their possession or control.

G. "Person" means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; firm; partnership; association; group; governmental body, agency or subdivision; committee; commission; or other organization or entity.

H. The terms "concern", "concerning", "relate to", and "relating to" include referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing, constituting, or in any way relevant to the specified subject within the meaning of Rule 26 of the South Carolina Rules of Civil Procedure.

I. "Communication" includes any written or oral communication of all kinds including, but not limited to, letters, telegrams, exchanges of written or recorded information, face-to-face meetings, and telephone conversations.

J. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronouns so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

K. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

L. "Each", "any", and "all" are both singular and plural.

M. The terms "rape kit" or "SAFE kit" include all forms of sexual assault forensic examinations.

REQUESTS FOR PRODUCTION

1. Any and all statements of possible witnesses, including parties to this action, whether written, oral, summarized or reproduced in any manner whatsoever.

2. Any and all photographs, diagrams, sketches, plat or other prepared documents of any kind whatsoever that are in any way related to any of the facts, claims or defenses in this case.

3. Any and all records, reports, or other written or printed materials referred to in Defendants' responses to Plaintiff's First Set of Interrogatories in the above-captioned matter.

4. Any and all documents or tangible objects upon which Defendants intend to rely upon and/or to offer into evidence as exhibits at the time of trial of this case.

5. Any and all communications between any of Defendants' owners, management, other employees, or any third party regarding the allegations contained in Plaintiff's Complaint.

6. Any and all documents relating to the internal procedures, policies, and/or protocols for the collection of rape kits at Oconee Memorial Hospital (the Hospital) and/or all other Greenville Hospital System (GHS) owned or operated facilities.
7. Any and all documents relating to the policies, procedures and/or protocols provided to SANE nurses at the Hospital and/or all other GHS owned or operated facilities.
8. Any and all documents used for the purposes of training SANE nurses at the Hospital and/or all other GHS owned or operated facilities.
9. Any and all documents relating to any policies or procedures in any way related to the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence for SANE nurses at the Hospital and/or all other GHS owned or operated facilities.
10. Any and all documents relating to any policies and procedures for sexual assault forensic evidence collection, handling, preservation, storage, safeguarding, transfer, and retention for employees, staff, independent contractors, agents, or representatives at the Hospital and/or any GHS owned or operated facility.
11. Any and all documentation relating to any claim or lawsuit brought by any victim, alleged victim, or suspected victim of a sexual crime against the Hospital and/or any other GHS owned or operated facility within the last ten (10) years.
12. Any and all documentation evidencing any training or used in any training given to employees, staff, independent contractors, agents, or representatives at the Hospital and/or any other GHS owned or operated facility regard the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence from victims, alleged victims or suspected victims of a sexual crime.

13. Any and all documentation relating to any policy of the Hospital and/or GHS regarding what to do if law enforcement refuses to personally collect a rape kit from the Hospital and/or GHS.

14. Any and all documents evidencing or relating to any and all policies or procedures of the Hospital and/or any other GHS owned or operated facility as to when blood evidence is to be collected during a forensic examination of a victim, alleged victim or suspected victim of a sexual crime.

15. All correspondence concerning the Plaintiff and/or this case between and/or among the Defendants, the Plaintiff, law enforcement, victim's advocate and/or any other person or entity.

16. All documents that the Defendants intend to use at trial of this case or to question any witness at trial or during any deposition.

17. All non-privileged notes or correspondence by, to, or from any party concerning the subject matter of this lawsuit.

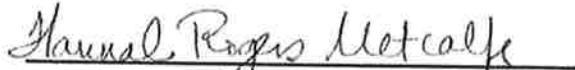
18. Any and all documents (a) reviewed, considered, and/or relied upon by each and every expert or consultant with whom the Defendant(s) consulted or whom the party intends to call as an expert witness at trial in connection with the case, or (b) that embody, reflect, refer to or summarize reports or memoranda prepared for the party to this litigation by any person the party expects to call as an expert witness.

19. Any and all expert's or consultant's reports, whether draft or final, pertaining to this litigation.

20. Any records, documents or reports received or produced pursuant to a subpoena or FOIA request or otherwise from or by any person or entity relating to the

subject matter of this lawsuit, including but not limited to, the claims or allegations of any party. Please note that this request is continuing and applies to any subpoenas issued pursuant to RULE 45 SCRPC or other requests made during this litigation.

21. All documents relating in any way to the matters alleged in the Plaintiff's complaint, the Defendants' answer, or the subject matter of this action.


Courtney C. Atkinson, SC Bar #71902
Hannah Rogers Metcalfe, SC Bar #73046
Metcalf & Atkinson, LLC
1395 S. Church Street
Greenville, SC 29605
(864) 214-2319
(864) 214-3067
Attorneys for Plaintiff

January 17, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiffs,

vs.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Doyck, M.D, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-37-00762

**PLAINTIFF'S FIRST SET OF
REQUESTS TO ADMIT TO
DEFENDANTS**

TO: KENNETH N. SHAW, COUNSEL FOR DEFENDANT

Plaintiff, by and through her undersigned attorneys and pursuant to Rule 36 of the Federal Rules of Civil Procedure, hereby requests that Defendant admit or deny the following matters of fact within thirty (30) days of service hereof. If an objection is made to any of the requests, the specific reason(s) therefore shall be stated. The written answer shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. If Defendant fails to admit the truth of any matter set forth below and Plaintiff subsequently proves the truth of the matter, Plaintiff will apply to the Court for an order requiring Defendant to pay Plaintiff's reasonable expenses incurred in making this proof, said amount to include all costs and reasonable attorney's fees, as set forth in the Federal Rules of Civil Procedure.

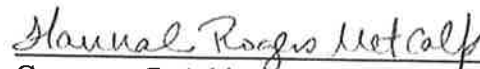
REQUESTS TO ADMIT

1. Admit that Defendant gave possession of the rape kit directly to the Plaintiff.
2. Admit that Defendant recommended that the Plaintiff personally transport the rape kit to the Dekalb County Sheriff's Office.

3. Admit that, after refusal from the Dekalb County Sheriff's Office to personally retrieve possession of the rape kit, Defendant made no other effort to contact any other legal authority or law enforcement agency.

4. Admit that Defendant did not include blood evidence in the rape kit that Defendant gave possession of to Plaintiff.

5. Admit that Defendant collected blood evidence as part of Plaintiff's sexual assault forensic examination.


Courtney C. Atkinson, S.C. Bar #71992
Hannah Rogers Metcalfe, S.C. Bar #73046
Metcalf & Atkinson, LLC
1395 S. Church Street
Greenville, South Carolina 29605
864-214-2319
catkinson@malawfirm.com
Attorneys for Plaintiff

January 17, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Doyck, M.D., Mary
Beth Hendricks

Defendants,

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-37-00762

CERTIFICATE OF SERVICE

This is to certify that I have served counsel of record with a copy of the foregoing
**PLAINTIFF'S FIRST SET OF INTERROGATORIES, FIRST SET OF REQUESTS FOR
PRODUCTION, AND FIRST SET OF REQUESTS TO ADMIT** this 17 day of January,
2019 by placing a copy in the United States mail, postage prepaid, and addressed as follows:

Kenneth N. Shaw, Esq.
PO Box 2048
Greenville, SC 29602


Hannah Rogers Metcalfe

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Docyk, MD, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

*Defendants' Answers to Plaintiff's First
Set of Requests to Admit*

TO: PLAINTIFF AND HER ATTORNEY, HANNAH METCALFE, ESQ.

Defendants Greenville Health System ("GHS") (Oconee Memorial Hospital is a GHS facility, not a separate legal entity), Upstate Affiliate Organization, Kevin Docyk, MD and Mary Beth Hendricks hereby respond to Plaintiff's First Set of Requests to Admit as follows:

As an initial matter, Defendants note that they have filed a motion to dismiss, the grounds for which are hereby incorporated herein by reference. Defendants contend that the time for responding to written discovery requests is stayed pending a ruling on its motion to dismiss; however, Defendants are hereby responding to Plaintiff's Requests to Admit solely out of an abundance of caution. By so doing, Defendants do not intend to waive any of the defenses or arguments raised in their motion to dismiss.

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's Requests to Admit to the extent they seek to impose a burden on Defendant to provide responses in excess of those requirements imposed by the South Carolina Rules of Civil Procedure.

2. Defendant objects to Plaintiff's Requests to Admit to the extent they seek documents or information containing legal or factual opinions or conclusions.

3. Defendant objects to Plaintiff's Requests to Admit to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents subject to the attorney/client privilege, work product doctrine or the protection afforded mental impressions, conclusions, opinions or legal theories of Defendant's attorneys or its representatives as defined in South Carolina Rule of Civil Procedure 26(b)(3), and/or information protected by S.C. Code § 44-7-392 and/or S.C. Code § 40-71-10, et. seq., 42 USCS s. 299b-22, KD Ex Rel. Dieffenbach v. United States, 715 F. Supp. 2d 587.

4. Defendant objects to Plaintiff's Requests to Admit to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed. No such documents or information will be produced or identified in a Privilege Log.

5. Defendant objects to Plaintiff's Requests to Admit to the extent they seek or might be argued to have Defendant admit that events occurred or that the law is as described by Plaintiff in her pleadings or discovery requests. By answering a Request to Admit, Defendant is not admitting that events occurred or that the law is as described in Plaintiff's pleadings, her discovery requests, or in any discovery responses from Plaintiff.

6. Defendant objects to Plaintiff's Requests to Admit to the extent they seek to impose upon Defendant a duty to ascertain, create, or secure information which is not in Defendant's possession, custody or control.

7. Defendant reserves and does not waive its right to object to the relevancy, authenticity, competency or admissibility of any of the information contained in these Answers to Plaintiff's Requests to Admit.

8. By answering Plaintiff's Requests to Admit, Defendant is not waiving any immunity or defense it, or any of its employees, or agents might have to any claims asserted against Defendant in the above-captioned lawsuit.

9. Defendant objects to Plaintiff's Requests to Admit to the extent they seek or may be deemed to seek production of materials or information not within the time period relevant to the above-captioned lawsuit.

10. Defendant reserves the right to supplement or amend its Answers to Plaintiff's Requests to Admit.

11. Defendant objects to Plaintiff's Requests to Admit to the extent they are vague, overly broad, or seek or may be deemed to seek production of materials or discovery of information, the location, retrieval or production of which would be unduly burdensome to Defendant.

12. Defendant objects to Plaintiff's Requests to Admit to the extent they seek or may be deemed to seek production of materials or discovery of information that is irrelevant and immaterial to the claims asserted against Defendant in the above-captioned lawsuit.

13. By responding to Plaintiff's Requests to Admit, Defendant is not waiving any other objections to discovery, any other defense to any claim asserted against Defendant in the above-captioned lawsuit, or any objection to admissibility of evidence.

SPECIFIC ANSWERS TO REQUESTS TO ADMIT

1 Admit that Defendant gave possession of the rape kit directly to the Plaintiff.

Answer: Defendant admits only that GHS transferred custody of the rape kit to Plaintiff per the instructions of Officer Tirado who informed Plaintiff that she needed to personally deliver the rape kit to the Dekalb County Sheriff's Office.

2 Admit that Defendant recommended that the Plaintiff personally transport the rape kit to the Dekalb County Sheriff's Office.

Answer: Denied as worded. GHS would admit only that Officer Tirado informed Plaintiff that she needed to personally deliver the rape kit to the Dekalb County Sheriff's Office.

3 Admit that, after refusal from Dekalb County Sheriff's Office to personally retrieve possession of the rape kit, Defendant made no other effort to contact any other legal authority or law enforcement agency.

Answer: Admitted as worded; however, Defendant would deny this request to the extent it suggests or can be inferred to suggest that Defendant made no efforts to contact any other law enforcement agency prior to speaking with Officer Tirado at the Dekalb County Sheriff's Office.

4 Admit that Defendant did not include blood evidence in the rape kit that Defendant gave possession of to Plaintiff.

Answer: Denied upon information and belief.

5 Admit that Defendant collected blood evidence as part of Plaintiff's sexual assault forensic examination.

Answer: Admitted upon information and belief.

HAYNSWORTH SINKLER BOYD, PA


 Kenneth N. Shaw SC Bar 77859
 PO Box 2048
 Greenville, SC 29602
 864.240.4541
kshaw@hsblawfirm.com
 Attorneys for Defendants

Dated: 1/24/19
 Greenville, SC

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Docyk, MD, Mary
Beth Hendricks

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

Certificate of Service

I HEREBY CERTIFY that a copy of the hereinbelow listed pleadings were served upon all counsel of record on this date by depositing in the United States Mail, proper postage affixed thereto, true and accurate copies thereof.

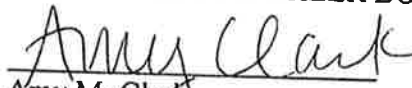
PLEADING:

1 Defendants' Answers to Plaintiff's First Set of Requests to Admit

COUNSEL SERVED:

Hannah Rogers Metcalfe
Courtney Atkinson
Metcalfe & Atkinson
PO Box 1826
Greenville, SC 29602

HAYNSWORTH SINKLER BOYD, PA


Amy M. Clark

Dated: 1/24/19
Greenville, SC

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jane Doe

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville Health
System; Upstate Affiliate Organization; Kevin
Docyk; Mary Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUIDICAL CIRCUIT

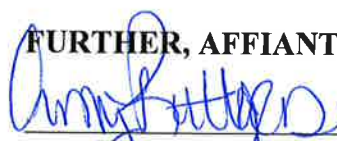
C.A. No.: 2018-CP-37-00762

AFFIDAVIT OF AMY RUTTGRS

I, Amy Ruttgers, who being duly sworn, deposes and says:

1. I am a paralegal at Metcalfe & Atkinson, LLC and am over the age of eighteen.
2. On January 17, 2019, our office served Defendants with Plaintiff's First Set of Interrogatories, First Set of Requests for Production and First Set of Requests to Admit in the above-captioned action.
3. Defendants provided written responses to Plaintiff's First Set of Requests to Admit on January 24, 2019.
4. Defendants' initial written responses and documents responsive to Plaintiff's First Set of Interrogatories and Request for Production were not received in our office until September 18, 2019.

FURTHER, AFFIANT SAYETH NOT.



Amy W. Ruttgers

SWORN and SUBSCRIBED TO
This 17th day of September, 2019



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1/26/22

EXHIBIT E

RE: Jane Doe - Motion to Compel

1 message

Shaw, Kenneth <kshaw@hsblawfirm.com>

Tue, Aug 27, 2019 at 10:50 AM

To: Hannah Metcalfe <hmetcalfe@malawfirm.com>

Cc: "catkinson@malawfirm.com" <catkinson@malawfirm.com>, Dawn Jones <amy@malawfirm.com>, "Clark, Amy" <aclark@hsblawfirm.com>

Hannah,

When did you communicate with me about our discovery responses? I don't recall receiving any sort of follow up from you. As I said below, I was still operating under the belief that we were holding off on discovery until my motion to dismiss was decided. I don't believe that motion has been fully decided. I never filed a motion for summary judgment. As he is allowed to do under Rule 12(b)(6), Judge Sprouse, sua sponte, converted our motion to dismiss into one for summary judgment on some of the issues.

I initially found out the motion for summary judgment was going to be heard in September when I called the clerk's office after receiving Judge Sprouse's order. I wanted to know if I needed to file anything or if the hearing would just be set. The clerk confirmed I didn't need to file anything and informed me the first non-jury roster would be in September. After you filed your motion a couple of weeks ago, I called again to inquire about the hearing date since I had not received a formal notice. That is when I was verbally told it was set for Sept. 23rd and notices would go out shortly.

I'm really not trying to be difficult here. I just don't want to bill my client for working on discovery responses that may be completely moot after Judge Sprouse decides the SOL issue. I looked back at your requests, and I don't see any that appear to be pertinent to the SOL issue, but if you believe there are or if there is information you believe you need that wasn't included in your requests, please let me know and I'll be happy to provide that information to you.

Ken

**HAYNSWORTH
SINKLER BOYD****Kenneth N. Shaw** | Attorney

Direct 864.240.4541 | kshaw@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.

From: Hannah Metcalfe <hmetcalfe@malawfirm.com>
Sent: Tuesday, August 27, 2019 9:13 AM
To: Shaw, Kenneth <kshaw@hsblawfirm.com>
Cc: catkinson@malawfirm.com; Dawn Jones <amy@malawfirm.com>
Subject: Re: Jane Doe - Motion to Compel

Ken,

Thank you for your email. No, we will not withdraw our motion to compel. We will not withdraw our motion to compel unless and until you provide your clients' long overdue discovery responses. As for consultation, we have previously communicated with you about this outstanding discovery. We did have an agreement that discovery would not be due until the Court ruled on your motion to dismiss. Nonetheless, the Court ruled on the motion and you have now answered on behalf of your clients on May 15, 2019. As such, your discovery responses are now well overdue. The motion pending is one for summary judgment, not a motion to dismiss. Discovery is proper and your clients are expected to respond. The fact that your motion is now one for summary judgment is even more reason why your client must respond to discovery. We will strenuously object to any motion for summary judgment being considered when you have failed to respond to discovery. I have never heard of a court allowing a party to refuse to participate in discovery until *after* ruling on a dispositive motion on the merits.

Finally, we received no notice of such a hearing on September 23rd until after your previous email nor did it appear on the motion roster for Oconee county at that time. Do you have some way of finding out when motions are calendared that are not the normal public channels? I'd sure like to know how you know about motions hearings before the roster is made public. It would definitely be a helpful tool.

I look forward to receiving your discovery responses.

Sincerely yours,

Hannah Rogers Metcalfe

On Tue, Aug 27, 2019 at 8:33 AM Shaw, Kenneth <kshaw@hsblawfirm.com> wrote:

Hannah/Courtney:

I just wanted to follow up on my email below. Will you please withdraw your motion to compel until the motion for summary judgment is decided? I assure you, we will timely respond once the motion is decided.

Thanks,

Ken

HAYNSWORTH SINKLER BOYD

Kenneth N. Shaw | Attorney

Direct 864.240.4541 | kshaw@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.

ONE North Main, 2nd Floor | Greenville, SC 29601

Main 864.240.3200 | Fax 864.240.3300

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

From: Shaw, Kenneth

Sent: Monday, August 19, 2019 9:49 AM

To: hmetcalfe@malawfirm.com; catkinson@malawfirm.com

Cc: Clark, Amy <aclark@hsblawfirm.com>

Subject: Jane Doe - Motion to Compel

Hannah/Courtney:

I saw where you filed a motion to compel regarding your discovery requests. I wish you had corresponded with me prior to filing the motion. It was my understanding we had an agreement discovery responses would not be due until my motion to dismiss was decided, which has not yet occurred. As you know, Judge Sprouse, *sua sponte*, converted the motion into one for summary judgment in regards to the statute of limitations issue. I understand from the clerk the motion will be heard on September 23rd at 10:00 AM. Until that motion is decided, I can't adequately respond to discovery as I won't know the full scope of the issues in the case. Once the motion is decided, I assure you we will timely respond to your requests. With that in mind, I would kindly ask that you withdraw your motion to compel.

While I don't believe I can fully respond to your discovery requests, if there is something specific you believe you need for purposes of the summary judgment motion, please let me know.

HAYNSWORTH SINKLER BOYD

Kenneth N. Shaw | Attorney

Direct 864.240.4541 | kshaw@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.

ONE North Main, 2nd Floor | Greenville, SC 29601

Main 864.240.3200 | Fax 864.240.3300

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

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--
Hannah Rogers Metcalfe

Metcalfe & Atkinson, LLC

PO Box 1826 (29602)

1395 S. Church Street

Greenville, SC 29605

T: (864) 214-2319

F: (864) 214-3067
hmetcalfe@malawfirm.com

PLEASE NOTE OUR NEW ADDRESS

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ELECTRONICALLY FILED - 2019 Sep 19 5:32 PM - OCONEE - COMMON PLEAS - CASE#2018CP3700762

EXHIBIT F

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville
Heath System,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. NO.: 2017-CP-10-_____

SUMMONS
(Jury Trial Requested)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber at their office at 1395 S. Church Street, Greenville, SC 29605 within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Hannah Rogers Metcalfe

Hannah Rogers Metcalfe, SC Bar # 73046

Courtney C. Atkinson, SC Bar # 71992

Metcalfe & Atkinson, LLC

1395 S. Church Street

Greenville, SC 29605

Telephone (864) 214-2319

Facsimile (864) 214-3067

Attorneys for Plaintiff

December 5, 2017

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville
Heath System,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. NO.: 2017-CP-10-_____

**COMPLAINT
(Jury Trial Requested)**

Plaintiff, Jane Doe, complaining of each of the above-listed Defendants, would hereby allege and show unto this Honorable Court as follows:

THE PARTIES

1. Plaintiff is a citizen and resident of Oconee County, South Carolina.
2. Defendant Oconee Memorial Hospital (hereinafter "the Hospital") is a business organization organized and existing under the laws of South Carolina and doing business in Oconee County, South Carolina.
3. Defendant Greenville Health System (hereinafter "GHS") is a business organization organized and existing under the laws of South Carolina and doing business in Oconee County, South Carolina. GHS is the owner of the Hospital.
4. Some or all of the unlawful actions complained of in this action occurred in Oconee County, South Carolina.
5. This Court has jurisdiction over this matter and the relief sought herein. Venue is also proper.

FACTUAL ALLEGATIONS

6. In the early morning hours of December 5, 2015, while in Atlanta, Georgia for a dance event, Plaintiff was unknowingly drugged and sexually assaulted by a Georgia resident that was known to the Plaintiff.

7. Within hours of the above-referenced assault, Plaintiff drove immediately back to South Carolina and reported to the Hospital at approximately 10:30 a.m. on December 5, 2015. While at the Hospital, Plaintiff reported to various employees of the Hospital, including physician Kevin Docyk and nurse Mary Beth Hendricks, that she had been sexually assaulted and believed that she had also been drugged.

8. After indicating that she wanted the Hospital to perform a sexual assault forensic examination and get law enforcement involved, Plaintiff was attended by two nurses and physician Docyk. The first nurse, Jane Finfrock, was only present for Plaintiff's initial intake and eventually turned Plaintiff over to the care of Hendricks, who Plaintiff understood to be a sexual assault nurse examiner ("SANE"). Hendricks then attended to Plaintiff and performed the sexual assault forensic examination which included both swabs and a blood draw. Following completion of the sexual assault forensic examination, a third Hospital employee came into the examination room and collected the specimens that had been taken by Hendricks, including the blood that had been drawn. Finally, Plaintiff was examined by Docyk, who had authority to order any tests that were needed, including the collection and testing of Plaintiff's blood. Both Docyk and Hendricks, as well as the other Hospital employees who attended Plaintiff on December 5, 2015, were made aware of Plaintiff's report that she had been drugged and sexually assaulted.

9. Following the above-referenced procedures and examination, and while still at the Hospital, Plaintiff affirmatively consented to the Hospital reporting the assault to law enforcement. Accordingly, Hendricks called and reported the assault to the Dekalb County Sheriff's Office in Georgia, the location of the assault.

10. During that call, the officer advised Hendricks that he was unwilling to come to the Hospital to collect the evidence himself. While not a party to the phone call, Plaintiff observed Hendricks become upset and heard her advise the officer of her belief that he needed to collect the evidence directly from the Hospital. The officer refused and, upon information and belief, advised Hendricks that the only option was for the Plaintiff to take physical possession of the evidence and drive it back to Georgia.

11. Following the call with the Dekalb County Sheriff's Office, neither Hendricks nor anyone else employed by the Hospital made any effort to contact local law enforcement or someone else in the Dekalb County Sheriff's Office to take custody of the evidence. Hendricks also made no effort to help Plaintiff contact local law enforcement or to pursue other options in securing the evidence and/or transferring it directly to law enforcement. Instead, she simply advised Plaintiff that if she wanted to pursue criminal charges against the perpetrator, Plaintiff would have to personally drive the evidence to the Dekalb County Sheriff's Office.

12. Hendricks then broke the chain of custody in regard to the evidence collected, giving Plaintiff a box that Plaintiff believed to include the entire rape kit, including the blood that she recalled as having been drawn. At the same time, she had Plaintiff sign a sticker on the back of the box to acknowledge her receipt of the box. At no time did Hendricks ever advise Plaintiff that in doing so the chain of custody had been

broken for the evidence collected. She also did not advise Plaintiff of the need for the rape kit to be transferred to law enforcement immediately.

13. Plaintiff then took the sealed box home with her and left the Hospital. Plaintiff then went to her home where she showered and tried to get some rest before traveling back to Georgia the following day.

14. On December 6, 2015, acting upon the direction and advice of the Hospital nurse, Plaintiff drove to the Dekalb County Sheriff's Office, delivered the box she had been given at the Hospital by Hendricks, and gave the investigating officer her statement regarding the drugging and assault she had endured the day prior. The officer asked Plaintiff several times if she was telling the truth and told her that if she was not telling the truth she could go to jail. Finally, the officer told Plaintiff he would be in touch at a later date.

15. In January of 2016, after some back and forth communications between Plaintiff and the Dekalb County Sheriff's Office, the investigating officer contacted Plaintiff and advised her that it would be several months before his office could examine and test the contents of the rape kit she had personally delivered.

16. A few weeks later, in February of 2016, Plaintiff again heard from the investigating officer, who advised Plaintiff that he had reviewed the contents of her rape kit and that there was no blood sample included from which his office could ever determine if Plaintiff had been drugged as she had originally reported. He further advised Plaintiff that, due to that lack of blood evidence to corroborate Plaintiff's report about the assault that occurred on the morning of December 5, 2015, he was going to close the case and not proceed further with any action against the Plaintiff's attacker.

Upon information and belief, the fact that there had been a break in the chain of custody for the Plaintiff's rape kit was also considered by the investigating officer in making the decision to close the Plaintiff's case.

17. After receiving that call, Plaintiff was very upset and contacted the Hospital to request a copy of her treatment records from December 5, 2015. Her review of those records surprisingly indicated that the Hospital had absolutely no record of blood having been drawn from the Plaintiff at the Hospital December 5, 2015.

18. When Plaintiff called the Hospital about the missing blood sample, an unidentified Hospital employee, believed to be one of the head nurses, advised Plaintiff that a review of Plaintiff's records from December 5 indicated that Docyk had made the decision to not include the blood in the rape kit that Hendricks handed to the Plaintiff on December 5 despite knowing that Plaintiff had claimed she was drugged and wanted the matter reported to law enforcement. That same nurse advised Plaintiff that the Hospital needed to do better training on evidence collection in assault cases.

FOR A FIRST CAUSE OF ACTION
(Negligence – Failure to Properly Collect and Protect Evidence)

19. Plaintiff re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

20. In treating and providing other services to Plaintiff at the Hospital on December 5, 2015, the Hospital and GHS owed a duty to Plaintiff to ensure that she received proper medical attention, that physical evidence of the drugging and assault Plaintiff reported to the Hospital was both collected and preserved and that all such evidence was properly transferred to law enforcement in keeping with generally accepted policies regarding the collection of evidence and chain of custody.

21. The Hospital and GHS also owed a duty to Plaintiff and other reporting victims of sexual assault to appropriately train their employees, including both physicians and nurses, on the collection, preservation, and proper transfer of physical evidence from sexual assault victims and to enact appropriate policies related thereto. Such guidance and training is set forth by both the U.S. Department of Justice and the South Carolina Attorney General's office and is available in written format.

22. The Hospital and GHS also owed a duty to Plaintiff and other reporting victims of sexual assault to have appropriate policies, procedures and protocols in place, and to provide appropriate training thereon, in regard to the collection, preservation and proper transfer of physical evidence from sexual assault victims to law enforcement

23. The Hospital and GHS breached the above-referenced duties by failing to collect, protect and preserve the physical evidence collected from Plaintiff by its employees on December 5, 2015, by failing to ensure that all evidence collected made it into Plaintiff's rape kit and in failing to maintain a proper chain of custody by ensuring that the evidence collected from Plaintiff was transferred directly to law enforcement.

24. The Hospital and GHS also breached their duties to Plaintiff by failing to enact proper policies and procedures regarding the collection and preservation of physical evidence from patients and victims, as well in chain of custody issues, and by failing to properly train its employees on these issues.

25. Defendants also breached their duties in handing Plaintiff's rape kit to Plaintiff and in failing to advise her that, by giving the rape kit to the Plaintiff, they were not maintaining the proper chain of custody

26. Defendants further breached their duties to Plaintiff in not keeping custody

of the rape kit until it could be collected directly by an appropriate law enforcement agency.

27. As a direct and proximate result of said breaches, Plaintiff has suffered damages, in addition to the loss of her inability to proceed with criminal action against her attacker, entitling Plaintiff to an award of actual and consequential damages from the Hospital and GHS.

FOR A SECOND CAUSE OF ACTION
(Negligence – Failure to Order Necessary Tests)

28. Plaintiff re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

29. Understanding Plaintiff's allegations that she had been drugged and sexually assaulted, Defendants, acting by and through their employee physician Docyk, owed a duty to Plaintiff to ensure that all possible physical evidence of the drugging and assault Plaintiff reported to the Hospital was collected and preserved, and that said evidence was properly transferred to law enforcement in keeping with generally accepted policies, procedures, and protocols regarding the collection of evidence and chain of custody issues.

30. Defendants, acting by and through physician Docyk, breached said duties by failing to order all tests to protect and preserve all possible physical evidence collected from Plaintiff on December 5, 2015, and in failing to ensure that all possible physical evidence was included in the rape kit that was to be provided to law enforcement.

31. Defendants acting by and through physician Docyk, further breached their duties to Plaintiff in failing to ensure that any blood taken from the Plaintiff was included in the rape kit when Defendants were both advised and aware that Plaintiff reported her

belief that she had been drugged by her attacker.

32. Upon information and belief, Defendants further breached their duties to the Plaintiff when their employee physician Docyk decided to withhold Plaintiff's blood sample from the rape kit that was to be provided to law enforcement even though he knew that Plaintiff had reported her belief that she had been drugged by her attacker.

33. As a direct and proximate result of said breaches, Plaintiff has suffered damages, in addition to the loss of her ability to proceed with criminal action against her attacker, entitling Plaintiff to an award of actual and consequential damages from Defendants.

FOR A THIRD CAUSE OF ACTION
(Gross Negligence – Failure to Properly Collect and Protect Evidence)

34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

35. In treating and providing other services to Plaintiff at the Hospital on December 5, 2015, the Hospital and GHS owed a duty to Plaintiff to ensure that she received proper medical attention, that physical evidence of the drugging and assault Plaintiff reported to the Hospital was both collected and preserved and that all such evidence was properly transferred to law enforcement in keeping with generally accepted policies regarding the collection of evidence and chain of custody.

36. The Hospital and GHS also owed a duty to Plaintiff and other reporting victims of sexual assault to appropriately train their employees, including both physicians and nurses, on the collection, preservation, and proper transfer of physical evidence from sexual assault victims and to enact appropriate policies related thereto. Such guidance and training is set forth by both the U.S. Department of Justice and the South Carolina

Attorney General's office and is available in written format.

37. The Hospital and GHS also owed a duty to Plaintiff and other reporting victims of sexual assault to have appropriate policies, procedures and protocols in place, and to provide appropriate training thereon, in regard to the collection, preservation and proper transfer of physical evidence from sexual assault victims to law enforcement

38. The Hospital and GHS breached the above-referenced duties by failing to collect, protect and preserve the physical evidence collected from Plaintiff by its employees on December 5, 2015, by failing to ensure that all evidence collected made it into Plaintiff's rape kit and in failing to maintain a proper chain of custody by ensuring that the evidence collected from Plaintiff was transferred directly to law enforcement.

39. The Hospital and GHS also breached their duties to Plaintiff by failing to enact proper policies and procedures regarding the collection and preservation of physical evidence from patients and victims, as well in chain of custody issues, and by failing to properly train its employees on these issues.

40. Defendants also breached their duties in handing Plaintiff's rape kit to Plaintiff and in failing to advise her that, by giving the rape kit to the Plaintiff, the were not maintaining the proper chain of custody

41. Defendants further breached their duties to Plaintiff in not keeping custody of the rape kit until it could be collected directly by an appropriate law enforcement agency.

42. The above-referenced breaches by the Hospital and GHS were particularly willful and reckless given Plaintiff's repeated and express instructions that she wished to report her drugging and assault to law enforcement. These breaches were also willful and

reckless given the clear guidance and protocol provided by both the federal and state government as to the collection and preservation of physical evidence from victims of sexual assault, which the Hospital and GHS completely ignored on December 5, 2015.

43. As a direct and proximate result of said breaches, Plaintiff has suffered damages, in addition to the loss of her ability to proceed with criminal action against her attacker, entitling Plaintiff to an award of actual and punitive damages from the Hospital and GHS.

FOR A FOURTH CAUSE OF ACTION
(Gross Negligence – Failure to Order Necessary Tests)

44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

45. Understanding Plaintiff's allegations that she had been drugged and sexually assaulted, Defendants, acting by and through their employee physician Docyk, owed a duty to Plaintiff to ensure that all possible physical evidence of the drugging and assault Plaintiff reported to the Hospital was collected and preserved, and that said evidence was properly transferred to law enforcement in keeping with generally accepted policies, procedures, and protocols regarding the collection of evidence and chain of custody issues.

46. Regardless, Defendants, acting by and through physician Docyk, breached said duties by failing to order all tests to protect and preserve all possible physical evidence collected from Plaintiff on December 5, 2015, and in failing to ensure that all possible physical evidence was included in the rape kit that was to be provided to law enforcement.

47. Defendants, acting by and through physician Docyk, further breached their

duties to Plaintiff in failing to ensure that any blood taken from the Plaintiff was included in the rape kit when Defendants were both advised and aware that Plaintiff reported her belief that she had been drugged by her attacker.

48. Defendants further breached their duties to the Plaintiff when their employed physician, Docyk, decided to withhold Plaintiff's blood sample from the rape kit that was to be provided to law enforcement even though he knew that Plaintiff had reported her belief that she had been drugged by her attacker.

49. The above-referenced breaches were particularly willful and reckless given the fact that, as an emergency room physician, Docyk should have known the express protocols in regard to the collection and preservation of physical evidence from a sexual assault victim, including the fact that all relevant physical evidence should have both been collected and included in the rape kit that was to be provided directly to law enforcement.

50. These breaches were also particularly willful and reckless given the fact that Docyk made the decision either not to take and test Plaintiff's blood and/or not to include relevant blood evidence in Plaintiff's rape kit despite the fact that Plaintiff had reported that she had been drugged and had given repeated and express instructions that she wished to report her drugging and assault to law enforcement.

51. As a direct and proximate result of said breaches, Plaintiff has suffered damages, in addition to the loss of her ability to proceed with criminal action against her attacker, entitling Plaintiff to an award of actual and punitive damages from Hendricks.

FOR A FIFTH CAUSE OF ACTION
(Negligent Supervision)

52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

53. Defendants had a duty to properly supervise employees like Hendricks and Docyk so as to ensure that said they acted in accordance with generally accepted standards of care and protocol in regard to patient care and collection and preservation of evidence from assault victims such as the Plaintiff.

54. Defendants breached said duty to properly supervise Hendricks and Docyk in failing to ensure they were properly trained on and following proper protocol in regard to the collection and preservation of evidence from assault victims such as the Plaintiff.

55. In so doing, Defendants breached their duty to properly supervise Hendricks and Docyk.

56. As a direct and proximate result of said breach, Plaintiff has suffered damages, beyond the inability to proceed with criminal action against her attacker, entitling Plaintiff to an award of actual and consequential damages from Defendants.

FOR A SIXTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

57. Plaintiff re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

58. Defendants acted intentionally and/or recklessly in failing to collect all possible physical evidence from Plaintiff and in failing to secure all blood and other physical evidence taken from Plaintiff on December 5, 2015, in failing to ensure that said

evidence was properly transferred directly to law enforcement so as to maintain chain of custody of all available evidence, in giving the evidence directly to the Plaintiff, and in communicating to Plaintiff that it was her responsibility to transfer the evidence to law enforcement in Georgia.

59. Defendants also acted intentionally and/or recklessly in failing to enact proper policies and procedures regarding the collection and preservation of physical evidence from sexual assault victims, as well in chain of custody issues, and by failing to properly train its employees on these issues

60. Defendants were well aware of their duties, as communicated by federal and state authorities, in regard to the collection and preservation of evidence from victims of sexual assault, including their duty to maintain chain of custody at all times and to ensure that all relevant evidence collected was transferred directly to the appropriate law enforcement.

61. Defendants' conduct, as outlined above, was so extreme and outrageous as to exceed all possible bounds of decency, and Defendants knew or should have known that severe emotional distress would result from their conduct, including giving the rape kit to the Plaintiff and instructing her to personally drive it back to Georgia where her assault occurred just a day prior.

62. Plaintiff did, in fact, suffer severe emotional distress as a direct result of Defendants' conduct, and that distress was so severe that no reasonable person should be expected to endure it.

63. Accordingly, Plaintiff is entitled to an award of actual and punitive damages against Defendants.

WHEREFORE, Plaintiff prays for an award of damages against Defendants for actual and consequential damages, punitive damages, attorneys' fees and costs, and for any such other and further relief as the Court may deem just and proper.

s/Hannah Rogers Metcalfe

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Attorneys for Plaintiff

December 5, 2017

Greenville, South Carolina

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Greenville Health System,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-37-00700

**PLAINTIFF'S MOTION TO
AMEND COMPLAINT**

TO: KENNETH N. SHAW, ESQUIRE, COUNSEL FOR DEFENDANT:

Plaintiff, Jane Doe, hereby moves the Court, pursuant to South Carolina Civil Procedure Rule 15(a), S.C.R.C.P., to amend her Complaint to name any other appropriate entities as additional defendants, to add two additional causes of action for breach of contract and bailment, and to further clarify Plaintiff's pending claim for negligence. This motion is made on the following grounds:

1. The proposed amendments include the naming of additional defendants who are necessary parties to this action, the addition of two additional causes of action, and the clarification of Plaintiff's current claim for negligence. All of these proposed amendments relate to and arise out of the exact same facts and conduct alleged in Plaintiff's original Complaint.

2. The proposed amendments would not prejudice Defendant as no substantive action has been taken in this case since it was originally filed on December 5, 2017. In fact, no answer has been filed yet by Defendant as Defendant's Motion to Dismiss has been pending since January 10, 2018. No substantial discovery has been

conducted beyond initial requests served on Defendant, no depositions have been taken and trial of this matter is not currently scheduled.

3. The interests of justice would be served in allowing the proposed amendments in order to make sure that all proper parties and all claims related to the facts alleged in Plaintiff's Complaint are before the Court in this matter.

For all the above reasons, Plaintiff respectfully requests that the Court grant this motion and allow Plaintiff to file an Amended Complaint. Counsel for Plaintiff believes that consultation with Defendant's counsel would be futile in light of Defendant's pending Motion to Dismiss Plaintiff's Complaint and Defendant's position that Plaintiff's entire action against Defendant should be dismissed.

METCALFE & ATKINSON, LLC

s/ Courtney C. Atkinson
Courtney C. Atkinson, S.C. Bar #71992
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Attorneys for Plaintiff Jane Doe

June 4, 2018
Greenville, South Carolina

EXHIBIT H

1 then the existence of that duty is analyzed as it
2 would be were the defendant a private entity."

3 And there in that case, the plaintiff started a
4 negligence claim based upon the common law duty to
5 exercise reasonable care; and therefore, the public
6 duty rule is not -- is not applicable and that's the
7 case here.

8 Now, as to the defendant's claim that this is
9 essentially a spoliation of evidence claim, Your
10 Honor, we would say it is not. It is a general
11 negligence claim relating to the handling of this
12 patient's medical evidence. With -- this is with
13 regard to the handling of the kit, training of the
14 staff, supervision of the staff where we had the
15 cause of action and the negligent training and
16 supervision. The hospital was negligent in training
17 the physicians and nurses as to how they were
18 handled -- how to handle blood, how things were
19 supposed to be -- how the patients were supposed to
20 be informed with regard to their rights, and how the
21 patients were supposed to be informed with regard to
22 this evidence in maintaining this evidence.

23 In addition, Your Honor, if this afternoon were
24 to clear up any confusion, we move to amend the
25 complaint so as to assault. And I know Mr. Shaw may

1 not have seen this because this was just right
2 before I got here. Your Honor, I we went ahead and
3 preemptively filed a motion to amend to allege the
4 cause of action for breach of contract because there
5 is this contractual relationship, as well as an
6 action for bailment because there is a constructive
7 and contractual bailment situation here where her
8 blood is being given to the hospital for safekeeping
9 and the hospital is compensated for that.

10 In this case, the patient wants to know if she
11 was drugged, and there's no way for her to know
12 without this blood being tested. Mr. Shaw said --
13 in the memorandum they say, it was very possible the
14 blood sample may have come back clean, but this is
15 the crux of her damage, Your Honor. She'll never
16 know if the blood sample could've come back clean
17 because she never -- her blood was never tested.
18 The blood was drawn and -- and disposed of by the
19 hospital, so she'll never know.

20 And when -- and in our complaint what we say is
21 for damage, aside from whether or not her
22 perpetrator could be criminally prosecuted, she's
23 been damaged because she doesn't know if she was
24 drugged. She'll never know if she was actually
25 raped because the -- the semen, the evidence, it's

EXHIBIT I

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital, Greenville
Health System,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2017-CP-37-00700

***Order Granting Defendant Greenville
Health System's Motion to Dismiss***

This matter came before the Court upon Defendant Greenville Health System's ("GHS") motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.¹ The motion was heard on June 4, 2018. Having listened to oral arguments and reviewed the submissions of the parties, for the reasons more fully set forth below, I hereby grant GHS's motion to dismiss as to the causes of action set forth in the Plaintiff's Complaint. This Order is, however, without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action.

FACTS²

Plaintiff alleges that she was drugged and sexually assaulted in the early morning hours of December 5, 2015 while in Atlanta, Georgia. She alleges that following the assault, she drove

¹ Plaintiff identifies Oconee Memorial Hospital as a named defendant in her Complaint; however, Oconee Memorial Hospital is not an independent entity capable of being sued. Rather, it is a facility owned and operated by GHS.

² In ruling on Defendant's 12(b)(6) motion, the Court was constrained by the facts alleged in Plaintiff's Complaint. The Court notes that approximately one hour prior to the hearing on June 4, 2018, and without any prior notice to Defendant, Plaintiff electronically filed a motion to amend her complaint. While Plaintiff's counsel briefly mentioned the motion to amend during the hearing, the merits of Plaintiff's motion were not properly before the Court and were not discussed. Further, the Court could not consider the merits of Plaintiff's motion to amend even if it were inclined to do so, because no proposed amended complaint was ever submitted to the Court.

back home to South Carolina and went to Oconee Memorial Hospital (“OMH”) where she requested a sexual assault forensic examination and stated her desire to report the assault to law enforcement. GHS employee, Mary Beth Hendricks, attended to Plaintiff and performed the sexual assault forensic examination, which included both swabs and a blood draw.

Upon completion of the examination, Hendricks contacted the Dekalb County Sheriff’s Office in Georgia and reported the assault. Hendricks requested Dekalb County Sheriff’s Office come collect the examination kit; however, she was advised by the Sheriff’s Office that they were unwilling to travel to South Carolina to pick up the kit, and if Plaintiff wished to pursue her claim, she would personally need to take the kit to them in Georgia. Hendricks protested, but was advised by the Sheriff’s Office that was the only option. Hendricks reluctantly relayed the Sheriff’s Office’s instructions to Plaintiff and signed over custody of the kit to Plaintiff.

Plaintiff took the kit to the Dekalb County Sheriff’s Office the following day. She gave the kit and her statement to the investigating officer, who advised her that he would be back in touch at a later date. A few weeks later, the investigating officer allegedly reached out to Plaintiff and informed her that there was no blood sample included in the kit from which his office could determine whether Plaintiff had been drugged. She alleges that the officer decided to close the case and not pursue any further action against Plaintiff’s alleged attacker due to the lack of the blood sample. In addition, she contends that the officer may have also considered the alleged break in the chain of custody when making the decision to close the case.

LEGAL ANALYSIS

Under Rule 12(b)(6), SCRPC, the Court, upon reviewing all the well pleaded facts in a light most favorable to the claimant, must dismiss the action if the Complaint fails to state a claim upon which relief can be granted. Charleston County Sch. Dist. v. Laidlaw Transit, Inc.,

348 S.C. 420, 559 S.E.2d 362 (Ct. App. 2001). The Court is to consider only the alleged facts and is not to consider the inferences or conclusions of law drawn by the Plaintiff from the facts. Charleston County Sch. Dist. v. S.C. State Ports Auth., 283 S.C. 48, 50, 320 S.E.2d 727, 729 (Ct. App. 1984). Each element of a cause of action must be alleged, and a complaint that omits an element fails to state a claim and must be dismissed. Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 363 S.E.2d 691 (1988).

I. Plaintiff Fails to Plead Facts Sufficient to Support the Duty and Damages Elements of Her Negligence Causes of Action

Plaintiff's first five causes of action allege negligence on the part of GHS and its employees. In order to survive a motion to dismiss, Plaintiff must allege facts sufficient to establish that GHS owed Plaintiff a duty of care, GHS breached that duty, and Plaintiff sustained damages proximately resulting from the breach. South Carolina Insurance Company v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct.App.1986). Plaintiff's claims fail because no legal duty was owed to her in regards to the sexual assault examination kit, and she failed to allege any cognizable damages.

A. No Duty was Owed to Plaintiff in Regards to the Sexual Assault Examination Kit

"A legal duty is that which the law requires to be done or forborne with respect to a particular individual or the public at large." Byerly v. Connor, 301 S.C. 441, 443 415 S.E.2d 796, 798 (1992). A legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance. Madison v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 656 (2007). The court must determine, as a matter of law, whether the law recognizes a particular duty. Id. If there is no duty, then the defendant is entitled to a dismissal as a matter of law. Id. The Court finds that GHS owed no duty to Plaintiff in regards to the sexual assault examination kit. Rather, the Court finds that GHS was performing a service on

behalf of law enforcement in collecting evidence for a criminal investigation.

Plaintiff alleges that GHS owed her a duty to collect, preserve, and properly transfer all physical evidence of her alleged sexual assault to law enforcement. She alleges that GHS breached that duty by failing to ensure that the blood samples were in the examination kit and by breaking the chain of custody by giving the kit to Plaintiff rather than giving it directly to law enforcement. However, Plaintiff identified no statute, regulation, rule, ordinance or standard which clearly established a duty owed to her in regards to the handling of the sexual assault examination kit. Like the law enforcement agency it was acting on behalf of, GHS was acting pursuant to statutes, ordinances, and regulations which protect the public at large, but provide no duty of care to individuals. See Wells v. City of Lynchburg, 331 S.C. 296, 308, 501 S.E.2d 746, 752 (Ct. App. 1998); see also Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 659 S.E.2d 122 (2008) (Court stating that sheriff's office owed no duty to plaintiff to preserve evidence that was collected for a criminal investigation).

Plaintiff argues that GHS's duty flowed from its obligation to provide medical treatment for her alleged sexual assault injuries. While GHS undoubtedly owed a duty of care in rendering medical services, Plaintiff has not alleged injuries stemming from those services.³ Her only alleged injuries stem from her allegations that GHS negligently handled the sexual assault examination kit. While gathering evidence for the sexual assault examination kit, GHS was not rendering medical services or treatment to Plaintiff. Providing medical care for alleged or suspected injuries is a wholly separate function from gathering evidence for a sexual assault examination kit. This is readily apparent by the fact that a person may come to the ED to seek

³ To the extent the allegations in Plaintiff's Complaint could be read to infer injuries stemming from the medical services rendered to her, her claims would sound in medical malpractice. In that case, dismissal would still be appropriate on the basis that Plaintiff failed to comply with the requirements of S.C. Code § 15-79-125.

treatment for an alleged sexual assault, but decline to report the assault to law enforcement and/or complete an examination kit. *See* S.C. § 16-3-1350.

B. Spoliation of Evidence is Not a Cognizable Cause of Action

The Court interprets Plaintiff's claims as an attempt to allege a negligent spoliation of evidence claim; however, South Carolina does not recognize an independent tort for spoliation of evidence. Cole Vision Corp. v. Hobbs, 394 S.C. 144, 151, 714 S.E.2d 537, 541 (2011); see also Austin, supra (refusing to adopt the tort of third party spoliation of evidence where plaintiff sued sheriff's office for destroying evidence that plaintiff alleged prevented her from being able to pursue wrongful death claim against another party).

Plaintiff contends she is asserting "general negligence claims" rather than a claim for spoliation of evidence; however, that same argument was rejected by the Court in *Hobbs*. As noted by the Court,

"Whether denominated as a claim for spoliation of evidence or as a general negligence claim based on spoliation of evidence, the substance of this claim is the same: both are based on the allegation that Cole Vision breached its duty to maintain a key document, the absence of which harmed Hobbs in the underlying lawsuit."

394 S.C. 144, 154, 714 S.E. 2d 537, 542 (2011). The instant case is indistinguishable. Plaintiff claims that she has been harmed by GHS's alleged failure to maintain the blood sample that she claims would have helped her prove she was sexually assaulted. Calling it general negligence doesn't change the fact that the substance of the relief being sought is still the same – she wants GHS held responsible for the allegedly missing evidence. *Id.*

As noted in both Hobbs and Austin, one of the primary policy reasons for refusing to acknowledge a cause of action for spoliation of evidence is the very speculative nature of the damages. Here, Plaintiff alleges the lack of a blood sample prevented her assaulter from being

prosecuted; however, it is extremely speculative to suggest he would have been prosecuted had the blood sample been in the kit.

C. Plaintiff Failed to Assert a Cognizable Injury

Finally, Plaintiff's negligence claims fail because she has not alleged a cognizable injury. In her Complaint, Plaintiff merely alleged that she has "suffered damages, in addition to the loss of her ability to proceed with criminal action against her attacker." (Compl. ¶¶ 27, 33, 43, 51, 56.) At the hearing, Plaintiff's counsel explained that the crux of Plaintiff's injury was the pain of not knowing for certain whether she was drugged and whether she was sexually assaulted. Plaintiff does not allege she sustained a physical injury as a result of GHS's alleged negligence. The only reasonable inference the Court can draw from Plaintiff's allegations is that she has endured emotional distress; however, it is well established that South Carolina does not recognize a claim for negligent infliction of emotional distress under these circumstances. See Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985); Doe v. Greenville County School Dist., 375 S.C. 63, 67-68, 651 S.E.2d 305 (2007) (limiting negligent infliction of emotional distress claims to bystander situations only).

II. Plaintiff's Claims do not Amount to an Intentional Infliction of Emotional Distress

For her sixth and final cause of action, Plaintiff asserted an intentional infliction of emotional distress claim. This cause of action further emphasizes that Plaintiff's only alleged injury is one of emotional distress. However, regardless of the label, Plaintiff's claim is unavailing, because the Court still views it as an attempt to assert a spoliation of evidence claim. Hobbs, 394 S.C. 144, 149, 714 S.E.2d 537, 540.

Nevertheless, Plaintiff failed to plead facts sufficient to establish the heightened standard of proof required for an intentional infliction of emotional distress claim. Argoe v. Three Rivers

Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (noting higher standard of proof and enumerating elements of intentional infliction of emotional distress claim to include intentional or reckless conduct that exceeds all possible bounds of decency and causes such severe distress that no reasonable man could bear it). The South Carolina Supreme Court has held the circuit courts undertake a “significant gatekeeping role” in analyzing whether the alleged conduct was sufficiently outrageous and the emotional distress sufficiently severe to survive a motion to dismiss. AJG Holdings LLC v. Dunn, 392 S.C. 160, 708 S.E.2d 218 (Ct. App. 2011) (citing Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 72 (2007)). In order to establish a claim for intentional infliction of emotional distress, plaintiff must allege that GHS employees intentionally or recklessly conducted themselves in a manner that was “extreme and outrageous,” exceeding “all bounds of decency,” “atrocious,” and “utterly intolerable.” See Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981) (recognizing tort of intentional infliction of emotional distress and adopting elements set forth in Restatement (Second) of Torts § 46).

First, nowhere in the Complaint did Plaintiff allege that GHS employees acted with the intent to cause her severe emotional distress, nor did she allege that the employees were certain or substantially certain that their actions would cause her such distress. Id. Second, the Court finds no reasonable person could determine that following the instructions of a law enforcement officer regarding the handling of evidence of a crime could be considered “extreme and outrageous” conduct. Id. Finally, Plaintiff did not allege such “severe” emotional distress that “no reasonable man could be expected to endure it,” as many, if not most, victims of sexual assault have to deal with the emotions associated with their attacker not being held accountable for his/her actions.

In addition, GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended), and it and its agents and employees are, therefore, entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. See Murphy v. Richland Mem. Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995) (citing Benton v Roger C Peace, 313 S.C. 520, 443 S.E.2d 537 (1994)). Pursuant to S.C. Code § 15-78-60(17), GHS has immunity for employee conduct outside the scope of his official duties or which constitutes actual malice or intent to harm. Therefore, even if the GHS employees' conduct could be said to rise to the level of "extreme and outrageous," exceeding "all bounds of decency," "atrocious," and "utterly intolerable," GHS would still be immune from liability. See Cornelius v. City of Columbia, 663 F.Supp.2d 471 (D.S.C. 2009).

WHEREFORE, for the reasons stated herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the causes of action set forth in Plaintiff's Complaint are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Judge R. Scott Sprouse
Tenth Judicial Circuit

July __, 2018



Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al
Case Number: 2017CP3700700
Type: Order/Dismissal

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2018-07-09 15:50:54 page 9 of 9

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk; Mary Beth
Hendricks,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

C.A. No.: 2018-NI-37-00010

C.A. No.: 2019-CP-37-00271

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Plaintiff Jane Doe, by and through her undersigned counsel, requests that the Court deny Defendants' motion for summary judgment in both of the above-referenced matters. Defendants have failed to respond to discovery and, as a result, Defendants motion is not yet ripe and should be denied.

This Matter Is Not Ripe For Summary Judgment Because Defendants Have Failed to Respond to Discovery.

At the hearing before this Court, counsel for Defendants contended that this matter was ripe for decision by the Court. Despite the fact that Defendants had not responded to discovery until six days before the hearing on this matter, counsel argued that Defendants had now responded and suggested that the lack of discovery was not an impediment to the Court's ruling because Plaintiff's had not served "supplemental" discovery directly pertaining to the issues raised in Defendant's motion for summary judgment. This argument is factually incorrect and contrary to the South Carolina Rules of Civil Procedure and the Rules of Professional Conduct. This matter is not ripe for summary judgment and Defendants' motion should be denied at this time.

As an initial matter, the Defendants' contention that the Plaintiff had not served discovery requests that would lead to discovery of information relevant to the pending motion for summary judgment is incorrect. *See* Plaintiff's First Set of Requests for Production To Defendants and Plaintiff's First Interrogatories to Defendant, attached hereto as **Exhibit A**, plainly asks for "[a]ll documents relating in any way to the matters alleged in the Plaintiff's complaint, the Defendants' answer, or the subject matter of this action." In their Answer, Defendants plead the statute of limitations as a defense. Thus, any documents relevant to Defendants' claim that summary judgment should be granted because Plaintiff's claims are barred by the statute of limitations should have been produced. Regardless, Defendants have not produced these documents. For example, Defendants assert as a defense that Defendants Docyk and Hendricks are employees of Defendant GHS. Defendants have not produced a copy of any employment agreements, contracts or any other documents that would substantiate this allegation. Instead, Defendants seem to want the Court to simply dismiss this action based on Defendants' representation.⁸ Similarly, Defendants assert that Defendant Upstate Affiliate Organization is not a proper defendant because the Organization was not established until after the events alleged in Plaintiff's Complaint. Nonetheless, Defendants have produced absolutely no documents relating to this defense in response to Plaintiff's initial request for documents. Defendants also failed

⁸ Plaintiff would note that the Defendants previously asked this Court to dismiss the prior action based on Defendants' representations to the Court that Defendants were not negligent in their handling of the sexual assault forensic examination kit collected from Plaintiff's person. Specifically, Defendants represented to this Court that it had "no duty" to the Plaintiff or any other sexual assault victim receiving care at Oconee Memorial Hospital or any other GHS facility. Based on this representation, the previous negligence action was dismissed. Now, the limited discovery Plaintiff only received from the Defendants on September 18th readily reveals that the Defendants' representation to the Court was not accurate and that Defendants have previously acknowledged owing certain duties to assault victims who report to Defendants' facilities. Specifically, the Defendants' own documents reveal the existence of an internal sexual assault examination policy that required Oconee Memorial Hospital, as well as all other GHS facilities to collect, safeguard, and turn over to law enforcement all sexual assault forensic examinations. *See Exhibit B*. These same policies also expressly acknowledge various "medical-legal" duties owed by Defendants to patients reporting sexual assaults.

to respond to Plaintiff's Interrogatory that specifically asked: "[i]f the Defendants are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information." See **Exhibit A.** As such, Plaintiff respectfully contends that, without Defendants fully responding to discovery that has been outstanding for over nine months and without providing Plaintiff with the opportunity to conduct supplemental discovery into the various defenses that have been raised by Defendants, summary judgment as to whether Defendants' claims are barred by the statute of limitations is not yet ripe for determination by this Court.

Second, any suggestion that it was somehow Plaintiff's responsibility to ensure that Defendants responded to discovery and/or that Plaintiff's counsel failed to meaningfully consult with Defendants' counsel regarding needed discovery is also incorrect. Plaintiff served this initial discovery on Defendants in January. When Defendants failed and intentionally refused to answer these requests, Plaintiff's counsel had multiple communications with Defendants' counsel about the outstanding discovery. On April 12, 2019, after this Court ruled on Defendants' motion to dismiss, counsel for Plaintiff again fulfilled the obligation to consult regarding discovery disputes prior to filing a motion to compel and *reminded* Defendants' counsel of the outstanding discovery requests. See **Exhibit C.** Counsel for the Defendants initially indicated that he would like to wait to respond to these discovery requests until after this Court ruled on his motion to reconsider its decision denying Defendants' motion to dismiss. See April 18, 2019 Email attached hereto as **Exhibit D.** In this communication, counsel for Defendants specifically represented: "[i]f the judge denies the motion altogether, it should not take me very long

thereafter to file an answer and I would expect to have discovery responses to you within a couple weeks after the answer is filed.” *Id.* On April 22, 2019, counsel for Plaintiff graciously agreed to the defendants’ request. *See Exhibit E.* Then, on May 8, 2019, this Court denied Defendants’ motion to reconsider. Thereafter, Defendants filed their answer on May 15, 2019. Unfortunately, no discovery was forthcoming from Defendants despite their counsel’s previous representation that responses would be provided shortly after Defendants filed their answer.

The suggestion that Plaintiff’s has not sought relevant discovery and/or that it is somehow the Plaintiff’s fault that Defendants failed to respond to discovery is both unavailing and disingenuous. Plaintiff’s counsel consulted with defense counsel on April 12, 2019 concerning the long-overdue discovery responses. Counsel for Defendants represented, as an officer of the Court, that he would provide the responses within a couple weeks after the answer was filed. Plaintiff relied upon the representation of counsel for Defendants.⁹ The answer was filed on May 15, 2019 and the Defendants never served any discovery responses until September 18, 2019, at which time Defendants served only partial responses to Plaintiff’s initial discovery requests. This discovery was directly relevant to the motion for summary judgment. Counsel for Plaintiff did not file a motion to compel right away, but waited until August 2019 in order to allow Defendants additional time to respond to the discovery. Then, on August 17, 2019, unaware that the motion for summary judgment was set to be heard in September, Plaintiff filed a motion to compel Defendants’ responses to this discovery.

At the hearing, in furtherment of the scurrilous suggestion that Defendants’ failure

⁹ Plaintiff’s reliance upon the representation of counsel for Defendants was done in good faith. The South Carolina Rules of Professional Conduct provide that a lawyer shall not “fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.” *See* Rule 3.4(d), SCRPC.

to respond to discovery was somehow Plaintiff's fault because Plaintiff did not remind or "follow up" with Defendants enough prior to the hearing on the motion for summary judgment, Defendants stated that defense counsel had not heard from counsel for Plaintiff concerning the outstanding discovery since May 2019 when Defendants failed to follow-through on their agreement to provide responses to Plaintiff's long-overdue discovery requests. Upon review of the call logs from the undersigned counsel's office, it was discovered that counsel communicated with defense counsel via telephone on at least two occasions in June 2019. *See Exhibit F.* While it is not Plaintiff's counsel's responsibility to repeatedly remind Defendants of the obligation to comply with the South Carolina Rules of Civil procedure concerning discovery, a review of telephone records, emails, and correspondence via U.S. Mail reveals that counsel for Plaintiff communicated with defense counsel concerning the outstanding discovery at least four times prior to filing the motion to compel in August 2019. Defendants failed to respond to discovery even though defense counsel knew – when Plaintiff did not – that the motion for summary judgment was set to be heard in September 2019.¹⁰

Defendants also suggested at the hearing before this Court that Plaintiff's contention with regard to Defendants' outstanding discovery is somehow irrelevant because Plaintiff did not serve supplemental discovery requests that specifically addressed the issues raised in Defendants' motion. This argument is similarly without merit. Defendants had already failed and/or refused to respond to the discovery already outstanding since January of 2019. The suggestion that Defendants would have responded to supplemental discovery, when

¹⁰ At the hearing before this Court on September 23, 2019, counsel for Defendants represented that, as early as May 2019, he was aware that this matter was set to be heard in September 2019. Despite being aware that this was to be heard in September 2019, Defendants still made no efforts to respond to outstanding discovery, including any discovery relevant to Defendants' motion for summary judgment, or apprise Plaintiff to the scheduling of the hearing.

Defendants had not even bothered to respond to initial discovery requests from nine months earlier, is incredibly disingenuous. Plaintiff had already asked Defendants to produce any documents relevant to their defenses – which would include any applicable statute of limitations arguments as asserted in Defendants’ motion – and Defendants still have not provided any responsive documents relevant to those defenses. Thus, the notion that if the Plaintiff had simply asked for *more* discovery or only asked for discovery that specifically targeted Defendants summary judgment claims then Defendant would have responded is entirely without merit. Plaintiff served discovery requests on Defendant in January 2019. Defendants did not bother to respond until September 2019 and, as detailed below, these responses were incomplete. Defendants have not provided documents requested that would relate to their motion for summary judgment and, as such, Defendants’ motion for summary judgment should be denied.

Defendants’ Discovery Responses Are Insufficient and Incomplete

Defendants served initial responses to Plaintiff’s January 2019 discovery requests, which were received by Plaintiff’s counsel on September 18, 2019. However, Defendants’ responses are incomplete and insufficient in multiple regards and do not provide all documents and information sought by way of Plaintiff’s initial requests.

As an initial matter, Defendants’ responses to Plaintiff’s First Set of Interrogatories are incomplete in the following specific regards:

Interrogatory No. 2 – This Interrogatory asks Defendants to identify all documents in possession of Defendants that in any way relate to this case, including Defendants’ defenses thereto. As noted more fully above, Defendants have identified none of the documents relevant to the defenses raised by Defendants, including its argument that Plaintiff’s claims are barred by the statute of limitations set forth in the South Carolina Tort Claims Act.

Interrogatory No. 10 - This Interrogatory asks Defendants to identify all victims

of sexual crimes reporting to Oconee Memorial Hospital and all other GHS-owned facilities within the previous five (5) years. Defendants object to answering this Interrogatory and provide none of the requested information.

Interrogatory No. 11 - This Interrogatory asks Defendants to identify how many of the victims of sexual crimes identified in response to Interrogatory No. 10 were either denied or refused treatment and, for each such instance of denial or refusal or treatment, certain information related thereto. Similar to its response to Interrogatory No. 10, Defendants object to answering this Interrogatory and provide none of the requested information.

Interrogatory No. 12 - This Interrogatory asks Defendants to identify all previous lawsuits or claims brought against Defendants by any sexual assault victims within the last ten (10) years. Defendants object to answering this Interrogatory, provide none of the requested information and instead response that Plaintiff should review all lawsuits of public records against Defendant GHS for the previous ten (10) years.

Interrogatory No. 16 - This Interrogatory asks Defendants to identify all instances where any employee or other representative of GHS gave possession of a rape kit to a victim or suspected victim of sexual assault instead of giving possession therefore to law enforcement. Defendants object to answering this Interrogatory and provide none of the requested information.

Interrogatory No. 17 - This Interrogatory asks Defendants to identify all other dates and instances where any employee or other representative of GHS advised a victim or suspected victim of sexual assault to personally transport their own rape kit to law enforcement. Defendants object to answering this Interrogatory and provide none of the requested information.

Interrogatory No. 18 - This Interrogatory asks Defendants to identify all instances where Defendants reported a suspected sexual assault to law enforcement and were advised that law enforcement was unwilling or unable to take possession of a rape kit. Defendants object to answering this Interrogatory and provide none of the requested information.

See Defendants' Answers to Plaintiff's First Set of Interrogatories, attached hereto as

Exhibit G.

Defendants' responses to Plaintiff's First Set of Requests for Production are also insufficient in the following specific regards:

Request No. 2 – As with Interrogatory No. 2, this Request asks Defendants to produce all documents in possession of Defendants that in any way relate to this case, including Defendants' defenses thereto. As noted more fully above,

Defendants have identified none of the documents relevant to the defenses raised by Defendants, including its argument that Plaintiff's claims are barred by the statute of limitations set forth in the South Carolina Tort Claims Act.

Request No. 11 – This Request asks Defendants to produce any and all documentation relating to any claim or lawsuit brought by any sexual assault victim against Defendants within the last ten (10) years. As with the related Interrogatory, Defendants object to this Request and have produced none of the requested documentation.

See Defendants' Responses to Plaintiff's First Set of Requests for Production, attached hereto as **Exhibit H**.

The above-outlined discovery requests were all served on Defendants in January of 2019. All of these requests are relevant to Plaintiff's claims and Defendants' defenses thereto. These requests, as detailed more fully above, are also directly relevant to the issues raised in Defendants' motion for summary judgment in the above-referenced matters. Notwithstanding, and despite the passage of almost nine (9) months since service of those requests, Defendants have failed and/or refused to provide complete responses thereto. Accordingly, Plaintiff hereby requests that the Court order Defendants, pursuant to Rule 37(a)(2) of the South Carolina Rules of Civil Procedures, to provide complete responses to Plaintiff's First Set of Interrogatories and Plaintiff's First Set of Requests for Production, including those specific interrogatories and requests detailed above.

CONCLUSION

For the foregoing reasons, as well as those previously articulated in Plaintiff's original memorandum and the arguments presented at the hearing before this Court, Plaintiff respectfully asserts that Defendants' motion for summary judgment should be denied and Plaintiff's motion to compel should be granted.

Respectfully submitted,

s/ Courtney C. Atkinson

Courtney C. Atkinson, SC Bar #71992
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Attorneys for Plaintiff

September 27, 2019
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jane Doe,

Plaintiffs,

vs.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Doyck, M.D, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-37-00762

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS**

TO: KENNETH SHAW, ESQUIRE, ATTORNEY FOR DEFENDANTS:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the undersigned attorney for the Plaintiff hereby requests that you serve upon said counsel within thirty (30) days answers to the following interrogatories. The following interrogatories shall be deemed to continue from the time of service until the time of the trial of the case so that information sought which comes to the knowledge of Defendants, after answers to interrogatories have been submitted, shall be transmitted to the undersigned.

INSTRUCTIONS AND DEFINITIONS

A. In answering these interrogatories, furnish all information that is available to Defendants, including information that is in the possession of Defendants' attorneys, investigators for his attorneys, independent accountants, officers, employees or agents, and not merely information from Defendants' own records or knowledge.

B. If Defendants cannot answer any of the following interrogatories in full, answer to the extent possible, specifying the reasons why they are unable to answer the

remainder, and provide whatever information they have concerning the unanswered portions.

C. After each response to each of the following interrogatories, identify each person who participated in the preparation of, or was consulted about, the answer to the interrogatory.

D. If any document or portion thereof is or will be withheld because of a claim of privilege or work product:

- (a) state the basis on which the privilege is or will be claimed;
- (b) state the author of the document;
- (c) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (d) state the date of the document; and
- (e) state the general subject matter of the document or portion thereof for which the privilege is claimed.

E. The term "document" shall mean all written, printed, typed, recorded, transcribed, punched, taped or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of Defendant, including but not limited to, all writings, letters, minutes, bulletins, correspondence, telegrams, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, interoffice communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, invoices, graphs, photographs, slides, moving pictures, videotapes, film

negatives, drafts, data sheets, data compilations, computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into usable form or any other tangible thing which records information in any way. The term "document" also means each copy which is not identical to the original, whether by notations on the copy or otherwise.

F. The term "identify" or "identity" when used with respect to an individual shall mean to state the name and present or last known home and business address and phone numbers of each such person, and, if that individual has ever been employed by Defendants, affiliated or associated with Defendants or rendered any service to Defendants, so indicate and state the nature and time period of such employment, affiliation, association or service. Once a person has been fully identified in your answer, such person may be identified thereafter by name alone.

G. Whenever Defendants' response to an interrogatory mentions a person, set forth with specificity the following information with respect to each such person:

- (a) name and last known home address and telephone number;
- (b) business or other relationship of such person to Defendants, if any; and
- (c) position and title that person presently has and the position and title held by that person at the time referred to in the interrogatory.

H. When used with respect to a corporation, "identify" or "identity" shall mean to state the corporation's full name, the address of its principal place of business, the state of incorporation, and the corporation's principal activity or activities. When used with respect to a person other than an individual or a corporation, "identify" or "identity" means

to state its official name or designation and the address of its principal place of business; identify all partners or members; and state the principal activities of such entity.

I. “Identify” or “identity”, with reference to documents, means to state the title of the document, if any, the date of the document or the date it was prepared, the identity of the author or authors, the recipients of the documents (including copies thereof), the type of document, and a description of the subject matter of the document. If any document that Defendants are asked to identify is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in Defendants’ possession, custody or control, state the disposition which was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

J. “Person” means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; partnership; association; governmental body, agency or subdivision; committee, commission or other organization or entity.

K. “Concerning” includes referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, exchanges of written or recorded information, face-to-face meetings, and telephone conversations.

L. “Communication” or “communications” includes any written or oral communication of all kinds including, but not limited to, letters, telegraphs, exchanges of written or recorded information, face-to-face meetings, and telephone conversations.

M. The terms “identify” or “identity” with respect to a communication requires that you state (a) the date of the communication; (b) its type (*e.g.*, letter, phone call, or face-to-face meeting), (c) the identity and role of each participant (see definition of “identify” with respect to persons, above), (d) its place, if a face-to-face meeting, and (e) the identity of each document constituting or reflecting the communication (see definition of “identify” with respect to documents, above), and (f) the substance of the communication in detail.

N. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

O. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

P. The terms “rape kit” or “SAFE kit” include all forms of sexual assault forensic examinations.

INTERROGATORIES TO DEFENDANTS

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.

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.

3. 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.

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

5. 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.

6. Identify all internal policies, procedures, and protocols at Oconee Memorial Hospital (the Hospital) and/or all other Greenville Hospital System (GHS) owned or operated facilities, whether written or otherwise, regarding or in any way related to the collection of forensic evidence from sexual assault victims or "rape kits."

7. Set forth a list of all policies, procedures, and protocols provided to sexual assault nurse examiners ("SANE's") at the Hospital and/or all other GHS owned or operated facilities.

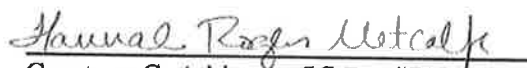
8. Set forth a list of all materials used for the purpose of training SANE nurses or any other employees, staff, independent contractors, agents, or representatives at the Hospital and/or all other GHS owned or operated facilities regarding the collection of rape kits and/or dealing with victims, alleged victims, or suspected victims of sexual assault.

9. List all policies, procedures, and protocols regarding the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence from victims, alleged victims, or suspected victims of sexual crimes at the Hospital and/or all other GHS owned or operated facilities.

10. Provide the number of victims, alleged victims, or suspected victims of sexual crimes received and/or examined within the last five (5) years by the Hospital and/or all other GHS owned or operated facilities, itemized by year and individual facility.
11. For all victims, alleged victims, or suspected victims of sexual crimes who checked in or reported to any GHS owned or operated facility in the time period specified in Interrogatory No. 10, list the number of such persons who were either denied or refused treatment. For each of those instances please provide:
 - a. Date of the denial or refusal of treatment;
 - b. The particular facility where the denial or refusal occurred; and,
 - c. An explanation of why the individual was denied or refused treatment.
12. Identify any and all lawsuits and previous claims of whatever type brought against the Hospital and/or any GHS owned or operated facility by any victim, alleged victim, or suspected victim of sexual crimes within the last ten (10) years. As to each such claim/lawsuit identified, please identify the case number and state whether it is settled, dismissed, or currently pending.
13. Provide a list of all employees, staff, independent contractors, agents, or representatives at the Hospital from the last five (5) years who have been trained as SANE nurses.
14. List all training of any type given to any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility in regard to the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence compliant with State and Federal law.

15. Provide a list of all trainings, requirements and/or certifications that SANE nurses employed at the Hospital and/or any other GHS owned or operated facility are required to complete or obtain.
16. Identify any and all other instance(s) whereby any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility gave possession of a rape kit to a victim, alleged victim, or suspected victim of a sexual crime instead of giving possession of the rape kit directly to the appropriate legal authority or law enforcement.
17. Identify any and all other instance(s) whereby any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility advised and/or recommended to a victim, alleged victim, or suspected victim of a sexual crime that the victim personally transport the rape kit to the appropriate legal authority.
18. Identify the dates of any and all other instance(s) in which the Hospital or any other GHS owned or operated facility reported an alleged sexual assault or crime to law enforcement and was advised that law enforcement was either unwilling or unable to take possession of a rape kit. For each and every such instance identified, explain in detail how the situation was handled or resolved by the Hospital and/or any other GHS owned or operated facility.
19. Identify any and all policies of the Hospital and/or GHS regarding how to handle law enforcement refusal to personally retrieve rape kits.

20. Identify any and all policies of the Hospital and/or GHS regarding or in any way related to when blood evidence is to be collected from a victim, alleged victim, or suspected victim of a sexual crime.
21. Identify any and all policies and training used by the Hospital and/or all other GHS owned or operated facilities to ensure compliance with the South Carolina Attorney General's protocols regarding sexual assault forensic examinations, the collection of evidence pertaining to sexual assault(s) and the handling, retention, protection, storage, safeguarding, and transfer of any and all such evidence collected.
22. If the Defendants are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.


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Attorneys for Plaintiff

January 17, 2019
 Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiffs,

vs.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Doyck, M.D, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-37-00762

**PLAINTIFF'S FIRST SET OF
REQUEST FOR PRODUCTION TO
DEFENDANTS**

TO: KENNETH SHAW, ESQUIRE, ATTORNEY FOR DEFENDANTS:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the undersigned attorneys for Plaintiffs hereby request that Defendants produce the documents and things identified below for examination, inspection and copying at the offices Metcalfe & Atkinson LLC, 1395 S. Church Street, Greenville, South Carolina, or some other mutually convenient place agreed to by the parties within 30 days after the date of service of these requests or any earlier date specified by the Court.

These requests are continuing, and Defendants are obligated to produce all documents responsive to these requests, including such documents as they become available to Defendants or of which Defendants become aware after their response hereto is served.

INSTRUCTIONS AND DEFINITIONS

A. In responding to these requests, produce all documents which are in the custody, possession, or control of the Defendants, including documents which are in the custody, possession, or control of the Defendants' attorneys, investigators for the Defendants' attorneys, independent accountants, agents, or any person acting on behalf of or in concert with Defendants or with any of these persons, and not merely documents from the Defendants' own files or records.

B. If the Defendants cannot respond to any of the following requests in full, respond to the extent possible, specifying the reasons why the party is unable to respond in full, and provide whatever information the party has concerning the unprovided documents or portions of documents, including the source or sources from which the documents or portions thereof may be obtained.

C. If documents requested are not reasonably available to Defendants in precisely the form requested, or for the particular date or period specified, but could be produced in a modified form and/or for a slightly different date or period, please respond to that request in such modified form or for such different date or period.

D. If any document which is responsive to a request is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefore. If any such document is no longer in existence or no longer in Defendants' possession, custody or control, state the disposition that was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person(s)

performing such disposition, the substance or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

E. If any document or portion thereof is or will be withheld because of a claim of privilege or work product:

- (1) state the basis on which the privilege is or will be claimed;
- (2) state the author of the document;
- (3) identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document;
- (4) state the date of the document; and
- (5) state the general subject matter of the document or portion thereof for which the privilege is claimed.

F. The term "document" shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped or graphic matter of every type and description, including computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of Defendants, including but not limited to, all writings, letters, minutes, bulletins, correspondence, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intraoffice communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, photographs, drafts, data sheets, data compilations,

computer data sheets, computer data compilations, worksheets, statistics, speeches or other writings, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into usable form, or any other tangible thing which records information in any way. The term "document" shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the possession or control of the Defendants if it is within the possession or control of any of the Defendants' attorneys, investigators for the Defendants' attorneys, independent accountants, agents, or any person acting on behalf of or in concert with Defendants or with any of these persons, or otherwise under their possession or control.

G. "Person" means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; firm; partnership; association; group; governmental body, agency or subdivision; committee; commission; or other organization or entity.

H. The terms "concern", "concerning", "relate to", and "relating to" include referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing, constituting, or in any way relevant to the specified subject within the meaning of Rule 26 of the South Carolina Rules of Civil Procedure.

I. "Communication" includes any written or oral communication of all kinds including, but not limited to, letters, telegrams, exchanges of written or recorded information, face-to-face meetings, and telephone conversations.

J. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronouns so used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

K. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

L. "Each", "any", and "all" are both singular and plural.

M. The terms "rape kit" or "SAFE kit" include all forms of sexual assault forensic examinations.

REQUESTS FOR PRODUCTION

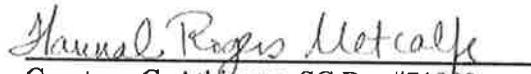
1. Any and all statements of possible witnesses, including parties to this action, whether written, oral, summarized or reproduced in any manner whatsoever.
2. Any and all photographs, diagrams, sketches, plat or other prepared documents of any kind whatsoever that are in any way related to any of the facts, claims or defenses in this case.
3. Any and all records, reports, or other written or printed materials referred to in Defendants' responses to Plaintiff's First Set of Interrogatories in the above-captioned matter.
4. Any and all documents or tangible objects upon which Defendants intend to rely upon and/or to offer into evidence as exhibits at the time of trial of this case.
5. Any and all communications between any of Defendants' owners, management, other employees, or any third party regarding the allegations contained in Plaintiff's Complaint.

6. Any and all documents relating to the internal procedures, policies, and/or protocols for the collection of rape kits at Oconee Memorial Hospital (the Hospital) and/or all other Greenville Hospital System (GHS) owned or operated facilities.
7. Any and all documents relating to the policies, procedures and/or protocols provided to SANE nurses at the Hospital and/or all other GHS owned or operated facilities.
8. Any and all documents used for the purposes of training SANE nurses at the Hospital and/or all other GHS owned or operated facilities.
9. Any and all documents relating to any policies or procedures in any way related to the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence for SANE nurses at the Hospital and/or all other GHS owned or operated facilities.
10. Any and all documents relating to any policies and procedures for sexual assault forensic evidence collection, handling, preservation, storage, safeguarding, transfer, and retention for employees, staff, independent contractors, agents, or representatives at the Hospital and/or any GHS owned or operated facility.
11. Any and all documentation relating to any claim or lawsuit brought by any victim, alleged victim, or suspected victim of a sexual crime against the Hospital and/or any other GHS owned or operated facility within the last ten (10) years.
12. Any and all documentation evidencing any training or used in any training given to employees, staff, independent contractors, agents, or representatives at the Hospital and/or any other GHS owned or operated facility regard the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence from victims, alleged victims or suspected victims of a sexual crime.

13. Any and all documentation relating to any policy of the Hospital and/or GHS regarding what to do if law enforcement refuses to personally collect a rape kit from the Hospital and/or GHS.
14. Any and all documents evidencing or relating to any and all policies or procedures of the Hospital and/or any other GHS owned or operated facility as to when blood evidence is to be collected during a forensic examination of a victim, alleged victim or suspected victim of a sexual crime.
15. All correspondence concerning the Plaintiff and/or this case between and/or among the Defendants, the Plaintiff, law enforcement, victim's advocate and/or any other person or entity.
16. All documents that the Defendants intend to use at trial of this case or to question any witness at trial or during any deposition.
17. All non-privileged notes or correspondence by, to, or from any party concerning the subject matter of this lawsuit.
18. Any and all documents (a) reviewed, considered, and/or relied upon by each and every expert or consultant with whom the Defendant(s) consulted or whom the party intends to call as an expert witness at trial in connection with the case, or (b) that embody, reflect, refer to or summarize reports or memoranda prepared for the party to this litigation by any person the party expects to call as an expert witness.
19. Any and all expert's or consultant's reports, whether draft or final, pertaining to this litigation.
20. Any records, documents or reports received or produced pursuant to a subpoena or FOIA request or otherwise from or by any person or entity relating to the

subject matter of this lawsuit, including but not limited to, the claims or allegations of any party. Please note that this request is continuing and applies to any subpoenas issued pursuant to RULE 45 SCRPC or other requests made during this litigation.

21. All documents relating in any way to the matters alleged in the Plaintiff's complaint, the Defendants' answer, or the subject matter of this action.


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Attorneys for Plaintiff

January 17, 2019
Greenville, South Carolina

EXHIBIT B

Greenville Hospital System
Emergency Services

Title:	<u>Alleged Sexual Assault</u> Emergency Services, Section III, Doc 7.1	
Policy:	All alleged sexual assault cases will follow medical legal protocol.	
Personnel:	Trained RN's and physicians	
Desired Outcome:	To provide medical care and assist with evidence collection while maintaining dignity and respect for the victim	
Supportive Data/Agencies:	Law Enforcement and Greenville Sexual Trauma Center (GSTC)	
Equipment :	Sexual Assault kits Speculum Culture supplies for GC and Chlamydia , not DNA probe Woods lamp Blood specimen tubes (2 red tops, 1 grey top and 1 purple top)	
Steps:		
1. Upon patient's arrival, patient is placed in a private room or family room and notify the Charge Nurse	1. These patients are not triaged	
2. Establish when and where the incident occurred	2. If incident > 72 hours ago, explain to patient that we can not collect evidence, but will exam and treat her/him.	
3. Notify Law Enforcement and the Rape Crisis Counselor upon patient's arrival, if not accompanying patient. If patient is a Child, inform ChildLife, if available.	3. Call the law enforcement agency for the county where the incident occurred. If the patient does not know what county or city the incident occurred in, call the Greenville County Sheriffs Department	
4. Obtain a case number, brief history and give patient a brief explanation of the procedures	4. If evidence will not be collected, follow normal procedure for patient treatment.	
5. Have registration come register patient	5. Chart should be handed back to the RN caring for the patient or to the Charge Nurse	
6. Obtain written and witnessed consent for exam and release form to proper authorities.	6. For legal permission to treat, perform HIV testing and obtain payment from Victim Compensation.	
7. Open kit and start ED record. See Note 1 if patient is a minor, disabled or elderly victim.	7. Once the seal is broken on the kit, it must remain with you at all times or in a secure place only you have access to.	
8. Notify the MD and begin the nursing part of the exam	8. The OB/GYN resident is called for female patients 12 years old and up. The CEC MD is notified of patients < 12 years old and male patient <17 years old. The ETC MD does the exam on male patients 17 years and older.	

Greenville Hospital System
Emergency Services

Title: Alleged Sexual Assault

9. Before the patient is undressed, ask patient to stand on white paper from kit. While patient is standing on the white paper ask them to undress and place all of their clothing in the proper bags (bags are labeled). Patient is then placed in a hospital gown. The white paper is folded and placed in the bag.	9. White paper will capture any evidence that might fall from the patient.
10. Draw blood for GMMC lab and sled kit . Blood is sent to the ETC lab for BHCG, RPR, HIV and Hepatitis B. Urine is collected only at the MD's request. If the patient is a pediatric patient who does not need a BHCG, ELMA cream can be applied and lab work collected at the conclusion of the exam.	Urinalysis is done after MD exam, if requested. Obtain the patients signature, as appropriate, acknowledging laboratory specimens are being collected. The two red top tubes go to our lab and the grey and purple top tubes are placed in the SA kit.
11. Begin complete physical assessment and document on page 2 of the ED record.	If the victim is a child, the only part of the exam that the nurse does is the undressing of the child. A pediatric MD does the examination.
A. Examine head and scalp	Document any pain, deformities, laceration or bruises. Check pupils and document size and reaction to light. Note any drainage from ears or nose.
B. Inspect oral cavity	Document foreign bodies, lacerations, the presence of blood, pain or bruising
C. Palpate neck	Note tenderness, pain, bruising or swollen glands
D. Auscultate heart	Note rate and rhythm
E. Auscultate lung fields	Note lung sounds
F. Inspect breasts	Document bruising, bite marks and lacerations
G. Palpate shoulders, upper chest, upper extremities and back. Do simple ROM.	Document pain and bruising. Note any limitations.
H. Inspect abdomen	Palpate abdomen, document guarding, tenderness, pain, bruising, lacerations and bite marks
I. Inspect buttocks	Note bruising, lacerations and bite marks
J. Inspect and palpate lower extremities. Do simple ROM	Document tenderness, pain, bruising, lacerations, deformities and bite marks. Note any limitations.

Greenville Hospital System
Emergency Services

Title: Alleged Sexual Assault

12. If there is any trauma, notify Law Enforcement so photographs can be taken. Inform Law Enforcement of any bite marks, so they can call in the odontologist to take molds of the bite marks.	12. Stay with the patient while the photographs are being taken
13. Begin collecting samples:	13. Specimens from the fingernails, hair or saliva should be obtained by the Registered Nurse.
A. Hair from head	
B. Saliva	If patient has bite marks, to rule out self bites
C. Fingernail scrapings	In case patient has scratched assailant.
D. Pubic hair combings and plucking	
14. Set up for a pelvic exam	
A. Cultures for GC and Chlamydia	Do not use the DNA probe. These are sent to the ED lab.
B. Wet prep (for motile vs immotile sperm) and KOH (Trichomonas)	Looked at by the MD after the exam
C. Slides and packets in kit	These remain with the kit and should be dry when placed back in kit.
15. Renotify appropriate MD	15. See Key Point for step #8
16. Complete paperwork and pull up BHCG results for the physician before they arrive	
17. Assist with the pelvic exam	
18. Obtain GC and Chlamydia throat swabs for oral penetration	18. Sent to the ED lab
19. Administer medications as ordered. If Ovril is given, the patient should take two pills now and two in 12 hours.	19. Usual meds ordered are prophylactic antibiotics, tetanus and diphtheria if needed and Ovril and Phenergan. Phenergan is taken prior to the Ovril to prevent the patient from becoming nauseous and vomiting up Ovril.
20. Treat any minor trauma with cleaning and bandaging as needed	
21. Finish paperwork	21. Complete the chain of custody on bottom of the box. The MD must sign first, nurse second and law enforcement last.

Greenville Hospital System
Emergency Services

Title: **Alleged Sexual Assault**

22. Separate paperwork and seal box	22. Follow the color guide at the bottom of the paperwork. Clothing and the kit go with Law Enforcement along with designated paperwork. Law Enforcement Officer signs the release form and places the copy in the box. The original of this form stays with the ED record. The pink copies of the form are placed in an envelope for Law Enforcement. It is important for all materials to be dry prior to placement in the box. REMEMBER: underwear goes in the box so it can be refrigerated.
23. Complete the appropriate instruction sheet and give to patient along with the medications to go home.	23. Ensure patient knows that if she vomits right after taking the Ovril she needs to call to get more.
24. The paperwork should remain confidential. The Nurse Manager will forward the paperwork to the appropriate individuals for billing purposes.	

NOTES:

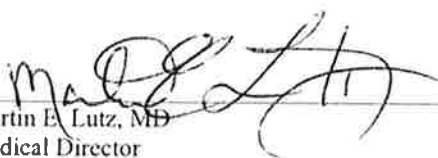
1. If the victim is a minor, disabled or elderly and the perpetrator lives with the victim, DSS needs to be notified when the assault kit is started.
2. If the nurse starting the kit is unable to complete the kit, the starting nurse must sign the back of the kit box and turn it over to another nurse. Whenever possible, the nurse who starts the kit should remain with the patient.

Original: 11/95
Revised: 12/03
12/01
01/97

Greenville Hospital System
Emergency Services

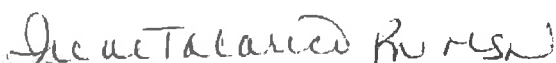
Title:

Alleged Sexual Assault



Martin E. Lutz, MD
Medical Director
Emergency Services

DATE: 11/26/03



Irene Talarico, RN, MSN
Director of Nursing
Emergency Services

DATE: 11/26/03



Suzanne K. White, MN, RN
Vice President, Patient Care and Nursing Services
Chief Nursing Officer

DATE: 12/28/03

Policy/Procedure:

Purpose:	To provide proper care when assisting with a sexual assault exam.
Scope:	Proper evidence collection and maintenance of patient privacy and emotional state.
Responsibility:	Nurses, physicians, unit coordinators
References:	South Carolina Law Enforcement Division (SLED) sexual assault exam kit
Definitions:	RC – Rape Crisis Center - Foothills Alliance - 231-7273 SOVA - South Carolina Office of Victim Assistance HIM - Health Information Management
Actions / Tasks / Procedures:	Place the patient in a room as soon as possible; valuable evidence may be lost with the passage of time. Interviewing should only take place in the patient's room.

Notifications

Foothills Alliance - charge nurse or designee

Law enforcement if necessary

DSS if the patient is mentally ill or disabled, or for minors if the suspect is a family member

Sexual assault exam

Inform the patient that there is no obligation to prosecute and any evidence collected will not be turned over to police without consent (see 'Anonymous reporting'). Treatment is not withheld if the patient fails to agree to release information or evidence to the police. The extent of exam and treatment depends on the physician's judgment and the patient's wishes.

If the patient requests his or her private physician, efforts should be made to fulfill this request. However, a private physician with little experience in rape exam is less likely to correctly preserve evidence for successful prosecution.

A nurse or RC counselor (RCC) remains with the patient throughout the visit. A female nurse is present during the exam and treatment of a female patient, and her name noted in the medical record. Law enforcement is not present during the exam.

The nurse does not assume the role of interrogator. Though the medical record should not reflect any conclusions regarding whether a crime has been committed, it should be concise and complete in the event that it is subpoenaed in court. Direct quotes from the patient and details of the alleged attack pertinent to the medical exam will be noted. All questions will be completed on the documents enclosed in the SLED kit.

Anonymous reporting

Sexual assault victims 18 years or older will be informed of available options for reporting the assault. If the victim chooses the anonymous reporting option, a SLED kit is collected and will be held by law enforcement for 1 year. (If the accused is a legal spouse, the kit is only held for 30 days.) An investigation is initiated only if the victim requests.

After completion, the kit is sealed. An anonymity number is obtained from law enforcement and placed on the outside of the kit. The kit and any physical evidence are turned over to law enforcement without providing any of the victim's personal identifying information.

Rape Crisis will complete and maintain a form that links the anonymity number to the patient's identification. RC will notify the victim at 11 months as a reminder that the kit is still being

Policy/Procedure:

held. If no investigation has been initiated by the victim after 1 year (or 30 days for spousal accusation,) any held evidence is destroyed.

Evidence collection

Once the kit has been initiated, it cannot be left unattended under any circumstances. The kit must be properly transferred to law enforcement to preserve the chain of evidence, with documentation of this transfer in the paperwork that goes in the box and on the outside of the box itself after it is sealed.

The patient's clothes are considered evidence and once collected, become part of the chain of custody. Instruct the patient to undress carefully while standing on a disposable surface. All items should be kept separate from each other and placed in separate bags, along with the material the patient was standing on, and labeled appropriately. Wet or damp items should not remain in plastic bags for extended periods of time. Inform the officer if bags contain damp or wet items.

External seminal stains on the body should be removed carefully with saline-moistened cotton swabs, allowed to dry, and placed in labeled containers containing information as to where on the body they were found. A Woods lamp or ultra violet light may aid in the detection of seminal fluid.

Saliva samples must be completely dry before folding and placing in envelope.

Slides should be clearly labeled with the patient's name using a diamond pencil or medium soft lead pencil if the slide has frosted end. (A ball point pen, indelible marker, or wax pencil should not be used.)

After collection, all specimens are placed in their individual envelopes, sealed, and returned to the box.

SOVA Medical Examination Release Form and the SOVA Sexual Assault Protocol Billing Statement form

Prior to discharge, both SOVA forms must be completed to ensure proper payment for service. For exams that are **not** anonymous, all blanks and signatures must be filled in. For anonymous exams, the only difference is that law enforcement does not sign and the word "Anonymous" is written in this space. The completed forms should remain with the patient's chart.

Discharge and follow-up

After the exam and evidence collection is complete, the patient should have the opportunity to attend to personal hygiene needs. The RCC will supply clothing if necessary. The patient should be instructed to follow-up with Foothills Alliance (provide phone number) and their personal physician.

The patient should be discharged with a friend, relative, or police and not left stranded to find a way home. Request that a Patient Access Representative come to the room to have any final financial discussions. This will protect the patient's privacy by not being escorted to the discharge desk by the nurse who is carrying the SLED kit.



Sexual Assault Exam

QSP-ED-0059

Rev. Level 4

Rev. date: June 2014

Page 3 of 3

Policy/Procedure:

Approvals: Senior Director of Patient Care Services

Date:

This document contains information of a proprietary nature. Information contained herein shall be kept in Confidence and divulged only to persons who by nature of their duties require access to such documentation

Revision Level	Revision Date	Revision Level	Revision Date	Revision Level	Revision Date
0	November 2005				
1	April 2007				
2	June 2010				
3	June 2012				
4	June 2014				



GU/GYN Emergencies

Greenville Health System
2015

Sexual Assault



- Sexual Assault is the sexual exploitation, forcible penetration, or an act of sexual contact on the body of another person, male or female, without his or her consent
- Sexual Assault Nurse Examiners (SANE) trained nurses available on call to provide specialized health and forensic care
- Law Enforcement (SLED) provides the Sexual Assault Evidence Collection Kit

Sexual Assault



General instructions:

- Call in the Julie Valentine Center Advocate for patient support
- Make certain the patient is medically cleared prior to beginning sexual assault evidence collection
- When documenting be as complete and specific as possible using quotations
- Make certain all swabs have had plenty of time to dry before packaging
- No plastic bags

Sexual Assault



General instructions:

- Seal all packaging
- Use the red evidence tape to seal clothing in the bag and box
- Follow strict chain of custody with the officer
- Document all interventions (lab collection, assessment, medications, discharge, etc.)
- Wear gloves so no personal DNA is mixed with samples
- Change gloves between swab collection

Sexual Assault



Assessment:

- Date, time, location of assault (county)
- Use of weapons
- Any consensual intercourse within 5 days
- Any post assault hygiene
- Any voluntary substance or alcohol use
- Any injuries left on the perpetrator
- Contraceptive use by perpetrator
- Last menstrual period
- Current medications

Sexual Assault



Assessment:

- Note patients affect (crying, calm, angry, anxious)
- Head to toe assessment: bite marks, fingernails, trauma, bruising
- UV light exam: assists to visualize semen

Sexual Assault



Diagnostics:

- CBC
- Urinalysis
- Urine pregnancy test
- DNA swabs: oral, vaginal, rectal
- STD swabs
- Toxicology panel

Sexual Assault



Interventions:

- Evidence collection
- Follow strict chain of custody
- Clothing removal on paper sheet
- Place undergarments in separate bag (even if not undergarments the patient was wearing during the assault.
- Visualize patient with UV light (saliva, semen). IF it glows, swab it. Individual swabs for each area.
- Document specifically where evidence obtained

Sexual Assault



Interventions:

- Fingernail scraping: each hand has its own paper.
- Pubic hair combing
- Medications:

STD prophylaxis (Rocephin, Zithromax, Flagyl); “Plan B” if negative pregnancy test (within 72 hours of assault);
Zofran (nausea)

Sexual Assault



General Information:

- Even if you did not collect a sample. Document unable to obtain and put the envelope back in the box
- Can put condoms, tampons, etc. in a urine cup and label
- Exact measurement of bruising and marks with tape measure. Describe clearly with medical terminology.

EXHIBIT C

METCALFE & ATKINSON, LLC
ATTORNEYS AT LAW

April 12, 2019

Kenneth Shaw
Haynsworth Sinkler Boyd, P.A.
One North Main, 2nd Floor
Greenville, SC 29601

RE: Jane Doe vs. Greenville Health System, et al.
C/A No.: 2018-CP-37-00762

Dear Ken:

I am writing in follow-up to Plaintiff's first set of discovery requests that were served on Defendants on January 17, 2019 in the above-referenced matter. As of the date of this letter, our office has received only Defendants' Responses to Plaintiff's First Set of Requests to Admit and my file indicates that Defendants' Responses to Plaintiff's First Set of Interrogatories and Request for Production are still outstanding. Please provide responses to Plaintiff's First Set of Interrogatories and Request for Production by May 3, 2019 to avoid Plaintiff being required to file a motion to compel.

Thank you in advance for your cooperation.

Sincerely,



Courtney C. Atkinson
catkinson@malawfirm.com

CCA/awr

Haynsworth Sinkler Boyd, P.A.

Date Rec'd 4/17/19
C/M # 0856 S. 0860
Routing KNS, AMc
Calendared _____

EXHIBIT D

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

From: Shaw, Kenneth
Sent: Thursday, April 18, 2019 8:11 AM
To: catkinson@malawfirm.com; hmetcalfe@malawfirm.com
Cc: Clark, Amy <aclark@hsblawfirm.com>
Subject: Jane Doe - Discovery

Courtney,

I received your letter regarding discovery requests. As I am sure you are aware, the Rules provide defendants 15 additional days from the date the answer is due to respond to discovery requests. When I filed the motion to dismiss, that stayed the time to file our answer and respond to discovery requests. Obviously the judge issued an order denying the motions to dismiss last Friday, which would normally start the clock running on my time to file an answer; however, as you probably saw yesterday, I filed a motion for reconsideration, which I believe stays the time again. In addition, to the extent the judge denies our motion for reconsideration or decides to deny it in part, I've asked him to stay the case pending resolution of the appeal. I hope you agree that makes sense from a judicial economy perspective.

In any event, I would like to get a ruling on the motion before I have to bill my client for drafting an answer or responding to your discovery requests. Please let me know if you have any objections to me doing that. If the judge denies the motion altogether, it should not take me very long thereafter to file an answer and I would expect to have discovery responses to you within a couple of weeks after the answer is filed.

Feel free to give me a call if you wish to discuss further.

Thanks,

Ken

**HAYNSWORTH
SINKLER BOYD**

Kenneth N. Shaw | Attorney
Direct 864.240.4541 | kshaw@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor | Greenville, SC 29601
Main 864.240.3200 | Fax 864.240.3300

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

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EXHIBIT E

Clark, Amy

From: Courtney Atkinson <catkinson@malawfirm.com>
Sent: Monday, April 22, 2019 5:38 PM
To: Shaw, Kenneth
Cc: hmetcalfe@malawfirm.com; Clark, Amy
Subject: Re: Jane Doe - Discovery

That's fine Ken

****Please be advised that Metcalfe & Atkinson is now located at 1395 South Church Street, Greenville, SC 29605.**

Courtney C. Atkinson
Metcalfe & Atkinson, LLC
1395 S. Church Street
Greenville, South Carolina 29605
(864) 214-2351

On Mon, Apr 22, 2019 at 4:48 PM Shaw, Kenneth <kshaw@hsblawfirm.com> wrote:

Courtney,

I just wanted to confirm you received my email below. Obviously, I saw where you filed a memo in opposition, so I know you don't agree we should stay the case pending the appeal, but do you have any objection to me waiting to file an answer until we get a ruling on the motion to reconsider. Again, I don't think I'm required under the rules to file an answer until the motion to reconsider is decided, but if you have reason to believe otherwise, please let me know.

Thanks,

Ken

**HAYNSWORTH
SINKLER BOYD**

Kenneth N. Shaw | Attorney
Direct 864.240.4541 | kshaw@hsblawfirm.com
Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor | Greenville, SC 29601
Main 864.240.3200 | Fax 864.240.3300

EXHIBIT F

☐	Type	From	To	Ext	Forwarded To	Name	Date / Time	Recording	Action	Result	Length
☐	(-)	(864) 240-3200	(864) 214-2319			⊕ Add Contact	07/17/2019 9:19 AM	-	Phone Call	Vocicemail	0:01:43
☐	(-)	(864) 240-3200	(864) 214-2351			⊕ Add Contact	07/03/2019 2:35 PM	-	Phone Call	Accepted	0:05:41
☐	(-)	(864) 240-3200	(864) 214-2351			⊕ Add Contact	06/19/2019 9:48 AM	-	Phone Call	Accepted	0:06:36
☐	(-)	Amv	(864) 240-3200	10...		⊕ Add Contact	06/18/2019 10:53 AM	-	VoIP Call	Call connected	0:01:08
☐	(-)	(864) 240-3200	(864) 214-2351			⊕ Add Contact	06/18/2019 9:45 AM	-	Phone Call	Accepted	0:08:32
☐	(-)	(864) 240-3200	(864) 214-2351			⊕ Add Contact	06/18/2019 8:58 AM	-	Phone Call	Accepted	0:00:57
☐	(-)	(864) 240-3200	(864) 214-2351			⊕ Add Contact	06/07/2019 9:19 AM	-	Phone Call	Accepted	0:13:48
☐	(-)	(864) 240-3200	(864) 214-2351			⊕ Add Contact	06/05/2019 2:43 PM	-	Phone Call	Accepted	0:01:05
☐	(-)	(864) 240-3200	(864) 214-2351			⊕ Add Contact	06/05/2019 1:34 PM	-	Phone Call	Accepted	0:07:28

EXHIBIT G

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Docyk, MD, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

*Defendants' Answers to Plaintiff's First
Set of Interrogatories*

TO: PLAINTIFF AND HER ATTORNEY, COURTNEY ATKINSON, ESQ.

Defendants Answer Plaintiff's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff's Interrogatories to the extent they seek to impose a burden on Defendants to provide responses in excess of those requirements imposed by the South Carolina Rules of Civil Procedure.

2. Defendants object to Plaintiff's Interrogatories to the extent they seek documents or information containing legal or factual opinions or conclusions.

3. Defendants object to Plaintiff's Interrogatories to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents subject to the attorney/client privilege, work product doctrine or the protection afforded mental impressions, conclusions, opinions or legal theories of Defendant's attorneys or its representatives as defined in South Carolina Rule of Civil Procedure 26(b)(3), and/or information protected by S.C. Code § 44-7-392 and/or S.C. Code § 40-71-10, et. seq., 42 USCS s. 299b-22, KD Ex Rel. Dieffenbach v. United States, 715 F. Supp. 2d 587.

4. Defendants object to Plaintiff's Interrogatories to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed. No such documents or information will be produced or identified in a Privilege Log.

5. Defendants object to Plaintiff's Interrogatories to the extent they seek or might be argued to have Defendants admit that events occurred or that the law is as described by Plaintiff in her pleadings or discovery requests. By answering an Interrogatory, Defendants are not admitting that events occurred or that the law is as described in Plaintiff's pleadings, her discovery requests, or in any discovery responses from Plaintiff.

6. Defendants object to Plaintiff's Interrogatories to the extent they seek to impose upon Defendants a duty to ascertain, create, or secure information which is not in Defendants' possession, custody or control.

7. Defendants reserve and do not waive their right to object to the relevancy, authenticity, competency or admissibility of any of the information contained in these Answers to Plaintiff's Interrogatories.

8. By answering Plaintiff's Interrogatories, Defendants are not waiving any immunity or defense they, or any of their employees, or agents might have to any claims asserted against Defendants in the above-captioned lawsuit.

9. Defendants object to Plaintiff's Interrogatories to the extent they seek or may be deemed to seek production of materials or information not within the time period relevant to the above-captioned lawsuit.

10. Defendants reserve the right to supplement or amend its Answers to Plaintiff's Interrogatories.

11. Defendants object to Plaintiff's Interrogatories to the extent they are vague, overly broad, or seek or may be deemed to seek production of materials or discovery of information, the location, retrieval or production of which would be unduly burdensome to Defendants.

12. Defendants object to Plaintiff's Interrogatories to the extent they seek or may be deemed to seek production of materials or discovery of information that is irrelevant and immaterial to the claims asserted against Defendants in the above-captioned lawsuit.

13. By responding to Plaintiff's Interrogatories, Defendants are not waiving any other objections to discovery, any other defense to any claim asserted against Defendants in the above-captioned lawsuit, or any objection to admissibility of evidence.

SPECIFIC ANSWERS TO 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.

Answer

- (a) **Personnel of GHS d/b/a Oconee Memorial Hospital, including but not limited to:**
Melinda Bryant
Stormy Shealy, RN
Jane Finfrock, RN
Kevin Docyk, MD
Mary Beth Hendricks, RN
Karen Owens, RN
Chad Averett, NST
Edith Kozikowski
- (b) **Any other health care provider who rendered care and/or treatment to Jane Doe.**
- (c) **Any Georgia law enforcement officer involved in the investigation of the alleged rape that is at issue in this case, including Officer Tirado of the Dekalb County Police Department.**

See also medical records.

No written or recorded statements have been taken from the above witnesses other than those included in the medical records or police records.

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.

Answer

Defendants are in possession of Jane Doe's medical records from OMH and GHS as well as her medical bills from OMH.

Documents produced in response to a Dekalb Open Records Request. Documentation from Atlanta PD Open Records and Fulton County Open Records saying they have no records. Letter from GBI saying they can't give out records as investigation is still open in Dekalb.

SLED Sexual Assault Evidence Collection Kit. Defense counsel is in possession of one sample kit, which he will make available for inspection upon request. A copy of the instructions contained within the kit are being produced herein. Note – the sample kit was provided after the filing of this lawsuit and may not be the exact kit that was in use at the time of this incident.

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

Answer

Greenville Health System is self-insured.

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

Answer

Defendants have not yet identified an expert witnesses. When that is done, this Interrogatory will be supplemented. Defendants reserve the right to utilize any health care provider who rendered care and/or treatment to Jane Doe as an expert witness. Such expert would testify in accordance with his/her area of expertise.

5. 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.

Answer

Medical witnesses listed in Interrogatory 1 are expected to testify in regards to their care and/or treatment of Jane Doe. Officer Tirado and any other Georgia law enforcement officers are expected to testify in regards to their investigation of Jane Doe's sexual assault claim.

6. Identify all internal policies, procedures, and protocols at Oconee Memorial Hospital (the Hospital) and/or all other Greenville Hospital System (GHS) owned or operated facilities, whether written or otherwise, regarding or in any way related to the collection of forensic evidence from sexual assault victims or "rape kits."

Answer

See General Objections, specifically numbers 9, 11, and 12. Subject thereto, Defendants are aware of the following policies which may be responsive to this request:

- **OMH Policy/Procedure QSP-ED-0059 titled Sexual Assault Exam.**
- **Instructions included in the Sexual Assault Evidence Collection Kit provided by SLED.**
- **GHS Emergency Services Policy titled Alleged Sexual Assault; however, Defendants object to the relevancy of this policy. GHS took over operations of OMH shortly before this incident, and OMH was still in the process of incorporating GHS's policies and procedures. This particular policy was not being used at OMH at the time of the incident.**

7. Set forth a list of all policies, procedures, and protocols provided to sexual assault nurse examiners ("SANE's") at the Hospital and/or all other GHS owned or operated facilities.

Answer

See Answer to Interrogatory # 6, including all objections therein. Defendants further object to this interrogatory on the basis that it is irrelevant since a SANE certified nurse was not involved in the incident at issue.

8. Set forth a list of all materials used for the purpose of training SANE nurses or any other employees, staff, independent contractors, agents, or representatives at the Hospital and/or all other GHS owned or operated facilities regarding the collection of rape kits and/or dealing with victims, alleged victims, or suspected victims of sexual assault.

Answer

See General Objections, specifically numbers 9, 11, and 12. Subject thereto, OMH did not have a SANE program at the time. Nurses at OMH were provided the Sexual

Assault Exam policy referenced above and trained to follow the instructions contained within the rape kits, which were provided by SLED.

At the time of this incident, some GHS nurses received training which included a PowerPoint presentation called "GU/GYN Emergencies"; however, the presentation was not provided to OMH nurses at the time, thus it would be irrelevant to this case.

9. List all policies, procedures, and protocols regarding the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence from victims, alleged victims, or suspected victims of sexual crimes at the Hospital and/or all other GHS owned or operated facilities.

Answer

See Answer to Interrogatory # 6, including all objections therein.

10. Provide the number of victims, alleged victims, or suspected victims of sexual crimes received and/or examined within the last five (5) years by the Hospital and/or all other GHS owned or operated facilities, itemized by year and individual facility.

Answer

See General Objections, specifically numbers 11 and 12 as "victims of sexual crimes" is a vague, ambiguous, and overly broad term in the context of medical services. To the extent Plaintiff is inquiring about the number of cases where a person has reported to the ED with allegations of rape, Defendants object on the basis the information would be irrelevant, but nevertheless, Defendants do not have a reasonable way of accurately determining a responsive number.

11. For all victims, alleged victims, or suspected victims of sexual crimes who checked in or reported to any GHS owned or operated facility in the time period specified in Interrogatory No. 10, list the number of such persons who were either denied or refused treatment. For each of those instances please provide:
 - a. Date of the denial or refusal of treatment;
 - b. The particular facility where the denial or refusal occurred; and,
 - c. An explanation of why the individual was denied or refused treatment.

Answer

See Answer to Interrogatory # 10, including all objections therein. Further, Defendants object to this interrogatory on the basis it appears to request confidential information protected by HIPAA.

12. Identify any and all lawsuits and previous claims of whatever type brought against the Hospital and/or any GHS owned or operated facility by any victim, alleged victim, or

suspected victim of sexual crimes within the last ten (10) years. As to each such claim/lawsuit identified, please identify the case number and state whether it is settled, dismissed, or currently pending.

Answer

See General Objections, specifically numbers 3, 11, and 12. Subject thereto, all lawsuits filed against GHS are a matter of public record, thus equally available to Plaintiff as Defendants.

13. Provide a list of all employees, staff, independent contractors, agents, or representatives at the Hospital from the last five (5) years who have been trained as SANE nurses.

Answer

See General Objections, specifically numbers 11 and 12. Subject thereto, there were no SANE certified nurses at OMH at the time of Plaintiff's presentation to the Emergency Department.

14. List all training of any type given to any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility in regard to the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence compliant with State and Federal law.

Answer

See Answer to Interrogatory # 8, including all objections therein.

15. Provide a list of all trainings, requirements and/or certifications that SANE nurses employed at the Hospital and/or any other GHS owned or operated facility are required to complete or obtain.

Answer

See Answer to Interrogatory # 8, including all objections therein.

16. Identify any and all other instance(s) whereby any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility gave possession of a rape kit to a victim, alleged victim, or suspected victim of a sexual crime instead of giving possession of the rape kit directly to the appropriate legal authority or law enforcement.

Answer

See General Objections, specifically numbers 9, 11, and 12. Subject thereto, Defendants are not aware of any such incident; however, Defendants have no way of reasonably determining whether such an incident may have occurred in the past.

17. Identify any and all other instance(s) whereby any employee, staff, independent contractor, agent, or representative of the Hospital and/or any other GHS owned or operated facility advised and/or recommended to a victim, alleged victim, or suspected victim of a sexual crime that the victim personally transport the rape kit to the appropriate legal authority.

Answer

See General Objections, specifically numbers 5, 9, 11, and 12. Subject thereto, Defendants are not aware of any such incident; however, Defendants have no way of reasonably determining whether such an incident may have occurred in the past.

18. Identify the dates of any and all other instance(s) in which the Hospital or any other GHS owned or operated facility reported an alleged sexual assault or crime to law enforcement and was advised that law enforcement was either unwilling or unable to take possession of a rape kit. For each and every such instance identified, explain in detail how the situation was handled or resolved by the Hospital and/or any other GHS owned or operated facility.

Answer

See General Objections, specifically numbers 9, 11, and 12. Subject thereto, Defendants are not aware of any such incident; however, Defendants have no way of reasonably determining whether such an incident may have occurred in the past.

19. Identify any and all policies of the Hospital and/or GHS regarding how to handle law enforcement refusal to personally retrieve rape kits.

Answer

Defendants are not aware of any policies responsive to this request as Defendants are not aware of law enforcement ever refusing to retrieve a rape kit prior to this incident.

20. Identify any and all policies of the Hospital and/or GHS regarding or in any way related to when blood evidence is to be collected from a victim, alleged victim, or suspected victim of a sexual crime.

Answer

See Answer to Interrogatory # 6, including all objections therein.

21. Identify any and all policies and training used by the Hospital and/or all other GHS owned or operated facilities to ensure compliance with the South Carolina Attorney General's protocols regarding sexual assault forensic examinations, the collection of evidence

pertaining to sexual assault(s) and the handling, retention, protection, storage, safeguarding, and transfer of any and all such evidence collected.

Answer

See Answer to Interrogatory # 8, including all objections therein.

22. If the Defendants are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

Answer

Greenville Health System should be the only named defendant in this action. OMH is not an independent entity capable of being sued. Upstate Affiliate Organization, now known as Prisma Health – Upstate, did not exist at the time of the incident in question and had nothing to do with the services rendered to Plaintiff. Defendants Kevin Docyk, MD and Mary Beth Hendricks are improperly named pursuant to S.C. Code § 15-78-70.



Kenneth N. Shaw SC Bar 77859
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602
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kshaw@hsblawfirm.com
Attorneys for Defendants

Dated: 9/12/19
Greenville, SC

EXHIBIT H

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Docyk, MD, Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

*Defendants' Responses to Plaintiff's First
Set of Request for Production*

TO: PLAINTIFF AND HER ATTORNEY, COURTNEY ATKINSON, ESQ.

Defendants Respond to Plaintiff's First Set of Requests for Production as follows:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff's Requests to the extent they seek to impose a burden on Defendants to provide responses in excess of those requirements imposed by the South Carolina Rules of Civil Procedure.

2. Defendants object to Plaintiff's Requests to the extent they seek documents or information containing legal or factual opinions or conclusions.

3. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents subject to the attorney/client privilege, work product doctrine or the protection afforded mental impressions, conclusions, opinions or legal theories of Defendant's attorneys or its representatives as defined in South Carolina Rule of Civil Procedure 26(b)(3), and/or information protected by S.C. Code § 44-7-392 and/or S.C. Code § 40-71-10, et. seq., 42 USCS s. 299b-22, KD Ex Rel. Dieffenbach v. United States, 715 F. Supp. 2d 587.

4. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed. No such documents or information will be produced or identified in a Privilege Log.

5. Defendants object to Plaintiff's Requests to the extent they seek or might be argued to have Defendants admit that events occurred or that the law is as described by Plaintiff in her pleadings or discovery requests. By responding to a Request, Defendants are not admitting that events occurred or that the law is as described in Plaintiff's pleadings, her discovery requests, or in any discovery responses from Plaintiff.

6. Defendants object to Plaintiff's Requests to the extent they seek to impose upon Defendants a duty to ascertain, create, or secure information which is not in Defendants' possession, custody or control.

7. Defendants reserve and do not waive their right to object to the relevancy, authenticity, competency or admissibility of any of the information contained in these Responses to Plaintiff's Requests for Production.

8. By responding to Plaintiff's Requests, Defendants are not waiving any immunity or defense they, or any of their employees, or agents might have to any claims asserted against Defendants in the above-captioned lawsuit.

9. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek production of materials or information not within the time period relevant to the above-captioned lawsuit.

10. Defendants reserve the right to supplement or amend its Responses to Plaintiff's Requests for Production.

11. Defendants object to Plaintiff's Requests to the extent they are vague, overly broad or seek or may be deemed to seek production of materials or discovery of information, the location, retrieval or production of which would be unduly burdensome to Defendants.

12. Defendants object to Plaintiff's Requests to the extent they seek or may be deemed to seek production of materials or discovery of information that is irrelevant and immaterial to the claims asserted against Defendants in the above-captioned lawsuit.

13. By responding to Plaintiff's Requests, Defendants are not waiving any other objections to discovery, any other defense to any claim asserted against Defendants in the above-captioned lawsuit, or any objection to admissibility of evidence.

SPECIFIC RESPONSES TO REQUESTS FOR PRODUCTION

1. Any and all statements of possible witnesses, including parties to this action, whether written, oral, summarized or reproduced in any manner whatsoever.

Response

None other than those included in the medical records and those given to Officer Tirado of the Dekalb County Police Department.

2. Any and all photographs, diagrams, sketches, plat or other prepared documents of any kind whatsoever that are in any way related to any of the facts, claims or defenses in this case.

Response

See General Objections, specifically numbers 3 and 4. Subject thereto:

Defendant is in possession of Jane Doe's medical records from OMH and GHS. Defendant is also in possession of Jane Doe's medical bills from OMH.

**Documents produced in response to a Dekalb Open Records Request.
Documentation from Atlanta PD Open Records and Fulton County Open Records saying they have no records.
Letter from GBI saying they can't give out records as investigation is still open in Dekalb.**

SLED Sexual Assault Evidence Collection Kit. Defense counsel is in possession of one sample kit, which he will make available for inspection upon request. A copy of the

instructions contained within the kit are being produced herein. Note – the sample kit was provided after the filing of this lawsuit and may not be the exact kit that was in use at the time of this incident.

3. Any and all records, reports, or other written or printed materials referred to in Defendants' responses to Plaintiffs First Set of Interrogatories in the above-captioned matter.

Response

See General Objections, specifically numbers 9, 11, and 12. Subject thereto, see Response to Request # 2 and the below attached documents:

- OMH Policy/Procedure QSP-ED-0059 titled Sexual Assault Exam.
- GHS Emergency Services Policy titled Alleged Sexual Assault (subject to the objection stated in Defendants' Answer to Interrogatory # 6).
- PowerPoint presentation identified in Defendants' Answer to Interrogatory # 8, subject to the objection stated therein.

4. Any and all documents or tangible objects upon which Defendants intend to rely upon and/or to offer into evidence as exhibits at the time of trial of this case.

Response

See General Objections, specifically number 3. Subject thereto, all exhibits will be timely identified.

5. Any and all communications between any of Defendants' owners, management, other employees, or any third party regarding the allegations contained in Plaintiff's Complaint.

Response

See General Objections, specifically numbers 3 and 4. Subject thereto, none known other than those contained in the medical records and law enforcement records.

6. Any and all documents relating to the internal procedures, policies, and/or protocols for the collection of rape kits at Oconee Memorial Hospital (the Hospital) and/or all other Greenville Hospital System (GHS) owned or operated facilities.

Response

See Response to Request 3.

7. Any and all documents relating to the policies, procedures and/or protocols provided to SANE nurses at the Hospital and/or all other GHS owned or operated facilities.

Response

See Defendants' Answers to Interrogatories #s 7 and 8, including all objections therein. Subject thereto, see Response to Request 3.

8. Any and all documents used for the purposes of training SANE nurses at the Hospital and/or all other GHS owned or operated facilities.

Response

See Response to Request 7.

9. Any and all documents relating to any policies or procedures in any way related to the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence for SANE nurses at the Hospital and/or all other GHS owned or operated facilities.

Response

See Defendants' Answers to Interrogatories #s 7, 8, and 9, including all objections therein. Subject thereto, see Response to Request 3.

10. Any and all documents relating to any policies and procedures for sexual assault forensic evidence collection, handling, preservation, storage, safeguarding, transfer, and retention for employees, staff, independent contractors, agents, or representatives at the Hospital and/or any GHS owned or operated facility.

Response

See Response to Request 3.

11. Any and all documentation relating to any claim or lawsuit brought by any victim, alleged victim, or suspected victim of a sexual crime against the Hospital and/or any other GHS owned or operated facility within the last ten (10) years.

Response

See Defendants' Answer to Interrogatory # 12, including all objections therein.

12. Any and all documentation evidencing any training or used in any training given to employees, staff, independent contractors, agents, or representatives at the Hospital and/or any other GHS owned or operated facility regard the collection, handling, preservation, storage, safeguarding, transfer, and retention of evidence from victims, alleged victims or suspected victims of a sexual crime.

Response

See Response to Request 3.

13. Any and all documentation relating to any policy of the Hospital and/or GHS regarding what to do if law enforcement refuses to personally collect a rape kit from the Hospital and/or GHS.

Response

See Defendants' Answer to Interrogatory # 19.

14. Any and all documents evidencing or relating to any and all policies or procedures of the Hospital and/or any other GHS owned or operated facility as to when blood evidence is to be collected during a forensic examination of a victim, alleged victim or suspected victim of a sexual crime.

Response

See Response to Request 3.

15. All correspondence concerning the Plaintiff and/or this case between and/or among the Defendants, the Plaintiff, law enforcement, victim's advocate and/or any other person or entity.

Response

See General Objections, specifically numbers 3 and 4. Subject thereto, none known other than those contained in the medical records and law enforcement records produced in response to Request 2.

16. All documents that the Defendants intend to use at trial of this case or to question any witness at trial or during any deposition.

Response

See General Objections, specifically number 3. Subject thereto, all exhibits will be timely identified.

17. All non-privileged notes or correspondence by, to, or from any party concerning the subject matter of this lawsuit.

Response

See Response to Request 15.

18. Any and all documents (a) reviewed, considered, and/or relied upon by each and every expert or consultant with whom the Defendant(s) consulted or whom the party intends to

call as an expert witness at trial in connection with the case, or (b) that embody, reflect, refer to or summarize reports or memoranda prepared for the party to this litigation by any person the party expects to call as an expert witness.

Response

See Answer to Interrogatory 4.

19. Any and all expert's or consultant's reports, whether draft or final, pertaining to this litigation.

Response

See Answer to Interrogatory 4.

20. Any records, documents or reports received or produced pursuant to a subpoena or FOIA request or otherwise from or by any person or entity relating to the subject matter of this lawsuit, including but not limited to, the claims or allegations of any party. Please note that this request is continuing and applies to any subpoenas issued pursuant to RULE 45 SCRCF or other requests made during this litigation.

Response

See attached documents from Dekalb Police Department, Atlanta Police Department, Fulton County Sheriff's Office and Georgia Bureau of Investigation.

21. All documents relating in any way to the matters alleged in the Plaintiff's complaint, the Defendants' answer, or the subject matter of this action.

Response

See Responses above.


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 (864) 240-4541
kshaw@hsblawfirm.com
 Attorneys for Defendants

Dated: 9/12/19
 Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital, Greenville
Health System, Upstate Affiliate
Organization, Kevin Docyk, MD, Mary
Beth Hendricks

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

Certificate of Service

I HEREBY CERTIFY that a copy of the hereinbelow listed pleadings were served upon all counsel of record on this date by depositing in the United States Mail, proper postage affixed thereto, true and accurate copies thereof.

PLEADING:

- 1 Defendants' Answers to Plaintiff's First Set of Interrogatories
- 2 Defendants' Responses to Plaintiff's First Set of Requests for Production

COUNSEL SERVED:

Hannah Rogers Metcalfe
Courtney Atkinson
Metcalfe & Atkinson
PO Box 1826
Greenville, SC 29602

Dated: 9/12/19
Greenville, SC

HAYNSWORTH SINKLER BOYD, PA


Amy M. Clark

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk, MD; Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. Nos.: 2018-CP-37-00762 and 2019-CP-
37-0271 and 2018-NI-37-00010***Reply Memorandum in Support of
Defendants' Motion to Dismiss/Motion for
Summary Judgment***

Defendants had not planned to submit any additional information in support of the statute of limitations issue, as Defendants believed all pertinent information and all relevant arguments were already before the Court. Defendants still believe that; however, apparently Plaintiff felt it was necessary to file a nine page memorandum in which she essentially repeated the same arguments regarding discovery which she previously made to the Court. Defendants do not wish to engage in a petty discovery dispute that is irrelevant to the issue before the Court, but given the nature of some of the allegations/misrepresentations in Plaintiff's supplemental memorandum, Defendants feel a response is required.

**Plaintiff Has Made No Attempt to Conduct Discovery Pertinent to the Statute of
Limitations Issue**

While apparently ignoring Defendants' affidavit, Plaintiff contends Defendants have not produced any documents in support of the statute of limitations defense. In so arguing, Plaintiff points to employment agreements as an example of the type of documents she contends should have been produced, but Plaintiff never specifically requested employment agreements or any

other documents relevant to the statute of limitations issue.

As noted in the correspondence previously submitted to the Court, in response to Plaintiff's motion to compel, below signed counsel asked on August 19, 2019 if there were any specific documents Plaintiff's counsel felt they needed for the summary judgment motion. Plaintiff's counsel did not respond at all to that email until a follow up email was sent on August 27, 2019. During the correspondence on that date, below signed counsel again offered to produce any information Plaintiff's counsel felt they needed for the summary judgment issue, but Plaintiff's counsel never responded to the offer. Plaintiff has known there would be a hearing on the statute of limitations issue since the Court issued its ruling in May. Despite that, Plaintiff never specifically requested any information pertinent to the issue.

While it is disingenuous for Plaintiff to argue she hasn't had an adequate opportunity to conduct discovery, the truly disappointing part, and frankly the primary reason for this reply, is Plaintiff's citing of the South Carolina Rules of Professional Conduct as if to suggest below signed counsel may not have acted ethically. All correspondence regarding discovery was produced to the Court at the hearing. It is clear from that correspondence that an agreement was reached whereby Defendants would not have to respond to discovery until the "judge denies the motion altogether." It was Defendants' understanding that the Court's Order did not deny the motion altogether. As a result, Defendants continued to operate under the assumption they did not have to respond to discovery. While Defendants filed an Answer to the Complaint, a footnote on the first page made clear they were only doing so out of an abundance of caution.

Despite the agreement and despite Defendants making their position known in regards to the finality of the Order, Plaintiff filed a motion to compel discovery responses without any further correspondence with below signed counsel. Plaintiff has now submitted phone records,

which she contends establishes communications with below signed counsel. They absolutely do not. First off, while (864) 240-3200 is the main number for Haynsworth Sinkler Boyd's Greenville office, it by no means establishes a phone call from below signed counsel. There are over forty attorneys in the Greenville office along with numerous paralegals and administrative assistants. Second, each of the highlighted phone calls were from the HSB office to Plaintiff's law firm. It is inconceivable why below signed counsel would call Plaintiff's law firm four times in less than two weeks to discuss Defendants' outstanding discovery responses.

Regardless, I, Kenneth N. Shaw, as an officer of the Court, do hereby affirmatively state I did not make any of those phone calls. In addition to having no recollection of making any phone calls to Plaintiff's counsel regarding discovery – I generally prefer to communicate regarding such issues in writing via email – my Outlook Calendar confirms I was out of the office when three of the four calls were made. But just to be certain, I requested our IT department conduct a search of calls made to/from Plaintiff's law firm, and it turns out that all of the phone calls Plaintiff contends were made by me were in fact made by attorney Thomas Coker, Jr., who was involved in a wholly different matter with Plaintiff's counsel at the time. (See Affidavit of Mary Gwinn, attached hereto as Exhibit 1.)

Defendants Did Fully Respond to Plaintiff's Discovery Requests

Plaintiff contends Defendants have not fully responded to her discovery requests. As repeatedly discussed, her initial discovery requests were irrelevant to the statute of limitations issue, and the adequacy of Defendants' responses were not really discussed at the hearing, but since Plaintiff has raised the issue in her supplemental memorandum, Defendants will take a moment to address each of the allegedly insufficient responses:

First off, Plaintiff has repeatedly argued she did not receive the discovery responses until

September 18, 2019; however, the written responses were emailed to and received by Plaintiff's counsel on September 12, 2019. (See email attached hereto as Exhibit 2.)

Interrogatory No. 2 and Request No. 2 – These are essentially very broad standard discovery requests that are designed to have each party list and produce all the documents they believe to be relevant to the issues in the case so as to avoid documents from being produced by surprise at trial. In response, Defendants listed and produced every document they believed to be relevant to the issues in the case. However, Defendants cannot anticipate every document Plaintiff may feel is necessary to the claims and defenses. If these discovery requests were meant to be all encompassing, there would be no point in serving more specific interrogatories or requests for production, which Plaintiff certainly did in this case. In regards to the statute of limitations defense, Defendants planned to establish the defense through sworn testimony and public records, which is why they submitted the affidavit of Cynthia Cambron.

Interrogatory Nos. 10 and 11 – Defendants stand by their answers including the objections stated therein. It is inconceivable how the number of victims of “sexual crimes” who received care at any GHS facility could be relevant to this case; but regardless, as noted in the response, Defendants have no reasonable way of determining an accurate responsive number. Defendants simply have no reasonable way of determining every person who has presented to one of its facilities with allegations of being the victim of a “sexual crime.”

Interrogatory No. 12 and Request No. 11 – Defendants stand by their objections, especially in light of the fact that Defendants are not aware of any instances similar to the instant case (see Answers to Interrogatories Nos. 16, 17, and 18).

Interrogatory Nos. 16, 17, 18 – Defendants fully answered these interrogatories to the best of their ability. As noted in their answers, Defendants are not aware of any such incidents.

It is unclear what further information Plaintiff contends should have been given in response to these interrogatories.

CONCLUSION

The undisputed facts prove that Greenville Health System is the only proper defendant in this action, and as such, Plaintiff's tort claims are barred by the applicable statute of limitations. Plaintiff's contentions that she has not had an adequate opportunity to conduct pertinent discovery is without merit as she had nearly four months to conduct discovery on the statute of limitations issue, but chose not to.

Defendants reasonably believed they had an agreement with Plaintiff whereby discovery responses would not be due until the statute of limitations issue was decided. Once it became apparent Plaintiff did not agree, Defendants timely and fully responded to Plaintiff's discovery requests.

WHEREFORE, for the reasons stated herein as well as those set forth in Defendants' prior motions and memorandums, Defendants respectfully request the Court enter an order denying Plaintiff's motion to compel, dismissing C.A. No. 2019-CP-37-0271 in its entirety with prejudice, and dismissing all tort claims in C.A. No. 2018-CP-37-00762 with prejudice, and for any such further relief as the Court may deem just and proper. Defendants further request that the remaining breach of contract action be stayed pending the resolution of the case currently on appeal.

(SIGNATURE BLOCK ON FOLLOWING PAGE)

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/Kenneth N. Shaw

Kenneth N. Shaw (SC Bar No. 77859)

kshaw@hsblawfirm.com

PO Box 2048

Greenville, SC 29602

864-240-4541

864-240-3300 (fax)

Attorneys for Defendants

Dated: October 1, 2019
Greenville, SC

Exhibit 1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEA

COUNTY OF OCONEE

C.A. No.: 2018-CP-37-00762

C.A. No.: 2018-NI-37-00010

C.A. No.: 2019-CP-37-00271

Jane Doe,

Plaintiff,

v.

Affidavit of Mary C. Gwinn

Oconee Memorial Hospital; Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk, MD; Mary
Beth Hendricks,

Defendants.

The Affiant, being duly sworn, deposes and states as follows:

1. My name is Mary C. Gwinn. I am currently employed by Haynsworth Sinkler Boyd in the capacity of Director of Information Technology.
2. On September 30, 2019, I was asked to conduct a search within the Aderant database – Aderant is a law practice financial management software system – for all inbound/outbound information related to telephone number 864.214.2351 for the month of June 2019.
3. The attached spreadsheet, marked Exhibit A, is the report that I generated as a result of my Aderant search.
4. As noted within Exhibit A, all phone calls to (864) 214-2351 in the month of June 2019 were made from attorney Thomas Coker, Jr.'s telephone.
5. Every employee, including the employees in our Greenville office, has their own telephone with their own distinct extension.
6. There are no records of attorney Kenneth Shaw placing or receiving any phone calls to or from the number in question.

THE AFFIANT FURTHER STATETH NOT.

Mary C. Gwinn
Mary C. Gwinn

Sworn to before me this
1st day of October, 2019.

Pamela G. Ledbetter
Notary Public for South Carolina

My Commission Expires: 11-10-2025

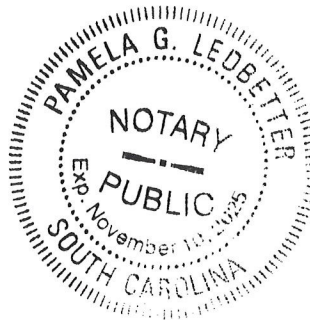


Exhibit A

Row_Uno	Empl_u no	Employee_Name	Start_Time (GMT)	Is_GMT _Time	Actual time as converted from GMT	Connector_ code	Activity_Type_Code	Duration (seconds)	Phone Number
1107448881	1535	Coker, Thomas H., Jr.	6/5/19 5:33 PM	Y	6/5/19 1:33 PM	Cisco2	PhoneCall_Outgoing	445	2142351
1107451913	1535	Coker, Thomas H., Jr.	6/5/19 6:42 PM	Y	6/5/19 2:42 PM	Cisco2	PhoneCall_Outgoing	66	2142351
1107535210	1535	Coker, Thomas H., Jr.	6/7/19 1:19 PM	Y	6/7/19 9:19 AM	Cisco2	PhoneCall_Outgoing	826	2142351
1107949294	1535	Coker, Thomas H., Jr.	6/18/19 12:58 PM	Y	6/18/19 8:58 AM	Cisco2	PhoneCall_Outgoing	55	2142351
1107951729	1535	Coker, Thomas H., Jr.	6/18/19 1:44 PM	Y	6/18/19 9:44 AM	Cisco2	PhoneCall_Outgoing	513	2142351
1107996400	1535	Coker, Thomas H., Jr.	6/19/19 1:47 PM	Y	6/19/19 9:47 AM	Cisco2	PhoneCall_Outgoing	395	2142351

ELECTRONICALLY FILED - 2019 Oct 01 4:49 PM - OCONEE - COMMON PLEAS - CASE#2019CP3700271

Shaw, Kenneth

From: Hannah Metcalfe <hmetcalfe@malawfirm.com>
Sent: Thursday, September 12, 2019 12:57 PM
To: Shaw, Kenneth
Cc: catkinson@malawfirm.com; Dawn Jones; Clark, Amy
Subject: Re: Jane Doe - Motion to Compel

Ken,

We look forward to receiving your discovery responses. We agreed responses were not due until the Court ruled on the motion to dismiss. The Court ruled. Your discovery is now long overdue and we will review it when it arrives.

Thanks,

Hannah

On Thu, Sep 12, 2019 at 12:48 PM Shaw, Kenneth <kshaw@hsblawfirm.com> wrote:

Hannah,

I still believe we had an agreement that discovery responses would not be due until after the issues raised by my motion to dismiss were decided, but since you never responded to my below email and you haven't withdrawn your motion to compel, I have to assume you disagree. Since the last thing I want is to be arguing about discovery issues in front of Judge Sprouse, I have drafted answers to your requests. The attached along with a disk containing responsive documents will be going out in the mail today.

Ken

**HAYNSWORTH
SINKLER BOYD**

Kenneth N. Shaw | Attorney
Direct 864.240.4541 | kshaw@hsblawfirm.com

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ONE North Main, 2nd Floor | Greenville, SC 29601
Main 864.240.3200 | Fax 864.240.3300

Web | Bio | vCard | Map | Linked In | Blog

From: Shaw, Kenneth
Sent: Tuesday, August 27, 2019 10:50 AM
To: 'Hannah Metcalfe' <hmetcalfe@malawfirm.com>
Cc: catkinson@malawfirm.com; Dawn Jones <amy@malawfirm.com>; Clark, Amy <aclark@hsblawfirm.com>
Subject: RE: Jane Doe - Motion to Compel

Hannah,

When did you communicate with me about our discovery responses? I don't recall receiving any sort of follow up from you. As I said below, I was still operating under the belief that we were holding off on discovery until my motion to dismiss was decided. I don't believe that motion has been fully decided. I never filed a motion for summary judgment. As he is allowed to do under Rule 12(b)(6), Judge Sprouse, sua sponte, converted our motion to dismiss into one for summary judgment on some of the issues.

I initially found out the motion for summary judgment was going to be heard in September when I called the clerk's office after receiving Judge Sprouse's order. I wanted to know if I needed to file anything or if the hearing would just be set. The clerk confirmed I didn't need to file anything and informed me the first non-jury roster would be in September. After you filed your motion a couple of weeks ago, I called again to inquire about the hearing date since I had not received a formal notice. That is when I was verbally told it was set for Sept. 23rd and notices would go out shortly.

I'm really not trying to be difficult here. I just don't want to bill my client for working on discovery responses that may be completely moot after Judge Sprouse decides the SOL issue. I looked back at your requests, and I don't see any that appear to be pertinent to the SOL issue, but if you believe there are or if there is information you believe you need that wasn't included in your requests, please let me know and I'll be happy to provide that information to you.

Ken

**HAYNSWORTH
SINKLER BOYD**

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[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

From: Hannah Metcalfe <hmetcalfe@malawfirm.com>
Sent: Tuesday, August 27, 2019 9:13 AM
To: Shaw, Kenneth <kshaw@hsblawfirm.com>
Cc: catkinson@malawfirm.com; Dawn Jones <amy@malawfirm.com>
Subject: Re: Jane Doe - Motion to Compel

Ken,

Thank you for your email. No, we will not withdraw our motion to compel. We will not withdraw our motion to compel unless and until you provide your clients' long overdue discovery responses. As for consultation, we have previously communicated with you about this outstanding discovery. We did have an agreement that discovery would not be due until the Court ruled on your motion to dismiss. Nonetheless, the Court ruled on the motion and you have now answered on behalf of your clients on May 15, 2019. As such, your discovery responses are now well overdue. The motion pending is one for summary judgment, not a motion to dismiss. Discovery is proper and your clients are expected to respond. The fact that your motion is now one for summary judgment is even more reason why your client must respond to discovery. We will strenuously object to any motion for summary judgment being considered when you have failed to respond to discovery. I have never heard of a court allowing a party to refuse to participate in discovery until *after* ruling on a dispositive motion on the merits.

Finally, we received no notice of such a hearing on September 23rd until after your previous email nor did it appear on the motion roster for Oconee county at that time. Do you have some way of finding out when motions are calendared that are not the normal public channels? I'd sure like to know how you know about motions hearings before the roster is made public. It would definitely be a helpful tool.

I look forward to receiving your discovery responses.

Sincerely yours,

Hannah Rogers Metcalfe

On Tue, Aug 27, 2019 at 8:33 AM Shaw, Kenneth <kshaw@hsblawfirm.com> wrote:

Hannah/Courtney:

I just wanted to follow up on my email below. Will you please withdraw your motion to compel until the motion for summary judgment is decided? I assure you, we will timely respond once the motion is decided.

Thanks,

Ken

HAYNSWORTH SINKLER BOYD

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From: Shaw, Kenneth
Sent: Monday, August 19, 2019 9:49 AM
To: hmetcalfe@malawfirm.com; catkinson@malawfirm.com
Cc: Clark, Amy <aclark@hsblawfirm.com>
Subject: Jane Doe - Motion to Compel

Hannah/Courtney:

I saw where you filed a motion to compel regarding your discovery requests. I wish you had corresponded with me prior to filing the motion. It was my understanding we had an agreement discovery responses would not be due until my motion to dismiss was decided, which has not yet occurred. As you know, Judge Sprouse, *sua sponte*, converted the motion into one for summary judgment in regards to the statute of limitations issue. I understand from the clerk the motion will be heard on September 23rd at 10:00 AM. Until that motion is decided, I can't adequately respond to discovery as I won't know the full scope of the issues in the case. Once the motion is decided, I assure you we will timely respond to your requests. With that in mind, I would kindly ask that you withdraw your motion to compel.

While I don't believe I can fully respond to your discovery requests, if there is something specific you believe you need for purposes of the summary judgment motion, please let me know.

HAYNSWORTH SINKLER BOYD

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--

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

vs.

Oconee Memorial Hospital, Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk; Mary Beth
Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762

C.A. No.: 2018-NI-37-00010

**PLAINTIFF'S MOTION TO
RECONSIDER ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS**

PLEASE TAKE NOTICE that Plaintiff Jane Doe hereby moves the Court, pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure, to reconsider the Court's October 18, 2019 Form 4 Order granting Defendants' Motion to Dismiss as to Plaintiff's tort claims in the above-captioned matters. This Motion is made on grounds that Defendants' Motions, which were treated as a Motion for Summary Judgment, were prematurely decided before Plaintiff had the opportunity for full and fair discovery on the relevant issues and because Plaintiff's bailment claim should not have been dismissed as a tort claim. The grounds for this Motion will be set forth more fully in a memorandum to be filed following entry of any subsequent order by the Court as referenced in the Court's October 18, 2019 Order.

(Signature page follows)

METCALFE & ATKINSON, LLC

/s/Courtney C. Atkinson

Courtney C. Atkinson, S.C. Bar #71992

Hannah Rogers Metcalfe, S.C. Bar #73046

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Attorneys for Plaintiff Jane Doe

October 25, 2019

Greenville, South Carolina

1 State of South Carolina
2 County of Oconee In the Court of Common Pleas

3
4 Jane Doe,)
5 Plaintiff,) 2018-CP-37-00010
6 -vs-) September 23, 2019
7 Oconee Memorial Hospital, et al.,)
8 Defendants.)
9) Transcript of
) Record
)
10 -----)
11

12 B E F O R E:

13 The Honorable R. Scott Sprouse, Judge
14

15 A P P E A R A N C E S:

16 Hannah Rogers Metcalfe, Esquire
17 Courtney C. Atkinson, Esquire
18 Attorneys for Plaintiff

19 Kenneth N. Shaw, Esquire
20 Attorney for Defendants
21

22 Reported by:
23 Diane L. Marcengill, RPR, CRR, CRC
24 Circuit Court Reporter
25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:06 a.m.)

4 THE CLERK: 2018-CP-37-00010. This is Jane Doe
5 vs. Ocone Memorial Hospital, et al.

6 This first motion that is up is Greenville Health
7 Systems' motion for summary judgment in this case and
8 also the 2018-CP-37-00762.

9 THE COURT: All right. Mr. Shaw, your motion.

10 MR. SHAW: Yes, sir, your Honor.

11 Well, this is, I guess, the third or fourth time
12 we have been in front of you on this. I think you have
13 a pretty good idea of kind of the basics of the case.

14 We were here in front of you earlier, back in the
15 spring, with regard to the hospital's motion to
16 dismiss. We're back in front of you because, upon a
17 motion to reconsider, your Honor converted our motion
18 to dismiss to one for summary judgment in regards to a
19 statute of limitations issue, so we're back in front of
20 you today on that issue.

21 And, your Honor, I have submitted to the Court a
22 supplemental memo in support of the motion for summary
23 judgment.

24 Do you have a copy? It includes an affidavit.

25 First off, your Honor, the only proper defendant

1 in this case is Greenville Health System. And I will
2 admit that, when we were here before arguing our motion
3 to dismiss, quite frankly, I just completely forgot
4 that plaintiffs had named Upstate Affiliate
5 Organization as a defendant in this case. I knew there
6 was discussion about when we were hearing oral
7 arguments, but I had actually completely forgotten that
8 they had been named as a defendant in this case.

9 But, again, the only proper defendant is
10 Greenville Health System. And it should be undisputed,
11 anyway, that Greenville Health System is a governmental
12 entity subject to the Tort Claims Act.

13 The Court, in its prior ruling when we were here
14 well over a year ago now when this matter first arose,
15 that was judicially determined in the July 9, 2018,
16 order, it has been judicially determined multiple times
17 by our appellate courts in this state. So we don't
18 really view that to be something that should be a
19 dispute here as to Greenville Health System. It is
20 certainly subject to the Tort Claims Act.

21 Pursuant to the affidavit from Cindy Cambron
22 (phonetic) with the hospital, Dr. Docyk and Mary Beth
23 Hendricks, the two individuals that were named in the
24 plaintiff's most recent complaint, those individuals,
25 at the time of this action arose and at all times

1 relevant to this action, were employees of Greenville
2 Health System pursuant to the Tort Claims Act,
3 therefore they should not even be individually named,
4 at least in regards to any sort of tort actions, but
5 certainly they are subject, again, to the two-year
6 statute of limitations that would be imposed upon the
7 governmental entity.

8 Finally, in regards to Upstate Affiliate
9 Organization, I went back and looked at the complaint.
10 Again, I apologize that I just completely missed it the
11 first time around when we were here, but Upstate
12 Affiliate Organization, the only allegation that I saw
13 in the complaint with regards to Upstate Affiliate
14 Organization, it's alleged that they owned GHS.

15 Frankly, your Honor, I'm not even really sure how
16 there could be a good-faith pleading to that. Upstate
17 Affiliate Organization, you can go to the Secretary of
18 State's website, they are a 501(c)(3) corporation. How
19 a 501(c)(3) organization can own a public entity is
20 beyond me, but they certainly don't own Greenville
21 Health System. Greenville Health System is a
22 governmental entity.

23 The only change in regards to Greenville Health
24 System since this incident occurred is Greenville
25 Health System is now known as Greenville Health

1 Authority, but it still exists, the governmental entity
2 is still there, the governmental entity still owns
3 property, the governmental entity still owns most of
4 the property that these hospitals sit on. All right.

5 What they did in the fall of 2016 is they entered
6 into a contractual arrangement with what was then known
7 as Upstate Affiliate Organization to allow Upstate
8 Affiliate Organization to take over operations of the
9 hospitals. But, again, Greenville, again what is now
10 known as Greenville Health Authority, is the entity
11 that still owns most of those hospitals as far as who
12 owns the buildings, and they lease everything to
13 Upstate Affiliate Organization, which is now known as
14 Prizma Health.

15 That is laid out in the affidavit that is attached
16 to our supplemental memo in support of the motion for
17 summary judgment. But, again, Upstate Affiliate
18 Organization did not exist at the time this action
19 arose. They had nothing to do with the plaintiff's
20 care in this case. They had nothing to do with the
21 sexual assault examination kit. They couldn't. As I
22 said, they were not even formed as an entity until
23 after Jane Doe visited Oconee Memorial Hospital in
24 December of 2015.

25 So, again, that's based, as stated in the

1 affidavit from Cindy Cambron, that entity did not even
2 exist at the time, so there's no way they could have
3 had anything to do with this action. They shouldn't be
4 a party to this action. The -- again, the proper
5 defendant to this action is Greenville Health System.
6 It's undisputed that Greenville Health System is a
7 governmental entity. The two employees that have been
8 individually named were employees of Greenville Health
9 System. They, again, should not be individually named
10 in this case and should be subject to the Tort Claims
11 Act at least in regards to the tort claims.

12 To address a few of the issues that plaintiffs
13 have raised in their memorandum in opposition, their
14 first kind of defense to this is they said they haven't
15 had an opportunity to conduct discovery in regards to
16 this issue.

17 Your Honor, you issued this order back in May, so
18 certainly they have known since May this was going to
19 be an issue. We haven't received a single discovery
20 request from them since May that had anything to do
21 with the statute of limitations issue.

22 Plaintiffs have pointed out in their memorandum
23 that we did not respond to discovery. I will tell you,
24 your Honor, that I have an e-mail going back to
25 April of 2019. In that e-mail we agreed that I would

1 not have to answer discovery until after our motion to
2 dismiss was decided.

3 I was operating under the assumption that when you
4 converted it into a motion for summary judgment sua
5 sponte that it had not been fully decided, so I had not
6 responded to discovery. I did respond to the
7 complaint. I did file an answer to the complaint,
8 although I did state in that answer that I was filing
9 that answer as, you know, an abundance of caution, that
10 I did not believe we were required to do so at that
11 time.

12 Plaintiffs filed a motion to compel. I will tell
13 you I hadn't received any sort of communication from
14 them since April, and then they file a motion to compel
15 asking about the discovery. We did go ahead and
16 respond to the discovery a couple weeks ago. But in
17 responding -- prior to responding to the discovery, I
18 had multiple e-mail communications. Some of those are
19 actually attached to the plaintiff's memorandum here.

20 I expressed to them, I told them that, you know,
21 hey, I was under the impression I didn't have to
22 respond. You know, I understand your position. But
23 there's -- what, honestly, your Honor, I didn't want to
24 spend time billing my client answering discovery
25 requests that I felt may become completely irrelevant,

1 depending on how you rule on this statute of
2 limitations issue.

3 So I asked, you know, but could we continue that.
4 I told them, I said, if there's anything -- it's in the
5 e-mail that is actually attached to this. I state in
6 that e-mail, if there's anything that you need for the
7 statute of limitations issue, let me know. I'll be
8 happy to see if I can get that for you. I have not
9 received a single request for anything in that regard.

10 So I do think that the argument that they haven't
11 had a proper opportunity to conduct discovery on this
12 is somewhat disingenuous since I don't think they have
13 made any attempt.

14 So, and then as we move on --

15 THE COURT: Let me ask you this. What -- have you
16 answered everything that they had provided to you?

17 MR. SHAW: I answered the discovery that they sent
18 to me at the beginning of the case, yes, sir, your
19 Honor. I answered that a week and a half or two weeks
20 ago.

21 THE COURT: Have you received any supplemental
22 discovery that you have not answered?

23 MR. SHAW: No, your Honor.

24 THE COURT: Okay. Go ahead.

25 MR. SHAW: And then their next argument is that

1 the claims should relate back to the original complaint
2 that was filed in this case.

3 Your Honor, again, as we stated in our memo that
4 we filed in regards to the motion to defense, we filed
5 a supplemental memo in support of that motion to
6 defense following the hearing we had in the spring here
7 because, again, that topic was raised or that issue was
8 raised while we were here during oral arguments. They
9 alleged then that it should relate back to the original
10 complaint.

11 Your Honor, I can't understand how Rule 15 can
12 apply here. This is not an amended complaint. I
13 understand that plaintiffs believe that the Court erred
14 in not allowing them to file an amended complaint back
15 when the original complaint was filed, again, over two
16 years ago, but that issue is up on appeal. That is one
17 of the things up on appeal, is whether or not the Court
18 erred in that regard.

19 I don't see how at this point in time -- that, to
20 me, that's an issue for the court of appeals to decide.
21 But what we know is that the current complaint that we
22 are here for is not styled as an amended complaint, it
23 is not filed as an amended complaint. It is a
24 standalone complaint. Rule 15 does not apply in this
25 situation.

1 But even if it did, even if you could somehow or
2 another equitably apply Rule 15, and I'm not aware of
3 any case law that allows you to do that, but even if
4 you could somehow equitably apply Rule 15, it doesn't
5 relate back in this case. As we cited in our
6 memorandum, totally new, different causes of action
7 that are filed after the statute of limitations do not
8 relate back to the original filing.

9 Also what we have here is they have named two
10 individuals, certainly new claims against individuals
11 that were not previously named. Rule 15 doesn't apply
12 to that. You have to allege -- you have to make
13 accusations against new defendants within the statute
14 of limitations. They did not do that in this case.

15 So, again, your Honor, the argument that these
16 things should relate back, again, I don't know how Rule
17 15 can possibly apply here. But even if you went under
18 the Rule 15-type analysis, these are totally separate
19 claims that do not -- totally new causes of action that
20 do not relate back under the rules. Again, we cited
21 the case law in our briefs in regards to that.

22 So the final thing that I will say is that it's
23 interesting to me that the plaintiffs have kind of made
24 two different arguments here. In one respect they talk
25 about how this is a totally different, new cause of

1 action, and, you know, when I talked about -- when I
2 argued before that their claims were, you know, that
3 the Court has already ruled on this issue when you
4 granted our motion to dismiss on the negligence causes
5 of action in the first case and in that order found
6 that there was no duty owed, found that they were
7 attempting to assert a spoliation of evidence-type
8 cause of action which doesn't exist in South Carolina,
9 that that same rationale would apply to this case.

10 They argue in response to that, no, we have made
11 totally different causes of action that don't -- that
12 doesn't apply to.

13 Well, your Honor, medical malpractice is not a
14 totally different cause of action than negligence. It
15 is just a special form of negligence. It is
16 negligence. So I really fail to understand how that
17 claim is distinct and different. But, certainly if it
18 is distinct and different, and I don't think it is, but
19 if it is distinct and different, then, again, Rule 15
20 wouldn't allow it to relate back. It's a different
21 cause of action, according to them.

22 Again, I don't think that's true, but again, if
23 it's not, then it doesn't relate -- even if it relates
24 back at that point in time, the rationale behind the
25 first motion to dismiss still applies. You can't have

1 a medical malpractice cause of action if you can't have
2 a negligence cause of action. And so the same thing
3 would apply there.

4 And, again, to the extent that the distinguishment
5 in this case between this case and the first case that
6 was filed are the additional defendants, well, again,
7 Upstate Affiliate Organization should not be a
8 defendant. They are improperly named in this, as set
9 forth in the affidavit. Plaintiffs have put forth no
10 evidence. We're here on a motion for summary judgment.
11 Plaintiff's not going to have any evidence to the
12 contrary of that.

13 And then, secondly, the doctor and the nurse were
14 both employees of the hospital. That's undisputed as
15 well. They are subject to the Tort Claims Act and
16 should also have the same protections in regards to
17 that and in regards to the two-year statute of
18 limitations.

19 But I would also again argue, your Honor, that I
20 don't understand how, if the hospital didn't owe a duty
21 in regards to the sexual assault examination kit, I'm
22 not sure how the individuals who are agents of the
23 hospital could have owed a duty either. It seems to me
24 to be the same kind of argument.

25 But then, finally, your Honor, in regards to the

1 individual employees, I do certainly think that, as a
2 minimum, they should be dismissed in regards to the
3 tort claims but also in regards to the breach of
4 contract claim.

5 There's no allegation in the complaint in regards
6 to the breach of contract that either one of these
7 defendants individually entered into a contract with
8 the plaintiff. The allegation is that the hospital
9 entered into a contract with the plaintiff, not these
10 two individuals. So I don't see how they could be
11 individual defendants in this action regardless of what
12 the Court may rule on the other causes of action.

13 THE COURT: Thank you, Mr. Shaw.

14 MS. METCALFE: Hannah Rogers Metcalfe here today
15 on behalf of Jane Doe. I'm going to try to address
16 those arguments in turn unless the Court has something
17 you would like me to address first and I'm happy to do
18 that.

19 Turning first to Mr. Shaw's argument with regard
20 to the motion for summary judgment and the long
21 discussion about the various parties and who the proper
22 party was and that all of these parties are
23 governmental entities such that the statute of
24 limitations would apply, that long explanation was
25 exactly why we need discovery before a court can rule

1 on summary judgment.

2 We served discovery on Mr. Shaw's client -- his
3 clients through Mr. Shaw in January of this year. We
4 received his responses to the interrogatories and
5 requests for production Tuesday afternoon in our
6 office. So less than six days ago we received the
7 responses.

8 We follow up -- we followed up with him after the
9 Court ruled on the motion to dismiss and the motion the
10 reconsider and stated it was going to be converted for
11 a motion for summary judgment because the fundamental
12 questions were the employment relationship, the
13 interrelationship between these various entities, were
14 they a governmental entity. He just said that Upstate
15 Affiliate is a 501(c)(3).

16 Well, then it's not a government entity such that
17 it would be subject to the Tort Claims Act. The only
18 information we have gotten from him is attached to an
19 affidavit to his motion. That's the first information
20 we have received.

21 Have we served supplemental discovery? No,
22 because we didn't get the responses to the requests we
23 originally sent, even though, throughout the summer, we
24 asked him for that discovery -- those discovery
25 responses.

1 Attached to our response is an e-mail string
2 between myself and Mr. Shaw from, I believe it was
3 August the 27th, asking again, saying, you've got to
4 give us this discovery, the discovery responses. We
5 have to have discovery on these issues before we can go
6 and have the Court rule on this motion for summary
7 judgment.

8 As of the end of August, it was not on the Court's
9 docket. Mr. Shaw was the one who informed us it had
10 been placed on the Court's docket for September, at
11 which point we heightened our request, renewed our
12 request for the discovery responses. We need to be
13 able to take depositions, send requests to Dr. Docyk
14 and Nurse Hendricks. We need to find out what their
15 employment relationship is.

16 In my dealings with cases involving GHS, what I've
17 learned now is there's often unusual employment
18 relationships or other third-party contracts. There
19 might be a dual employment relationship such that
20 Mr. Shaw's arguments about being an employee of a
21 governmental entity might not apply here. But the only
22 thing we have at this point is the affidavit that he
23 attached to his memorandum in support of the motion for
24 summary judgment. That's not sufficient, and we would
25 respectfully request that we be allowed to continue

1 discovery -- or actually have discovery, a normal
2 process, before the Court rules on the motion for
3 summary judgment.

4 THE COURT: Let me ask you this. The materials
5 you received Tuesday, were they answered in full?

6 MS. METCALFE: No, your Honor. And I can go
7 through those.

8 THE COURT: Okay. Well, now, the second part of
9 my question is, what in those materials related to the
10 statute of limitations claim?

11 MS. METCALFE: There were some questions relating
12 to Dr. Docyk and Nurse Hendricks. Candidly, there was
13 not a direct question, but these were served before the
14 motion to dismiss relating to the interrelationship
15 between Upstate Affiliate and GHS. Our intent was to
16 get those initial responses back, see what was in there
17 and then supplement if that information was not
18 included.

19 You know, we have our standard interrogatories
20 where we ask for general information. Had they
21 included the information with regard to Docyk and
22 Hendricks, it would not have needed a supplement.

23 From what we've reviewed at the end of this week,
24 there does not seem to be anything in there about their
25 employment relationship such that we will have to ask

1 supplemental requests about their employment, either
2 directed toward them individually as defendants or
3 towards GHS, to have them provide copies of their
4 contract to demonstrate that they are, in fact,
5 employees of GHS.

6 But our hope was -- our plan was to go through the
7 discovery. And, again, it was served in January. So
8 after the Court ruled in the spring on the motion to
9 dismiss, we anticipated that we would receive the
10 initial responses and then review the responses and
11 serve supplemental discovery as needed to address the
12 issues relating to summary judgment.

13 We didn't get anything until Tuesday, even though
14 a month ago we followed up with Mr. Shaw, at which
15 point he responded and said, Well, tell me what you
16 need. Well, that's not really how it works. We've
17 sent a bunch of requests; you haven't bothered to
18 answer those. And for whatever reason, he thinks that
19 he doesn't have to, but my review of the rules says
20 otherwise.

21 THE COURT: How many contacts have you had with
22 Mr. Shaw since you served the --

23 MS. METCALFE: About the discovery?

24 THE COURT: Yes, ma'am.

25 MS. METCALFE: We had multiple contacts in the

1 spring, at which point we agreed he could wait until
2 the Court ruled on the motion to dismiss. We said that
3 was fine, he can wait until the Court ruled on the
4 motion to dismiss, but then he had to respond to
5 discovery.

6 And then we had communications with him in the
7 summer, and then I have the attached correspondence
8 with him in August, a month ago, following up, back and
9 forth with him.

10 THE COURT: Have you made that part of your
11 exhibits?

12 MS. METCALFE: Yes, your Honor. We attached the
13 August correspondence with Mr. Shaw. I'm just trying
14 to --

15 MR. SHAW: Your Honor, if I may, I've got,
16 actually, all the correspondence related to this issue.

17 THE COURT: If you have a hard copy, that will
18 save time.

19 MR. SHAW: I do.

20 THE COURT: Okay.

21 Go ahead, Ms. Metcalfe.

22 MS. METCALFE: Your Honor, I have a feeling that
23 there's something missing in this stack, but I can't be
24 certain. I don't want to make a representation one way
25 or the other.

1 You can see as early as April we were
2 communicating about the discovery and the
3 communications there. You know, we agreed. There's
4 also some telephone calls Ms. Atkinson had, I believe.
5 We agreed after the motion to dismiss was ruled upon,
6 we would expect discovery responses, and we received
7 nothing until this past Tuesday.

8 Other than the request to admit, he did respond to
9 those in January in a timely fashion. Those were
10 served on him, and Mr. Shaw's clients did answer the
11 requests to admit.

12 So, your Honor, we would request that the
13 motion -- we would respectfully suggest the motion for
14 summary judgment is premature because we haven't had an
15 opportunity to engage in discovery, despite serving
16 discovery on these fundamental issues related to the
17 status of these entities, specifically Docyk,
18 Hendricks, and Upstate Affiliate.

19 Also, one of the issues that was raised originally
20 the last time we were here was the timing on some of
21 these changes. If you recall, we had questions about
22 the timing of the changeover from GHS to Upstate
23 Affiliate to Greenville Health to Prizma and how that
24 fit with the timing of the alleged incident. So that
25 was one of the other issues that we needed to have

1 answered. I know that Mr. Shaw's made representations,
2 and there is an affidavit attached to his memo, but
3 that's the first information we've received from GHS
4 with regard to that timing.

5 Additionally, your Honor, this was converted from
6 a motion for summary judgment -- I mean a motion to
7 dismiss. The motion to dismiss moved for dismissal
8 based on the statute of limitations, and I can quote
9 the language from his motion, only as to GHS as a
10 governmental entity.

11 In that motion, which was the only pleading we had
12 until he filed his memorandum recently, there's no
13 mention of Docyk or Hendricks or Upstate Affiliate.
14 The motion states, "Plaintiff's tort claims are barred
15 by the applicable statute of limitations," and then it
16 says, "Oconee Memorial Hospital was owned and operated
17 by Greenville Healthcare System, a healthcare facility
18 within the meaning of the South Carolina Tort Claims
19 Act, and its agents and employees therefore are
20 entitled to rights, limitations, and immunities."

21 So the extent it's suggesting that Docyk and
22 Hendricks are employees, perhaps that motion is to
23 them, but it doesn't move to dismiss on the grounds of
24 statute of limitations as to them specifically, nor
25 does it mention Upstate Affiliate. This is this first

1 I'm hearing of Upstate Affiliate today.

2 So to the extent that we need to have discovery
3 about something that we were never -- an issue we were
4 never apprised of, we would like that opportunity.

5 With regard to the discovery, I've touched on it a
6 little bit. We received his discovery responses on
7 Tuesday, your Honor. We spent a little bit of time
8 trying to review the documents we received and the
9 answers. There's significant deficiencies, just
10 rattling off a few of them, with regard to the
11 interrogatories.

12 There's no responsive answer to Number 10, Number
13 11, Number 12, Number 16, Number 17, Number 18. Number
14 19, they don't provide their policies, identify their
15 policies.

16 There are also significant deficiencies with
17 regard to the requests for production. There's no
18 response to Number 11. There's no correspondence I.D.
19 to response Number 15. There's no experts identified.
20 There's no internal communications identified. There's
21 significant gaps.

22 One thing we did notice, your Honor, is they did
23 include a copy of their policies, their internal
24 policies, their GU-GYN emergency policies, as well as
25 their GHS emergency services policies for sexual

1 assault, which refers to the medical-legal protocol for
2 RNs and medical MDs in discussing -- which discuss the
3 maintenance of the security of rape kits as well as how
4 to handle blood draws and the processing to ensure
5 chain of custody, which is the crux of the original
6 claim for general negligence and these new claims for
7 bailment, breach of contract, and medical malpractice.

8 And this leads into the relation back issue. Rule
9 15 does relate to the amendment of a complaint, but
10 equity favors relation back in this instance where the
11 parties are aware of the claims. These all relate to
12 the same event, and they are an expansion of the
13 original negligence action.

14 The few documents that we received reveal that
15 they had an internal policy that mirrored the state's
16 attorney general policy on how these kits were to be
17 handled and that they were negligent in doing so, and
18 that the physician and nurse who handled it committed
19 malpractice in the manner in which they handled it
20 because they deviated from the standard of care as
21 provided in their own GHS policy.

22 These claims, these new causes of action, are an
23 expansion of what was already pled. The parties are
24 all aware of it. There's nothing new. There was no
25 prejudice. There's no surprise. And, in fact, your

1 Honor, stated in the order dismissing the original
2 negligence causes of action, which are on appeal, and,
3 understandably, it's a novel issue, your Honor stated
4 that it was being dismissed without prejudice to bring
5 additional different causes of action.

6 In our motion to amend that was before the Court
7 on the original negligence action that was filed prior
8 to that cause of action being dismissed, we referenced
9 bailment, breach of contract, and the defendants were
10 very well aware of these claims, and so there's no
11 prejudice to them that these are somehow coming out of
12 the blue or they are radically different. It comes out
13 of the same circumstances, the same facts, and they
14 were aware of these.

15 So, therefore, we respectfully contend that the
16 new causes of action should relate back to the original
17 one because they're all part of the same, and that we
18 have moved to amend, but the Court for, I think,
19 efficiency or for ease granted the motion to dismiss
20 but gave us leave to file the separate causes of
21 action.

22 And so we would contend that to allow GHS to move
23 to dismiss the new causes of action under a statute of
24 limitations argument would prejudice Jane Doe because
25 it would prevent her from moving forward because of the

1 statute of limitations argument, but there's no
2 prejudice to GHS and the other defendants with going
3 forward with these because they were well aware of
4 these claims when the original negligence action was
5 pending.

6 THE COURT: Thank you.

7 Mr. Shaw, do you have any response?

8 MR. SHAW: Couple things.

9 First off, I e-mailed the responses to the
10 discovery before I actually -- the same day that I
11 physically mailed them out. They received the physical
12 copies in their office last Tuesday, but they had an
13 e-mail prior to that.

14 Secondly, she went through a whole list of
15 interrogatories and so forth that we didn't provide
16 responsive answers to. We did respond to everything.
17 Now, we may have had objections or there may have been
18 information we didn't have.

19 For example, we don't have an expert at this point
20 in time. I haven't gone out and retained one. I'm not
21 identifying one when I don't have one. So I would ask
22 your Honor, specifically point to the interrogatories,
23 specifically point to the requests for production that
24 you believe is pertinent to this issue, to the statute
25 of limitations issue, to the issue of whether or not

1 Greenville Health System is subject to the Tort Claims
2 Act. Point to whatever discovery you have asked about
3 and let me know what I didn't answer in that regard.

4 Again, this statement that throughout the summer
5 they asked for discovery is just completely untrue,
6 your Honor. I have provided you with the e-mail
7 correspondence, starting with the letter that
8 Ms. Atkinson sent to me back in April to which I
9 responded to via e-mail, and she agreed that we would
10 not have to respond until this issue had been decided.
11 All right.

12 Again, my assumption was the issue had not been
13 decided until they filed their motion to compel. When
14 they filed their motion to compel, I immediately
15 reached out, expressed my side of the story and why I
16 had not responded. And, again, they took the position,
17 Well, it's been decided you need to respond, and we had
18 a back-and-forth, but I ultimately did respond. I
19 responded what I believe to be fairly timely after
20 that.

21 And, again, even before I responded to their
22 outstanding discovery, I said in the first e-mail to
23 them in August when we had this, I said, if there's
24 something you need, let me know what it is. Again,
25 they have known about this issue. They have known

1 about the argument about the statute of limitations for
2 some time now, since going back, really, to the first
3 complaint, we raised it as a potential defense. But we
4 certainly raised it in December of 2017 when they filed
5 this and we filed our motion -- sorry, December of '18
6 when they filed this and we filed our motion to
7 dismiss.

8 The motion to dismiss says -- to say that it
9 doesn't reference Upstate Affiliate is completely
10 untrue. The very first sentence says, "Please take
11 notice that at such time and place as set by the Court,
12 Defendants Greenville Health System, Upstate Affiliate
13 Organization, Kevin Docyk, M.D., and Mary Beth
14 Hendricks will move pursuant to Rule 12(b)(6) South
15 Carolina Rules of Civil Procedure for an order
16 dismissing the above-referenced actions.

17 "As set forth in more detail below, the medical
18 malpractice claims asserted in plaintiff's notice of
19 this lawsuit" --

20 THE REPORTER: I'm sorry. You're killing me.

21 MR. SHAW: I'm sorry -- "are barred pursuant to
22 the doctrines of res judicata and/or collateral
23 estoppel and are also barred by the applicable statute
24 of limitations." It's raised in the first two
25 sentences of our motion to dismiss, and it's applicable

1 to all the defendants in the motion.

2 Frankly, your Honor, it's a disingenuous argument
3 to sit here and say that that's not the case. And
4 again, I think it's a disingenuous argument to sit here
5 and say that they haven't had a meaningful opportunity
6 to conduct discovery when they have known that we were
7 going to have a hearing at some point in time -- again,
8 didn't know the date, but they have known since May
9 that there was going to be a hearing on this issue, and
10 I haven't received a single request for anything
11 related to this issue about --

12 THE COURT: Well, let me ask you this.
13 Ms. Metcalfe said that you did answer the requests for
14 admission.

15 MR. SHAW: I did.

16 THE COURT: Were there any questions in the
17 requests for admission -- Ms. Metcalfe, I'll let you
18 respond to this as well -- regarding the statute of
19 limitations?

20 MR. SHAW: Not that -- I mean, nothing that I'm
21 aware of that would be pertinent to it.

22 THE COURT: All right. I interrupted you. Go
23 ahead.

24 MR. SHAW: I mean, again, that's one of the things
25 when we had this discussion. And as I pointed out in

1 the e-mail correspondence that you have got a copy of,
2 you know, I was like, I don't see where any of your
3 discovery requests are pertinent to the issue that's at
4 hand, that's immediately at hand, you know, so let me
5 know if there's something that you need in regards to
6 that issue. I'll get it for you.

7 I'm not trying to be difficult, your Honor. I'm
8 trying to -- because, frankly, the last thing that I
9 wanted was to come in here today and have an argument
10 that we didn't give them what they were looking for or
11 we didn't give them information. They can't decide
12 this issue -- you know, they can't -- summary judgment
13 is unfair because they haven't had an opportunity to
14 conduct discovery. I anticipated that might be an
15 argument. That's why I was like, let me know if
16 there's something you need. That's going back over a
17 month ago, and I haven't gotten a single request for
18 anything.

19 We filed our memo with the affidavit Monday of two
20 weeks ago. I gave plenty of notice. I wanted to make
21 sure I gave plenty of notice so that they knew exactly
22 what I was filing and knew what the affidavit said so
23 if there was any questions about it and you need
24 something more in support of it, let me know. I
25 haven't received a request for anything, your Honor.

1 And, frankly, as the law requires, you know, when
2 the motion for summary judgment is filed, certainly I
3 have an obligation to come forth and support that
4 motion. But plaintiffs can't just rest on their
5 pleadings either. They have to come forth and present
6 evidence contrary to it.

7 Again, I get this argument that, you know, they
8 haven't had a chance to conduct discovery. But, again,
9 what do they want to do? I mean, we've known about
10 this for, what, five months, four months, and they
11 haven't asked for anything. And they have known about
12 this issue because the last time we were here, we
13 argued about this very same thing, about Prizma Health
14 and what is the relationship and all this kind of
15 stuff. We argued about these same things last time we
16 were here, so, certainly, they have known what their
17 questions were, they just haven't bothered to ask me.
18 And now they want to come in here and use it as an
19 excuse for not having summary judgment granted against
20 them.

21 Frankly, your Honor, I think it's a disingenuous
22 argument.

23 THE COURT: Thank you, Mr. Shaw.

24 Ms. Metcalfe, I'll give you the last word.

25 MS. METCALFE: Just very briefly, your Honor.

1 First, with regard to your question about the
2 requests to admit, they did not relate to the statute
3 of limitations. They were served in January with the
4 complaint. They were served very early in the case so
5 they did not relate to the statute of limitations
6 issue. They were served well before the motion to
7 dismiss was ever filed.

8 But I want to point out in this packet that
9 Mr. Shaw handed up for the Court, in his April 18th
10 letter to my law partner, Ms. Atkinson, or e-mail, the
11 second paragraph, he says, "In any event, I would like
12 to get a ruling on the motion" -- that's the motion to
13 reconsider -- "before I have to bill my client for
14 drafting an answer or responding to your discovery
15 requests. Please let me know if you have any objection
16 to me doing that. If the judge denies the motion
17 altogether, it should not take me very long thereafter
18 to file an answer, and I would expect to have discovery
19 responses to you within a couple weeks after the answer
20 is filed."

21 Your Honor, you entered a Form 4 order on May 8th
22 on the motion to reconsider. Shortly thereafter,
23 Mr. Shaw filed his answer. We took him at his word
24 that he was going to, sometime in June, or I'll say
25 even July, give us discovery responses. He didn't.

1 I do not -- I've tried to look up to confirm
2 because my recollection is there was another
3 communication at some point, either a verbal
4 communication or something of Mr. Shaw that's not
5 represented in this packet, but I don't have it. I
6 don't trust my memory, your Honor, so I don't want to
7 make a representation that's not true.

8 But we took him at his word. He didn't respond to
9 the discovery. August the 19th he sends us an e-mail
10 saying, I see you filed a motion to compel. So he knew
11 as of August 19th we needed the discovery responses.
12 He didn't get it to us until last Tuesday.

13 We've already found by reviewing over the
14 weekend -- and I'm sorry, your Honor. I had court, you
15 know, Wednesday, Thursday, Friday, but we tried to
16 review. We have already found documents that relate to
17 their policies. We haven't had a chance to go through
18 fully, but we know they're not responsive. They
19 haven't given us all the documents. There may be
20 documents in there relating to Docyk and Hendricks, but
21 I think we're entitled to have him respond to the
22 discovery and to have full discovery on these issues
23 before the Court rules on the motion for summary
24 judgment.

25 What Mr. Shaw's e-mails reveal is that while we

1 didn't know this had been set for a hearing on
2 September 23rd, he somehow knew. He knew this was
3 coming up. He knew he had an obligation to respond to
4 discovery, but he did not do so. We learned subsequent
5 to his e-mails, once we received the notice from court
6 docketing about the hearing on the motion for summary
7 judgment, and at that time we continued to ask for the
8 documents.

9 And you will see, finally, on August 27th, I said,
10 no, you must respond to discovery. We did not agree
11 for you to never respond and let the Court rule, at
12 which point he said, fine, and sent us what we had last
13 Tuesday.

14 So we would argue -- we would again stress this is
15 premature and that the issues are not properly before
16 the Court because we haven't had discovery on these
17 issues, and we would ask for the opportunity to have
18 full discovery at least with regards to statute of
19 limitations and to get the documents that we have
20 requested relating to the claims in this case before
21 the Court rules on the motion.

22 THE COURT: I'm looking at your Exhibit B. Have
23 you -- which is your first set of interrogatories.

24 Have you served any supplemental interrogatories
25 on Mr. Shaw other than what you have included in

1 Exhibit B?

2 MS. METCALFE: Supplemental interrogatories, no,
3 your Honor.

4 THE COURT: Okay. All right. Well, this is what
5 I'm going to do. I'm going to read -- as y'all know --
6 you have been before me before -- I like to read
7 everything that is submitted because there is a
8 large -- a number of documents here, so I'm going to
9 take it under advisement.

10 I will give each party until Friday to supplement
11 the record.

12 Ms. Metcalfe, if you're able to locate this
13 correspondence that you remember that you don't have
14 today.

15 Mr. Shaw, I'll give you the opportunity as well.

16 So if you have any other documents you would like
17 me to consider in the way of exhibits, I will allow you
18 until Friday to supplement the record.

19 So it will be under advisement, and I'll have my
20 law clerk contact you. Thank you.

21 MR. SHAW: Your Honor, real quick. Depending
22 on -- I don't think we ever got a ruling. Part of the
23 motion to reconsider included a motion to stay.

24 Again, I don't know how your Honor is going to
25 rule on this, but, you know, we would like -- I don't

1 think that was ever addressed in any of your orders,
2 our motion to stay this case pending the court of
3 appeals case. We certainly would like to have some
4 sort of ruling on that.

5 THE COURT: I can address that in this order.

6 MR. SHAW: Okay.

7 (WHEREUPON, proceedings concluded at 10:46 a.m.)

8 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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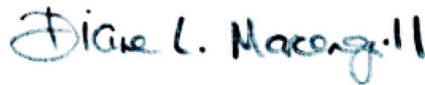
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 23rd day of September 2019.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 6, 2020



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

METCALFE & ATKINSON, LLC
ATTORNEYS AT LAW

April 12, 2019

Kenneth Shaw
Haynsworth Sinkler Boyd, P.A.
One North Main, 2nd Floor
Greenville, SC 29601

RE: Jane Doe vs. Greenville Health System, et al.
C/A No.: 2018-CP-37-00762

Dear Ken:

I am writing in follow-up to Plaintiff's first set of discovery requests that were served on Defendants on January 17, 2019 in the above-referenced matter. As of the date of this letter, our office has received only Defendants' Responses to Plaintiff's First Set of Requests to Admit and my file indicates that Defendants' Responses to Plaintiff's First Set of Interrogatories and Request for Production are still outstanding. Please provide responses to Plaintiff's First Set of Interrogatories and Request for Production by May 3, 2019 to avoid Plaintiff being required to file a motion to compel.

Thank you in advance for your cooperation.

Sincerely,



Courtney C. Atkinson
catkinson@malawfirmnc.com

CCA/awr

Haynsworth Sinkler Boyd, P.A.

Date Rec'd 4/17/19
C/M # 08565.0860
Routing KN5, AUC
Calendared _____

Clark, Amy

From: Courtney Atkinson <catkinson@malawfirm.com>
Sent: Monday, April 22, 2019 5:38 PM
To: Shaw, Kenneth
Cc: hmetcalfe@malawfirm.com; Clark, Amy
Subject: Re: Jane Doe - Discovery

That's fine Ken

****Please be advised that Metcalfe & Atkinson is now located at 1395 South Church Street, Greenville, SC 29605.**

Courtney C. Atkinson

Metcalfe & Atkinson, LLC

1395 S. Church Street

Greenville, South Carolina 29605

(864) 214-2351

On Mon, Apr 22, 2019 at 4:48 PM Shaw, Kenneth <kshaw@hsblawfirm.com> wrote:

Courtney,

I just wanted to confirm you received my email below. Obviously, I saw where you filed a memo in opposition, so I know you don't agree we should stay the case pending the appeal, but do you have any objection to me waiting to file an answer until we get a ruling on the motion to reconsider. Again, I don't think I'm required under the rules to file an answer until the motion to reconsider is decided, but if you have reason to believe otherwise, please let me know.

Thanks,

Ken

**HAYNSWORTH
SINKLER BOYD**

Kenneth N. Shaw | Attorney

Direct 864.240.4541 | kshaw@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.

ONE North Main, 2nd Floor | Greenville, SC 29601

Main 864.240.3200 | Fax 864.240.3300

From: Shaw, Kenneth
Sent: Thursday, April 18, 2019 8:11 AM
To: catkinson@malawfirm.com; hmetcalfe@malawfirm.com
Cc: Clark, Amy <aclark@hsblawfirm.com>
Subject: Jane Doe - Discovery

Courtney,

I received your letter regarding discovery requests. As I am sure you are aware, the Rules provide defendants 15 additional days from the date the answer is due to respond to discovery requests. When I filed the motion to dismiss, that stayed the time to file our answer and respond to discovery requests. Obviously the judge issued an order denying the motions to dismiss last Friday, which would normally start the clock running on my time to file an answer; however, as you probably saw yesterday, I filed a motion for reconsideration, which I believe stays the time again. In addition, to the extent the judge denies our motion for reconsideration or decides to deny it in part, I've asked him to stay the case pending resolution of the appeal. I hope you agree that makes sense from a judicial economy perspective.

In any event, I would like to get a ruling on the motion before I have to bill my client for drafting an answer or responding to your discovery requests. Please let me know if you have any objections to me doing that. If the judge denies the motion altogether, it should not take me very long thereafter to file an answer and I would expect to have discovery responses to you within a couple of weeks after the answer is filed.

Feel free to give me a call if you wish to discuss further.

Thanks,

Ken

Kenneth N. Shaw | Attorney
Direct 864.240.4541 | kshaw@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor | Greenville, SC 29601
Main 864.240.3200 | Fax 864.240.3300

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Clark, Amy

From: Shaw, Kenneth
Sent: Tuesday, August 27, 2019 8:33 AM
To: hmetcalfe@malawfirm.com; catkinson@malawfirm.com
Cc: Clark, Amy
Subject: RE: Jane Doe - Motion to Compel

Hannah/Courtney:

I just wanted to follow up on my email below. Will you please withdraw your motion to compel until the motion for summary judgment is decided? I assure you, we will timely respond once the motion is decided.

Thanks,

Ken



Kenneth N. Shaw | Attorney
Direct 864.240.4541 | kshaw@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor | Greenville, SC 29601
Main 864.240.3200 | Fax 864.240.3300

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

From: Shaw, Kenneth
Sent: Monday, August 19, 2019 9:49 AM
To: hmetcalfe@malawfirm.com; catkinson@malawfirm.com
Cc: Clark, Amy <aclark@hsblawfirm.com>
Subject: Jane Doe - Motion to Compel

Hannah/Courtney:

I saw where you filed a motion to compel regarding your discovery requests. I wish you had corresponded with me prior to filing the motion. It was my understanding we had an agreement discovery responses would not be due until my motion to dismiss was decided, which has not yet occurred. As you know, Judge Sprouse, *sua sponte*, converted the motion into one for summary judgment in regards to the statute of limitations issue. I understand from the clerk the motion will be heard on September 23rd at 10:00 AM. Until that motion is decided, I can't adequately respond to discovery as I won't know the full scope of the issues in the case. Once the motion is decided, I assure you we will timely respond to your requests. With that in mind, I would kindly ask that you withdraw your motion to compel.

While I don't believe I can fully respond to your discovery requests, if there is something specific you believe you need for purposes of the summary judgment motion, please let me know.



Kenneth N. Shaw | Attorney

Direct 864.240.4541 | kshaw@hsblawfirm.com

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ONE North Main, 2nd Floor | Greenville, SC 29601

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[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

The Honorable R. Scott Sprouse, Circuit Court Judge

Case Nos.: 2018-NI-37-00010/2019-CP-37-0271

Jane Doe

Appellant,

v.

Oconee Memorial Hospital, Greenville Health System, Upstate Affiliate
Organization, Kevin Docyk, Mary Beth Hendricks

Respondents.

NOTICE OF APPEAL

Jane Doe hereby appeals from the order of the Circuit Court, by the Honorable R. Scott Sprouse, Circuit Court Judge, dated and entered on October 31, 2019. Written notice of this Order having been affirmed was received on October 31, 2019. The Court's order denying Plaintiff's motion for reconsideration of the October 31, 2019 order was entered on November 4, 2019 and written notice of the order denying the motion to reconsider was received on November 4, 2019. A copy of the October 31, 2019 order is attached hereto and incorporated herein.

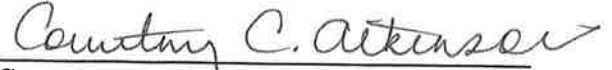
(Signature on following page)

RECEIVED

DEC 06 2019

SC Court of Appeals

Respectfully submitted,



Courtney C. Atkinson, SC Bar No. 71992
Hannah Rogers Metcalfe, SC Bar No. 73046
METCALFE & ATKINSON, LLC
1395 S. Church Street
Greenville, South Carolina 29605
(864) 214-2319

Other Counsel of Record:

Kenneth N. Shaw
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602

Attorney for Respondents Oconee Memorial Hospital, Greenville Health System, Upstate
Affiliate Organization, Kevin Docyk, Mary Beth Hendricks

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville
Health System; Upstate Affiliate
Organization; Kevin Docyk, MD; Mary
Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762, 2019-CP-37-
0271, and 2018-NI-37-00010*Order Granting Defendants' Motion to
Dismiss***RECEIVED****DEC 06 2019****SC Court of Appeals**

This matter came before the Court upon Defendants Greenville Health System ("GHS")¹, Upstate Affiliate Organization ("UAO"), Kevin Docyk, MD, and Mary Beth Hendricks's motions to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. After careful reconsideration of all the issues, for the reasons more fully set forth below, I hereby grant Defendants' motions as to all tort causes of action with prejudice.

PROCEDURAL HISTORY

The above referenced actions are Plaintiff's second attempt to assert claims related to the handling of a sexual assault forensic examination kit at Oconee Memorial Hospital ("OMH") on December 5, 2015. In the instant actions, Plaintiff makes essentially the same factual allegations as she did in her prior civil action filed on December 5, 2017 (C.A. No.: 2017-CP-37-00700). In that action, she alleged the facts amounted to: (1) negligence – failure to properly collect and protect evidence; (2) negligence – failure to order necessary tests; (3) gross negligence – failure

¹ Plaintiff identifies Oconee Memorial Hospital as a named defendant in her pleadings; however, Oconee Memorial Hospital is not an independent entity capable of being sued. Rather, at all times relevant to these actions, it was a facility owned and operated by GHS.

to properly collect and protect evidence; (4) gross negligence – failure to order necessary tests; (5) negligent supervision; and (6) intentional infliction of emotional distress (hereinafter “Negligence Action”).

GHS filed a motion to dismiss the Negligence Action on January 10, 2018. A hearing on the motion to dismiss was held on June 4, 2018. Just prior to the start of the hearing, Plaintiff filed a motion to amend her complaint. Plaintiff’s motion did not include a proposed amended complaint, but the motion stated she wished to amend to add defendants and to add two additional causes of action. Plaintiff’s motion did not specify the two new causes of action, but during the motion to dismiss hearing, Plaintiff’s counsel identified the two new causes of action as breach of contract and bailment.

Following the hearing and additional submissions from both parties, the Court issued an Order granting GHS’s motion to dismiss the Negligence Action on July 9, 2018. By way of the Order, the Court dismissed with prejudice the six causes of action set forth in the Negligence Action. However, the Court provided that its ruling was “without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action.” (July 9, 2018 Order, p. 1.) Plaintiff appealed the Order, and that appeal is still pending.

On December 5, 2018, Plaintiff filed the instant actions. In C.A. No. 2018-CP-37-00762, Plaintiff asserted Breach of Contract and Breach of Implied Contract causes of action against Defendants GHS and UAO, and she asserted Bailment and Implied Bailment causes of action against all Defendants (hereinafter “Contract Action”). In C.A. Nos. 2018-NI-37-00010 and 2019-CP-37-0271, Plaintiff asserted medical malpractice claims against all Defendants (hereinafter “Med Mal Action”).

Defendants filed the instant motions to dismiss on December 21, 2018. In their motions,

Defendants argued Plaintiff's medical malpractice claims and bailment claims were barred by the two year statute of limitations pursuant to the Tort Claims Act.² In addition, Defendants argued Plaintiff failed to state facts sufficient to support her contract causes of action.

The motions came before the Court on March 20, 2019. During the hearing, Plaintiff's counsel argued there were questions of fact about whether Defendants were subject to the Tort Claims Act. After taking the matter under advisement, the Court issued a Form 4 Order on April 11, 2019 denying the motions to dismiss on the basis Defendants arguments invoked matters outside of the pleadings. Defendants responded by timely filing a motion to reconsider. On May 8, 2019, the Court issued another Form 4 Order whereby it granted a *de novo* hearing on the statute of limitations issue which would be treated as a motion for summary judgment under Rule 12(c), SCRCP; otherwise, the motion to reconsider was denied.

The *de novo* hearing was held on September 23, 2019. In support of their argument that Plaintiff's medical malpractice and bailment claims were subject to the Tort Claims Act, Defendants submitted a memorandum which included an affidavit from Cynthia Cambron. The affidavit established the following pertinent facts:

1. GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act.
2. In December 2015, and at all times relevant to this action, Oconee Memorial Hospital was one of numerous hospital facilities within the System operated by GHS.

² Defendants also argued Plaintiff's claims were barred by the doctrines of *res judicata* and/or *collateral estoppel*, but since the statute of limitations issue is dispositive, the Court need not address that argument.

3. In December 2015, and at all times relevant to this action, Kevin Docyk, MD and Mary Beth Hendricks were employees of GHS pursuant to the Tort Claims.
4. UAO is a 501(c)(3) corporation, so it could not possibly “own” GHS as alleged by Plaintiff. Further, and more importantly, it had nothing to do with the care rendered to Plaintiff on December 5, 2015, as it did not exist as an entity at that time.

In response, Plaintiff did not submit any evidence to the contrary. Rather, Plaintiff filed a memorandum in opposition in which she argued dismissal was inappropriate, because she had not had adequate time to conduct discovery on the statute of limitations issue, and she believed her new claims should relate back to the filing of her Negligence Action. For the reasons stated below, the Court finds Plaintiff’s arguments unavailing.

LEGAL ANALYSIS

As noted above, GHS is a healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq.; therefore, it and its agents and employees, including, Defendants Docyk and Hendricks, are entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. *Murphy v. Richland Mem. Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995), and *Benton v Roger C Peace*, 313 S.C. 520, 443 S.E.2d 537 (1994)). Pursuant to S.C. Code § 15-78-110, the applicable statute of limitations for all tort claims is 2 years.

Plaintiff’s alleged injuries occurred on December 5, 2015. Plaintiff filed the instant actions on December 5, 2018, a full year after the statute of limitations expired in regards to any tort claims. Therefore, all of her tort claims, including her bailment causes of action, are barred

by the applicable statute of limitations. *See Hadfield v. Gilchrist*, 343 S.C. 88, 538 S.E.2d 268 (2000) (holding that, although contractual in nature, “an action for breach of the duty of care by a bailee sounds in tort”).

Plaintiff contends she did not have a reasonable opportunity to conduct discovery on the statute of limitations issue, but it would appear to the Court that Plaintiff made no attempt to conduct any such discovery. Plaintiff knew about the statute of limitations issue since Defendants filed their motions to dismiss in December 2018, yet Plaintiff never sent any discovery requests specific to the issue. On August 19, 2019, a full month before the hearing, Defendants actually offered to produce anything Plaintiff felt she needed for the statute of limitations issue, but Plaintiff chose to ignore Defendants’ offer. Plaintiff had an obligation to establish facts showing there was a genuine issue of material fact, but despite adequate time to discover if any such facts existed, she failed to do so. *See George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 593, 545 S.E.2d 500 (2001) (party opposing a motion for summary judgment may not rest on the mere allegations or denials of her pleadings).

Next, Plaintiff argued her claims should relate back to the filing of her Negligence Action pursuant to Rule 15(c), SCRCF. However, Rule 15 is inapplicable to the instant actions, because Rule 15 applies to amended complaints. The instant actions are not amendments to the Negligence Action complaint; rather, they are distinct and separate actions, and the Court is not aware of any procedure whereby such actions can be converted into amendments of prior actions. Regardless, even if treated as amended complaints, the claims would still be barred by the statute of limitations. It is well established that a complaint cannot be amended to state a new or different cause of action after the statute of limitations has expired. *Scott v. McCain*, 272 S.C. 198, 202, 250 S.E.2d 118, 121 (1978); *Coral Gables v. Palmetto Brick Co.*, 183 S.C. 478,

191 S.E. 337 (1937) (“[A]n amendment which introduces a new or different cause of action and makes a new or different demand does not relate back to the beginning of the action, so as to stop the running of the statute of limitations, but is the equivalent of a fresh suit upon a new cause of action, and the statute continues to run until the amendment is filed.”)

WHEREFORE, for the reasons stated herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that C.A. Nos. 2019-CP-37-0271 and 2018-NI-37-00010 are both hereby dismissed with prejudice.

As to C.A. No.: 2018-CP-37-00762, Plaintiff’s Bailment and Implied Bailment causes of action are hereby dismissed with prejudice. Only Plaintiff’s Breach of Contract and Breach of Implied Contract causes of action remain; however, since those causes of action are not asserted against Defendants Docyk and Hendricks, those defendants are hereby dismissed.

Further, the Court finds Defendant Upstate Affiliate Organization is not a proper party to this action; therefore it is also dismissed.

In sum, all causes of action are hereby dismissed except Plaintiff’s Breach of Contract and Breach of Implied Contract causes of action, which shall proceed against Defendant Greenville Health System only.

Finally, Defendant Greenville Health System’s motion to stay the Contract Action pending resolution of the appeal of the Negligence Action is hereby denied.

AND IT IS SO ORDERED.

The Honorable Judge R. Scott Sprouse
Tenth Judicial Circuit

October __, 2019



Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al
Case Number: 2018NI3700010
Type: Order/Dismissal

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2019-10-31 16:23:05 page 7 of 7

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

The Honorable R. Scott Sprouse, Circuit Court Judge

Case Nos.: 2018-NI-37-00010/2019-CP-37-0271

Jane Doe

Appellant,

v.

Oconee Memorial Hospital, Greenville Health System, Upstate Affiliate
Organization, Kevin Docyk, Mary Beth Hendricks

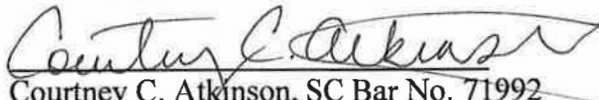
Respondents

CERTIFICATE OF SERVICE

I certify that on 12/3/19, I served Appellant's Notice of Appeal on the
Respondents, by placing a copy into the U.S. Mail, postage prepaid, addressed to the
Respondent's counsel of record as follows:

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2019-002009

Jane Doe

Appellant,

v.

Oconee Memorial Hospital, Greenville Health System, Upstate Affiliate
Organization, Kevin Docyk, M.D., Mary Beth Hendricks

Respondents.

CERTIFICATE OF COUNSEL

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



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August 19, 2020