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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas
The Honorable Debra R. McCaslin, Circuit Court Judge

Appellate No. 2021-000487
C/A No. 2020-CP-10-02902

Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman,

Respondent,

v.

We Are Sharing Hope SC, Medical University of South Carolina, United Network for Organ Sharing, Jacqueline Honig, M.D., and Darla Welker,

Defendants,

of which We Are Sharing Hope SC and United Network for Organ Sharing are the

Appellants.

INITIAL REPLY BRIEF OF APPELLANT
We Are Sharing Hope SC

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ARGUMENT IN REPLY

I. THIS COURT HAS APPELLATE JURISDICTION OF THE PENDING APPEAL OF THE TRIAL COURT'S ORDER RULING ON THE PEER REVIEW PRIVILEGE ISSUES.

Sharing Hope served and filed a notice of appeal on May 5, 2021, pursuant to Rule 203, SCACR, and S.C. Code §44-7-394. In due course, the Appellant timely filed an initial brief with designations of matters to be included in the Record on Appeal. In both its notice of appeal and initial brief, the Appellant specifically referenced the issue of appellate jurisdiction over Judge McCaslin's discovery order by acknowledging that discovery orders generally are not immediately appealable, but also specifically referencing the appellate jurisdictional provisions of §44-7-394. In its initial brief[1], the Respondent raises an issue of appellate jurisdiction, arguing that the order is an interlocutory decision that is not appealable at this time, citing a litany of cases which hold that discovery orders are not immediately appealable. The Respondent further contends that the statutory provision for an immediate appeal found in §44-7-394 does not apply because Sharing Hope is not a hospital or a hospital-associated entity entitled to a peer review privilege under §44-7-392.

While Sharing Hope maintains that appellate jurisdiction is properly founded on §44-7-392, as discussed below, in an abundance of caution, Sharing Hope is submitting a Petition for Extraordinary Relief by a Writ of Certiorari seeking the Supreme Court's review of these novel and important issues of peer review privilege that would become moot if Sharing Hope is forced to produce documents and answer deposition questions about matters involving the peer review process it participated in as required by its federal certification and contract with UNOS. With the Petition, Sharing Hope also is requesting that the Supreme Court certify this appeal for transfer

[1]The Respondent did not raise its appellate jurisdiction challenge when the appeal was filed.

pursuant to Rule 204(b), SCACR. A copy of the Petition is being filed in the Court of Appeals for informational purposes.

A. The immediate appeal of this discovery order is statutorily authorized by S.C. Code §44-7-394.

As a general rule, a discovery order is not immediately appealable. Tobaccoville USA, Inc. v. McMaster, 387 S.C. 287, 692 S.E.2d 526, 529 n. 2 (2010). Prior to 2012, the Court had specifically ruled that an order involving a peer review privilege (under S.C. Code § 40-71-20) was not immediately appealable. Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc., 381 S.C. 332, 332–33, 673 S.E.2d 417, 418 (2009)[2]. However, in 2012, the Legislature addressed the issue of privilege for documents, records, and information in connection with hospital-related peer review processes aimed at assessing patient quality of care, including sentinel event investigations or root cause analyses. S. C. Code § 44-7-392; 2012 Act No. 275, § 1, eff June 26, 2012. With that 2012 Act, the Legislature also provided a motion procedure for parties to assert or contest the privilege and in camera review by the trial court. S.C. Code §44-7-394. Most significantly, §44-7-394 provides for immediate appeal of a trial court order compelling production:

> (C) If the court orders a hospital or affected person to produce documents to a third party under this section, the hospital or affected person shall have the right to immediately appeal that order, and the filing of the appeal shall stay the enforcement of the order compelling the production.

"***Absent some specialized statute***, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code § 14–3–330." Woodard v. Westvaco Corp., 319

[2] As discussed in the Petition for a Writ of Certiorari filed with the Supreme Court, notwithstanding the rule as stated in Wieters, the Supreme Court had previously accepted immediate review of discovery orders implicating a peer review privilege by way of a writ of certiorari in McGee v. Bruce Hosp. Sys., 312 S.C. 58, 439 S.E.2d 257 (1993).

S.C. 240, 242, 460 S.E.2d 392, 393 (1995) (emphasis added).[3] Sharing Hope acknowledges that as a general rule, pretrial discovery orders are not directly appealable under §14-3-330, but Sharing Hope maintains that the "specialized statute" of §44-7-394 provides the Court of Appeals with appellate jurisdiction of the pending appeal.

To the extent that the Plaintiff/Respondent argues that §44-7-394 does not apply because Sharing Hope is not a hospital or related entity, the merits of that very point are one of the issues in this appeal. The order on appeal contains a specific ruling on §44-7-392 and compels production of documents (and deposition testimony). Accordingly, the order is immediately appealable under the statutory authority of §44-7-394.

B. The Appellate Court can, and should, exercise pendant appellate jurisdiction over the interconnected issues relating to the peer review privilege as asserted by Sharing Hope.

As seen in the Appellant's initial brief, Sharing Hope has asserted a peer review privilege based on multiple grounds. Sharing Hope contends that South Carolina law, as found in §40-71-20 and §44-7-392, recognizes a peer review privilege for retrospective self-critical analysis in the healthcare field. In addition to and in the alternative, Sharing Hope contends that longstanding, well-established public policy supports recognition of a privilege to protect peer review materials generated in the healthcare field. Sharing Hope also argues separately that its participation in the root cause analysis conducted with Grand Strand Hospital is protected by § 44-7-392.[4] To the extent that any of these issues, arguably, do not fall squarely within the precise parameters of §44-

[3] O*verruled on other grounds by* Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002).

[4] As an additional ground, Sharing Hope maintains that Virginia law provides a peer review privilege to the materials created by Sharing Hope to meet the requirement of a Virginia entity, relying upon Va. Code Ann. § 8.01-581.17.

7-392 (and the appellate jurisdiction conferred by §44-7-394), the Court can and should review the other grounds under its pendent appellate jurisdiction.

South Carolina appellate courts have pendant appellate jurisdiction to review interlocutory rulings that are companions with interlocutory issues that are immediately reviewable under some other authority. Morris v. Anderson Cty., 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) ("this Court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation"); Roberts v. Recovery Bureau, Inc., 316 S.C. 492, 495, 450 S.E.2d 616, 618 n. 2 (Ct. App. 1994) ("The appellate courts have discretion, however, to consider an unappealable order if an appealable issue is before the court and a ruling on appeal will avoid unnecessary litigation.").

As noted in Brown v. Cty. of Berkeley, 366 S.C. 354, 362, 622 S.E.2d 533, 538 n. 5 (2005), "Courts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable." (Citations omitted). The issues must have a nexus to justify the appellate Court's exercise of its pendent jurisdiction. *Id.*; *see also* Smith v. Tiffany, 419 S.C. 548, 552, 799 S.E.2d 479, 481 (2017) (holding that the issue lacked a sufficient nexus or companionship); Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 338–39, 574 S.E.2d 502, 512 (Ct. App. 2002) ("the denial of the motion for summary judgment on the unjust enrichment claim is so closely connected to these other issues and constitutes a basis for the grant of summary judgment to Jackson National, we may properly review it at this time").

The reasoning for pendent appellate jurisdiction lies in the goal of judicial efficiency and economy. *See* Woods v. Rock Hill Fertilizer Co., 102 S.C. 442, 86 S.E. 817, 819 (1915) ("it will be better for both parties in the further progress of the case to have these questions decided"); Tate

v. Oxner, 236 S.C. 313, 317, 114 S.E.2d 225, 225 (1960) ("where there is an appealable issue before the Court, an Order refusing a motion to strike may also be considered in order to avoid unnecessary litigation.").

Sharing Hope submits that all the grounds raised in support of its assertion of a peer review privilege are closely connected so as to meet the nexus requirement for pendent appellate jurisdiction, and that judicial efficiency and economy will best be served by resolving the peer review privilege so that the parties can move forward towards ligation on the merits of the claims.

II. THE COURT HAS THE AUTHORITY TO RECOGNIZE A PEER REVIEW PRIVILEGE TO EFFECTUATE PUBLIC POLICY WHERE THERE IS NO EXPRESS OR IMPLIED LEGISLATIVE INTENT TO EXCLUDE THE MEMBERS OF THE ORGAN PROCUREMENT AND TRANSPLANT NETWORK FROM THE PROTECTIONS OF SUCH A PRIVILEGE.

The cornerstone of the asserted peer review privilege is a well-recognized public policy that encourages the policy of extending peer review privilege to promote qualitative review to improve patient care. As stated by the Supreme Court, the peer review privilege expressly granted by §40-71-20 (to a committee of a professional society) serves "the overriding public policy ... to encourage health care professionals to monitor the competency and professional conduct of their peers to safeguard and improve the quality of patient care." McGee v. Bruce Hosp. Sys., 312 S.C. 58, 61, 439 S.E.2d 257, 259 (1993). The Court also has recognized "the policy goals of promoting candor and open discussion among participants in the peer review process." Durham v. Vinson, 360 S.C. 639, 646, 602 S.E.2d 760, 763 (2004). The same public policy forms the basis for the peer review privilege granted to hospital and their related entities in §44-7-392.

While the Trial Court acknowledges the merit of these public policy arguments, the court invoked the "the plain meaning rule" as a justification for refusing to extend the peer review privilege to Sharing Hope because the Legislative has only granted such privilege to hospitals (§44-7-392) or a committee of a professional society (§40-71-20). [ROA ___; Order, pp. 6-7.]

The Respondent/Plaintiff contends that the Trial Court correctly determined that Sharing Hope is not entitled to claim peer review privilege under South Carolina law because it is not a covered entity under the plain language of the peer review statutes, and that the Trial Court rightly declined to expand the peer review privilege by creating a "public policy exception" where the Legislature chose not to do so. Sharing Hope maintains that, notwithstanding the fact that the precise provisions of the two statutory privileges do not address the OPTN peer review process, the courts can, and should, recognize that public policy fully supports extending the same privilege to a federally-certified OPO (and UNOS). In this Reply, Sharing Hope seeks to expound upon the premise that the plain meaning rule of statutory construction does not prevent the Court from deciding this novel issue and extending the same privilege to Sharing Hope, as a member of the federal Network

Admittedly, many appellate opinions espouse the statutory construction principle ("the plain meaning rule") that "it is not the court's place to change the meaning of a clear and unambiguous statute." In re Vincent J., 333 S.C. 233, 235–36, 509 S.E.2d 261, 262 (1998). However, Sharing Hope is not asking the Court to change the terms of §40-71-20 or §44-7-392. Rather, Sharing Hope is asking the Court to expand the protection where the same vital public policy applies.

From one perspective, §40-71-20 and §44-7-392 expressly grant a peer review privilege to two groups in the healthcare field – committees of professional societies and hospital systems, but those statutes do not expressly exclude members of the OPTN, such as Sharing Hope, from the protections of a peer review privilege. This is not a situation where the Legislature under took a comprehensive approach to peer review privileges across the entire healthcare field. Under the circumstances, the Legislature's piecemeal treatment of a peer review privilege in the healthcare

field and silence on the unique role of the OPO and/or the OPTN should not be construed as a deliberate intent to deprive an OPO of the same peer review privilege granted to the transplant hospitals, such as Defendant MUSC. Such an inference is unjustified, particularly, where (1) there is no legislative history or other indication that the Legislature even considered the potential prospect that the OPO members of the OPTN are an essential part of the organ transplant healthcare field, and where (2) the same public policy concerns apply to its mandatory peer review process.

A. This Court can extend the peer review privilege to this Organ Procurement Organization to fill in the gaps left in the statutes because it would serve the same public policy that undergirds the Legislative acts.

The case of Barth v. Barth, 293 S.C. 305, 360 S.E.2d 309 (1987), provides an enlightening example where the Court answered a novel question of law when the statute was silent on the point in issue on appeal. There, the Court was presented with a novel question because the statute on the legal rate of interest (S.C. Code § 34–31–20) was silent on the running of interest on a judgment during a pending appeal claiming that the judgment was inadequate. The Court was of the opinion that the General Assembly did not consider that point in drafting the statute, so the Court undertook to review a split of authority among other jurisdiction and held that interest did not accrue during the appeal where the judgment was affirmed.[5] In doing so, the Court stated: "It is the right and duty of this court to interpret statutes and to develop the common law to meet the needs of an ever-changing society." The Court also quoted from a noted authority on statutory construction addressing a court's role when there are gaps in statutes:

[5] A new rule on interest was stated in Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000).

Regarding statutory construction, Benjamin N. Cardozo[6] states:

> ... It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had none the less a real and Oxer ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute. 'The fact is,' says Gray in his lectures on the "Nature and Sources of the Law," 'that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.'

Id. at 310-11. This case presents such a case where it is readily apparent that the Legislature had no intent about providing an express privilege to the OPTN and its members such as Sharing Hope because when there is no indication that the topic ever occurred to the Legislature. Thus, it is for the Court to look to the underlying public policy to "fill in the gap" in regards to the peer review process of this federal Network that holds a unique, but vital role in the organ transplant field of healthcare.

This concept of courts "filling in the gaps" in legislation is recognized in other courts. For example, in Guiseppi v. Walling, 144 F.2d 608, 620–21 (2d Cir. 1944), aff'd sub nom. Gemsco, Inc., v. Walling, 324 U.S. 244 (1945), the Second Circuit discussed when a court might have to resort to legislating (or "making law") to fill in the gaps in statutes:

> Courts in their interpretation of statutes often cannot avoid some such legislation. The enactment of many a statute thus, by implication, calls on the courts to engage in supplemental law making. That activity should always, of course, be modest in scope. But the necessary generality in the wording of many statutes, and ineptness in the drafting of others, frequently compels the courts, as best they can, ***to fill in***

[6] Benjamin N. Cardozo , The Nature of the Judicial Process (1921).

> ***the gaps***, an activity which, no matter how one may label it, is in part legislative. (Emphasis added.)

The Rhode Island Supreme Court has also addressed the role of the courts in "filling in the gaps" in the law where the legislative intent on a topic is obscure, also citing to Cardozo:

> This is understandably so because nothing either in the language of the Act, or in the report of the legislative commission preceding its enactment, even hints at an attitudinal approach. Neither is there anything in the objectives which the Act was designed to serve or in the circumstances attendant upon its enactment from which a legislative intention can be ascertained. Instead, there is nothing but obscurity. It is as if there were a complete lack of awareness that there might someday be a proposal to include an agency shop provision in a labor agreement.
>
> As we cannot extract meaning from an intention cloaked in obscurity, we must legislate 'between gaps' and fill 'the open spaces in the law.' Cardozo, The Nature of the Judicial Process 113 (1921). We are guided in that task by considerations '* * * exactly of the same nature as those which ought to dominate legislative action itself, since it is a question in each case, of satisfying, as best may be, justice and social utility by an appropriate rule.'

Town of N. Kingstown v. N. Kingstown Tchrs. Ass'n, 297 A.2d 342, 345–46 (RI 1972) (footnotes omitted).

Similarly, in Beneficial Fin. Co. of New York v. Baker, 43 Misc. 2d 546, 548, 251 N.Y.S.2d 556, 558 (Sup. Ct. 1964), a New York court lamented the legislature's lack of foresight in addressing a particular point of law in an otherwise detailed statute, but the court accepted the proposition that it could attempt to fill in the gaps guided by legislative intent:

> Although the statutes spell out the priorities in these matters in considerable detail, provision has not been made for the precise problem confronting us here. This is not a case in which there is an inherently right or wrong answer. What is needed is merely a good workable rule. It would be better had the Legislature foreseen and provided for this situation, for a matter of policy may be involved. Nevertheless, if the legislative scheme as revealed by the statutes sufficiently points the way to the legislative intent, it is proper for the court to supply the gaps consistently with such intent.

The reality is that sometimes a case comes before a court when the legislature has not fully legislated in an area of law, leaving a "gap" court for which the court may fashion an appropriate rule:

> [W]e believe that the legislature has not spoken on this issue. We believe a lacuna[7] exists, and we are free to use our own determination to explain pertinent words in the blood shield statute.
>
> ****
>
> When the occasion arises for which there is no specific rule to apply, 'we are free to fashion an appropriate rule of law.'

Smith v. Cutter Biological, Inc., a Div. of Miles Inc., 72 Haw. 416, 426, 823 P.2d 717, 723 (1991) (citation omitted.).

When a statute addresses a subject, but it is silent in certain particulars, the court might first determine if the silence or "gap" was intentional:

> Our task is to seek the intent of the legislature, not to substitute our own wisdom in its stead. To that end, when a statute is silent regarding particular circumstances and we determine that such a gap was not the intent of the legislature, "we must determine the best rule of law to ensure that the statute is applied uniformly." We "analyze the act in its entirety and harmonize its provisions in accordance with the legislative intent and purpose."

Cox v. Laycock, 345 P.3d 689, 700 (UT 2015) (footnote omitted). Here, the General Assembly has not spoken on the peer review process mandated by the OPTN, and there is no basis to infer any intent by the Legislature to exclude the OPTN members, such as Sharing Hope, from the protections of a privilege. In light of the recognized public policy together with the unique role of the OPTN in the organ transplant field and the federal mandate requiring participation in the peer

[7] "Lacuna" is defined as a gap or blank in writing. *Black's Law Dictionary Free Online Legal Dictionary* 2nd Ed.; https://thelawdictionary.org/lacuna.

review process, the best rule of law would be to extend to Sharing Hope the same privilege which has been granted to the transplant hospitals that are part of the same Network.

B. This Court can make law on novel issues to serve public policy and according to its own "sense of law, justice and right."

A discussion of the court's power and the duty to "make law" on novel issues can be found in many cases. For example, in Huggins v. Com. & Sav. Bank, 141 S.C. 480, 140 S.E. 177, 182 (1927), the Court stated that where is no direction from legislation, no binding precedent, and no dicta to provide guidance, it is the court's duty "to determine which doctrine best appeals to its sense of law, justice, and right." (Quoting Antley v. New York Life Ins. Co., 139 S.C. 23, 30, 137 S.E. 199, 201 (1927)). This reference to answering novel questions based on "law, justice, and right" can be found in a number of Court opinions answering novel questions of law on certification from federal courts:

> In answering a certified question raising a novel question of law, the Court is free to decide the question based on its assessment of which answer and reasoning would best comport with the law and public policies of this state and the Court's sense of law, justice, and right.

Peagler v. USAA Ins. Co., 368 S.C. 153, 157, 628 S.E.2d 475, 477 (2006); *accord* Miller v. Aiken, 364 S.C. 303, 306, 613 S.E.2d 364, 365 (2005); Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008); Donze v. Gen. Motors, LLC, 420 S.C. 8, 11, 800 S.E.2d 479, 480 (2017).

In this case, the statutory peer review privilege provisions do not address the question of whether the OPTN and its member OPOs are entitled to the same privilege granted to hospitals (§44-7-392) or a committee of a professional society (§40-71-20). Likewise, there is no binding precedent on the question of whether an organ procurement organization, as a member of the Organ Procurement and Transplant Network, is entitled to assert a peer review privilege as to post-

incident self-critical materials prepared or exchanged by an OPO in compliance with a requirement of its membership in the federal OPTN. However, the public policy foundation for peer review privilege is well established. In this case under these circumstances, it is within the power of the Court to answer the novel question presented and say YES to extending the peer review privilege to this Organ Procurement Organization because an affirmative answer would best comport with the stated public policy commensurate with fairness and justice.

Evidence of the Court's exercise of its authority to "make law" can be also be found in the seminal opinions wherein the Court has faced novel issues, bemoaned the lack of legislation on a point of law and forged ahead to change the law. One of the most preeminent decisions is McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985), wherein the Supreme Court abolished sovereign immunity. The Court referenced the fact that it had long before identified the doctrine as being "archaic and outmoded," but it had suggested that any change of the doctrine should come from the legislature.[8] The Court had expressly urged the legislature to address the rule in prior opinions,[9] but the Court found that the few exceptions addressed by the Legislature amounted to "a scattered patchwork of sovereign liability that lacks continuity, logic or fairness." *Id.* at 742. When the Supreme Court abolished sovereign immunity, only then did the General Assembly accomplish the task of enacting the South Carolina Tort Claims Act.

Another prominent opinion where the Court "made law" is Russo v. Sutton, 310 S.C. 200, 422 S.E.2d 750 (1992), which abolished the cause of action for alienation of affections. In that case, the appellant had argued for abolishment of the antiquated tort causes of action for criminal

[8] McKenzie v. City of Florence, 234 S.C. 428, 435, 108 S.E.2d 825, 828 (1959).

[9] Copeland v. Housing Authority of Spartanburg, 282 S.C. 8, 316 S.E.2d 408 (1984); Belton v. Richland Memorial Hospital, 263 S.C. 446, 211 S.E.2d 241 (1975).

conversation and alienation of affections. The Court abolished the cause of action for alienation of affection on the ground that it was outmoded and violative of the public policy of South Carolina, stating:

> The common law changes when necessary to serve the needs of the people. *Dupuis v. Hand,* 814 S.W.2d 340, 346 (Tenn.1991). We have not hesitated to act in the past when it has become apparent that the public policy of the State is offended by outdated rules of law. *See Nelson v. Concrete Supply Co.,* 303 S.C. 243, 399 S.E.2d 783 (1991) (abolishing contributory negligence); *McCall v. Batson,* 285 S.C. 243, 329 S.E.2d 741 (1985) (abolishing sovereign immunity).

Id. at 753. Of note, the fact that the Legislature had already dispensed with the cause of action for criminal conversation by passage of S.C. Code Ann. §15–3–150[10], does not appear to have presented any compelling basis for the Court to infer any legislative intent to preserve the cause of action for alienation of affection.

The Court also has made new law by creating common law duties, such as in Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 85 (2007), where the Court recognized and imposed a common law duty on social hosts and created a cause action against a host for serving alcoholic beverages to underage minors. In so doing, the Court clearly pronounced its authority to change law, citing to Russo, supra.

More recently, the Court made law in Stone v. Thompson, 428 S.C. 79, 833 S.E.2d 266 (2019), by abolishing common law marriage. In a family court divorce action, the Court considered the concept or common-law marriage and "concluded the institution's foundations have eroded with the passage of time, and the outcomes it produces are unpredictable and often convoluted." *Id*. at 267. Even though the legislature had recognized common law marriage by virtue of creating an exception to the general requirement to obtain a marriage license (S.C. Code

[10]The Legislature simply and declaratively stated: "No civil action may be brought in this State for the tort of criminal conversation." 1988 Act No. 391, § 1.

Ann. § 20-1-360), the Court referenced Russo v. Sutton and McCall v. Batson on the point that the Court could and would change the law when necessary to serve the needs of the people and current public policy.

In this case, there is a clear, well-established public policy supporting peer review in the healthcare field to promote better patient care and safety and there is an accepted recognition that the protection of confidentiality with a privilege is critical to promoting complete candor and open discussion in peer review process. While the General Assembly has enacted two different statutory provisions relating to such a peer review privilege, it has not promulgated any comprehensive legislation designed to provide uniformity on the topic of peer review privilege in all healthcare fields. Nor has the General Assembly expressly or implicitly demonstrated any intent to exclude the Organ Procurement Organization members of the federal Organ Procurement and Transplant Network from the protections of a peer review privilege. Given the unique and vital lifesaving role of OPOs, as members of the OPTN, in the organ transplant field of healthcare, the law needs to be expanded to provide Sharing Hope with the same peer review privilege that is granted to transplant hospitals under §44-7-392.

CONCLUSION

For the reasons presented in the Brief of Appellant and this Reply Brief, the Trial Court's order should be reversed.

Respectfully submitted,

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October 21, 2021

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Defendants,

of which We Are Sharing Hope SC and United Network for Organ Sharing are the

Appellants.

Certificate of Service

The undersigned certifies that on this **21st** day of **October 2021**, a copy of the Initial Reply Brief of Appellant We Are Sharing Hope SC was served by emailing a copy of each, on the following counsel at the addresses listed below:

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October 21, 2021

RECEIVED
Oct 21 2021
SC Court of Appeals

Via E-Filing and U.S. Mail
The Honorable Jenny Abbott Kitchings
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Re: Michelle Cha Holliman, individually and as personal representative of the estate of Allen B. Holliman, Respondent v. We Are Sharing Hope SC, Medical University of South Carolina, United Network for Organ Sharing, Jacqueline Honig, M.D., and Darla Welker, Defendants, of which We Are Sharing Hope SC and United Network for Organ Sharing are the Appellants
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HLF File No. 269.009

Dear Ms. Kitchings:

Enclosed please find Appellant We Are Sharing Hope SC's Initial Reply Brief and Certificate of Service for filing in the above-captioned matter. We are serving all counsel of record with a copy of same by email.

Thank you for your time and consideration.

Kind regards,

Yours truly,

/s/ Molly H. Craig

Molly H. Craig

MHC/spc
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cc: John C. Moylan, III, Esquire [***Via E-Mail***]
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Rachel Lewis Anna, Esquire [***Via E-Mail***]
James Hunter May, Esquire [***Via E-Mail***]
Jack G. Gresh, Esquire [***Via E-Mail***]
Lauren Spears Gresh, Esquire [***Via E-Mail***]
G. Wade Cooper, Esquire [***Via E-Mail***]

bcc: Doug Klein, Claim No. 2019017035 [***Via E-Mail***]
Dave DeStefano [***Via E-Mail***]
John T. Lay, Esquire [***Via E-Mail***]
Anthony W. Livoti, Esquire [***Via E-Mail***]