

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT 25 2021

SC Court of Appeals

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

Civil Case No. 2020-CP-10-02902
Court of Appeal No. 2021-000487

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,
and 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

Appellants,

And of which We Are Sharing Hope SC is

Petitioner.

**APPENDIX TO PETITION FOR EXTRAORDINARY RELIEF BY A WRIT OF CERTIORARI, AND
MOTION FOR CERTIFICATION OF APPEAL FROM COURT OF APPEALS**

HOOD LAW FIRM, LLC

Mary Agnes Hood Craig (SC #6960)
Jean Marie Jennings (SC #100651)
Deborah Harrison Sheffield, *Of Counsel* (SC #2757)
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Charleston, South Carolina 29402
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**Attorneys for Appellant/Petitioner
We Are Sharing Hope SC**

INDEX OF ATTACHMENTS

- A. Holliman Docket Sheet
- B. Complaint, filed July 9, 2020
- C. Plaintiff Motion to Compel, filed November 18, 2020
- D. WASH Motion for Protective Order, filed December 15, 2020
- E. Order (Judge McCaslin), filed April 29, 2021
- F. Notice of Appeal, filed May 5, 2021
- G. Appellant's Initial Brief
- H. Respondent's Initial Brief
- I. Appellant's Initial Reply Brief
- J. Docket Sheet for Ykeiah Lawrence , et al vs. We Are Sharing Hope SC, et al, 2021-CP-10-02033
- K. Docket Sheet for Joe Patterson v. We Are Sharing Hope SC, et al, 2:21-cv-1242-BHH

Exhibit A



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

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Switch View					
Michelle Cha Holliman , plaintiff, et al VS We Are Sharing Hope Sc , defendant, et al					
Case Number:	2020CP1002902	Court Agency:	Common Pleas	Filed Date:	07/09/2020
Case Type:	Common Pleas	Case Sub Type:	Medical Malpract 220	File Type:	Jury
Status:	Pending	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
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Holliman, Michelle Cha	NEF(10-20-2021 05:26:12 PM) Memo/Memo In Opposition	Filing		10/21/2021-09:44		
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Holliman, Michelle Cha	NEF(10-20-2021 05:15:52 PM) Memo/Memo In Opposition	Filing		10/21/2021-09:35		
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We Are Sharing Hope Sc	Notice Of Motion And Motion To Quash Subpoena And Request	Motion	Judge Young Motions Roster Week of October 25, 2021	10/04/2021-16:55	
Holliman, Michelle Cha	NEF(09-20-2021 12:12:26 PM) Motion/Compel	Filing		09/20/2021-13:02	
Holliman, Michelle Cha	Motion to Compel Against We are Sharing Hope SC	Motion	Judge Young Motions Roster Week of October 25, 2021	09/20/2021-12:12	
We Are Sharing Hope Sc	NEF(09-17-2021 08:55:53 AM) Motion/Protection from Disco...	Filing		09/17/2021-13:54	
We Are Sharing Hope Sc	Notice of Motion & Motion/Protection Order	Motion	Judge Young Motions Roster Week of October 25, 2021	09/17/2021-08:55	
We Are Sharing Hope Sc	NEF(09-13-2021 11:17:55 AM)	Filing		09/13/2021-12:04	

We Are Sharing Hope Sc	Motion/Protection from Disco... Motion/Protective Order	Motion	Judge Young Motions Roster Week of October 25, 2021	09/13/2021-11:17		
Medical University Of South Carolina	NEF(09-02-2021 05:21:59 PM) Notice/Other	Filing		09/03/2021-09:23		
Medical University Of South Carolina	Notice of Transfer W/In Firm	Filing		09/02/2021-17:21		
Medical University Of South Carolina	Notice/Notice of Appearance	Filing		09/02/2021-17:21		
Holliman, Michelle Cha	NEF(08-05-2021 10:31:41 AM) Notice/Notice of Appearance	Filing		08/05/2021-10:32		
Holliman, Michelle Cha	Notice/Notice of Appearance	Filing		08/05/2021-10:31		
Holliman, Michelle Cha	NEF(08-05-2021 10:27:47 AM) Notice/Notice of Appearance	Filing		08/05/2021-10:28		
Holliman, Michelle Cha	Notice/Notice of Appearance	Filing		08/05/2021-10:27		
United Network For Organ Sharing	NEF(07-29-2021 11:50:47 AM) Response	Filing		07/29/2021-11:58		
Medical University Of South Carolina	NEF(07-29-2021 11:27:23 AM) Memo/Memo In Opposition	Filing		07/29/2021-11:54		
United Network For Organ Sharing	Response to Proposed Order granting Motion to Compel Documen	Filing		07/29/2021-11:50		
Medical University Of South Carolina	Memo In Opposition tp Plaintiffs Proposed Order	Filing		07/29/2021-11:27		
Holliman, Michelle Cha	NEF(07-09-2021 04:55:52 PM) Memo/Memo In Opposition	Filing		07/12/2021-09:05		
Holliman, Michelle Cha	NEF(07-12-2021 09:00:28 AM) Order/Consent Order	Filing		07/12/2021-09:00		
Holliman, Michelle Cha	Order/Amended Consent Confidentiality Order	Order		07/12/2021-09:00		
Holliman, Michelle Cha	NEF(07-09-2021 04:51:42 PM) Memo/Memo In Support	Filing		07/12/2021-09:00		
We Are Sharing Hope Sc	NEF(07-09-2021 04:57:26 PM) Memo/Memo In Support	Filing		07/12/2021-08:54		
We Are Sharing Hope Sc	Memo In Support Of Motions For Protective Order For Defendan	Filing		07/09/2021-16:57		
Holliman, Michelle Cha	Response In Opp to Motions for Protective Order	Filing		07/09/2021-16:55		
Holliman, Michelle Cha	Supplemental Memo In Support of Motions to Compel	Filing		07/09/2021-16:51		
United Network For Organ Sharing	NEF(07-09-2021 04:01:36 PM) Memo/Memo In Opposition	Filing		07/09/2021-16:23		
United Network For Organ Sharing	Memo In Opposition to Plaintiffs Motion to Compel	Filing		07/09/2021-16:01		
Holliman, Michelle Cha	NEF(07-09-2021 08:13:51 AM) Motion/Alter and/or Amend	Filing		07/09/2021-08:45		
Holliman, Michelle Cha	Consent Motion F/Amended Confidentiality Order	Motion		07/09/2021-08:13	07/12/2021-08:13	
Dinkins, Mary Lucille	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Dinkins, Mary Lucille	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Dinkins, Mary Lucille	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Dinkins, Mary Lucille	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Dinkins, Mary Lucille	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Dinkins, Mary Lucille	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Craig, Mary Agnes Hood	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Craig, Mary Agnes Hood	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Craig, Mary Agnes Hood	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Craig, Mary Agnes Hood	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Craig, Mary Agnes Hood	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Craig, Mary Agnes Hood	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Moylan, John Carroll III	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Moylan, John Carroll III	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Moylan, John Carroll III	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Moylan, John Carroll III	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Moylan, John Carroll III	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Moylan, John Carroll III	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Moylan, John Carroll III	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Gresh, Lauren Spears	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Gresh, Lauren Spears	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		
Gresh, Lauren Spears	7/19/2021 MOTION Roster/Notice of Motions Roster Publication	Action		06/21/2021-14:56		

	of Motions Roster Publication					
Gresh, Lauren Spears	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Lauren Spears	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Lauren Spears	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Jack G	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Jack G	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Jack G	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Jack G	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Jack G	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Gresh, Jack G	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Bradshaw, Julia Ann	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Bradshaw, Julia Ann	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Bradshaw, Julia Ann	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Bradshaw, Julia Ann	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Bradshaw, Julia Ann	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Bradshaw, Julia Ann	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Buyck, Hugh W.	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Buyck, Hugh W.	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Buyck, Hugh W.	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Buyck, Hugh W.	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Buyck, Hugh W.	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Buyck, Hugh W.	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Sanders, Darren Kent	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Sanders, Darren Kent	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Sanders, Darren Kent	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Sanders, Darren Kent	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Sanders, Darren Kent	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Sanders, Darren Kent	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Jennings, Jean Marie	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Jennings, Jean Marie	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Jennings, Jean Marie	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Jennings, Jean Marie	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
Jennings, Jean Marie	7/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			06/21/2021-14:56	
We Are Sharing Hope Sc	NEF(06-14-2021 03:54:19 PM) Letter/Letter	Filing			06/15/2021-06:17	
We Are Sharing Hope Sc	Letter re: Exhibits A-C F/Memo Support Mot/Protective Order	Filing			06/14/2021-15:54	
Holliman, Michelle Cha	NEF(06-14-2021 11:16:33 AM) Memo/Memo In Opposition	Filing			06/14/2021-12:02	
Holliman, Michelle Cha	Memo In Opposition to Defnt Motion for A Protective Order	Filing			06/14/2021-11:16	
We Are Sharing Hope Sc	NEF(06-14-2021 09:31:21 AM) Memo/Memo In Support	Filing			06/14/2021-10:05	
We Are Sharing Hope Sc	DF Sharing Hope SC Memo In Support of Motion For A Protectiv	Filing			06/14/2021-09:31	
We Are Sharing Hope Sc	NEF(06-11-2021 03:51:35 PM) Motion/Stay	Filing			06/11/2021-16:16	
We Are Sharing Hope Sc	Joint Motion to Stay Discovery Pending Appeal of Order Grant	Motion	Judge Young Motions Roster Week of October 25, 2021		06/11/2021-15:51	
Holliman, Michelle Cha	NEF(06-04-2021 02:24:00 PM) Motion/Compel	Filing			06/04/2021-16:13	
Holliman, Michelle Cha	Motion/Compel to Produce Documents W/Held on Improper Claim	Motion			06/04/2021-14:24	07/22/2021-14:24
United Network For Organ	NEF(05-28-2021 02:45:31 PM)	Filing			05/28/2021-15:28	

Sharing	Response					
United Network For Organ Sharing	NEF(05-28-2021 02:42:43 PM) Answer/Amended Answer	Filing			05/28/2021-15:13	
United Network For Organ Sharing	DF United Network Response To PLS Motion For Leave To Amend	Filing			05/28/2021-14:45	
United Network For Organ Sharing	DF United Network Amended Answer To Complaint, Jury Trial De	Filing			05/28/2021-14:42	
We Are Sharing Hope Sc	NEF(05-27-2021 11:36:51 AM) Motion/Protection from Disco...	Filing			05/27/2021-13:21	
We Are Sharing Hope Sc	Motion/Protective Order	Motion			05/27/2021-11:36	07/22/2021-11:36
Holliman, Michelle Cha	NEF(05-27-2021 10:39:58 AM) Motion/Compel	Filing			05/27/2021-10:49	
Holliman, Michelle Cha	Motion to Compel	Motion			05/27/2021-10:39	07/22/2021-10:39
United Network For Organ Sharing	Appeal/Notice of Appeal to Court of Appeals	Action			05/22/2021-12:09	
United Network For Organ Sharing	NEF(05-21-2021 12:09:02 PM) Appeal/Notice of Appeal to C...	Filing			05/21/2021-12:29	
United Network For Organ Sharing	NEF(05-21-2021 12:11:43 PM) Service/Certificate Of Servl...	Filing			05/21/2021-12:15	
United Network For Organ Sharing	Service/Certificate Of Service	Filing			05/21/2021-12:11	
We Are Sharing Hope Sc	NEF(05-14-2021 03:02:58 PM) Motion/Other	Filing			05/17/2021-06:25	
We Are Sharing Hope Sc	Motion/Protective Order	Motion			05/14/2021-15:02	07/22/2021-15:02
Moylan, John Carroll III	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Moylan, John Carroll III	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Craig, Mary Agnes Hood	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Craig, Mary Agnes Hood	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Dinkins, Mary Lucille	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Dinkins, Mary Lucille	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Jennings, Jean Marie	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Jennings, Jean Marie	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Sanders, Darren Kent	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Sanders, Darren Kent	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Buyck, Hugh W.	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Buyck, Hugh W.	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Bradshaw, Julia Ann	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Bradshaw, Julia Ann	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Gresh, Jack G	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Gresh, Jack G	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Gresh, Lauren Spears	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
Gresh, Lauren Spears	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			05/14/2021-14:37	
We Are Sharing Hope Sc	NEF(05-07-2021 09:49:42 AM) Motion/Other	Filing			05/10/2021-07:39	
Holliman, Michelle Cha	NEF(05-06-2021 03:18:33 PM) Motion/Leave to Amend	Filing			05/07/2021-12:53	
We Are Sharing Hope Sc	Motion F/Protective Order	Motion	Judge Youngs Motions Roster Week of October 25, 2021		05/07/2021-09:49	
We Are Sharing Hope Sc	NEF(05-05-2021 04:12:13 PM) Notice/Other	Filing			05/06/2021-15:56	
Holliman, Michelle Cha	Motion for Leave to Amend Complaint	Motion			05/06/2021-15:18	05/07/2021-15:18
We Are Sharing Hope Sc	Notice of Appeal, Appealing order filed 4/29/2021	Filing			05/05/2021-16:12	
We Are Sharing Hope Sc	Certificate Of Service	Filing			05/05/2021-16:12	
We Are Sharing Hope Sc	NEF(05-03-2021 05:02:58 PM) Motion/Stay	Filing			05/04/2021-07:13	
We Are Sharing Hope Sc	Motion/Stay of Order Compelling Production	Motion	JUDGE JEFFERSON WEEK OF JUNE 14, 2021		05/03/2021-17:02	
Holliman, Michelle Cha	NEF(04-29-2021 02:57:20 PM) Order/Other	Filing			04/29/2021-14:57	
Holliman, Michelle Cha	Order/Motion/Compel Granted,Motion/Protective Order Denied	Order			04/29/2021-14:57	
Holliman, Michelle Cha	ADR/Notice of ADR	Action			04/28/2021-08:56	04/19/2021-08:56
We Are Sharing Hope Sc	NEF(04-19-2021 01:59:17 PM) Reply/Other	Filing			04/20/2021-09:32	
We Are Sharing Hope Sc	Reply to Supplemental Memo In	Filing			04/19/2021-13:59	

	Support of Motion to Compel					
Holliman, Michelle Cha	NEF(04-19-2021 10:35:48 AM) ADR/Proof of ADR	Filing			04/19/2021-10:36	
Holliman, Michelle Cha	ADR/Proof of ADR-At an Impasse	Action			04/19/2021-10:35	
Holliman, Michelle Cha	NEF(04-16-2021 04:26:25 PM) Memo/Memo In Support	Filing			04/19/2021-09:43	
We Are Sharing Hope Sc	NEF(04-16-2021 03:41:59 PM) Memo/Memo In Opposition	Filing			04/19/2021-09:41	
United Network For Organ Sharing	NEF(04-16-2021 05:16:39 PM) Motion/Protection from Disco...	Filing			04/19/2021-08:55	
United Network For Organ Sharing	Motion/Protection from Discovery	Motion			04/16/2021-17:16	04/16/2021-17:16
Holliman, Michelle Cha	Supplemental Memo/Support of Mot/Compel & Opp/Protective	Filing			04/16/2021-16:26	
We Are Sharing Hope Sc	Supplemental Memo In Opposition to Plntffs Motion/Compel	Filing			04/16/2021-15:41	
We Are Sharing Hope Sc	NEF(04-15-2021 09:51:31 AM) Order/Consent Order	Filing			04/15/2021-09:51	
We Are Sharing Hope Sc	Order for Production of Blood Bank Records from GSRMC	Order			04/15/2021-09:51	
Medical University Of South Carolina	NEF(04-13-2021 04:29:57 PM) Order/Electronic Form 4	Filing			04/13/2021-16:31	
Medical University Of South Carolina	Order/Motion to Compel Is Denied	Order			04/13/2021-16:29	
Holliman, Michelle Cha	Decline to Sign:Order/Consent Order	Filing			04/12/2021-10:49	
Holliman, Michelle Cha	NEF(04-09-2021 04:48:46 PM) Memo/Memo In Opposition	Filing			04/12/2021-09:08	
We Are Sharing Hope Sc	NEF(04-09-2021 04:56:48 PM) Memo/Memo In Opposition	Filing			04/12/2021-09:05	
We Are Sharing Hope Sc	Crt/Defnts Memo In Opposition Of Motion/Compel	Filing			04/09/2021-16:56	
Holliman, Michelle Cha	Pltffs Memo/Opposition of Crt/Defnts Motion/Protective Order	Filing			04/09/2021-16:48	
Holliman, Michelle Cha	NEF(04-09-2021 02:56:27 PM) Motion/Alter and/or Amend	Filing			04/09/2021-15:33	
We Are Sharing Hope Sc	NEF(04-09-2021 02:07:04 PM) Order/Order Cover Sheet \$25....	Filing			04/09/2021-15:31	
Holliman, Michelle Cha	Consent Motion F/Amended Confidentiality Order	Motion			04/09/2021-14:56	07/22/2021-14:56
We Are Sharing Hope Sc	Order/Order Cover Sheet \$25.00	Filing			04/09/2021-14:07	
Dinkins, Mary Lucille	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Dinkins, Mary Lucille	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Craig, Mary Agnes Hood	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Craig, Mary Agnes Hood	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Moylan, John Carroll III	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Moylan, John Carroll III	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Gresh, Lauren Spears	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Gresh, Lauren Spears	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Gresh, Jack G	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Gresh, Jack G	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Bradshaw, Julia Ann	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Bradshaw, Julia Ann	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Buyck, Hugh W.	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Buyck, Hugh W.	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Sanders, Darren Kent	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Sanders, Darren Kent	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Jennings, Jean Marie	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Jennings, Jean Marie	4/19/2021_MOTION_Roster/Notice of Motions Roster Publication	Action			03/19/2021-15:06	
Holliman, Michelle Cha	NEF(03-15-2021 03:43:31 PM) Motion/Strike	Filing			03/15/2021-16:15	
Holliman, Michelle Cha	Motion/Strike	Motion			03/15/2021-15:43	07/22/2021-15:43
We Are Sharing Hope Sc	NEF(03-15-2021 12:46:50 PM) Reply/Other	Filing			03/15/2021-13:05	
We Are Sharing Hope Sc	Sharing's Reply to Pltffs/Opp of Motion/Protection Order	Filing			03/15/2021-12:46	
We Are Sharing Hope Sc	Sharing's Memo/Supp of Motion/Compel	Filing			03/15/2021-12:46	
We Are Sharing Hope Sc	NEF(03-12-2021 05:10:27 PM) Memo/Memo In Support	Filing			03/15/2021-09:01	

United Network For Organ Sharing	NEF(03-12-2021 04:39:53 PM) Memo/Memo In Opposition	Filing		03/15/2021-08:51		
Holliman, Michelle Cha	NEF(03-12-2021 04:25:14 PM) Memo/Memo In Opposition	Filing		03/15/2021-08:44		
Holliman, Michelle Cha	NEF(03-12-2021 04:22:40 PM) Memo/Memo In Support	Filing		03/15/2021-08:41		
Holliman, Michelle Cha	NEF(03-12-2021 04:17:09 PM) Memo/Memo In Support	Filing		03/15/2021-08:37		
Medical University Of South Carolina	NEF(03-12-2021 04:12:50 PM) Memo/Memo In Opposition	Filing		03/15/2021-08:33		
We Are Sharing Hope Sc	Sharing's Memo/Support Of Motion/Protection	Filing		03/12/2021-18:10		
We Are Sharing Hope Sc	Sharing's Memo/Opposition Of Pitffs Motion/Compel	Filing		03/12/2021-18:10		
United Network For Organ Sharing	United's Memo/Opposition of Pitffs Motions/Compel	Filing		03/12/2021-17:39		
Holliman, Michelle Cha	Pitffs Response/Opp of Sharing's Motion/Protective Order	Filing		03/12/2021-17:25		
Holliman, Michelle Cha	Pitffs Memo/Support Of Motion/Compel We are Sharing Hope	Filing		03/12/2021-17:22		
Holliman, Michelle Cha	Pitffs Memo/Support Of Motion/Compel MUSC	Filing		03/12/2021-17:17		
Medical University Of South Carolina	MUSC's Memo/Opposition to Plaintiffs Motion/Compel	Filing		03/12/2021-17:12		
Dinkins, Mary Lucille	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Dinkins, Mary Lucille	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Dinkins, Mary Lucille	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Craig, Mary Agnes Hood	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Craig, Mary Agnes Hood	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Craig, Mary Agnes Hood	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Moylan, John Carroll III	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Moylan, John Carroll III	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Moylan, John Carroll III	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Sanders, Darren Kent	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Sanders, Darren Kent	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Sanders, Darren Kent	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Buyck, Hugh W.	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Buyck, Hugh W.	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Buyck, Hugh W.	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Bradshaw, Julia Ann	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Bradshaw, Julia Ann	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Bradshaw, Julia Ann	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Jennings, Jean Marie	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Jennings, Jean Marie	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Jennings, Jean Marie	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Gresh, Jack G	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Gresh, Jack G	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Gresh, Jack G	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Gresh, Lauren Spears	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Gresh, Lauren Spears	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
Gresh, Lauren Spears	4/12/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/10/2021-10:50		
We Are Sharing Hope Sc	NEF(03-02-2021 03:21:05 PM) Motion/Other	Filing		03/02/2021-15:54		
We Are Sharing Hope Sc	Motion/For Court Order to obtain records of a non-party	Motion		03/02/2021-15:21	04/12/2021-15:21	
We Are Sharing Hope Sc	NEF(02-18-2021 11:51:32 AM) Motion/Other	Filing		02/18/2021-12:03		
We Are Sharing Hope Sc	Motion/Protective Order	Motion	Judge Young Motions Roster Week of October 25, 2021	02/18/2021-11:51		
Moylan, John Carroll III	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16		
Moylan, John Carroll III	3/15/2021_MOTION_Roster/Notice	Action		02/12/2021-11:16		

	of Motions Roster Publication				
Moylan, John Carroll III	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Craig, Mary Agnes Hood	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Craig, Mary Agnes Hood	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Craig, Mary Agnes Hood	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Dinkins, Mary Lucille	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Dinkins, Mary Lucille	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Dinkins, Mary Lucille	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Gresh, Lauren Spears	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Gresh, Lauren Spears	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Gresh, Lauren Spears	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Gresh, Jack G	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Gresh, Jack G	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Gresh, Jack G	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Jennings, Jean Marie	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Jennings, Jean Marie	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Jennings, Jean Marie	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Bradshaw, Julia Ann	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Bradshaw, Julia Ann	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Bradshaw, Julia Ann	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Buyck, Hugh W.	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Buyck, Hugh W.	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Buyck, Hugh W.	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Sanders, Darren Kent	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Sanders, Darren Kent	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Sanders, Darren Kent	3/15/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		02/12/2021-11:16	
Holliman, Michelle Cha	NEF(02-05-2021 08:02:25 AM) Motion/Compel	Filing		02/05/2021-09:03	
Holliman, Michelle Cha	Motion/Compel	Motion		02/05/2021-08:02	04/13/2021-08:02
Holliman, Michelle Cha	ADR/Alternative Dispute Resolution (Workflow)	Action		02/04/2021-16:00	04/28/2021-16:00
Holliman, Michelle Cha	NEF(02-01-2021 03:14:33 PM) Motion/Compel	Filing		02/01/2021-15:19	
Holliman, Michelle Cha	Motion/Compel	Motion		02/01/2021-15:14	04/07/2021-15:14
Holliman, Michelle Cha	NEF(01-28-2021 08:56:46 AM) ADR/Notice of ADR	Filing		01/28/2021-08:56	
	Miscellaneous Documents	Filing		01/27/2021-11:42	
Holliman, Michelle Cha	NEF(12-29-2020 03:24:30 PM) Order/Other	Filing		12/29/2020-15:24	
Holliman, Michelle Cha	Order/order denying defnt United Network's motoin to dismiss	Order		12/29/2020-15:24	
Holliman, Michelle Cha	NEF(12-28-2020 09:54:11 AM) Notice/Other	Filing		12/29/2020-10:08	
Holliman, Michelle Cha	Notice of Intent to File Suit Againt Jacqueline Honig, Daria	Filing		12/28/2020-09:54	
Holliman, Michelle Cha	Affidavit of Anthony I. Panos Md	Filing		12/28/2020-09:54	
United Network For Organ Sharing	NEF(12-22-2020 12:26:32 PM) Answer/Answer and Jury Deman...	Filing		12/22/2020-13:04	
United Network For Organ Sharing	United Network's Answer/JTD to Plaintiffs Complaint	Filing		12/22/2020-12:26	
Holliman, Michelle Cha	NEF(12-18-2020 04:17:10 PM) Proposed Order/Other	Filing		12/18/2020-16:41	
Holliman, Michelle Cha	Order/Order Cover Sheet \$25.00	Filing		12/18/2020-16:17	
We Are Sharing Hope Sc	NEF(12-15-2020 04:40:03 PM) Motion/Protection from Disco...	Filing		12/16/2020-09:17	
We Are Sharing Hope Sc	Motion/Protection from Discovery	Motion		12/15/2020-16:40	03/19/2021-16:40
Holliman, Michelle Cha	NEF(12-11-2020 09:30:39 AM) Order/Electronic Form 4	Filing		12/11/2020-09:30	
Holliman, Michelle Cha	Order/Motion to Dismiss Is Denied	Order		12/11/2020-09:30	
Holliman, Michelle Cha	NEF(11-18-2020 02:25:18 PM)	Filing		11/18/2020-15:07	

	Motion/Compel					
Holliman, Michelle Cha	Motion/Compel	Motion		11/18/2020-14:25	03/19/2021-14:25	
Holliman, Michelle Cha	NEF(11-04-2020 12:21:59 PM) Motion/Other	Filing		11/04/2020-14:52		
Holliman, Michelle Cha	Motion/Compel	Motion		11/04/2020-12:21	03/19/2021-12:21	
Holliman, Michelle Cha	NEF(10-30-2020 03:53:18 PM) Memo/Memo In Opposition	Filing		11/02/2020-10:07		
United Network For Organ Sharing	NEF(10-30-2020 03:30:59 PM) Memo/Memo In Support	Filing		10/30/2020-16:02		
United Network For Organ Sharing	Memo In Support of Motion to Dismiss	Filing		10/30/2020-15:30		
Holliman, Michelle Cha	Memo In Opposition to Crtn Defnt Motion to Dismiss	Filing		10/30/2020-14:53		
Medical University Of South Carolina	NEF(10-19-2020 09:07:05 AM) Stipulation/Stipulation of	Filing		10/19/2020-10:01		
Medical University Of South Carolina	Stipulation of Uncontested Facts for Litigation	Filing		10/19/2020-09:07		
Dinkins, Mary Lucille	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Moylan, John Carroll III	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Buyck, Hugh W.	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Bradshaw, Julia Ann	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Jennings, Jean Marie	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Gresh, Jack G	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Sanders, Darren Kent	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Gresh, Lauren Spears	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
Craig, Mary Agnes Hood	11/2/2020 MOTION Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
United Network For Organ Sharing	NEF(08-20-2020 10:43:51 AM) Motion/Dismiss	Filing		08/20/2020-11:24		
United Network For Organ Sharing	Motion/Dismiss	Motion		08/20/2020-10:43	11/06/2020-10:43	
We Are Sharing Hope Sc	NEF(08-12-2020 12:26:14 PM) Answer/Amended Answer	Filing		08/12/2020-13:24		
We Are Sharing Hope Sc	Amended Answer to Complaint & Jury Trial Demanded	Filing		08/12/2020-12:26		
We Are Sharing Hope Sc	NEF(08-12-2020 10:00:43 AM) Notice/Notice of Appearance	Filing		08/12/2020-10:51		
Medical University Of South Carolina	NEF(08-12-2020 09:47:57 AM) Answer/Answer and Jury Deman...	Filing		08/12/2020-10:43		
We Are Sharing Hope Sc	Notice of Appearance Atty Jennings & Atty Bradshaw	Filing		08/12/2020-10:00		
We Are Sharing Hope Sc	Answer to Complaint & Jury Trial Requested	Filing		08/12/2020-10:00		
Medical University Of South Carolina	Answer to Complaint and Jury Trial Demanded	Filing		08/12/2020-09:47		
Dinkins, Mary Lucille	8/24/2020 MOTION Roster/Notice of Motions Roster Publication	Action		08/05/2020-16:06		
Craig, Mary Agnes Hood	8/24/2020 MOTION Roster/Notice of Motions Roster Publication	Action		08/05/2020-16:06		
Moylan, John Carroll III	8/24/2020 MOTION Roster/Notice of Motions Roster Publication	Action		08/05/2020-16:06		
Gresh, Lauren Spears	8/24/2020 MOTION Roster/Notice of Motions Roster Publication	Action		08/05/2020-16:06		
Sanders, Darren Kent	8/24/2020 MOTION Roster/Notice of Motions Roster Publication	Action		08/05/2020-16:06		
Gresh, Jack G	8/24/2020 MOTION Roster/Notice of Motions Roster Publication	Action		08/05/2020-16:06		
Buyck, Hugh W.	8/24/2020 MOTION Roster/Notice of Motions Roster Publication	Action		08/05/2020-16:06		
Holliman, Michelle Cha	NEF(07-28-2020 10:20:46 AM) Order/Protective Order	Filing		07/28/2020-10:20		
Holliman, Michelle Cha	Protective Order	Order		07/28/2020-10:20		
Holliman, Michelle Cha	NEF(07-28-2020 09:25:08 AM) Order/Electronic Form 4	Filing		07/28/2020-09:25		
Holliman, Michelle Cha	Order Correcting Previous Form 4	Order		07/28/2020-09:25		
Holliman, Michelle Cha	NEF(07-24-2020 02:25:30 PM) Order/Order Cover Sheet \$25....	Filing		07/27/2020-10:00		
Holliman, Michelle Cha	NEF(07-24-2020 02:05:29 PM) Order/Order Cover Sheet \$25....	Filing		07/27/2020-09:52		
Medical University Of South Carolina	NEF(07-27-2020 08:07:47 AM) Notice/Notice of Appearance	Filing		07/27/2020-08:08		
Medical University Of South Carolina	Notice/Notice of Appearance	Filing		07/27/2020-08:07		
Holliman, Michelle Cha	Order/Order Cover Sheet \$25.00	Filing		07/24/2020-14:25		
Holliman, Michelle Cha	Order/Order Cover Sheet \$25.00	Filing		07/24/2020-14:05		
Holliman, Michelle Cha	NEF(07-24-2020 08:46:22 AM) Order/Electronic Form 4	Filing		07/24/2020-08:46		
Holliman, Michelle Cha	Order on Pit Mot/Compel, Mot/Quash	Order		07/24/2020-08:46		

	& Mot/Protective Order					
Holliman, Michelle Cha	NEF(07-23-2020 11:06:56 AM) Service/Acceptance Of Servic...	Filing		07/23/2020-11:21		
Holliman, Michelle Cha	Service/Acceptance Of Service on Medical University Of South	Filing		07/23/2020-11:06		
United Network For Organ Sharing	NEF(07-21-2020 10:11:37 AM) Service/Acceptance Of Servic...	Filing		07/21/2020-10:14		
United Network For Organ Sharing	Service/Acceptance Of Service on United Network For Organ Sh	Filing		07/21/2020-10:11		
United Network For Organ Sharing	NEF(07-21-2020 10:09:27 AM) Notice/Notice of Appearance	Filing		07/21/2020-10:09		
United Network For Organ Sharing	Notice/Notice of Appearance	Filing		07/21/2020-10:09		
Holliman, Michelle Cha	Motion hearing (Scheduling Purposes Only, No image)	Motion		07/15/2020-16:32	08/06/2020-16:32	
Holliman, Michelle Cha	NEF(07-15-2020 04:12:23 PM) Order/Electronic Form 4	Filing		07/15/2020-16:12		
Holliman, Michelle Cha	Order/Motion to Reconsider is granted	Order		07/15/2020-16:12		
Holliman, Michelle Cha	NEF(07-14-2020 09:35:35 AM) Service/Acceptance Of Servic...	Filing		07/14/2020-09:37		
Holliman, Michelle Cha	Acceptance Of Service for We Are Sharing Hope Sc on We Are S	Filing		07/14/2020-09:35		
Holliman, Michelle Cha	NEF(07-13-2020 09:51:08 AM) Motion/Reconsider	Filing		07/13/2020-10:05		
Holliman, Michelle Cha	Motion/Reconsider	Motion		07/13/2020-09:51	07/15/2020-09:51	
Holliman, Michelle Cha	Summons & Complaint	Filing		07/09/2020-16:00		

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University
of South Carolina, and United Network for
Organ Sharing,

Defendants.

Civil Action No.: _____

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at 807 Gervais Street, Suite 301, Columbia, SC 29201, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

Wyche, P.A.

s/John C. Moylan, III
John C. Moylan, III (S.C. Bar 11227)
Lucy Dinkins (S.C. Bar 101177)
807 Gervais Street, Suite 301
Columbia, South Carolina 29201
Telephone: 803-254-6542
Facsimile: 803-254-6544
Email: jmoylan@wyche.com
ldinkins@wyche.com
Attorneys for Plaintiff

July 9, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University
of South Carolina, and United Network for
Organ Sharing,

Defendants.

Civil Action No.: _____

(Action No. 2019-NI-10-60)

**COMPLAINT
(Jury Trial Demanded)**

Michelle Cha Holliman, complaining of Defendants as set forth herein, would respectfully show unto the Court and jury as follows:

THE PARTIES

1. The plaintiff is Michelle Cha Holliman (“Mrs. Holliman”), acting individually and as personal representative of the Estate of Allen B. Holliman (“Mr. Holliman”). Mrs. Holliman is a citizen and resident of Aiken County, South Carolina, and she is the widow of Mr. Holliman.

2. Defendant We Are Sharing Hope SC (“Sharing Hope”) is an organ and tissue recovery service provider located in Charleston, South Carolina.

3. Sharing Hope is the designated Organ Procurement Organization (“OPO”) for organ recovery services in most of South Carolina, and it provides organ and tissue donor services to numerous hospitals throughout South Carolina, including Defendant Medical University of South Carolina (“MUSC”).

4. Sharing Hope holds itself out to the public as a competent and qualified OPO.

5. Sharing Hope has a duty to provide competent and qualified medical services in the procurement, testing, evaluation, reporting, and distribution of organs for donation.

6. Defendant MUSC is a hospital and health care provider located in Charleston, South Carolina. MUSC has a transplant center that performs organ transplants, including lung transplants. MUSC is the only solid organ transplant center in South Carolina.

7. MUSC holds itself out to the public as a competent and qualified health care provider and organ transplant center.

8. MUSC has a duty to provide competent and qualified medical services in the course of performing organ transplants and caring for patients undergoing an organ transplant.

9. Defendant United Network for Organ Sharing (“UNOS”) is an organization with headquarters in Richmond, Virginia that manages and serves as the organ transplant system in the United States, which is known as the Organ Procurement and Transplantation Network (“OPTN”), under a contract with the federal government.

10. According to UNOS’s website, its responsibilities include, but are not limited to, “managing the national transplant waiting list,” “matching donors to recipients,” “maintaining the database that contains all organ transplant data for every transplant event that occurs in the U.S.,” and “monitoring every organ match to ensure organ allocation policies are followed.” <https://unos.org/about/>, last accessed July 6, 2020.

11. UNOS advertises that it “provides a vital link in the organ transplant process” because “[i]ts policies and computerized network match donated organs with transplant candidates in ways that save as many lives as possible and provide transplant recipients with the best possible chance of long-term survival.” <https://unos.org/transplant/how-we-match-organs/>, last accessed July 6, 2020. In fact, according to UNOS, “[e]very lifesaving organ transplant is managed through

UNOS' computer system, which matches donors with potential transplant recipients 24 hours a day, 365 days a year." <https://unos.org/about/>, last accessed July 6, 2020.

12. UNOS holds itself out to the public as a competent and qualified manager of the organ transplant system in the United States and provider of services related to the organ transplant and donation system and process in the United States.

13. UNOS has a duty to provide competent and qualified services in connection with its management of the country's organ transplant system and its provision of services for the organ transplant and donation system and process in the United States.

JURISDICTION, VENUE, AND PROCEDURAL BACKGROUND

14. Many of the events giving rise to this action occurred in Charleston County, South Carolina, including Mr. Holliman's transplant surgery and resulting death.

15. The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County, South Carolina.

16. Mrs. Holliman's initial Notice of Intent to File Suit and supporting expert affidavit were filed in this Court on July 17, 2019.

17. On April 7, 2020, Mrs. Holliman filed an Amended Notice of Intent to File Suit and supporting expert affidavit.

18. The parties have participated in a pre-suit mediation conference in accordance with the requirements of S.C. Code §§ 15-79-110, *et seq.*

STATEMENT OF THE FACTS

19. Mr. Holliman suffered from lung problems, and physicians at MUSC determined that he was in need of a double-lung transplant. The physicians at MUSC further determined that Mr. Holliman was a suitable candidate for such a transplant, and he was placed on the transplant

list.

20. On or about November 27, 2018, Mr. Holliman was informed by physicians at MUSC that there was an available pair of donor lungs that was a match for him. Mr. Holliman's physicians approved him for a double-lung transplant with the available donor lungs, finding that there were no contraindications to pursuing transplant and that Mr. Holliman was in a suitable condition for the surgery.

21. That same day, November 27, 2018, Mr. Holliman underwent a double-lung transplant at MUSC.

22. According to Mr. Holliman's medical records, the lungs transplanted into Mr. Holliman were from the donor associated with donor identification numbers AFKY198, 2018-0516, and 18-15828 ("the Donor").

23. Sharing Hope was the OPO that procured and distributed the Donor's lungs that Mr. Holliman received.

24. Upon information and belief, Sharing Hope, as the OPO for the Donor's lungs, ordered pre-transplant testing of the lungs, evaluated the suitability of the lungs for transplant, reported the lungs as available for transplant, and distributed the lungs for transplant.

25. Upon information and belief, UNOS reported the Donor's lungs as available for transplant, listed the Donor as having type O blood, and matched Mr. Holliman with the Donor's lungs.

26. Mr. Holliman began suffering substantial complications during his lung transplant surgery. The transplant surgery was eventually completed, but Mr. Holliman remained in critical condition and continued to have significant problems, including but not limited to metabolic acidosis and pronounced hemodynamic instability. Mr. Holliman was given multiple blood

transfusion products but never became stable.

27. Upon information and belief, Dr. Timothy Whelan ("Dr. Whelan") of MUSC was notified in the early morning of November 28, 2018, that Mr. Holliman might have received donor lungs of a blood type incompatible with Mr. Holliman's blood type.

28. Upon information and belief, Dr. Whelan was informed that another transplant center had tested the blood of the Donor whose lungs Mr. Holliman received and found that the Donor had type A blood.

29. Upon information and belief, MUSC tested the blood of Mr. Holliman's Donor after it transplanted the Donor's lungs into Mr. Holliman and also found that the Donor had type A blood.

30. Mr. Holliman had type O blood. Type O blood is incompatible with type A blood.

31. Mr. Holliman died on November 28, 2018, just one day after his lung transplant surgery. Mr. Holliman's cause of death was hyperacute rejection of his transplanted lungs due to ABO incompatibility of the lungs. Mr. Holliman died because the donor lungs he received were of a blood type that was incompatible with his blood type.

32. According to OPTN Policy 2.6.A, Sharing Hope, as the OPO for the Donor's lungs, was responsible for determining the Donor's blood type by testing at least two blood samples from the Donor drawn on separate occasions, having different collection times, and submitted as separate samples. The two blood samples from the Donor were required to have results indicating the same blood type.

33. Sharing Hope ordered pre-transplant blood testing for the Donor whose lungs Mr. Holliman received from VRL Eurofins ("VRL"). VRL issued two final pre-transplant testing reports for the Donor to Sharing Hope. Both reports showed the Donor's blood type was

indeterminate and that the samples used for the ABO blood typing were drawn after the Donor received emergency blood transfusions.

34. Upon information and belief, Sharing Hope failed to determine the Donor's blood type with two Donor blood samples indicating the same blood type.

35. Sharing Hope should not have reported the Donor's lungs as available for transplant and should not have distributed the Donor's lungs for transplant given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

36. As a result of Sharing Hope's wrongful reporting of the availability of and distribution of the Donor's lungs for transplant, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

37. UNOS should not have reported the Donor's lungs as available for transplant and should not have matched Mr. Holliman with the Donor's lungs given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

38. As a result of UNOS's wrongful reporting of the Donor's lungs as available for transplant and wrongful matching of Mr. Holliman with the Donor's lungs, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

39. MUSC should not have approved Mr. Holliman for a transplant with the Donor's lungs and should not have transplanted the Donor's lungs into Mr. Holliman given the VRL test results indicating that the Donor's blood type could not be determined and that the samples used for ABO blood typing were drawn after the Donor received emergency blood transfusions.

40. As a result of MUSC's wrongful transplanting of the Donor's lungs into Mr.

Holliman, Mr. Holliman received transplanted lungs of an incompatible blood type, which resulted in his death.

41. The negligence, gross negligence, and reckless disregard for the health, wellbeing, and rights of Mr. Holliman by Sharing Hope, UNOS, and MUSC (collectively “Defendants”) caused Mr. Holliman’s death.

42. Defendants, directly and vicariously through their agents, servants, contractors, and employees, failed to provide the requisite and adequate standard of care to Mr. Holliman and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Complaint.

43. Sharing Hope deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of and distributing the Donor’s lungs for transplant in the following ways:

- a. By reporting the availability of the Donor’s lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the Donor’s blood type was indeterminate;
- b. By reporting the availability of the Donor’s lungs for transplant without having two ABO blood typing samples from the Donor indicating the same ABO blood type;
- c. By distributing the Donor’s lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the ABO blood type for the Donor was indeterminate;
- d. By distributing the Donor’s lungs for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type; and
- e. By failing to recognize or ignoring that the two initial ABO blood typing samples

for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL.

44. UNOS deviated from the recognized and generally accepted standards of care in connection with its reporting the availability of the Donor's lungs for transplant and matching of Mr. Holliman with the Donor's lungs in the following ways:

- a. By wrongfully reporting the Donor's lungs as available for transplant despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;
- b. By wrongfully reporting the Donor's lungs as available for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type for the Donor;
- c. By failing to recognize or ignoring that the two initial ABO blood typing samples for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL;
- d. By wrongfully reporting the Donor as having type O blood despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions; and
- e. By wrongfully matching Mr. Holliman with the Donor's lungs despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type

was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions.

45. MUSC deviated from the recognized and generally accepted standards of care in connection with Mr. Holliman's double lung transplant in the following ways:

- a. By wrongfully transplanting lungs from the Donor into Mr. Holliman despite having access to pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;
- b. By failing to identify or ignoring that the Donor's ABO blood typing was unreliable, as manifest by the indeterminate ABO blood typing reported by VRL; and
- c. By failing to identify the ABO incompatibility of the Donor's lungs with Mr. Holliman and failing to prevent the lung transplant.

46. Defendants' deviations from the standards of care outlined in Paragraphs 43-45 above proximately caused Mr. Holliman's death.

47. As a direct and proximate result of Defendants' failure to follow the recognized and generally accepted standards of care, Mr. Holliman wrongfully and prematurely lost his life; Mrs. Holliman lost Mr. Holliman's services, care, comfort, and companionship as her husband; and Mrs. Holliman incurred substantial damages and expenses as a result of Mr. Holliman's wrongful death and loss of consortium.

48. If Mr. Holliman had received donor lungs of a blood type compatible with his blood type, he most likely would have successfully recovered from a double lung transplant, and Mrs. Holliman would not have been deprived of Mr. Holliman's services, care, comfort, and

companionship or have suffered substantial damages and expenses from his wrongful death.

FIRST CAUSE OF ACTION

(Negligence/Gross Negligence/Recklessness by We Are Sharing Hope SC Resulting in Wrongful Death)

49. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

50. At all times relevant to this action, Sharing Hope owed a duty to Mr. Holliman and others to provide competent and qualified medical services in the procurement, testing, evaluation, reporting, and distribution of organs for donation, including the Donor's lungs that were transplanted into Mr. Holliman.

51. Sharing Hope breached its duty of care to Mr. Holliman, deviated from the recognized and generally accepted standards of care, and was negligent, grossly negligent, and reckless in connection with its reporting the availability of and distributing the Donor's lungs for transplant in the following ways:

- a. By reporting the availability of the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate;
- b. By reporting the availability of the Donor's lungs for transplant without having two ABO blood typing samples from the Donor indicating the same ABO blood type;
- c. By distributing the Donor's lungs for transplant despite the receipt of pre-transplant laboratory testing results from VRL reporting that the ABO blood type for the Donor was indeterminate;
- d. By distributing the Donor's lungs for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type; and
- e. By failing to recognize or ignoring that the two initial ABO blood typing samples

for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL.

52. Sharing Hope's negligence, gross negligence, and recklessness proximately caused Mr. Holliman's wrongful and premature death.

53. Mrs. Holliman, as the personal representative of the Estate of Mr. Holliman, is entitled to recover from Sharing Hope all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman's wrongful death in an amount to be determined by a jury.

SECOND CAUSE OF ACTION

(Negligence/Gross Negligence/Recklessness by UNOS Resulting in Wrongful Death)

54. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

55. At all times relevant to this action, UNOS owed a duty to Mr. Holliman and others to provide competent and qualified services in connection with its management of the country's organ transplant system and its provision of services for the organ transplant and donation system and process in the United States, including in reporting the Donor's lungs as available for transplant and in matching Mr. Holliman with the Donor's lungs.

56. UNOS breached its duty of care to Mr. Holliman, deviated from the recognized and generally accepted standards of care, and was negligent, grossly negligent, and reckless in connection with its reporting the availability of the Donor's lungs for transplant and matching of Mr. Holliman with the Donor's lungs in the following ways:

- a. By wrongfully reporting the Donor's lungs as available for transplant despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;

- b. By wrongfully reporting the Donor's lungs as available for transplant without having two ABO blood typing samples from the Donor confirming the same identical blood type for the Donor;
- c. By failing to recognize or ignoring that the two initial ABO blood typing samples for the Donor were collected after the Donor received emergency blood transfusions, which made the Donor's ABO blood typing unreliable, as manifest by the indeterminate ABO blood typing reported by VRL;
- d. By wrongfully reporting the Donor as having type O blood despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions; and
- e. By wrongfully matching Mr. Holliman with the Donor's lungs despite pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions.

57. UNOS's negligence, gross negligence, and recklessness proximately caused Mr. Holliman's wrongful and premature death.

58. Mrs. Holliman, as personal representative of the Estate of Mr. Holliman, is entitled to recover from UNOS all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman's wrongful death in an amount to be determined by a jury.

THIRD CAUSE OF ACTION

(Negligence/Gross Negligence/Recklessness by MUSC Resulting in Wrongful Death)

59. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

60. At all times relevant to this action, MUSC owed a duty to Mr. Holliman and others

to provide competent and qualified medical services in the course of performing organ transplants and caring for patients undergoing an organ transplant, including Mr. Holliman.

61. MUSC breached its duty of care to Mr. Holliman, deviated from the recognized and generally accepted standards of care, and was negligent, grossly negligent, and reckless in connection with Mr. Holliman's double lung transplant in the following ways:

- a. By wrongfully transplanting lungs from the Donor into Mr. Holliman despite having access to pre-transplant laboratory testing results from VRL reporting that the Donor's blood type was indeterminate and that the Donor's blood samples used for testing were drawn after the Donor received emergency blood transfusions;
- b. By failing to identify or ignoring that the Donor's ABO blood typing was unreliable, as manifest by the indeterminate ABO blood typing reported by VRL; and
- c. By failing to identify the ABO incompatibility of the Donor's lungs with Mr. Holliman and failing to prevent the lung transplant.

62. MUSC's negligence, gross negligence, and recklessness proximately caused Mr. Holliman's wrongful and premature death.

63. Mrs. Holliman, as personal representative of the Estate of Mr. Holliman, is entitled to recover from MUSC all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman's wrongful death in an amount to be determined by a jury.

FOURTH CAUSE OF ACTION
(Loss of Consortium against All Defendants)

64. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

65. As a direct and proximate result of Defendants' negligence, gross negligence, and recklessness, as set forth in detail above, Mr. Holliman wrongfully and prematurely lost his life,

and Mrs. Holliman lost Mr. Holliman’s services, care, comfort, and companionship as her husband.

66. Mrs. Holliman is entitled to recover all direct, consequential, punitive, and special damages incurred as a result of Mr. Holliman’s wrongful death and loss of consortium in an amount to be determined by a jury.

REQUEST FOR RELIEF

67. Mrs. Holliman incorporates all prior paragraphs as if fully set forth herein.

68. As a direct and proximate result of the wrongful conduct of Defendants described above, Mrs. Holliman, both individually and as personal representative of the Estate of Mr. Holliman, requests judgment against Defendant, jointly and severally, for the following:

- a. Full direct, consequential, punitive, and special damages against Defendants in an amount to be determined by a jury;
- b. Reasonable attorney’s fees and costs; and
- c. Any other such relief the Court deems just and proper.

JURY TRIAL DEMAND

69. A trial by jury is demanded as to all issues to the extent permitted by law.

Respectfully submitted,

Wyche, P.A.

s/John C. Moylan, III
 John C. Moylan, III (S.C. Bar 11227)
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Attorneys for Plaintiff

July 9, 2020

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Case No. 2020-CP-10-02902

Plaintiff,

**PLAINTIFF'S MOTION FOR AN
ORDER COMPELLING DEFENDANT
WE ARE SHARING HOPE SC TO FILE
DOCUMENTS WITHHELD FROM
DISCOVERY UNDER SEAL PURSUANT
TO S.C. CODE § 40-71-30 AND TO
PROVIDE COMPLETE DISCOVERY
RESPONSES**

vs.

We Are Sharing Hope SC, Medical University
of South Carolina, and United Network for
Organ Sharing,

Defendants.

Plaintiff Michelle Cha Holliman ("Mrs. Holliman"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), respectfully moves for an order (1) compelling Defendant We Are Sharing Hope SC ("WASH") to file certain documents with the Court under seal pursuant to S.C. Code § 40-71-30 for a judicial determination of whether the documents are subject to discovery; (2) compelling WASH to produce all documents that the Court determines have been improperly withheld on a claim of privilege; (3) awarding Mrs. Holliman's attorneys' fees and costs incurred in obtaining documents unreasonably withheld on a claim of privilege; and (4) compelling WASH to provide complete responses to Mrs. Holliman's first set of interrogatories and requests for production.

FACTUAL BACKGROUND

This wrongful death case arises out of Mr. Holliman's untimely death following a double lung transplant performed by physicians at Defendant Medical University of South Carolina ("MUSC") during which lungs of the wrong blood type were transplanted into Mr. Holliman. WASH was the organ procurement organization ("OPO") that procured and distributed the donor lungs that Mr. Holliman received. As the OPO, WASH was responsible for accurately determining and reporting the blood type of Mr. Holliman's donor (the "Donor").

WASH ordered pre-transplant blood testing for the Donor from VRL Eurofins ("VRL"). VRL issued two testing reports for the Donor to WASH, both of which stated that the Donor's blood type could not be determined. Two other blood typing tests from the hospital where the Donor was admitted just prior to her death indicated that the Donor had type O blood, but these tests were performed using blood samples collected after the Donor received a massive amount of un-crossmatched emergency blood transfusions. Despite the VRL results stating that the Donor's blood type was indeterminate, and despite the lack of any reliable blood typing results performed using a blood sample collected prior to the Donor's receipt of massive emergency blood transfusions, WASH reported the Donor's blood type as type O. Mr. Holliman was matched with the Donor's lungs, and his physicians at MUSC performed a double lung transplant on him with the Donor's lungs on November 27, 2018.

Mr. Holliman began suffering serious complications during his transplant surgery and remained in critical condition afterwards. A few hours after Mr. Holliman's surgery was completed, another transplant center that received a different organ from the Donor informed WASH that it had tested the blood sample from the Donor that it received with its organ, and it discovered that the Donor's blood type had been incorrectly reported as type O when it was in fact

type A. WASH relayed this information to MUSC, and, shortly thereafter, MUSC tested the Donor's blood sample it received with the Donor's lungs. MUSC's test results from this blood sample confirmed that the Donor in fact had type A blood. Upon information and belief, neither WASH nor MUSC tested this blood sample prior to Mr. Holliman's transplant.

Mr. Holliman had type O blood, which is incompatible with type A blood. Mr. Holliman died the day after his transplant because his body rejected the ABO incompatible Donor lungs that WASH wrongfully procured, distributed, and reported as being blood type O.

RELEVANT DISCOVERY HISTORY

Shortly after filing her notice of intent to sue WASH, Mrs. Holliman issued a subpoena to WASH on July 30, 2019, pursuant to S.C. Code § 15-79-125(B). Mrs. Holliman's subpoena called for the production of certain documents and communications relating to Mr. Holliman and the Donor. In communications between counsel for WASH and Mrs. Holliman, WASH indicated that it would not produce the subpoenaed documents absent a court order because of concerns regarding privacy and confidentiality. WASH, however, also refused to consent to the entry of *any* protective order, and it filed a motion to quash the subpoena in its entirety on August 30, 2019. In an attempt to alleviate any confidentiality concerns, Mrs. Holliman filed a motion, without WASH's consent, for a protective order on September 27, 2019, which the Court granted on June 23, 2020. Nevertheless, WASH still did not respond to Mrs. Holliman's subpoena.

On July 23, 2020, the Court entered a Form 4 Order denying WASH's motion to quash. As a result, WASH finally responded to its subpoena on August 7, 2020—over a year after it was issued. WASH provided a privilege log with its response indicating that 186 pages of documents were withheld from its production on a claim of "Peer Review, Quality Assurance/Quality Assessment." *See* Exhibit A (WASH's privilege log dated August 7, 2020).

Following the filing of her complaint, Mrs. Holliman served her first set of interrogatories and requests for production on WASH on July 10, 2020. *See* Exhibit B (Plaintiff's first set of interrogatories and requests for production to WASH). WASH served responses to Mrs. Holliman's discovery requests on August 28, 2020. *See* Exhibit C (WASH's responses to Plaintiff's first set of interrogatories and requests for production). In its responses, WASH objects to numerous interrogatories and requests for production "to the extent" that they seek confidential peer review materials. *See* Exhibit C. Along with the discovery responses, WASH also provided an amended privilege log indicating that 195 pages of responsive documents were withheld on a claim of "Peer Review, Quality Assurance/Quality Assessment." *See* Exhibit D (WASH's amended privilege log dated August 28, 2020).

On October 7, 2020, Mrs. Holliman's attorney, John Moylan, sent a letter to WASH's attorneys, Jean Marie Jennings and Molly Craig, outlining a number of deficiencies with WASH's discovery responses, including WASH's withholding of documents and objections based on a claim of peer review privilege. *See* Exhibit E (letter from John Moylan to Jean Marie Jennings and Molly Craig dated October 7, 2020). Mr. Moylan also outlined specific deficiencies with multiple discovery responses and noted that WASH failed to produce *any* communications or a verification for its interrogatory responses. *See id.*

On October 27, 2020, WASH provided a supplemental document production consisting of 16 pages of text message screenshots. On November 6, 2020, Ms. Jennings responded to Mr. Moylan's October 7, 2020, letter and reiterated that WASH maintains the documents it withheld are privileged. *See* Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). WASH also provided supplemental responses to some of Mrs. Holliman's discovery requests, a supplemental document production, and a second amended privilege log indicating that 226 pages

of responsive documents were withheld on a claim of a “Peer Review, Quality Assurance/Quality Assessment” privilege. *See* Exhibit G (WASH’s supplemental responses to Plaintiff’s first set of interrogatories and requests for production); Exhibit H (WASH’s second amended privilege log dated November 6, 2020). Like WASH’s first two privilege logs, the second amended privilege log contains only the Bates range of the withheld documents, a generic document description for a few large subsets of documents, and an assertion of a peer review privilege for all of the documents. *See* Exhibit H. The privilege log does not include any information regarding the author(s), recipient(s), dated created, date modified, document type, or titles of specific documents. *See id.*

Although WASH’s supplemental discovery responses have resolved some of the issues outlined in Mr. Moylan’s October 7, 2020, letter, several significant deficiencies with WASH’s discovery responses remain, including but not limited to WASH’s withholding of 226 pages of responsive documents on an improper claim of privilege.

ANALYSIS

I. WASH Has Improperly Withheld Documents on a Claim of Peer Review Privilege.

As stated above, WASH has withheld 226 pages of responsive documents on a claim of peer review privilege. *See* Exhibit H (WASH’s second amended privilege log). WASH asserts the following objection to numerous requests for production of Mrs. Holliman:

This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contain in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted.

See Exhibit C (WASH's responses to Plaintiff's first set of interrogatories and requests for production), at response to Requests 1, 10-13, 15-16, 21, 24- 26; Exhibit G (WASH's supplemental responses to Plaintiff's first set of interrogatories and requests for production), at response to Requests 19, 20. In her November 6, 2020, letter, Ms. Jennings makes it clear that WASH stands by this objection and assertion of peer review privilege for the withheld documents. See Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). This objection, however, is improper for the reasons set forth below. Moreover, it is a continuation of WASH's pattern in this case of unreasonably withholding documents—a pattern which dates back to WASH's refusal to produce lawfully subpoenaed documents for *a year* until it was ordered to do so by the Court, and its refusal even to consent to a protective order to facilitate the exchange of documents in this case.

A. S.C. Code § 40-71-40

WASH's objection purports to reference S.C. Code § 40-71-40, but there is no such provision in the South Carolina Code.

B. S.C. Code § 40-71-20

S.C. Code § 40-71-20(A) protects from discovery “data and information **acquired by the committee referred to in Section 40-71-10** in the exercise of its duties” (emphasis added). The committee to which § 40-71-10 refers is “**an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section** or a committee appointed by the Department of Mental Health, or a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death” § 40-71-10(B) (emphasis added). That section defines “professional society” as “legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutical, and engineering organizations having as

members at least a majority of the eligible licentiates in the area served by the particular society.” § 40-71-10(A).

Thus, § 40-71-20(A) protects data and information acquired by only *certain* appointed committees, which are outlined in § 40-71-10(B). It does *not* protect all data and information acquired by *any* committee having a peer review purpose. WASH asserts that § 40-71-20 protects its withheld documents because “WASH was involved in a confidential peer review process involving the Membership and Professional Standards Committee of UNOS.” *See* Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). It appears, therefore, that WASH takes the position that its documents are privileged because they were acquired by the first type of committee listed in §40-71-10(B)—“an appointed committee which is formed to maintain professional standards of a state or local professional society.”

UNOS, however, is not a state or local professional society as required by § 40-71-10(B). UNOS, which is another defendant in this case, is the Organ Procurement and Transplantation Network (“OPTN”) for the United States. *See* Compl. ¶ 9. As the OPTN for the United States, UNOS is responsible for managing the national transplant waiting list, matching donors to recipients, maintaining the database that contains the data for every transplant in the United States, and monitoring every organ match in the country to ensure that policies are followed. *Id.* ¶ 10. UNOS is headquartered in Richmond, Virginia, and it is the one and *only* OPTN for the entire country. *Id.* ¶ 9. Because UNOS serves as the OPTN for the whole country, it is not a state or local professional society as required by § 40-71-10(B). Moreover, UNOS does not even meet the definition of “professional society” set forth in § 40-71-10(A) because it is not a medical organization “having as members at least a majority of the eligible licentiates in the area” served by it, which is the entire United States. *See* § 40-71-10(A). Therefore, the UNOS committee

referenced by WASH does not fall within the purview of S.C. Code § 40-71-20, and WASH's unspecified "involvement" with the UNOS committee does not protect relevant and responsive documents in WASH's possession from discovery in this case.

Furthermore, even if WASH were in possession of some documents that were presented to some other committee that *is* covered by § 40-71-20 (no evidence of which has been provided to Mrs. Holliman), then WASH is still required to produce such documents in this case because § 40-71-20(A) expressly provides that "[i]nformation, documents, or records **which are otherwise available from original sources** [in this case WASH] are **not** immune from discovery or use in a civil action merely because they were presented during the committee proceedings." (emphasis added); *see also McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 62, 439 S.E.2d 257, 260 (1993) ("We interpret the 'otherwise available' language to mean that information that is available from a source other than the committee does not become privileged simply by being acquired by the review committee. Accordingly, the statute does not protect information if obtained from alternative sources.").

C. S.C. Code § 44-7-392

WASH also claims that some of its withheld documents are privileged under S.C. Code § 44-7-392 because they "involve a Root Cause analysis with Grand Strand Medical Center in January of 2019." *See* Exhibit F (letter from Ms. Jennings to Mr. Moylan dated November 6, 2020). Section 44-7-392, however, applies to certain documents prepared or acquired by hospitals. S.C. Code § 44-7-392(A)(1) ("All proceedings of, and all data, documents, records, and information prepared or acquired by, a **hospital licensed under this article . . .** relating to the following are confidential" (emphasis added)). Like § 40-71-20, § 44-7-392(A)(3) explicitly states that documents and information that are "otherwise available from original sources are not

confidential and are not immune from discovery from the original source under this section or use in a civil action merely because they were acquired by the hospital.”

WASH is not a hospital, and, therefore, § 44-7-392 does not protect documents in its possession from discovery. Even if some of the documents withheld by WASH were given to Grand Strand Medical Center, which is the hospital where Mr. Holliman’s donor died, and are not subject to discovery directly from Grand Strand, such documents are nevertheless subject to discovery from WASH pursuant to the plain language of § 44-7-392(A)(3). *See also IntegraMed Am., Inc. v. Patton*, 298 F.R.D. 326, 331-32 (D.S.C. 2014) (“[B]oth statutes [S.C. Code §§ 40-71-20(A) and 44-7-392(A)] explicitly state that documents available from original sources are not confidential and are not immune from discovery.”).

D. UNOS Policies and Guidelines and OPTN Bylaws

WASH further posits that Mrs. Holliman’s discovery requests seek documents protected by UNOS policies and guidelines and OPTN bylaws. There is, however, no privilege recognized by the South Carolina courts for UNOS policies and guidelines or OPTN bylaws, and this is, therefore, not a proper basis for withholding documents in this case. *See State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980) (“In general, the burden of establishing the privilege rests upon the party asserting it.” (citation omitted)).

E. Case Law Cited by WASH

WASH incorrectly asserts that the withheld documents are privileged pursuant to *McGee v. Bruce Hospital System*, 312 S.C. 58, 439 S.E.2d 257 (1993) and *Sibley v. Lutheran Hosp. of Md.*, 871 F.2d 479, 484 (4th Cir. 1989).

McGee involved discovery requests for credentialing files from the executive committee of a hospital, which the court held were privileged under §§ 40-71-10 and 20. *McGee*, 312 S.C.

at 60-61, 439 S.E.2d at 259. Unlike the executive committee of the hospital in *McGee*, WASH is not part of any committee subject to § 40-71-20. The court in *McGee* further held that, even though the documents sought were not subject to discovery directly from the hospital, the plaintiff could nevertheless obtain them from other sources because the “statute provides that documents otherwise available from the original source do not become privileged merely because they are presented to the committee.” *Id.* at 62, 439 S.E.2d at 260. Thus, pursuant to *McGee* (and the plain language of § 40-71-20(A)), WASH’s documents are subject to discovery regardless of whether they might have been presented to other committees governed by §§ 40-71-20 or 44-7-392.

The other case relied upon by WASH, *Sibley v. Lutheran Hosp. of Md.*, 871 F.2d 479, 484 (4th Cir. 1989), does not discuss peer review privilege for documents and is inapposite to this discovery dispute.

F. WASH Must Produce the Withheld Documents or File Them under Seal for Judicial Review.

For the reasons set forth above, the 226 pages of responsive documents withheld by WASH are not privileged and must be produced in this wrongful death case. S.C. Code §§ 40-71-30 and 44-7-394 set forth the procedure for disputes regarding claims of peer review privilege. Section 40-71-30 states in its entirety:

When a party asserts a claim of confidentiality over documents pursuant to Section 40-71-20 and the party seeking the documents objects, **the documents must be filed under seal with the circuit court having jurisdiction over the pending action and are subject to judicial review** by the circuit court judge. If the court determines that any of the documents are not subject to confidentiality pursuant to Section 40-71-20 and are otherwise discoverable, the court shall provide the documents to the requesting party. **In the event the court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court shall assess attorney’s fees against that party for any fees incurred by the requesting party in obtaining the documents.**

(emphasis added). Similarly, § 44-7-394(A) states in relevant part:

If a hospital or affected person asserts a claim of confidentiality over documents pursuant to Section 44-7-392, and the party seeking the documents objects, then upon motion to the court having jurisdiction over the pending action **the court shall review the documents under seal to determine if any of the documents are subject to discovery**. The court may order production of the documents to the requesting party. If the court finds that a hospital or affected person acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court may assess attorney's fees against that party for any fees incurred by the requesting party in obtaining the documents.

(emphasis added).

Pursuant to these statutes, WASH must either produce the documents it has withheld, or file them under seal for a judicial determination of whether they are subject to discovery. If the Court determines that WASH acted unreasonably in withholding any of the documents, then Mrs. Holliman is entitled to recover her attorneys' fees and costs incurred in obtaining the documents.

II. WASH Has Withheld Requested Communications.

Mrs. Holliman propounded multiple requests for production on WASH calling for the production of certain communications relating to this case, including those relating to Mr. Holliman, his death, and his Donor. *See* Exhibit B at Requests 9-13, 15-20, 23, 25, 26, 28. WASH initially failed to produce *any* emails, text messages, or voice recordings in response to Mrs. Holliman's requests, although notes relating to the Donor that WASH did produce indicate numerous communications took place among WASH personnel working on the Donor's case. Mrs. Holliman's attorney pointed out WASH's failure to produce any communications in his deficiency letter to WASH. *See* Exhibit E (letter from Mr. Moylan to Ms. Jennings and Ms. Craig dated October 7, 2020). WASH subsequently provided a supplemental production of sixteen pages of text message screenshots and only four individual emails.

Counsel for Mrs. Holliman is aware of several emails sent to or from WASH personnel that are responsive to Mrs. Holliman's discovery requests and that WASH has failed to produce.

These missing emails were produced by other parties or subpoena recipients in this case. Given that WASH's mistyping of the Donor's blood type resulted in Mr. Holliman's death and serious injuries requiring a second transplant for at least two other people, one would certainly expect WASH to have more than four individual emails relating to this case. Case notes produced by WASH also reference several text messages among WASH personnel relating to the Donor that do not appear to be included in the texts recently produced by WASH. Thus, Mrs. Holliman believes that there are communications responsive to her discovery requests that have not been produced, and she requests that the Court order WASH to produce all communications responsive to her requests.

Additionally, it is impossible to determine from the text message screenshots that WASH did produce who sent and received each of the messages and when. This is crucial information that is just as important as the content of the messages. Mrs. Holliman asks for the Court to require WASH to produce its responsive text messages in native format, or any other format that will clearly show the sender, recipient, and date and time of each message.

III. Deficiencies with Specific Discovery Responses.

WASH's supplemental discovery responses resolve some issues, but several of WASH's responses to Mrs. Holliman's first set of discovery requests remain deficient.

A. Interrogatory 13

This interrogatory asks WASH to identify all documents relating to the Donor that it provided to Defendant UNOS and to state when it provided each document identified. *See* Exhibit B at Interrogatory 13. WASH's initial response stated that "portions of the Donor medical record such as the blood typing records are uploaded to DonorNet which is the platform operated by UNOS" Exhibit C at response to Interrogatory 13. In his deficiency letter to WASH, Mr.

Moylan explained that this response fails to identify which specific documents relating to the Donor were provided to UNOS, at any point, and to state when they were provided. *See* Exhibit E (letter from Mr. Moylan dated October 7, 2020). WASH's supplemental response simply states that "the case notes and call notes contained in the donor medical record are not uploaded to DonorNet" and that WASH communicated with UNOS regarding a confidential peer review process. Exhibit G at supplemental response to Interrogatory 13.

WASH has still failed to identify which documents relating to the Donor it provided to UNOS and when. This interrogatory seeks only basic information regarding documents relating to the Donor that one defendant shared with another, and Mrs. Holliman is entitled to a full and complete response.

B. Interrogatory 14

This interrogatory asks WASH to identify all documents relating to the Donor that it provided to Defendant MUSC and to state when it provided each document identified. *See* Exhibit B at Interrogatory 14. WASH's response simply states that it "uploaded relevant portions from the Donor medical record labeled for production as *WASH 0003-0332 CONFIDENTIAL* to Donor Net" and that "medical records are uploaded as the records become available" Exhibit C at response to Interrogatory 14. Mr. Moylan explained in his deficiency letter that this answer is not responsible to the interrogatory. *See* Exhibit E (letter from Mr. Moylan dated October 7, 2020). The request asks WASH to identify *all* documents relating to the Donor it provided to MUSC, not just those uploaded to DonorNet, and when such documents were provided. *See* Exhibit B. Furthermore, the documents referred to by WASH in its response consist of over 300 pages, including many that are not part of the Donor's medical record, so it is unclear from WASH's response which documents it even provided to MUSC through DonorNet. *See* Exhibit C at

response to Interrogatory 14. Like Interrogatory 13, Mrs. Holliman is entitled to know which documents WASH shared with codefendant MUSC and when.

C. Interrogatory 24

This Interrogatory asks WASH to state whether it has performed any investigations relating to Mr. Holliman's death or the Donor and, if so, to describe the purpose of such investigations, the dates, the participating individuals, and the outcome or conclusions. *See* Exhibit B at Interrogatory 24. WASH objects to this Interrogatory "to the extent it seeks confidential peer review materials" and simply refers to its privilege log. *See* Exhibit C at response to Interrogatory 24.

As explained above, it does not appear that WASH participated in any peer review committees that are protected by South Carolina law, and WASH is therefore required to fully answer this Interrogatory. Moreover, the South Carolina Supreme Court has clearly held that the *outcome* of review proceedings is not protected from discovery, *even when* the documents and information acquired as part of the proceedings are. *Durham v. Vinson*, 360 S.C. 639, 646-47, 602 S.E.2d 760, 763-67 (2004); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 61-63, 439 S.E.2d 257, 259-61 (1993). The Court in *McGee* explained:

[W]e find that the outcome of the decision-making process is not protected. Permitting discovery of the effect of the committee proceedings does not inhibit open discussion. In our view, the confidentiality statute was intended to protect the review process, but not restrict the disclosure of the result of the process.

McGee, 312 S.C. at 63, 439 S.E.2d at 260 (internal citation omitted). Thus, even if WASH did participate in any investigations protected under South Carolina law, which Mrs. Holliman disputes, the outcome and other basic information requested by this Interrogatory are not privileged and must be disclosed.

D. Request 14

This request calls for the production of all documents relating to the Donor's blood type that WASH sent to any transplant centers that received any organs or tissues of the Donor. *See* Exhibit B at Request for Production 14. In WASH's initial response, it simply referred to the documents Bates-labeled *WASH 0006-0332 CONFIDENTIAL*, many of which were clearly not documents sent to transplant centers. *See* Exhibit C at response to Request for Production 14. In its supplemental response, WASH states that "medical records of the Donor contained in *WASH 0006-0332 CONFIDENTIAL* regarding the Donor's blood testing are uploaded to DonorNet for viewing by transplant centers," but this still fails to identify which specific documents relating to the Donor's blood typing WASH sent to transplant centers and when. *See* Exhibit G at supplemental response to Request for Production 14. This request is narrowly tailored to seek crucial documents that are expected to shed light on how the mistyping of the Donor's blood occurred.

IV. Verification

WASH has not provided a verification for its interrogatory responses as required by Rule 33(a) of the South Carolina Rules of Civil Procedure. Mr. Moylan specifically requested a verification in his deficiency letter, *see* Exhibit E, but Mrs. Holliman has not yet received one.

CONCLUSION

For the reasons set forth above, Mrs. Holliman respectfully requests that the Court enter an Order:

1. Compelling WASH to file the documents listed on its Second Amended Privilege Log and Bates-labeled Privileged 0001-0226 with the Court under seal for a judicial determination of whether they are subject to discovery;

2. Compelling WASH to produce to Mrs. Holliman all documents that the Court determines have been improperly withheld on a claim of privilege;

3. Awarding Mrs. Holliman's attorneys' fees and costs incurred in connection with obtaining any documents that the Court determines WASH unreasonably withheld on a claim of privilege; and

4. Compelling WASH to provide full and complete responses to Mrs. Holliman's first set of discovery requests, including producing all requested communications; producing text messages in native format or some other format that reveals the sender, recipient, and date and time of each message; providing full and complete responses to Mrs. Holliman's Interrogatories 13, 14, 24 and Request for Production 14; and providing a verification for WASH's interrogatory responses.

As evidenced by Exhibits E and F, counsel for Mrs. Holliman communicated with counsel for WASH and attempted in good faith to resolve the issues in this motion, but the parties were unable to do so.

Respectfully submitted,

WYCHE, P.A.

s/John C. Moylan, III

John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

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Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: jmoylan@wyche.com

ldinkins@wyche.com

Attorneys for Plaintiff

November 18, 2020

EXHIBIT A

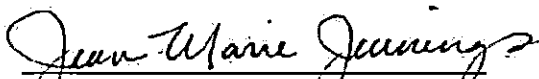
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman,	)	C/A No. 2020-CP-10-02902
)	
)	
<i>Plaintiff,</i>)	
)	
Versus	)	DEFENDANT
	)	WE ARE SHARING HOPE SC's
We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing,	)	PRIVILEGE LOG
)	
)	
<i>Defendants.</i>)	

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, We Are Sharing Hope (hereinafter "this Defendant"), hereby submits the following log of privileged documents withheld from production:

Bates Label Nos.	Document Description	Privilege Asserted
Privileged 0001-0186	Peer Review	Peer Review Quality Assurance/Quality Assessment

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402.
Ph: (843) 577-4435 / Fax: (843) 722-1630
Email: Info@hoodlaw.com


Molly H. Craig (SC #6960)
Jean Marie Jennings (SC #100651)

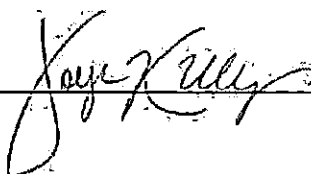
Attorneys for the Defendant
We Are Sharing Hope

August 7, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the **DEFENDANT WE ARE SHARING HOPE SC's PRIVILEGE LOG** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 7th day of August, 2020.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University
of South Carolina, and United Network for
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT
WE ARE SHARING HOPE SC**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), hereby requests that Defendant We Are Sharing Hope SC ("Defendant") serve upon counsel for Plaintiff answers to the following interrogatories within forty-five days after the date of service of these interrogatories or any earlier date specified by the Court.

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 Defendant, its representatives, agents, or attorneys, after answers to these 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 the Defendant, including information that is in the possession of the Defendant's attorneys, investigators for its attorneys, independent accountants, officers, employees, or agents.

B. If the Defendant cannot answer any of the following interrogatories in full, answer to the extent possible and specify the reasons why the Defendant is unable to answer the remainder, and provide whatever information the Defendant has concerning the unanswered portions.

C. If any document or information 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 containing the information;
- (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.

D. The term "document" shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped, coded, or graphic matter of every type and description, including ESI, computer files and data, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Defendant, including but not limited to, all writings, letters, minutes, bulletins, e-mails or similar transmissions, correspondence, text messages, 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, social media postings and communications, instant messages, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, drafts, data sheets, data compilations computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, photographs, slides, moving pictures, videotapes, 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 Defendant if it is within the possession or control of any of the Defendant’s attorneys, investigators for the Defendant’s attorneys, independent accountants, agents, or any person acting on behalf of or in concert with the Defendant or with any of these persons, or otherwise under their possession or control.

E. “Electronically stored information” and “ESI” means any documents; E-mail; Instant Messages (IM); Web pages; text messages; social media postings and communications, cell phone data; Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; cell phone data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, flash drive, etc.); PDAs, Blackberries and Palm Pilots; cell phones; tablets; IM tools; or USB drives.

G. 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 the Defendant, affiliated or associated with the Defendant or rendered any service to the Defendant, 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.

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 document (including copies thereof), the type of document, and a description of the subject matter of the document. If any document that the Defendant is 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 the Defendant's 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. "Relating to" includes referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

L. "Communication" or "communications" means transmission and/or receipt of any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings,

interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (e-mail), text messages, instant messaging, memoranda, documents, writings, or other forms of communications, including but not limited to oral, written, and electronic communications.

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. “Each”, “any”, and “all” are both singular and plural.

Q. The terms “you” “your,” and “Defendant” refer to the Defendant, We Are Sharing Hope SC, and any of its agents, servants, employees, attorneys, experts, consultants, or representatives who are in possession of or who may have obtained information for or on behalf of the Defendant, and any and all other persons acting under its authority or on its behalf.

R. “Mr. Holliman” refers to Allen B. Holliman.

S. “Donor” refers to the donor whose lungs Mr. Holliman received and who is

associated with donor identification numbers AFKY198, 2018-0516, and 18-15828.

INTERROGATORIES

1. Identify all persons known to Defendant or its counsel to be witnesses concerning the facts of this case and indicate whether written or recorded statements have been taken from the witnesses and, if so, who has possession of each such statement.

2. For each person known to Defendant or its counsel to be a witness concerning the facts of this case, set forth a summary of the facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiff's claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

4. Identify each person you expect to call as an expert witness at the trial of this case and describe the subject matter on which each expert is expected to testify and summarize the opinion(s) to which each expert is expected to testify.

5. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the determination of the blood type of potential organ donors.

6. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the reporting of organs as available for transplant to the United Network for Organ Sharing.

7. State when and how you first became aware that the Donor might be a candidate for organ donation.

8. Describe all steps you took to evaluate the suitability of the Donor and her organs for organ donation.

9. State the following for all laboratory or other test results of which Defendant is

aware, regardless of whether Defendant was involved in the testing, relating to the determination of the Donor's blood type:

- a. Who conducted the testing;
- b. Who requested the testing;
- c. The date and time the testing was conducted;
- d. The date and time the testing was completed;
- e. The date and time the sample used for the testing was collected from the Donor;
- f. Who collected the sample used for the testing from the Donor;
- g. Whether the sample used for the testing was collected from the Donor before or after the Donor received any blood transfusions;
- h. The results of the testing; and
- i. The date and time the results of the testing were issued.

10. State what blood type you reported to United Network for Organ Sharing for the Donor and set forth the basis for reporting that blood type.

11. Identify all individuals involved in determining the blood type of the Donor and, for each individual identified, explain in detail his/her role in determining the Donor's blood type.

12. Identify all individuals involved in reporting the Donor's blood type to United Network for Organ Sharing and, for each individual identified, explain in detail his/her role in reporting the Donor's blood type.

13. Identify all documents relating to the Donor you provided to United Network for Organ Sharing and state when you provided each document identified.

14. Identify all documents relating to the Donor you provided to Medical University of South Carolina and state when you provided each document identified.

15. With the exception of any attorney-client privileged communications, identify all communications relating to the blood type of the Donor.

16. With the exception of any attorney-client privileged communications, identify all communications relating to Mr. Holliman or his death.

17. With the exception of any attorney-client privileged communications, identify all communications relating to the mistyping or potential mistyping of the Donor's blood type.

18. State when and explain in detail how you first learned that the Donor might not or did not have type O blood.

19. Describe all steps you took to notify transplant centers, United Network for Organ Sharing, and/or recipients of organs or tissues from the Donor that the Donor might not or did not have type O blood.

20. Identify all transplant centers or hospitals who received any organ(s) or tissue(s) from the Donor.

21. Identify all organs or tissues from the Donor that were reported as available for transplant, and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

22. Identify all licensed physicians who are employed by you, either as a regular employee or an independent contractor, on your Board of Directors, on your Advisory Board, or with whom you are otherwise affiliated, and explain in detail each such physician's role in your operations.

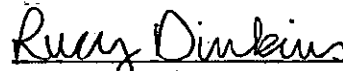
23. Identify all individuals who participated in the procurement or distribution of the Donor's organs and describe each such individual's role in the procurement or distribution of the Donor's organs.

24. State whether you have performed any investigations relating to Mr. Holliman's death or the Donor and, if so, provide the following for each such investigation, with the exception of any investigations conducted by your attorneys in this matter:

- a. Describe the purpose of the investigation;
- b. State when the investigation was commenced and when it was concluded;
- c. Identify all individuals who participated in the investigation; and
- d. State the outcome or conclusion(s) of the investigation.

Respectfully submitted,

Wyche, P.A.



John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

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ldinkins@wyche.com

July 10, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University
of South Carolina, and United Network for
Organ Sharing,

Defendants.

Civil Action No: 2020-CP-10-02902

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
DEFENDANT WE ARE SHARING
HOPE SC**

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiff Michelle Cha Holliman ("Plaintiff"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), hereby requests that Defendant We Are Sharing Hope SC ("Defendant") produce the documents and things identified below for examination, inspection and copying at the offices of Wyche, P.A., 807 Gervais Street, Suite 301, Columbia, South Carolina, or some other mutually convenient place agreed to by the parties, within forty-five (45) days after the date of service of these requests or any earlier date specified by the court.

These requests are continuing, and Defendant is obliged to produce all documents responsive to these requests, including such documents as become available to Defendant or its counsel after its responses hereto are served.

INSTRUCTIONS AND DEFINITIONS

A. In responding to these requests, produce all documents which are in the custody, possession or control of Defendant, including documents which are in the custody, possession or

control of Defendant's attorneys, investigators for Defendant's attorneys, independent accountants, agents or any person acting on behalf of or in concert with Defendant or with any of these persons, and not merely documents from Defendant's own files or records.

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

C. If documents requested are not reasonably available to Defendant 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 that 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 therefor. If any such document is no longer in existence or no longer in Defendant's 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:

- (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.

F. The term "document" shall be given its full scope within the rules and shall include all written, printed, typed, recorded, transcribed, punched, taped, coded, 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 the Defendant, including but not limited to, all writings, letters, minutes, bulletins, e-mails or similar transmissions, correspondence, text messages, 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 intra-office communications, social media postings and communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, drafts, data sheets, data compilations computer data sheets, computer data compilations, work sheets, statistics, speeches or other writings, photographs, slides, moving pictures, videotapes, 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 Defendant if it is within the possession or control of any of Defendant's attorneys, investigators for Defendant's attorneys, independent accountants, agents, or any person

acting on behalf of or in concert with Defendant or with any of these persons, or otherwise under their possession or control.

G. “Electronically stored information” and “ESI” means any documents; E-mail; Instant Messages (IM); Web pages; text messages; cell phone data; social media postings and communications, Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; cellphone data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, etc.); PDAs, Blackberries and Palm Pilots; cellphones; tablets; IM tools; or USB drives.

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

I. “Relating to” includes referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

J. “Communication” or “communications” includes any written or oral communication of all kinds including, but not limited to, emails, texts, letters, telegrams, exchanges of written or recorded information of any type, including ESI, face-to-face meetings, and telephone conversations.

K. 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.

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

M. The terms "you," "your," and "Defendant" shall refer to the Defendant, We Are Sharing Hope SC, and any of its agents, servants, employees, attorneys, experts, consultants or representatives who are in possession of or who may have obtained information, documents, or other materials for or on behalf of Defendant, and any and all other persons acting under its authority or on its behalf.

N. "Mr. Holliman" refers to Allen B. Holliman.

T. "Donor" refers to the donor whose lungs Mr. Holliman received and who is associated with donor identification numbers AFKY198, 2018-0516, and 18-15828.

REQUESTS FOR PRODUCTION

1. All non-privileged written or recorded statements or affidavits, including notes or drafts, from persons who are witnesses to facts relating to this action, including but not limited to any taped conversations or communications of any witness.

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff's claims in this matter.

3. For each expert or consultant whom Defendant intends to call to testify at trial, all documents relied upon by such expert or consultant in preparation of his/her opinion or testimony and all documents that embody, reflect, refer to, or summarize reports or memoranda prepared for Defendant by such expert or consultant.

4. All reports prepared by each expert or consultant whom Defendant intends to call to testify at trial.

5. All documents referenced or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories.

6. All policies of Defendant in effect from 2018 to the present relating to the determination of the blood type of potential organ donors.

7. All policies of Defendant in effect from 2018 to the present relating to the reporting of organs as available for transplant to United Network for Organ Sharing.

8. All laboratory or other test results relating to the Donor.

9. All documents and communications relating to blood products received by the Donor shortly before her death.

10. All documents and communications relating to the determination of the blood type of the Donor.

11. All documents and communications relating to Mr. Holliman or his death.

12. All documents and communications relating to the mistyping or potential mistyping of the Donor's blood type.

13. All communications with Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any transplant centers relating to the Donor.

14. All documents relating to the Donor's blood type sent to any transplant centers that received any organ(s) or tissue(s) of the Donor.

15. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for determining the blood type of potential organ donors.

16. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for matching organ donors and recipients.

17. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

18. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

19. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

20. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the testing of blood or tissue samples of potential organ donors.

21. All documents relating to the Donor provided to United Network for Organ Sharing.

22. All documents relating to the Donor provided to Medical University of South Carolina.

23. All communications relating to the suitability of the Donor for organ donation.

24. All reports or other documents summarizing or relating to the outcome or conclusion(s) of any investigation(s) relating to Mr. Holliman's death or the Donor.

25. With the exception of any attorney-client privileged communications, all communications relating to any investigation(s) relating to Mr. Holliman's death or the Donor.

26. All communications relating to complications experienced by recipients of any of the Donor's organs or tissues.

27. All Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

28. All communications relating to Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

29. Job descriptions for all licensed physicians who are employed by you either as a regular employee or an independent contractor or with whom you are otherwise affiliated.

30. Descriptions of duties and responsibilities for all licensed physicians on your Board of Directors or Advisory Board.

Respectfully submitted,

Wyche, P.A.



John C. Moylan, III (S.C. Bar 11227)

Lucy Dinkins (S.C. Bar 101177)

807 Gervais Street, Suite 301

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: jmoylan@wyche.com

ldinkins@wyche.com

July 10, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

We Are Sharing Hope SC, Medical University
of South Carolina, and United Network for
Organ Sharing,

Defendants.


Civil Action No: 2020-CP-10-02902

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the foregoing **Plaintiff's First Set of Interrogatories to Defendant We Are Sharing Hope SC and Plaintiff's First Set of Requests for Production to Defendant We Are Sharing Hope SC** upon counsel for Defendant by causing a copy of the same to be served by Electronic Mail and First Class U.S. Mail this 10th day of July, 2020, addressed as follows:

Molly H. Craig, Esq.
Hood Law Firm, LLC
P.O. Box 1508
Charleston, SC 29402-1508
molly.craig@hoodlaw.com

July 10, 2020



Laura H. Diaz, Paralegal

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Michelle Cha Holliman, individually and as	)	C/A No. 2020-CP-10-02902
personal representative of the Estate of Allen B.)	
Holliman,)	
)	
<i>Plaintiff,</i>)	
)	
Versus	)	DEFENDANT
	)	WE ARE SHARING HOPE SC's
We Are Sharing Hope SC, Medical University	)	ANSWERS TO PLAINTIFF'S
of South Carolina, and United Network for	)	FIRST SET OF INTERROGATORIES
Organ Sharing,)	
)	
<i>Defendants.</i>)	

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, This Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), answers the Plaintiff's First Set of Interrogatories, as follows:

1. Identify all persons known to Defendant or its counsel to be witnesses concerning the facts of this case and indicate whether written or recorded statements have been taken from the witnesses and, if so, who has possession of each such statement.

ANSWER: This Defendant may utilize any and all witnesses named by the Plaintiff or Co-Defendant, those persons listed in the medical records (including all treating physicians), and those persons who may in the future be listed or deposed. In addition, this Defendant identifies the following:

Michelle Cha Holliman

Ms. Holliman is the Plaintiff in this case and will testify as to the facts and circumstances alleged in the Complaint.

The individuals listed below provided care and/or were involved with organ procurement services. They are expected to testify regarding all relevant areas of the care and treatment provided to the Donor, the organ procurement process, and the allegations contained in the Complaint, including expert opinions.

Employees and Representatives of We Are Sharing Hope

Darla Welker	Erika Veletto
Dave DeStefano	Adrienne Armstrong
Michael Lotts	Bryon Harper
Janine Burgarner	Amber Daniels
Lisa Walkabout	Allison Sullivan
Alyson Clark	Nicole Fuller
Candy St. Marie	Traci Adams
Jovilyn Swifka	Candy St. Marie
Theresa Ross	Tiffany Adams
Valerie Boykin	Tyrish Page
Taylor Nicolette	
Lacy Fryar	

Employees and Representatives of Grand Strand Regional Medical Center

Employees and Representatives of MUSC

This Defendant reserves the right to call at trial any unanticipated witnesses, of whom timely notice will be given. This Defendant will supplement this response.

2. For each person known to Defendant or its counsel to be a witness concerning the facts of this case, set forth a summary of the facts known to or observed by such witness

and provide a copy of any written or recorded statements taken from such witness.

ANSWER: See Answer to Interrogatory No. 1.

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiffs claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

ANSWER: Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

4. Identify each person you expect to call as an expert witness at the trial of this case and describe the subject matter on which each expert is expected to testify and summarize the opinion(s) to which each expert is expected to testify.

ANSWER: This Defendant intends to call expert witnesses at the trial of this case. This Defendant specifically reserves the right to call as expert witnesses at trial any of the donor or Plaintiff's treating physicians as well as any expert witnesses identified by the Plaintiff or Co-Defendant. At this time, this Defendant has not determined which experts it intends to call to a trial of this matter. This Defendant will supplement this response as the case progresses.

5. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the determination of the blood type of potential organ donors.

ANSWER: This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0333-0338 CONFIDENTIAL*.

6. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the reporting of organs as available for transplant to the United Network for Organ Sharing.

ANSWER: This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0359-0363 CONFIDENTIAL*.

7. State when and how you first became aware that the Donor might be a candidate for organ donation.

ANSWER: This Defendant received an initial referral of the donor patient on November 24, 2018 which is documented in *WASH 006-0332 CONFIDENTIAL*, specifically *WASH 0042, 0124, 0137, 0167 and 0188 CONFIDENTIAL*.

8. Describe all steps you took to evaluate the suitability of the Donor and her organs for organ donation.

ANSWER: This Defendant refers the Plaintiff to the documents related to Donor medical record bates labeled for production as *WASH 006-0332 CONFIDENTIAL* for details regarding the information sought.

9. State the following for all laboratory or other test results of which Defendant is aware, regardless of whether Defendant was involved in the testing, relating to the determination of the Donor's blood type:

- a. Who conducted the testing;
- b. Who requested the testing;
- c. The date and time the testing was conducted;
- d. The date and time the testing was completed;
- e. The date and time the sample used for the testing was collected from the Donor;
- f. Who collected the sample used for the testing from the Donor;
- g. Whether the sample used for the testing was collected from the Donor

before or after the Donor received any blood transfusions;

- h. The results of the testing; and
- i. The date and time the results of the testing were issued.

ANSWER: This Defendant refers the Plaintiff to the documents related to laboratory tests bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. This Defendant specifically refers to *WASH 0322, 0299, 0229 (ABO Verification), 0218, 0217, 0216, 0215, 0214 CONFIDENTIAL*. The two ABO results which were used to report the blood type of the Donor in this case were determined by the blood bank at Grand Strand Medical Center and are labeled *WASH 0216 CONFIDENTIAL* and *WASH 0217 CONFIDENTIAL* which were collected respectfully on November 24, 2018 at 23:09 and on November 25, 2018 at 19:50.

10. State what blood type you reported to United Network for Organ Sharing for the Donor and set forth the basis for reporting that blood type.

ANSWER: This Defendant reported ABO Type O Neg based on the blood bank results from November 24, 2018 at 23:09 and November 25, 2018 at 19:50 which are labeled for production as *WASH 0216 CONFIDENTIAL* and *WASH 0217 CONFIDENTIAL*.

11. Identify all individuals involved in determining the blood type of the Donor and, for each individual identified, explain in detail his/her role in determining the Donor's blood type.

ANSWER: This Defendant refers the Plaintiff to the documents pertaining to determining the Donor's blood type bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

12. Identify all individuals involved in reporting the Donor's blood type to United

Network for Organ Sharing and, for each individual identified, explain in detail his/her role in reporting the Donor's blood type.

ANSWER: This Defendant refers the Plaintiff to the documents related to blood typing and reporting bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. Further responding, the clinical allocation technician completes the document labeled as *WASH 0229 CONFIDENTIAL* and uploads the document to DonorNet along with reporting the donor blood type to DonorNet.

13. Identify all documents relating to the Donor you provided to United Network for Organ Sharing and state when you provided each document identified.

ANSWER: This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

Further responding and without waiving the above objections, portions of the Donor medical record such as the blood typing records are uploaded to DonorNet which is the platform operated by UNOS allowing Organ Procurement Organizations to Communicate with Transplant Centers.

14. Identify all documents relating to the Donor you provided to Medical University of South Carolina and state when you provided each document identified.

ANSWER: This Defendant uploaded relevant portions from the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* to DonorNet. The medical records are uploaded as the records become available during the organ procurement process.

15. With the exception of any attorney-client privileged communications, identify all communications relating to the blood type of the Donor.

ANSWER: This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. This Defendant further objects as overly broad and unduly burdensome. Further answering and without waiving these objections, this Defendant refers the Plaintiff to the Donor medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the Privilege Log.

16. With the exception of any attorney-client privileged communications, identify all communications relating to Mr. Holliman or his death.

ANSWER: This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Without waiving these objections, the Donor medical record

labeled for production as *WASH 0006-0332 CONFIDENTIAL* contains documents stating Mr. Holliman's status as deceased. This Defendant also refers to the Privilege Log and reserves the right to supplement this information during discovery.

17. With the exception of any attorney-client privileged communications, identify all communications relating to the mistyping or potential mistyping of the Donor's blood type.

ANSWER: This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted and refer the Plaintiff to the Privilege Log.

Further answering and without waiving the objection, this Defendant obtained from Grand Strand Medical Hospital's blood bank two separate donor blood samples from two separate draw times which were over twenty-four hours apart finding the blood type was O negative. These blood bank results are found at *WASH 0216 CONFIDENTIAL* and *WASH 0217 CONFIDENTIAL*.

18. State when and explain in detail how you first learned that the Donor might not or did not have type O blood.

ANSWER: This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* and specifically refers the Plaintiff to *WASH 0173 CONFIDENTIAL* wherein this Defendant received a call from another transplant center which tested the Donor blood resulting in blood Type A.

19. Describe all steps you took to notify transplant centers, United Network for Organ

Sharing, and/or recipients of organs or tissues from the Donor that the Donor might not or did not have type O blood.

ANSWER: This Defendant refers the Plaintiff to documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* including *WASH 0173 CONFIDENTIAL*.

20. Identify all transplant centers or hospitals who received any organ(s) or tissue(s) from the Donor.

ANSWER: This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for responsive information and also notes the following:

Heart: NCCM

Lungs: SCMU

Liver: TNVU

Kidneys: SCMU

Pancreas: WIUW

21. Identify all organs or tissues from the Donor that were reported as available for transplant, and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

ANSWER: This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for responsive information. Further responding, this Defendant attempts to place all organs which are able to be transplanted, namely the right and left kidneys, liver, pancreas, intestines, heart and lungs in order to save as many lives as possible and all of the organs listed above were listed as

available for transplant with regard to the Donor in this case. Tissue recovery occurs after organ recovery and is not relevant to the allegations of this lawsuit.

22. Identify all licensed physicians who are employed by you, either as a regular employee or an independent contractor, on your Board of Directors, on your Advisory Board, or with whom you are otherwise affiliated, and explain in detail each such physician's role in your operations.

ANSWER: This Defendant objects to this Interrogatory as overly broad and unduly burdensome. Without waiving these objections, in 2018, Dr. Honig was the medical director and Dr. Whelan was the associate medical director. Dr. Honig and Dr. Whelan currently hold these positions. Further responding, the responsibilities of the medical director during the organ procurement at issue in this case are labeled for production as *WASH 0369-0371 CONFIDENTIAL*.

23. Identify all individuals who participated in the procurement or distribution of the Donor's organs and describe each such individual's role in the procurement or distribution of the Donor's organs.

ANSWER: This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for the individuals participating in the procurement of the Donor's organs as well as answer to Interrogatory No. 1.

24. State whether you have performed any investigations relating to Mr. Holliman's death or the Donor and, if so, provide the following for each such investigation, with the exception of any investigations conducted by your attorneys in this matter:

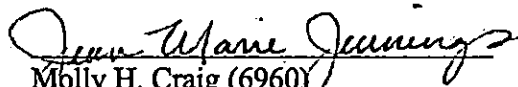
- a. Describe the purpose of the investigation;

- b. State when the investigation was commenced and when it was concluded;
- c. Identity all individuals who participated in the investigation; and

State the outcome or conclusion(s) of the investigation.

ANSWER: This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

HOOD LAW FIRM, LLC
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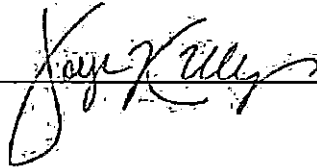
*Attorneys for the Defendant
We Are Sharing Hope SC*

August 28, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES*** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 28th day of August, 2020.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Michelle Cha Holliman, individually and as	)	C/A No. 2020-CP-10-02902
personal representative of the Estate of Allen B.)	
Holliman,)	
)	
<i>Plaintiff,</i>)	
)	
Versus	)	DEFENDANT
	)	WE ARE SHARING HOPE SC's
We Are Sharing Hope SC, Medical University	)	RESPONSES TO PLAINTIFF'S
of South Carolina, and United Network for	)	FIRST SET OF REQUESTS
Organ Sharing,	)	FOR PRODUCTION
)	
<i>Defendants.</i>)	

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), responds to the Plaintiff's First Set of Requests for Production, as follows:

1. All non-privileged written or recorded statements or affidavits, including notes or drafts, from persons who are witnesses to facts relating to this action, including but not limited to any taped conversations or communications of any witness.

RESPONSE: This Defendant objects to this Request to the extent it calls for attorney-client and/or work product related documents and to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Without waiving these objections, other than what is contained in

the medical records of the Donor and Plaintiff, this Defendant is not aware of any non-privileged written or recorded statements at this time.

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff's claims in this matter.

RESPONSE: Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

3. For each expert or consultant whom Defendant intends to call to testify at trial, all documents relied upon by such expert or consultant in preparation of his/her opinion or testimony and all documents that embody, reflect, refer to, or summarize reports or memoranda prepared for Defendant by such expert or consultant.

RESPONSE: This Defendant intends to call expert witnesses at the trial of this case. This Defendant specifically reserves the right to call as expert witnesses at trial any of the Donor or Plaintiff's treating physicians as well as any expert witnesses identified by the Plaintiff or Co-Defendant. At this time, this Defendant has not determined which experts it intends to call to a trial of this matter. This Defendant will supplement this response as the case progresses.

4. All reports prepared by each expert or consultant whom Defendant intends to call to testify at trial.

RESPONSE: This Defendant intends to call expert witnesses at the trial of this case. This Defendant specifically reserves the right to call as expert witnesses at trial any of the Donor or Plaintiff's treating physicians as well as any expert witnesses identified by the Plaintiff or Co-Defendant. At this time, this Defendant has not determined which experts it

intends to call to a trial of this matter. This Defendant will supplement this response as the case progresses.

5. All documents referenced or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories.

RESPONSE: The Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL, WASH 0359-0363 CONFIDENTIAL* and *WASH 0369-0371 CONFIDENTIAL*.

6. All policies of Defendant in effect from 2018 to the present relating to the determination of the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff to the documents related to this Defendant's policies in effect from November 2018 to present bates labeled for production as *WASH 0333-0359 CONFIDENTIAL*.

7. All policies of Defendant in effect from 2018 to the present relating to the reporting of organs as available for transplant to United Network for Organ Sharing.

RESPONSE: This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff to the documents related to this Defendant's policies in effect from November of 2018 to present bates labeled for production as *WASH 0359-0368 CONFIDENTIAL*.

8. All laboratory or other test results relating to the Donor.

RESPONSE: This Defendant refers the Plaintiff to the Donor medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for laboratory and other tests relating to the Donor.

9. All documents and communications relating to blood products received by the Donor shortly before her death.

RESPONSE: This Defendant refers the Plaintiff to the Donor's Organ Medical Record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* which contains the blood products received by the Donor.

10. All documents and communications relating to the determination of the blood type of the Donor.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

11. All documents and communications relating to Mr. Holliman or his death.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993)

and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

12. All documents and communications relating to the mistyping or potential mistyping of the Donor's blood type.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

13. All communications with Grand Strand Medical Center, VRL Eurofins, United Network for Organ Sharing, or any transplant centers relating to the Donor.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted.

Further responding and without waiving these objections, this Defendant refers the Plaintiff to the Privilege Log as well as Donor's organ medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. The relevant portions of the Donor organ medical record are uploaded to DonorNet which is the platform allowing this Defendant to upload the Donor medical records to be viewed by transplant hospitals. This Defendant further refers to documents labeled for production as *WASH 0003-0005 CONFIDENTIAL* (Revised). This Defendant reserves the right to supplement this information during discovery.

14. All documents relating to the Donor's blood type sent to any transplant centers that received any organ(s) or tissue(s) of the Donor.

RESPONSE: This Defendant objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding and without waiving the objection, this Defendant refers the documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

15. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for determining the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer

review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

16. All communications with United Network for Organ Sharing from January 1, 2018, to November 30, 2019, relating to the procedures or protocols for matching organ donors and recipients.

RESPONSE: This Defendant objects to this Request as overly broad and unduly burdensome as seeking communications with UNOS which are not related to this lawsuit. This Defendant further objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, this Defendant refers the Plaintiff to documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the Privilege Log.

17. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it seeks protected medical information pursuant to HIPAA regarding Donors and/or Recipients not involved in this case. In addition, this Defendant further objects to the extent this Request is overly broad and unduly burdensome. Without waiving these objections, this Defendant refers the Plaintiff to documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

18. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

RESPONSE: This Defendant objects to this Request as overly broad and unduly burdensome and to the extent it seeks protected medical information pursuant to HIPAA regarding Donors and/or Recipients not involved in this case. Further responding, this Defendant's procedures and policies as an OPO are developed independently are typically not shared with the Medical University of South Carolina. Further responding, this Defendant will supplement if any applicable communications exist with regard to this case.

19. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it calls for protected medical information from other Donors unrelated to this case.

20. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the testing of blood and tissue samples of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it calls for information from other Donors unrelated to this case. Further responding and without waiving these objections, this Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for documents and communications with VRL Eurofins Laboratories related to the Donor involved in this case. Further responding, upon information and belief, following the organ procurement and transplant process in this case this Defendant discussed the process of blood typing with VRL Eurofins via telephone call.

21. All documents relating to the Donor provided to United Network for Organ Sharing.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, the Defendant refers the Plaintiff to the Privilege Log and the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. UNOS operates the DonorNet platform by which OPOs and Transplant centers communicate with each other during the organ procurement and transplant process. The information uploaded to DonorNet by this Defendant is contained in the Donor organ medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the privilege log.

22. All documents relating to the Donor provided to Medical University of South Carolina.

RESPONSE: Portions of the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* uploaded to DonorNet as they were available for viewing by transplant centers such as the Medical University of South Carolina.

23. All communications relating to the suitability of the Donor for organ donation.

RESPONSE: The Defendant refers the Plaintiff to the documents labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

24. All reports or other documents summarizing or relating to the outcome or conclusion(s) of any investigation(s) relating to Mr. Holliman's death or the Donor.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

25. With the exception of any attorney-client privileged communications, all communications relating to any investigation(s) relating to Mr. Holliman's death or the Donor.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

26. All communications relating to complications experienced by recipients of any of the Donor's organs or tissues.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive

case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log as well as documents labeled for production as *WASH 0006-0332 CONFIDENTIAL* related to recipients of the Donor's organs. Further responding, ABO typing does not affect tissue recovery.

27. All Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

RESPONSE: Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

28. All communications relating to Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

RESPONSE: Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

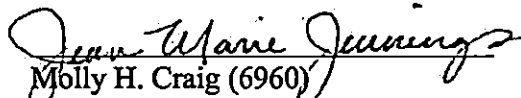
29. Job descriptions for all licensed physicians who are employed by you either as a regular employee or an independent contractor or with whom you are otherwise affiliated.

RESPONSE: This Defendant refers to documents labeled for production as *WASH 0369-0371 CONFIDENTIAL*.

30. Descriptions of duties and responsibilities for all licensed physicians on your Board of Directors or Advisory Board.

RESPONSE: This Defendant responds that any licensed physicians sitting on the Board of Directors do not have any responsibilities regarding the operations of this Defendant.

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*Attorneys for the Defendant
We Are Sharing Hope SC*

August 28, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION*** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 28th day of August, 2020.

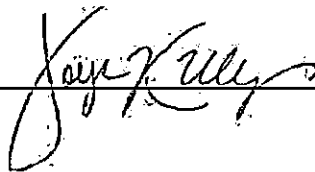


EXHIBIT D

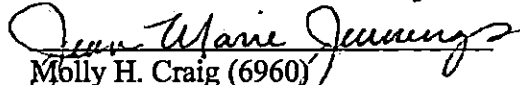
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman,	)	C/A No. 2020-CP-10-02902
)	
)	
<i>Plaintiff,</i>)	
)	
Versus	)	DEFENDANT
	)	WE ARE SHARING HOPE SC's
We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing,	)	AMENDED
	)	PRIVILEGE LOG
)	
<i>Defendants.</i>)	

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, We Are Sharing Hope (hereinafter "this Defendant"), hereby submits the following log of privileged documents withheld from production:

Bates Label Nos.	Document Description	Privilege Asserted
Privileged 0001-0186	Peer Review	Peer Review Quality Assurance/Quality Assessment
Privileged 0187-0195	Root Cause Analysis	Peer Review Quality Assurance/Quality Assessment

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*Attorneys for the Defendant
We Are Sharing Hope SC*

August 28, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the **DEFENDANT WE ARE SHARING HOPE SC's AMENDED PRIVILEGE LOG** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 28th day of August, 2020.

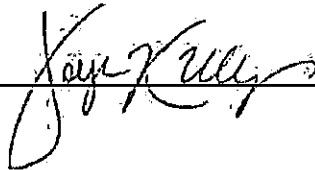


EXHIBIT E

W Y C H E

Attorneys at Law

October 7, 2020

Via Email

Jean Marie Jennings
Molly Craig
Hood Law Firm, LLC
Jeanmarie.jennings@hoodlaw.com
Molly.craig@hoodlaw.com

Re: Holliman vs. We Are Sharing Hope SC, *et al.*
Case No. 2020-CP-10-2902
We Are Sharing Hope SC's responses to Plaintiff's first discovery requests

Dear Jean Marie and Molly,

I am writing regarding substantial deficiencies with We Are Sharing Hope SC's ("WASH") responses to Plaintiff's first set of interrogatories ("Interrogatories") and requests for production ("Requests"). These deficiencies are outlined below.

Claims of Peer Review Privilege

WASH objects to Interrogatories 13, 15, 16, 17, and 24 and Requests 1, 10, 11, 12, 13, 15, 16, 21, 24, 25, and 26 on the ground that they seek "confidential peer review materials protected by S.C. Code Ann. § 40-71-20 to 40 and § 44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 527 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989)" This objection is improper for several reasons.

First, the objection purports to reference S.C. Code § 40-71-40, but there is no such provision in the South Carolina Code.

Second, S.C. Code § 40-71-20 protects from discovery "data and information acquired by the committee referred to in Section 40-71-10 in the exercise of its duties . . ." (emphasis added). The committee to which § 40-71-10 refers is "an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section or a committee appointed by the Department of Mental Health, or a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death . . ." § 40-71-10(B) (emphasis added). That section defines "professional society" as "legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutical, and engineering organizations having as members at least a majority of the eligible licentiates in the area served by the particular society." § 40-71-10(A).

Thus, according to its plain terms, § 40-71-20 protects certain documents of (1) certain committees appointed by a professional society to maintain professional standards of the professional society;

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W Y C H E

October 7, 2020

Page 2

(2) certain committees appointed by the Department of Mental Health; and (3) certain committees appointed by the Department of Health and Environmental Control. Section 40-71-20(A) clarifies, however, that “[i]nformation, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during the committee proceedings.” Thus, information and documents that are presented to a committee covered by § 40-71-20 are not subject to discovery from the appointed committee, but they are subject to discovery from other sources.

There is no information in WASH’s discovery responses indicating that WASH is part of a committee appointed by a professional society, as defined by § 40-71-10(A), to maintain professional standards of the society, a committee appointed by the Department of Mental Health, or a committee appointed by DHEC. Furthermore, WASH is an organ procurement organization (“OPO”), and Plaintiff is not aware of the existence of any society of OPOs in South Carolina that would meet the definition of a “professional society” under § 40-71-10(A). In the event that WASH is in possession of documents that were ultimately presented to some other committee that is covered by the protections in § 40-71-20, such documents must still be produced by WASH as an original source and are not immune from discovery simply because they were presented to a protected committee. *See* § 40-71-20(A). Accordingly, WASH is not expected to be in possession of any materials protected by § 40-71-20.

Third, WASH claims that documents responsive to Plaintiff’s request are protected by S.C. Code § 44-7-392, but that provision applies to certain documents and information acquired by hospitals. Because WASH is not a hospital, § 44-7-392 is inapplicable to documents in its possession. Furthermore, like § 40-71-20, any information or documents in WASH’s possession that might have been presented in the course of hospital proceedings protected by § 44-7-392 are subject to discovery from WASH and may not be withheld simply because they were presented in the course of the hospital proceedings. *See* § 44-7-392(A)(3).

Fourth, the cases cited by WASH in its objection do not support the contention that the materials requested from WASH are privileged. *McGee* involves discovery requests for credentialing files from the executive committee of a hospital, which the court held was a committee protected by § 40-71-20. As explained above, however, it does not appear that WASH is part of any committee protected by the statute. Moreover, the court in *McGee* held that the plaintiff could obtain the documents at issue from sources other than the appointed hospital committee, and it also held that the outcome of the hospital committee’s decision-making process was not protected even though the documents and information the committee acquired were. *McGee*, 312 S.C. at 62-63. The other case cited in WASH’s objection, *Sibley v. Lutheran Hosp. of Md., Inc.*, 871 F.2d 479 (4th Cir. 1989), does not discuss peer review privilege and provides is inapposite.

Lastly, UNOS policies and guidelines and OPTN Bylaws do not serve as a basis for withholding documents and materials responsive to Plaintiff’s discovery requests because there is no privilege recognized by the South Carolina courts for UNOS policies and guidelines or OPTN Bylaws.

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Accordingly, Plaintiff's objection to numerous Interrogatories and Requests on the basis of a peer review privilege is improper. Plaintiff requests that WASH provide full and complete responses to Interrogatories 13, 15, 16, 17, and 24 and Requests 1, 10, 11, 12, 13, 15, 16, 21, 24, 25, and 26 and that WASH produce all documents and other materials withheld on a claim of peer review privilege.

Lack of Communications Produced

Multiple Requests seek the production of certain communications. Definition J to the Requests provides that, for purposes of the Requests, "communication" includes "any written or oral communication of all kinds including, but not limited to, emails, texts, letters . . . and telephone conversations." There were no emails, text messages, or voice recordings produced in response to Plaintiff's Requests. It is expected that WASH would have responsive emails, text messages, or voice recordings in its possession, particularly given the case notes and call notes included in WASH's production that make reference to numerous communications relating to this case. Please produce all non-privileged, responsive communications of any type, including but not limited to emails, text messages, and voice recordings.

Date Generated for Documents

The documents Bates-labeled WASH 0006-189 have a "Date Generated" stamp at the bottom that says August 5, 2020. This appears to be the date these documents were accessed to be produced in this case, not the actual date the documents were generated. Please produce an audit trail for the documents showing when they were created and modified.

Verification

South Carolina Civil Procedure Rule 33(a) requires interrogatories to be answered under oath by the party. No verification was provided with WASH's interrogatory responses. Please provide a verification signed by a representative of WASH.

Deficiencies with Specific Interrogatories and Requests

1) Interrogatory 3 and Request 2

These requests ask for insurance information and copies of insurance policies that might provide coverage for Plaintiff's claims. WASH identified Allied World Surplus Line Insurance Company as an insurer that might have coverage, but it has not produced any insurance policies as requested. Rule 26(b)(1) specifically provides for the discovery of insurance policies that might have coverage for the claims in a case. Please provide copies of all insurance policies that might provide coverage, in whole or in part, for Plaintiff's claims in this case.

2) Interrogatories 5 and 6 and Requests 6 and 7

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Interrogatories 5 and 6 ask for WASH to explain in detail its policies in effect in November 2018 relating to the determination of the blood type of potential organ donors and the reporting of organs as available for transplant. Requests 6 and 7 ask for copies of all such policies in effect from 2018 to the present. WASH responds to these requests by referring to the policies Bates-labeled WASH 0333-68. The policies in WASH 0333-68 state at the end that they have attachments, and they reference additional procedures, standards, and regulations. None of these attachments or other references have been produced. Please produce the attachment and other references listed at the end of the policies Bates-labeled WASH 0333-68.

3) Interrogatory 13 and Request 21

Interrogatory 13 calls for WASH to identify all documents relating to the Donor that it provided to Defendant United Network for Organ Sharing (“UNOS”) and to state when each document identified was provided. WASH states in response that portions of the Donor’s medical record were uploaded to DonorNet, but WASH fails to identify with specificity which documents relating to the Donor were provided to UNOS (at any point) and to state when they were provided.

Request 21 asks for the production of all documents relating to the Donor that were provided to UNOS. WASH responds to this Request by simply stating that information uploaded to DonorNet is contained in the documents Bates-labeled WASH 0006-332, but it is unclear which documents within WASH 0006-332 are the documents uploaded to DonorNet. Furthermore, this Request asks for the production of all documents relating to the Donor that were provided to UNOS—not just the documents uploaded to DonorNet.

Please provide full and complete responses to Interrogatory 13 and Request 21.

4) Interrogatory 14 and Request 22

Interrogatory 14 asks for WASH to identify all documents relating to the Donor that it provided to Defendant Medical University of South Carolina (“MUSC”) and to state when it provided each document identified. WASH responds that it “uploaded relevant portions from the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* to DonorNet. The medical records are uploaded as the records become available” This answer is not responsive to the interrogatory. The Interrogatory asks for all documents relating to the Donor that WASH provided to MUSC—not just those that were uploaded to DonorNet—and it asks when each document was given to MUSC. Furthermore, the documents labeled WASH 0006-332 contain many documents that are not part of the Donor’s medical record, so it is unclear which documents were even uploaded to DonorNet by WASH.

Request 22 calls for the production of all documents relating to the Donor that WASH provided to MUSC. WASH responds to this Request by stating that information that was uploaded to DonorNet is contained in WASH 0006-332, but, again, it is unclear which documents within

W Y C H E

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WASH 0006-332 were uploaded to DonorNet. Furthermore, this Request asks for the production of all documents relating to the Donor provided to MUSC by WASH—not just the documents uploaded to DonorNet.

Please provide full and complete responses to Interrogatory 14 and Request 22.

5) Interrogatory 21

This Interrogatory requires WASH to identify all organs or tissues from the Donor that were reported as available for transplant, and for each organ or tissue identified, to state whether it was transplanted and, if so, to state the outcome of the transplant. WASH provides no information regarding the Donor's tissues and asserts that tissue recovery is not relevant to this case. Whether tissues from the Donor were transplanted and, if so, the outcome of such transplants is relevant to this case arising out of the incorrect blood typing of the Donor and certainly falls within the broad scope of discovery permitted by Rule 26(b)(1). Please provide the requested information regarding the Donor's tissues.

6) Request 14

This Request calls for the production of all documents relating to the Donor's blood type that WASH sent to any transplant centers that received any organs or tissues of the Donor. WASH objects that the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and then refers Plaintiff to the set of documents Bates-labeled WASH 0006-332. This Request is narrowly targeted to seek key documents in this wrongful death case: documents relating to the Donor that were sent to transplant centers receiving the Donor's organs or tissues. The documents Bates-labeled WASH 0006-332 appear to include many documents that were not sent to transplant centers, so it is impossible to determine which of these documents WASH sent to transplant centers. Additionally, it is unclear whether documents have been withheld on the basis of WASH's objection. Please specify which documents within WASH 0006-332 were sent to transplant centers, and produce all documents in WASH's possession that are responsive to this Request.

7) Requests 18, 19, and 20

These Requests seek certain communications with MUSC and VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients, determining the blood type of potential donors, and the testing of blood and tissue samples of potential donors. WASH objects to these Requests "to the extent" they seek protected medical information regarding other donors or recipients. Although Plaintiff does not believe these Requests are objectionable, please allow this to serve as clarification that these Requests seek communications with MUSC and VRL during the specified time period regarding procedures and protocols for matching organ donors and recipients, determining the blood type of potential donors, and the testing of blood and tissue samples of potential donors in general, or as related specifically

W Y C H E

October 7, 2020

Page 6

to the Donor at issue in this case. The Requests do not seek communications relating to the matching of other identified donors and recipients, the determination of the blood type of other specific donors, or the testing of samples of other specific donors. Please produce all communications responsive to this Request as clarified herein.

8) Requests 27 and 28

These Requests seek the production of all HIPAA authorizations for the Donor and all communications relating to HIPAA authorizations for the Donor. WASH's responses assert that WASH is not required to obtain HIPAA authorizations "to perform its organ procurement functions and communicate with donor hospitals and transplant centers." This assertion is non-responsive to the Requests. Please produce all HIPAA authorizations for the Donor at issue in this case and all communications relating to such authorizations.

9) Request 30

This Request asks for descriptions of duties and responsibilities for all licensed physicians on WASH's Board of Directors or Advisory Board. In response, WASH states that "any licensed physicians sitting on the Board of Directors do not have any responsibilities *regarding the operations* of this Defendant." This is non-responsive. The Request asks for descriptions of duties and responsibilities for all licensed physicians on WASH's Board of Directors or Advisory Board—not simply responsibilities "regarding the operations" of WASH and not only physicians on the Board of Directors. Please provide descriptions of the duties and responsibilities, regardless of whether they relate to "operations," for all licensed physicians on WASH's Board of Directors or Advisory Board.

Please correct the deficiencies outlined above and provide full and complete responses to Plaintiff's Interrogatories and Requests by October 21, 2020. Please do not hesitate to let me know if you have any questions or would like to discuss this matter further.

Sincerely,

s/JCM

John C. Moylan, III



JEAN MARIE JENNINGS
Partner
DIRECT DIAL: (843) 577-1217
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November 6, 2020

Via E-Mail/Sharefile

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807 Gervais Street, Suite 301
Columbia, SC 29201

Re: Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman v. We Are Sharing Hope SC; Medical University of South Carolina, and United Network for Organ Sharing
C/A No. and Jurisdiction: 2020-CP-10-02902, Charleston CP
HLF File No. 269.009

Dear Counselors:

We are writing in response to your letter dated October 7, 2020 regarding We Are Sharing Hope SC's discovery responses to the Plaintiff. While we do not believe our responses were deficient, we are supplementing our responses with additional information pursuant to your letter. The documents referenced may be found via the following Sharefile link: <https://hoodlaw.sharefile.com/d-s51baf933f69743e>. This link will expire in 30 days. This Defendant is supplementing discovery responses with the insurance policy, email communications, audit detail, and additional policies and procedures. In addition, please see the supplemental discovery responses and privilege log. We previously supplemented with text messaging communications on October 27, 2020.

In regards to documents withheld on the basis of privilege, We Are Sharing Hope SC was involved in a confidential peer review process involving the Membership and Professional Standards Committee of UNOS which serves as the Organ Procurement and Transplantation Network under contract with the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Thus, we believe our citations to S.C. Code § 40-71-10 *et seq.* and other objections are proper.

The second set of documents withheld on the privilege log are withheld because they involve a Root Cause Analysis with Grand Strand Medical Center in January of 2019. Thus, protection under S.C. Code § 44-7-392 is applicable to these documents.

We Are Sharing Hope will supplement their Interrogatories with a verification pursuant to Rule 33(a) of the South Carolina Rules of Civil Procedure as requested.

If you should have any questions, please feel free to contact me, or my paralegal, Tammy Villanueva.

HOOD LAW FIRM, LLC

John C. Moylan, III, Esquire
Mary Lucille Dinkins, Esquire
Page Two
November 6, 2020

Kind regards,

Yours truly,



Jean Marie Jennings

JMJ/jku

Enclosures

cc: Darren K. Sanders, Esquire [*Via E-Mail/Sharefile*]
Jack G. Gresh, Esquire/Lauren Spears Gresh, Esquire [*Via E-Mail/Sharefile*]

EXHIBIT G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman,	)	C/A No. 2020-CP-10-02902
)	
)	
<i>Plaintiff,</i>	)	DEFENDANT
	)	WE ARE SHARING HOPE SC's
Versus	)	FIRST SUPPLEMENTAL ANSWERS TO
	)	PLAINTIFF'S
We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing,	)	FIRST SET OF INTERROGATORIES
)	
)	
<i>Defendants.</i>)	

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, This Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), answers the Plaintiff's First Set of Interrogatories, as follows:

3. Set forth the names and addresses of all insurance companies that might provide coverage in whole or in part for Plaintiffs claims in this matter and set forth the number(s) of the policy(ies) involved and the amount(s) of coverage provided in each policy(ies).

ANSWER: Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

SUPPLEMENTAL ANSWER: This Defendant refers the Plaintiff to documents labeled for production as *WASH 0389-0440*.

5. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the determination of the blood type of potential organ donors.

ANSWER: This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0333-0338 CONFIDENTIAL*.

SUPPLEMENTAL ANSWER: This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to *WASH 0611-0690 CONFIDENTIAL* which contains the attachments and referenced and related procedures listed from the original production.

6. Explain in detail Defendant's policy(ies) in effect in November 2018 relating to the reporting of organs as available for transplant to the United Network for Organ Sharing.

ANSWER: This Defendant refers the Plaintiff to the documents bates labeled for production as *WASH 0359-0363 CONFIDENTIAL*.

SUPPLEMENTAL ANSWER: This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to lead to the discovery of admissible evidence. Without waiving these objections, some of the referenced and related procedures listed in the policies labeled for production as *WASH 0359-0368 CONFIDENTIAL* have previously been produced and are labeled *WASH 333-350 CONFIDENTIAL* and the additional policy referenced is labeled for production as *WASH 0663-0666 CONFIDENTIAL*. Further responding, the attachment regarding post-recovery kidney reallocation is not relevant to the allegations contained in this case regarding lung donation.

13. Identify all documents relating to the Donor you provided to United Network for Organ Sharing and state when you provided each document identified.

ANSWER: This Defendant objects to this Interrogatory to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md. , 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Without waiving this objection, this Defendant refers the Plaintiff to the Privilege Log.

Further responding and without waiving the above objections, portions of the Donor medical record such as the blood typing records are uploaded to DonorNet which is the platform operated by UNOS allowing Organ Procurement Organizations to Communicate with Transplant Centers.

SUPPLEMENTAL ANSWER: Without waiving the above objections, this Defendant responds the case notes and call notes contained in the donor medical record are not uploaded to DonorNet. Further responding and without waiving the above objections, this Defendant communicated with UNOS regarding the confidential peer review process as labeled on the privilege log.

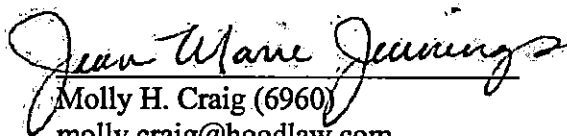
21. Identify all organs or tissues from the Donor that were reported as available for transplant, and, for each organ or tissue identified, state whether it was transplanted into a recipient and, if so, what the outcome of the transplant was.

ANSWER: This Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for responsive information. Further responding, this Defendant attempts to place all organs which are able to be transplanted, namely the right and left kidneys, liver, pancreas, intestines, heart and lungs in order to save as many lives as possible and all of the organs listed above were listed as available for transplant with regard to

the Donor in this case. Tissue recovery occurs after organ recovery and is not relevant to the allegations of this lawsuit.

SUPPLEMENTAL ANSWER: Further responding, tissues from the donor are recovered and accepted by a tissue processing center. The tissues are processed and/or stored unprocessed and may be used for transplantation up to five years later. Thus, the recipients of tissue are generally not known to this Defendant. Further responding, at this time this Defendant is not aware of any issues regarding tissues transplanted from the Donor in this case if tissue transplantation has occurred.

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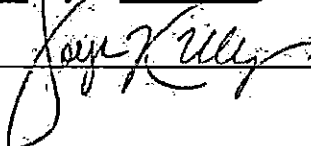
*Attorneys for the Defendant
We Are Sharing Hope SC*

November 6, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of **DEFENDANT WE ARE SHARING HOPE SC's FIRST SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6th day of November, 2020.



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

Michelle Cha Holliman, individually and as) C/A No. 2020-CP-10-02902
personal representative of the Estate of Allen B.)
Holliman,)

Plaintiff,)

Versus)

We Are Sharing Hope SC, Medical University)
of South Carolina, and United Network for)
Organ Sharing,)

Defendants.)

**DEFENDANT
WE ARE SHARING HOPE SC's FIRST
SUPPLEMENTAL
RESPONSES TO PLAINTIFF'S
FIRST SET OF REQUESTS
FOR PRODUCTION**

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), responds to the Plaintiff's First Set of Requests for Production, as follows:

2. Any insurance policies that might provide coverage in whole or in part for Plaintiff's claims in this matter.

RESPONSE: Allied World Surplus Line Insurance Company. This Defendant will supplement with any applicable declarations page.

SUPPLEMENTAL RESPONSE: This Defendant refers to documents labeled for production as *WASH 0389-0440*.

6. All policies of Defendant in effect from 2018 to the present relating to the determination of the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff

to the documents related to this Defendant's policies in effect from November 2018 to present bates labeled for production as *WASH 0333-0359 CONFIDENTIAL*.

SUPPLEMENTAL RESPONSE: This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to lead to the discovery of admissible evidence. Without waiving these objections, this Defendant refers to *WASH 0611-0690 CONFIDENTIAL* which contains the attachments and referenced and related procedures listed from the original production.

7. All policies of Defendant in effect from 2018 to the present relating to the reporting of organs as available for transplant to United Network for Organ Sharing.

RESPONSE: This Defendant objects to this Request to the extent the documents sought are subsequent remedial measures pursuant to Rule 407, SCRE. This Defendant refers the Plaintiff to the documents related to this Defendant's policies in effect from November of 2018 to present bates labeled for production as *WASH 0359-0368 CONFIDENTIAL*.

SUPPLEMENTAL RESPONSE: This Defendant objects to the production of the attachments and referenced and related procedures as overly broad, unduly burdensome, and not reasonably calculated to lead to lead to the discovery of admissible evidence. Without waiving these objections, some the referenced and related procedures listed in the policies labeled for production as *WASH 0359-0368 CONFIDENTIAL* have previously been produced and are labeled *WASH 333-350 CONFIDENTIAL* and the additional policy referenced is labeled for production as *WASH 0663-0666 CONFIDENTIAL*. Further responding, the attachment regarding post-recovery kidney reallocation is not relevant to the allegations contained in this case regarding lung donation.

14. All documents relating to the Donor's blood type sent to any transplant centers that received any organ(s) or tissue(s) of the Donor.

RESPONSE: This Defendant objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding and without waiving the objection, this Defendant refers the documents bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*.

SUPPLEMENTAL RESPONSE: The medical records of the Donor contained in *WASH 0006-0332 CONFIDENTIAL* regarding the Donor's blood testing are uploaded to DonorNet for viewing by transplant centers. Upon information and belief, the results from the blood type testing at Grand Strand Medical Center as well as the VRL Eurofins results were uploaded to DonorNet. Further responding, tissue recovery occurs following organ procurement and the tissue is provided to an accepting tissue repository or processing center for use. Tissues may be used up to five years following recovery.

18. All communications with the Medical University of South Carolina from January 1, 2018, to November 30, 2019, relating to the procedures and protocols for matching organ donors and recipients.

RESPONSE: This Defendant objects to this Request as overly broad and unduly burdensome and to the extent it seeks protected medical information pursuant to HIPAA regarding Donors and/or Recipients not involved in this case. Further responding, this Defendant's procedures and policies as an OPO are developed independently are typically not shared with the Medical University of South Carolina. Further responding, this Defendant will supplement if any applicable communications exist with regard to this case.

SUPPLEMENTAL RESPONSE: This Defendant refers to documents labeled for production as *WASH 0441-0445*.

19. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the determination of the blood type of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it calls for protected medical information from other Donors unrelated to this case.

SUPPLEMENTAL RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-10 et seq. and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law. Without waiving these objections, this Defendant has identified emails with VRL Eurofins which were part of this Defendant's quality improvement/peer review process with UNOS regarding ABO typing generally and also as related to this Donor which are labeled on the privilege log.

20. All communications with VRL Eurofins from January 1, 2018, to November 30, 2019, relating to the testing of blood and tissue samples of potential organ donors.

RESPONSE: This Defendant objects to this Request to the extent it calls for information from other Donors unrelated to this case. Further responding and without waiving these objections, this Defendant refers the Plaintiff to the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL* for documents and communications with VRL Eurofins Laboratories related to the Donor involved in this case. Further responding, upon information and belief, following the organ procurement and transplant process in this case this Defendant discussed the process of blood typing with VRL Eurofins via telephone call.

SUPPLEMENTAL RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-10 et seq. and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law. This Defendant has identified emails with VRL Eurofins which were part of this Defendant's quality improvement/peer review process with UNOS regarding ABO typing generally and also as related to this Donor which are labeled on the privilege log.

21. All documents relating to the Donor provided to United Network for Organ Sharing.

RESPONSE: This Defendant objects to this Request to the extent it seeks confidential peer review materials protected by S.C. Code Ann. §40-71-20 to 40 and §44-7-392, UNOS policies and guidelines, OPTN Bylaws specifically Appendix L, and instructive case law contained in McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) and Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989) regarding the peer review privilege asserted. Further responding and without waiving the objection, the Defendant refers the Plaintiff to the Privilege Log and the Donor's medical record bates labeled for production as *WASH 0006-0332 CONFIDENTIAL*. UNOS operates the DonorNet platform by which OPOs and Transplant centers communicate with each other during the organ procurement and transplant process. The information uploaded to DonorNet by this Defendant is contained in the Donor organ medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* and the privilege log.

SUPPLEMENTAL RESPONSE: Other than the materials withheld as privileged involving the peer review process occurring after the incident alleged in the Complaint and

the donor medical records which are uploaded to DonorNet which is operated by UNOS, this Defendant is not in possession of any responsive documents.

22. All documents relating to the Donor provided to Medical University of South Carolina.

RESPONSE: Portions of the Donor medical record labeled for production as *WASH 0006-0332 CONFIDENTIAL* uploaded to DonorNet as they were available for viewing by transplant centers such as the Medical University of South Carolina.

SUPPLEMENTAL RESPONSE: Other than the documents uploaded to DonorNet, upon information and belief, this Defendant did not provide additional documentation to MUSC.

27. All Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

RESPONSE: Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

SUPPLEMENTAL RESPONSE: This Defendant is not in possession of any HIPAA authorizations for the Donor as it has not sent any subpoenas with regard to seeking protected health information of the Donor. During the organ recovery and transplant process pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant performs its functions without the need for HIPAA authorizations pursuant to the provisions cited above.

28. All communications relating to Health Insurance Portability and Accountability Act (HIPAA) authorizations for the Donor.

RESPONSE: Pursuant to 45 C.F.R. §164.512(h); 42 C.F.R. § 482.45, this Defendant is not required to obtain a HIPAA authorization to perform its organ procurement functions and communicate with donor hospitals and transplant centers.

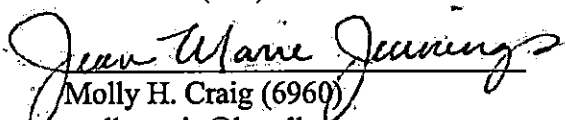
SUPPLEMENTAL RESPONSE: See response to Request No. 27 above.

30. Descriptions of duties and responsibilities for all licensed physicians on your Board of Directors or Advisory Board.

RESPONSE: This Defendant responds that any licensed physicians sitting on the Board of Directors do not have any responsibilities regarding the operations of this Defendant.

SUPPLEMENTAL RESPONSE: This Defendant is not in possession of a description of the duties and responsibilities of licensed physicians.

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Jean Marie Jennings (100651)
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*Attorneys for the Defendant
We Are Sharing Hope SC*

November 6, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of **DEFENDANT WE ARE SHARING HOPE SC's FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6th day of November, 2020.

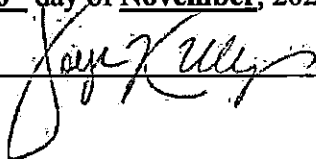
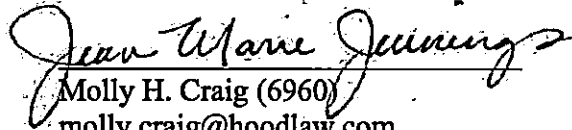


EXHIBIT H

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Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

*Attorneys for the Defendant
We Are Sharing Hope SC*

November 6, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the ***DEFENDANT WE ARE SHARING HOPE SC's SECOND AMENDED PRIVILEGE LOG*** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6th day of November, 2020.

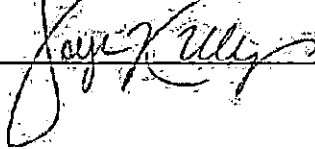


Exhibit D

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

Michelle Cha Holliman, individually and as) C/A No. 2020-CP-10-02902
personal representative of the Estate of Allen B.)
Holliman,)

Plaintiff,) **DEFENDANT WE ARE SHARING HOPE**
) **SC'S NOTICE OF MOTION AND MOTION**
Versus) **FOR A PROTECTIVE ORDER**

We Are Sharing Hope SC, Medical University)
of South Carolina, and United Network for)
Organ Sharing,)
)
Defendants.)

TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), by and through its undersigned attorneys, will move as soon as may be heard, pursuant to Rules 26 and 30 of the South Carolina Rules of Civil Procedure, for a Protective Order from the Court.

During the deposition of Darla Welker, which was held on December 14, 2020, the Plaintiff's attorney asked questions related to information protected by the peer review privilege, S.C. Code Ann § 44-7-392. Ms. Welker was instructed not to answer these questions on the basis that the information falls under the peer review privilege and is protected from discovery.

The undersigned hereby moves this Court for an Order protecting this Defendant from having to divulge information that is protected from discovery on the basis that the information sought is protected by the peer-review privilege. This Motion is supported by statutory and common law of the State of South Carolina and other applicable authority and may be supported by a memorandum of law or other supporting material as permitted under the South Carolina Rules

of Civil Procedure. Pursuant to Rule 11, SCRPC, the undersigned certifies further consultation regarding the subject matter of this Motion would serve no useful purpose.

HOOD LAW FIRM, LLC
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Charleston, SC 29402
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s/ Molly H. Craig

Molly H. Craig (6960)

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Jean Marie Jennings (100651)

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Julia A. Bradshaw (103767)

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*Attorneys for Defendant
We Are Sharing Hope SC*

December 15, 2020
Charleston, South Carolina

Exhibit E

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Michelle Cha Holliman, individually and)
 as personal representative of the Estate of)
 Allen B. Holliman,)
)
 Plaintiff,)
)
 vs.)
)
)
 We Are Sharing Hope SC, Medical)
 University of South Carolina, United Network)
 for Organ Sharing, Jacqueline Honig, M.D.,)
 and Darla Welker,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 C/A No. 2020-CP-10-02902

ORDER REGARDING DISCOVERY

RECEIVED
May 05 2021
SC Court of Appeals

This matter comes before the Court by way of a Motion to Compel brought by Plaintiff Michelle Cha Holliman (“Mrs. Holliman”), individually and as personal representative of the Estate of Allen Holliman (“Mr. Holliman”) (collectively “Plaintiff”). Plaintiff seeks an Order compelling Defendant We Are Sharing Hope SC (“WASH”) to produce documents withheld on a claim of peer review privilege, to provide complete discovery responses to Plaintiff’s discovery requests, and to obtain full and complete answers to questions posed to Defendant Darla Welker (“Ms. Welker”) during her deposition. The matter was scheduled to be heard during the week of March 15, 2021, and the parties submitted briefs to the Court to rule without oral argument. After a status conference was held on April 13th, 2021, via WebEx Virtual Courtroom, the Court further provided the parties the opportunity to submit supplemental memoranda in support of the arguments described herein. For the reasons set forth below, this Court declines to extend the application of the peer-review privilege under South Carolina law to Defendant WASH and therefore GRANTS Plaintiff’s Motion to Compel.

Introduction

Plaintiff alleges that Allen B. Holliman suffered from lung problems and that physicians at Defendant Medical University of South Carolina (“MUSC”) determined he was a suitable candidate for a double-lung transplant and subsequently placed him on a transplant list. On

November 27, 2018, MUSC informed Holliman he matched with a pair of available donor lungs from donor AFKY198, 2018-0516, and 18-15828 (the “Donor”), which were procured and distributed by Defendant WASH, an organ procurement organization (“OPO”) that provides organ donor services to hospitals throughout South Carolina. Holliman’s MUSC physicians approved him for a double-lung transplant after finding no contraindications for pursuing the transplant. On November 27, 2018, Holliman underwent a double-lung transplant at MUSC. During the surgery, Holliman had complications, and MUSC subsequently discovered the Donor had type A blood, which was incompatible with Holliman’s type O blood. Holliman passed away on November 28, 2018, from hyperacute rejection of his transplanted lungs. Plaintiff alleges Defendant UNOS (“UNOS”) is an organization headquartered in Virginia that manages and serves as the organ transplant system in the United States, the Organ Procurement and Transplantation Network (the “OPTN”), under a contract with the federal government. UNOS manages and serves as the one and only organ transplant system in the United States, and as set forth in Plaintiff’s Complaint, UNOS’s responsibilities as the OPTN for the United States include, “managing the national transplant waiting list,” “matching donors to recipients,” and “monitoring every organ match.” Plaintiff alleges WASH evaluated the suitability of the lungs for transplant, listed the Donor as having type O blood, and distributed the lungs for transplant. Specifically, WASH was the entity responsible for determining the Donor’s blood type by testing at least two blood samples from the Donor indicating a blood-type match.

In discovery, Plaintiff has sought to obtain 335 pages of documents from WASH and depositions responses from WASH’s employee Ms. Welker, who is also a defendant in this case. WASH argues that these documents and the deposition responses are privileged under South Carolina’s two peer review statutes. In the alternative, WASH asks this Court to extend the peer review protections potentially afforded under Virginia law, federal law, or to invoke public policy goals found in both state and federal law, which it argues weigh in favor of a finding that WASH is entitled to invoke peer review privilege, even if WASH does not fall within the current protections of South Carolina’s statutes. These materials, which have been described in WASH’s 4th Amended privilege log, were provided to this Court for *in camera* review. Upon review, this Court makes the following findings:

1) Whether WASH is Entitled to Peer Review Privilege Under South Carolina law

WASH argues that the withheld materials are protected under the plain language of both the South Carolina's peer review statute, S.C. Code Ann. § 40-71-20 and South Carolina's "new" or supplemental peer review statute, S.C. Code Ann. § 44-7-392. Plaintiff argues that neither statute permits WASH to assert peer review privilege, as they are not included in the terms of the statute.

The cardinal rule of statutory interpretation is to determine the intent of the legislature. *Georgia–Carolina Bail Bonds. v. County of Aiken*, 354 S.C. 18, 579 S.E.2d 334 (Ct. App.2003); *see also Gordon v. Phillips Utils. Inc.*, 362 S.C. 403, 608 S.E.2d 425 (2005) ("The primary purpose in construing a statute is to ascertain legislative intent."); *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 205, 544 S.E.2d 38, 44 (Ct.App.2001) ("The quintessence of statutory construction is legislative intent."). However, all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *McClanahan v. Richland County Council*, 350 S.C. 433, 567 S.E.2d 240 (2002). The legislature's intent should be ascertained primarily from the plain language of the statute. *State v. Landis*, 362 S.C. 97, 606 S.E.2d 503 (Ct. App.2004). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292 (2003).

A. S.C. Code § 40-71-20

WASH first asserts that it is entitled to invoke peer review privilege pursuant to SC Code Ann. § 40-71-20, entitled "Confidentiality of certain proceedings, records and information; reporting accidents and incidents". Section (A) of the statute provides:

"All proceedings of and all data and information acquired by the committee referred to in Section 40-71-10 in the exercise of its duties are confidential unless a respondent in the proceeding requests in writing that they be made public. These proceedings and documents are not subject to discovery, subpoena, or introduction into evidence in any civil action except upon appeal from the committee action. Information, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented

during the committee proceedings, nor shall any complainant or witness before the committee be prevented from testifying in a civil action as to matters of which he has knowledge apart from the committee proceedings or revealing such matters to third persons.”

S.C. Code Ann. § 40-71-20 (A)

The “committee referred to in § 40-71-10” is “an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section . . .” S.C. Code Ann. § 40-71-10(B). Section 40-70-10 describes the entities who are provided the authority to invoke peer-review privilege in § 40-71-20 (A), which includes “legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutical, and engineering organizations having as members at least a majority of the eligible licentiates in the area served by the particular society and any foundations composed of members of these societies”.

WASH is a South Carolina non-profit corporation that does business as an organ procurement organization and procures and distributes donor organs. WASH does not assert that it is an appointed committee under the statute, nor that it is a committee appointed by a professional society to maintain the professional standards of the society. WASH does not claim to have a majority of eligible licentiates in the area it serves (South Carolina), and it does not have more than a handful of professional licentiates of any type. The plain language of the statute clearly provides protection to committees appointed by a professional society to maintain the professional standards of the society. WASH is not a committee appointed to maintain the professional standards of a professional society, its documents and Ms. Welker’s knowledge regarding WASH’s investigations relating to Mr. Holliman’s death are therefore not subject to peer review privileged under § 40-71-20.

B. S.C. Code Ann. S.C. Code § 44-7-392

WASH next argues that it may properly invoke peer review privilege pursuant to § 44-7-392(A)(1), which states: “[a]ll proceedings of, and all data, documents, records, and information prepared or acquired by, a hospital licensed under this article, its parent, subsidiaries, health care system, committees, whether permanent or ad hoc, including the hospital’s governing body, or

physician practices owned by the hospital (its parent or subsidiaries) relating to the following are confidential” WASH does not assert that it is a hospital, or that it otherwise falls within the entities specifically described in the statute. Because WASH is not a hospital, nor any entity specifically described in the plain language of the statute, its documents and any knowledge Ms. Welker has about WASH’s investigations related to this case are not privileged under § 44-7-392.

C. Documents Provided to a Source which Could Invoke Peer Review Privilege

WASH next argues that some of its documents and the information sought during Ms. Welker’s deposition are privileged because they were shared with both Grand Strand Hospital and a committee of Defendant United Network Organ Sharing (“UNOS”). This argument does not extend protection to WASH. Both peer review statutes expressly provide that documents and information available from sources other than the hospital or committee protected by the statute are not immune from discovery from such other sources simply because they were presented to the hospital or the committee. Section 40-71-20(A) provides that “Information, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during the committee proceedings” Likewise Section 44-7-392(A)(3) provides that “Data, documents, records, or information which are otherwise available from original sources are not confidential and are not immune from discovery from the original source under this section or use in a civil action merely because they were acquired by the hospital.”

In this context, the South Carolina Supreme Court has explained: “We interpret the ‘otherwise available’ language [of § 40-71-20] to mean that information that is available from a source other than the committee does not become privileged simply by being acquired by the review committee. Accordingly, the statute does not protect information if obtained from alternative sources.” *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 62, 439 S.E.2d 257, 260 (1993).

Therefore, even if WASH shared some of its documents and information with entities that, unlike WASH, are subject to a peer review statute, such documents and information are still subject to discovery from WASH pursuant to the plain language of the statutes.

2) Whether Public Policy Requires this Court to Grant WASH Peer Review Privilege

WASH next argues that the Court should extend peer review privilege under both Virginia state law and federal law, and that public policy favors doing so. Specifically, WASH, a South Carolina non-profit, asks the Court to extend the peer review protections provided by Virginia Code § 8.01-581.17, on the basis that Defendant UNOS is a Virginia entity and that Defendant UNOS required WASH to participate in the self-critical quality assurance and peer review process. WASH also argues public policy behind federal law, including the Patient Safety Quality Improvement Act of 2005 (“PSQIA”) promotes the extension of peer review privilege to organizations like WASH, even if the statute does not expressly do so. See 42 U.S.C.A. § 299b-22.

Under traditional South Carolina choice of law principles, the substantive law governing a tort action is determined by the *lex loci delicti*, the law of the state in which the injury occurred. *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997); *Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct. App. 1994). However, South Carolina also recognizes a “public policy exception” to the enforcement of an out of state law. *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001).

WASH, at length, implores this Court to extend peer review privilege on the basis of public policy. WASH claims that compelling the disclosure of these documents will lead to “an immediate, chilling effect on full, candid, self-critical assessment in violation of the clearly mandated South Carolina public policy for the same” and that permitting said disclosure of any documents provided to entities who could properly invoke the peer review privilege would “nullify the protections to which other entities are entitled and would undermine the privilege altogether”.

South Carolina indeed recognizes and encourages the policy of extending peer review privilege to promote qualitative review to improve patient care, and the South Carolina Supreme Court has held, “[t]he overriding public policy of the confidentiality statute is to encourage health care professionals to monitor the competency and professional conduct of their peers to safeguard and improve the quality of patient care.” *Durham v. Vinson*, 360 S.C. 639, 646, 602 S.E.2d 760, 763 (2004); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 61, 439 S.E.2d 257, 259 (1993). While WASH’s public policy arguments are not without merit, under the plain meaning rule, it is not this Court’s place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509

S.E.2d 261 (1998). Therefore, this Court declines to invoke the public policy exception to extend peer review privilege where the Legislature and the statutes at issue clearly did not do so.

Conclusion

Upon careful review, this Court finds that Defendant We Are Sharing Hope is not entitled to claim peer review privilege under South Carolina law, and this Court must effectuate the plain meaning of the statutes, rather than rely on the public policy exception to extent peer review privilege to new and unique entities. The Court therefore GRANTS the Plaintiff's Motion to Compel and DENIES Defendants Motions for Protective Orders.¹ The Court further orders that:

- 1) WASH produce all of the documents it has withheld on a claim of peer review privilege, which were submitted to the Court for an in camera review and which have been Bates-labeled WASH Privileged 0001-0335;
- 2) Ms. Welker's deposition be reconvened and that Ms. Welker answer all questions she was previously instructed not to answer as well as any related questions; and
- 3) WASH shall provide complete discovery responses to any discovery requests to which a claim of peer review privilege was asserted.

THEREFORE, IT IS HEREBY ORDERED THAT Plaintiff's Motion to Compel is hereby granted, Defendants collective Motions for Protective Orders submitted in opposition are hereby DENIED, and Defendant We Are Sharing Hope shall produce the documents described herein within seven (7) days of this Court's Order.

IT IS SO ORDERED.

Debra R. McCaslin
Circuit Court Judge

Lexington, SC
April 29, 2021

¹ The Court declines to award Plaintiff attorneys fees and costs pursuant to § 40-71-30, as the Court finds WASH had a good-faith basis for asserting the claim of confidentiality, and that said claim was not made unreasonably. ("In the event the court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court shall assess attorney's fees against that party for any fees incurred by the requesting party in obtaining the documents.")



Charleston Common Pleas

Case Caption: Michelle Cha Holliman , plaintiff, et al VS We Are Sharing Hope Sc ,
defendant, et al
Case Number: 2020CP1002902
Type: Order/Other

So Ordered

Debra R. McCaslin

Electronically signed on 2021-04-29 13:53:04 page 8 of 8

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Exhibit F

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May 05 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

Civil Case 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,
and United Network for Organ Sharing,
Jacqueline Honig, M.D., and Darla Welker,

Defendants,

OF WHOM We Are Sharing Hope SC, is

Appellant.

NOTICE OF APPEAL

Pursuant to S.C. Code §44-7-394¹ and Rule 203, SCACR, We Are Sharing Hope SC appeals from the Order Regarding Discovery issued by the Honorable Debra R. McCaslin, and entered on April 29, 2021. The undersigned received written notice of entry of the order on April 29, 2021.

¹While discovery orders generally are not immediately appealable, *see S.C. Pub. Serv. Auth. v. Arnold*, 340 S.E.2d 535, 536 (S.C. 1986), Section 44-7-394 specifically authorizes immediate appeal of a court order compelling production of documents protected under the peer review privilege of §44-7-392; and also, provides that the filing of the appeal automatically stays the enforcement of the order compelling the production.

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/s/ Mary Agnes Hood Craig

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May 5, 2021

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STATE OF SOUTH CAROLINA **May 05 2021**
IN THE COURT OF APPEALS

SC Court of Appeals

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

Civil Case No. 2020-CP-10-02902

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Respondent,

v.

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

Defendants,

OF WHOM We Are Sharing Hope SC, is

Appellant.

Certificate of Service

The undersigned certifies that on this 5th day of May, 2021, a copy of the Notice of Appeal with Order Regarding Discovery issued by the Honorable Debra R. McCaslin, and entered on April 29, 2021 was served by emailing a copy on the following counsel at the addresses listed below:

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May 5, 2021

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May 05 2021

SC Court of Appeals

VIA E-FILING & U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman v. We Are Sharing Hope SC, Medical University of South Carolina, and United Network for Organ Sharing
C/A No. 2020-CP-10-02902, Charleston CP
Appellate Case No. 2021-_____
HLF File No. 269.009

Dear Ms. Kitchings:

Enclosed please find the Notice of Appeal and Order Regarding Discovery issued by the Honorable Debra R. McCaslin, and entered on April 29, 2021 as well as the Certificate of Service. Also enclosed with this letter is our check for \$250.00 for the filing fee. By copy of this letter, we are serving all counsel and have also efiled the Notice with the Charleston Court of Common Pleas.

Kind regards,

Yours truly,

/s/ Molly H. Craig

Molly H. Craig

MHC/jad
Enclosure

cc: Charleston County Clerk [*Via E-Filing*]
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Exhibit G

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Aug 03 2021

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 BRIEF OF APPELLANT
We Are Sharing Hope SC**

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STATEMENT OF THE ISSUES ON APPEAL

Did the Trial Court err in granting the Plaintiff's Motion to Compel and denying the Defendant We Are Sharing Hope SC's Motion for Protective Order because the materials and information sought are protected by a peer review privilege?

Or, as otherwise stated:

- I. Should post-incident self-critical materials prepared or exchanged by an Organ Procurement Organization pursuant to a requirement of its membership in the federal Organ Procurement and Transplant Network and its HHS federal certification and designation be protected by a peer review privilege?**
- II. Does the peer review privilege found in S.C. Code § 44-7-392 apply to a root cause analysis conducted between the Organ Procurement Organization and the donor hospital?**

STATEMENT OF THE CASE

This wrongful death action arises out of the death of Allen B. Holliman (Patient) after he underwent a double-lung transplant at the Medical University of South Carolina (MUSC) on November 27, 2018. The Personal Representative of his estate, Plaintiff, presents claims against MUSC, We Are Sharing Hope SC (Sharing Hope), and the United Network for Organ Sharing (UNOS) in connection with the process and procedures by which the organ was donated. [ROA ___; Complaint, filed July 9, 2020.] All of Plaintiff's claims are focused on the manner and method by which the transplant organs were identified as a match for the Patient – a process that involves several different organizations who are part of the United States' Organ Procurement and Transplant Network (OPTN). [ROA ___; Complaint.]

The OPTN is the network established by federal statute and regulation responsible for the facilitation of organ recovery and transplantation throughout the United States. It is operated by UNOS, who oversees and coordinates its various member transplant hospitals and Organ Procurement Organizations (OPOs). Sharing Hope, a non-profit incorporated under South Carolina law, is the designated OPO for organ recovery services in South Carolina, and it provides organ and tissue donor services to numerous hospitals throughout South Carolina, including MUSC. [ROA ___, ___; Complaint ¶ ___, Sharing Hope Amended Answer ¶ 3.]

The issue on appeal arises from Sharing Hope's assertion of peer review privilege during discovery – an assertion specific to certain self-critical, peer review activities performed by Sharing Hope after the transplant at issue.¹ To be clear: Sharing Hope has produced all of its

¹ The issue of the peer review privilege was also raised by UNOS, who has filed a separate appeal. The appeals have been consolidated, but UNOS will present its arguments in its own brief.

medical records for the Donor.² It has also produced various policies and procedures, audit details, and contemporaneous communications between its employees regarding the Donor. However, Sharing Hope has objected to the production of materials generated during its post-incident peer review activities and has prepared a privilege log, as subsequently amended, listing certain documents (numbered 0001-0335) withheld on this basis.

Sharing Hope asserted, and maintains, that the withheld documents are privileged under S.C. Code § 40-71-20 and/or § 44-7-392, because these self-evaluative and deliberative materials were created during a retrospective, self-critical quality assurance and peer review evaluation required by UNOS in connection with the Patient's death. [ROA __, __, __, __; Exhibits A, D, H to Ex. A to Plaintiff's November 18, 2020 Motion to Compel – Sharing Hope's privilege logs; Ex. B to Plaintiff's February 5, 2021 Motion to Compel – Sharing Hope's Responses to Plaintiff's First Set of Supplemental Requests for Production, Sharing Hope's Third Amended Privilege Log.] In addition, Sharing Hope has asserted a privilege as to certain documents prepared as part of its participation in a retrospective review/root cause analysis conducted by Sharing Hope and the donor hospital Grand Strand Medical Center. [See Privilege Log numbered 0187-0195.]

PROCEDURAL HISTORY

Plaintiff filed a Notice of Intent to File Suit and accompanying expert affidavit on July 17, 2019 indicating her intent to sue Sharing Hope alone. [ROA __; Notice of Intent (NOI).] Plaintiff subsequently filed an Amended Notice of Intent to File Suit and an updated expert affidavit on

² Initially, Plaintiff attempted to obtain the Donor's records without providing an appropriate HIPAA authorization. Sharing Hope objected to the production of the Donor's records as such a request would require Sharing Hope to commit a HIPAA violation in producing the requested materials. Sharing Hope produced the Donor's records after the Trial Court denied its motion to quash, thereby satisfying HIPAA obligations. [ROA __; Order, filed July 24, 2020.]

April 7, 2020, indicating her intention to also sue UNOS and MUSC. [ROA ___; Amd. NOI.] The Complaint was filed on July 9, 2020, naming Sharing Hope, UNOS, and MUSC as defendants. [ROA ___; Compl.] Sharing Hope filed an amended answer on August 12, 2020, denying the allegations of negligence, and asserting a defense of good faith immunity under the terms of the Uniform Anatomical Gift Act, S.C. Code Ann. §§44-43-300 et seq., as well as defenses and protections under the charitable immunity statutes found in S.C. Code Ann. § 33-56-170(1) and § 33-56-180(A). [ROA ___; Amd. Answer.] MUSC filed an answer on August 12, 2020. [ROA ___; Answer.] UNOS initially filed a motion to dismiss pursuant to Rule 12(b)(2) and 12(b)(6) which was denied by order of December 29, 2020; thereafter, UNOS filed an answer on November 22, 2020. [ROA ___, ___, ___; Motion, Order, Answer.]

On December 28, 2020, Plaintiff filed a Notice of Intent to File Suit against two employees of Sharing Hope which was accompanied by an affidavit from a second expert. [ROA ___; NOI as to Sharing Hope Employees Honig and Welker.] Plaintiff recently moved to amend her complaint to raise claims directly against these employees – a motion which was granted as recently as July 26, 2021. [ROA ___; Motion.]

Specific to this appeal, Plaintiff filed a motion to compel on November 18, 2020 challenging Sharing Hope's peer review privilege assertions. [ROA ___; Plaintiff's Motion to Compel, Nov. 18, 2020.] Plaintiff also filed a motion to compel against MUSC, seeking the same materials, on November 18, 2021. [ROA ___; Motion.] On December 15, 2020, Sharing Hope filed a related Motion for a Protective Order regarding questions posed in the deposition of Sharing Hope employee, Darla Welker, related to information about a meeting held in conjunction with the root cause analysis post-action review with the donor hospital, which is also protected by the

peer review privilege.³ [ROA ___; Sharing Hope's Notice Of Motion And Motion For A Protective Order.] Sharing Hope submitted memoranda in support of its motion and in opposition to the Plaintiff's motion. [ROA ___, ___; Memorandum, filed March 12, 2021, Supplemental/Reply memorandum, filed March 15, 2021.] After reviewing the parties' written submissions, the Trial Court requested that the parties present oral argument on these Motions, which took place virtually on April 13, 2021. Thereafter, Sharing Hope submitted a supplemental memorandum as requested by the Trial Court on April 16, 2021. [ROA ___; Memoranda filed April 16, 2021, and Reply filed April 19, 2021.]

In connection with these motions, Sharing Hope provided designated documents under seal for the Trial Court's in camera review. Thus, while there are several motions involved in this appeal, the same legal issue is involved in each of them – whether Sharing Hope's retrospective, self-critical peer review activities are protected from discovery.

The Trial Court granted the November 18th Motion to Compel against Sharing Hope, denied the Motion to Compel against MUSC, and denied Sharing Hope's Motion for a Protective Order. [ROA ___, ___; Form 4 Order, April 13, 2021, Order, filed April 29, 2021.] The result of these Orders is that Sharing Hope was ordered to produce all of its peer review materials and to direct the witness to answer questions regarding the peer review documents, while many of the same materials which were in MUSC's possession were protected.

Sharing Hope timely served and filed a notice of appeal from the April 29, 2021 Order pursuant to S.C. Code § 44-7-394⁴ and Rule 203, SCACR. [ROA ___; NOA, served May 5, 2021.]

³ The issue of the peer review privilege was also raised by UNOS, who has filed a separate appeal. The appeals have been consolidated, but UNOS will present its arguments in its own brief.

⁴ While discovery orders generally are not immediately appealable, see S.C. Pub. Serv. Auth. v. Arnold, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986), § 44-7-394 specifically authorizes

STATEMENT OF THE FACTS

The details of the procurement and management of the deceased Donor's organs and the Patient's medical treatment are not pertinent to the legal issue presented on appeal regarding the peer review privilege. Rather, the key facts related to the privilege issues at bar are found in the operation of the national Organ Procurement and Transplant Network (OPTN) and the roles of UNOS, its administrator, the OPOs and the various donor and transplant hospitals within the OPTN. Sharing Hope's role as an OPO and the nature of its post-incident quality assurance review – activities required by UNOS – are essential to an understanding of why the documents created in that peer review process should be recognized as privileged under South Carolina law.

Overview of Organ Procurement and Transplant Network as a Critical Participant in the Healthcare Field of Organ Transplants

During the middle of the 20th Century, medical science accomplished important breakthroughs in the field of organ transplantation when the first successful kidney transplant was performed in 1954, and then the first successful heart transplant was performed in 1967. While the scientific advances in organ transplantation provided opportunities to save and prolong many lives, those opportunities were hindered by an inadequate supply of available organs. This spurred enactment of legislation at both the state and federal levels to address issues related to obtaining valid consents for anatomical gifts (organ donation) as well as managing collection and distribution of the donated organs.⁵

immediate appeal of a court order compelling production of documents protected under the peer review privilege of § 44-7-392; and also, provides that the filing of the appeal automatically stays the enforcement of the order compelling the production.

⁵ On the state level, the National Conference of Commissioners on Uniform State Laws presented the Uniform Anatomical Gift Act of 1968 (UAGA) which was drafted with the primary purpose to increase the supply of organs. The UAGA served as a guideline for state laws on principles and procedures dealing with the determination of death, the "gifting" of organs by the donor or

At the federal level, Congress enacted the National Organ Transplant Act in 1984. Pub. L. 98-507, codified as amended at 42 U.S.C. § 273 et seq. (2021) (the Act). The Act directed the Secretary of Health and Human Services (HHS) to create and operate the Organ Procurement and Transplant Network (OPTN) for the purpose of establishing a national organ transplant infrastructure, including maintaining a list of individuals in need of such transplants and facilitating an equitable nationwide distribution of organs among transplant patients. 42 U.S.C. § 274(a), (b)(1)(A)-(B), (b)(2)(D). HHS also has implemented rules/regulations establishing a regulatory framework for the structure and operations of the OPTN. 42 CFR §§121.1 et seq.

The OPTN is a membership organization designed to be “operated by the transplant community ... with oversight by HHS.” Final Rule for the Organ Procurement and Transplantation Network, 63 Fed. Reg. 16,296, 16,197–98 (proposed Apr. 2, 1998) (codified at 42 C.F.R. pt. 21 (2021)). The OPTN is governed by a Board of Directors, and its membership includes OPOs, transplant hospitals, and other institutions or individuals with an interest in organ donation. 42 C.F.R. § 121.3. The Act called for the OPTN to be administered by a private, non-profit organization under federal contract. UNOS, a Virginia private non-profit organization, was awarded the OPTN contract in 1986 and has operated the OPTN continuously since then. See United States v. United Network for Organ Sharing, C/A No. 03 C 2295, 2002 WL 1726536, 2002 U.S. Dist. LEXIS 8878 (N.D. Ill. May 17, 2002) (discussing the 1986 contract between HHS and UNOS).

those with authority his/her behalf; and the receipt of an anatomical gift by a transplant patient. Over time, the UAGA has been revised, and a version or revision of the UAGA has been adopted by all 50 states and the District of Columbia. South Carolina adopted its version of the 1968 UAGA in 1969; S.C. Acts 1969 (56) 625; 1962 SC Code § 32-717. The act has been amended and the current version is found in S.C. Code §§ 44-43-310 et seq.

The OPTN, as administered by UNOS, establishes policies which govern the allocation of transplantable organs nationwide; collects clinical data on all transplant candidates and organ donors in the United States; establishes a network of membership requirements for transplant hospitals and OPOs; and monitors their compliance with the established standards, policies, and transplant quality.⁶

Sharing Hope's Unique and Essential Role as South Carolina's Organ Procurement Organization

An OPO facilitates the delivery of life-saving organs to individuals on organ transplant lists. As part of their essential role in the OPTN, an OPO evaluates potential organ donors and serves as a conduit to provide information regarding the donor to transplant centers. When a donor is declared brain dead, the OPO oversees the donor's body to maximize organ function for optimum organ recovery in preparation for donation. In this role, the OPO gathers the donor's pertinent medical information provided by the donor hospital and outside laboratories⁷ which it then uploads into a database maintained by UNOS. It also coordinates the logistics for organ recovery with the donor hospital and the transplant surgeons.

Federal law requires OPOs to be members of the OPTN. 42 C.F.R. § 121.3(b). An entity becomes an OPO by demonstrating its qualifications to the Secretary of HHS and thereafter being designated as a particular region's OPO by the Secretary or her delegee. 42 U.S.C. § 1320b-8. Only one OPO may be designated for each service area. § 1320b-8(b)(2). In order to be designated as a particular service area's OPO, an entity must meet certain qualifications and requirements as outlined in the law, including certification by the Secretary of HHS. See 42 U.S.C. § 273. Sharing

⁶ <https://optn.transplant.hrsa.gov/members/member-actions/>.

⁷ Sharing Hope is not a laboratory and relies on the donor hospital and outside laboratories to provide information and testing for the donor.

Hope has been designated as the OPO for South Carolina and certified by HHS. In order to serve as the OPO for South Carolina, Sharing Hope must meet and abide by OPTN policies, procedures, standards and requirements as administered by UNOS.

Self-Critical Quality Assurance and Peer Review Evaluations Required by the OPTN

Federal regulation specifically requires the OPTN to establish appropriate peer review processes for the purpose of evaluating its members' compliance with applicable federal regulations and OPTN policies, including member OPOs. 42 C.F.R. § 121.10. In furtherance of this obligation, UNOS created a Membership and Professional Standards Committee (MPSC) which maintains membership criteria and monitors member compliance based on OPTN membership criteria, bylaws, and policies.⁸ The MPSC conducts peer review of OPTN members and reviews events identified as a risk to patient safety, public health, or the integrity of the OPTN.

The OPTN Bylaws include the following provision regarding Medical Peer Review:

The OPTN will conduct all deliberations and take all actions according to applicable medical peer review laws. Consistent with applicable laws, all inquiries, deliberations, recommendations, and actions during member reviews by the OPTN will be kept confidential. All proceedings and records within the scope of these OPTN quality review activities are confidential. Members of any OPTN Committee attending the meeting in which a peer review is conducted, serving as a peer reviewer, working for or on behalf of the OPTN, or providing information to the OPTN for peer review activities, are entitled to confidentiality.

The OPTN will keep all materials, information, and correspondences to and from members and directly related to the OPTN peer review process confidential to promote quality improvement and full disclosure by OPTN members. Materials, information, and correspondences created by or for the peer review body are considered "directly related."

The OPTN will not disclose any materials provided to the OPTN by the member, except as required by law. Materials prepared by members independent of the OPTN medical peer review process may be shared by members in their discretion.

⁸ See generally <https://optn.transplant.lhrsa.gov/members/committees/membership-and-professional-standards-committee/>.

Bylaws L.3, Medical Peer Review.⁹

Sharing Hope's Self-Critical Quality Assurance and Peer Review Evaluations at Issue in this Appeal

Sharing Hope and UNOS' MPSC engaged in a retrospective, self-critical quality assurance and peer review evaluation regarding the Patient's double lung transplant following his death. This peer review included consideration of Sharing Hope's collection and reporting of the Donor's medical information and the identification of the Patient as a match for the Donor's organs. Again, the underlying factual information involving the transplant, including Sharing Hope's contemporaneous records and communications regarding the evaluation of the Donor and the transplant process, have been produced and are not at issue in this appeal. It is the communications and materials created after the transplant as part of UNOS' mandatory peer review process which are at issue in this appeal. Sharing Hope has withheld as privileged materials and communications generated during its peer review and has identified the same on its privilege log (as amended). Specifically, the withheld materials consist of documents and correspondence exchanged between Sharing Hope (the South Carolina OPO) and the MPSC (the committee established by UNOS as part of its administration of the OPTN) while these entities engaged in their confidential peer review process. To the extent that these communications contain attachments or enclosures of the Donor's medical records, standard operating policies of Sharing Hope, or other records kept in the ordinary course of business, such materials have already been separately produced to the Plaintiff.

Sharing Hope also engaged in a root cause analysis¹⁰ with the donor hospital, Grand Strand Medical Center, which was conducted to study the Patient's death in order to identify the root

⁹ https://optn.transplant.hrsa.gov/media/1201/optn_bylaws.pdf.

¹⁰ JCAHO accredited organizations use a comprehensive systematic analysis referred to as root cause analysis to study sentinel events of patient harm in order uncover the factors that lead to

causes towards a goal of improving patient safety protocols. One of the documents in issue [Privileged 0187-0195] was prepared and shared with Grand Strand in connection with this root cause analysis.

Additionally, Sharing Hope has instructed its employees not to answer questions during depositions regarding these protected activities.

ARGUMENT

Post-incident, self-critical materials prepared or exchanged by an Organ Procurement Organization pursuant to a requirement of the federal Organ Procurement Transplant Network should be protected by a peer review privilege.

STANDARD OF REVIEW

The trial court's determination of whether or not a communication is privileged and confidential will not be overturned on appeal absent an abuse of discretion. Tobaccoville USA, Inc. v. McMaster, 387 S.C. 287, 292, 692 S.E.2d 526, 529 (2010). An abuse of discretion occurs when the judge's ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support. Renney v. Dobbs House, Inc., 275 S.C. 562, 564, 274 S.E.2d 290, 291 (1981); Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987); 16 S.C. Jur. Appeal and Error § 124. Questions of law are subject to de novo review on appeal. Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

INTRODUCTION TO ARGUMENT

The question of whether, and to what extent, a peer review privilege protects post-incident self-critical materials prepared by an OPO pursuant to a requirement of its federal regulatory

patient safety events and improve patient safety by preventing future harm. JACHO Root Cause Analysis in Health Care: Tools and Techniques, <https://www.jcrinc.com/-/media>. See also <https://www.med.unc.edu/ihqi/resources/root-cause-analysis>.

schema is novel question of law. The Trial Court refused to recognize Sharing Hope's right to a peer review protection based on its narrow interpretation of the applicable state statutes despite the imperative public policy objectives as soundly stated in long-standing caselaw.

Sharing Hope has properly asserted a peer review privilege to materials, described on the privilege log and provided to the court for in camera review, under the applicable peer review statutes found in South Carolina and Virginia law, and the mandatory peer review policies adopted by the federal OPTN, as administered by UNOS. Sharing Hope's assertion of peer review privilege also fully comports with the important objectives embodied in peer review protections extended on varied state and federal levels, including the express protections provided by the Patient Safety Quality Improvement Act of 2005, which should be extended in this case.

The importance of recognizing Sharing Hope's right to a peer review privilege is imperative where the peer review process is itself required by federal law and regulation, and where Sharing Hope's continued ability to serve as South Carolina's OPO requires compliance with UNOS' peer review process.¹¹ The consequences of ordering production in this case also cannot be overstated; an order requiring such production would have a substantial chilling effect on any future peer review process conducted by UNOS because any OPO would be reticent to fully engage in the process for fear of increasing its exposure to liability. In addition, it is necessary to preserve the peer review protection in these circumstances to avoid improperly eroding the peer review protections enjoyed by other entities involved in this case.

To require production of the peer review materials withheld by Sharing Hope would violate the clear, established public policy of promoting quality assurance efforts to improve patient care.

¹¹ Indeed, it is extremely unlikely that the Secretary of HHS would continue to designate an OPO as responsible for a particular region if the OPO failed to or refused to participate in the peer review process proscribed at 42 C.F.R. § 121.10.

Importantly, continuing to protect peer review materials does not restrict inquiring parties from learning the facts or information associated with the underlying medical event. Plaintiff is simply required to prove her claims using those facts and information, rather than relying on any retrospective evaluation conducted during a peer review designed to improve patient care. Rather than contravene the sound, appropriate and essential objectives of the peer review protection, the Plaintiff's Motions to Compel should be denied, and Sharing Hope's Motion for Protection should be granted.

I. SOUTH CAROLINA LAW¹² RECOGNIZES A PEER REVIEW PRIVILEGE FOR RETROSPECTIVE SELF-CRITICAL ANALYSIS IN THE HEALTHCARE FIELD.

The South Carolina Supreme Court has consistently restated the important public policy concerns in recognizing a peer review privilege in the healthcare field. In McGee v. Bruce Hosp. Sys., 312 S.C. 58, 62, 439 S.E.2d 257, 259 (1993), the Court found that “the public interest in candid professional peer review proceedings should prevail over the litigant's need for information from the most convenient source.” In so holding, the Court articulated the “overriding public policy” to promote “complete candor and open discussion” in peer review process:

The overriding public policy of the confidentiality statute is to encourage health care professionals to monitor the competency and professional conduct of their peers to safeguard and improve the quality of patient care. *See State ex rel Shroades v. Henry*, 187 W.Va. 723, 421 S.E.2d 264 (1992). The underlying purpose behind the confidentiality statute is not to facilitate the prosecution of civil actions, but to promote complete candor and open discussion among participants in the peer review process.

¹² As a traditional rule, the substantive law governing a tort action is determined by the law of the state in which the injury occurred. Boone v. Boone, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001). On the other hand, under traditional choice of law, questions of privilege may be viewed as evidentiary and the law of the forum is applied. 1 McCormick On Evid. § 73.2 (8th ed.). Here, the question is complicated by the implications of the peer review requirements and confidentiality assurances of national-level organizations such as the OPTN, as administered by UNOS. Therefore, Sharing Hope addresses the law applicable to the state of its own incorporation (South Carolina) and the state of UNOS' incorporation (Virginia) along with relevant federal laws and policies.

312 S.C. at 62, 439 S.E.2d at 259. The Court further adopted the reasoning of an opinion of the Supreme Court of Florida in Cruger v. Love, 599 So. 2d 111 (Fla. 1992), on the importance of alleviating the participants' fear of detrimental consequences of candidly contributing to the peer review process:

[t]he policy of encouraging full candor in peer review proceedings is advanced only if all documents considered by the committee ... during the peer review or credentialing process are protected. Committee members and those providing information to the committee must be able to operate without fear of reprisal. Similarly, it is essential that doctors seeking hospital privileges disclose all pertinent information to the committee. Physicians who fear that information provided in an application might someday be used against them by a third party will be reluctant to fully detail matters that the committee should consider.

McGee, 321 S.C. at 61–62, 439 S.E.2d at 259–60 (quoting Cruger, 599 So. 2d at 114).

The Supreme Court has continued to adhere to these policy statements as found in Durham v. Vinson, 360 S.C. 639, 647, 602 S.E.2d 760, 763 (2004), where the Court found that a trial court had erred by allowing plaintiff's counsel to use a defendant physician's assertion of a peer review privilege to portray the defendant as deceitful, stating: "Allowing this to occur does not serve the policy goals of promoting candor and open discussion among participants in the peer review process." 360 S.C. at 649, 602 S.E.2d at 765.

In furtherance of this policy, the South Carolina Legislature has enacted two statutes regarding peer review data. These enactments include the "old" peer review statute, found in § 40-71-20 (enacted in 1978), and the "new" statute, § 44-7-392 (enacted in 2012), both of which protect peer review materials from disclosure in civil actions.

Section 40-71-20(A) addresses peer review privilege in the context of proceedings conducted by a committee of a professional society:

(A) All proceedings of and all data and information acquired by the committee referred to in Section 40-71-10 in the exercise of its duties are confidential unless

a respondent in the proceeding requests in writing that they be made public. These proceedings and documents are not subject to discovery, subpoena, or introduction into evidence in any civil action except upon appeal from the committee action. Information, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during the committee proceedings, nor shall any complainant or witness before the committee be prevented from testifying in a civil action as to matters of which he has knowledge apart from the committee proceedings or revealing such matters to third persons.

S.C. Code § 40-71-20. As referenced, § 40-71-10 refers to an appointed committee formed to maintain professional standards of a state or local professional society.¹³

Section 44-7-392 addresses peer review privilege in the context of proceedings conducted by a hospital:

(A)(1) All proceedings of, and all data, documents, records, and information prepared or acquired by, a hospital licensed under this article, its parent, subsidiaries, health care system, committees, whether permanent or ad hoc, including the hospital's governing body, or physician practices owned by the hospital (its parent or subsidiaries), relating to the following are confidential:

(a) sentinel event investigations or root cause analyses, or both, as prescribed by the joint commission or any other organization under whose accreditation a hospital is deemed to meet the Centers for Medicare and Medicaid Services' conditions of participation;

(b) investigations into the competence or conduct of hospital employees, agents, members of the hospital's medical staff or other practitioners, relating to the quality of patient care, and any disciplinary proceedings or fair hearings related thereto;

(c) quality assurance reviews;

(d) the medical staff credentialing process;

¹³ S.C. Code §40-71-10, defines professional society as follows:

“Professional society” as used in this chapter includes legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutical, and engineering organizations having as members at least a majority of the eligible licentiates in the area served by the particular society and any foundations composed of members of these societies. It also includes the South Carolina Law Enforcement Accreditation Council.

(e) reports by a hospital to its insurance carriers;

(f) reviews or investigations to evaluate the quality of care provided by hospital employees, agents, members of the hospital's medical staff, or other practitioners; or

(g) reports or statements, including, but not limited to, those reports or statements to the National Practitioner Data Bank and the South Carolina Board of Medical Examiners, that provide analysis or opinion (including external reviews) relating to the quality of care provided by hospital employees, agents, members of the hospital's medical staff, or other practitioners; or

(h) incident or occurrence reports and related investigations, unless the report is part of the medical record.

The Trial Court held that neither statute provided a privilege to the UNOS-Sharing Hope peer review process because Sharing Hope is not an “appointed committee” or a hospital within the bare language of these statutes. [ROA ___; Order.] However, UNOS-Sharing Hope peer review process should be protected under § 40-71-20, contrary to the Trial Court’s ruling.

The federal OTPN is an organization of which Sharing Hope is a member OPO, and UNOS (the OPTN’s administrator) has appointed a standing Membership and Professional Standards Committee (MPSC) to conduct peer reviews of OPTN members. UNOS has adopted By-Laws requiring the maintenance of confidentiality for its peer review activities, and UNOS’ MPSC conducts peer reviews and investigations pursuant to the same. Both Sharing Hope and the MPSC should be considered “appointed committees” such that the peer review protection provided by § 40-71-20 applies. The mere fact that the particular peer review process at issue involves the OPTN and a member OPO should not erode the propriety and necessity of providing robust protection of peer review processes from discovery.

In reading the statutory language so rigidly to exclude the UNOS-Sharing Hope peer review process, the Trial Court has restricted the peer review privilege so narrowly that it

contravenes the well-established public policy without any rational basis. While the precise circumstances of the organizational structure of these healthcare entities may be unique, the policy concerns remain the same: confidentiality is the core of the peer review process, and if disclosure of peer review information can be compelled, the foundation of any entity's peer review process will be severely compromised. If there is no confidentiality, then OPOs and their staff may be hesitant to candidly participate in the process or simply refuse to participate at all; and such lack of cooperation will hinder the OPTN's efforts to improve patient safety and availability of viable donor organs. Such a result would be particularly troubling in light of the undeniable expectation of confidentiality and privilege for this process provided in UNOS' By-Laws, quoted above.

In addition, Sharing Hope, as the OPO for South Carolina, operates in cooperation and conjunction with both the donor and transplant hospitals and, in fact, an OPO is the essential link in facilitating the donation and transplant of lifesaving organs. It is entirely illogical for donor and transplant hospitals, such as Grand Strand and MUSC, to enjoy peer review protection for their retrospective, post-incident analyses while the same protection is not afforded to the OPO. This is particularly true when these entities are necessarily involved in the exchange of information and may even participate in portions of each other's peer review processes. Yet, that is precisely what occurred at the trial level in this case.

As discussed below, protecting the materials created and communications exchanged by Sharing Hope for UNOS' mandatory peer review analysis would fully comport with clearly established public policy and spirit of these peer review statutes, while denying the OPO the protection of a privilege would be a detrimental disservice to the federal network that is the exclusive source of organ procurement for patients in need of a lifesaving organ transplant.

II. LONGSTANDING, WELL-ESTABLISHED PUBLIC POLICY SUPPORTS RECOGNITION OF A PRIVILEGE TO PROTECT PEER REVIEW MATERIALS.

Statutory Construction – To Effectuate Legislative Intent and Public Policy Goals

As noted by the Trial Court, the primary purpose of statutory construction is to determine and effectuate the intent of the Legislature. Charleston Cty. Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). To that end, one of the corollary rules of statutory construction is that legislative intent should be ascertained, by first looking to the plain language of the statute. However, the plain language rule does not presuppose that the courts should ignore the recognized intent of the Legislature. “[T]he purpose of an enactment will prevail over the literal import of the statute.” Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000).

“A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of the words.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) (citations omitted); See also Enos v. Doe, 380 S.C. 295, 304, 669 S.E.2d 619, 623 (Ct. App. 2008); Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005). The court should not consider a particular clause in isolation but should read it in conjunction with the purpose of the whole statute and the underlying public policy. S.C. Coastal Council v S.C. State Ethics Comm’n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991). Considerations of public policy undergird all legal proceedings, such that the law will not support an outcome which contravenes the public interest. The rule of statutory construction of statutes pertaining to public policy is strong. “When a statute is a part of other legislation, designed as a whole to establish an expressed state policy, the court should strive to effectuate that policy.” Gregg Dyeing Co. v. Query, 166 S.C. 117, 123, 164 S.E. 588, 590 (1930).

Another rule of statutory construction aims to avoid absurdities. When application of the plain language “rule” would result in a distinction for which there is no logical basis or lead to an absurd result that could never that been intended by the Legislature, the court may construe the statute so as to effectuate the public policy underlying the legislative intent. See S.C. State Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946) (citing State v. Gilliam, 208 S.C. 126, 37 S.E.2d 299, 301 (1946)); see also State v. Prince, 335 S.C. 466, 476, 517 S.E.2d 229, 234 (Ct. App. 1999) (rejecting interpretation as illogical and contrary to public policy). The court can, and should, refuse to construe a statute so that it is illogical and unreasonable and would lead to an obviously unintended result. Breeland, 208 S.C. at 481, 38 S.E.2d at 650. The court can, and has, interpreted a statute to accomplish legislative intent despite a contrary literal meaning of the statutory language “where there has been an oversight by the legislature that is clearly in conflict with the overall intent of the statute.” Hodges v. Rainey, 341 S.C. at 87, 533 S.E.2d at 582.

Where a statute is silent, courts will interpret it in a manner consistent with its stated purpose and within the breadth of the legislative schema. In the face of silence on a particular point, a court may reasonably expand the statute’s application to fill the void in a manner consistent with its legislative purpose. S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t Control, 390 S.C. 418, 427, 702 S.E.2d 246, 252 (2010).

Here, the Trial Court was reluctant to look beyond the narrow language of the statutes, even while acknowledging the merit of the recognized public policy at issue. [ROA ___; Order p. 6.] However, this Court can, and should, construe the statutes to encompass these circumstances of Sharing Hope’s peer review process, or recognize a common law privilege, to effectuate the

important public policy of encouraging peer review as important to optimum patient care and safety.

As discussed above, our Supreme Court has recognized the overriding public policy to promote complete candor and open discussion in peer review process. See discussion of McGee v. Bruce Hospital and Durhan v. Vinson, *supra*. While the statutes address a peer review privilege for hospitals and standards committees of professional associations, they may not directly address the circumstances presented here involving a peer review required by federal law uniquely applicable to the OPTN and conducted by UNOS' MPSC and a member OPO. The fact that the statutes do not directly speak to this singular, unique organization and its regional members does not automatically justify denying this OPO, Sharing Hope, protection of the same peer review privilege which is extended to the donor and transplant hospitals that form part of the organ transplant system where the "overriding public policy" to promote "complete candor and open discussion" in peer review process that are all essential to providing life-saving procedures.

The reality of legislation is that it necessarily is drafted in advance of, and therefore with imperfect appreciation for, the problems that may be countered in its application. Jack Schwartz & Amanda Stakem Conn, The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History, 54 Md. L. Rev. 432, 435-36 (1995). Where an issue was not reasonably envisioned, contemplated or addressed by a legislative body, it is the right and duty of the court to make rulings on issues not perfectly encompassed by statutes in a manner consistent with a state's public policy and the overarching objectives of the law.

It is highly unlikely that the state legislature specifically considered the activities of OPOs – nor any particular peer review process in which they might participate – when crafting the South

Carolina peer review statutes.¹⁴ To the extent that the bare terms of the statutory language do not expressly encompass peer review materials produced in the mandated review process conducted between UNOS and its OPO, this can be seen as a case of legislative oversight, *see Hodges*, 341 S.C. at 87, 533 S.E.2d at 582, and the Court still has the ability, if not the responsibility, to extend the protection where the same vital public policy applies.

Further, Plaintiff herself has treated Sharing Hope and UNOS as health care providers in this case. For example, Plaintiff has complied with the South Carolina Tort Reform Act of 2005 Relating to Medical Malpractice (2005 Act No. 32, codified at S.C. Code § 15-79-110 *et seq.*) by providing a pre-suit Notice of Intent to sue for each of the named Defendants along with an affidavit of an expert witness purporting to identify each Defendants' alleged deviation from the standard of care. [ROA ___; Notice of Intent, Amd. Notice of Intent, & Notice of Intent as to Sharing Hope Employees.] It would be illogical to endorse an inconsistent treatment of Sharing Hope and UNOS versus the other health care providers involved in the organ donation process at issue in this suit.

¹⁴ This is particularly likely for several reasons unique to the function of the OPTN and its member OPOs. First, the certification of OPOs and the creation of the regions they serve is dictated by the Department of HHS, rather than the states. It is entirely possible (and actually the case in some areas) that an OPO may operate across several states while being incorporated in only one. For example, the New England Organ Bank is the federally designated OPO for Region 1, which covers the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Bermuda, and portions of Vermont. *See generally* <https://optn.transplant.hrsa.gov/members/regions/region-1/> and <https://neds.org/our-opos/>. Additionally, given that the protections of the Uniform Anatomical Gift Act, as adopted in South Carolina, provide immunity for entities acting in good faith in the procurement and/or facilitation of organ transplants, it is unlikely that an OPO operating within the state would be identified as an entity in need of express acknowledgement in the peer review statutes. *See* S.C. Anatomical Gift Act, S.C. Code § 44-43-385 (2021).

Common Law and Statutory Development of the Peer Review Privilege - Nationwide

From its first recognition, the peer review privilege has been a product of judicial creation. The self-critical analysis privilege was first addressed in the seminal opinion in Bredice v. Doctor's Hosp., Inc., 50 F.R.D. 249, 250 (D.D.C. 1970), aff'd, 479 F.2d 920 (Table) (D.C. Cir. 1973), where a federal district court held that a medical malpractice plaintiff could not obtain the minutes and reports of a hospital medical staff meeting aimed at improving in its procedures and treatments for patient safety. In so holding the court considered several factors, including the objective of the peer review process, the obligatory nature of participation in the process, the assurance of confidentiality as essential to full and effective participation, and the lack of relevancy.

In Bredice, the court considered the fact that the medical staff review was conducted pursuant to the requirements of the Joint Commissions on Accreditation of Hospitals which entail JCAHO requires staff meetings “to review, analyze, and evaluate the clinical work of its members” towards “the ‘sole objective’ of such staff meetings is the ‘improvement’ in the available care and treatment.” 50 F.R.D. at 250. The court accepted/acknowledged that such retrospective self-analysis served a valuable function in improving medical care:

The purpose of these staff meetings is the improvement, through self-analysis, of the efficiency of medical procedures and techniques. They are not a part of current patient care but are in the nature of a retrospective review of the effectiveness of certain medical procedures. The value of these discussions and reviews in the education of the doctors who participate, and the medical students who sit in, is undeniable. This value would be destroyed if the meetings and the names of those participating were to be opened to the discovery process. *Id.*

The court also reflected upon the fact that the retrospective self-improvement process is not relevant to the facts of the actual treatment provided to the patient/plaintiff. *Id.* at 251.

Another factor noted by the Bredice court was that the staff committee work was performed “with the understanding that all communications originating therein are to be confidential.” *Id.* at

250. The court recognized the critical need for assurance of confidentiality in peer review processes:

Confidentiality is essential to effective functioning of these staff meetings; and these meetings are essential to the continued improvement in the care and treatment of patients. Candid and conscientious evaluation of clinical practices is a sine qua non of adequate hospital care. To subject these discussions and deliberations to the discovery process, without a showing of exceptional necessity, would result in terminating such deliberations. Constructive professional criticism cannot occur in an atmosphere of apprehension that one doctor's suggestion will be used as a denunciation of a colleague's conduct in a malpractice suit. *Id.*

The Bredice court appreciated that healthcare providers bear an immense responsibility for life and death decisions in patient healthcare and they need to engage in opportunities to learn through self-evaluation, stating: "There is an overwhelming public interest in having those staff meetings held on a confidential basis so that the flow of ideas and advice can continue unimpeded." *Id.* at 251. Ultimately, the court concluded that the overwhelming public interest was a sufficient basis to recognize a qualified privilege for retrospective peer review processes aimed at self-improvement. Under the same reasoning, the UNOS peer review with its designated OPO, being retrospective with the purpose of self-improvement, should be entitled to a privilege to serve the overwhelming public interest in promoting optimum patient health and safety.

Persuasive authority in Hofflander v. St. Catherine's Hospital, Inc., 635 N.W.2d 13 (Wis. App. 2001), *aff'd in pertinent part*, 664 N.W.2d 545 (Wis. 2003), also supports extension of the protection to the confidential medical peer review between UNOS and Sharing Hope. In Hofflander, the court extended statutory peer review confidentiality to JCAHO records based on public policy, finding that JCAHO performs functions equivalent to a peer review committee and that allowing discovery of its reports would discourage hospitals from seeking accreditation and depriving them of an impartial and objective review of the services they provide. By the same reasoning, the UNOS Membership and Professional Standards Committee performs functions

comparable to a medical society professional standards committee and conducts peer review proceedings that are the equivalent of a root cause analysis or quality assurance under §40-71-20 and §44-7-392. Allowing discovery of Sharing Hope's self-critical analysis materials could discourage the OPO from candid participation in the UNOS peer review process and deprive the federal OPTN of the invaluable benefit such self-analysis provides for the betterment of the organ transplant field.

Each of the fifty states have acknowledged the public policy supporting a peer review privilege: "The legislatures in every state in the Nation have concluded that without a peer review privilege, physicians will be discouraged from participating in the full and frank expression of opinion that is essential if peer review is to fulfill its vital role in advancing the quality of medical care." Sevilla v. United States, 852 F. Supp. 2d 1057, 1060 (N.D. Ill. 2012). Consequently, all fifty States and the District of Columbia recognize a form of medical peer review privilege or protection. Francis v. United States, C/A No. 09 Civ. 4004 (GBD)(KNF), 2011 WL 2224509, at *6, 2011 U.S. Dist. LEXIS 59762, at *18 (S.D.N.Y. May 31, 2011). Of note, it appears that only the Illinois statute has language that expressly extends a peer review privilege to an organ procurement agency (along with an extensive listing of other health care entities/groups). 735 Ill. Comp. Stat. Ann. 5/8-2101.¹⁵ However, these statutes share a common purpose in encouraging frank and candid discussion of medical events by eliminating the fear that peer review information will be used against the participants in subsequent litigation. Francis, id. (citing K.D. ex rel. Dieffenbach v. United States, 715 F. Supp. 2d 587, 597 (D. Del. 2010)).

¹⁵In Watson v. LifeShare Transplant Donor Servs. of Oklahoma, Inc., No. CIV-09-979-M, 2011 WL 3648389, at *2 (W.D. Okla. Aug. 18, 2011), a federal district court held that an incident report prepared by an OPO for UNOS was protected by a Oklahoma peer review privilege statute that provided peer review privilege to a "health care facility." This appears to be the only reported decision involving an OPO peer review privilege.

Federal law also recognizes the essential function of the peer review process and protects the same. For example, in 2005 Congress enacted the Patient Safety Quality Improvement Act which has been largely seen as an announcement of “a more general approval of the medical peer review process and more sweeping evidentiary protections for materials used therein.” Dieffenbach, 715 F. Supp. 2d at 597. Its purpose is to “encourage a ‘culture of safety’ and quality in the U.S. health care system by providing for broad confidentiality and legal protections of information collected and reported voluntarily for the purposes of improving the quality of medical care and patient safety.” S. Rep. No. 108-196, at 3 (2003). Recognition of a peer review privilege for the OPO in this case would be in line with the nationwide acceptance of the important public policy to promote efforts for better patient care and safety and the vital role of self-critical analysis in effectuating that policy goal.

Judicial recognition of a peer review privilege would also comport with federal and state jurisprudence on the common law recognition of privileges. For example, U.S. Supreme Court has noted that while our legal system has a fundamental premise that the public has a right to every man’s evidence, exceptions in the form of privileges may be justified by a transcending public good. Jaffee v. Redmond, 518 U.S. 1, 9 (1996). An asserted privilege may be granted where it is grounded in an essential need for confidence and trust, and it must serve an important public interest. *Id.* at 11. In Jaffe, the Court extended a recognized privilege that protects confidential communications between psychiatrists and psychologists and their patients to also protect confidential communications made to social workers:

We have no hesitation in concluding in this case that the federal privilege should also extend to confidential communications made to licensed social workers in the course of psychotherapy. The reasons for recognizing a privilege for treatment by psychiatrists and psychologists apply with equal force to treatment by a clinical social worker

Id. at 15. By the same reasoning, the peer review privilege that covers peer review by professional associations and hospitals should apply with equal force to the exclusive federal organ procurement schema. As widely acknowledged, the peer review privilege is grounded in a need for confidence and trust to promote candor in the retrospective self-analysis processes that serve an overriding public interest in improving patient care and safety. There is no logical justification for granting a peer review privilege to the hospitals involved in the transplantation field of medicine and denying the same privilege to the OPOs that hold an essential role in that same field.

In Hartsock v. Goodyear Dunlop Tires N. Am. Ltd., 422 S.C. 643, 649, 813 S.E.2d 696, 698-99 (2018), our own Supreme Court undertook an analysis of how privileges are recognized in South Carolina, stating that: “The principle underlying recognition of a privilege is simple and cited the U.S. Supreme Court’s decision in Jaffe by quoting therefrom:

[A]lthough the public “has a right to every man's evidence,” an exception may be justified ‘by a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.’” “[A]n asserted privilege must also ‘serv[e] public ends.’”

The Hartsock Court also noted that “our evidentiary privileges are provided through an assortment of sources: the South Carolina or United States Constitution, the common law, or a statutory provision.” *Id.* at 699.

The Legislature’s failure to address the question of applying the privilege to a peer review process undertaken by a unique federally-designated entity such as UNOS and its federally-certified OPO does not preclude the Court from recognizing one, as a matter of interpretation or a matter of common law. A peer review privilege is undeniably necessary in these circumstances because confidentiality is essential to the efficacy of the process of retrospective self-analysis and the privilege will serve the public good by ensuring/promoting patient safety.

As one commentator has noted, courts should not be reticent or hesitant to rule in support of the public policy goals that serve as the foundation of the privilege of self-critical analysis, stating: “Only through such developments will the privilege of self-critical analysis properly perform its function.” The Privilege of Self-Critical Analysis, 96 Harv. L. Rev. 1083, 1100–01 (1983). If the Court does not apply the peer review privilege to the self-critical analysis in which Sharing Hope engaged after the Patient’s unfortunate death, the purpose of the peer review privilege will be thwarted at the cost for potentially detrimental harm to the vital operation of the UNOS Network and its designated OPO in cooperation with the donor and transplant hospitals.

III. VIRGINIA LAW PROVIDES A PEER REVIEW PRIVILEGE TO THE MATERIALS CREATED BY SHARING HOPE TO MEET THE REQUIREMENT OF A VIRGINIA ENTITY.

The documents sought to be protected are the result of peer review required by UNOS, a Virginia non-profit organization, Virginia law is instructive and may be equally applicable. [See footnote 8.] UNOS would be held to the Virginia law and as discussed below, the documents designated as Privileged 0001-0186, 0196-0210, 0211-0223, and 0224-0227 would also fall under protection of the Virginia statutory scheme.

Virginia provides protection for the proceedings, minutes, records or reports of any quality assurance, quality of care, or peer review committee adopted by a national professional association of health care providers or Virginia chapter of a national professional association of healthcare providers. Va. Code Ann. § 8.01-581.17(B)(c) (Lexis, 2021). UNOS qualifies as such an organization. Va. Code Ann. § 8.01-581-1 (Lexis, 2021). This protection is further extended to all communications, both oral and written, originating in or provided to such committees or entities. *Id.* The materials and communications identified in Virginia’s peer review statute are privileged and are not subject to disclosure in discovery unless a circuit court, after a hearing and for good

cause arising from extraordinary circumstances being shown, orders the disclosure of the proceedings, minutes, records, reports, or communications. *Id.*

There is one statutory exception to this Virginia rule: oral communications regarding a specific medical incident involving patient care and made within 24 hours of the specific medical incident are not protected by the peer review statute. *Id.* However, none of the materials withheld by Sharing Hope were generated within the 24-hour period following Mr. Holliman's death.

The documents withheld as privileged were generated in furtherance of the activities of quality assurance, quality of care, and for a peer review committee, the MPSC. This satisfies the threshold requirement of Va. Code Ann. § 8.01-581.17(B). Thus, Virginia's peer review privilege is applicable and prohibits the production of the withheld materials. Moreover, these materials are not the type generated in the ordinary course of business, such as incident reports or other contemporaneous documentation. Such materials have already been produced in this case and, indeed, are not protected by Virginia's peer review statute. Riverside Hosp., Inc. v. Johnson, 636 S.E.2d 416, 423–24 (Va. 2006). Analogous with South Carolina law, factual patient care does not reflect committee discussion and as discussed above, the medical records and policies contained within the peer review designated documents were produced to the Plaintiff in this case.

IV. SHARING HOPE'S PARTICIPATION IN THE ROOT CAUSE ANALYSIS CONDUCTED WITH GRAND STRAND HOSPITAL IS PROTECTED BY § 44-7-392.

As set forth above, the "new" peer review statute adopted in 2012 provides peer review protection to hospitals for root cause analyses required for accreditation, and for quality assurance reviews. S.C. Code § 44-7-392(A)(1)(a) and (c). After the transplant patient's death, the donor hospital, Grand Strand, and Sharing Hope participated a self-critical analysis that constitutes a root cause analysis and/or quality assurance review as contemplated by the statute. Sharing Hope participated in the protected process and created eight pages [Privilege log numbered 0187-0195]

as a result of a root cause analysis meeting between the two entities. The designation as “Root Cause Analysis” is found on the face of these documents.

Sharing Hope employee Ms. Welker attended Grand Strand’s quality meeting on behalf of Sharing Hope to participate in the after-event self-critical analysis. During Ms. Welker’s deposition, counsel for Sharing Hope directed her not to answer questions regarding the contents of the Root Cause Analysis on the basis of the peer review privilege.

The Trial Court held that these root cause documents, and questions posed to Ms. Welker during her deposition, are not protected by § 44-7-392 because they fall into the exception found in § 44-7-392(3), which reads: “Data, documents, records, or information which are *otherwise available from original sources* are not confidential and are not immune from discovery *from the original source* under this section or use in a civil action merely because they were acquired by the hospital.” (Emphasis added). However, Sharing Hope maintains that the Root Cause Analysis contains self-critical, retrospective analysis which goes beyond the facts and original source information regarding the Patient’s transplant and, as such, this material and any testimony regarding the same should be protected by peer review.

This exception to the privilege allowing production from an original source is intended to allow testimony from and/or production of evidence regarding the patient care that is within that person’s personal knowledge. However, while raw materials of purely factual medical information and historical factual events may be obtained from an “original source,” the very purpose of the peer review privilege is to protect evaluative and deliberative materials created and/or gathered by a health care provider. *See* The Privilege of Self-Critical Analysis, 96 Harv. L. Rev. 1083, 1093 (1983) (“Courts currently interpret the privilege of self-critical analysis to protect the evaluative but not the factual portions of self-analyses.”). See also In re Living Centers of Texas, Inc., 175

S.W.3d 253, 258 (Tex. 2005); Beth Israel Hosp. Ass'n v. Bd. of Registration in Med., 401 Mass. 172, 183, 515 N.E.2d 574, 580 (1987). As noted above, Plaintiff has already obtained the factual material and contemporaneous documentation and communication regarding the Patient's transplant along with the donor's records and various other non-privileged material from Sharing Hope.

The Trial Court's interpretation of this exception to privilege is wholly incompatible with the public policy that undergirds the privilege in the first instance. As discussed above, public policy supports recognition of a peer review privilege as necessary to promote full candor and open discussion among the participants in the peer review process. The policy would be contravened if documents from the peer review process are only protected from production by the hospital and allows those participating with the hospital to be forced to produce same evaluative and reflective documents because they retained copies in their possession. What participant would willingly be open and honest in a self-critical review while knowing that they would be subject to discovery production and deposition questions? It is reasonable to contemplate that the Trial Court's interpretation and application of this other/original source provision will greatly harm the efficacy of such comparable peer review efforts. The logical conclusion in the context of the public policy is to limit the other source exception to factual materials, and to protect the eight-page evaluation document that Sharing Hope created in connection with Grand Strand's root cause analysis (and limit related questions posed to the OPO staff).

CONCLUSION

For the foregoing reasons, the Trial Court's order should be reversed.

Respectfully submitted,

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August 2, 2021

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Aug 03 2021

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.

Certificate of Service

The undersigned certifies that on this 2nd day of August 2021, a copy of the Initial Brief and Designations on behalf of Appellant We Are Sharing Hope SC were served by emailing a copy of each, on the following counsel at the addresses listed below:

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August 2, 2021

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Aug 03 2021

SC Court of Appeals

Via U.S. Mail & E-Filing

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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
C/A No. 2020-CP-10-02902, Charleston CP
Appellate Case No. 2021-000487
HLF File No. 269.009

Dear Ms. Kitchings:

Enclosed please find the Appellant We Are Sharing Hope's Initial Brief and Appellant We Are Sharing Hope's Designation of Matters to Be Included in the Record on Appeal in the above captioned matter. Also, enclosed herewith is the Certificate of Service. We were having technical issues trying to e-file these documents and will try again tomorrow, August 3, 2021. I am serving all other counsel of record by emailed copy of this letter.

Kind regards,

Yours truly,

/s/ Molly H. Craig

Molly H. Craig

MHC/mde

Enclosure

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Exhibit H

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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

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Trial Court Case 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.

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STATEMENT OF THE ISSUES ON APPEAL

1. May We Are Sharing Hope SC and United Network for Organ Sharing appeal an interlocutory discovery order?
2. Did the circuit court correctly determine that We Are Sharing Hope SC 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?
3. Did the circuit court rightly decline to expand the peer review privilege by creating a “public policy exception” where the Legislature chose not to do so?
4. Did the circuit court correctly conclude that South Carolina’s peer review law governs whether documents and information of a South Carolina entity that is sued in South Carolina are privileged?

STATEMENT OF THE CASE

In an effort to delay this case from going forward, Appellants ask this Court to hear an improper interlocutory appeal of a circuit court's discovery order. This Court should decline that invitation.

This interlocutory appeal, if heard, presents a straightforward question of whether the circuit court correctly determined that We Are Sharing Hope SC ("WASH") is not entitled to claim peer review privilege under South Carolina law, either under the plain language of the statutes or through a judicially created public policy exception. After extensive briefing and a full hearing, the circuit court granted Mrs. Holliman's motion to compel and ordered WASH to produce documents and testimony withheld on a baseless claim of peer review privilege. WASH and United Network for Organ Sharing ("UNOS") now challenge the circuit court's ruling on appeal.

I. Factual Background

A. Introduction

This is a wrongful death case arising out of Allen B. Holliman's untimely death following a double lung transplant during which lungs of the wrong blood type were transplanted into him. WASH was the organ procurement organization ("OPO") that evaluated, procured, and distributed the donor lungs that Mr. Holliman received. (Complaint ¶¶ 23-24). As the OPO, WASH was responsible for accurately determining and reporting the donor's blood type. (Complaint ¶¶ 34, 43).

In connection with its duties as OPO, WASH ordered pre-transplant blood testing for the donor from VRL Eurofins ("VRL"). (Complaint ¶¶ 33, 43). VRL issued two reports for the donor to WASH, both of which stated that the Donor's blood type was indeterminate and discrepant—specifically, that the forward typing for the donor yielded type O results and the reverse typing yielded type A results. (Complaint ¶ 33). The hospital where the donor died, Grand Strand

Regional Medical Center in Myrtle Beach (“Grand Strand”), had also performed two blood typing tests for the donor in the course of its care for the donor as a trauma patient; these tests were not performed for the purposes of organ donation. (Pl.’s Mot. to Compel, Exhibit C, WASH’s Resp. to Interrog. 9). Grand Strand’s tests showed results of type O blood, but they were conducted using blood samples collected after the donor received a massive amount of un-crossmatched type O blood transfusions (the blood type that everyone can accept), and were, therefore, unreliable. (Pl.’s Mot. to Compel, Exhibit C, WASH’s Resp. to Interrog. 9).

WASH used the Grand Strand’s results to report the donor as having type O blood, without investigating the cause of VRL’s indeterminate ABO results as required by WASH’s own policies, and without consulting with Grand Strand’s blood bank about its ABO results that were not obtained for the purpose of donation. (Complaint ¶¶ 33, 35, 43). In doing so, WASH ignored VRL’s indeterminate and discrepant ABO results and labeled the donor as blood type O despite the absence of any reliable blood typing result based on a sample collected prior to the donor’s receiving emergency blood transfusions. (Complaint ¶¶ 32-35).

Mr. Holliman, who had type O blood, was matched with the donor’s lungs by UNOS. UNOS serves as the Organ and Transplant Network (“OPTN”) for the United States under a contract with the federal government. (Complaint ¶¶ 9, 25). Mr. Holliman’s physicians at the Medical University of South Carolina (“MUSC”) transplanted the donor’s lungs into him on November 27, 2018. (Complaint ¶ 21). Mr. Holliman began suffering serious complications during his transplant surgery and remained in critical condition afterwards. (Complaint ¶ 26). A few hours after the surgery was completed, another transplant hospital that received the donor’s pancreas notified WASH that it had tested the donor’s blood sample it received with the pancreas, and it discovered that the donor’s blood type had been incorrectly reported as type O when it was actually

type A. (Complaint ¶¶ 17-19; Pl.'s Motion to Compel at 2-3). WASH relayed this information to MUSC, and, shortly thereafter, MUSC tested the donor's blood sample that WASH had given it with the lungs, which had been collected by WASH after the samples tested by VRL and Grand Strand. (Complaint ¶¶ 29; Pl.'s Mot. to Compel at 3). MUSC's test results from its blood sample confirmed that the donor in fact had type A blood. (Complaint ¶ 29). Neither WASH nor MUSC tested this blood sample prior to Mr. Holliman's transplant. (Complaint ¶¶ 34, 45).

Type A blood is incompatible with type O blood. (Complaint ¶ 30). Therefore, Mr. Holliman's physicians transplanted ABO incompatible lungs into him. (Complaint ¶¶ 31, 40). Mr. Holliman never gained consciousness after his transplant and died the very next day because his body rejected the donor's ABO incompatible lungs. (Complaint ¶ 31). UNOS matched Mr. Holliman with the ABO incompatible lungs that were transplanted into him and caused his death. (Complaint ¶¶ 25, 37-38).

B. WASH Withholds Documents on the Basis of Peer Review Privilege.

The appeal arises out of Appellants' assertion of peer review privilege with regard to 335 pages of documents in WASH's possession relating to Mr. Holliman's death, and information sought during deposition testimony. (WASH's Mem. in Opp. to Pl.'s Mot. at 4; WASH's Mot. for Protective Order at 1). WASH and UNOS contend that the documents and information withheld are privileged under at least one of the following statutes: S.C. Code Ann. § 44-7-392, S.C. Code Ann. § 40-71-20, or Va. Code. Ann. § 8.01-581.17 (B)(c). (UNOS App. Br. at 11-16; WASH App. Br. at 3, 16, 27-30).

WASH is the OPO for South Carolina and is located in Charleston, South Carolina. (WASH's Amended Answer ¶ 3; Complaint ¶ 2). WASH provides organ and tissue recovery services for every organ donor in South Carolina. (WASH Amended Answer ¶¶ 3, 5). WASH is

not a hospital, nor is it a hospital's parent, subsidiary, health care system, committee, or physician practice. (Order at 5). This is undisputed.

WASH is also not an appointed committee of any kind, and it is certainly not a committee appointed by a state or local professional society to maintain the professional standards of the society. (Order at 4). WASH does not have a majority of eligible licentiates in the area it serves, South Carolina, and, in fact, does not have more than a handful of professional licentiates of any type. (Order at 4). WASH, therefore, is not a state or local professional society or an appointed committee of such a society. *See* S.C. Code Ann. § 40-71-20 (A). WASH, instead, is a South Carolina non-profit organization conducting business as the OPO for South Carolina.

UNOS is also not a hospital, a parent or subsidiary of a hospital, health care system, committee, or physician practice. UNOS is the Organ Procurement and Transplantation Network ("OPTN") for the United States. (Order at 2). UNOS is responsible for managing the national transplant waiting list, matching donors to recipients, maintaining the database that contains the data for every transplant in the United States, and monitoring every organ match in the country, including Mr. Holliman's. (Complaint ¶¶ 10, 25).

UNOS is headquartered in Richmond, Virginia, and it is the only OPTN for the entire country. (Complaint ¶ 9). Because UNOS serves as the OPTN for the whole country (Complaint ¶ 9), it is not a state or local professional society. In fact, UNOS is not a professional society of any type because it is not a medical organization with a majority of eligible licentiates in the area it serves, which includes the entire United States. (Complaint ¶ 9).

II. Procedural History

Mrs. Holliman filed a Notice of Intent to File Suit against WASH on July 17, 2019,

pursuant to S.C. Code Ann. § 15-79-125.¹ (Notice of Intent to File Suit). On July 30, 2019, Mrs. Holliman issued a subpoena for relevant documents to WASH, as permitted by S.C. Code Ann. § 15-79-125 (B). (Pl.’s Mot. to Compel at 3). Beginning its efforts to delay the progress of this case, WASH refused to produce any documents until ordered to do so by the Court. (Pl.’s Mot. to Compel at 3). WASH claimed it could not produce the subpoenaed documents because of privacy concerns, but it also refused to consent to the entry of any confidentiality order to address those purported concerns. (Pl.’s Mot. to Compel at 3). WASH filed a motion to quash, which was denied by the circuit court on July 23, 2020. (Form 4 Order on Mot. to Quash). WASH finally responded to Mrs. Holliman’s subpoena on August 7, 2020—more than a year after the subpoena was issued. (Pl.’s Mot. to Compel at 4). WASH provided a privilege log with its response indicating that 186 pages of documents were withheld from its production on a claim of “Peer Review, Quality Assurance/Quality Assessment.” (Pl.’s Mot. to Compel at 4).

Mrs. Holliman filed her complaint against WASH, UNOS, and MUSC on July 9, 2020. (Complaint). Following the filing of her complaint, Mrs. Holliman served her first set of interrogatories and requests for production on WASH on July 10, 2020. (Pl.’s Mot. to Compel at 4). WASH served responses to Mrs. Holliman’s discovery requests on August 28, 2020. (Pl.’s Mot. to Compel at 4). In its responses, WASH objected to numerous interrogatories and requests for production on the basis that they sought peer review materials. (Pl.’s Mot. to Compel at 4). Along with the discovery responses, WASH also provided an amended privilege log indicating that 195 pages of responsive documents were withheld on a claim of “Peer Review, Quality Assurance/Quality Assessment.” (Pl.’s Mot. to Compel at 4). WASH later amended its privilege

¹ An amended Notice of Intent to File Suit was filed on April 7, 2020, to include UNOS and MUSC.

log multiple times. (Pl.'s Mot. to Compel at 4-5). According to WASH's fourth amended privilege log, WASH has withheld at least 335 pages of documents as peer review privileged. (Order at 2; Pl.'s Suppl. Mem. in Supp. of Pl.'s Mot. to Compel, April 16, 2021, at 1-2).

WASH has asserted a peer review privilege to requests for information related to, among other things, WASH's non-conformance report for Mr. Holliman's donor; communications between WASH and the Centers for Medicare & Medicaid Services ("CMS") relating to a complaint survey CMS conducted at WASH in May 2019, which resulted in a Statement of Deficiencies issued by CMS to WASH; and communications between WASH and CMS relating to Mr. Holliman or the donor whose mistyped lungs he received. (Pl.'s Mot. to Compel., Feb. 5, 2021, at 3). These documents and communications are all directly related to this wrongful death case arising out of WASH's mistyping of the blood type of Mr. Holliman's organ donor, and WASH should not be permitted to conceal this crucial evidence.

During the deposition of Ms. Welker, a key WASH employee and defendant, WASH's counsel instructed her not to answer questions relevant to the existence of the purported peer review privilege, such as the participants of allegedly privileged meetings and whether WASH has conducted any investigations into the fatal blood typing error at issue in this case. (Pl.'s Resp. in Opp. to WASH's Motion for Protective Order at 3; Order at 1-2). Shortly after the deposition, WASH filed a protective order regarding Ms. Welker's deposition. (WASH's Mot. for Protective Order).

Mrs. Holliman filed motions to compel WASH to produce documents withheld as peer review privileged on November 18, 2020, and February 5, 2021. (Pl.'s Mot. to Compel; Pl.'s Mot. to Compel., February 5, 2021). Prior to the scheduled hearing on Mrs. Holliman's motions to compel and WASH's motion for a protective order, WASH provided the withheld materials to the

circuit court for *in camera* review. (Order at 2). Subsequently, just one hour before the hearing with the circuit court, WASH provided an amended privilege log that identified, for the first time, an additional one hundred pages of documents withheld on a claim of peer review privilege. (Email from WASH's counsel attaching WASH's Fourth Amended Privilege Log ; Pl.'s Suppl. Mem. in Supp. of Mot. to Compel, April 16, 2021, at 6). The circuit court held a hearing on April 13, 2021, during which it carefully considered arguments presented by counsel for WASH, UNOS, and Mrs. Holliman. (April 13, 2021, Hearing Transcript). The court also permitted the parties to submit additional briefs, which they did. (Order at 1; April 13, 2021, Hearing Transcript at 15-16; WASH's Suppl. Mem. in Opp. to Pl.'s Mot. to Compel, April 16, 2021; UNOS' Mot. for a Protective Order/Mem. in Opp. to Pl.'s Mot. to Compel, August 16, 2021; Pl.'s Suppl. Mem. in Supp. of Mot. to Compel, April 16, 2021).

On April 29, 2021, the circuit court entered an Order granting the motion to compel filed by Mrs. Holliman against WASH and denying Appellants' motions for protective orders (the "Order"). (Order at 7). Specifically, the Order held that WASH was not protected by South Carolina's peer review statutes because, under the plain language of the statutes, WASH is not a hospital entitled to protection under S.C. Code Ann. § 44-7-392, nor is WASH an "appointed committee which is formed to maintain professional standards of a state or local professional society" covered by S.C. Code Ann. § 40-71-10 *et seq.* (Order at 4-5). The circuit court also ruled that WASH's documents and communications are not protected by peer review privilege, even if WASH shared documents with entities that were subject to the peer review statute, because such documents and information are still subject to discovery pursuant to the plain language of S.C. Code Ann. §§ 40-71-20 (A) and 44-7-392(A)(3). (Order at 5). Finally, the circuit court held that WASH's documents are not protected by peer review privilege under Virginia state law and federal

law and declined to invoke a public policy exception to extend the peer review privilege beyond the plain language of the statutes enacted by the South Carolina Legislature. (Order at 6).

Concerning the portion of the Order related to whether the circuit court should extend peer review privilege under a public policy exception, the circuit court stated:

It is not this Court's place to change the meaning of a clear and unambiguous statute. Therefore, this Court declines to invoke the public policy exception to extend peer review privilege where the Legislature and the statutes at issue clearly did not do so Upon careful review, this Court finds that Defendant We Are Sharing Hope is not entitled to peer review privilege under South Carolina law, and this Court must effectuate the plain meaning of the statutes, rather than rely on the public policy exception to extent [sic] peer review privilege to new and unique entities.

(Order at 7) (citations omitted).

The circuit court directed WASH to produce, within 7 days, all of its documents withheld on a claim of peer review privilege and to reconvene the deposition of its employee, Ms. Welker, who had been improperly instructed not to answer questions during her deposition.² (Order at 7). WASH has not complied with the Order. Instead, in an effort to further delay this lawsuit, it has filed this interlocutory appeal. The circuit court carefully considered and rejected Appellants' arguments following a full hearing and extensive briefing. The Order is thorough and correct and should not be disturbed.

SUMMARY OF ARGUMENT

The first question before this Court is whether it should hear an interlocutory appeal of a circuit court's discovery order. Under South Carolina law and the precedents of its appellate

² Judge Cothran also examined South Carolina's peer review statutes to determine if Appellants can claim a privilege under them in connection with subsequent motions filed by Appellants regarding these same issues. Judge Cothran has indicated that he intends to grant Mrs. Holliman's motions to compel WASH and UNOS to produce documents previously withheld as peer review privileged and deny WASH's motion for a protective order. (Email from Judge Cothran's Law Clerk dated July 26, 2021).

Courts, the answer to that question is “no.”

If this Court hears this appeal, the first step for any question of statutory interpretation is to review the plain language of the statute itself. In this case, it is also where the inquiry should end. South Carolina law recognizes two peer review privileges: a hospital peer review privilege and a professional society peer review privilege. These two statutes concerning peer review privileges are clear and unambiguous. S.C. Code Ann. § 44-7-392 provides protection for documents and information acquired in the course of certain hospital proceedings; S.C. Code Ann. § 40-71-20 protects data and information acquired by certain appointed committees of state or local professional societies. WASH is neither a hospital nor an appointed committee of a state or local professional society. Even if WASH shared or acquired information from a hospital or appointed committee covered by S.C. Code Ann. §§ 44-7-392 or 40-71-20, such documents and information are still subject to discovery from WASH pursuant to the plain language of the statutes. Finally, the circuit court correctly determined that this case is governed by South Carolina law because Mr. Holliman’s ABO incompatible transplant and death occurred in South Carolina.

STANDARD OF REVIEW

The determination of whether a communication is privileged and immune from discovery is a matter for the trial judge to decide after a preliminary inquiry into all the facts and circumstances. *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). The trial judge’s decision will not be overturned absent an abuse of discretion. *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 292, 692 S.E.2d 526, 529 (2010). An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). Questions of law are subject to de novo review on appeal. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ARGUMENT

This Court should dismiss this appeal or uphold the well-reasoned Order of the circuit court. First, this is an attempt to appeal an interlocutory discovery order. Second, S.C. Code Ann. §§ 44-7-392 and 40-71-20 are plain and unambiguous, and they do not apply to WASH. Appellants' arguments in support of a public policy exception and adoption of Virginia peer review law strain credulity, and are a desperate attempt to delay this lawsuit and to shield crucial information related to the communications and investigation following Mr. Holliman's wrongful death.

I. Parties May Not Immediately Appeal Interlocutory Discovery Orders.

The circuit court's Order is not appealable at this time because it is an interlocutory decision, and the underlying case is ongoing. The circuit court ordered WASH to respond to Mrs. Holliman's discovery and provide deposition testimony previously withheld. (Order at 7). Under S.C. Code Ann. § 14-3-330, orders directing a party to participate in discovery are interlocutory and not directly appealable. *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003) (“[W]e note an order compelling discovery does not ordinarily involve the merits of the case and may not be appealed.”); *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) (“This discovery order is not a final order because it leaves some further act to be done by the court before the rights of the parties in an enforcement proceeding are determined.”); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (“[T]he fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.”); *Brown v. County of Berkeley*, 366 S.C. 354, 361, 622 S.E. 2d 533, 537 (2005) (“It is well settled that an

interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right.”).

UNOS fails to cite any statutory law authorizing its immediate appeal of the interlocutory discovery order, and WASH claims its appeal is authorized by S.C. Code Ann. § 44-7-394. Section 44-7-394 (C) makes court orders immediately appealable only for a “hospital or affected person.” Under the plain language of the applicable statutes, these Appellants are neither. WASH nor UNOS claim to be a hospital and could not credibly do so. Section 44-7-394 (B) explains that “[f]or purposes of this section an ‘affected person’ means a person, other than a patient, who is a subject of a proceeding enumerated in Section 44-7-392(A)(1).” Section (A)(1) in turn narrowly expands the definition of “affected person” to include:

All proceedings of, and all data, documents, records, and information prepared or acquired by, a hospital licensed under this article, its parent, subsidiaries, health care system, committees, whether permanent or ad hoc, including the hospital's governing body, or physician practices owned by the hospital (its parent or subsidiaries), relating to the following are confidential”

S.C. Code Ann. § 44-7-392(A)(1)(emphasis added). Neither WASH nor UNOS are a hospital, a hospital parent, a hospital subsidiary, a health care system, a hospital committee, a hospital’s governing body, or a physician practice. The lone exception in the statute that allows a hospital or a closely related entity to take an immediate appeal simply does not apply to WASH or UNOS.

Appellants are not entitled to appeal the circuit court’s discovery order under any statute. Thus, the interlocutory Order is not appealable, and this appeal should be dismissed.

II. WASH is Not Entitled to Peer Review Privilege Under South Carolina’s Clear and Unambiguous Peer Review Statutes.

There is no ambiguity in South Carolina’s hospital and professional society peer review statutes. Consequently, those statutes must be enforced as written. The plain, unambiguous language of Section 44-7-392 applies to certain proceedings of *hospitals*, or the hospital’s

affiliated entities. “South Carolina’s Legislature enacted S.C. Code Ann. § 44-7-392 to separately govern hospital peer review committees.” *Howell v. Holland*, No. 4:13-cv-295-RBH-TER, 2014 WL 958277, at *2 (D.S.C. Mar. 10, 2014). WASH is not a hospital. (Order at 5). That fact is not in dispute. Because WASH is not a hospital, the circuit court correctly determined that WASH’s documents and any knowledge Ms. Welker has about WASH’s investigations related to this case are not privileged under Section 44-7-392.

WASH is also not subject to South Carolina’s professional society peer review statute, S.C. Code Ann. § 40-71-20. Section 40-71-20(A) protects from discovery “data and information acquired by the committee referred to in Section 40-71-10 in the exercise of its duties” The committee to which Section 40-71-10 refers is:

[A]n appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section or a committee appointed by the Department of Mental Health, or a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death”

S.C. Code Ann. § 40-71-10 (B) (emphasis added).

Section 40-71-10 (A) defines professional society as follows:

‘Professional society’ as used in this chapter includes legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutical, and engineering organizations having as members at least a majority of the eligible licentiates in the area served by the particular society and any foundations composed of members of these societies.

Thus, Section 40-71-20 applies to documents acquired by committees appointed by professional societies, such as the South Carolina Medical Association and the South Carolina Bar Association, to maintain the professional standards of the society. The South Carolina Commission on Lawyer Conduct is an example of an appointed committee of a professional society subject to Section 40-71-20.

The plain language of Section 40-71-20 protects only committees appointed by a state or local professional society to maintain the professional standards of the society. WASH is a South Carolina non-profit corporation that does business as an organ procurement organization and procures and distributes donor organs. (Order at 4). It is not an appointed committee of any kind, and it is certainly not a committee appointed by a professional society to maintain the professional standards of the society. (Order at 4). WASH does not have a majority of eligible licentiates in the area served by it—South Carolina. (Order at 4). In fact, WASH does not have more than a handful of professional licentiates of any type.

The circuit court correctly determined the statute is to be construed in accordance with the legislative intent. (Order at 3, 6-7). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)); *see also Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 122, 754 S.E.2d 486, 491 (2014).

Section 40-71-20 is clear, and there is nothing in that Section that extends peer review privilege to WASH.

III. The Court Should Not Invoke a “Public Policy Exception” Because the Expressed Intent of the Legislature and the Statutes at Issue are Clear.

Because South Carolina’s peer review statutes are plain and unambiguous, this Court need look no further and should decline to invoke a public policy exception that is inconsistent with the Legislature’s intent. In an apparent acknowledgment that it is not a hospital or appointed

committee subject to either of South Carolina's peer review statutes, WASH argues that this Court should look beyond the plain language of the statutes and craft a public policy exception for it to encourage peer review. (WASH App. Br. at 16-17). WASH also points out that all fifty States and the District of Columbia recognize some form of medical peer review privilege. (WASH App. Br. at 24). But the issue on appeal is not whether peer review privilege plays an important role in promoting patient health and safety. Nor is the issue about the scope of peer review privileges in other states. Rather, the Court is asked whether the South Carolina Legislature's intent can be ascertained and effectuated by the plain language of the statute.³ "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995)

WASH overlooks the fact that the Legislature reviewed and amended South Carolina's professional society peer review statute in 2012 and expanded the scope of peer review for hospitals to include the hospital's affiliated entities and its committees with the enactment of S.C. Code Ann. § 44-7-392. The South Carolina Legislature could have written the statutes to expand peer review privilege to include other entities in the health care sector, but the South Carolina Legislature chose to leave application of peer review to a narrow class of entities or individuals. The Legislature chose the precise wording in the peer review statutes for good reason. "Privileges are not favored under South Carolina law." *Felder v. Wyman*, 139 F.R.D. 85, 88 (D.S.C. 1991).

³ Judge McCaslin emphasized that the court could not step into the place of the Legislature regardless of what other peer review statutes other states had implemented. Judge McCaslin informed the parties during the hearing on April 13, 2021: "I understand what you're telling me and I know that [] you've got all of these other states that have their own laws, and basically it's public policy and I understand that, but that doesn't mean that they fit in with South Carolina law, and I'm bound by South Carolina law. This Judge isn't here to make new law, I'll put it to you that way." (April 13, 2021, Hearing Transcript 19:14-20).

The 2012 amendments to South Carolina's peer review statutes further disprove WASH's public policy argument.

WASH is asking this Court to rewrite the statute to recognize peer review for any entity involved in the medical field in any way that appoints its own review committee. Without the limitations imposed by the statute, a myriad of organizations could set up an appointed committee to shield information in their possession from discovery. That rendering would be inconsistent with the Legislature's intent, and it would be bad policy. It would also be counter to authority recognizing that "[t]he scope of discovery in South Carolina is generally broad[.]" and privileges are strictly construed. *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 166-67, 829 S.E.2d 707, 712 (2019) (citations omitted). Furthermore, interpretive additions to the plain language of a statute, like the ones proposed by WASH in this instance, are strongly disfavored in South Carolina. "The court has no right to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy." *Consumer Advocate for the State of S.C. v. S.C. Dep't of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) (quoting *Kinard v. Moore*, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)).

The public policy of South Carolina is that parties are entitled to discovery, and limitations to that entitlement are narrowly construed. The South Carolina Legislature has balanced the competing interests of a party's entitlement to discovery with its desire to protect internal hospital reviews. It did not extend that protection to any entity that cloaks itself with the term "medical procedures," and this Court should honor that decision.

IV. Even if WASH Shared or Obtained Materials From an Entity Subject to Peer Review, Materials and Information in WASH's Possession are Not Protected Under South Carolina's Peer Review Statutes.

Both WASH and UNOS contend that materials which WASH shared with or obtained from Grand Strand and UNOS's MPSC should be afforded protection under South Carolina's peer review statutes because WASH chose to share those documents. (UNOS App. Br. at 10, 12, 15-70-; WASH App. Br. at 17, 27-29). However, the hospital and professional society peer review statutes in South Carolina expressly state that documents and information available from sources, other than the hospital or committee protected by the statute, are not immune from discovery from such other sources simply because they were presented to the hospital or committee. S.C. Code Ann. § 40-71-20 (A) states:

Information, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during the committee proceedings.

Similarly, S.C. Code Ann. § 44-7-392(A)(3) states:

Data, documents, records, or information which are otherwise available from original sources are not confidential and are not immune from discovery from the original source under this section or use in a civil action merely because they were acquired by the hospital.

The South Carolina Supreme Court has previously explained that it "interpret[s] the 'otherwise available' language [of Section 40-71-20] to mean that information that is available from a source other than the committee does not become privileged simply by being acquired by the review committee. Accordingly, the statute does not protect information if obtained from alternative sources." *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 62, 439 S.E.2d 257, 260 (1993). Therefore, even if WASH chose to share some of its documents and information with a hospital and/or an appointed committee that, unlike WASH or UNOS, is subject to a peer review statute, such documents and information are still subject to discovery from WASH pursuant to the plain

language of the statutes. Furthermore, even if WASH personnel acquired privileged documents or information from a hospital, in this case Grand Strand, such information is still subject to discovery from WASH, even though it might not be subject to discovery directly from Grand Strand. WASH complains that this is illogical, but this is the system the Legislature enacted. “[B]oth statutes [S.C. Code Ann. §§ 40-71-20 (A) and 44-7-392(A)] explicitly state that documents available from original sources are not confidential and are not immune from discovery.” *IntegraMed Am., Inc. v. Patton*, 298 F.R.D. 326, 331-32 (D.S.C. 2014).

The logic of the statutes and the South Carolina Supreme Court’s rulings are clear and unassailable. A party, such as WASH, that is not protected by the peer review statute cannot obtain that privilege by simply sharing documents with or receiving them from a hospital or committee that is protected.

V. South Carolina’s Peer Review Statutes Do Not Apply to the Materials Withheld by WASH.

UNOS and WASH appeal to this Court to apply Virginia’s peer review law to the documents and testimony withheld by WASH. (UNOS App. Br. at 8-12; WASH App. Br. at 27-28). WASH seeks to protect documents it created at the request of UNOS, which WASH avers is subject to Virginia’s peer review law. (WASH App. Br. at 27). The Virginia peer review statute, however, does not apply to WASH. UNOS’s request for a peer review analysis does not confer any particular protection on WASH’s materials.

Turning to UNOS, as a preliminary matter, it lacks standing to appeal the circuit court’s Order. Rule 201(b) limits the ability to appeal to “[o]nly a party aggrieved by an order, judgment, sentence, or decision[.]” Rule 201, SCACR. This court has previously explained that under Rule 201(b), “[t]he word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” *Beaufort Realty Co. v.*

Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). In this instance, Mrs. Holliman filed the underlying motion to compel against WASH, and the circuit court held that WASH is not entitled to claim peer review privilege. The circuit court ordered WASH, not UNOS, to produce discovery materials and deposition testimony. UNOS is not aggrieved by the circuit court's Order.

Nevertheless, UNOS posits that Virginia's peer review statute, Va. Code Ann. § 8.01-581.17, should protect its documents in WASH's possession from discovery because UNOS conducted the peer review in question at its headquarters in Virginia.⁴ (UNOS App. Br. at 8). There is no evidence in the record regarding the location where UNOS's review took place. Moreover, UNOS is asking this Court to adopt its preferred choice of law rule for privileges. Under UNOS's proposed rule, a party could potentially cherry-pick the privilege law that applies by conducting a peer review outside of South Carolina and in the state with an advantageous peer review statute, regardless of where the underlying tort occurred. That would create an absurd result.

UNOS admits that South Carolina adheres to the traditional choice of law rules set forth in the Restatement (First) Conflict of Laws. (UNOS App. Br. at 7). *See also, e.g., Menezes v. WL Ross & Co., LLC*, 403 S.C. 522, 530, 744 S.E.2d 178, 182 (2013); *Witt v. Am. Trucking Associations, Inc.*, 860 F. Supp. 295, 300 (D.S.C. 1994). Section 597 of the Restatement (First) states that "[t]he law of the forum determines the admissibility of a particular piece of evidence." Restatement (First) Conflict of Laws § 597 (1934). Under traditional choice of law rules, matters affecting the parties' substantive rights are determined by *lex loci*, law of the situs of the claim, and procedural rights are determined by *lex fori*, the law of the forum. *Nash v. Tindall Corp.*, 375

⁴ UNOS does not fall within any of the three specific types of committees or groups covered by Virginia's peer review statute. *See* Va. Code Ann. § 8.01-581.17(B).

S.C. 36, 39, 650 S.E.2d 81, 83 (Ct. App. 2007) (citing *McDaniel v. McDaniel*, 243 S.C. 286, 289, 133 S.E.2d 809, 811 (1963)). The First Restatement comports with the common law rule that “questions of evidence, including privileges, [are] ‘procedural’ and governed by the law of the forum.” § 5435 State Law Proviso—Choice of Law, 23A Fed. Prac. & Proc. Evid. § 5435 (1st ed). “[T]he substantive law governing a tort action is determined by the *lex loci delicti*, the law of the state in which the injury occurred.”⁵ *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001) (citations omitted). Thus, the territorial approach of South Carolina’s choice of law rules concentrate on *the location* where the particular event at issue took place or the law of the forum. As the circuit court correctly ruled, the issue of whether the documents and communications related to Mr. Holliman’s wrongful death are subject to peer review privilege is governed by South Carolina law because Mr. Holliman’s ABO incompatible transplant and death occurred in South Carolina, and this case is proceeding in South Carolina. (Order at 6).

UNOS nevertheless disregards South Carolina’s traditional choice of law rules and invites the Court to apply the Restatement (Second) Conflict of Laws for a choice of law analysis for privileges. (UNOS App. Br. at 7). *See* Restatement (Second) of Conflict of Laws § 139(1)-(2) (1971). South Carolina has never adopted the choice of law test found in the Second Restatement that UNOS proposes. *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 145, 494 S.E.2d 449, 456 (Ct. App. 1997); *Menezes*, 403 S.C. 522, 530. Even if this Court applied the Second Restatement, which it should not, South Carolina law still applies because it has the most

⁵ This interpretation is consistent with federal law that applies the law of the forum state to attorney-client privilege determinations in diversity cases. *See, e.g., Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 282 n.5 (4th Cir. 2000) (noting that “the availability of an evidentiary privilege is governed by the law of the forum state”); *see also Hege v. Aegon USA, LLC*, 2011 WL 1791883, at *3 (D.S.C. May 10, 2011); *First S. Bank v. Fifth Third Bank, N.A.*, 2013 WL 1840089, at *3 (D.S.C. May 1, 2013).

significant relationship with the communications and materials at issue.

UNOS cites to the report and recommendation in *Wellin v. Wellin*, No. 2:13-CV-1831-DCN, 2016 WL 7626536 (D.S.C. Mar. 8, 2016) to support application of the Second Restatement (UNOS App. Br. at 7), rather than the district court's order in *Wellin v. Wellin*, 211 F. Supp. 3d 793 (D.S.C. 2016), *order clarified*, No. 2:13-CV-1831-DCN, 2017 WL 3620061 (D.S.C. Aug. 23, 2017). In *Wellin*, the special master determined that New York had the significant relationship to the communications at issue involving a third party. However, the district court rejected the special master's analysis, instead finding that South Carolina, not New York, had the significant relationship with the communications. *Wellin*, 211 F. Supp. at 805. The district court also determined that a location test was "too equivocal to be of any use" for emails and phone calls. *Id.* In lieu of focusing on the location of the alleged privileged communications, the district court examined the state where the relationship between the parties was centered under the guidance of the Second Restatement and concluded that the parties' relationship was centered in South Carolina. *Id.*

Here, UNOS's relationship with WASH, MUSC, Grand Strand, the donor, and Mr. Holliman is clearly centered in South Carolina. WASH and MUSC are both located and incorporated in South Carolina. WASH created the documents and was involved in the communications at issue. UNOS matched Mr. Holliman, a South Carolina citizen, with the ABO incompatible lungs of a South Carolina citizen, who was hospitalized at Grand Strand in Myrtle Beach. Those incompatible lungs were then transplanted into Mr. Holliman and caused his death in South Carolina. Because South Carolina is both the forum state and the state with the most significant relationship to the communications and materials at issue, it is clear that South Carolina law applies. *See Wellin*, 211 F. Supp. at 806 (finding that it was unnecessary to conduct additional

Second Restatement analysis if the significant relationship can be established).

UNOS sets forth the Second Restatements factors for a forum to consider in determining whether to admit evidence. (UNOS App. Br. at 7). *See* Restatement (Second) of Conflict of Laws § 139 (1971). Those factors are not applicable here, even if the Second Restatement did apply, because South Carolina has the significant relationship to the communications and materials at issue. However, those factors still weigh in favor of admitting the evidence. First, the nature of the contacts with South Carolina is well established. Other than UNOS, the relevant parties are located in South Carolina, and all of the relevant events leading to Mr. Holliman's death took place in South Carolina. Second, the evidence sought from WASH is unquestionably material to the claims related to Mr. Holliman's wrongful death. Third, UNOS should not be allowed to rely on a Virginia peer review statute to shield materials in WASH's possession from discovery. Finally, it would be unfair to Mrs. Holliman for the Court to allow UNOS, which is a party to this action, to conceal crucial evidence.⁶ Under either the traditional choice of law rules or the Second Restatement analysis, South Carolina law governs whether the documents and information in WASH's possession are privileged.

UNOS is not entitled to claim peer review privilege as to documents in WASH's protection under South Carolina peer review statutes. UNOS is neither a hospital nor an appointed committee which is formed to maintain professional standards of a state or local professional society. UNOS unconvincingly maintains that its Membership and Professional Standards Committee ("MPSC") qualifies as an appropriate committee under Section 40-71-10. (UNOS App. Br. at 12). It does not. MPSC is not an appointed committee formed to maintain the standards of a *state or local*

⁶ According to the Second Restatement, when determining fairness, a forum is more likely to recognize privilege claimed by third parties than if the privilege is claimed by a party to the action. *See* Restatement (Second) of Conflict of Laws § 139 (1971).

professional society. Moreover, UNOS is not a medical organization having as members a majority of the eligible licentiates in the area served by it, which is the entire United States. Lastly, and as explained above, documents in WASH's possession are subject to discovery from WASH regardless of whether they were shared with a hospital or committee that is covered by a peer review statute.

UNOS argues that it is unfair that the hospital peer review privilege is extended to MUSC but not to UNOS or WASH. (UNOS App. Br. at 10). That is a fight UNOS must take up with the Legislature, not this Court. "The narrow construction applied to a recognized privilege suggests no judicial inclination on the part of the South Carolina Supreme Court to expand the number, type, or reach of privileges recognized in this state absent legislative direction." *Felder v. Wyman*, 139 F.R.D. 85, 88 (D.S.C. 1991).

CONCLUSION

S.C. Code Ann. §§ 40-71-20 and 44-7-392 are clear. Neither WASH nor UNOS are covered by those statutes. This Court should affirm the judgment of the circuit court.

Respectfully submitted,

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October 1, 2021

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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 Case No: 2021-000487

Trial Court Case 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.

PROOF OF SERVICE

This is to certify that I have this date caused to be served a true and correct copy of the foregoing *Respondent's Initial Brief and Respondent's Designations of Matter to be Included in the Record on Appeal* on counsel in this action by email, pursuant to the Supreme Court's Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules dated August 25, 2021, by electronic mail, addressed as follows:

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SC Court of Appeals

Via E-Filing

October 1, 2021

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211


RE: Michelle Cha Holliman, individually and as personal representative of the estate of Allen B. Holliman v. We Are Sharing Hope SC, Medical University of South Carolina, United Network for Organ Sharing, Jacqueline Honig, M.D., and Darla Welker
C/A No. 2020-CP-10-02902, Charleston CP
Appellate Case No. 2021-000487

Dear Ms. Kitchings:

Enclosed please find for filing with your office the Initial Brief, Designation of Matter to be Included in the Record on Appeal and Proof of Service on behalf of the Respondent Michelle Cha Holliman, individually and as Personal Representative of the Estate of Allen B. Holliman.

All counsel of record are being served with same via electronic mail.

Sincerely,



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Exhibit I

**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 brief¹, 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

¹The 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 *Overruled 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 litigation 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 undertook 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. Cardozo⁶ 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 Oser 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 Guisseppi 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 lacuna⁷ 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. §15-3-150¹⁰, 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 of 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

¹⁰The 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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We Are Sharing Hope SC

October 21, 2021

Exhibit J



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

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Ykeiah Lawrence , plaintiff, et al VS We Are Sharing Hope Sc , defendant, et al

Case Number:	2021CP1002033	Court Agency:	Common Pleas	Filed Date:	05/03/2021
Case Type:	Common Pleas	Case Sub Type:	Medical Malpract 220	File Type:	Mediator - Jury
Status:	Pending/ADR	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Lawrence, Ykeiah	ADR/Alternative Dispute Resolution (Workflow)	Action		11/29/2021-14:55		
Lawrence, Ykeiah	NEF(08-05-2021 10:32:50 AM) Notice/Notice of Appearance	Filing		08/05/2021-10:33		
Lawrence, Ykeiah	Notice/Notice of Appearance	Filing		08/05/2021-10:32		
Lawrence, Ykeiah	NEF(08-05-2021 10:29:30 AM) Notice/Notice of Appearance	Filing		08/05/2021-10:29		
Lawrence, Ykeiah	Notice/Notice of Appearance	Filing		08/05/2021-10:29		
United Network For Organ Sharing	NEF(06-17-2021 04:47:42 PM) Answer/Answer and Jury Deman...	Filing		06/18/2021-06:24		
United Network For Organ Sharing	NEF(06-17-2021 04:50:34 PM) Motion/Dismiss	Filing		06/18/2021-06:21		
United Network For Organ Sharing	NEF(06-17-2021 04:54:52 PM) Memo/Memo In Support	Filing		06/18/2021-06:20		
United Network For Organ Sharing	Memo In Support of Motion to Dismiss	Filing		06/17/2021-16:54		
United Network For Organ Sharing	Motion/Dismiss	Motion		06/17/2021-16:50		
United Network For Organ Sharing	Answer & Jury Trial Demanded	Filing		06/17/2021-16:47		
We Are Sharing Hope Sc	NEF(06-07-2021 04:58:18 PM) Notice/Notice of Appearance	Filing		06/08/2021-08:34		
We Are Sharing Hope Sc	Notice of Appearance Atty Jennings & Atty Craig	Filing		06/07/2021-16:58		
We Are Sharing Hope Sc	Answer to Complaint	Filing		06/07/2021-16:58		
Welke, Karl	NEF(05-25-2021 10:49:16 AM) Notice/Notice of Appearance	Filing		05/25/2021-11:00		
Welke, Karl	Notice/Notice of Appearance	Filing		05/25/2021-10:49		
Welke, Karl	Answer & Jury Trial Demanded	Filing		05/25/2021-10:49		
United Network For Organ Sharing	NEF(05-07-2021 01:19:39 PM) Service/Acceptance Of Servic...	Filing		05/07/2021-15:01		
United Network For Organ Sharing	Acceptance Of Service on United Network for Organ Sharing on	Filing		05/07/2021-13:19		
United Network For Organ Sharing	NEF(05-07-2021 01:16:39 PM) Notice/Notice of Appearance	Filing		05/07/2021-13:17		
United Network For Organ Sharing	Notice/Notice of Appearance	Filing		05/07/2021-13:16		
Lawrence, Ykeiah	NEF(05-04-2021 05:54:46 PM) Service/Acceptance Of Servic...	Filing		05/05/2021-08:41		
Lawrence, Ykeiah	Acceptance Of Service on Atrium Health Inc	Filing		05/04/2021-17:54		
Lawrence, Ykeiah	Acceptance Of Service on Karl Welke	Filing		05/04/2021-17:54		
Lawrence, Ykeiah	Acceptance Of Service on We Are Sharing Hope Sc	Filing		05/04/2021-17:54		
Lawrence, Ykeiah	Acceptance Of Service on Jacqueline Honig	Filing		05/04/2021-17:54		
Lawrence, Ykeiah	Acceptance Of Service on Darla Welker	Filing		05/04/2021-17:54		
Lawrence, Ykeiah	Summons & Complaint	Filing		05/03/2021-14:55		

Exhibit K

**U.S. District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE #: 2:21-cv-01242-BHH**

Patterson v. We Are Sharing Hope SC et al
Assigned to: Honorable Bruce Howe Hendricks
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 04/26/2021
Jury Demand: Both
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

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Jean Marie Jennings
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Date Filed	#	Docket Text
04/26/2021	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 402 receipt number 0420-9800607.), filed by Joe Patterson. Service due by 7/26/2021 (Attachments: # <u>1</u> Exhibit A: Statement of Deficiencies). (vdru,) (Entered: 04/27/2021)
04/26/2021	<u>2</u>	Local Rule 26.01 Answers to Interrogatories by Joe Patterson.(vdru,) (Entered: 04/27/2021)
04/26/2021	<u>3</u>	Summons Issued as to We Are Sharing Hope SC. (vdru,) (Entered: 04/27/2021)
04/26/2021	<u>4</u>	Summons Issued as to United Network for Organ Sharing. (vdru,) (Entered: 04/27/2021)
04/26/2021	<u>5</u>	Summons Issued as to Elizabeth Davies, MD. (vdru,) (Entered: 04/27/2021)
04/26/2021	<u>6</u>	Summons Issued as to Jacqueline Honig, MD. (vdru,) (Entered: 04/27/2021)
04/26/2021	<u>7</u>	Summons Issued as to Darla Welker. (vdru,) (Entered: 04/27/2021)
05/03/2021	<u>10</u>	ACCEPTANCE OF SERVICE OF COMPLAINT by Joe Patterson. Jacqueline Honig, MD served on 4/30/2021, answer due 5/21/2021; We Are Sharing Hope SC served on 4/30/2021, answer due 5/21/2021; Darla Welker served on 4/30/2021, answer due 5/21/2021. (Attachments: # <u>1</u> Acceptance of Service on Defendant We Are Sharing Hope SC, # <u>2</u> Acceptance of Service on Defendant Jacqueline Honig, M.D., # <u>3</u> Acceptance of Service on Defendant Darla Welker)(Moylan, John) (Entered: 05/03/2021)
05/03/2021	<u>11</u>	ACCEPTANCE OF SERVICE OF COMPLAINT by Joe Patterson. Elizabeth Davies, MD served on 5/3/2021, answer due 5/24/2021. (Attachments: # <u>1</u> Acceptance of Service on Defendant Elizabeth Davies, M.D.)(Moylan, John) (Entered: 05/03/2021)
05/07/2021	<u>12</u>	NOTICE of Appearance by Donald Jay Davis, Jr on behalf of Elizabeth Davies, MD (Davis, Donald) (Entered: 05/07/2021)
05/07/2021	<u>13</u>	MOTION to Appear Pro Hac Vice by Sara FitzPatrick Reynolds (Filing fee \$ 350 receipt

		number 0420-9830059) by Elizabeth Davies, MD. Response to Motion due by 5/21/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Affidavit) Proposed order is being emailed to chambers with copy to opposing counsel.(Davis, Donald) (Entered: 05/07/2021)
05/07/2021	<u>14</u>	ACCEPTANCE OF SERVICE OF COMPLAINT by Joe Patterson. United Network for Organ Sharing served on 5/7/2021, answer due 5/28/2021. (Attachments: # <u>1</u> Acceptance of Service on Defendant United Network for Organ Sharing)(Moylan, John) (Entered: 05/07/2021)
05/10/2021	<u>15</u>	TEXT ORDER granting <u>13</u> Motion to Appear Pro Hac Vice. Sara F. Reynolds, who represents Elizabeth Davies, MD, is granted admission pro hac vice in this case. Entered at the Direction of The Honorable Bruce Howe Hendricks on 5/10/2021. (vdru,) (Entered: 05/10/2021)
05/21/2021	<u>17</u>	LETTER EXTENDING TIME TO ANSWER Darla Welker answer due 6/5/2021; We Are Sharing Hope SC answer due 6/5/2021; Jacqueline Honig, MD answer due 6/5/2021. (Jennings, Jean) (Entered: 05/21/2021)
05/24/2021	<u>18</u>	LETTER EXTENDING TIME TO ANSWER Elizabeth Davies, MD answer due 6/8/2021. (Davis, Donald) (Entered: 05/24/2021)
05/27/2021	<u>19</u>	LETTER EXTENDING TIME TO ANSWER United Network for Organ Sharing answer due 6/11/2021. (Gresh, Jack) (Entered: 05/27/2021)
06/07/2021	<u>20</u>	ANSWER to <u>1</u> Complaint by Jacqueline Honig, MD, We Are Sharing Hope SC, Darla Welker.(Jennings, Jean) (Entered: 06/07/2021)
06/07/2021	<u>21</u>	Local Rule 26.01 Answers to Interrogatories by Jacqueline Honig, MD, We Are Sharing Hope SC, Darla Welker.(Jennings, Jean) (Entered: 06/07/2021)
06/08/2021	<u>22</u>	CONFERENCE AND SCHEDULING ORDER Rule 26(f) Conference Deadline 6/29/2021, 26(a) Initial Disclosures due by 7/13/2021, Rule 26 Report due by 7/13/2021, Motions to Amend Pleadings due by 8/3/2021, Plaintiffs ID of Expert Witness due by 9/2/2021, Defendants ID of Expert Witnesses Due by 10/4/2021, Records Custodian Affidavit due by 10/4/2021, Discovery due by 12/3/2021, Motions due by 1/3/2022, Jury Selection Deadline 4/4/2022, Mediation Due by 12/3/2021, Signed by Honorable Bruce Howe Hendricks on 6/8/2021. (jbry,) (Entered: 06/08/2021)
06/08/2021	<u>23</u>	MEDIATION ORDER Mediation Due by 12/3/2021, Signed by Honorable Bruce Howe Hendricks on 6/8/2021. (jbry,) (Entered: 06/08/2021)
06/08/2021	<u>24</u>	ANSWER to <u>1</u> Complaint by Elizabeth Davies, MD.(Davis, Donald) (Entered: 06/08/2021)
06/08/2021	<u>25</u>	Local Rule 26.01 Answers to Interrogatories by Elizabeth Davies, MD.(Davis, Donald) (Entered: 06/08/2021)
06/11/2021	<u>27</u>	MOTION to Dismiss by United Network for Organ Sharing. Response to Motion due by 6/25/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support, # <u>2</u> Exhibit OPTN Charter, # <u>3</u> Exhibit UNOS IRS Form 990)No proposed order.(Gresh, Jack) (Entered: 06/11/2021)
06/11/2021	<u>28</u>	ANSWER to <u>1</u> Complaint by United Network for Organ Sharing.(Gresh, Jack) (Entered: 06/11/2021)
06/11/2021	<u>29</u>	Local Rule 26.01 Answers to Interrogatories by United Network for Organ Sharing.

		(Gresh, Jack) (Entered: 06/11/2021)
06/25/2021	<u>31</u>	RESPONSE in Opposition re <u>27</u> MOTION to Dismiss Response filed by Joe Patterson.Reply to Response to Motion due by 7/2/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> Exhibit 1 - UNOS' Memo in Support of Motion to Dismiss (Related Case), # <u>2</u> Exhibit 2 - Order Denying UNOS' Motion to Dismiss (Related Case))(Dinkins, Mary) (Entered: 06/25/2021)
06/25/2021	<u>32</u>	MOTION to Appear Pro Hac Vice by Ashley Brooke Tipton (Filing fee \$ 350 receipt number 0420-9926643) by Elizabeth Davies, MD. Response to Motion due by 7/9/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing, # <u>2</u> Exhibit Application/Affidavit for Pro Hac Vice Admission)Proposed order is being emailed to chambers with copy to opposing counsel.(Davis, Donald) (Entered: 06/25/2021)
06/28/2021	<u>33</u>	TEXT ORDER granting <u>32</u> Motion to Appear Pro Hac Vice. Ashley Tipton, who represents Elizabeth Davies, MD, is granted pro hac vice admission in this case. Entered at the Direction of The Honorable Bruce Howe Hendricks on 6/28/2021. (vdru,) (Entered: 06/28/2021)
06/30/2021	<u>34</u>	MOTION to Dismiss for Lack of Jurisdiction by Elizabeth Davies, MD. Response to Motion due by 7/14/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support, # <u>2</u> Exhibit 1 - Affidavit of James Michael Millis, M.D., M.B.A., # <u>3</u> Exhibit 2 - Notice of Intent to File Suit Against Elizabeth Davies, M.D., # <u>4</u> Affidavit Affidavit of Elizabeth Davies, M.D.)No proposed order.(Davis, Donald) (Entered: 06/30/2021)
07/02/2021	<u>35</u>	REPLY to Response to Motion re <u>27</u> MOTION to Dismiss Response filed by United Network for Organ Sharing. (Gresh, Jack) (Entered: 07/02/2021)
07/12/2021	<u>36</u>	MOTION to Stay <i>Discovery</i> by Elizabeth Davies, MD. Response to Motion due by 7/26/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Davis, Donald) (Entered: 07/12/2021)
07/13/2021	<u>37</u>	Rule 26(f) Report by Joe Patterson.(Dinkins, Mary) (Entered: 07/13/2021)
07/13/2021	<u>38</u>	Rule 26 Outline of Discovery Plan by Joe Patterson.(Dinkins, Mary) (Entered: 07/13/2021)
07/13/2021	<u>39</u>	Rule 26(f) Report by We Are Sharing Hope SC. (Attachments: # <u>1</u> Main Document, # <u>2</u> Main Document, # <u>3</u> Main Document)(Jennings, Jean) (Entered: 07/13/2021)
07/13/2021	<u>40</u>	Rule 26(f) Report by Elizabeth Davies, MD.(Davis, Donald) (Entered: 07/13/2021)
07/13/2021	<u>41</u>	Rule 26 Outline of Discovery Plan by Elizabeth Davies, MD. (Attachments: # <u>1</u> Proposed Order)(Davis, Donald) (Entered: 07/13/2021)
07/13/2021	<u>42</u>	Rule 26(f) Report by United Network for Organ Sharing.(Gresh, Jack) (Entered: 07/13/2021)
07/13/2021	<u>43</u>	Rule 26 Outline of Discovery Plan by United Network for Organ Sharing.(Gresh, Jack) (Entered: 07/13/2021)
07/14/2021	<u>44</u>	RESPONSE in Opposition re <u>34</u> MOTION to Dismiss for Lack of Jurisdiction Response filed by Joe Patterson.Reply to Response to Motion due by 7/21/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u>

		Exhibit 1 - Dr. Davies' Rule 26(a)(1) Initial Disclosures)(Dinkins, Mary) (Entered: 07/14/2021)
07/21/2021	<u>45</u>	REPLY to Response to Motion re <u>34</u> MOTION to Dismiss for Lack of Jurisdiction Response filed by Elizabeth Davies, MD. (Davis, Donald) (Entered: 07/21/2021)
07/22/2021	<u>46</u>	RESPONSE in Opposition re <u>36</u> MOTION to Stay <i>Discovery</i> Response filed by Joe Patterson.Reply to Response to Motion due by 7/29/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Dinkins, Mary) (Entered: 07/22/2021)
07/28/2021	<u>47</u>	NOTICE of Request for Protection from Court Appearance by Donald Jay Davis, Jr for August 3-11, 2021, September 20-24, 2021, September 30, 2021- October 4, 2021, October 1-5, 2021 and November 3-9, 2021 (Davis, Donald) (Entered: 07/28/2021)
07/28/2021	<u>48</u>	REPLY to Response to Motion re <u>36</u> MOTION to Stay <i>Discovery</i> Response filed by Elizabeth Davies, MD. (Attachments: # <u>1</u> Exhibit 1 - Holliman Complaint)(Davis, Donald) (Entered: 07/28/2021)
07/29/2021	<u>49</u>	NOTICE of Request for Protection from Court Appearance by Donald Jay Davis, Jr for August 3-11, 2021, September 20-24, 2021, September 30, 2021- October 4, 2021, October 14-18, 2021 and November 3-9, 2021 <i>Amended Notice of Request for Protection</i> (Davis, Donald) (Entered: 07/29/2021)
08/05/2021	<u>50</u>	NOTICE of Appearance by James Hunter May on behalf of Joe Patterson (May, James) (Entered: 08/05/2021)
08/05/2021	<u>51</u>	NOTICE of Appearance by Rachael Lewis Anna on behalf of Joe Patterson (Anna, Rachael) (Entered: 08/05/2021)
08/18/2021	<u>52</u>	TEXT ORDER granting <u>36</u> Motion to Stay: The Court orders that discovery in this case is stayed while Dr. Davies' Motion to Dismiss is pending. Entered at the Direction of The Honorable Bruce Howe Hendricks on 8/18/2021.(vdru,) (Entered: 08/18/2021)

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