

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.

RECORD ON APPEAL
Vol. 2 (pp. 323-590)

HOOD LAW FIRM, LLC

Mary Agnes Hood Craig (SC #6960)
Jean Marie Jennings (SC #100651)
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
(843) 577-4435

Attorneys for Appellant
We Are Sharing Hope SC

HALL BOOTH SMITH, P.C.

Jack G. Gresh, S.C. Bar No. 75188
Lauren Spears Gresh, S.C. Bar No. 100994
111 Coleman Blvd Suite 301
Mount Pleasant, SC 29464
(843) 720-3460

Attorneys for Appellant
United Network for Organ Sharing

WYCHE, P.A.

John C. Moylan, III (S.C. Bar 11227)
Lucy Dinkins (S.C. Bar 101177)
James H. May (S.C. Bar 77278)
807 Gervais Street, Suite 301
Columbia, South Carolina 29201
803-254-6542

Rachael L. Anna (S.C. Bar 100486)
200 E. Camperdown Way
Greenville, SC 29601
Telephone: (864) 242-8200

Attorneys for Respondent
Michelle Cha Holliman

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

Defendants.

Case No. 2020-CP-10-02902

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
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**

Plaintiff Michelle Cha Holliman ("Mrs. Holliman"), individually and as personal representative of the Estate of Allen B. Holliman ("Mr. Holliman"), submits this supplemental memorandum in support of her Motion for an Order Compelling Defendant We Are Sharing Hope SC ("WASH") to File Documents withheld from Discovery under Seal Pursuant to S.C. Code § 40-71-30 and to Provide Complete Discovery Responses filed on November 18, 2020 (the "Motion").

With the exception of WASH's response to Interrogatory Number 14, Request for Production Number 14, and its failure to provide a verification for its interrogatory responses,¹

¹ WASH served second supplemental responses to Mrs. Holliman's first set of interrogatories and requests for production on March 11, 2021—the day before briefing on Mrs. Holliman's Motion was due. A copy of WASH's supplemental responses is attached as Exhibit 1. WASH's supplemental responses resolve the disputes regarding Interrogatory 14 and Request for Production Number 14, and WASH finally provided a verification for its interrogatory responses. Since Mrs. Holliman's Motion was filed, WASH has also produced additional documents that should have been produced initially (including five additional pages of text message screenshots that fail to show the sender, recipient, and date and time of each message) as well as responses to supplemental requests propounded by Mrs. Holliman, but these other additional discovery

none of the issues in Mrs. Holliman's Motion has been resolved, and Mrs. Holliman incorporates and refers the Court to the arguments set forth in her Motion. Mrs. Holliman submits this supplemental memorandum to set forth additional grounds for requiring WASH to produce documents improperly withheld on a claim of peer review privilege due to WASH's failure to follow the mandatory statutory procedure for resolving disputes regarding the peer review privilege WASH is asserting, its continued failure to comply with Rule 26(b)(5)(A), and WASH's disclosure subsequent to the filing of the Motion of a key document that was responsive to Mrs. Holliman's initial discovery requests and should have been listed on WASH's previous privilege logs.

I. WASH Has Waived Any Arguments that its Withheld Documents are Protected by Statutory Peer Review Privileges by Failing to File the Withheld Documents Under Seal for Judicial Review as Required by the Statutes.

One of the issues raised in Mrs. Holliman's Motion is WASH's improper withholding of documents on a claim of peer review privilege pursuant to S.C. Code §§ 40-71-20 and 44-7-392. Mrs. Holliman explained in her Motion that both statutes require a party asserting a claim of confidentiality over documents pursuant to the statutes, and withholding them from discovery on that basis, to file the documents under seal with the court when the party seeking the documents objects to the claim of confidentiality. Mrs. Holliman's Motion at 10-11. As set forth in Mrs. Holliman's Motion, S.C. Code § 40-71-30 provides: "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 . . .**" (emphasis added). Similarly, § 44-7-394(A) states: "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

responses of WASH do not resolve the issues in Mrs. Holliman's Motion, with the exception of those relating to Interrogatory Number 14 and Request for Production Number 14 and WASH's failure to verify its interrogatory responses.

upon motion to the court . . . **the court shall review the documents under seal . . .**” (emphasis added). Mrs. Holliman further explained that, pursuant to §§ 40-71-30 and 44-7-394(A), WASH was required either to (1) produce the documents it has withheld or (2) to file them under seal with the court for a judicial determination of whether they are subject to discovery.

Mrs. Holliman’s Motion was filed almost four months ago, but, to Mrs. Holliman’s knowledge and as of 3:00 pm on March 12, 2021, WASH has still failed to file the documents it has withheld pursuant to a purported privilege under §§ 40-71-20 and 44-7-392 with the court under seal. On the afternoon of March 12, 2021—the day briefs on Mrs. Holliman’s Motion were due—WASH’s counsel emailed the Court’s law clerk and, for the first time, inquired about how to go about providing the documents to the Court under seal. Filing withheld documents under seal for judicial review, and doing so in a timely manner, is mandatory under § 40-71-30 upon objection from the party seeking the documents, and it is mandatory under § 44-7-394(A) upon motion from the party seeking the documents. Even though Mrs. Holliman’s counsel objected in writing to WASH’s claims of confidentiality, *see* Exhibit E to Mrs. Holliman’s Motion, and filed a formal motion four months ago objecting to the confidentiality claims and explaining the statutory procedure requiring WASH to file the documents under seal, WASH has still not filed the documents under seal as required by the statutes. WASH’s failure to follow the mandatory statutory procedure for filing its withheld documents under seal for judicial review should be deemed a waiver of WASH’s arguments that the documents are privileged under §§ 40-71-20 and 44-7-392. *See Willis v. Highland Med. Ctr.*, No. 1-18-1541, 2019 WL 1547550, at *1 (Ill. Ct. App. Apr. 5, 2019) (“The claim of [peer review] privilege was supported by submission to the circuit court of [defendant’s] privilege log, the documents in question filed under seal, and the affidavit”); *cf. AVX Corp. v. Horry Land Co.*, No. 4:07-cv-3299, 2010 WL 4884903, at *3 (D.S.C. Nov. 24, 2010) (“Failure to produce a timely or sufficient privilege log may constitute

forfeiture of any claims of privilege.” (citations omitted)).

II. WASH Should Also Be Required to Produce the Non-Conformance Report for the Donor Listed on its Third Amended Privilege Log.

Subsequent to the filing of Mrs. Holliman’s Motion, WASH provided a third amended privilege log along with responses to Mrs. Holliman’s first set of supplemental requests for production. WASH’s third amended privilege log lists an additional withheld document not listed on its prior three privilege logs—a non-conformance report Bates-labeled Privileged 0231-235. *See* WASH’s third amended privilege log, attached as Exhibit 2. Tammy Smith, a former employee of WASH who was the medical records coordinator for Mr. Holliman’s Donor, testified in her deposition that WASH completes non-conformance reports whenever there has been a situation compromising patient safety or a non-conformance with WASH’s policies. Tammy Smith Dep. at 33:15-34:11 (Exhibit 3). Ms. Smith explained that WASH’s non-conformance reports typically include any relevant emails, attachments, or notifications and list the cause of adverse events relating to a donor, if the cause is known. *Id.* at 33:8-14, 34:20-35:4. Ms. Smith further testified that she believes a non-conformance report was created for Mr. Holliman’s Donor by Lorraine Kemp, WASH’s director of quality, because of the blood typing issues with the Donor. *Id.* at 30:20-31:2, 32:1-13. Thus, the non-conformance report listed on WASH’s third amended privilege log is a crucial piece of evidence in this case.

Mrs. Holliman specifically requested WASH’s non-conformance reports from November 27, 2018, to December 31, 2018, in her first set of supplemental requests for production, but the Donor’s non-conformance report is also responsive to Mrs. Holliman’s first set of requests for production, which are at issue in this Motion. Specifically, the report is responsive to Mrs. Holliman’s Requests Number 12 and 24, which call for the production of “documents and communications relating to the mistyping or potential mistyping of the Donor’s blood type” and “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," respectively. See Exhibit B to Mrs. Holliman's Motion, Requests 12 and 24. Accordingly, WASH was required to produce the Donor's non-conformance report in response to Mrs. Holliman's first set of requests for production or, if it intended to assert that the report is privileged, to list it on the privilege log provided with its responses to Mrs. Holliman's first discovery requests. See Rule 26 (b)(5)(A). WASH failed to do either and, therefore, should be deemed to have waived any claim of privilege asserted for the non-conformance report. See *Willis*, 2019 WL 1547550, at *1; cf. *AVX Corp.*, 2010 WL 4884903, at *3.

Moreover, WASH's non-conformance report for the Donor is not privileged for the same reasons set forth in Mrs. Holliman's Motion pertaining to the other 235 pages of documents withheld by WASH. Mrs. Holliman's attorney explained this in an email to WASH's counsel following Ms. Smith's deposition, and Mrs. Holliman filed a motion to compel WASH to provide complete responses to her supplemental requests for production that addresses the withheld non-conformance report as well as several other deficiencies with WASH's responses to Mrs. Holliman's supplemental requests. See February 25, 2021, email from Ms. Dinkins to Ms. Jennings, attached as Exhibit 4; Mrs. Holliman's Motion to Compel filed on February 5, 2021. Because the issues regarding WASH's improper withholding of the Donor's non-conformance report are the same as those regarding the other documents withheld by WASH, and counsel have conferred regarding production of the non-conformance report specifically, Mrs. Holliman submits that judicial economy and efficiency would be served by the Court's ruling upon the discoverability of the non-conformance report at the same time it rules upon the discoverability of the other 235 pages of documents withheld by WASH. Therefore, Mrs. Holliman respectfully requests for the Court to order WASH to produce the Donor's non-conformance report in addition to the other withheld documents listed on WASH's previous privilege logs.

III. WASH Has Waived Any Arguments that its Withheld Documents are Privileged by Failing to Comply with Rule 26(b)(5)(A).

Mrs. Holliman explained in her Motion that WASH's third amended privilege log does not contain any information regarding the author(s), recipient(s), date created, date modified, or other similar information needed for Mrs. Holliman's to meaningfully assess whether the documents are privileged as WASH claims. *See* Mrs. Holliman's Motion at 5. WASH has not provided an amended privilege log or any other information to Mrs. Holliman to enable her to evaluate the purported privilege. In fact, WASH has instructed its employees not to answer deposition questions seeking basic information regarding to the existence of the alleged privilege, including whether WASH even conducted any investigation into the fatal blood typing error it made for this Donor. *See* WASH's motion for a protective order filed December 16, 2020, and Mrs. Holliman's response filed March 12, 2021; WASH motion for a protective order filed February 18, 2020.

By not providing adequate information to enable Mrs. Holliman to assess the applicability of the purported privilege and by failing to list the non-conformance report discussed above on the privilege log WASH provided with its responses to Mrs. Holliman's first set of requests for production, WASH has failed to comply with Rule 26(b)(5)(A), which requires a party withholding information under a claim of privilege to "make the claim expressly" and "describe the nature of the documents . . . in a manner that, without revealing the information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection." As a result, WASH should be deemed to have waived the purported privilege for its withheld documents for this additional reason, and WASH should be required to produce its documents to Mrs. Holliman, subject to the provisions of the confidentiality order already entered in this case. *See, e.g., Wellin v. Wellin*, Nos. 2:13-cv-1831, 2:13-cv-3595, 2:14-cv-4067, 2015 WL 5785709, at *11 (D.S.C. July 31, 2015) ("[C]ourts have generally found that the failure to produce a timely or sufficient privilege log may constitute a forfeiture of any claims of privilege." (citations omitted)); *AVX Corp. v. Horry*

Land Co., 2010 WL 4884903, at *3.

Moreover, although WASH's privilege log is deficient and provides scant information regarding the withheld documents, it appears that some of the documents might be the same as those listed on Defendant United Network for Organ Sharing's ("UNOS") privilege log, as well as potentially some of the documents on MUSC's privilege log. *Compare* WASH's third amended privilege log (Exhibit 2) *with* UNOS's privilege log, attached as Exhibit 5 *and* MUSC's privilege log, attached as Exhibit 6. If Defendants are all in possession of some of the allegedly privileged documents, that is inconsistent with MUSC's claims regarding the importance of maintaining strict confidentiality of the documents, and it appears that Mrs. Holliman is the only party being deprived of these relevant and responsive documents in this wrongful death case.

WASH's withholding of numerous documents on a claim of privilege that is unsupported by law, its failure to follow the statutory procedure required by the plain language of the statutes, and its failure to comply with Rule 26(b)(5)(A) is a continuation of WASH's discovery abuses in this case. Mrs. Holliman will refrain from outlining all of WASH's discovery abuses, but they started at the beginning of this case when WASH refused to agree to a confidentiality order and refused to produce any documents responsive to a lawful subpoena for over a year until a court ordered it to do so, and they continue to WASH's recent baseless instructions to employees not to answer questions during depositions. *See* WASH's motion for a protective order filed on December 15, 2020, and Mrs. Holliman's response in opposition filed on March 12, 2021; WASH's motion for a protective order filed on February 18, 2021. Because WASH should be deemed to have waived its arguments that the withheld documents are confidential, it should now be compelled to produce the documents to Mrs. Holliman.

CONCLUSION

For the reasons set forth in this supplemental memorandum and in Mrs. Holliman's Motion filed on November 18, 2020, Mrs. Holliman respectfully requests for the Court to enter an Order:

1. Compelling WASH to produce all documents withheld on a claim of peer review privilege, which have been Bates-labeled Privileged 0001-0235;
2. Awarding Mrs. Holliman's reasonable attorney's fees and costs incurred in connection with obtaining WASH's withheld documents pursuant to S.C. Code §§ 40-71-30 and 44-7-394(A); and
3. 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; and providing full and complete responses to Mrs. Holliman's Interrogatories 13 and 24.

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

March 12, 2021

EXHIBIT 1



JEAN MARIE JENNINGS
Partner
DIRECT DIAL: (843) 577-1217
E-MAIL: jeanmarie.jennings@hoodlaw.com

March 11, 2021

Via E-Mail & U.S. Mail

John C. Moylan, III, Esquire
Mary Lucille Dinkins, Esquire
Wyche, P.A.
807 Gervais Street, Suite 301
Columbia, SC 29201

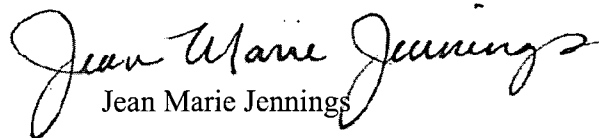
Re: Michelle Cha Holliman, individually and as personal representative of the Estate of Allen B. Holliman v. We Are Sharing Hope SC, Medical University of South Carolina, United Network for Organ Sharing
C/A No. 2020-CP-10-02902, Charleston CP
HLF File No. 269.009

Dear Counselors:

Enclosed for service, please find Defendant We Are Sharing Hope SC's Second Supplemental Answers to Plaintiff's First Set of Interrogatories and Second Supplemental Responses to Plaintiff's First Set of Requests for Production in the above-referenced matter. If you have any questions, please feel free to contact me or my paralegal, Tammy Villanueva.

Kind regards,

Yours truly,


Jean Marie Jennings

JMJ/jku
Enclosures

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

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,	)	
	)	
	)	DEFENDANT
	)	WE ARE SHARING HOPE SC's
Versus	)	SECOND SUPPLEMENTAL ANSWERS TO
	)	PLAINTIFF'S
	)	FIRST SET OF INTERROGATORIES
We Are Sharing Hope SC, Medical University	)	
of South Carolina, and United Network for	)	
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:

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.

SECOND SUPPLEMENTAL ANSWER: Without waiving the above objections, this Defendant uploaded documents to DonorNet as discussed in its first Answer to Plaintiff's Interrogatories while the Donor case was ongoing and refers the Plaintiff to documents labeled for production as *UNOS DP 001-217* which is the UNet Donor File. Further responding, this Defendant provided documents to the Membership and Professional Standards Committee of UNOS as stated on privilege log.

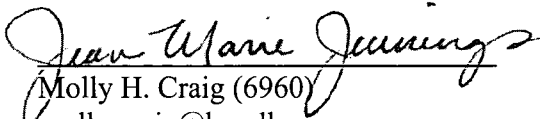
14. Identify all documents relating to the Donor you provided to Medical University of South Carolina and state when you provided each document identified.

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.

SUPPLEMENTAL ANSWER: Upon information and belief, at the time of this Donor's procurement surgery in 2018 the ABO results, serology results, and increased risk disclosure documents were packaged with each organ to go to the respective transplant centers. Upon information and belief, other than those documents which were packaged with the organs and an upload of a CT scan referenced on *WASH 0180 CONFIDENTIAL*

which was provided to Dr. Whelan, no other documents were provided to MUSC directly from this Defendant. Rather, the medical records of the Donor were uploaded by this Defendant to DonorNet for applicable transplant centers to view. This Defendant refers the Plaintiff to the to the UNet Donor File labeled for production as *UNOS DP 001-217*.

HOOD LAW FIRM, LLC
 172 Meeting Street / Post Office Box 1508
 Charleston, SC 29402
 Phone: (843) 577-4435
 Facsimile: (843) 722-1630


 Molly H. Craig (6960)
molly.craig@hoodlaw.com
 Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

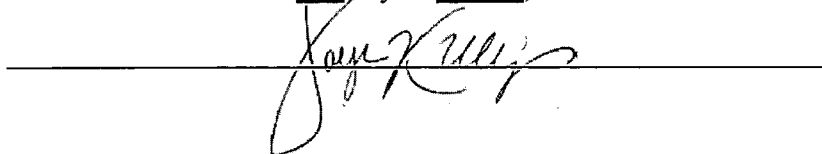
*Attorneys for the Defendant
 We Are Sharing Hope SC*

March 11, 2021
 Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's SECOND 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 11th day of March, 2021.



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,

Plaintiff,

Versus

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

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

Defendants.

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:

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.

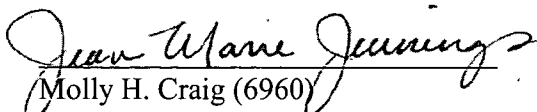
RESPONSE: This Defendant objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding and without waiving the objection, this Defendant refers the documents bates labeled for production as *WASH 0006-0332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

SECOND SUPPLEMENTAL RESPONSE: Upon information and belief, at the time of this Donor's procurement surgery in 2018, the ABO results, serology results, and increased risk disclosure documents were packaged with each organ to go to the respective transplant centers.

HOOD LAW FIRM, LLC
172 Meeting Street / Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630


Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

*Attorneys for the Defendant
We Are Sharing Hope SC*

March 11, 2021
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of ***DEFENDANT WE ARE SHARING HOPE SC's SECOND 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 11th day of March, 2021.

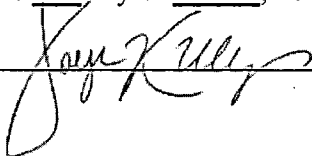


EXHIBIT 2

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

;

) C/A No. 2020-CP-10-02902

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**DEFENDANT
WE ARE SHARING HOPE SC's THIRD
AMENDED
PRIVILEGE LOG**

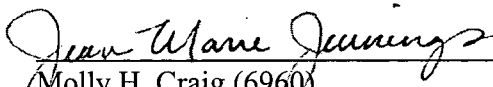
TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

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 process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS	Peer Review Quality Assurance/Quality Assessment.
Privileged 0187-0195	Root Cause Analysis involving We Are Sharing Hope SC and Grand Strand Medical Center	Peer Review Quality Assurance/Quality Assessment
Privileged 0196-210, 0224-0226	Emails between We Are Sharing Hope and VRL-Eurofins involving ABO testing/part of peer review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS	Peer Review Quality Assurance/Quality Assessment.
Privileged 0211-0223	Emails re: Peer Review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS	Peer Review Quality Assurance/Quality Assessment.

Privileged 0224-230	Emails between We Are Sharing Hope SC and Kathy Brazil re: adverse event reporting	Peer Review Quality Assurance/Quality Assessment.
Privileged 0231-0235	Printable version of Non-conformance Report	Peer Review Quality Assurance/Quality Assessment.

HOOD LAW FIRM, LLC
 172 Meeting Street / Post Office Box 1508
 Charleston, SC 29402
 Phone: (843) 577-4435
 Facsimile: (843) 722-1630


 Molly H. Craig (6960)
molly.craig@hoodlaw.com
 Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

*Attorneys for the Defendant
 We Are Sharing Hope SC*

December 1, 2020
 Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the **DEFENDANT WE ARE SHARING HOPE SC's THIRD 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 1st day of **December**, 2020.

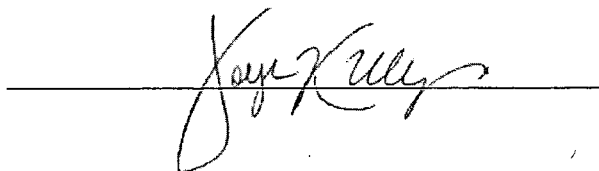


EXHIBIT 3

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 MICHELLE CHA HOLLIMAN, INDIVIDUALLY AND AS
4 PERSONAL REPRESENTATIVE OF THE ESTATE OF ALLEN
5 B. HOLLIMAN,

Plaintiff,

6 vs. CASE NO. 2020-CP-10-02902

7 WE ARE SHARING HOPE SC, MEDICAL UNIVERSITY OF
8 SOUTH CAROLINA, AND UNITED NETWORK FOR ORGAN
9 SHARING,

Defendants.

10 VIDEOCONFERENCE

11 DEPOSITION OF: TAMMY JEAN SMITH

12 DATE: February 25, 2021

13 TIME: 2:01 p.m.

14 LOCATION: 6210 Old Point Road
15 Hanahan, SC

16 TAKEN BY: Counsel for the Plaintiff

17 REPORTED BY: MICHAEL DAVID ROBERTS,
18 Court Reporter
(Appearing by VTC)

1 have a lot of, you know, one-on-one with her, you
2 know, interaction unless I had a problem and needed
3 some information from her and how to proceed.

4 Q. If you ever came across issues in a
5 donor's chart that you were working on, is there
6 anyone you would discuss those issues with?

7 MS. JENNINGS: Object to the form.

8 THE WITNESS: It would be Lorraine.

9 BY MS. DINKINS:

10 Q. And so would you typically let her know
11 if you found a problem in a donor's chart?

12 A. Depending on the problem, if it was
13 something that I could just go to the staff and
14 assign them, you know, a task to -- correction to
15 get their information in. If something was unable
16 to be obtained, then I would go to Lorraine.

17 Q. Okay. Did you ever see a
18 nonconformance report for this donor?

19 A. I did not see it, no.

20 Q. Do you know whether one was written?

21 A. I haven't seen one. I would think
22 there would be one.

23 Q. And why would you think there would be
24 one?

25 A. All patient safety are reported to, you

1 know -- as a patient safety report NCR and a UNOS
2 report.

3 Q. And when you say all patient safety,
4 what do you mean?

5 A. For example, if a biopsy comes back
6 it's renal cell carcinoma, anything that would
7 affect a recipient posttransplant or prior to
8 transplant post-OR.

9 Q. And so would a nonconformance report
10 have been written for this donor because of the ABO
11 mistyping for the donor?

12 MS. JENNINGS: Object to the form.

13 THE WITNESS: I -- I -- I can't say why
14 the NCR would be created other than a patient
15 safety.

16 BY MS. DINKINS:

17 Q. And what do you mean by a patient
18 safety?

19 A. It's -- that is what -- it's a report
20 that is reported to UNOS on any issue that may
21 affect the recipient.

22 Q. Okay. And so what was the patient
23 safety issue for this donor?

24 A. I can't say. I was not part of that --
25 I was not part of any reporting in this case.

1 Q. You said, though, that you think a
2 nonconformance report was written for this donor
3 because of a patient safety, and I'm just trying to
4 figure out what it is that makes you think there
5 would be a nonconformance report for this donor.

6 A. Because of the case notes and stating
7 that other transplant centers were called.

8 Q. So it's because of the ABO issue with
9 the donor?

10 A. Yes.

11 Q. And who would have written the
12 nonconformance report for the donor?

13 A. Lorraine Kemp.

14 Q. Does she write them for all donors?

15 A. Usually, yes.

16 Q. Okay. Do you know approximately when
17 she would have written it?

18 A. I have no idea.

19 MS. JENNINGS: Object to the form.

20 BY MS. DINKINS:

21 Q. Who would have had access to the
22 donor's nonconformance report?

23 MS. JENNINGS: Object to the form.

24 THE WITNESS: The director of quality
25 systems and the medical director.

1 BY MS. DINKINS:

2 Q. Would anyone else at Sharing Hope have
3 access to it?

4 A. No.

5 Q. Were you involved at all in the donor's
6 nonconformance report?

7 A. I was not.

8 Q. What kinds of things are included in a
9 nonconformance report?

10 A. The -- the -- any attachments, emails,
11 notifications.

12 Q. What sort of attachments?

13 A. Any emails, reports, those -- those
14 would be attachments.

15 Q. And so what's the purpose of a
16 nonconformance report?

17 A. To document the investigation of any
18 nonconformance.

19 Q. And would that be a nonconformance --

20 A. Or patient safety. Nonconformance or
21 patient safety.

22 Q. Okay. And when you say nonconformance,
23 what do you mean?

24 A. If we had a situation where an op
25 note -- a surgeon had to leave early and we were

1 missing a signature and the signature was unable to
2 be obtained, we would create a nonconformance to
3 document that we were unable to obtain the
4 signature.

5 Q. Okay. So would it be a
6 nonconformance -- you would create a nonconformance
7 report if there was some nonconformance with
8 Sharing Hope's policies; is that right?

9 MS. JENNINGS: Object to the form.

10 THE WITNESS: Just missing -- it would
11 be missing information.

12 BY MS. DINKINS:

13 Q. Okay. Do nonconformance reports
14 typically say what the cause of a patient safety
15 event was?

16 MS. JENNINGS: Object to the form.

17 THE WITNESS: I can't answer that. I
18 was not part of this NCR -- you know, most of NCRs.

19 BY MS. DINKINS:

20 Q. Have you ever seen a nonconformance
21 report?

22 A. I have.

23 Q. And how many of them did you see?

24 A. I've probably seen at least 30.

25 Q. Okay. And did those typically list a

1 cause for the adverse events relating to a donor?

2 MS. JENNINGS: Object to the form.

3 THE WITNESS: Yes, if the -- if the
4 cause was known.

5 BY MS. DINKINS:

6 Q. Right. But the cause of an adverse
7 event is something that the nonconformance reports
8 would typically address?

9 A. Could you repeat that, please?

10 Q. Sure. So the nonconformance reports
11 would typically address the cause of an adverse
12 event?

13 MS. JENNINGS: Object to the form.

14 THE WITNESS: No, it would -- it would
15 address the cause of the NCR, the purpose of the
16 NCR.

17 BY MS. DINKINS:

18 Q. I'm sorry?

19 A. It would state -- it would state the
20 purpose of the NCR.

21 Q. Okay. Would they discuss what a likely
22 cause of an adverse event was?

23 MS. JENNINGS: Object to the form.

24 THE WITNESS: No. They would include
25 the invest -- the -- what is the investigation of

EXHIBIT 4

From: Lucy Dinkins
Sent: Thursday, February 25, 2021 4:02 PM
To: Jean Marie Jennings
Cc: John C. Moylan
Subject: Holliman

Jean Marie,

It was nice seeing you today. Pursuant to Tammy Smith's deposition testimony, please produce Sharing Hope's report to UNOS of adverse events relating to this donor and all related emails and other communications with UNOS regarding the report. Additionally, we maintain and reiterate that Sharing Hope's non-conformance report for the donor is not privileged and should be produced.

Best regards,
Lucy



Lucy Dinkins | Wyche

807 Gervais St., Suite 301 | Columbia, SC 29201

Phone: (803) 254-6542 | Fax: (803) 254-6544

ldinkins@wyche.com | www.wyche.com/ldinkins | [vCard](#)

A Lex Mundi Member Firm

EXHIBIT 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2020-CP-10-02902

**DEFENDANT UNITED NETWORK
FOR ORGAN SHARING'S PRIVILEGE
LOG****TO: JOHN MOYLAN, ESQUIRE AND LUCY DINKINS, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF:**

Defendant United Network for Organ Sharing (hereinafter "this Defendant" or "UNOS")
hereby submits the following log of privileged documents withheld from production:

Document Description	Privilege Asserted	Bates Label Nos.
UNet Donor File AFKY198	Partial redaction of confidential patient information protected by HIPAA and personally identifying information of third parties unrelated to this case	UNOS DP 001 to 217
Medical Peer Review file, including communications and documents related to the investigation by the OPTN/UNOS Membership and Professional Standards Committee (MPSC)	Confidential Peer Review, Quality Assurance Work Product, and Confidential patient information protected by HIPAA	UNOS Privileged 0001 to 0387
Medical Peer Review of MUSC's Adult Liver Transplant Program by the OPTN/UNOS Performance	Confidential Peer Review, Quality Assurance Work Product	UNOS Privileged 0388 to 1210

Analysis and Improvement Subcommittee (PAIS) of the Membership and Professional Standards Committee (MPSC)		
Medical Peer Review of MUSC's Adult Lung Transplant Program by the OPTN/UNOS Performance Analysis and Improvement Subcommittee (PAIS) of the Membership and Professional Standards Committee (MPSC)	Confidential Peer Review, Quality Assurance Work Product	UNOS Privileged 1211 to 1738
Desk Review of MUSC's Living Donor Kidney Transplant Program by the OPTN/UNOS Performance Analysis and Improvement Subcommittee (PAIS) of the Membership and Professional Standards Committee (MPSC)	Confidential Peer Review, Quality Assurance Work Product	UNOS Privileged 1739 to 1761
On-Site Survey of MUSC's Transplant Programs by the OPTN/UNOS Performance Analysis and Improvement Subcommittee (PAIS) of the Membership and Professional Standards Committee (MPSC)	Confidential Peer Review, Quality Assurance Work Product	UNOS Privileged 1762 to 1972
Medical Peer Review of MUSC's Pediatric Liver Transplant Program by the OPTN/UNOS Performance Analysis and Improvement Subcommittee (PAIS) of the Membership and Professional Standards Committee (MPSC)	Confidential Peer Review, Quality Assurance Work Product	UNOS Privileged 1973 to 1975
On-Site Survey of We Are Sharing Hope SC conducted by the OPTN/UNOS Policy Compliance Subcommittee (PCSC) of the Membership	Confidential Peer Review, Quality Assurance Work Product	UNOS Privileged 1976 to 2197

and Professional Standards Committee (MPSC)		
--	--	--

HALL BOOTH SMITH, P.C.

/s/Jack G. Gresh, Esq.

Jack G. Gresh, SC Bar No. 75188

Lauren Spears Gresh, SC Bar No. 100994

111 Coleman Blvd, Suite 301

Mount Pleasant, South Carolina 29464

Phone: 843.720.3460

jgresh@hallboothsmith.com

lgresh@hallboothsmith.com

*Counsel for Defendant United Network for Organ
Sharing*

February 4, 2021

Mount Pleasant, South Carolina

EXHIBIT 6

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as
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.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 2020-CP-10-002902

**DEFENDANT MEDICAL UNIVERSITY
OF SOUTH CAROLINA'S
PRIVILEGE LOG**TO: JOHN C. MOYLAN, ESQUIRE AND LUCY DINKINS, ESQUIRE, ATTORNEYS FOR THE
PLAINTIFF:

The Defendant Medical University of South Carolina (hereinafter "this Defendant"), hereby
submits the following log of privileged documents withheld from production:

Document Description	Privilege Asserted	Bates Label Nos.
Root Cause Analysis, Quality Review and Quality Assurance Performance Improvement documents related to the Event Investigation & Analysis and Transplant ICCE Adverse Event Policies	Peer Review	MUSC Privileged 0001-0138
OPTN On-Site Survey Documents	Peer Review	MUSC Privileged 0139-0266
Performance Analysis and Improvement Subcommittee Report	Peer Review	MUSC Privileged 0267-0368

BUYCK & SANDERS, LLC

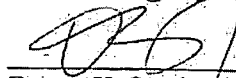
305 Wingo Way

P.O. Box 2424

Mt. Pleasant, SC 29465-2424

Telephone: (843) 377-1400

Email: dks@buyckfirm.com



Darren K. Sanders (S.C. Bar # 68296)

Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for the Defendant

Medical University of South Carolina

9/22, 2020
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as
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.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 2020-CP-10-002902

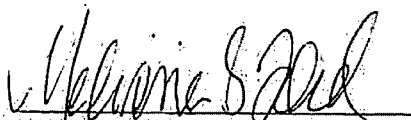
CERTIFICATE OF SERVICE

This is to certify that I, Melissia G. Ford, paralegal with Buyck & Sanders, LLC, attorneys for the Defendant Medical University of South Carolina have on this 22nd day of September, 2020 served a copy of the **Defendant Medical University of South Carolina's Privilege Log** on all parties or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, and/or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure as follows:

John C. Moylan, III, Esquire
Lucy Dinkins, Esquire
Wyche, P.A.
807 Gervais Street, Suite 301
Columbia, South Carolina 29201
Attorneys for Plaintiff

Molly H. Craig, Esquire
Hood Law Firm, LLC
172 Meeting Street
P.O. Box 1508
Charleston, SC 29402
Attorneys for We Are Sharing Hope

Jack G. Gresh, Esquire
Lauren Spears Gresh, Esquire
Hall Booth Smith, PC
111 Coleman Blvd, Suite 301
Mount Pleasant, SC 29464
Attorneys for United Network for Organ
Sharing



Melissia G. Ford
Paralegal to Darren K. Sanders, Esquire

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

Defendants.

Case No. 2020-CP-10-02902

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT WE
ARE SHARING HOPE SC'S MOTION
FOR A PROTECTIVE ORDER**

Plaintiff Michelle Cha Holliman ("Mrs. Holliman"), individually and as personal representative of the Estate of Allen Holliman ("Mr. Holliman"), submits this response in opposition to Defendant We Are Sharing Hope SC's ("WASH") motion for a protective order (the "Motion") filed on December 15, 2020.

WASH's counsel instructed Darla Welker ("Ms. Welker"), an employee of WASH and a defendant in this action, not to answer multiple questions during her deposition on the basis that the information solicited is allegedly protected by S.C. Code § 44-7-392, which governs the confidentiality of documents and information prepared or acquired in the course of certain hospital proceedings. After Ms. Welker's deposition, WASH filed its Motion, which reiterates WASH's claim that questions directed to Ms. Welker during her deposition called for the disclosure of information that is privileged pursuant to § 44-7-392. WASH, however, is not a hospital, and, therefore, § 44-7-392 is inapplicable to information solicited from Ms. Welker, an employee of WASH. Accordingly, WASH's Motion should be denied, and Mrs. Holliman respectfully requests

for the Court to enter an Order requiring Ms. Welker to provide full and complete responses to the questions posed by Mrs. Holliman's counsel during her deposition and ordering WASH to reimburse Mrs. Holliman for her reasonable attorney's fees and costs incurred in opposing WASH's Motion.

BACKGROUND

This is a wrongful death case arising out of Mr. Holliman's death following a double lung transplant during which lungs of the wrong blood type were transplanted into him. *See* Compl. WASH was the organ procurement organization ("OPO") that procured and distributed the donor lungs transplanted into Mr. Holliman. As the OPO for Mr. Holliman's donor (the "Donor"), WASH was responsible for determining and reporting the Donor's blood type.

WASH reported the Donor as having type O blood, but it was determined shortly after Mr. Holliman's transplant surgery that the Donor actually had type A blood. Mr. Holliman died the day after his transplant, and, according to his medical records, his cause of death was hyperacute rejection of his transplanted lungs due to ABO incompatibility of the lungs. Two WASH employees involved in the determination and reporting of the Donor's blood type, Ms. Welker and Janine Bumgarner, both admitted in their depositions that WASH reported the wrong blood type for the Donor. Bumgarner Dep. at 87:18-22 (Exhibit 1); Welker Dep. at 42:7-8, 83:5-8 (Exhibit 2). Ms. Welker further testified that incorrectly determining a donor's blood type (as WASH did with Mr. Holliman's Donor) can result in an ABO incompatible transplant that can cause a patient to die (as happened to Mr. Holliman). Welker Dep. at 74:4-13 (Exhibit 2).

WASH has a long history of hiding relevant documents and information in this case. Shortly after Mrs. Holliman filed her notice of intent to sue WASH, she issued a subpoena to WASH pursuant to S.C. Code § 15-79-125(B) calling for the production of certain documents and

communications relating to Mr. Holliman and the Donor. WASH refused to produce the subpoenaed documents, allegedly because of concerns regarding privacy and confidentiality, but it also refused to consent to the entry of *any* protective order to facilitate the exchange of documents in this case. WASH withheld the lawfully subpoenaed documents for a year until the court ordered it to produce them. When WASH did finally respond to the subpoena, it withheld numerous documents on a claim of peer review privilege. WASH has continued to improperly withhold relevant documents throughout discovery in this case on a claim of peer review privilege, and, in total, WASH has withheld 235 pages of responsive documents thus far, which are the subject of a separate motion.

Plaintiff's attorney deposed Ms. Welker on December 14, 2020. Ms. Welker was the WASH employee who approved the incorrect blood type reported for Mr. Holliman's Donor. Welker Dep. at 45:13-18 (Exhibit 2). During Ms. Welker's deposition, WASH's attorney instructed Ms. Welker not to respond to several questions posed by Mrs. Holliman's counsel on the basis that they called for the disclosure of information allegedly protected by S.C. Code § 44-7-392. *See* Welker Dep. at 43, 52:6-18, 159:15-25, 172:1-4 (Exhibit 2). The questions Ms. Welker was instructed not to answer related to the identity of attendees of meetings regarding the Donor, what Ms. Welker has learned about blood typing since the Donor's mistyping occurred, and whether WASH has conducted any investigations into the Donor's mistyping error. *See id.*

On December 15, 2020, WASH filed its Motion for a protective order pursuant to Rule 30 seeking protection from having to respond to the questions posed to Ms. Welker during her deposition. WASH's Motion is conclusory and lacks any meaningful discussion or analysis. *See* WASH's Motion. WASH simply asserts that the deposition questions at issue call for the

disclosure of information that is privileged under § 44-7-392. *See id.*¹

STANDARD

Under South Carolina Civil Procedure Rule 30(j)(3), “[c]ounsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court or unless that counsel intends to present a motion under Rule 30(d), SCRPC.” “Counsel directing that a witness not answer a question on those grounds . . . shall move the court for a protective order . . .” *Id.*

“The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed[.]” and “[d]epositions are widely recognized as one of the most powerful and productive devices used in discovery.” *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (internal quotations omitted) (citations omitted). “When a party withholds information otherwise discoverable . . . by claiming that it is privileged . . . the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection.” Rule 26(b)(5)(A), SCRPC. The party asserting a privilege has the burden of establishing the privilege. *E.g., In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 168-69, 829 S.E.2d 707, 713 (2019) (“We hold that the party asserting the privilege has the initial burden to

¹ On February 15, 2021, Plaintiff’s counsel deposed another WASH employee involved in the determination of the Donor’s blood type, Michael Lotts. WASH’s counsel also instructed Mr. Lotts not to answer to several questions posed during his deposition on the ground that they called for information rendered privileged by § 44-7-392. Several days later, WASH filed a motion for a protective order in connection with Mr. Lotts’s deposition that is substantively identical to the one at issue in relation to Ms. Welker’s deposition.

make a prima facie showing that the communications in questions are privileged[.]”); *Wilson v. Preston*, 378 S.C. 348, 359, 662 S.E.2d 580, 585 (2008).

The trial court has discretion in resolving discovery disputes, and “[a] trial judge’s rulings on discovery matters will not be disturbed on appeal absent a clear abuse of discretion.” *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citation omitted). Pursuant to Rules 30(d) and 37(a)(4), when a court denies a motion for a protective order regarding a deposition, the court may award the reasonable expenses, including attorney’s fees, incurred by the party opposing the motion.

ANALYSIS

WASH argues that the deposition questions it instructed Ms. Welker not to answer seek information privileged under § 44-7-392. *See* WASH’s Motion. Section 44-7-392 is entitled “Confidentiality of **hospital** proceedings, data, documents, and information” (emphasis added), and it applies to documents and information prepared or acquired by **hospitals** in the course of certain investigations and reviews. 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**, 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” (emphasis added)). The statute explicitly states that documents and information “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.” § 44-7-392(A)(3) (emphasis added). Thus, documents and information shared with a hospital by another source are still subject to discovery from the other source, even if they are not discoverable from the hospital.

WASH is not a hospital, nor is it a parent, subsidiary, health care system, or committee of a hospital, nor a physician practice owned by a hospital. *See* § 44-7-392(A)(1). Rather, WASH is an independent OPO that provides organ and tissue recovery services for South Carolina. *See* sharinghopesc.org, last accessed March 10, 2021; <https://sharinghopesc.org/history/>, last accessed March 10, 2021. According to WASH's website, it provides education regarding organ, eye, and tissue donations, support to donor families, and serves as "the organ and tissue recovery organization for South Carolina." <https://sharinghopesc.org/history/>, last accessed March 10, 2021. Because WASH is not a hospital, § 44-7-392 does not protect any information or documents in its possession from discovery. *See* § 44-7-392; *see also Howell v. Holland*, No. 4:13-cv-295, 2014 WL 958277, at *2 (D.S.C. Mar. 10, 2014) ("South Carolina's Legislature enacted S.C. Code Ann. § 44-7-392 to separately govern **hospital** peer review committees.").

Even if WASH shared some of the information it seeks to keep hidden with a hospital that is subject to § 44-7-392, such information is still subject to discovery from WASH as an original source of the information and is not immune from discovery from WASH merely because it was shared with a hospital committee. *See* § 44-7-392(A)(3); *see also IntegraMed Am., Inc. v. Patton*, 298 F.R.D. 326, 331-32 (D.S.C. 2014) (explaining that pursuant to § 44-7-392(A), "documents available from original sources are not confidential and are not immune from discovery.").

Moreover, the deposition questions WASH's counsel instructed Ms. Welker not to answer would not fall within the type of information protected by § 44-7-392 even if the statute did protect information in the possession of WASH or its employees, which, again, it does not. WASH's attorney instructed Ms. Welker not to answer the following questions:

- "And who else was there?" (asking who else attended meetings in which the Donor's incorrect blood typing was discussed) (Welker Dep. at 43:21 (Exhibit 2)).
- "And so what have you learned?" (asking what Ms. Welker has learned about the

importance of when blood samples for blood type testing are collected) (*Id.* at 52:14).

- “So what meetings were you involved with where Dave DeStefano was there?” (asking what meetings Ms. Welker had regarding the Donor with WASH’s CEO, Dave DeStefano) (*Id.* at 159:20-21).
- “Did WASH conduct any investigations into how the donor’s blood typing error occurred?” (*Id.* at 172:1-2).

Questions regarding the basic facts of who attended meetings regarding the Donor and whether WASH conducted any investigations into the fatal blood typing error at issue in this case would not be privileged even if any privilege did apply to WASH. Such basic information goes to the existence of a purported privilege, not the substance of a privileged communication. Just as not every aspect of the attorney-client relationship is privileged, not every aspect of a hospital peer review proceeding, such as who participated in meetings and even whether an investigation occurred, should be deemed privileged. *See* § 44-7-392(A)(1) (providing that “data, documents, records, and information prepared or acquired by” hospitals in the course of certain investigations and reviews are confidential); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 61-63, 439 S.E.2d 257, 259-61 (1993) (holding that even though § 44-7-392 protected the credentialing files of the executive committee of a hospital, it did not protect the hospital’s policies and procedures for staff monitoring from discovery because “the information contained in the written rules, regulations, policies, and procedures for the medical staff would not compromise the statutory goal of candid evaluation of peers in the medical profession”); *see also, e.g., State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 219-20 (1981) (outlining the elements required for the attorney-client privilege to apply and explaining that “[n]ot every communication within the attorney and client relationship is privileged”).

Furthermore, the South Carolina Supreme Court has clearly held that the outcome of

hospital 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) (holding that a hospital's privileging file on a doctor was protected from discovery but explaining that "the outcome of the decision-making process is not protected from discovery"); *McGee*, 312 S.C. at 61-63, 439 S.E.2d at 259-61. 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 were subject to § 44-7-392, which it is not, it would still be required to disclose the outcome of any investigations it conducted, and instructing Ms. Welker not to answer a question asking what she has learned about blood typing since the mistake with this Donor occurred would still be improper.

Lastly, in the event that WASH tries to argue the information sought in Ms. Welker's deposition is privileged under some statute or source other than S.C. Code § 44-7-392, WASH has waived such privilege arguments by failing to expressly make the privilege claim in a timely manner and to describe the information in a manner that enables Mrs. Holliman to assess the applicability of the purported privilege, as required by Rule 26(b)(5)(A). *See* Rule 26(b)(5)(A); *AVX Corp. v. Horry Land Co.*, No. 4:07-cv-3299, 2010 WL 4884903, at *3 (D.S.C. Nov. 24, 2010) ("Generalized claims of privilege are insufficient. . . . Failure to produce a timely or sufficient privilege log may constitute forfeiture of any claims of privilege." (citations omitted)). Because the only privilege claimed by WASH in its Motion is the purported privilege under § 44-7-392, WASH has waived any other privilege arguments it might try to make.

CONCLUSION

Documents and information in WASH's possession are not immune from discovery from

WASH under S.C. Code § 44-7-392, which governs the confidentiality of hospital proceedings, because WASH is not a hospital. Even if WASH shared some documents or information with a hospital in connection with hospital proceedings that are subject to § 44-7-392, such documents and information may still be discovered from WASH as an original source of the information pursuant to § 44-7-392(A)(3), and under no circumstances would WASH or any entity be protected from disclosing basic facts regarding the existence the purported privilege or the outcome of investigations or reviews, *see McGee*, 312 S.C. at 61-63, 439 S.E.2d at 259-61.

WASH has failed to satisfy its burden of establishing the applicability of a privilege under § 44-7-392 protecting the basic and relevant information sought from Ms. Welker during her deposition. Therefore, WASH's Motion should be denied, and Ms. Welker should be compelled to provide full and complete answers to the deposition questions at issue. Mrs. Holliman respectfully requests an Order:

1. Denying WASH's motion for a protective order;
2. Ordering Ms. Welker's deposition to be reconvened and compelling Ms. Welker to provide full and complete responses to the deposition questions she was instructed not to answer during her deposition on December 14, 2020, and any related questions; and
3. Ordering WASH to reimburse Mrs. Holliman for her reasonable attorney's fees and costs incurred in opposing WASH's motion to quash.

[Signature Block on Following Page]

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

March 12, 2021

EXHIBIT 1

STATE OF SOUTH CAROLINA

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. C.A. NO. 2020-CP-10-2902

WE ARE SHARING HOPE SC, MEDICAL UNIVERSITY OF
SOUTH CAROLINA, and UNITED NETWORK FOR ORGAN
SHARING,

Defendants.

VTC

DEPOSITION OF: JANINE BUMGARNER

DATE: October 28, 2020

TIME: 1:00 p.m.

LOCATION: 1506 Marsh Reed Court
Hanahan, SC 29410

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Roxanne Easterwood, RPR

A. WILLIAM ROBERTS, JR. & ASSOCIATES, A Veritext Company

1 Q. Who is responsible for determining
2 whether a particular donor would be a compatible
3 match with particular recipients?

4 MS. CRAIG: Object to the form.

5 THE WITNESS: Okay. That -- I mean,
6 that all is UNOS generated. They -- like I said,
7 they show up on the list based on information
8 provided by the transplant center, so.

9 BY MS. DINKINS:

10 Q. What blood type did WASH report for
11 the donor at issue in this case?

12 A. In this case?

13 Q. Yes.

14 A. I believe it was O negative.

15 Q. And what was the donor's actual blood
16 type?

17 A. A.

18 Q. So would you agree that the blood type
19 WASH reported for the donor was incorrect?

20 MS. CRAIG: Object to the form.

21 THE WITNESS: It was an incorrect -- I
22 mean, yes, it was incorrect.

23 BY MS. DINKINS:

24 Q. How did that happen?

25 MS. CRAIG: Objection.

EXHIBIT 2

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 9TH JUDICIAL CIRCUIT
MICHELLE CHA HOLLIMAN, individually and as personal
representative of the Estate of Allen B. Holliman,

Plaintiff,

vs. CASE NO. 2020-CP-10-2902

WE ARE SHARING HOPE SC, MEDICAL UNIVERSITY OF SOUTH
CAROLINA, and UNITED NETWORK FOR ORGAN SHARING,
Defendants.

VIDEOCONFERENCE

DEPOSITION OF: DARLA A. WELKER

DATE: December 14, 2020

TIME: 10:04 a.m.

LOCATION: Mount Pleasant, South Carolina

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MARIE H. BRUEGGER, RPR, CRR
(Appearing Via VTC)

1 Q Did you have any idea as to what might
2 have happened?

3 A No.

4 Q Did you later ask why there was a
5 discrepant ABO?

6 A Of course.

7 Q And what did you learn?

8 A That it was the wrong ABO.

9 Q Do you know why the ABO was wrong?

10 A At the time, no.

11 Q Do you now?

12 A We since, yes, have learned since.

13 Q And what is your understanding of why
14 the ABO was wrong?

15 A Because she was massively transfused.

16 Q When did you learn that?

17 A Days after the fact of learning what
18 happened.

19 Q So a few days later?

20 A Yes.

21 Q And how did you learn that the ABO was
22 incorrect because of massive transfusions?

23 A I can't recall exactly. I don't -- I
24 don't know.

25 Q Did somebody tell you?

1 A I don't recall.

2 Q Did you have any conversations about
3 what happened with this donor after that initial
4 conversation when you were informed?

5 A Internally, yes. We had multiple
6 conversations within our organization, yes.

7 Q Who did you talk to about the
8 discrepant ABO?

9 A We had a quality meeting that involved
10 an after-action review that everyone involved
11 attended, as well as the Grand Strand blood bank
12 attended and Dr. Whelan, to discuss the events
13 that took place. We had, I do believe, a couple
14 other meetings with quality as well as
15 after-action reviews, and we had a blood
16 specialist from MUSC come over and do education.
17 So we had multiple education and after-action
18 reviews for this particular donor.

19 Q Did you participate in those meetings?

20 A Yes.

21 Q And who else was there?

22 MS. CRAIG: At this point, Darla, I'm
23 going to instruct you not to answer the question
24 because this is a privileged and confidential
25 process pursuant to Section 44-7-392.

1 that the donor received blood transfusions,
2 correct?

3 MS. CRAIG: Same objection.

4 THE WITNESS: Any coordinator that was
5 on site to review the case, yes, would have known
6 that, should have known that.

7 BY MS. DINKINS:

8 Q Were there any other coordinators on
9 site for this donor who should have known that?

10 A There were. There had to have been
11 other coordinators. I don't recall who was on the
12 case from the start before Michael.

13 Q Were you responsible for approving the
14 blood type reported for this donor?

15 A Yes.

16 Q And so did you approve reporting this
17 donor as having blood type O?

18 A I did.

19 Q How did you communicate your approval
20 of this donor's blood type?

21 A How did we verify? Is that the
22 question?

23 Q Well, my first question was a little
24 more technical. How did you communicate it? So
25 did you do this over writing? Over the phone?

1 other blood type results for the donor that had --
2 that indicated a blood type, that those would be
3 sufficient to type the donor?

4 A Yes, considering they were 24 hours
5 apart, yes.

6 Q Did you think it mattered when the
7 blood samples for those other test results were
8 collected?

9 A At the time, no.

10 Q What do you think now?

11 A Again, we've had many after-action
12 meetings and discussions with blood specialists,
13 so we've learned more since then.

14 Q And so what have you learned?

15 MS. CRAIG: I'm going to instruct you
16 not to answer that question pursuant to the state
17 statute that protects privileged confidential
18 information.

19 BY MS. DINKINS:

20 Q Who else was involved in determining
21 and reporting the donor's blood type?

22 A Janine and Michael.

23 Q What is -- excuse me.

24 A Janine is to receive the blood types
25 to compare them and then to notify the on-site

1 to accurately determine the blood type of
2 potential donors?

3 A Absolutely. We're here to save lives.

4 Q And why is it important for WASH to
5 accurately determine the blood type of donors?

6 A To prevent an ABO discrepancy.

7 Q And what can happen if there is an ABO
8 discrepancy?

9 A It can be life-threatening.

10 Q An unintended ABO incompatible
11 transplant can cause a patient to die. Is that
12 correct?

13 A That's my understanding.

14 Q Would you agree that WASH is required
15 to determine a donor's blood type by testing blood
16 samples from the donor that were collected before
17 the donor received emergency blood transfusions?

18 MS. CRAIG: Object to form.

19 THE WITNESS: Can you repeat that
20 question, please?

21 BY MS. DINKINS:

22 Q Sure. Would you agree that WASH is
23 required to determine a donor's blood type by
24 testing blood samples from the donor that were
25 collected before the donor received emergency

1 A O.

2 Q And what was the donor's actual blood
3 type?

4 A My understanding was it was A.

5 Q So would you agree that the blood type
6 WASH reported for the donor was incorrect?

7 MS. CRAIG: Object to form.

8 THE WITNESS: Yes.

9 BY MS. DINKINS:

10 Q How did that happen?

11 MS. CRAIG: Objection. Outside her
12 area of expertise.

13 THE WITNESS: I'm not a blood
14 specialist. I don't know.

15 BY MS. DINKINS:

16 Q Do you know whether it was because the
17 donor had received massive blood transfusions?

18 MS. CRAIG: Same objection.

19 THE WITNESS: I don't -- I don't know.

20 BY MS. DINKINS:

21 Q Do you recall whether you worked on
22 this donor's case through the middle of the night?

23 A Yes. Typically, our calls are 24
24 hours.

25 Q That's how long you'll be working at a

1 Q Why couldn't it have used the same
2 samples it used for the initial run?

3 A Because we had a discrepancy in the
4 ABO, so clearly, there was some concern at that
5 point about it being a correct ABO.

6 Q So it's because --

7 A You would not have -- you would not
8 have used previous samples.

9 Q Because the previous samples were
10 incorrect?

11 A Were discrepant.

12 Q They were discrepant?

13 A Or yes, incorrect. I'm sorry. They
14 were incorrect based on what we knew at that time.

15 Q Have you ever talked with Dave
16 DeStefano about this donor?

17 A Not outside of our after-action
18 meetings and the blood specialist and training
19 that we did, no.

20 Q So what meetings were you involved
21 with where Dave DeStefano was there?

22 MS. CRAIG: Again, I do instruct the
23 witness not to answer the question based on
24 privileged confidential information protected by
25 statute.

1 Q Did WASH conduct any investigations
2 into how the donor's blood typing error occurred?

3 MS. CRAIG: Objection. I'm going to
4 instruct you not to answer the question.

5 BY MS. DINKINS:

6 Q I have just one more exhibit. I'm
7 going to share my screen because I don't think
8 this is one you're going to have.

9 (Plaintiff's Exhibit 16, Email Chain
10 ending in a 12/4/18 Email to Stanton and DeStefano
11 from Thomas [MUSC_Subpoena 14-15], was marked for
12 identification.)

13 BY MS. DINKINS:

14 Q This is MUSC_Subpoena 14 and 15. This
15 is marked as Exhibit 16. And I'm looking at the
16 email at the top of the page from Daniel Stanton
17 to Dave DeStefano and Jeff Thomas.

18 Have you seen this email?

19 A No.

20 Q Excuse me. I wasn't actually at the
21 top of the page. Sorry. I'm looking at an email
22 from Jeff Thomas to Daniel Stanton and Dave
23 DeStefano which is at the top of Exhibit 16.

24 Have you seen this?

25 A No.

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

)

)

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
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR PROTECTION**

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

The Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), hereby submits this Memorandum Support of Its Motion to Protection filed following the deposition of We Are Sharing Hope employee Darla Welker.

BACKGROUND

During Darla Welker's deposition she was asked about quality meetings and discussions following the events of this case and was instructed not to answer. Ms. Welker is an employee of Sharing Hope and during the events of this case she was working as the Administrator on Call. Ms. Welker is registered nurse and as Administrator on Call she oversees different Donor cases which may be occurring simultaneously. In her deposition, Ms. Welker testified Sharing Hope had a quality meeting that involved an after-action review with Grand Strand and she had other meetings with regard to education. Ms. Welker testified she participated in the meeting with Grand Strand and other educational meetings. When Ms. Welker was asked who else was there, she was instructed by counsel not to answer the question pursuant to S.C. Code Section 44-7-392.

Ms. Welker was also instructed not to answer when asked what she has learned following the after-action meetings and discussion with blood specialists pursuant to the state statute and what quality meetings she was involved with the president and CEO of Sharing Hope. (159) In addition, Ms. Welker was asked about whether Sharing Hope conducted any investigation into how the donor's blood typing error occurred and instructed not to answer. (172)

In totality the questions Ms. Welker was instructed not to answer are below:

Q: Did you participate in those meetings?

A: Yes.

Q: And who else was there? (43:19-21)

A: Again, we've had many after-action meetings and discussions with blood specialists, so we've learned more since then.

Q: And so what have you learned? (52:11-14)

Q: So what meetings were you involved with where Dave DeStefano was there? (159:20-21)

Q: Did WASH conduct any investigations into how the donor's blood type error occurred? (172:1-2)

For the following reasons, Sharing Hope now respectfully requests that the Court grant its Motion for a Protective Order under Rule 26(c), SCRPC, to prevent the dissemination of protected peer review information.

ARGUMENT

The communications and after-action meetings as Ms. Welker referred to them are protected by the confidentiality of peer review and quality assurance activities. South Carolina statutes on peer review privilege and the public policy reasons for such a privilege further support protection of this information. Ms. Welker was involved in the Root Cause Analysis investigation

between Sharing Hope and Grand Strand Hospital¹ which is designated on the privilege log as Privileged 0187-0195. As such, Ms. Welker was instructed not to answer questions regarding the meeting between Sharing Hope and Grand Strand: (1) who was there; (2) what did she learn; (3) if the president and CEO were there; (4) and a general investigation question which would also point to this Root Cause Analysis with Grand Strand Hospital to which Ms. Welker was involved as an employee of Sharing Hope.

The general rule according to South Carolina peer review statutes is that hospital peer review data and proceedings are not subject to discovery or introduction into evidence in a civil action. See §44-7-392. Though this matter involves a review from a hospital and an Organ Procurement Organization² the rationale for protecting peer review set forth by the South Carolina legislature is the same.

The underlying purpose behind the South Carolina peer review privilege statutes is the promotion of complete candor and open discussion among participants in the peer review process. Peer review and quality assurance activities are not meant to facilitate litigation, but rather to encourage health care professions to self-monitor their peers and to promote patient safety. Permitting the use of peer review communications in litigation would have a substantial chilling effect on the health care profession's ability to monitor and improve patient care.

Pursuant to Section 44-7-392 titled the "Confidentiality of hospital proceedings, data, documents and information" all proceedings and information prepared or acquired by a hospital

¹ Grand Strand Hospital is not a party to this lawsuit.

² We Are Sharing Hope SC is the federally designated Organ Procurement Organization for South Carolina. On the same day as this memorandum was filed, Sharing Hope also filed a Memorandum in Opposition to Plaintiff's Motion to Compel which contains additional background information regarding Sharing Hope as an OPO.

licensed under this article relating to sentinel event or root cause analysis or quality assurance review are not subject to discovery.

The statute is as follows:

Section 44-7-392 Confidentiality of hospital proceedings, data, documents and information

(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 hearing related thereto;
- (c) quality assurance reviews.

If this meeting was not a root cause analysis as stated in Section (a) above then it should be classified as a (c) quality assurance review regarding this case between Grand Strand and Sharing Hope any testimony from Ms. Welker regarding the same should be protected.

(2) The proceedings and data, documents, records, and information described in subsection (A)(1) may be shared with a parent corporation, subsidiaries, other hospitals in the health care system, directors, officers, employees, and agents of the hospital and if shared, remain confidential. These proceedings and data, documents, records, and information in subsection (A)(1) are not subject to discovery, subpoena, or introduction into evidence in any civil action unless the hospital and any affected person who is a party to such action waives the confidentiality in writing.

As per the above, the Root Cause Analysis is not subject to discovery because the hospital has not waived the confidentiality in writing and therefore, any testimony from Ms. Welker regarding the root cause analysis meeting with Grand Strand should be protected from discovery.

CONCLUSION

Sharing Hope requests an Order pursuant to Rule 26(c) protecting the testimony and information obtained via peer review to be disseminated during this litigation.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

s/ Jean Marie Jennings
Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

*Attorneys for Defendant
We Are Sharing Hope SC*

March 12, 2021
Charleston, South Carolina

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

)

)

)

Plaintiff,)

)

Versus

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)

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

)

)

)

)

Defendants.)

DEFENDANT
WE ARE SHARING HOPE SC'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL

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

The Defendant We Are Sharing Hope SC (hereinafter "this Defendant" or "Sharing Hope"), hereby submits this Memorandum in Opposition to Plaintiff's Motion to Compel documents Sharing Hope has properly withheld as privileged and part of the peer-review process.

BACKGROUND

This case arises from an organ transplant given to the Decedent, Allen B. Holliman. Mr. Holliman unfortunately passed away due to the transplant organ's incompatibility with his ABO blood type. It is alleged that We Are Sharing Hope SC ("Sharing Hope") incorrectly reported the blood type of the organ donor ("Donor") when it reported the Donor's blood type as O negative, as resulted by blood tests from the Donor Hospital.

We Are Sharing Hope SC is the federally-designated Organ Procurement Organization ("OPO") for the State of South Carolina. This South Carolina Non-Profit Corporation facilitates the delivery of life-saving organs to persons on organ transplant lists. Sharing Hope evaluates potential donors by hospital referrals and, once a donor is declared to be brain dead, Sharing Hope

manages the donor to maximize organ function. In this role, Sharing Hope reports and uploads medical information regarding each donor and coordinates organ recovery with the donor hospital and the transplant surgeons.

As the OPO for the State of South Carolina, Sharing Hope is part of the national Organ Procurement and Transplantation Network ("OPTN"). The OPTN is a national transplant network established by federal law and regulation to which every transplant hospital, organ procurement organization and transplant histocompatibility laboratory in the United States is a member.¹ The OPTN is administered by the United Network for Organ Sharing ("UNOS") under a contract with the Health Resources and Services Administration of the U.S. Department of Health and Human Services. UNOS is a Virginia private non-profit organization.

The OPTN, 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; and establishes a network of membership requirements for transplant hospitals and OPOs; and monitors their compliance with the established standards, policies, and transplant quality.² In order to serve as the South Carolina OPO for UNOS, Sharing Hope must meet and abide by OPTN policies, procedures, standards and requirements as administered by UNOS. For example, UNOS operates the OPTN Membership and Professional Standards Committee ("MPSC") which maintains membership criteria and monitors member compliance based on OPTN membership criteria, bylaws, and policies. 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.

¹ <https://optn.transplant.hrsa.gov/members/member-actions/>.

² <https://optn.transplant.hrsa.gov/members/member-actions/>.

As a result of Mr. Holliman's death, Sharing Hope and the MPSC (operated by UNOS) engaged in a self-critical quality assurance and peer review evaluation, the contents of which are protected by applicable peer-review statutes in South Carolina and Virginia as well as by the bylaws of the OPTN. It is these communications and materials which are the subject of the present motion.

DISCOVERY BACKGROUND

The Plaintiff has pursued, and ultimately received, discovery of the factual information relating to the organ transplant at issue in addition to the usual medical records generated in the course of the Decedent's treatment. For example, the Plaintiff has sought the production of medical records of the Donor, a non-party in this case to which this Defendant expressed and filed a motion based on the production violating the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Following the hearing, Sharing Hope produced the medical records of the Donor even though the Donor is not a party and had not consented to the same.

In addition to the Decedent's actual medical records, Sharing Hope has produced over 1,000 documents including the organ medical record (Donor), Sharing Hope policies and procedures, the audit detail, and non-privileged emails exchanged on the Sharing Hope email server. Sharing Hope has also provided copies of text messages between Sharing Hope employees who were involved in the Donor case when the ABO blood typing was reported. After receiving an objection from the Plaintiff as to the form of the text messages' production, this Defendant has been working and continues to work with its employees and its IT department re-produce the same text messages in a different format. Because Sharing Hope employees use personal phones for texting and are not located in the Sharing Hope office or working from home due to the pandemic, this process is ongoing. In addition, Sharing Hope has supplanted its Answers to Interrogatories,

Requests for Production and provided a Verification as requested by the Plaintiff in her Motion to Compel.

Pertinent to the present motion, the Plaintiff now seeks to compel the production of the communications and materials exchanged by Sharing Hope and the MPSC, operated by UNOS, during the self-critical quality assurance and peer review evaluation conducted following Mr. Holliman's death. These materials have been withheld as privileged and have been identified on Sharing Hope's Privilege Log as *Privileged 0001-0186, 0196-0210, 0211-0223, and 0224-0227*. Specifically, the withheld materials consist of those documents and correspondence exchanged between Sharing Hope (the OPO for South Carolina) and the MPSC (the national committee of the OPTN administered by UNOS) while these entities engaged in their confidential peer review process. To the extent that these communications contain attachments or enclosures of the Decedent'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.

ARGUMENT

The Plaintiff's Motion to Compel should be denied.

I. SHARING HOPE & UNOS CONFIDENTIAL MEDICAL PEER REVIEW

The materials withheld by Sharing Hope (identified on Sharing Hope's Privilege Log as *Privileged 0001-0186, 0196-0210, 0211-0223, and 0224-0227*) are protected by the peer review privilege. As Sharing Hope is a South Carolina entity and UNOS is a Virginia entity, either state's

peer review privilege may apply. Under either state's law,³ the withheld materials are protected by the peer review privilege, and the Court should not require Sharing Hope to produce the same.

A. South Carolina Statutory Law and Policy

South Carolina has enacted two statutes regarding peer review data which include the "old" peer review statute § 40-71-20 enacted in 1978 and the "new" statute § 44-7-392 enacted in 2012 both which protect peer review materials from disclosure in civil actions. Peer review and quality assurance activities are not meant to facilitate litigation, but rather to encourage health care professions to self-monitor their peers and to promote patient safety. Permitting the use of peer review communications in litigation would have a substantial chilling effect on the health care profession's ability to monitor and improve patient care. The intended purpose of the original peer review law as stated in Durham v. Vinson was to promote complete candor and open discussions among participants in the peer review process. 360 S.C. 639, 602 S.E. 2d 760 (2004). The new law expanded the protections of the peer review law and an order compelling production of peer review materials is now immediately appealable. The Fourth Circuit has said "If there is one instance where society should encourage uninhibited communication, it is in the review of the competency of medical professionals." Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989). In this case, several of Sharing Hope's medically trained employees, such as the Clinical Donation Coordinator and the Administrator on Call, were engaged in managing the donor and reporting the information the donor hospital provided. The self-critical analysis and education

³ Since medical practice is an area governed by state law, it is not clear which state law would be applicable to the peer review processes adopted by 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) as well as the state of UNOS' incorporation (Virginia). The outcome of an analysis under either state's applicable peer review privilege is the same, and the materials should not be produced.

following after a patient safety event is critical and should not be used as evidence against Sharing Hope in a civil case.

The documents labeled and disclosed on the privilege log as *Privileged 0001-0186, 0196-0210, 0211-0223, and 0224-0227* contain confidential peer review materials involving the critical analysis and quality assurance measures that are protected under South Carolina Code §§ 40-71-20 and §44-7-392 by the spirit of the law and policy to encourage full candor without fear of reprisal. Privileged 001 as well as multiple other documents therein contains the words "Confidential Medical Peer Review" affixed to it. The documents labeled as *Privileged 0001-0186, 0196-0210, 0211-0223, and 0224-0227* are part of a confidential medical peer review process between the Membership and Professional Standards Committee of UNOS and We Are Sharing Hope SC.

Section 40-71-20 provides that peer review material is confidential:

All proceedings of 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, document, or records which are otherwise available from the 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 matter of which he has knowledge apart from the committee proceedings or revealing such matters to third persons. Confidentiality provisions do not prevent committees appointed by the Department of Health and Environmental Control from issuing reports containing solely nonidentifying data and information.

The "committee" referred to in Section 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 or an appointed member of a committee of a medical staff or a licensed hospital, provided the medical staff operates pursuant to written bylaws that have been approved by the governing

board of the hospital, 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 and disease.” A “professional society” is defined in Section 40-71-10(A) as a medical organization having as members at least a majority of eligible licentiates in the area served⁴.”

This statute when read together with Section §40-71-20 applies to UNOS’s peer review process with Sharing Hope. The MPSC is an appointed committee formed to maintain the professional standards of its members, in this case a state professional society, Sharing Hope, consisting of nurses, physicians, and technicians to better promote public health and patient safety. Further, the fact the MPSC is a committee of a national organization that monitors the state organization should not exempt the confidential documents from the peer review protection as evidenced by the policy behind the law as discussed below.

Further the reading of § 40-71-10 also comports with the policy underlying the statutory privilege as stated in

In McGee v. Bruce Hospital, the South Carolina Supreme Court stated:

The overriding public policy of the confidentiality statute is to encourage health care professional to monitor the competency and professional conduct of their peers to safeguard and improve the quality of patient care. 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. Cruger v. Love, 599 So.2d 111 (Fla. 1992). We adopt the Florida Supreme Court’s reasoning in Cruger that:

The policy of encouraging full candor in peer review proceedings is advanced only if all documents considered by the committee ... during the peer review process are protected. Committee members and those

⁴ “‘Professional society’ as used in this chapter includes legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutic, and engineering organizations having as members at least a majority of the eligible cs 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.” S.C. Code § 40-71-10(A).

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 the application might someday be used against them by a third party will be reluctant to fully detail matter that the committee should consider.

312 S.C. 58, 439 S.E.2d 257, 259-60 (1993):

In addition, McGee concerns only the release of clinical privileges and should not be over analyzed and expanded to cover the release of peer review documents or results which were not at issue. Clinical privileges are merely a listing of what procedures a doctor may perform at a given hospital. As such, the release of clinical privileges does not translate into conclusions or opinions of how a doctor performed in any particular case and this reasoning should not be extended to require Sharing Hope to report any outcome of the peer review process.

Persuasive authority in Hofflander v. St. Catherine's Hospital, Inc., 635 N.W.2d 13 (Wis. App. 2001), supports extension of the protection to the confidential medical peer review between UNOS and Sharing Hope. In Hoflander, the court extended statutory peer review confidentiality to JCAHO records based on public policy, finding that the JCAHO perform 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.

The same protections should be extended to the records labeled as *Privileged 0001-0186, 0196-0210, 0211-0223, and 0224-0227* because those records are part of a confidential medical peer review process as stated on several of the documents contained therein. Internal consultation and review by UNOS of one of its members, Sharing Hope, by way of a peer review is a valuable tool to ensure patient safety during the process of organ donation. Refusing protection of these

documents would discourage their critical self-analysis and frustrate the policy of the peer review statute. It would also have a chilling effect on the honesty and candor which is necessary during the peer review process.

B. Peer Review Law of the Commonwealth of Virginia

UNOS is a private non-profit organization operating in Virginia. Because the documents sought to be protected are the result of peer review conducted by UNOS, Virginia law is instructive and may be equally applicable. 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.⁵ *Id.*

⁵ There is one statutory exception to this 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.

C. OPTN Bylaws Support the Confidentiality of Peer Review Documents between UNOS and Sharing Hope

As an additional ground for the protection of the confidential peer review materials labeled as *Privileged 0001-0186, 0196-0210, 0211-0223, and 0224-0227* which are protected by both Virginia and South Carolina law, Sharing Hope refers to the OPTN bylaws which further confirm the policy and the protection regarding the documents. Each member of the OPTN must agree to comply with all OPTN Obligations which include following the OPTN Bylaws and Policies. Thus, Sharing Hope must comply with the above and also must cooperate with the OPTN to engage in the confidential medical peer review as discussed below:

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.

L.3 Medical Peer Review.

Again, the OPTN bylaws directly speak to the confidential nature of the documents to promote quality improvement and full disclosure by OPTN members such as Sharing Hope in this case. The peer review process between UNOS and Sharing Hope happened because it was required by the above Bylaws. The Bylaws further peak to the same reasoning as to the confidentiality as in the South Carolina and Virginia statutory provisions and spirit of the law. Encouraging full and frank discussion about any quality assurance or patient safety matter is for the benefit of all persons moving forwards and not to be used against an organization during the course of civil litigation.

II. ROOT CAUSE ANALYSIS BETWEEN SHARING HOPE AND GRAND STRAND

There is an additional basis under which a portion of the materials identified on Sharing Hope's privilege log are properly withheld. *Privileged 0187-0195* includes a root cause analysis

between Sharing Hope and the donor hospital, Grand Strand Medical Center⁶. The eight pages of documents contained therein are the result of a root cause analysis meeting between Sharing Hope and the Donor hospital Grand Strand Medical Center who is not a party to this action. The documents have "Root Cause Analysis" affixed to them and the root cause analysis was completed by Sharing Hope and provided to Grand Strand Hospital.

Pursuant to the "new" peer review statute adopted by South Carolina:

(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.

* * *

(2) The proceedings and data, documents, records, and information described in subsection (A)(1) may be shared with a parent corporation, subsidiaries, other hospitals in the health care system, directors, officers, employees, and agents of the hospital and if shared, remain confidential. These proceedings and data, documents, records, and information in subsection (A)(1) are not subject to discovery, subpoena, or introduction into evidence in any civil action unless the hospital and any affected person who is a party to such action waives the confidentiality in writing.

S.C. Code § 44-7-392(A). By the language of the statute, the documents labeled as privileged consist of a root cause analysis and it was acquired by Grand Strand or provided to Grand Strand following a joint meeting.

⁶ Sharing Hope has also filed a Memorandum in Support of its Motion for an Order of Protection as to the deposition of Sharing Hope employee Darla Welker which concern the same documents *Privileged 0187-0195*.

At this time, the hospital has not waived the confidentiality in writing and therefore, the documents labeled for production as *Privileged 0187-0195* are not subject to discovery, subpoena or introduction into evidence.

CONCLUSION

For all of the foregoing reasons, Sharing Hope respectfully requests that this Court deny Plaintiff's Motion to Compel the privileged documents contained on Sharing Hope's Privilege Log and find that Sharing Hope acted reasonably in labeling the documents and affixing them in the privilege log.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

s/ Jean Marie Jennings
Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

*Attorneys for Defendant
We Are Sharing Hope SC*

March 12, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2020-CP-10-02902
	)	
Michelle Cha Holliman, individually and as	)	
personal representative of the Estate of Allen	)	
B. Holliman,	)	
	)	DEFENDANT UNITED NETWORK
Plaintiff,	)	FOR ORGAN SHARING'S
	)	OPPOSITION TO PLAINTIFF'S
v.	)	MOTIONS TO COMPEL AGAINST
	)	CODEFENDANTS WE ARE SHARING
We Are Sharing Hope, SC, Medical	)	HOPE, SC AND THE MEDICAL
University of South Carolina, and United	)	UNIVERSITY OF SOUTH CAROLINA
Network for Organ Sharing,	)	
	)	
Defendants.	)	

Defendant United Network for Organ Sharing (“UNOS”) respectfully submits this Response in Opposition to Plaintiff’s Motions to Compel against both codefendant We are Sharing Hope and codefendant Medical University of South Carolina. As grounds for its opposition, UNOS joins in the responses filed by both of those defendants, adopting and incorporating those memoranda herein. In addition to the reasons set forth in the codefendants’ memoranda, the Court should also deny Plaintiff’s Motions to Compel because the information and materials Plaintiff seeks are protected and privileged by Virginia’s peer-review privilege statute, Va. Code §§ 8.01-581.16–17 (the “Peer Review Statute”), to the extent Virginia law applies here.

BACKGROUND

Plaintiff alleges that Allen B. Holliman (“Holliman”) suffered from lung problems and that physicians at MUSC determined he was a suitable candidate for a double-lung transplant and subsequently placed him on a transplant list. (Compl. ¶ 19). 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 We Are

Sharing Hope SC (“WASH”), an organ procurement organization (“OPO”) that provides organ donor services to hospitals throughout South Carolina. (Compl. ¶¶ 3, 23). Holliman’s MUSC physicians approved him for a double-lung transplant after finding no contraindications for pursuing the transplant. (Compl. ¶¶ 20, 22).

On November 27, 2018, Holliman underwent a double-lung transplant at MUSC. (Compl. ¶ 21). 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. (Compl. ¶¶ 27–30). Holliman passed away on November 28, 2018, from hyperacute rejection of his transplanted lungs. (Compl. ¶ 31).

UNOS is a Virginia 501(c)(3) not-for-profit charitable 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. (Compl. ¶ 9). Plaintiff alleges UNOS listed the Donor’s lungs as available for transplant, listed the Donor as having type O blood, and matched Holliman with the Donor’s lungs. (Compl. ¶ 25).

Plaintiff filed two similar motions to compel, one against each codefendant, seeking the production of information protected from discovery by the peer review privileges. Both codefendants have outlined well the reasons that such information is not discoverable; however, UNOS is compelled to join in those responses as a significant amount of the information sought from the codefendants was given to UNOS as a part of its peer review process. Although the instant Motions to Compel are only against the codefendants and not UNOS directly, the information sought from the codefendants is critical peer review information given to UNOS

pursuant to its peer review process. Because Plaintiff seeks disclosure of matters privileged under South Carolina's and/or Virginia's Peer Review Statute, the Court should deny Plaintiff's motion.

LEGAL STANDARD

Under Rule 37(a)(2) of the South Carolina Rules of Civil Procedure, a party “may apply for an order compelling discovery . . . [i]f . . . a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer . . . or an order compelling inspection in accordance with the request.” S.C.R.C.P. 37(a)(2).

However, Rule 26(b) limits the scope of discovery by providing, in part, that privileged matter or discovery otherwise limited by court order is not discoverable. See S.C.R.C.P. 26(b)(1) (emphases added) (“Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) [p]arties may obtain discovery regarding any matter, not privileged . . .”).

An evidentiary privilege is one “that allows a specified person to refuse to provide evidence or to protect the evidence from being used or disclosed in a proceeding.” Hartsock v. Goodyear Dunlop Tires N. Am. Ltd., 422 S.C. 643, 647, 813 S.E.2d 696, 699–700 (2018) (citing Evidentiary Privilege, Black's Law Dictionary (10th ed. 2014)). “The principle underlying recognition of a privilege is simple: although 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.’” Id., 422 S.C. at 647, 813 S.E.2d at 699 (quoting Jaffee v. Redmond, 518 U.S. 1, 9 (1996)).

ARGUMENT

Plaintiff's discovery requests seek, in part, disclosure and details of any investigations relating to Holliman's death or the Donor, which are protected from discovery by the peer-review privilege. (See generally Pl.'s First Set of Interrogs.; Pl.'s First Set of Reqs. for Produc., attached as Ex. A to Pl.'s Mot. to Compel against MUSC). As briefed in MUSC's Response in Opposition, such information and materials are not discoverable under South Carolina's peer-review privilege. Furthermore, to the extent Virginia law applies to the privilege asserted (as UNOS is a Virginia not-for-profit organization headquartered in Virginia), the Peer Review Statute applies to this confidential, protected, and privileged information and materials sought by Plaintiff, rendering them not discoverable.

1. The Virginia Peer Review Statute Applies to Defendant United Network For Organ Sharing And Its Members.

The Virginia Peer Review Statute is very broad as to whom it applies. The peer review protections apply to any committee or entity as specified in Va. Code § 8.01-581.16. That section clarifies that the peer review protections apply to every group or entity that "functions primarily to review, evaluate, or make recommendations on ... (ii) the professional services furnished with respect to the medical, dental, psychological, podiatric, chiropractic, veterinary, or optometric necessity for such services; ... (iv) the adequacy or quality of professional services; (v) the competency and qualifications for professional staff privileges..." Va. Code § 8.01-581.16.

Here, Defendant UNOS operates the Organ Procurement and Transplantation Network ("OPTN") for the Department of Health and Human Services. In furtherance of that program, UNOS investigated the incident in question through the OPTN Membership and Professional Standards Committee, who sought and obtained confidential peer review information from both

the Medical University of South Carolina and We Are Sharing Hope. That role of that Committee is best summarized by its website quoted below:

The OPTN Membership and Professional Standards Committee (MPSC) is an operating committee of the OPTN. The MPSC maintains membership criteria and monitors OPTN member compliance with OPTN membership criteria, OPTN bylaws and policies, and the OPTN Final Rule. The MPSC takes action or makes recommendations for further action to the OPTN Board of Directors as needed.

The MPSC, through peer review:

- **Reviews events identified as presenting a risk to patient safety, public health or the integrity of the OPTN.**
- Evaluates and supports OPTN members by providing feedback on and recommendations to **improve** members' performance, compliance, and **quality systems**.
- Reviews applications for membership in the OPTN, approval of designated transplant programs, and changes in OPTN member key personnel.

The MPSC also:

- Identifies opportunities for transplant community education to **improve patient safety** and safeguard the integrity of the transplant system, often through dissemination of successful examples of membership engagement and sharing of best practices.
- Develops bylaws and policies related to membership criteria or the oversight responsibilities of the MPSC that align with the OPTN mission to maximize organ supply, **provide efficient and safe care**, and provide equitable access to transplantation.

See <https://optn.transplant.hrsa.gov/members/committees/membership-and-professional-standards-committee/> (bolded emphasis added).

When MUSC or We Are Sharing Hope reports to UNOS / OPTN information relating to the investigation of an adverse event, it is in furtherance of the committee's a peer review effort. The UNOS / OPTN Committee which received the information from MUSC and We Are Sharing Hope was designed to investigate the propriety of patient care, improve patient safety, and make transplantations safer. If the information sought in the Motions to Compel was not protected from discovery, the chilling effect it would have on the transplantation world could not be understated.

2. The Virginia Peer Review Statute Protects The Information Sought.

The Virginia Peer Review Statute provides, in pertinent part:

The proceedings, minutes, records, and reports of any (i) medical staff committee, utilization review committee, professional program, or other committee, board, group, commission, or other entity as specified in § 8.01-581.16; (ii) nonprofit entity that provides a centralized credentialing service; or (iii) quality assurance, quality of care, or peer review committee established pursuant to guidelines approve or adopted by (a) a national or state physician peer review entity, (b) a national or state physician accreditation entity, (c) a national professional association of health care providers or Virginia chapter of a national professional association of health care providers, (d) a licensee of a managed care health insurance plan (MCHIP) as defined in § 38.2-5800, (e) the Office of Emergency Medical Services or any regional emergency medical services council, or (f) a statewide or local association representing health care providers licensed in the Commonwealth, together with all communications, both oral and written, originating in or provided to such committees or entities, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications.

Va. Code § 8.01-581.17 (emphases added).

Simply stated, the plain language of the Peer Review statute provides that “peer review records ‘are privileged communications which may not be disclosed or obtain by legal discovery proceedings.’” HCA Health Servs. of Va., Inc. v. Levin, 260 Va. 215, 220, 530 S.E.2d 417, 419–20 (2000). Peer review generally refers to the process where a group of medical professionals with comparable education, skill, and judgment review the professional medical services delivered by

another medical professional. Such review is done to evaluate the quality of medical services provided to patients and to identify steps to improve patient outcomes. Recognizing the need to protect the peer review process, Virginia enacted the Peer Review Statute, providing that certain information and materials involved in or related to the peer review process are privileged from disclosure in civil litigation. The “obvious legislative intent” of the Peer Review Statute “is to promote open and frank discussion during the peer review process among health care providers in furtherance of the overall goal of improvement of the health care system” because “[i]f peer review information were not confidential, there would be little incentive to participate in the process.” Levin, 260 Va. at 221, 530 S.E.2d at 420.

The language of the Peer Review Statute does not limit its application to any particular type of lawsuit or action. Id., 260 Va. at 220, 530 S.E.2d at 420. The privilege “does not belong to the physician who is subject to the peer review and may not be unilaterally waived by the physician” because such waiver would run “counter to the purpose of the statute that encourages physicians to participate candidly in the peer review of other physicians, with the expectation that the information submitted will remain confidential and shielded from public disclosure.” Id.

Here, Plaintiff’s discovery requests broadly seek information and materials that fall within the Virginia Peer Review Statute’s protection of proceedings, minutes, records, reports, and communications purportedly in UNOS’s possession, custody, or control, whether received from MUSC or from We Are Sharing Hope. Accordingly, such information and materials are privileged and not discoverable here.

CONCLUSION

UNOS believes that the information sought is protected from discovery by the South Carolina peer review privileges; however, because UNOS is a Virginia company, and its peer

review process is organized under the laws of Virginia, UNOS further points out that the information sought in both Motions to Compel are also protected from discovery by applicable Virginia law. Because Plaintiff's discovery requests seek, in part, disclosure of confidential, privileged information and materials, the Court should deny Plaintiff's Motions to Compel against MUSC and We Are Sharing Hope.

HALL BOOTH SMITH, P.C.

s/Jack G. Gresh

Jack G. Gresh, SC Bar No. 75188

Lauren Spears Gresh, SC Bar No. 100994

111 Coleman Blvd, Suite 301

Mount Pleasant, South Carolina 29464

Phone: 843.720.3460

jgresh@hallboothsmith.com

lgresh@hallboothsmith.com

*Counsel for Defendant United Network for Organ
Sharing*

March 12, 2021

Mount Pleasant, South Carolina

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

)

)

)

Plaintiff,) **DEFENDANT WE ARE SHARING HOPE**
) **SC's REPLY TO PLAINTIFF'S**

Versus

) **SUPPLEMENTAL MEMORANDUM IN**
) **SUPPORT OF MOTION FOR AN ORDER**We Are Sharing Hope SC, Medical University
of South Carolina, and United Network for
Organ Sharing,) **COMPELLING DEFENDANT WE ARE**
) **SHARING HOPE SC TO FILE**) **DOCUMENTS WITHHELD FROM**) **DISCOVERY UNDER SEAL PURSUANT***Defendants.*) **TO S.C. CODE 40-71-30 AND TO PROVIDE**
) **COMPLETE DISCOVERY RESPONSES**

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

The Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), hereby submits this Reply to Plaintiff's Supplemental Memorandum in Support of her Motion to Compel to discuss additional grounds which are not contained in Plaintiff's Motion to Compel.

The Plaintiff's Supplemental Memorandum in Support of its Motion to Compel adds an additional ground which is not contained in her Motion filed on November 18, 2020, specifically Sharing Hope's non-conformance report which was properly withheld on the privilege log. Because the non-conformance report was not included in the Plaintiff's Motion, We Are Sharing Hope did not discuss the non-conformance in its Memorandum in Opposition to Plaintiff's Motion to Compel. However, because these Motions are being decided upon the briefs, We Are Sharing Hope wishes to respond regarding to the non-conformance report which is not properly before the court at this time.

Sharing Hope's non-conformance report, which was classified for this case as an Adverse Event report, is an internal document completed and compiled by Sharing Hope's quality systems department. The non-conformance report related to the donor whose lungs were transplanted into Mr. Holliman includes attachments containing all of the communications and documents with UNOS as well as the Root Cause Analysis with Grand Strand. Thus, it is a working document containing the peer reviewed materials discussed at length in Sharing Hope's Motion in Opposition to Plaintiff's Motion to Compel and this Defendant incorporates its Memorandum in Opposition to Plaintiff's Motion to Compel herein. The non-conformance report/adverse event report contains a list of attachments which includes: 1) privileged/peer review/quality assurance documents between We Are Sharing Hope SC and UNOS¹ as discussed in Sharing Hope's Memorandum in Opposition to Plaintiff's Motion to Compel and UNOS's Motion in Opposition to Plaintiff's Motion to Compel Sharing Hope and MUSC; and 2) privileged/peer review/quality assurance documents from the Root Cause Analysis with Grand Strand and We Are Sharing Hope. The attachments to the non-conformance report are discussed in detail in Sharing Hope's Memorandum in Opposition to Plaintiff's Motion to Compel and the attachments to the non-conformance report are labeled as *Privileged 0001-0227* and were previously sent to the Court for review. The attachments listed in the non-conformance report which consist of donor medical records have been produced.

The non-conformance report is a quality assurance document containing the attachments discussed above which is the type of document and self-critical analysis which encourages self-monitoring and promotes patient safety – not to facilitate litigation. Moreover, it contains the

¹ UNOS has also filed a Motion in Opposition to Plaintiff's Motion to Compel the peer review documents between UNOS and We Are Sharing Hope SC.

documents by way of attachments between Sharing Hope and UNOS which are privileged pursuant to South Carolina and Virginia law as well as public policy and the documents which are privileged between Sharing Hope and Grand Strand pursuant to S.C. Code Section §44-7-392 and public policy. The non-conformance report is labeled on the third-amended privilege log as *Privileged 0231-0235* which will also be provided to the Court for review.

In regards to Plaintiff's argument that Sharing Hope failed to initially place the non-conformance report on the privilege log, once counsel for Sharing Hope realized a document existed called a non-conformance report, Sharing Hope supplemented its privilege log as required by the Rules of Civil Procedure. When counsel initially responded to discovery, it did not possess the knowledge that a non-conformance report containing the attachments existed as it only possessed the attachments to the report which were withheld on the privilege log. Further, counsel was under the impression the non-conformance report or adverse event report was reported to UNOS through an internet portal and Sharing Hope was not in possession of this report. Again, once counsel realized a document existed called the non-conformance report, it immediately placed the document on the privilege log.

Sharing Hope's responses to Request No. 12 and 24 contain an objection to any materials sought that may be privileged and also refers the Plaintiff to the privilege log which contained many of the documents listed as attachments to the non-conformance report and therefore, this Defendant did not waive the privilege.

Plaintiff's Supplemental Memorandum includes deposition testimony from Tammy Smith, former medical records coordinator at Sharing Hope. However, Mrs. Smith specifically testified she was not a part of any non-conformance report in this case and she has no knowledge of what is contained in the non-conformance report in this case. She testified in theory a non-conformance

report would be generated if there was information not found in the organ medical record or a patient safety issue. Prior to Mrs. Smith's deposition, the non-conformance report which was generated in this case had been placed on the privilege log. This Defendant fails to see what Mrs. Smith's testimony presents to this argument other than that she thought a non-conformance report was generated of which she had no knowledge – and the non-conformance report was already labeled on the privilege log at the time of her deposition.

In regards to the argument that Sharing Hope has waived the privilege by failing to file its *Privileged 001-0227* documents under seal, Sharing Hope has provided the documents to the law clerk for judicial review and it is reasonable to provide the documents to the presiding Judge once the presiding Judge is known. Neither §40-71-30 nor §44-7-392 assert any temporal requirement regarding filing under seal for judicial review, nor does either statute purport to say that the privilege is waived if this is not done. Importantly, the documents were sent to the Judge's law clerk prior to the Motion appearing on the roster and therefore this argument is without merit.

Plaintiff further asserts Sharing Hope has waived any arguments its withheld documents are privileged for failure to Comply with Rule 26(b)(5)(A). On the contrary, Sharing Hope has complied with Rule 26(b)(5)(A) and labeled the documents on the privileged log as with a sufficient description to determine what documents it has properly withheld and to not destroy the privilege as it exists. Sharing Hope maintains the documents between Sharing Hope and UNOS are properly withheld peer review documents pursuant to South Carolina and Virginia Law as well as public policy. UNOS has also filed a Memorandum in Opposition to Plaintiff's Motion to Compel asserting the documents between Sharing Hope and UNOS are peer review privileged documents.

Sharing Hope vehemently denies it has engaged in any discovery abuse. At the beginning of the case, Sharing Hope was unable to produce its organ medical record of the deceased donor because it contained the protected health information of an individual who is not a party to this lawsuit and the Plaintiff produced no valid authorization. Sharing Hope appropriately filed a timely Motion to Quash the subpoena and the motion was heard one year later due to the COVID pandemic. This Defendant had candid discussions with Plaintiff's counsel regarding its concerns producing the donor records due to the Health Insurance Portability and Accountability Act (HIPAA) privacy rule and the penalties contained therein and also offered to seek an expedited hearing. Once Sharing Hope's Motion to Quash was heard and ruled upon it produced the medical records of the donor who is not a party to this lawsuit via confidentiality order.

Sharing Hope has properly withheld and identified the documents on the privilege log as required by the South Carolina Rules of Civil Procedure and believes the documents (including the non-conformance report) are protected peer review/quality assurance materials as discussed in Sharing Hope's Memorandum in Opposition to Plaintiff's Motion to Compel. In addition, Sharing Hope has properly identified the documents pursuant to Rule 26.

For the foregoing reasons, We Are Sharing Hope SC respectfully requests the Court deny the Plaintiff's Motion to Compel Sharing Hope's privileged documents appropriately withheld on the privilege log.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

s/ Jean Marie Jennings
Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

Attorneys for Defendant
We Are Sharing Hope SC

March 15, 2021
Charleston, South Carolina

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

)

)

)

Plaintiff,

)

DEFENDANT

Versus

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**WE ARE SHARING HOPE SC's REPLY
TO PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT WE ARE
SHARING HOPE SC'S MOTION FOR A
PROTECTIVE ORDER**

)

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

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Defendants.

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

The Defendant We Are Sharing Hope SC (hereinafter "this Defendant"), hereby submits this Reply to Plaintiff's Response in Opposition to Defendant We Are Sharing Hope SC's Motion for a Protective Order.

The reason the Defendant is filing a Reply Memorandum is because the Plaintiff's Response in Opposition to Defendant We Are Sharing Hope SC's Motion for a Protective Order mischaracterizes the discovery history in this case. The Plaintiff states in her Memorandum that Sharing Hope "has a long history of hiding relevant documents and information in this case" and that Sharing Hope has "refused to produce the subpoenaed documents, allegedly because of concerns regarding privacy and confidentiality" and "refused to consent to the entry of any protective order to facilitate the exchange of documents in this case." (Pltf Memorandum p. 2 and 3). On the contrary, Sharing Hope had significant concerns regarding the Health Insurance Portability and Accountability Act (HIPAA) due to the production of medical information of a

deceased donor who is not a party to this case and for whom the Plaintiff produced no valid authorization and therefore filed an appropriate motion.

First and foremost, Sharing Hope's organ medical record contains the protected health information of a deceased organ donor who is not a party to this case. Sharing Hope was not in possession of any of the Plaintiff's decedent, Allen Holliman's medical records rather, Sharing Hope's medical records consist of medical information or protected health information of a deceased donor individual who contributed their organs to others and who is not a party to this litigation. Pursuant to the provisions of HIPAA, Sharing Hope had concerns about the production of protected health information for an individual who was not a party to this case and for whom the Plaintiff provided no valid authorization¹.

The Plaintiff issued a subpoena to Sharing Hope on July 30, 2019 asking for the medical records pertaining to this case and the undersigned had candid discussions with the Plaintiff regarding their HIPAA concerns. The Plaintiff did not produce any authorization for the production of the donor medical records except for Mrs. Holliman's authorization which was not valid to for the production of the donor records. Therefore, this Defendant filed a Motion to Quash the subpoena on July 30, 2019 due to concerns made in good faith regarding producing the protected health information of a person who is not a party to this case and not subjecting Sharing Hope to potential HIPAA violations. Further, the undersigned offered to ask for an expedited hearing on the Motion to Quash but received no response from Plaintiff's counsel. The Motion to

¹ Prior to filing her Notice of Intent, the Plaintiff sent correspondence to the We Are Sharing Hope SC Charleston Office providing a "HIPAA Compliant Medical Authorization form" which was signed by Mrs. Holliman to obtain all of the records of the donor whose lungs were transplanted into Mr. Holliman. However, Mrs. Holliman was not authorized to obtain the medical records of the donor in this case as she was not the Donor's personal representative or a family member pursuant to the HIPAA privacy rule.

Quash was heard almost a year later on July 23, 2020 and this delay was due in part due to the COVID-19 pandemic. Because Sharing Hope filed a good faith Motion to Quash based on its HIPAA concerns it was reasonable for Sharing Hope to not produce the medical records of the donor until the motion was ruled upon. Sharing Hope's Motion to Quash was denied and Sharing Hope produced the organ medical record shortly thereafter. Sharing Hope initially responded to the Plaintiff's subpoena on August 7, 2020 and provided a privilege log and provided answers to interrogatories and requests for production as well as a revised privilege log on August 28, 2020. Sharing Hope supplemented its responses by request of the Plaintiff on November 6, 2020 and also responded to supplemental requests for production on December 1, 2020 and further supplemented those as well. As this time, Sharing Hope has provided over 1,000 documents including the organ medical record, policies and procedures, audit detail, emails, and text messaging. In addition, Sharing Hope has properly withheld and identified documents on the privilege log which it believes it has a good faith basis to withhold². The scope of discovery pursuant to Rule 26(b)(1), SCRCF, is any matter, not privileged, which is relevant to the subject matter involved in the pending action. Sharing Hope has asserted the peer review privilege protects the documents it has labeled on the privilege log, specifically for its Motion for a Protective Order the relevant documents are *Privileged 0187-0195*.

Sharing Hope's Motion for a Protective Order is based upon §44-7-392 which is South Carolina peer review statute enacted in 2012 which is almost twenty years after the *McGee* case was decided. Sharing Hope is not a hospital and does not content it is a hospital. However, the documents labeled on the privilege log and produced to the Court to review labeled as *Privileged 0187-0195* contain documents regarding a Root Cause Analysis investigation between We Are

² See We Are Sharing Hope SC's Memorandum in Opposition to Plaintiff's Motion to Compel.

Sharing Hope SC and the donor hospital - Grand Strand Hospital. Section §44-7-392(A)(1) states that "All proceedings of, and data, documents, records, and information **prepared or acquired** by, a **hospital**" relating to sentinel event investigations and quality assurance reviews are confidential. §44-7-392(A)(1)(a) &(c). The Root Cause Analysis meeting and documentation of the meeting as documented on Sharing Hope's privilege log contains information acquired by a hospital. None of the documents contained in *Privileged 0187-0195* contain any medical records or policies and procedures relating to this case. Further, the statute states that the outcome of a practitioner's application for medical staff membership or clinical privileges is not confidential, but it does not state this same language in regards to Section §44-7-392(A)(1). In fact, the statute states that the **proceedings and documents described in §44-7-392(A)(1) are not subject to discovery, subpoena, or introduction in evidence in any action unless a hospital waives the confidentiality in writing** which has not occurred §44-7-392(A)(2). Therefore, the outcome of the Root Cause Analysis is not discoverable.

Ms. Welker was instructed not to answer the questions in her deposition because she was a part of this meeting as were other employees of We Are Sharing Hope SC and Grand Strand Hospital. The questions Ms. Welker was asked and when she was instructed not to answer were because she was a part of this meeting with Grand Strand of which the documents have been properly withheld on the privilege log.

In conclusion, Sharing Hope requests a Protective Order from the Court regarding the deposition of Darla Welker and counsel's instruction not to answer any questions regarding the Root Cause Analysis she participated in with Grand Strand. Should the Court find the documents *Privileged 0187-0195* are not privileged, this Defendant requests Darla Welker's deposition be re-

opened only for the purpose of questioning Ms. Welker as to the documents labeled as *Privileged* 0187-0195.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

s/ Jean Marie Jennings
Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

Attorneys for Defendant
We Are Sharing Hope SC

March 15, 2021
Charleston, South Carolina

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

)

)

)

Plaintiff,

)

)

Versus

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)

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

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Defendants.

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DEFENDANT

**WE ARE SHARING HOPE SC's
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL**

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

The Defendant We Are Sharing Hope SC (hereinafter "this Defendant" or "Sharing Hope"), hereby submits this Memorandum in Opposition to Plaintiff's Motion to Compel Defendant We Are Sharing Hope SC to Provide Complete Responses to Plaintiff's First Supplemental Requests for Production.

Plaintiff's Motion asks for Sharing Hope (1) to produce the documents which it has properly withheld on its privilege log¹, or to file them under seal and asks for (2) Sharing Hope to conduct a thorough search for and to produce all communications responsive to Request for Production No. 44. Concisely in response, Sharing Hope (1) has properly withheld the documents as privileged, has provided the privileged documents to Judge McCaslin for in camera/under seal review and incorporates by reference its previous memorandums filed with the Court; and (2)

¹ Sharing Hope inquired if Plaintiff intended to address the privileged documents which were currently under review by Judge McCaslin and Plaintiff responded they did not intend to file a supplemental memorandum. Therefore, Sharing Hope will address the privileged documents and can also provide to Judge McCoy for review.

Sharing Hope has conducted a thorough search and attaches as Exhibit A which is an Affidavit from Joseph Spitz, IT Director at Sharing Hope, detailing Sharing Hope's efforts to search for text messages on personal cellular phones as well as email correspondence in response to Request No. 44.

Prior to filing this Memorandum, Sharing Hope provided 189 e-mails from November of 2018 which is the time the alleged actions/omissions occurred as referenced in the Complaint and also produced five pages of text messaging threads from Dave DeStefano in response to Request No. 44. In addition, this Defendant advised the Plaintiff (also detailed in the attached Exhibit A) about the miscommunication occurring between the IT Department at We Are Sharing Hope SC and the undersigned counsel as well as counsel's intention to continue reviewing new emails, provide them to the Plaintiff, and update its privilege log on a rolling basis. Therefore, Sharing Hope contends it has satisfied the Plaintiff's request of compelling it to perform a thorough search as referenced in Exhibit A, Sharing Hope has identified the issue with regard to its initial email production in response to Request No. 44, fixed the problem, is currently reviewing new material for production, and has already produced materials from this production.

ARGUMENT

The Plaintiff's Motion to Compel should be denied.

I. Peer Review Privileged Documents Properly Withheld on the Privilege Log

Sharing Hope has properly withheld as privileged the documents which are part of the peer-review process occurring as a result of Mr. Holliman's unfortunate passing. Further, Sharing Hope has briefed the peer review privilege in *We Are Sharing Hope's Memorandum in Opposition to Plaintiff's Motion to Compel* filed on March 12, 2021 and *We Are Sharing Hope's Reply to Plaintiff's Supplemental Memorandum in Support of Motion for an Order Compelling Defendant*

We Are Sharing Hope to File Documents Withheld from Discovery Under Seal Pursuant to SC Code 40-71-30 and to Provide Complete Discovery Responses filed on March 15, 2021. Currently, Sharing Hope has provided documents labeled on the privilege log as *Privileged 0001-0186, 0196-0210, 0211-0223, 0224-0227², 231-235* (non-conformance report referenced in Plaintiff's Motion to Compel filed 2/5/21) and *0236-0335* for Judge McCaslin's in camera/under seal review and we will also provide those for review in this motion as well for Judge McCoy. In short, this Defendant has withheld the documents which are part of a peer review process between Sharing Hope as a federally designated Organ Procurement Organization and the United Network for Organ Sharing, the organization that manages the United States organ transplantation system under contract with the federal government. That peer review process is protected by the inherent policy and purpose of the South Carolina statutes and case law as well as Virginia law, and by the Organ Procurement and Transplant Bylaws. In further support for withholding these peer review materials contained in the privilege log and in addition to Sharing Hope's Memorandum referenced above, Sharing Hope also references the *United Network for Organ Sharing's Opposition to Plaintiff's Motion to Compel against Co-Defendants We Are Sharing Hope, SC and the Medical University of South Carolina and MUSC's Memorandum in Opposition to Plaintiff's Motion to Compel* filed on March 12, 2021. Because these issues have been fully briefed, Sharing Hope incorporates the above memorandum by reference.

² It appears these were inadvertently left out of the original privileged documents sent to Judge McCaslin but fall under the same protections and therefore this Defendant will supplement its in camera/under seal review.

II. Sharing Hope Has Performed a Thorough Search to Produce All Communications in Response to Request Number 44.

Sharing Hope has conducted a thorough search as detailed in the affidavit of Joseph Spitz attached as Exhibit A which provides the steps this Defendant has undertaken to search and locate responsive documents in this case.

A. Text Messages:

Joseph Spitz, IT director of We Are Sharing Hope SC, has searched the personal cellular phones of both Dave DeStefano and Jacqueline Honig as requested by the Plaintiff. There were certainly some delays in obtaining and searching the phones of the above individuals due to the remote nature of work during the COVID-19 pandemic, Dr. Honig residing in another state, and the inability of these individuals to use their personal cellular phones for a period of several hours while Mr. Spitz searched their personal cellular phones for responsive messages. The task of finding an appropriate time period for Mr. DeStefano as the CEO of We Are Sharing Hope and for Jacqueline Honig, a medical physician, to be without the use of their phones for hours was not an easy job in itself. Ultimately, in an attempt to obtain and search Dr. Honig's cellular phone IT director Joseph Spitz had to send a laptop configured with software which he was able to control remotely. Mr. DeStefano physically provided his cellular phone to Mr. Spitz to search for several hours. In order to perform the search on Mr. DeStefano's phone, Mr. Spitz had to enter each search term, wait for the software to locate responsive messages, download the messages, and repeat for each search term. This process has been not only overly burdensome but is has intruded on the privacy of Dr. Honig and Mr. DeStefano. Nevertheless, Sharing Hope has obtained text messaging and is continuing to review and produce and appropriately update its privilege log. With regard to Dr. Honig's text messaging, the texts are in a format where they are contained in folders which lead to additional folders that must be opened in Chrome, such that reviewing them is a slow

process. Ultimately, Sharing Hope has performed a thorough search as requested by the Plaintiff and is continuing to review and produce Mr. DeStefano and Dr. Honig's text messages in response to Request No. 44 and any other Requests served by the Plaintiff to which these texts may be responsive.

B. Emails:

We Are Sharing Hope has identified and fixed a miscommunication with the IT department at Sharing Hope regarding limiting the recipients of the e-mail mailboxes which were additionally searched. Thus, Sharing Hope and counsel have identified and fixed the problem which has resulted in the production of additional emails which the undersigned is reviewing and producing on a rolling basis. In a good faith effort to alert the Plaintiff to this misunderstanding and provide additional documents, this Defendant provided 189 documents of e-mail correspondence to the Plaintiff yesterday from on or about November of 2018 when the alleged incident in the Complaint occurred. Upon review, Sharing Hope also provided via secure link, the privileged e-mails to Judge McCaslin for further review in camera/under seal. Counsel for Sharing Hope has many more emails to review and multiple individuals are working to deliver this production to the Plaintiff on a rolling basis.

Plaintiff's Request for Production Number 44 includes the production of all text messages and emails from Dr. Honing and Dave DeStefano which are discussed above, as well as Dr. Omar Moussa, Dr. Satish Nadig, and Daniel Stanton. This Defendant has produced responsive emails from Dave DeStefano and Daniel Stanton following the search of Dave DeStefano's cellular phone. However, Dr. Omar Moussa, Dr. Satish Nadig, and Daniel Stanton are not Sharing Hope employees and therefore this Defendant does not have the ability to search these individuals email accounts because we do not represent these individuals. Daniel Stanton, Omar Moussa, and Satish

Nadig all appear to be affiliated in some manner with MUSC. While these three individuals serve on We Are Sharing Hope SC's Board of Directors or Advisory Board, they are not Sharing Hope employees with Sharing Hope emails and Sharing Hope does not have the ability to search their emails. As such, it utilized the names of the three individuals listed above in the email and text searches of Sharing Hope employees which counsel is continuing to review.

CONCLUSION

Sharing Hope respectfully requests that this Court enter an Order that is has complied with Plaintiff's request to conduct a thorough search of emails and text messages pursuant to Request No. 44. Further, Sharing Hope respectfully requests an Order it has properly withheld the documents claimed on the privilege log. Therefore, Plaintiff's Motion to Compel should be denied.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

s/ Jean Marie Jennings
Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

*Attorneys for the Defendant
We Are Sharing Hope SC*

April 9, 2021
Charleston, South Carolina

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>	)	AFFIDAVIT
	)	OF
Versus	)	JOSEPH SPITZ
	)	
We Are Sharing Hope SC, Medical University	)	
of South Carolina, and United Network for	)	
Organi Sharing,	)	
	)	
<i>Defendants.</i>	)	

PERSONALLY APPEARED before me Joseph Spitz, who first being duly sworn, deposes and states as follows:

1. My name is Joseph Spitz, and I serve as the Director of Information Technology of We Are Sharing Hope SC, a Defendant in the above-captioned matter.
2. I am over the age of eighteen (18), and I have personal knowledge of the matters stated herein.
3. I am currently employed by We Are Sharing Hope SC as its Director of Information Technology. I have been asked to assist with the collection and production of electronically stored information maintained by We Are Sharing Hope SC on its server(s) and email accounts, as well as ESI which may be available on the personal cellular telephones of certain We Are Sharing Hope SC employees.
4. I have assisted with the collection of material from the personal cellular telephone of David DeStefano as follows:

5. Mr. DeStefano provided his personal cellular telephone to me as the Director of Information Technology at We Are Sharing Hope SC in order obtain printable copies of text messages related to the Donor or related to Mr. Holliman. Mr. DeStefano's personal cellular telephone is a Samsung Galaxy S9 Plus.

6. Upon physically receiving Mr. DeStefano's cellular phone, on or about February 5, 2021 I performed a thorough search of all the text messages from the pertinent time frame in this case. This search was performed using Droid Transfer. After the completion of this search, I provided the results to We Are Sharing Hope SC's counsel for review and potential production.

7. I also employed two different software programs Wondershare Dr. Fone and PhoneRescue for Android to scan for any deleted messages which might be recoverable on Mr. DeStefano's cellular telephone; neither utility/program detected any deleted messages.

8. During the course of my inspection and search of Mr. DeStefano's cellular telephone, it was possible to identify text messages between Mr. DeStefano and Verizon support in December of 2018. Based on my review of these communications, it appears his phone crashed and went through a reset process in December of 2018. It appears that there are messages that were corrupted in this process and unreadable from the crash and reset in December of 2018. There were several messages found on Mr. DeStefano's cellular phone during the recovery with message dates that had converted to 1969 and did not contain any content. I asked Mr. DeStefano what he used for text messaging backup in December of 2018 and he advised me that he was not using any backup options at that time.

9. I have also assisted with the collection of material from the personal cellular telephone of Dr. Jacqueline Honig as follows:

10. Because Dr. Honig resides out of state, I attempted to walk Dr. Honig through downloading and utilizing software to search for her text messages on her personal cellular iPhone7 using a similar program as used with Mr. DeStefano's device.

11. During this discussion it was determined that copies of text messages were synced with her Macintosh computer using iMessage. A scan was completed of these messages using the terms and conditions as identified in Paragraph 18 below and I spent several hours performing scans on Dr. Honig's personal cellular phone.

12. The search yielded no messages which appeared to be relevant to this case regarding Mr. Holliman or the Donor but instead appeared to involve other donors not related to this case.

13. In light of this difficulty, we invested in additional software EaseUS MobiSaver designed to provide further search capabilities and attempt to recover any messages which might exist on Dr. Honig's device and we mailed a laptop containing downloaded software to her which I could control remotely.

14. I was able to recover some text messages and provided those to We Are Sharing Hope SC's counsel. However, some of the messages recovered are unusable messages meaning that the software did its best to retrieve data and make sense of it but some messages contain symbols or date stamps that are incorrect [for example from 2001] making them unusable.

15. I have also assisted in the collection of electronically stored information contained in the various email accounts maintained by employees of We Are Sharing Hope SC, as follows:

16. After conferring with counsel for We Are Sharing Hope SC, on or around October 16, 2020, I ran an initial search of We Are Sharing Hope SC email accounts.

17. This initial search was conducted over the We Are Sharing Hope SC email accounts for the following custodians: Darla Welker; Michael Lotts; Janine Bumgarner; Dave DeStefano; Traci Adams; Alyson Clark; Candy St. Marie; Theresa Ross; Amanda Carlson; Jacqueline Honig; Julia Rowe Mekarski; Tammy Smith. In this initial search, I restricted the search parameters to identify only emails to, from, and among these custodians. This resulted in any emails exchanged by these custodians which involved a custodian not listed above being omitted from the initial search results.

18. The following search terms were run across the email custodians listed in Paragraph 18, above: AFKY198; 2018-0516; 18-15828; Holliman; ABO Typing; ABO Type; Jacqueline Honig; Daniel Stanton; Omar Moussa; Satish Nadig.

19. After running the initial search as described above, I provided the results to counsel for We Are Sharing Hope SC.

20. Earlier this year, it was brought to my attention that other emails which included the We Are Sharing Hope SC custodians identified in Paragraph 18, above, had been produced by other entities. This information prompted me to work with counsel for We Are Sharing Hope SC to determine why such emails had not been returned in the initial search.

21. After evaluating this issue, I determined that the most likely cause of a difference in scope between the emails returned from We Are Sharing Hope SC's search and those apparently appearing in document productions made by other Defendants would be the restriction of the initial search parameters to the identification of only emails to, from, and among the custodians listed in Paragraph 18, above. This "to, from, and among" restriction was the result of an inadvertent miscommunication between myself and counsel for We Are Sharing Hope SC on the search parameters being requested.

22. After identifying this misunderstanding, I re-ran the search terms listed in Paragraph 19, above, across the custodians listed in Paragraph 18, but without the "to, from, and among" custodian restriction, for November 24, 2018-December 24, 2019.

23. At the request of the undersigned counsel, for this second search I also searched custodians Jeff Thomas and Tim Whelan using the same terms and parameters.

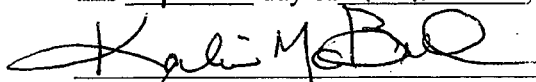
24. I have provided the more numerous results of the second search, including the results associated with the two additional custodians, to counsel for We Are Sharing Hope SC.

25. In addition, I have assisted with the collection of recorded calls from We Are Sharing Hope SC's call center relating to the incident involved in this case. Based on my review of We Are Sharing Hope SC's electronic records, calls recorded in late November 2018 have not been overwritten. I have gathered the recorded calls associated with the incident involved in this case and have provided the same to counsel for We Are Sharing Hope SC.

FURTHER THE AFFIANT SAYETH NOT.


Joseph Spitz

SWORN TO AND SUBSCRIBED before me
this 9TH day of APRIL, 2021.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4-12-2026



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

Defendants.

Case No. 2020-CP-10-02902

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL
AGAINST DEFENDANT WE ARE
SHARING HOPE SC AND IN
OPPOSITION TO WE ARE SHARING
HOPE SC'S MOTION FOR A
PROTECTIVE ORDER**

Plaintiff Michelle Cha Holliman ("Mrs. Holliman"), individually and as personal representative of the Estate of Allen Holliman ("Mr. Holliman"), respectfully submits this supplemental memorandum in support of her motion to compel Defendant We Are Sharing Hope SC ("WASH") to produce documents withheld on a claim of peer review privilege and to provide complete discovery responses and in opposition to WASH's motion for a protective order regarding questions posed to Defendant Darla Welker ("Ms. Welker") during her deposition.

Mrs. Holliman has been trying to obtain WASH's records relevant to this wrongful death case since she filed her notice of intent against WASH in July 2019—almost two years ago. WASH has put up one roadblock after another to try to avoid producing its documents. WASH initially refused to produce any of its documents because of alleged privacy concerns while simultaneously refusing to enter into a confidentiality order that would address those purported concerns. WASH unreasonably refused to produce any documents whatsoever until a judge ordered it do so a year later. Now, WASH has withheld 335 pages of relevant documents and

instructed its employee Ms. Welker, who is also a defendant in this case, not to answer deposition questions based on a claim that they are privileged under South Carolina's¹ two peer review statutes when it is clear under the plain language of the statutes that neither applies to WASH.

I. WASH Is Not Subject to the Hospital Peer Review Statute.

One of South Carolina's peer review statutes, S.C. Code § 44-7-392, applies to certain proceedings of hospitals. Section 44-7-392(A)(1) states: "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)). WASH is not a hospital. That is an indisputable fact. Because WASH is not a hospital, its documents and any knowledge Ms. Welker has about WASH's investigations related to this case are not privileged under § 44-7-392.

II. WASH Is Not Subject to the Professional Society Peer Review Statute.

South Carolina's other peer review statute, § 40-71-20, applies to "data and information acquired **by the committee referred to in Section 40-71-10.**" (emphasis added). 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 . . .**" § 40-71-10(B) (emphasis added). The statute defines "professional society" as "legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting, pharmaceutic, 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, the statute applies to documents acquired by

¹ WASH has suggested that it might be protected by Virginia's peer review statute if neither of South Carolina's statutes apply to it. The Court correctly rejected this baseless assertion during its April 13, 2021, hearing on this motion. WASH is a South Carolina non-profit corporation, and this case is pending in South Carolina and is governed by South Carolina law.

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 § 40-71-20.

WASH is a South Carolina non-profit corporation that does business as an organ procurement organization and procures and distributes donor organs. 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. WASH does not have a majority of eligible licentiates in the area served by it (South Carolina) and, in fact, does not have more than a handful of professional licentiates of any type. WASH suggested during the Court's hearing that it is protected by the statute because it has a quality department, but that argument lacks any merit. The statute does not apply to any entity or business with a quality department. Rather, it applies only to committees appointed by a professional society to maintain the professional standards of the society. If, as WASH suggests, it applied to any entity with a quality department, then every business in South Carolina would have a quality department and would claim that virtually all documents requested in discovery were privileged.

WASH is asking this Court to write a new law stating that anyone who has anything to do with someone in the medical field does not have to produce documents in litigation or answer deposition questions, even in a wrongful death case such as this one. That is clearly not the law in South Carolina, for good reason. Because 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 not privileged under § 40-71-20.

III. Even If Some of WASH's Documents and Information Were Acquired By a Hospital or a Professional Society Committee Subject to the Statutes, the Documents and Information are Still Subject to Discovery from WASH.

WASH also argued during the hearing that some of its documents and the information sought during Ms. Welker's deposition are privileged because they were shared Grand Strand hospital and a committee of Defendant United Network Organ Sharing ("UNOS"). However, 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. S.C. Code § 40-71-20(A) ("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") (emphasis added); § 44-7-392(A)(3) ("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). The South Carolina Supreme Court 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 a hospital and/or an appointed committee that, unlike WASH, 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.

IV. Mrs. Holliman is Entitled to an Award of Attorneys' Fees under the Statutes.

Both South Carolina peer review statutes provide for an award of attorneys' fees if the party asserting the claim of confidentiality under the statutes acted unreasonably, and, under those circumstances, an award is mandatory under the professional society statute. § 40-71-30 ("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); § 44-7-394(A) ("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.").

WASH's claim that it is protected by the peer review statutes is entirely unreasonable and frivolous because, as explained above, WASH is clearly neither a hospital nor an appointed committee of a professional society having a majority of eligible licentiates as members. Therefore, Mrs. Holliman is entitled to an award of her reasonable attorneys' fees incurred in obtaining WASH's withheld documents, opposing WASH's motion for a protective order, and reconvening Ms. Welker's deposition. Upon entry of an Order awarding attorneys' fees, Mrs. Holliman would welcome the opportunity to submit a fee petition to the Court.

V. WASH Should be Compelled to Produce All Communications Responsive to Mrs. Holliman's Requests for Production.

In addition to wrongfully withholding documents and information based on a frivolous claim of peer review privilege, WASH has failed for over eight months to produce communications relating to Mr. Holliman, his death, and his organ donor that Mrs. Holliman first requested in her requests for production served on July 10, 2020. WASH initially failed to produce any emails, text messages, or phone recordings in response to Mrs. Holliman's requests even though WASH's

documents referenced numerous communications regarding the donor. When WASH finally produced a few emails, Mrs. Holliman knew the production was incomplete because, in addition to the surprisingly small number of emails, at least two incriminating emails with WASH employees produced by another party were missing, including one in which a senior level WASH employee admits that the blood typing results WASH relied on for Mr. Holliman's donor were unreliable. Mrs. Holliman pointed out this deficiency to WASH's counsel and filed her motion to compel, but WASH failed to produce any additional communications for months until the eve of this Court's hearing on WASH's motion.

Nine months after Mrs. Holliman's requests were served, it appears that WASH is finally getting around to searching for, reviewing, and producing responsive communications such as emails and text messages. An hour before this Court's hearing held on April 13, 2021, WASH provided the Court and Mrs. Holliman with an amended privilege log incorporating one hundred pages of emails that are responsive to Mrs. Holliman's first requests for production served in July 2020 but were omitted from the documents WASH submitted for the Court's in camera review and were not included on any of WASH's prior privilege logs. In providing the amended privilege log to the Court, WASH's counsel admitted that WASH is "continuing to review e-mail correspondence in this case." *See* Exhibit 1. Similarly, WASH's attorney informed Mrs. Holliman's counsel on April 8, 2021, that she was still reviewing Defendant Dr. Honig's text messages, but Mrs. Holliman still has not received any text messages of Dr. Honig. *See* Exhibit 2.

WASH was required to conduct a thorough search of the requested communications at the time Mrs. Holliman served her discovery requests in July 2020 and to produce all responsive communications in its possession, custody, and control within the deadline for responding to those

requests. However, in keeping with WASH's pattern of obstructing discovery and avoiding its obligations, WASH decided to delay production of the requested communications as long as possible and not to conduct a reasonable, good faith search until the eve of this Court's hearing on Mrs. Holliman's motion to compel. That is not how discovery is supposed to work, and the South Carolina Rules of Civil Procedure do not allow such conduct. This case was filed almost two years ago, and Mrs. Holliman requested WASH's relevant communications almost one year ago. WASH should not be permitted to delay any longer. WASH should be ordered to conduct a thorough search for all communications responsive to Mrs. Holliman's first set of requests for production and to produce all such communications in its possession, custody, or control within one week from the entry of the Court's order.

CONCLUSION

For the reasons explained above, Mrs. Holliman respectfully requests for the Court to enter an Order:

1. Compelling WASH to produce all of the documents it has improperly 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. Ordering WASH to reimburse Mrs. Holliman for her reasonable attorney's fees incurred in obtaining WASH's improperly withheld documents pursuant to S.C. Code §§ 40-71-30 and 44-7-394;
3. Reconvening Ms. Welker's deposition and compelling Ms. Welker to answer all questions she was wrongfully instructed not to answer as well as any related questions; and
4. Compelling WASH to produce all communications responsive to Mrs. Holliman's

first set of requests for production, including, but not limited to emails, text messages, phone recordings, voicemails, and instant messages, within seven (7) days of entry of the Court's Order.

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

April 16, 2021

EXHIBIT 1

From: Jean Marie Jennings
To: dmccaslin@sccourts.org; McCaslin, Debra Law Clerk (Bruce Norton)
Cc: John C. Moylan; Lucy Dinkins; Cricket Rawls; dks@buyckfirm.com; Kristi@buyckfirm.com; Stephanie Chickey; JGresh@hallboothsmith.com; Lauren Spears Gresh; Hanna Turk Roberts; Molly Craig; Tammy Villanueva
Subject: RE: 2020-CP-10-02902, Holliman v. We Are Sharing Hope SC, et al.
Date: Tuesday, April 13, 2021 11:56:01 AM
Attachments: Privilege Log - 4th Amended.pdf

Dear Ms. Martin,

At your request, please find We Are Sharing Hope SC's Fourth Amended Privilege Log. We are continuing to review e-mail correspondence in this case and will continue to amend our privilege log with any additional documents currently under review.

Thank you,

Jean Marie

From: Stephanie Chickey <stephanie.chickey@hoodlaw.com>
Sent: Monday, April 12, 2021 4:00 PM
To: dmccaslin@sccourts.org
Cc: John C. Moylan <jmoylan@wyche.com>; Lucy Dinkins <ldinkins@wyche.com>; Cricket Rawls <crawls@wyche.com>; dks@buyckfirm.com; Kristi@buyckfirm.com; JGresh@hallboothsmith.com; Lauren Spears Gresh <LGresh@hallboothsmith.com>; Hanna Turk Roberts <hroberts@hallboothsmith.com>; Molly Craig <molly.craig@hoodlaw.com>; Jean Marie Jennings <jeanmarie.jennings@hoodlaw.com>; Tammy Villanueva <tammyv@hoodlaw.com>
Subject: 2020-CP-10-02902, Holliman v. We Are Sharing Hope SC, et al.

Hood Law Firm is temporarily operating on a remote working basis due to the COVID-19 situation. Please communicate with me via electronic mail or by phone until further notice, as my receipt of office deliveries may be delayed at this time.

Stephanie Chickey

Legal Secretary

Stephanie.Chickey@hoodlaw.com



172 Meeting Street
P.O. Box 1508
Charleston, SC 29401

Direct: (843) 577-1247

Main: (843) 577-4435

Fax: (843) 722-1630

www.hoodlaw.com

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EXHIBIT 2

From: Jean Marie Jennings [<mailto:jeanmarie.jennings@hoodlaw.com>]
Sent: Thursday, April 8, 2021 6:28 PM
To: Lucy Dinkins <ldinkins@wyche.com>
Cc: Tammy Villanueva <tammyv@hoodlaw.com>; John C. Moylan <jmoylan@wyche.com>; Molly Craig <molly.craig@hoodlaw.com>
Subject: Motion to Compel

Hi Lucy,

It was nice to see you at mediation today. I am writing to discuss your motion to compel against Sharing Hope filed on February 5, 2021 as briefs are due tomorrow. Will you be addressing the privileged documents in your brief which are currently under review by Judge McCaslin? Please let me know.

Also, we produced a set of emails today in a good faith effort to address some of your points in the motion. We have identified and fixed a miscommunication with the IT department at We Are Sharing Hope SC and have received additional emails which we are reviewing for production. In addition, the IT department aided us in obtaining Dave DeStefano and Jackie Honig's text messaging from their cellular phones. I will provide responsive text messages from Mr. DeStefano's phone which we have reviewed tomorrow but the text messaging from Dr. Honig's cellular phone is in a format that is not easily reviewable so it is taking longer to get through.

Also, I will send you a consent motion tomorrow regarding motion to compel third party records from Grand Strand.

Thank you,

Jean Marie

Jean Marie Jennings
Attorney
jeanmarie.jennings@hoodlaw.com

Hood Law Firm is temporarily operating on a remote working basis due to the COVID-19 situation. Please communicate with me via electronic mail or by phone until further notice, as my receipt of office deliveries may be delayed at this time



172 Meeting Street
P.O. Box 1508
Charleston, SC 29401

Telephone: (843) 577-1217
Fax: (843) 722-1630
www.hoodlaw.com

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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>	)	DEFENDANT
	)	UNITED NETWORK FOR ORGAN
Versus	)	SHARING'S MOTION FOR A
	)	PROTECTIVE ORDER/MEMORANDUM
We Are Sharing Hope SC, Medical University	)	IN OPPOSITION TO PLAINTIFF'S
of South Carolina, and United Network for	)	MOTION TO COMPEL
Organ Sharing,	)	
	)	
<i>Defendants.</i>	)	

The United Network for Organ Sharing (UNOS) files this Motion and Memorandum pursuant to SCRPC 26(c) to affirmatively assert privilege over the peer review documents between the United Network for Organ Sharing and We Are Sharing Hope SC contained on its own privilege log in order to prevent their improper disclosure from Plaintiff's Motion to Compel against Co-Defendant We Are Sharing Hope SC.

Plaintiff has filed a Motion to Compel Co-Defendant We Are Sharing Hope SC ("Sharing Hope) to produce the privileged documents contained in We Are Sharing Hope SC's privileged log and in part, these documents include a confidential medical peer review process between UNOS and We Are Sharing Hope SC. Thus, many of the documents claimed on We Are Sharing Hope SC's privilege log overlap with the documents claimed as privileged by UNOS. Therefore, to the extent UNOS has asserted the peer review privilege over identical documents, UNOS files this Motion for Protection of those documents from production and in the alternative respectfully files this Memorandum in Opposition to Plaintiff's Motion to Compel Sharing Hope's privileged peer review documents. In addition, UNOS incorporates by reference the Defendant We Are

Sharing Hope SC's Supplement Memorandum in Opposition to Plaintiff's Motion to Compel filed on April 16, 2021. In short UNOS objects to the Plaintiff's efforts to obtain confidential, peer reviewed documents from We Are Sharing Hope. Plaintiff cannot obtain these documents from UNOS as they are clearly privileged; instead, Plaintiff seeks to obtain from We Are Sharing Hope directly those same documents. This end run around the peer review privilege is improper.

BACKGROUND

This case is styled as a medical malpractice case against the United Network for Organ Sharing, a private, non-profit organization that manages the United States of America's organ transplant system under contract with the federal government; We Are Sharing Hope SC, an organ procurement organization (OPO); and the Medical University of South Carolina (MUSC), a transplant center. Each of these parties has separate and distinct rolls to ensure organ transplantation occurs safely and effectively and the peer review process plays an integral role. The Organ Procurement and Transplantation Network (OPTN) is the unique public-private partnership that links the professionals involved in the United States donation and transplant system. Understanding the federal structure and oversight of the unique system of organ transplantation is necessary to a proper application of the law and privileges.

The Health Resources and Services Administration (HRSA) is an agency of the Department of Health and Human Services (HHS) and it, through its Division of Transplantation, oversees the transplantation of human organs.¹ In order to address the organ donation shortage in the United States and improve the organ matching and placement process, Congress established

¹ See "Biovigilance in the United States: Efforts to Bridge a Critical Gap in Patient Safety and Donor Health," a whitepaper prepared by the United States Public Health Service (PHS) Biovigilance Working Group, at p. 57-59, 64 (https://www.notifylibrary.org/sites/default/files/US%20Biovigilance%20Efforts%20to%20Bridge%20Gap%20DHSS_0.pdf – last accessed Apr. 15, 2021).

the National Organ Transplant Act (NOTA; P.L. 98-507) in 1984. The Act created the Organ Procurement and Transplant Network (OPTN) to maintain a national registry for organ matching which was to be operated by a private, non-profit organization under federal contract.² UNOS was awarded the initial OPTN contract on September 30, 1986 and continues to administer the OPTN today. As such, UNOS has developed an online database for collecting, storing, analyzing and publicizing all OPTN data related to the patient waiting list, organ matching, and transplants³. Each member of the OPTN, which includes transplant centers and OPOs, agrees to comply with all applicable provisions of the National Organ Transplant Act, the OPTN final rule, the OPTN charter, the OPTN Bylaws, and the OPTN policies. The OPTN Final Rule became effective in March of 2000 and established a regulatory framework for OPTN operations “including requirements for policy development and member compliance with these policies, including policies consistent with the recommendations of the Centers for Disease Control and Prevention for the testing of donors and follow-up of transplant recipients to prevent the spread of infectious disease.”⁴

In its oversight role, HRSA “monitors the activities of the OPTN to include member compliance with NOTA, the OPTN Final Rule, and other applicable Federal law.”⁵ Importantly, CMS requires the OPTN to design appropriate plans and procedures, including survey instruments, *a peer review process*, and data systems... for the purpose of conducting ongoing and periodic reviews and evaluations of each member OPO and transplant hospital for compliance with these

² <https://optn.transplant.hrsa.gov/governance/about-the-optn/>

³ See “Biovigilance in the United States: Efforts to Bridge a Critical Gap in Patient Safety and Donor Health,” a whitepaper prepared by the United States Public Health Service (PHS) Biovigilance Working Group, at p. 57-59, 64.

⁴ *Id.*

⁵ *Id.*

rules and OPTN policies.” (emphasis added). The plain language of this regulation indicates that HHS obligates the OPTN to institute a peer review process which it has done by way of its Membership and Professional Standards Committee.

In addition to the above federal regulation, under the OPTN Final Rule, OPTN is required to review member compliance with Federal law and regulations, as well as the policies and bylaws of the OPTN and to conduct periodic and special compliance reviews of all OPTN members.⁶ If an OPTN member is not in compliance, it is referred to the Membership and Professional Standards Committee (MPSC) for review.⁷

Unlike the on-site inspections conducted by the professional State Facility Surveyors under CMS, much of the OPTN oversight, generally carried out through *confidential peer review* conducted by the MPSC, may also conduct *on-site peer reviews* with audit teams. The OPTN has the authority to take certain actions against OPTN members that are not in compliance, including issuing letters of warning, letters of admonition, letters of reprimand; placing the member on ‘Probation’ and making the member a ‘Member Not in Good Standing.’ Both ‘Probation’ and ‘Member Not in Good Standing’ are public actions, which in the case of transplant programs, may impact the program’s ability to receive contracts from insurance companies. In addition to actions that may be taken by the OPTN, particularly egregious non-compliance issues may be referred by the OPTN Board of Directors to the Secretary of HHS for further action, including removing a transplant program’s ability to receive donor organs and ability to participate in Medicare and Medicaid.⁸

“Within the organ transplantation community, oversight of policy and bylaws by the OPTN is recognized as key to a successful solid organ transplant program in the U.S. The current oversight system relies on confidential peer review of compliance in contrast to policy enforcement.”⁹ Not to mention, the CRF regulations require the OPTN to design a peer review

⁶ *See id.*

⁷ *See id.*

⁸ *Id.* (emphasis added).

⁹ *Id.* (emphasis added).

process. 42 CRF § 121.10. Given that the number of patients on the transplant waitlist is close to 114,000¹⁰ and given the recent push by the federal government to focus on reducing that number,¹¹ it is imperative that the confidentiality of this process be honored in order not to discourage the advancements being made in organ donation and transplantation. Moreover, for UNOS to facilitate OPOs and transplant centers to work collaboratively as part of a national system which rooted in uniform laws,¹² the consistent application of the confidential peer review privilege is imperative.

As of April 16, 2021, there were 251 transplant centers in the United States who were OPTN members and 57 Organ Procurement Organizations. Nationwide, organ procurement organizations and transplant centers are subject to performance reviews and investigations into violations of the OPTN policies/rules. The Membership and Professional Standards Committee of the OPTN is the operating committee which maintains membership criteria, monitors OPTN member compliance of OPOs and transplant centers¹³.

The MSPC, by way of peer review:

- Reviews events identified as presenting a risk to patient safety, public health or the integrity of the OPTN.
- Evaluates and supports OPTN members by providing feedback on and recommendations to improve members' performance, compliance, and quality systems.

¹⁰ <https://www.americantransplantfoundation.org/about-transplant/facts-and-myths>

¹¹ <https://www.hhs.gov/about/news/2020/08/17/hhs-reports-progress-on-president-trumps-advancing-american-kidney-health-initiative.html>

¹² The Uniform Anatomical Gift Act has been adopted by all 50 states and is meant to be applied uniformly. See, e.g., *Perry v. Saint Francis Hosp. and Medical Center, Inc.*, 886 F. Supp. 1551 (D. Kan. 1995) (In a case of first impression regarding the application of the UAGA, the court looked to other jurisdictions: "To assure uniformity in the enforcement and interpretation of UAGA among the different states adopting it, the court will apply the same general definition of "good faith.").

¹³ <https://optn.transplant.hrsa.gov/members/committees/membership-and-professional-standards-committee/>

- Reviews applications for membership in the OPTN, approval of designated transplant programs, and changes in OPTN member key personnel¹⁴.

The above is exactly what UNOS did in conjunction with We Are Sharing Hope SC regarding the incident in this case. The MPSC performed an investigation regarding this incident by means of a confidential medical peer review process separately with both the OPO involved, We Are Sharing Hope, SC and the transplant hospital, the Medical University of South Carolina due to the patient safety and/or public health-related implications of these events. This process involved classic self-critical analysis and investigation which is the hallmark of a peer review. Moreover, the Membership and Professional Standards Committee requires its members to engage in such a process and disclosing the information obtained therein would have a substantial chilling effect on the information shared detrimentally affecting the safety of organ transplantation across the United States.

The documents labeled on UNOS's privilege log, namely *UNOS Privileged 1976-2197* include an on-site survey of We Are Sharing Hope SC conducted by the OPTN/UNOS Policy Compliance Subcommittee (PCSC) of the Membership and Professional Standards Committee (MPSC) and as well as *UNOS Privileged 0001 to 0387* which includes the Medical Peer Review file are the ones sought to be protected by this Motion. These documents were properly withheld from the discovery process pursuant to applicable federal law and regulation, public policy regarding peer review, the OPTN bylaws and process, as well as Virginia and South Carolina state statutes. To be clear, the Plaintiff has not sought these materials from UNOS, instead they are seeking the same privileged peer materials which are identified on We Are Sharing Hope SC privilege log. However, the Plaintiff should not be able to obtain UNOS's privileged documents,

¹⁴ Id.

to the extent they overlap with the OPOs, by seeking them from We Are Sharing Hope SC and circumventing the peer review privilege UNOS asserts in this Motion and Memorandum.

ARGUMENT

In this Motion, UNOS is asking the Court to protect the documents contained on UNOS's privilege log between UNOS and We Are Sharing Hope SC. UNOS, as the OPTN contractor pursuant to 42 CFR § 121.10 must design a peer review process and conduct ongoing and periodic reviews of each member OPO and transplant program. The peer review process and on-site monitoring between UNOS and We Are Sharing Hope SC is protected pursuant federal regulations and state law and the Plaintiff should not be allowed to circumvent these protections by obtaining the privileged materials from Sharing Hope.

I. UNOS Privileged Documents withheld pursuant to Federal Regulations and Framework Governing Organ Transplantation and OPTN Bylaws

The federal framework discussed in the background section of this memorandum is instructive as to the federal protections which would apply to the peer review material withheld on the UNOS privilege log. Specifically, the federal regulation below in its plain language requires the OPTN to design a peer review process which it has done and which was followed in this case. The federal regulation reads as follows:

42 CFR § 121.10 Reviews, evaluation, and enforcement

(b) Review and evaluation by the OPTN.

(1) The OPTN shall design appropriate plans and procedures, including survey instruments, a peer review process, and data systems, for purposes of (emphasis added)

(i) Reviewing applications submitted under § 121.3(c) for membership in the OPTN;

(ii) Reviewing applications submitted under § 121.9(b) to be a designated transplant program; and

(iii) Conducting ongoing and periodic reviews and evaluations of each member OPO and transplant hospital for compliance with these rules and OPTN policies.

Thus, the OPTN, as operated by UNOS, has promulgated a peer review process which occurs through the Membership and Professional Standards Committee specifically laid out in the OPTN Bylaw L.3. As such, the documents contained on UNOS privilege log between UNOS and We Are Sharing Hope as a result of the peer review process should not be subject to discovery in litigation.

In addition to the federal regulation discussed above, federal law also provides protection for “patient safety work product” which may be produced as part of peer review conducted by “patient safety organizations.” The protections of the federal law should be extended in this case to UNOS pursuant to the underlying purpose of the legislation to protect the materials sought and to the extent the federal regulation requires UNOS to design a peer review process with OPOs and transplant centers.

On additional grounds, the Patient Safety and Quality Improvement Act of 2005 (PSQIA) was passed with a goal of preventing medical errors and was in response to concerns regarding “the threat of malpractice litigation (which) discourages health care professionals and organizations from disclosing, sharing, and discussing information about medical errors.”¹⁵

The PSQIA provides, in relevant part:

Notwithstanding any other provision of Federal, State, or local law... patient safety work product shall be privileged and shall not be... subject to discovery in connection with a Federal, State, or local civil, criminal, or administrative proceeding, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider. 42 U.S.C. 299b-22 §922(a)(2).

¹⁵ S. REP. 108-196, S. Rep. No. 196, 108TH Cong., 1ST Sess. 2003, 2003 WL 22725427 (Leg.Hist.)

“Patient safety work product” (PSWP) is defined as:

[A]ny data, reports, records, memoranda, analyses (such as root cause analyses) or written or oral statements –

which –

(I) are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization; or

(II) are developed by a patient safety organization for the conduct of patient safety activities;

and which could result in improved patient safety, health care quality, or health care outcomes; or

(ii) which identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system. *Id.* at §921.

In sum, the PSQIA is far-reaching and its broad scope of protections includes both peer review materials and root cause analysis documents. The underlying purpose of the PSQIA is to protect the peer review and other internal processes are critical to self-evaluation without fear of liability, particularly in the health care arena, like those peer review materials in this case. To that end, a review of the legislative history of the PSQIA is instructive:

The purpose of this legislation 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. These protections will facilitate an environment in which health care professionals and organizations report and evaluate health care errors and share their experiences with others in order to prevent similar occurrences.

This bill accomplishes these purposes by establishing and defining a specific class of information known as “patient safety data” and according this new class of data legal protections designed to promote its collection, reporting and analysis. Patient safety data is not subject to a Federal, State, or local civil, criminal, or administrative subpoena or subject to discovery in a Federal, State, or local civil, criminal, or administrative proceeding. Further, this bill will not permit patient safety data to be disclosed under the Freedom of Information Act (FOIA); admitted as evidence or disclosed in a Federal, State, or local civil, criminal, or administrative proceeding; or used in a disciplinary proceeding against a provider. The bill also provides broad confidentiality protections, which are necessary to engender the trust and cooperation of the health care providers. Without

participation of health care providers the system cannot be effective in collecting information. S. REP. 108-196, 3

Courts have applied the PSQIA privileges to protect PSWP in medical negligence cases in which plaintiffs have sought the same information that Plaintiff seeks in the instant case. By way of example, in *Daley v. Teruel*, 107 N.E.3d 1028 (Ill. App. (1st) 2018), an administrator of a deceased patient's estate brought a medical negligence action against a hospital and sought peer review documents related to review of the incident and other peer review documents. Defendant argued that the documents were PSWP under the PSQIA, and the court agreed.

Public policy in South Carolina also protects and encourages the self-critical introspective analysis which encompasses a peer review process. As stated in Durham v. Vinson the intended purpose of South Carolina statute § 40-71-20 was to promote complete candor and open discussions among participants in the peer review process which is analogous to the purpose of the federal statute. 360 S.C. 639, 602 S.E. 2d 760 (2004). Logically, it flows that the quality of the discussions and communications protected by the peer review process will not exist should the information be subject to production in litigation. As such, the Court should extend the PSQIA privileges to protect PSWP and Order the documents withheld on UNOS privilege log are protected from disclosure.

II. UNOS Affirmatively Asserts Virginia Law Protects the Peer Review Materials between We Are Sharing Hope SC and UNOS

UNOS is a charitable 501(c)(3) corporation which operates out of Richmond, Virginia and engaged in the peer review process and sent communications to We Are Sharing Hope from Virginia and as such Virginia law should apply to the peer review documents withheld. As such, UNOS contends in addition to the federal regulations which mandate protection of the peer review

materials, Virginia law is broad and also encompasses the peer review documents between UNOS and We Are Sharing Hope SC as contained on UNOS's privilege log.

The applicable Virginia statute to which the peer review process between UNOS and We Are Sharing Hope SC fits squarely within is as follows:

“[t]he **proceedings, minutes, records, and reports** of any

- (i) Medical staff committee, utilization review committee, professional program or other committee, board, group, commission, or other entity as specified in [Va. Code Ann.] § 8.01-581.16;
- (ii) Nonprofit entity that provides a centralized credentialing service; or
- (iii) Quality assurance, quality of care, or peer review committee established pursuant to guidelines approved or adopted by
 - (a) A national or state physician peer review entity,
 - (b) A national or state physician accreditation entity, [or]
 - (c) A national professional association of health care providers or Virginia Chapter of a national professional association of health care providers...

together with **all communications, both oral and written**, originating in or provided to such committees or entities, **are privileged communications which may not be disclosed or obtained by legal discovery proceedings** unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. . . .”

Va. Code Ann. § 8.01-581.17(B). (emphasis added)

The statute exempts any communications made within 24 hours of the occurrence of a medical incident and confirms that there is no privilege afforded to factual information regarding specific patient health care or treatment, similar to the South Carolina Statute. Importantly, the statute also confirms “the analysis, findings, conclusions, recommendations, and the deliberative process of any medical staff committee, utilization review committee, or other committee, board, group, commission, or other entity specified in [Va. Code Ann.] § 8.01-581.16, as well as the proceedings, minutes, records, and reports, including the opinions and reports of experts, of such entities shall be privileged in their entirety under this section. Id. The statute does not apply to

“medical records kept in with respect to any patient in the normal course of business... nor any facts or information contained in such records. Code 8.01-581.17.

The broad language of the Virginia statute protects the peer review privileged materials withheld by both UNOS and We Are Sharing Hope SC as part of the peer review process between these two organizations which occurred more than 24 hours post-incident. The self-critical peer review process undertaken with Sharing Hope by the Membership and Professional Standards Committee falls within the above statute and all materials generated in furtherance of this process are protected. To the extent the same materials are claimed as protected in We Are Sharing Hope’s privilege log, the Plaintiff should not be able to circumvent the privilege UNOS is asserting under Virginia law and obtain the same documents from We Are Sharing Hope if such documents are compelled to be produced.

“The obvious legislative intent [of the statute] is to promote open and frank discussion during the peer review process amount health care providers in furtherance of the overall goal of improvement in the health care system. If peer review information were not confidential, there would be little incentive to participate in the process.” Riverside Hosp., Inc. v. Johnson, 272 Va. 518, 533 (2006). The deliberative process and the conclusions reached through that process which the General Assembly sought to protect. Id. As previously discussed, the federal patient safety work product, South Carolina policy, and the Virginia statute and policy all protect the materials UNOS is claiming as privileged between itself and We Are Sharing Hope SC.

UNOS serves as the glue that brings together the transplant community, both organ procurement organizations and transplant centers. If the information obtained during the peer review process is not confidential, both OPOs and transplant centers would be hesitant to share in the process and the organ transplant system as a whole would suffer.

III. UNOS Peer Review Documents Are Protected by South Carolina Law

In addition to the above protections afforded by federal regulations, the extension of patient safety work product, and Virginia law, South Carolina law also applies to the extent the Court has found that UNOS is subject to personal jurisdiction in South Carolina. UNOS is the committee/contractor which is charged with the oversight and quality assurance control of organ procurement organizations and thus, would be subject to the application of the South Carolina Statute.

Pursuant to South Carolina Code 40-71-20 (A), "[a]ll 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." The Membership and Professional Standards Committee performs the oversight and quality assurance control of the members of the OPTN as operated by UNOS and as such the materials contained on UNOS privilege log should be protected.

CONCLUSION

The disclosure of the documents that the United Network for Organ Sharing claims as privileged should be protected from disclosure under Rule 26(c), SCRPC because the disclosure of the information generated by this type of self-critical analysis will cause a particularized harm to the Defendant and defeat the important public policy concerns which are embodied in the state and federal regulatory and statutory privileges. The documents contained in UNOS privilege log which are also identified on We Are Sharing Hope SC's privilege log should be protected from disclosure.

[signature block on next page]

HALL BOOTH SMITH, P.C.

/s/ Jack G. Gresh

Jack G. Gresh, SC Bar No. 75188

Lauren Spears Gresh, SC Bar No. 100994

111 Coleman Blvd, Suite 301

Mount Pleasant, South Carolina 29464

Phone: 843.720.3460

jgresh@hallboothsmith.com

lgresh@hallboothsmith.com

*Counsel for Defendant United Network for Organ
Sharing*

April 16, 2021
Mount Pleasant, South Carolina

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

)

)

)

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
SUPPLEMENTAL MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL**

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

Pursuant to the Court's directive at the hearing on Tuesday, April 13, 2021, the Defendant We Are Sharing Hope SC (hereinafter "this Defendant" or "Sharing Hope"), submits this Supplemental Memorandum in Opposition to Plaintiff's Motion to Compel documents Sharing Hope has properly withheld as privileged and part of the peer-review process.

INTRODUCTION

Sharing Hope has properly withheld the materials at issue in Plaintiff's Motion on the basis of applicable peer review protection. These materials, which have been described on Sharing Hope's privilege log and provided to the Court for *in camera* review, are protected on the following bases:

- (1) Both South Carolina and Virginia's peer review statutes;
- (2) Applicable policies adopted by the United Network for Organ Sharing ("UNOS");
- (3) The policy objectives embodied in the nationally recognized peer review protection, which warrant application of peer review protection in this case;

- (4) The express protections provided by the Patient Safety Quality Improvement Act of 2005, which should be extended in this case;
- (5) The absence of prejudice to Plaintiff's case by the preservation of the peer review protection; and
- (6) The necessity of preserving the peer review protection here so as to avoid improperly eroding the peer review protections enjoyed by other entities involved in this case.

The consequences of ordering production in this case cannot be overstated. Should the Court order production of the materials Sharing Hope has properly withheld, any counsel to any Organ Procurement Organization operating in South Carolina would be required to advise that any participation in the self-critical quality assurance and peer review process required by UNOS is not, in fact, protected and could be used against it in future litigation. Such a result is incompatible with the clear public policy recognized in South Carolina, Virginia, any other state, and by Congress itself. An order requiring production here would have a substantial chilling effect on any future peer review process conducted by UNOS because any Organ Procurement Organization would be unwilling to fully engage in the process for fear of increasing its exposure to liability.

It is illogical that an entity may be subject to tort liability for medical malpractice but has no protection from disclosure of its peer review activities. This is particularly true when the peer review is itself required by federal regulation. To require production of the peer review materials withheld here would violate the clear, established public policy of promoting quality assurance efforts to improve patient care. Importantly, continuing to protect peer review materials does not restrict inquiring parties from learning the facts or information associated with the underlying medical event. Plaintiffs are simply required to prove their 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 Court should deny Plaintiff's Motion.

FACTUAL BACKGROUND

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 to maintain a waitlist of individuals in need of such transplants and to assist in the nationwide distribution of organs equitably among transplant patients. 42 U.S.C. § 274(a), (b)(1)(A)-(B), (b)(2)(D); see also 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 the United Network for Organ Sharing).

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 Organ Procurement Organizations ("OPO"s), transplant hospitals, and other institutions or individuals with an interest in organ donation. 42 C.F.R. § 121.3.¹ The Act called for the OPTN to be run by a private, non-profit organization under federal contract. The United Network for Organ Sharing ("UNOS"), a Virginia private non-profit organization, was awarded the OPTN contract in 1984 and has operated the OPTN continuously since then.

¹ See also <https://optn.transplant.hrsa.gov/members/member-actions/>.

OPOs are a vital part of the OPTN's organization and operations and are required 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 delegate. 42 U.S.C. § 1320b-8. Only one OPO may be designated for each service area. *Id.* § 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.

The OPTN, 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.² 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.

Federal regulation specifically requires the OPTN to establish appropriate peer review processes for the purpose of evaluating its members' compliance with applicable regulation and OPTN policies, including member OPOs. 42 C.F.R. § 121.10. Thus, UNOS created the OPTN Membership and Professional Standards Committee ("MPSC") which maintains membership criteria and monitors member compliance based on OPTN membership criteria, bylaws, and policies.³ 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 MPSC specifically states that its review of events, its evaluations of OPTN members, and its recommendations for the

² <https://optn.transplant.hrsa.gov/members/member-actions/>.

³ *See generally* <https://optn.transplant.hrsa.gov/members/committees/membership-and-professional-standards-committee/>.

improvement of member performance are conducted “through peer review”,⁴ and that its investigations are “conducted under confidential medical peer review.”⁵

As a result of Mr. Holliman’s death and pursuant to the policies established by UNOS pursuant to 42 C.F.R. § 121.10, Sharing Hope and the MPSC (operated by UNOS) engaged in a self-critical quality assurance and peer review evaluation, the contents of which are protected by applicable peer-review statutes in South Carolina and Virginia as well as by the bylaws of the OPTN promulgated under federal regulation. Indeed, correspondence issued by UNOS in furtherance of this evaluation was consistently labeled “confidential medical peer review”, as is evident in the materials submitted by Sharing Hope for *in camera* review. *E.g., Privileged 0001-3, Privileged 0183-0184, Privileged 0185-0186.*

Despite the longstanding and well-established peer review protection, the Plaintiff seeks to require the production of these privileged materials for use in the present litigation. The parties submitted legal memoranda following the filing of the Plaintiff’s Motion to Compel these materials and, on April 13, 2021, the Court requested that the parties provide supplemental briefing on this issue.

ARGUMENT

In this motion, the Court is tasked with addressing the application of a well-recognized privilege – peer review – to somewhat unique contexts – peer reviews conducted by the nation’s sole OPTN administrator and one of its OPOs or by a hospital and its partner OPO. However, while some of the participants in the protected peer review processes in this case may have been operating in unique roles and functions, methods, purposes and utility of these processes are

⁴ Id.

⁵ <https://optn.transplant.hrsa.gov/members/member-actions/>.

remarkably familiar and should be afforded the same protections as all other peer review processes under the law.

For the reasons discussed below (in addition to those set forth in Sharing Hope's previous memorandum and raised at the April 13th hearing), the documents Plaintiff seeks to compel are – and should remain – privileged and confidential under the peer review privilege. This is demonstrated not only by the plain text of the pertinent statutes, but also by public policy and the intent of both the legislature, the courts and the federal regulations governing OPOs which provide broad protection to *all* documents and activities of the peer review process. To hold otherwise would, in effect, diminish, if not altogether eliminate, the privilege entirely.

In the alternative, because the application of the peer review context in this same context is an issue in at least one related case brought by plaintiffs who received organs from the same donor, this Court may reserve ruling on the present Motion until the court(s) in the related case(s) rule on the issue.

I. Sharing Hope Has Properly Withheld the Materials Identified on Its Privilege Log Pursuant to Applicable Peer Review Protection.

In its initial memorandum of law in opposition to the Plaintiff's Motion to Compel, Sharing Hope demonstrated that its withheld materials are protected under (1) the plain language of both the South Carolina and Virginia peer review statutes, S.C. Code § 40-71-20 (2021) and Va. Code Ann. § 8.01-581.17 (Lexis, 2021), as well as (2) the applicable policies promulgated by UNOS and/or (3) South Carolina's "new" or supplemental peer review statute, S.C. Code § 44-7-392 (2012). Sharing Hope incorporates its prior arguments by reference in support of the present memorandum.

A. Sharing Hope's Peer Review Analysis Conducted with UNOS Is and Must Remain Protected Under Applicable State Law.

In its initial memorandum of law, Sharing Hope demonstrated that the self-critical, peer review analysis it conducted with UNOS following the events giving rise to the Plaintiff's claims were protected under both South Carolina and Virginia law. Even if the Court is not inclined to recognize Sharing Hope's entitlement to peer review protection under S.C. Code § 40-71-20, the materials Plaintiff seeks nevertheless are equally protected under Virginia's peer review statute, Va. Code Ann. § 8.01-581.17, which provides:

"[t]he proceedings, minutes, records, and reports of any

- (i) Medical staff committee, utilization review committee, professional program or other committee, board, group, commission, or other entity as specified in [Va. Code Ann.] § 8.01-581.16;
- (ii) Nonprofit entity that provides a centralized credentialing service; or
- (iii) Quality assurance, quality of care, or peer review committee established pursuant to guidelines approved or adopted by
 - (a) A national or state physician peer review entity,
 - (b) A national or state physician accreditation entity, [or]
 - (c) A national professional association of health care providers or Virginia Chapter of a national professional association of health care providers, . . . ,

together with all communications, both oral and written, originating in or provided to such committees or entities, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. . . ."

Va. Code Ann. § 8.01-581.17(B). Factual information regarding specific patient health care or treatment is not protected by the Virginia peer review statute, importantly. However, "the analysis, findings, conclusions, recommendations, and the deliberative process of any medical staff committee, utilization review committee, or other committee, board, group, commission, or other entity specified in [Va. Code Ann.] § 8.01-581.16, as well as the proceedings, minutes, records, and reports, including the opinions and reports of experts, of such entities *shall be privileged in their entirety under this section.* *Id.* (emphasis added).

South Carolina courts enforce the tenets of another state's law when the case requires. 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). "Foreign" law may not be given effect in this [s]tate if "it is against good public morals or natural justice." Dawkins v. State, 306 S.C. 391, 393, 412 S.E.2d 407, 408 (1991) (citing Rauton v. Pullman Co., 183 S.C. 495, 501, 191 S.E.2d 416, 419 (1937)). However, "[t]he fact that the law of two states may differ does not necessarily imply that the law of one state violates the public policy of the other." Dawkins, 305 S.C. at 393, 412 S.E.2d at 408 (quoting Rauton, 183 S.C. at 501, 191 S.E. at 422).

In this case, even if the Court does not recognize Sharing Hope's entitlement to peer review protection under South Carolina law, the self-critical, peer review process required by UNOS's MPSC falls squarely within Va. Code Ann. § 8.01-581.17(iii) and all materials generated in furtherance of this process, whether by UNOS or Sharing Hope, are protected under the same. Since UNOS is a Virginia entity and required Sharing Hope to participate in the self-critical quality assurance and peer review process conducted by its MPSC, the protections of Virginia law should be extended, and the materials protected from discovery by the Plaintiff.

B. Sharing Hope's Peer Review or "Root Cause" Analysis Conducted in Conjunction with Grand Strand Medical Center Is and Must Remain Protected.

During the April 13th hearing, the parties did not focus overmuch on Sharing Hope's proper assertion of peer review protection with respect to the root cause analysis conducted jointly by Sharing Hope and Grand Strand Medical Center. As Sharing Hope noted in its original Memorandum in Opposition to Plaintiff's Motion, Grand Strand has not waived its protections over the root cause analysis – an analysis over which peer review protection is enjoyed by Grand Strand under S.C. Code § 44-7-392(A). This Court should not require the production of the root cause analysis by Sharing Hope, simply because it participated in the process and retained the

product of the same, where such a production would unilaterally waive the protection available to Grand Strand under the law. Moreover, this Court has previously held that work product generated from a root cause analysis is not discoverable because they are protected by peer review. See Ex. A, Order, Sept. 20, 2004, Moody et al. v. Roper Hospital, Inc., C/A No. 2003-CP-10-02899 (Charleston Cnty. Common Pleas). Such a result would be particularly harsh where, as here, the hospital holding the privilege or protection is not a party and has not had an opportunity to make its position known with respect to this issue.

II. The Well-Recognized Policy Objectives and Legislative Intent of the Peer Review Statutes Encourage Broad Protection of the Precise Materials Plaintiff Seeks in Discovery.

A. Public Policy Generally.

“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 50 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). 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. Id. (citing K.D. ex rel. Dieffenbach v. United States, 715 F. Supp. 2d 587, 597 (D. Del. 2010)).

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 (“PSQIA”), 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).

South Carolina recognizes and encourages the very same policy objectives which guide, encourage, and shape the continued protection of peer review communications and materials. For example, 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).

South Carolina also recognizes that, “[t]he underlying purpose behind the confidentiality statute is not to facilitate the prosecution of civil actions, but to promote candor and open discussion among participants in the peer review process.” Durham, 360 S.C. at 646, 602 S.E.2d at 763; McGee, 312 S.C. at 61, 439 S.E.2d at 259. “The public interest in candid professional peer review proceedings should prevail over the litigant’s need for information from the most convenient source.” McGee, 312 S.C. at 61, 439 S.E.2d at 259.

In formally recognizing the existence of a psychotherapist-patient privilege under Rule 501 of the Federal Rules of Evidence, the United States Supreme Court emphasized that reason and experience permitted the recognition of a privilege that “promotes sufficiently important interests to outweigh the need for probative evidence. . . .” Jaffee v. Redmond, 518 U.S. 1, 9–10 (1996) (internal quotation omitted). To that end, the asserted privilege must be (1) “rooted in imperative need for confidence and trust” and (2) must also serv[e] public ends.” Id. at 10–11. The

recognition of a privilege in state courts supports a recognition of the same privilege in federal courts, because after all, “a State’s promise of confidentiality would have little value if the [individuals it protects] were aware that the privilege would not be honored in federal court.” *Id.* at 11.

Additionally, what Learned Hand while discussing the need for qualified privilege in civil cases applies equally in the context of medical peer review: “[without a privilege,] the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties would be ‘dampen[ed]’.” *Sevilla*, 852 F. Supp. 2d at 1067 (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949)). Discussing the peer review process specifically, the Northern District of Illinois declined to permit discovery of the same and noted, “[t]he policy interests behind the peer review privilege in medical malpractice cases, regardless of the forum in which they are tried, are as substantial as any that can be imagined To subject these discussions and deliberations to the discovery process, without a showing of exceptional necessity, would result in terminating such deliberations.” *Sevilla*, 852 F. Supp. 2d at 1068–69 (internal citation and quotation omitted) (denying motion to compel peer review protected materials).

B. Legislative Intent and Policy Considerations May Guide the Application of the Law.

While courts are bound by the cannons of statutory construction, these cannons are not so rigid as to require an analysis which would lead to absurd results. “The real purpose and intent of the lawmakers will prevail over the literal import of the words.” *Enos v. Doe*, 380 S.C. 295, 304, 669 S.E.2d 619, 623 (Ct. App. 2008) (citing *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992)). Thus, in order to give effect to the law, courts frequently look to a legislature’s intent when interpreting and applying a statute. “Statutes, as a whole, must receive ‘practical, reasonable and fair interpretation consonant with the purpose, design and policy of

lawmakers.” Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005). Further, the court should not consider a particular clause being construed in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law. S.C. Coastal Council v S.C. State Ethics Comm’n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991). The Court did precisely this in McGee v. Bruce Hospital, 312 S.C. at 62, 439 S.E.2d at 260. There, the South Carolina Supreme Court interpreted the legislative intent of one of South Carolina’s peer review statutes to conclude that the statute protected not only the documents generated by the peer review committee, but also documents acquired by the peer review committee in the course of its proceedings. Id. Of note, this result was considered appropriate even though the protective language of the statute did not expressly reference “documents.”

Similarly, this Court has extended South Carolina’s statutory peer review protection to encompass even informal conversations between medical staff members where these conversations are undertaken as a form of peer review. Ex. A, Order, Sept. 20, 2004, Moody et al. v. Roper Hospital, Inc., C/A No. 2003-CP-10-02899 (Charleston Cnty. Common Pleas). In applying peer review protection, the Moody court looked not only to the terms of the applicable peer review statute but also to the underlying policy objectives of the peer review process and Georgia law. In another circuit, the court determined that a deponent was properly directed not to respond to questions during a deposition on the subject of even the existence of a peer review of the medical event underlying the case. Ex. B, Order, Nov. 6, 2019, Robinson v. The Regional Medical Center, C/A No. 2018-CP-38-00131 (Orangeburg Cnty. Common Pleas).

Further, 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, 164 S.E. 588 (1930).

The same concept is embedded in other areas of the law. For example, while our courts follow the doctrine of *lex loci delicti* and will apply another state’s substantive law to a tort claim, this doctrine will not be followed if the result would contravene South Carolina’s public policies. Boone v. Boone, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001); Lister v. Nationsbank of Delaware, N.A., 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997). Likewise, though South Carolina regularly enforces choice of law provisions in contracts, these provisions are unenforceable if the application of the foreign law would result in a violation of South Carolina public policy. Team IA, Inc. v. Lucas, 395 S.C. 237, 249, 717 S.E.2d 103, 109 (Ct. App. 2011).

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, 429, 702 S.E.2d 246, 252 (2010). For example, in State v. Prince, after conducting extensive review of legislative history and analogous statutes in other states, the South Carolina Supreme Court provided a definition to term previously undefined in anti-stalking statute. 335 S.C. 466, 475, 517 S.E.2d 229, 234 (1999). In issuing its ruling, the Court rejected the defendant’s suggested interpretation as contrary to public policy and illogical. The Court concluded, “[t]hus, reading the statutes together, the plain language and its logical interpretation support our holding today” Id. at 476, 517 S.E.2d at 234. In making its ruling, the Court also noted, “that our legislature specifically chose *not* to define [the phrase at issue] buttresses our conclusion. Had the legislature intended for that term to be defined narrowly, it could easily have

inserted limiting language. Instead, there is no limitation on the term. We decline to impliedly limit our statutory scheme to [the narrower definition suggested by defendant] when the legislature expressly did not do so.” Id. at 475–76, 517 S.E.2d at 234.

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 trial 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.⁶

In the face of statutory silence and no prior reported considerations of the peer review protections available to OPOs within the appellate law of this state, the Court may examine the holdings of other jurisdictions for persuasive authority. Bass v. Isochem, 365 S.C. 454, 478, 617 S.E.2d 369, 381 (Ct. App. 2005); cf. Ex. A, Moody Order (examining Georgia law in support of

⁶ 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).

its ruling to protect materials under the peer review privilege). Recognizing the important and essential function of peer review processes, which are designed to improve patient care and the quality of health care services provided, other courts have extended protection to peer review processes even where such processes are, for whatever reason, not encompassed by an applicable statute. For example, in Sevilla, the Northern District of Illinois concluded that the peer review materials sought by a plaintiff in a medical malpractice claim brought under the Federal Tort Claims Act were entitled to protection even though they technically fell outside the express peer review protections afforded by federal law. 852 F. Supp. 2d 1057. In Tep v. Southcoast Hospital Group, Inc., the District of Massachusetts reached the same conclusion with respect to a claim brought under the federal Emergency Medical Treatment and Active Labor Act (“EMTALA”). C/A No. 13-118870LTS, 2014 WL 6873137, at *3, 2014 U.S. Dist. LEXIS 168052, at *10 (D. Mass. Dec. 4, 2014) (“[T]he Court is satisfied that recognizing a medical peer review privilege in this case will promote sufficiently important interests to outweigh the need for probative evidence.”). The District of Connecticut likewise protected peer review materials even in the absence of direct statutory authority under the EMTALA, noting that the recognition of the peer review privilege would foster a vital public interest. Grenier v. Stamford Hosp. Stamford Health Sys., Inc., C/A No. 3:14-cv-00970 (VLB), 2016 WL 3951045, at *5, 2016 U.S. Dist. LEXIS 94424, at *12 (D. Conn. July 20, 2016).

In this case, the state court statutes’ silence as to OPOs specifically should not contravene the very policy objectives embodied in the peer review statutes. Rather, the Court should confirm that Sharing Hope is entitled to peer review protection under applicable state law. To hold otherwise would result in an absurd circumstance in which an entity integral to the health care

system (on the local, state, and national levels) may be subjected to civil suit without any protection being afforded to its self-critical, peer review process mandated by federal law.

The authority, structure and overall process of the OPTN are established by federal law and subject to federal regulation. All the OPOs as members of the OPTN are subject to the OPTN's authority as administered by UNOS, including the peer review procedures created pursuant to 42 C.F.R. § 121.10. There is no legally sustainable logic or fairness which could possibly support an outcome that a peer review process required of all OPTN members might receive protection from discovery only where member hospitals were participants. Nor is there any logic or fairness in requiring an OPO to participate in the peer review process required as part of the OPTN's membership and operations, providing assurances to the OPO that the peer review is confidential and protected, but then not actually extending such protection to the OPO. The mandatory character of a peer review process has previously been identified by this Court in support of an order protecting peer review materials. See Ex. A, Moody Order. Additionally, there is a tacit recognition of the value of a promise of confidentiality made at the outset of a process or conversation, such as was conveyed in this case by UNOS. In Tep, the court specifically noted that it was beyond dispute that participants in a peer review process operated under the reasonable assumption that the analysis conducted during the peer review would remain confidential. 2014 WL 6873137, at *4. Particularly when the peer review is mandatory, as it was in this case, the Court should not undermine a peer review process undertaken with every reasonable expectation of confidentiality and in accordance with the governing rules and regulations of the OPTN.

III. The Peer Review Protections Afforded by Federal Law Should be Extended to Sharing Hope's Peer Review Analyses in this Case.

Federal law provides broad protection for analogous "patient safety work product" generated as part of peer reviews conducted by "patient safety organizations", and the same

protection should be extended here. Congress has enacted the Patient Safety Quality Improvement Act of 2005 (“PSQIA”), which provides broad peer review protection to reviews and analyses conducted by or with patient safety organizations. Specifically, the PSQIA creates a privilege for any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements that a health care provider assembles or develop and reports to a patient safety organization. 42 U.S.C. § 299b-21(7) (2021). Congress intended the broad protection of the PSQIA to complement, not supplant, existing law. 42 U.S.C. § 299b-22(g) (2021).

The enactment of the PSQIA 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 v. United States, 715 F. Supp. 2d 587, 597 (D. Del. 2010). 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).

Since Congress enacted the PSQIA, at least five federal courts have recognized some form of a medical peer review privilege under federal common law where a peer review was conducted for the same purposes and objectives contemplated by the PSQIA. Grenier, 2016 WL 3951045, at *7 (noting this recognition is a “growing trend”); Tep, 2014 WL 6873137, at *5; Sevilla, 852 F. Supp. 2d at 1068–69; Francis, 2011 WL 2224509; at *7; Dieffenbach, 715 F. Supp. 2d at 592. These opinions have noted that the PSQIA signals a “shift in congressional policy” aimed at providing broad protection for peer review work product in an effort to improve patient safety and quality of care. E.g., Tep, 2014 WL 6873137, at *5.

In at least one case, peer review protections analogous to those provided by the PSQIA were extended to communications with a federal agency because in that case the federal agency met many of the same criteria as a “patient safety organization” as defined by the PSQIA and performed similar functions. Francis, 2011 WL 2224509, at *6. The Francis court noted that Congress “clearly intended to encourage” a more robust peer review process by enacting the PSQIA, and therefore concluded that the same protection should be afforded where an analogous peer review had occurred. Id.

Similarly, where a plaintiff sought documents which were analogous to the peer review materials protected by the PSQIA, protection was warranted even though the statute did not technically apply. Tep, 2014 WL 6873137, at *5. The Tep court noted, “[t]he documents at issue are like the ‘patient safety work product’ protected under the PSQIA, and they were generated during reviews and analyses that are tantamount to a ‘patient safety evaluation system’ under the PSQIA. Had they been provided to a ‘patient safety organization’ listed in the PSQIA, it appears they would be statutorily privileged.” Id. at *5.

Federal regulation requires that the OPTN “design appropriate plans and procedures, including survey instruments, *a peer review process*, and data systems . . . for the purpose of conducting ongoing period reviews and evaluations of each member OPO and transplant hospital for compliance with [applicable federal regulation] and OPTN policies.” 42 C.F.R. § 121.10 (emphasis added). As the federal contractor operating the OPTN, UNOS has consequently established various procedures and reviews to be handled by its MPSC to review medical events in which its member OPOs and/or transplant hospitals were involved. These quality control and peer review processes require the participations of the OPTN members when they are conducted,

as certification for participation in the OPTN is also governed by the OPTN itself. It is this very process which occurred in this case, discovery of which Plaintiff now seeks.

Here, even if UNOS' MPSC is not specifically identified as a patient safety organization under the PSQIA, it should be treated as such because it performs the same functions and meets the criteria for the same. Peer review is expressly required by the federal regulations governing the OPTN, which both UNOS and Sharing Hope are bound to follow. 42 C.F.R. § 121.10. The process undertaken by the MPSC – in which Sharing Hope was required to participate as a member of the OPTN – generated precisely the type of patient safety work product the PSQIA is designed to protect, and the analysis jointly conducted by these entities is tantamount to a patient safety evaluation system as contemplated by the PSQIA. The policy objectives embodied by the PSQIA would, and should, be furthered by its extension to the peer review process undertaken by UNOS' MPSC and Sharing Hope.

IV. Plaintiff Will Not be Unnecessarily Impeded by the Extension of Peer Review Protection in this Case.

Plaintiff is still more than capable of discovering the facts of the case because the information, facts and documents about the underlying incident are available from sources other than the peer-review process. Plaintiff may, and has, obtained discovery of not only the Decedent's medical records but also of the Donor's medical records, non-privileged correspondence among medical personnel regarding the incident, and all contemporaneous documentation of the same.

This very concept is expressed in peer review statutes' discussion of materials being "otherwise available" to a plaintiff or their discussion of the ongoing discoverability of the "underlying facts" of the medical event which was the subject of the peer review process. E.g., S.C. Code § 40-71-20; Va. Code Ann. § 8.01-581.17. As the South Carolina Supreme Court noted in McGee v. Bruce Hospital System, "[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. . . . The public interest in candid professional peer review proceedings should prevail over the litigant's need for information from the most convenient source." 312 S.C. at 61, 439 S.E.2d at 259–60 (internal quotation and citation omitted).

Many courts emphasize the availability of factual information associated with an underlying medical event when protecting the materials and communications of a separate peer review process. For example, in Sevilla, the court commented:

"Recognizing a peer review privilege furthers the national interest in the protection of the health and citizenry without compromising any competing and clashing interest, and does no more than require the plaintiff to prove his case with expert evidence unconnected to the peer review materials. This occurs routinely in cases tried throughout the country. The effect on the ultimate truth seeking function of a trial is thus 'modest,' at worst."

852 F. Supp. 2d at 1062. The Tep court identified a similar consideration when it protected the peer review materials at issue: "the facts necessary to develop Tep's EMTALA claim have been disclosed in other documents contained in the relevant medical files, as events central to Tep's EMTALA claim occurred outside the peer review process." 2014 WL 6873137 at *5. The same perspective was adopted in Grenier: "Plaintiff has presented no evidence that the peer review materials sought contain relevant information which he has not and cannot obtain from other sources." Id. at *5.

This is not a case in which the peer review process itself is the source of the alleged injury. Where that occurs, courts sometimes decline to protect peer review materials because these are the only evidence which can establish a plaintiff's claim. E.g., Summit Health, Ltd. v. Pinhas, 500 U.S. 322, 326–27 (1991); Patrick v. Burget, 486 U.S. 94 (1988); Teasdale v. Marin Gen. Hosp., 138 F.R.D. 691 (1991). The cases which involve such disclosures most frequently do not involve claims of medical malpractice, but rather something problematic with the peer review process

itself. In short, “[w]hen peer review materials are essential for proving a federal claim, such as discrimination in university tenure decisions . . . or antitrust violations . . . discovery is compelled. . . . But in a medical malpractice claim under the FTCA, where the opinions of a peer review committee are not indispensable to prove the claim, the privilege may be recognized.” Sevilla, 852 F. Supp. 2d at 1062 (internal quotation and citation omitted). Here, the Plaintiff’s claim does not stem from any peer review process conducted by Sharing Hope or in which Sharing Hope participated. Plaintiff is merely attempting to ease her own burden of prosecution by obtaining potentially damaging statements made by Sharing Hope during its peer review activities several weeks after the medical events giving rise to Plaintiff’s case. This weighs heavily against the disclosure of the peer review materials in this case as such a decision will have an immediate, chilling effect on full, candid, self-critical assessment in violation of the clearly mandated South Carolina public policy for the same.

Nor were the materials at issue in the present motion generated during or immediately after the incident giving rise to Plaintiff’s Complaint. Rather, they were generated weeks later after UNOS initiated a peer review evaluation of the incident – a process which required Sharing Hope’s participation. The circumstances here are quite different from the line of cases which decline to extend peer review protection to incident reports or other materials generated during or immediately after a medical event. See, e.g., Tibbs v. Bunnell, 448 S.W.2d 796 (Ky. 2014). Indeed, the contemporaneous documents, records, reports and communications associated with the underlying event in this case have been, or will shortly be, produced.

Thus, where the peer review process is not the source of the alleged injury or occurred after the events actually giving rise to the injury, the well-recognized policies supporting the protection outweigh a plaintiff’s need for the materials. “The only consequence in not recognizing the

privilege is to require the plaintiff in this case to do what plaintiffs in medical malpractice cases are routinely required to do in all other cases, namely adduce proof independent of what occurred in the peer review process.” Sevilla, 852 F. Supp. 2d at 1068–69 (internal citation and quotation omitted) (denying motion to compel peer review protected materials).

V. Failing to Provide Peer Review Protection to Sharing Hope Would Erode the Peer Review Protection Afforded to the Same Materials Where They are in the Possession of the Other Entities Participating in the Peer Review Process.

This case involves the entities who are responsible for the facilitation of the OPTN – an aspect of the health care system which does not often interact with the courts. Due to the unique function of these organizations and the transplant hospitals they serve nationally, it should hardly be surprising that their peer review process involves both the local OPO, the federally-contracted administrator for the OPTN (UNOS), and the hospital systems and laboratories who were involved in the transplants from both the donor and the donee’s sides. While the peer review undertaken by a single hospital may be the traditional or most frequent example of the type of peer review process to which protection has been applied, it certainly is not the *only* example, and such a limited application would be impractical. Nor would such a limited application facilitate an effective approach to improve patient care or the provision of the essential services the OPTN and its members provide to transplant patients nationally. The more effective approach is what was employed here – the OPTN members working together to generate self-critical analysis and review the underlying medical event with an eye toward improving the system of procuring organs for transplant and preventing a similar outcome from happening in the future.

Plaintiff’s motions practice appears strategically designed to segregate UNOS, the OPTN administrator, from the OPTN members who participated in the peer review process required by UNOS’ MPSC. Plaintiff further attempts to separate the various OPTN members from each other and to have the peer review protection apply differently to each of these organizations.

While this may be a convenient strategy for Plaintiff, it creates the highest potential for inconsistent treatment of the same materials and communications. Without a consistent application of the peer review protection to all of the Defendants' peer review activities in this case, it is possible that one document would be considered protected by the peer review protection when it is in one, but not another, defendant's possession. For example, a document in MUSC's possession withheld on the basis of peer review could very well be identical or nearly identical to a document withheld by Sharing Hope on the same basis. Without a consistent application of the peer review protection, such a document could receive inconsistent treatment even within the same case depending on whose privilege log was being scrutinized. Such a result would be directly at odds with the clear purpose and intent of the peer review privilege.

Fundamentally, by not affording Sharing Hope the same peer review protections which are undoubtedly available to the other defendants, Plaintiff would be permitted to achieve an end-run on any protected documents which were exchanged between Sharing Hope and any other entity during Sharing Hope's self-critical peer review processes. If Sharing Hope is required to produce such materials, such an order would effectively nullify the protections to which other entities are entitled and would undermine the privilege altogether. This result would not only reduce the ability and inclination of OPOs to participate in the MPSC's quality assurance and peer review activities, but it would also erode the confidence and trust of other entities who participate in a peer review jointly with the OPOs. This erosion of the integrity of the peer review process is certainly analogous to the United States Supreme Court's warning in Jaffee v. Redmond, when it noted that, "a State's promise of confidentiality would have little value if the [individuals it protects] were aware that the privilege would not be honored in federal court." Jaffee v. Redmond, 518 U.S. 1, 11 (1996).

To this end, Sharing Hope submits that the better approach is to consistently provide peer review protection to the withheld materials, irrespective of which entity possesses the same. This outcome would avoid potential inconsistent treatment of the same material within the same case and would best further the purpose and objectives of the peer review process. Additionally, a confirmation of the protections asserted by Sharing Hope would avoid the need for an immediate interlocutory appeal and permit this case to continue toward dispositive motions and, if necessary, trial.

VI. In the Alternative, the Court May Take this Issue Under Advisement and Hold it in Abeyance Pending Resolution of the Same Issue in a Related Federal Case.

In addition to the present case, there are two related cases brought by plaintiffs who received organs from the same donor.⁷ These related matters are currently pending in state and federal court under a Notice of Intent filed pursuant to S.C. Code § 15-79-125 (2021). All three cases involve the same medical records and the same peer review process conducted following the transplantation of the donor's organs. All three cases involve, or will involve, the same assertion of peer review protection over the self-critical peer review and quality control analyses conducted by Sharing Hope. All three plaintiffs are represented by the same counsel.

Sharing Hope has recently become aware of an improper subpoena practice conducted by Plaintiff Patterson in his case pending in federal court. This improper practice has resulted in the acquisition of peer review protected materials by Plaintiff Patterson (and, consequently, by counsel representing all three plaintiffs in this and the related cases) without Sharing Hope having had an

⁷ These civil actions are Patterson v. We Are Sharing Hope SC, United Network for Organ Sharing, Elizabeth Davies, M.D., Jacqueline Honig, M.D., and Darla Welker, C/A No. 2:20-mc-00471-BHH (D.S.C.) and Ykeiah Lawrence and Miles Lawrence v. We Are Sharing Hope SC, United Network for Organ Sharing, Atrium Health, Inc., Jacqueline Honig, M.D., Karl Welke, M.D., and Darla Wekler, C/A No. 2021-NI-10-00010 (Charleston Cnty. Common Pleas).

opportunity to object or move for a protective order as it is entitled to under Rule 45 of the Federal Rules of Civil Procedure.

Sharing Hope anticipates that it will file a motion for protective order in the Patterson matter in the near future, and that this motion will require the federal court to issue a ruling on the applicability of the same peer review protection asserted by Sharing Hope in the present case. In light of the overlapping federal schema of this issue among all three of the civil actions, this Court may consider whether the objectives of judicial efficiency would best be served by holding the present motion under advisement until peer review protection is ruled upon by the federal court in the Patterson Matter. Cf. Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 184, 379 S.E.2d 119 122 (1989) (“To stay an order is to hold it in abeyance or refrain from enforcing it; a stay is a stopping.”); Blackwell v. Fulgum, 375 S.C. 337, 345, 652 S.E.2d 427, 431 (Ct. App. 2007) (“the very definition of ‘abeyance’ is that of ‘temporary inactivity’ or ‘suspension.’”).

CONCLUSION

For all of the foregoing reasons discussed above, as well as the reasons articulated in its initial Memorandum in Opposition to Plaintiff’s Motion to Compel and at the April 13th hearing, Sharing Hope respectfully requests that this Court deny Plaintiff’s Motion to Compel the privileged documents contained on Sharing Hope’s Privilege Log and find that Sharing Hope acted reasonably in labeling the documents and affixing them in the privilege log.

[Signature Block Appears on the Following Page.]

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

s/ Molly H. Craig
Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

Attorneys for Defendant
We Are Sharing Hope SC

April 16, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
MILLARD M. MOODY AND MINNIE L. MOODY,	)	CASE NO 2003-CP-10-2899
	)	
PLAINTIFFS,	)	
	)	
vs	)	ORDER GRANTING DEFENDANTS' MOTION FOR PROTECTION
	)	
ROPER HOSPITAL, INC.,	)	
	)	
DEFENDANT	)	

This matter comes before the Court pursuant to Defendant, Roper Hospital's, Motion(s) for Protection. This is a medical malpractice case. During oral discovery, the Plaintiffs sought information regarding Defendant, Roper's, root cause analysis and subsequent incident report, created and filed in connection with the Hospital's self-evaluation proceedings, and peer review discussions among medical staff members. The information sought includes an incident report and conversations among medical staff related to the Hospital's follow-up proceedings in response to the incident.

For the reasons laid out herein, Defendants' Motion(s) for Protection should be granted.

**MOTION FOR PROTECTION FOR DEPOSITION OF RADIOLOGY
TECHNICIAN DEBRA HUNTER**

On January 22, 2004 Roper radiology technician, Debra Hunter, was deposed by counsel for the Plaintiff. During Mrs. Hunter's deposition Plaintiff's counsel asked her several questions regarding an incident report being made after the Plaintiff was injured. Counsel for defendant, Roper, instructed Mrs. Hunter not to reveal any of the substance of the report but did allow the witness to respond to general questions regarding who may

have participated in the drafting of an incident report (see attached Exhibit A, excerpts from deposition transcript of Deborah Hunter page 7, line 12 through page 9, line 10)

Deborah Hunter further testified that following Mr Moody's injury she met with Margaret Ann Fraley and another hospital employee named Lee Budd (see Exhibit B, deposition of Debra Hunter, page 26, line 14 through page 35 line 24)

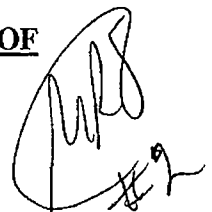
Margaret Ann Fraley was the manager for the nuclear medicine department at the time of the incident, (see Exhibit C, deposition of Margaret Ann Fraley, page 12, lines 2-7) Mrs Hunter identified Lee Budd as being the hospital risk manager.

Once again, Attorney Tierney instructed Mrs Hunter not to reveal any of her conversations between herself, Lee Budd and Margaret Ann Fraley, as the meeting between herself, Mrs Fraley and the risk manager would have been part of the hospital's root cause analysis

Following Deborah Hunter's deposition, Attorney Tierney filed a Motion for Protection Upon oral argument of the Motion, Attorney Tierney argued that Margaret Ann Fraley was a manager in the nuclear medicine department who was requested by the risk manager, Lee Budd, to participate (as part of a hospital review committee) to perform a root cause analysis to determine the circumstances of the Plaintiff's injury

It was further argued that any conversations or reports as a result of meetings with Lee Budd would also be privileged, as Lee Budd was the clinical risk manager for the hospital Any investigation Lee Budd performed was part of the hospital's root cause analysis and also protected by attorney/client privilege, as root cause analysis' investigations are commanded by the hospital's legal department

**MOTION FOR PROTECTION FOR DEPOSITION OF MANAGER OF
NUCLEAR MEDICINE DEPARTMENT MARGARET ANN FRALEY**

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On January 23, 2004, the previously mentioned, Margaret Ann Fraley was deposed by counsel for the Plaintiff. Mrs. Fraley testified that in 2002 (time of incident) she was the manager of the nuclear medicine department.

During examination by the Plaintiff, Mrs. Fraley testified that she met with Debra Hunter and Lee Budd to discuss the incident involving the Plaintiff. Plaintiff's counsel then asked Mrs. Fraley what was the purpose of that meeting. Attorney Tierney instructed the witness she could respond regarding the purpose of the meeting but was not allowed to respond regarding substantive details of that meeting (see Exhibit D, deposition of Margaret Ann Fraley, page 16 line 4 through page 29 line 17).

Mrs. Fraley responded that the purpose of the meeting was to discuss the incident with the risk manager for the hospital to determine if improvements needed to be made regarding patient care.

Mrs. Fraley was then asked detailed questions about the filling out of an incident report. Once again, Attorney Tierney instructed the witness to not respond, based on the information sought being privileged (see also Exhibit D, deposition of Margaret Ann Fraley, page 29 lines 18-22).

Following Margaret Ann Fraley's deposition, Attorney Tierney filed a Motion for Protection. Upon oral argument of the Motion, Attorney Tierney argued that any investigation performed by Margaret Ann Fraley or investigative report drafted on her behalf would be privileged as it was done at the direction of risk manager Lee Budd, and as commanded by the hospital's legal department.

A handwritten signature, possibly "MS", with the number "3" written below it.

Attorney Tierney argued all investigations were performed as a result of the hospital review committee's root cause analysis to determine the circumstances of the Plaintiff's injury and therefore should remain privileged

MOTION FOR PROTECTION FOR DEPOSITION OF JOAN DECHART,
DIRECTOR OF IMAGING

On May 5, 2004 counsel for Plaintiff deposed Joan Dechert, director of imaging for Roper Hospital. The nuclear medicine department (of which Margaret Ann Fraley is manager) is under the direction of Mrs Dechert.

During Mrs. Dechert's deposition, Plaintiff's counsel asked if Roper Hospital performed a root cause analysis with respect to the incident involving the Plaintiff that occurred on June 20, 2002. Attorney Tierney, instructed the witness she could respond regarding whether a root cause analysis was performed but was instructed not to answer regarding the substantive details of the analysis (see Exhibit E, deposition of Joan Dechert, page 15 line 8, through page 19, line 13)

As part of Mrs Dechert's limited response, she testified that she was involved in the root cause analysis with respect to the Plaintiff. She further testified that to her knowledge, Margaret Ann Fraley and Lee Budd of risk management were also involved in the root cause analysis

As a result of instructing Mrs Dechert not to respond, Attorney Tierney filed a Motion for Protection. During oral arguments of the Motion, Attorney Tierney argued that any participation Joan Dechert had in investigating the events surrounding the Plaintiff's fall were done as a result of the the hospital's root cause analysis and therefore should be protected as privileged

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Attorney Tierney argued Joan Dechart, as director of imaging for the hospital, was part of an investigation as a member of a hospital review committee for purposes of performing a root cause analysis. Attorney Tierney argued any information regarding participation by Joan Dechart was also protected by attorney/client privilege, as root cause analysis' investigations are commanded by the hospital's legal department (as evidenced by Mrs. Dechart meeting with Lee Budd, clinical risk manager for the hospital, performing an investigation commanded by the hospital legal department)

INFORMATION SOUGHT FROM DEBRA HUNTER; MARGARET ANN FRALEY; JOAN DECHERT SHOULD BE PROTECTED AS IT IS PART OF PEER REVIEW AND ROOT CAUSE ANALYSIS AND PROTECTED FROM DISCOVERY PURSUANT TO S.C. CODE § 40-71-10 AND 40-71-20

The investigative report and all aforementioned conversations are elements of the Hospital's root-cause analysis and peer review processes and, as such, are protected from discovery pursuant to S C Code §§ 40-71-10 and 40-71-20.

South Carolina Code § 40-71-20 provides that "[a]ll 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." The statute further provides that "[t]hese proceedings and documents are not subject to discovery, subpoena, or introduction into evidence in any civil action." The relevant "committee" to which the statute refers is that "of a medical staff of a licensed hospital, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital."

S C Code § 40-71-10

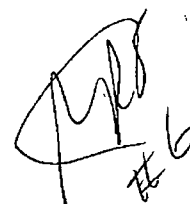
Roper Hospital's office of Risk Management ("Risk Management"), a committee of specially-appointed medical staff for which the hospital's written bylaws provides, is a "committee" as defined by S.C Code § 40-71-10. The establishment of the committee is

just one of many elements required in order for the Hospital to be accredited by the Joint Commission on Accreditation of Healthcare Organization ("JCAHO") According to JCAHO's Standards of Hospital Accreditation,

The improvement in care and treatment of hospital patients is the responsibility of the medical staff To accomplish this, meetings of the medical staff are required to review, analyze, and evaluate the clinical work of its members Chapter II, Part C, ¶4 (January 1964), *cited in* *Bredice v Doctors Hospital, Inc* , 50 F.R D 249, 250 (1970).

In keeping with JCAHO's stated standards, Roper's Risk Management provides guidelines for performing so-called "Root-Cause Analyses" in order to identify the initial cause of any unexpected accident or injury that occurs in the Hospital's treatment of patients The purpose of these investigations is to identify potential weaknesses in the system of care and to remedy such situations where possible

The incident report at hand is a key piece of documentation in Roper Hospital's self-evaluation process. Courts interpreting S C Code § 40-71-20 acknowledge that the statute protects both documents generated by a committee of medical staff of a licensed hospital and documents acquired by such committee in the course of its proceedings McGee v. Bruce Hosp. System, 312 S.C. 58, 439 S E 2d 257 (S C 1993) (reversed on other grounds) In McGee, the Supreme Court of South Carolina recognized that "[t]he express language of the statute provides that all proceedings of and all data and information acquired by the committee are confidential" Id at 52, 261 The incident report, therefore, is a confidential document that is undiscoverable by the Plaintiffs



Another integral part of the investigation process is the discussion of events among medical staff members as a form of peer review. Like the incident report, such discussions are conducted for the specific purpose of targeting any potential weaknesses in patient care in order to make any possible improvements in that care.

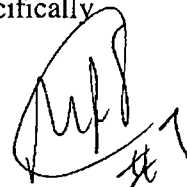
Joan Dechart testified that when an unfavorable event takes place at the hospital the hospital conducts an investigation to determine how that event could be prevented in the future (see Exhibit H, deposition of Joan Dechart, page 13 line 19-24).

It is the responsibility of risk management to have meetings with the medical staff to review, analyze and evaluate medical staff members in an effort to improve the care and treatment of hospital patients.

In the case at hand, Lee Budd, as risk manager and at the command of counsel for the hospital, met with the medical staff (Joan Dechart, Director of Imaging and Margaret Ann Fraley, Manager of Nuclear Medicine) to review, analyze and evaluate the medical staff's treatment of Millard Moody. Part of this evaluation included interviews and statements from medical staff members who treated Mr. Moody (to include Debra Hunter). Information derived from this "root cause analysis" is precisely what S.C. Code § 40-71-20 seeks to protect.

Guaranteeing confidentiality of these proceedings is a public policy measure which allows committee members and medical staff members to speak openly to their peers in an effort to find ways to improve patient care.

The facts of this case are distinguishable from those in Taylor v. Medenica, in which the South Carolina Supreme Court determined that the conversation between two doctors was not part of the peer review process where one of the doctors specifically

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stated the conversation was not part of the process 324 S C 200, 479 S E 2d 35 (1996) In the present case, the individuals engaged in the discussions from which Plaintiffs seek information insist the conversations were part of the peer review process, and there simply is no evidence to the contrary.

Plaintiff's attorney argued no testimony was placed in the record stating the incident report and interviews were part of the peer review process He further argues no testimony exists as to what or who constitutes a peer review committee at Roper Hospital, Inc

The sworn deposition testimony of Debra Hunter; Margaret Ann Fraley and Joan Dechert confirms that a peer review process was in place due to the fact that all three witnesses met with Lee Budd, risk manager for the hospital, to discuss the incident. Both managers interviewed (Mrs Fraley and Mrs Dechert) testified that the purpose of their meeting with Lee Budd was to discuss the incident with the risk manager for the hospital to determine if patient care could be improved. This is the purpose of peer review and what S C Code § 40-71-20 seeks to protect

Furthermore, Courts in other jurisdictions interpreting confidentiality statutes similar or identical to S C Code § 40-71-20 have provided wide protection to peer review discussions The Supreme Court of Georgia, for example, has held that even information as to whether meetings had been held at all and who might have been in attendance is confidential and not open to discovery. Hollowell v. Jove, 247 Ga 678, 279 S E 2d 430 (GA.1981) In that case, the Court stated that "the discovery of whether any medical review committee meetings relating to the care of the decedent were held and who attended those meetings necessitate an intrusion into the proceedings of the hospital's



review committee" Id. at 682, 434. Similarly, allowing the Plaintiffs in the present case to gain access to discussions among committee members attempting to elucidate the details of an incident and how best to prevent similar events from occurring in the future would thwart the self-evaluation process and undermine the South Carolina legislature's intent.

Documents "otherwise available" defined as obtained from alternative sources are not protected. McGee, supra.
 "An important rule of statutory construction is that the court must ascertain and effectuate the legislature's intent" McGee, 312 S.C. at 63, 439 S.E.2d at 260. The rationale behind the protection of such discussions is a clear and well-established one based on sound policy concerns. As the Court noted in McGee, "[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." Supra at 61, 259. Moreover, "[t]he 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" Id. It is imperative, therefore, that the Court uphold the confidentiality protections in the present case. *

ATTORNEY/CLIENT PRIVILEGE ARGUMENT

Attorney Tierney further argued that all meetings that took place between risk management and witnesses or managers involved in the investigation of Mr. Moody's fall should be afforded confidentiality subject to attorney/client privilege. The basis of Attorney Tierney's argument is that the risk management department was performing an investigation at direction of the legal department of the hospital in anticipation of litigation (which did, in fact, ensue).

** McGee specifically held that the result or outcome of the decision-making process is not protected. Therefore the Plaintiff is entitled to know the outcome of the*

Root cause analysis If no result was reached
 Plaintiff is entitled to inquire as to why or why not

Similar to the file of an insurance adjuster working in concert with counsel, Lee Budd was performing her investigation at the direction of legal counsel for the hospital. As such, any communications or documentation regarding her investigative process should remain privileged as the investigation was done in anticipation of litigation

SELF CRITICAL ANALYSIS PRIVILEGE EXTENDS TO INFORMATION SOUGHT BY PLAINTIFF

Even if the confidentiality provisions of S C Code § 40-71-20 do not apply to the facts of the case at hand, the self-critical analysis privilege precludes discovery of the incident report and peer review discussions. Indeed, the policy concerns addressed above are so compelling that a common law privilege has emerged to protect from discovery information just like that in the present case. Although this privilege has not been expressly adopted by South Carolina courts, it has been recognized and adopted by the majority of District Courts within the Fourth Circuit as well as by the D C and Sixth Circuits. See e.g. Asarco, Inc., Tennessee Mines Division v. National Labor Relations Board, 805 F.2d 194 (1986), Bredice v. Doctor's Hospital, Inc., 50 F.R.D. 249 (D.D.C.1970), Petition of McAllister Towing and Transportation Company, Inc., 2004 WL 1240667 (E.D. Pa. 2004), Manns v. Smith, 181 F.R.D. 329 (S.D.W. Va. 1998), Etienne v. Mitre Corporation, 146 F.R.D. 145 (E.D. Va. 1993). The privilege is by no means a rogue protection and should be applied in the present case.

In Bredice v. Doctor's Hospital, Inc., a medical malpractice suit, the United States District Court for the District of Columbia held that minutes and reports of the defendant hospital's staff concerning the death of the plaintiff's decedent were not subject to discovery even without the specific protections of a statute like S.C. Code § 40-71-20. 50 F.R.D. 249 (D.D.C. 1970). The Bredice court properly concluded that the overwhelming

public interest in having staff meetings held on a confidential basis outweighed the plaintiff's interests in disclosing this information. In discussing the committee proceedings the Court noted

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. Absent evidence of extraordinary circumstances, there is no good cause shown requiring disclosure of the minutes of these meetings. Id. at 251

Likewise, in the present case and as discussed above, the public interest in maintaining the confidentiality of the meetings among staff members and the incident report prepared specifically for the purposes of self-evaluation outweighs any argument for disclosure

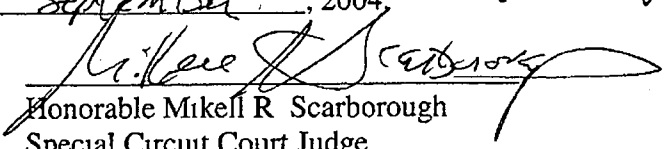
ORDERED

For the foregoing reasons, the Defendants' Motion(s) for Protection are granted pursuant to S.C. Code §§ 40-71-10 and 40-71-20, as well as McGee v. Bruce Hosp.

System, 312 S.C. 58, 439 S.E.2d 257 (S.C. 1993) (reversed on other grounds)

It is further ordered that the information sought is ^{to the extent} ~~protected as a matter of~~ ^{otherwise available,} ~~attorney/client privilege and pursuant to the common law principles of self-critical analysis.~~ ^{It is further ordered that Plaintiff is entitled to know the result of the root cause analysis and, if no result, why or why not.}

IT IS SO ORDERED this 20th day of September, 2004.


Honorable Mikell R. Scarborough
Special Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

A

1 Q. By this, you're referring to the
2 deposition notice?

3 A. Right. It wasn't this one though.

4 Q. Did you speak with anyone other than the
5 lawyers for the hospital about this deposition?

6 A. I'm sorry, I was reading this. Could you
7 tell me again?

8 Q. Sure. Did you speak with anyone other
9 than the lawyers for the hospital about this
10 deposition?

11 A. No.

12 Q. Did you review an incident report you
13 made concerning this?

14 A. I didn't make an incident report.

15 Q. Do you understand Roper has a policy
16 about incident reports being made after a patient is
17 injured?

18 A. Yes, I do. But I wasn't the one that did
19 it.

20 Q. So someone else made the incident report?

21 A. Right.

22 Q. Do you know who that was?

23 A. It was --

24 MR. TIERNEY: Let me let her give a
25 limited response on this, but just instruct her not

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1 to go into anything about the report. Of course, as
2 you know from previous cases, I claim privilege on
3 incident reports. But on that caveat, you can answer
4 the question.

5 THE WITNESS: I think it was the lead
6 tech and the chief of the department, one of the
7 supervisors.

8 BY MR. KAHN:

9 Q. I hope you know part of the purpose of a
10 deposition is to find out from witnesses what they
11 know or what they don't know. If you don't know
12 something, you don't know it. If you know something,
13 that's fine. And part of what we're trying to find
14 out is some of the information Roper has. That's why
15 I'm asking questions. I don't know that I know the
16 particular names of some of the people. So who do
17 you understand may have filled out this incident
18 report?

19 A. Margaret Ann Fraley.

20 Q. That's F-R-A-L-E-Y?

21 A. Right. And I think Phillip McKenzie.

22 Q. Phillip McKenzie is who?

23 A. He was the lead tech at the time, but
24 he's no longer in their department.

25 Q. Is he still at Roper?

1 A. No.

2 Q. Do you know where he is today?

3 A. He is, I think, at LMA, Lowcountry
4 Medical.

5 Q. Lowcountry Medical Associates?

6 A. Right.

7 Q. I'm not sure who you are in relationship
8 to what happened. You understand why we're here
9 involving Mr. Moody and this fall?

10 A. I do.

11 Q. And this Prism machine. I want to find
12 out what you know or don't know about this. Was this
13 the person that was -- I understand somebody got him
14 some juice?

15 A. I did. That was me, the juice girl.

16 Q. These other two people you talked about,
17 were they around at the time?

18 A. They were in the department but not in
19 the room.

20 Q. Then we'll get back to them. You gave me
21 your full name. What's your current address?

22 A. 956 Provincial Circle, Mt. Pleasant.

23 Q. What's the zip code?

24 A. 29464.

25 Q. And part of that is so if we need to send

B

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1 there to answer them, or is it just you and the
2 machine?

3 A. It's you and the machine. I'm sure you
4 could follow up if you had questions.

5 Q. Is there a grading process? Do you take
6 any tests?

7 A. You do.

8 Q. Are those tests entered into your
9 employment file?

10 A. Right.

11 Q. Have you ever been disciplined or written
12 up for anything while working for Roper?

13 A. No.

14 Q. Did you ever speak with Lee Budd about
15 Mr. Moody or the events associated with this?

16 A. I did.

17 Q. Approximately when was that?

18 A. Not long after the incident happened.

19 Q. This is sometime in June of 2002?

20 A. Right.

21 Q. Probably the same day?

22 A. I don't think it was the same day.

23 Q. Within a day or two, you think?

24 A. Right.

25 Q. Certainly within a week?

1 A. Right.

2 Q. And what did y'all talk about?

3 MR. TIERNEY: Hold on. I'm going to
4 instruct the witness not to answer. It's privileged,
5 part of the peer review process, root-cause analysis.
6 BY MR. KAHN:

7 Q. Do you understand Roper has a policy
8 which requires employees to document circumstances
9 surrounding a patient being injured in the hospital?

10 A. I would assume so. I didn't know there
11 was a policy.

12 Q. I'm going to show you something and ask
13 you if you've seen that before, policy number 23.

14 A. Is this an incident report?

15 Q. I understand that this is some kind of
16 policy that Roper has. Have you ever seen this
17 policy before? Are you familiar with it?

18 A. No. I mean, I know -- I've never seen
19 this exact policy, no.

20 Q. Do you understand that Roper has a policy
21 like --

22 A. Well, it might be in the policy manual.

23 MR. KAHN: Let me mark this as Number 2
24 first.

25 (PLF. EXH. 2, Three-page Roper

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1 CareAlliance Administrative Policy and
2 Procedure, Policy Number 23, was marked
3 for identification.)

4 BY MR. KAHN:

5 Q. We've marked Plaintiff's Exhibit Number
6 2, which is the Patient and/or Visitor Incidents and
7 Incident Reporting Policy. That's what we were
8 talking about a moment ago. You're familiar Roper
9 has certain policy manuals?

10 A. Correct.

11 Q. And they have different policies within
12 these manuals that employees are supposed to be
13 familiar with?

14 A. Right.

15 Q. Are you saying you're generally familiar
16 with this policy but you've never seen it in writing,
17 or you may have, you just don't remember?

18 A. Right.

19 Q. And does this sound like or look like the
20 kind of policy that you've heard about working for
21 Roper for the last 30 years?

22 A. Do you want me to read this policy so I
23 can answer these questions correctly?

24 Q. Whatever you'd like to do. Yes, if you
25 need to do that, don't hesitate to do that. My

1 questions associate with whether you're familiar with
2 this policy or a policy like it that Roper has, and
3 whether or not you've seen it in writing. So if you
4 need to read it, then go on.

5 A. It might take me a little while.

6 Q. That's all right.

7 A. I have seen a policy like this.

8 Q. All right. And that's in one of the
9 manuals or notebooks y'all have in the department?

10 A. Um-hum.

11 Q. Yes?

12 A. Yes.

13 Q. We'll go back to where we started. So
14 you are familiar that Roper has in place a policy
15 like policy number 23 that applies to y'all's
16 department?

17 A. Correct.

18 Q. I want to go back to Lee Budd a second.
19 Joe is going to object, but I want to ask some
20 questions so somebody reviewing this can decide what
21 to do. And you can -- you may or may not object to
22 some of them. Earlier we were talking about a
23 conversation you had with Lee Budd following this
24 incident involving Mr. Moody. Do you remember that?

25 A. Yes.

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1 Q. As part of the conversation you had with
2 Lee Budd, did you provide her with any documents?

3 A. No.

4 Q. What did you say to her?

5 MR. TIERNEY: Objection, I'm going to
6 instruct the witness not to answer.

7 BY MR. KAHN:

8 Q. What questions did she ask you?

9 MR. TIERNEY: Objection, instruct the
10 witness not to answer.

11 BY MR. KAHN:

12 Q. Did you write anything down when you were
13 speaking with Lee Budd?

14 A. No.

15 Q. Did Lee Budd write anything down?

16 A. Yes.

17 Q. Do you know if she wrote on some kind of
18 form or what she wrote it on?

19 A. No, I don't.

20 Q. Did she ask you to review what she wrote
21 down?

22 A. I can't remember.

23 Q. Do you know if you would have signed what
24 she wrote down?

25 A. No, I can't remember. I don't think I

1 signed anything.

2 Q. Do you know if she tape recorded it?

3 A. I don't think so.

4 Q. You didn't see a tape recorder?

5 A. No.

6 Q. Was anyone else in the room?

7 A. When I was talking to Lee Budd?

8 Q. Yes, ma'am.

9 A. Yes.

10 Q. Who was that?

11 A. Margaret Ann Fraley.

12 Q. Margaret Ann Fraley?

13 A. Right.

14 Q. Who is that?

15 A. She was the supervisor of our department.

16 Q. Did Margaret Ann Fraley ask you any
17 questions?

18 A. Did she ask me any questions? I can't
19 remember. I can't remember.

20 Q. Did she write anything down, meaning
21 Margaret Ann Fraley?

22 A. I think so. I don't remember. It was
23 more like a discussion.

24 Q. So were one or both of them asking you
25 questions, and you were answering them?

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1 A. Yes.

2 Q. Did you ask them any questions?

3 A. I might have.

4 Q. Was anyone else in the room other than
5 Lee Budd and Mrs. Fraley and you?

6 A. No.

7 Q. Was it in somebody's office?

8 A. Yes.

9 Q. Whose office was that?

10 A. It was the x-ray -- like conference room.

11 Q. At the time you were talking with these
12 people, did you know the condition of Mr. Moody?

13 A. No.

14 Q. Had you ever been involved in a
15 conversation -- do you remember Lee Budd's title?

16 A. She's risk manager.

17 Q. Had you ever been involved with a risk
18 manager or someone like that prior to this?

19 A. No.

20 Q. What is your understanding of what the
21 risk manager was doing when y'all were talking?

22 A. Trying to find out what happened.

23 Q. Did Lee Budd give you any instructions
24 concerning your conversation with her?

25 MR. TIERNEY: I'm going to object and

1 instruct her not to answer.

2 BY MR. KAHN:

3 Q. Did Ms. Fraley give you any instructions
4 concerning your conversation with her?

5 MR. TIERNEY: Same objection.

6 BY MR. KAHN:

7 Q. You now told me you spoke with Lee Budd
8 and Mrs. Fraley about this?

9 A. Correct.

10 Q. Did you speak with anyone else?

11 A. No.

12 Q. Any of the other techs or any of the
13 doctors?

14 A. Not as a meeting or anything, not really.
15 There wasn't really a lot of discussion about it.

16 Q. For example, did you ever speak with
17 Dr. Snyder?

18 A. I asked Dr. Snyder how Mr. Moody was
19 doing, but that was all.

20 Q. Did you speak with Dr. Snyder about what
21 had happened or what you understood had happened?

22 A. No.

23 Q. Did you speak with any other doctors
24 about Mr. Moody?

25 A. No.

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1 Q. Did you speak with any of the family
2 members of the Moodys?

3 A. No.

4 Q. Any nurses or other Roper staff other
5 than Lee Budd, Mrs. Fraley?

6 A. Well, just in our department, but, no.

7 Q. When you say in your department, did
8 y'all have sort of a class on how this could be
9 prevented in the future?

10 A. We did.

11 Q. And when was that, approximately?

12 A. Maybe one or two weeks afterwards.

13 Q. So sometime in June of 2002? This was
14 June 20th of 2002, so sometime in either late June of
15 2002 or early July of 2002?

16 A. Right.

17 Q. And was there any handouts at this
18 get-together?

19 A. I can't remember.

20 Q. Was there someone from Roper telling
21 y'all -- well, what happened?

22 A. Just trying to have a meeting about how
23 we could improve or how we could keep anything like
24 this from happening.

25 Q. About how long was this meeting?

1 A. About 45 minutes maybe.

2 Q. Who was in that meeting, all the tech
3 staff?

4 A. Correct.

5 Q. Approximately how many people is that?

6 A. At the time --

7 Q. Or was that?

8 A. How many people?

9 Q. Yes, ma'am.

10 A. Counting Lee and Margaret Ann, about
11 seven people.

12 Q. Were there any physicians or doctors
13 or --

14 A. That was it.

15 Q. What did y'all talk about how this could
16 be prevented?

17 A. Just kind of brain storming type ways
18 just to try to improve any kind of risks.

19 Q. What were some of the brain storming
20 ways?

21 A. Well, there wasn't a whole lot we could
22 do different to change the circumstances. As far as
23 having juice brought in the room beforehand, that was
24 about it.

25 Q. Let's talk about the event, and then

C

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1 January of 1998, I became director of the vascular
2 lab and nuclear medicine. And then later in 1998 I
3 became MG manager, and now I'm currently manager of
4 nuclear medicine, mammography and support services.

5 Q. Were you the manager you just stated in
6 2002?

7 A. Yes.

8 Q. What are your job responsibilities or
9 duties as -- I can't remember what you said, some
10 kind of manager.

11 A. You know, financials, planning, you know,
12 staffing plans. It's more of management,
13 administrative position. Budgets and -- it's kind of
14 hard to answer.

15 Q. Are you involved in setting any policies?

16 A. I could be involved in setting policies.

17 Q. Are you? When you say could be, does
18 that mean --

19 A. Yes.

20 Q. So you are involved with setting policies
21 for the nuclear -- what do I call the department?

22 A. Nuclear medicine department.

23 Q. How long have you been involved in
24 setting policies for the nuclear medicine department,
25 approximately?

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1 MR. KAHN: She said that.

2 THE WITNESS: Did I miss it? I don't --

3 BY MR. KAHN:

4 Q. I think yesterday we learned that there
5 was a Lee Budd who made some notes concerning
6 Ms. Hunter and what happened with Mr. Moody back in
7 June of 2002. I believe she mentioned you were at a
8 meeting like that. Does that ring a bell?

9 A. Yes.

10 Q. Did you speak with Lee Budd about
11 anything to do with this, other than that meeting you
12 had in June of 2002 with --

13 A. Recently, no.

14 Q. Have you ever spoken to Lee Budd about
15 anything to do with Mr. Moody?

16 A. Yes.

17 Q. And approximately when was that?

18 A. Of course when it happened, 2002.

19 Q. You understand Mr. Moody fell June 20th
20 of 2002? Does that sound about right to you?

21 A. Yes.

22 Q. When you say it happened, does that mean
23 that day? That's what I'm trying to understand.

24 A. I'm not sure if I spoke to her that day,
25 but I did meet with her.

1 Q. So relatively promptly after this fall,
2 you would have met with Lee Budd?

3 A. Yes.

4 Q. Do you know if at that meeting there was
5 anyone else present?

6 A. Deb and I met with her.

7 Q. Did you meet with Ms. Budd without Deb
8 there? By Deb, you're referring to Deb Hunter?

9 A. Yes. Concerning this case, I don't think
10 so.

11 Q. Is there a practice in place with the
12 nuclear medicine department to meet with Lee Budd
13 when incidents occur?

14 A. There is not a policy or anything, no.

15 Q. Are you familiar with the term sentinel
16 event?

17 A. Yes.

18 Q. Do you believe that Mr. Moody falling off
19 this table is a sentinel event?

20 A. Yes. But I don't know for sure he fell
21 off the table because I don't know what happened to
22 him.

23 Q. You believe that Mr. Moody's injury is a
24 sentinel event; is that correct?

25 A. Yes. I mean, it was a sentinel event,

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1 the whole episode, yes.

2 Q. By the whole episode -- and I'm sure Joe
3 will correct me if I'm wrong -- there has been
4 alleged an injury to Mr. Moody's shoulder as well as
5 falling off a commode. When you talk about the
6 sentinel event, are you solely referring to what
7 happened in the nuclear medicine department, or are
8 you talking about other events?

9 A. Nuclear medicine.

10 Q. As a result of the sentinel event in the
11 nuclear medicine department, were you involved with
12 sending anything to JCAHO, the Joint Commission?

13 A. I don't send anything to the Joint
14 Commission.

15 Q. Do you know if Roper submitted anything
16 to the Joint Commission?

17 A. I have no idea.

18 Q. Do you have an understanding as to
19 whether or not when a sentinel event occurs,
20 materials are supposed to be sent to the Joint
21 Commission?

22 A. I'm not on the Joint Commission team, so
23 I don't know.

24 Q. You're familiar with the Joint
25 Commission?

1 A. Oh, yes.

2 Q. That's the hospital accreditation
3 organization?

4 A. Um-hum.

5 Q. And you're familiar with that?

6 A. Yes.

7 Q. Do you understand, when I use the term
8 sentinel event, that's a term defined by the Joint
9 Commission?

10 A. Yes.

11 Q. What about Mr. Moody's injury was a
12 sentinel event?

13 A. My understanding of a sentinel event is
14 if a patient comes into the hospital and has any type
15 of adverse -- I don't know if reaction is the right
16 word -- outcome in the expected care of that date.

17 Q. Going back to this meeting you had with
18 Lee Budd and Deb Hunter, what was the purpose of that
19 meeting?

20 MR. TIERNEY: I'm going to instruct the
21 witness not to go into any of the substantive details
22 of the meeting.

23 BY MR. KAHN:

24 Q. One of the rules I forgot to tell you at
25 the beginning of the deposition is there is no judge

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1 present right now, and a judge will have an
2 opportunity to review this transcript and make
3 certain rulings concerning questions I ask and
4 objections Mr. Tierney states. Under our rules,
5 unless he instructs you otherwise, you're to answer
6 my questions. I think my question was, what was the
7 purpose of this meeting between you, Deb Hunter, and
8 Lee Budd?

9 MR. TIERNEY: You can answer it to the
10 extent of what the purpose of the meeting was. I
11 just don't want you to go into the substantive
12 details of the meeting.

13 THE WITNESS: Just to discuss the
14 incident.

15 BY MR. KAHN:

16 Q. What was the purpose of the discussion?

17 A. We filled out an incident report. And
18 she's our risk manager, so we met with her.

19 Q. When you say we filled out an incident
20 report, did you write any documents or fill out any
21 forms?

22 A. I signed the incident report.

23 Q. The incident report, are you referring to
24 a policy -- yesterday we had Ms. Hunter -- we marked
25 Plaintiff's Exhibit Number 2 from her deposition,

1 policy number 23. Is that a policy which describes
2 the incident report that you're talking about, or is
3 it something else?

4 A. This would be it. I guess I should read
5 this whole thing just to make sure.

6 Q. Sure. I've got another copy if you want
7 to look at it.

8 A. They're the same thing?

9 MR. TIERNEY: Yeah.

10 THE WITNESS: No, I'm fine. There was an
11 incident report that this is referring to.

12 MR. KAHN: Off the record a second.

13 (Off-the-record conference.)

14 (PLF. EXH. 2, Three-page Roper
15 CareAlliance Administrative Policy and
16 Procedure, Policy Number 23, was marked
17 for identification.)

18 BY MR. KAHN:

19 Q. Have you had an opportunity to review
20 through policy number 23 -- I can't remember if the
21 record will reflect this. We've now marked as
22 Plaintiff's Exhibit 2 to your deposition the policy
23 you were reviewing concerning incident reports.

24 A. Yes.

25 Q. Have you had an opportunity to review

Page 22

1 through those?

2 A. I read the first page. I didn't read
3 every single word of it, but it is the incident
4 report that we filled out.

5 Q. When you say we filled out, does that
6 mean Deb Hunter wrote out something, or what is the
7 process?

8 A. I don't know -- I can't remember who
9 actually filled it out. I know who it was signed by.

10 Q. Who was it signed by?

11 A. Phil McKenzie and myself.

12 O. Who is Phil McKenzie?

13 A. He was the lead tech at that time.

14 Q. What kinds of things are on an incident
15 report in terms of what information is put down?

16 MR. TIERNEY: Let me object and instruct
17 her not to answer. I think that goes into the
18 substance of the report, which we of course claim is
19 privileged.

20 BY MR. KAHN:

21 Q. Does the report ask for -- is it a form?

22 A. Yes.

23 Q. How many pages is the form,
24 approximately?

25 A. I'm trying to think. I think it's one.

1 I'm not positive. They change.

2 Q. And it's a prepared form, sort of like a
3 form that would be in the emergency room or somewhere
4 else that has some blocks to fill out and places to
5 put in information?

6 A. Yes.

7 Q. As part of the form, does it ask for the
8 facts as to what events took place?

9 A. You check blocks.

10 Q. So on the form are possible responses to
11 a particular question?

12 A. Yes.

13 Q. On this form is there any kind of
14 analysis or request as to how to prevent this event
15 from happening in the future?

16 A. I can't remember the 2002 form.

17 Q. Is there a different form now?

18 A. Forms change, and I'm not positive if the
19 form now is different than the one then.

20 Q. You've seen these forms before?

21 A. Yes.

22 Q. Have you been involved with having one
23 filled out other than with Mr. Moody?

24 A. Probably in 20 some years, yes.

25 Q. Have any of these forms ever analyzed or

Page 24

1 requested information about how the adverse event
2 could be prevented?

3 A. I'm not sure -- I'm not sure.

4 Q. What is the purpose of these incident
5 reports?

6 A. To be reported.

7 Q. To whom?

8 A. Risk management.

9 Q. What does risk management do with them?

10 A. You'd probably have to ask her that. I
11 mean, we met with her about it. But over and beyond,
12 I don't know all the details of what she does.

13 Q. By she, you're talking about Lee Budd?

14 A. Yes.

15 Q. Are these reports designed to allow Roper
16 to learn from mistakes?

17 A. We always try to learn.

18 Q. But are these forms designed to allow
19 Roper to learn from mistakes?

20 MR. TIERNEY: Object to form. You can
21 answer.

22 THE WITNESS: To learn from mistakes? I
23 guess if it's a mistake, yes. I think they're a
24 reporting mechanism.

25 BY MR. KAHN:

EXHIBIT - COMMISSIONER'S - CASE#2020CP1002902

1 Q. Is information about the patient's
2 condition on this form or requested on the form? Off
3 the record.

4 (Off-the-record conference.)

5 BY MR. KAHN:

6 Q. Back on the record, what kinds of
7 questions are asked on this form?

8 A. Demographics, the patient's name -- I
9 wish I had looked at one before I came.

10 Q. Information about like their date of
11 birth?

12 A. Probably. Name, date of birth, do they
13 have a medical record number, you know,
14 identification, probably what type of incident, was
15 it medicine, fall, things like that.

16 Q. So fall is one of the boxes on the form
17 to check off?

18 A. I think so. I would presume it has --
19 like if it was a hand or an arm, but I'm not
20 positive.

21 Q. Part of the body affected?

22 A. But I'm not positive on that.

23 Q. You think just a diagram of the body to
24 identify --

25 A. I don't think so. I would think if a

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1 doctor was notified, witnesses. That's all I can
2 think of.

3 Q. Is there space to put down what people
4 may have said?

5 A. I don't believe so.

6 Q. For example, if the patient says
7 something or a nurse hears something or says
8 something to somebody, would that be written down
9 into the form?

10 A. I don't believe so.

11 Q. Do you understand that there is a
12 requirement for the nuclear medicine department to
13 fill out these incident reports when there is a
14 circumstance surrounding an incident occurring to a
15 patient or visitor not consistent with the desired
16 operation of the hospital or care of the patient?

17 A. I'm sorry, what was that question again?

18 Q. I was basically reading from the form.
19 Is there a responsibility for the nuclear medicine
20 department to fill out one of these incident reports
21 if somebody gets hurt?

22 A. Yes.

23 Q. Do you have any idea what happens to this
24 information?

25 A. We give it to the risk manager.

CHARLESTON - COMMON PLEAS - CASE#2020CP1002902

1 Q. Do you know what the risk manager does
2 with it?

3 A. No.

4 Q. Does the risk manager ask you questions
5 about what happened while --

6 A. Yes.

7 Q. I'm sorry.

8 A. I'm sorry, finish your question.

9 Q. Does the risk manager ask you questions
10 about what happened while the form is being filled
11 out?

12 A. What was that question again?

13 Q. Does the risk manager ask you questions
14 after receiving the form -- what is the process?

15 A. We fill out the form and give it to risk
16 management.

17 Q. And is the person who creates the form
18 supposed to sign it?

19 A. The person who creates the form? You
20 mean fills it out?

21 Q. Yes, ma'am.

22 A. Yes.

23 Q. So --

24 A. I think.

25 Q. And then that person's supervisor would

Page 28

1 sign it as well?

2 A. The supervisor sometimes can fill them
3 out. I know it has definitely two signatures on it.

4 Q. In this case, do you know who filled out
5 the form?

6 A. No.

7 Q. And, I'm sorry, did you say you signed it
8 or there was some other gentleman?

9 A. Phil McKenzie signed it, and I signed it.

10 Q. Do you remember if Deb Hunter signed it?

11 A. No, I don't.

12 Q. She could have, you just don't remember?

13 A. That's correct.

14 Q. Does the nuclear medicine department use
15 these forms to learn from what mistakes may have been
16 made?

17 MR. TIERNEY: Objection to the form. You
18 can answer.

19 THE WITNESS: Yes, I would say.

20 BY MR. KAHN:

21 Q. And does Lee Budd provide them to you to
22 allow the department to learn from the mistakes?

23 A. The incident report?

24 Q. Yes, ma'am.

25 A. No. I mean, we have access to the

1 incident report when we fill it out.

2 Q. After you fill it out, do you have access
3 to these incident reports?

4 A. No. I mean, we could probably go to Lee
5 and ask for it.

6 Q. Have you in the time that you've been in
7 charge of this department ever asked Lee for incident
8 reports associated with falls regarding the nuclear
9 medicine department?

10 A. No.

11 Q. Have you ever asked Lee for any of these
12 forms regarding falls anywhere in the hospital?

13 A. No.

14 Q. Do you know if Lee would ever read any of
15 these reports to a patient or family member or parts
16 of that report?

17 A. I don't know that.

18 Q. What facts were put into this incident
19 report?

20 MR. TIERNEY: Objection, I'm going to
21 instruct the witness not to answer based on
22 privileged information.

23 BY MR. KAHN:

24 Q. What information did you have at the time
25 this incident report was created about Mr. Moody and

U

1 analysis Roper Hospital performed?

2 MR. TIERNEY: I'm going to object to
3 her responding to anything that has to do with the
4 root cause analysis that was performed with regard
5 to Mr. Moody's fall. It's privileged. I instruct
6 her not to answer.

7 BY MR. KAHN:

8 Q. Do you know if Roper Hospital performed
9 a root cause analysis?

10 MR. TIERNEY: You can answer yes or no.

11 THE WITNESS: Yes.

12 BY MR. KAHN:

13 Q. So Roper Hospital did perform a root
14 cause analysis?

15 A. Yes.

16 Q. Do you know what that root cause
17 analysis consisted of?

18 MR. TIERNEY: Same objection. I'm
19 going instruct her not to answer anything with
20 regards to the root cause analysis that was
21 performed in Mr. Moody's case. It's privileged.

22 BY MR. KAHN:

23 Q. Were you involved in the root cause
24 analysis investigation?

25 MR. TIERNEY: You can answer yes or no.

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1 THE WITNESS: Yes.

2 BY MR. KAHN:

3 Q. Who else was involved isn't the root
4 cause analysis?

5 A. Lee Bud from risk management, Margaret
6 Ann Fraley. Those are the ones I know for sure.

7 Q. Did Roper Hospital determine what was
8 the cause of Mr. Moody's fall?

9 MR. TIERNEY: Objection. I'm going to
10 instruct her not to answer regarding any of the
11 findings of the root cause analysis. Privileged.

12 BY MR. KAHN:

13 Q. Did Roper Hospital reach a conclusion
14 as to what was the cause of Mr. Moody's fall?

15 MR. TIERNEY: Same objection.

16 MR. KAHN: Are you going to instruct
17 her not to answer that one?

18 MR. TIERNEY: I mean, I'll allow her to
19 give a yes/no answer as long as she doesn't go into
20 any of the details of the conclusion or if there
21 was a conclusion, yeah.

22 You can give a yes/no answer.

23 THE WITNESS: Can you ask the question
24 again?

25 BY MR. KAHN:

1 Q. I think the question was:

2 Did Roper Hospital determine what the
3 root cause was of Mr. Moody's fall?

4 A. We did a root cause analysis.

5 Q. As part of that analysis, did Roper
6 Hospital determine what the most likely scenario
7 was of the fall?

8 MR. TIERNEY: Once again, I'm going to
9 instruct you not to go into any of the actual
10 analysis. If you can give a yes/no answer, that's
11 allowable without going into any of the details.

12 THE WITNESS: I can't answer that
13 without going into details.

14 MR. TIERNEY: Then you can't answer.

15 BY MR. KAHN:

16 Q. You could answer except for the
17 instruction by your lawyer not to answer, correct?

18 A. No.

19 Q. No, I'm not right or no, I am right?

20 MR. KAHN: Joe, I just want to clarify
21 for the record --

22 MR. TIERNEY: Okay. Yes.

23 MR. KAHN: -- what -- when you make
24 your arguments what it is we're arguing about.

25 BY MR. KAHN:

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1 Q. You could answer the question but for
2 his instruction not to answer the question, it's
3 not you don't know the answer to the question,
4 correct? That is, your response would require an
5 explanation and you're not allowed to explain --

6 A. Is the -- what is the question?

7 (The Court Reporter read the question
8 commencing on Page 17, Line 5.)

9 THE WITNESS: No.

10 MR. TIERNEY: She answered no.

11 BY MR. KAHN:

12 Q. All right. Well, let's just -- I'll
13 reask the question then.

14 Did Roper Hospital determine the most
15 likely cause of the fall?

16 A. I don't think so, no.

17 Q. Sitting here today, do you know the
18 most likely cause of Mr. Moody's fall?

19 MR. TIERNEY: Now, are you asking her
20 an opinion as a fact witness because, I mean,
21 obviously I -- you know, I don't want her going
22 into anything that's got to do with any response
23 that might be derived from her participation in the
24 root cause analysis. If you want to ask her
25 outside of the root cause analysis, do you know

1 what caused Mr. Moody's fall, I mean, I think
2 that's a reasonable question.

3 BY MR. KAHN:

4 Q. Outside of the root cause analysis, do
5 you know the most likely cause of Mr. Moody's fall?

6 A. No, I'm sorry, I don't.

7 Q. So as the director of imaging at Roper
8 Hospital, you don't know the most likely cause as
9 to why Mr. Moody fell, correct?

10 A. No, I don't.

11 Q. Do you know anyone at Roper that does
12 know the cause of Mr. Moody's fall?

13 A. No.

14 Q. As part of -- let's go back to this
15 particular event.

16 You came on board at Roper Hospital in
17 March of 2002 as the director of imaging?

18 A. Correct.

19 Q. And at that time, did you review any of
20 the policies or procedures of the nuclear medicine
21 department?

22 A. I came on board and tried to absorb as
23 much information as I could.

24 Q. You understand that within Roper
25 Hospital, there are different policies and

CHARLESTON
28 BROAD STREET
PO Box 993
CHARLESTON, SC 29402-0993
TELEPHONE (843) 577-4000
www.ycrl.com

Other Office
Columbia, SC



Joseph J. Tierney, Jr.

Direct Dial (843) 720-5406
Direct Fax (843) 579-1318
E-mail: jttierney@ycrlaw.com
AUG 12 2004

August 10, 2004

The Honorable Mikell R. Scarborough
Charleston County
100 Broad Street, Suite 266
Charleston, SC 29401

Re Millard M. Moody and Minnie L. Moody v. Roper Hospital, Inc.
Case No. 2003-CP-10-2899
Date of Loss: 6/20/2002
YCR File 3810-20031547

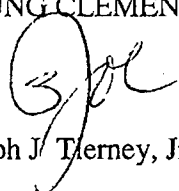
Dear Judge Scarborough

Enclosed please find a proposed Order from defendant's Motion(s) for Protection argued before you on July 13, 2004. Should you require any additional information, please contact me at the above-referenced number. By copy of this letter and enclosure, I have provided plaintiff's counsel with a copy of my proposed Order.

With kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP


Joseph J. Tierney, Jr.

JJT/mos
Enclosure(s)

cc Justin S. Kahn, Esquire, Kahn Law Firm

ELECTRONICALLY FILED - 2021 Apr 16 3:41 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002902

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
Amanda Robinson,	)	C/A Number: 2018-CP-38-00131
	)	
Plaintiff,	)	
	)	ORDER GRANTING
v.	)	DEFENDANT'S MOTION FOR
	)	PROTECTIVE ORDER
The Regional Medical Center,	)	
	)	
Defendant.	)	

This matter comes before me on Defendant's Motion for a Protective Order and Order Limiting the Deposition Testimony of Dr. Franga. This Court heard oral arguments on September 23, 2019. For the below stated reasons, defendant's motion is granted.

PROCEDURAL AND FACTUAL BACKGROUND

On June 27, 2019, the plaintiff was deposing Dr. Dion Franga, MD, a physician employed by TRMC. During the deposition plaintiff asked whether or not there was a peer review committee that looked into Amanda Robinson's Care at the Regional Medical Center. The following exchange occurred:

Q: Okay. Was there – and I'm not – asking you for in any way for the substance or contents of anything that may have been discussed, but to your knowledge was there ever any sort of peer review committee to look into Amanda Robinson's care at the Regional Medical Center?

[WHEREUPON, the above question is certified.]

A: Peer – Peer -- Peer review committees are protected.

Q: Sure. And that's -- that's why--

A: I'm not going to --

Q: -- Why I'm not asking -- but, whether or not it exists is my -- I'm not asking for the contents of it, just whether or not it was ever formed.

A: I think whether or not those discussions ever occurred at all is still also protected.

Q: Okay. I respectfully disagree. Are you refusing to answer that question

MR. SHAKIBANSAB: I'm --

A: No. I just answered it. I'm just -- we -- we-- I gave you my answer as to how I believe that information is protected. So whether a case was discussed in peer review, I think is protected information, whether it was or was not discussed. So that's my opinion about it. I mean -- so I think I've answered your question, you know, completely. We may not -- we may not agree on the -- the -- I mean, have I given you the answer that you want, but that's the answer I'm giving you.

Q: Sure.

MR. HINSON: Madam Court Reporter, would you please certify the question of was there ever a peer committee -- a peer review committee formed with regard to Amanda Robinson?

THE COURT REPORTER:[nods head affirmatively.]

Q: And I want to make clear, Doctor, you -- while even though I'm not asking you in any way for the contents of what was discussed, you are unwilling to answer whether or not you ever participated in -- any way a peer review committee with regard to --

A: I'm not -- I'm not --

Q – Amanda Robinson?

A: – I'm not – I answered your question, counselor. But I believe that the contents of any peer review start with the patient's name. And so, I cannot and will not answer any question I believe that is protected under the – those – those quality protections.

Q: Okay. All right, well, we'll – we'll find out how – how that – how that information – at – at what - at what point --

A: Yea, if a judge tells me – if a judge tells me that I have to answer that question, I will, but until I hear that I'm not going to do that.

Q: I understand. And it – but I just want to make clear. My question is not for the contents, simply whether or not it was – the – of such committee was formed. But – but I understand we have a disagreement as to where – where that --

A: And – and I –

Q: – Line starts and stops.

A: – and I think I fully understand your question.

Q: Okay.

A: And I – and I think that I know what you're asking for, but unfortunately, I — I don't think that's entitled information

Q: Okay. Fair enough. We will --

MR. HINSON: Again, Madam Court Reporter, have that on the record.

Later Counsel for Defendant put objections on the record. The following transaction occurred:

MR. SHAKIBANASAB: As far as the witness not answering the question, I also want to put my objections on the record pursuant to the peer review doctrine and the peer review statute,

as well as the hospital confidentiality statute regarding quality assurance and safety issues under 44 – SC Code 447392, and I just wanted to put my objections on the record.

MR. HINSON: Sure.

MR. SHAKIBANASAB: My objections.

MR. HINSON: Sure. And, again, my stance is that while the substance may be privileged, the existence of it is not, but that's – we can address that another day.

Counsel for Defendant timely moved for a Protective Order and Order Limiting Deposition Testimony on July 1, 2019. Both parties submitted memorandums outlining their respective positions. Oral argument was heard on September 23, 2019.

LAW AND ANALYSIS

This Court finds that whether or not Amanda Robinson's care was subject to the hospital's peer review committee is privileged and is not subject to discovery pursuant to the hospital confidentiality statutes S.C. Code Ann. §40-71-20 and §44-7-392. The plain language of both statutes are unambiguous. They make any of a hospital's investigatory actions and proceedings privileged. It logically flows that whether or not a patient was discussed during those proceedings is included in the privilege.

The Peer Review Statute states,

(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 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.

In 2012, the South Carolina Legislature enacted the hospital safety statute which “applies to any investigative action undertaken as provided herein where the underlying event giving rise to the investigation occurs on or after the effective date [June 26, 2012].” See Howell v. Holland, 2014 WL 958277 (D.S.C. Florence Div. March 10, 2014) (citing 2012 South Carolina Laws Act 275 (H.B.4008). Section (A)(1) of the hospital safety statute states

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 a hospital (its parents 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;
- (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.

SC Code Ann. Section §44-7-392(A)(1).

The Statute and the case law holds that plaintiff is entitled to discover the clinical privileges granted or denied by the hospital. See SC Code Ann. Section §44-7-392(A)(4); see also Durham, 360 S.C. at 647. The plaintiff did not ask this of Dr. Franga.

It is therefore ordered that Defendant's Motion for a Protective Order and Order Limiting the Deposition Testimony of Dion Franga, MD is granted.

AND IT IS SO ORDERED!

Courtney Clyburn Pope
Presiding Judge
First Judicial Circuit

_____, S.C.
October __, 2019



Orangeburg Common Pleas

Case Caption: Amanda C. Robinson VS Regional Medical Center , defendant, et al
Case Number: 2018CP3800131
Type: Order/Protection from Discovery

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2019-11-06 14:06:10 page 8 of 8

BELECTRONICALLY FILED - 2019 Nov 06 2:44 PM - ORANGEBURG - COMMON PLEAS - CASE#2018CP3800131

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,

) C/A No. 2020-CP-10-02902
)
)

Plaintiff,

)

Versus

)

DEFENDANT
WE ARE SHARING HOPE SC'S REPLY
MEMORANDUM

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, ATTORNEYS FOR THE PLAINTIFF:

The Defendant We Are Sharing Hope SC (hereinafter "this Defendant" or "Sharing Hope"), in response to Plaintiff's Supplemental Memorandum in Support of Plaintiff's Motion to Compel Against Defendant We Are Sharing Hope SC and In Opposition to We Are Sharing Hope's Motion for a Protective Order, respectfully replies the Plaintiff has included additional grounds in her supplemental memorandum [V. WASH Should be Compelled to Produce all Communications Responsive to Mrs. Holliman's Requests for Production] which appear to be the subject of another Motion to Compel filed by the Plaintiff and which this Defendant briefed and submitted to Judge McCoy on April 9, 2021.

Plaintiff asked for a continuance regarding the motion before Judge McCoy following the hearing in this case. We Are Sharing Hope SC incorporates by reference We Are Sharing Hope SC's Memorandum in Opposition to Plaintiff's Motion to Compel filed on April 9, 2021 including the attached Affidavit also filed on April 9, 2021.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

s/ Molly H. Craig
Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

Attorneys for Defendant
We Are Sharing Hope SC

April 19, 2021
Charleston, South Carolina

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.

RECEIVED

May 05 2021

SC Court of Appeals

HOOD LAW FIRM, LLC

/s/ Mary Agnes Hood Craig

Mary Agnes Hood Craig (SC #6960)

Jean Marie Jennings (SC #100651)

Deborah Harrison Sheffield, *Of Counsel* (SC #2757)

172 Meeting Street ~ P.O. Box 1508

Charleston, South Carolina 29402

Phone: (843) 577-4435

Facsimile: (843) 722-1630

Info@hoodlaw.com

May 5, 2021

Attorneys for Appellant We Are Sharing Hope SC

Other Counsel of Record:

John C. Moylan, III (S.C. Bar No. 11227)

Lucy Dinkins (S.C. Bar No. 101177)

807 Gervais Street, Suite 301

PO Box 12247

Columbia, South Carolina 29201

Telephone: 803-254-6542

Facsimile: 803-254-6544

Email: jmoylan@wyche.com

ldinkins@wyche.com

Attorneys for the Respondent

Jack G. Gresh (SC Bar No. 75188)

Lauren Spears Gresh (SC Bar No. 100994)

Hall Booth Smith PC

111 Coleman Blvd, Suite 301

Mount Pleasant, South Carolina 29464

Phone: 843.720.3460

jpgresh@hallboothsmith.com

lgresh@hallboothsmith.com

**Attorneys for Defendant United Network
for Organ Sharing**

Darren K. Sanders (S.C. Bar No. 68296)

Hugh W. Buyck (S.C. Bar No. 66462)

Buyck & Sanders LLC

PO Box 2424

Mt. Pleasant SC

29465-2424

Email: dks@buyckfirm.com

**Attorneys for Medical University
of South Carolina**

NONE OF RECORD as of this date

Attorneys for Defendant Darla Welker

NONE OF RECORD as of this date

**Attorneys for Defendant Jacqueline
Honig, M.D**

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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

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.

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:

John C. Moylan, III, Esquire
Mary Lucille Dinkins, Esquire
807 Gervais Street, Suite 301
Columbia, SC 29201
jmoylan@wyche.com
ldinkins@wyche.com

Jack G. Gresh, Esquire
Lauren Spears Gresh, Esquire
Hall Booth Smith
111 Coleman Blvd. Suite 301
Mount Pleasant, SC 29464
jgresh@hallboothsmith.com
lgresh@hallboothsmith.com

Darren K. Sanders, Esquire
BUYCK & SANDERS, LLC
305 Wingo Way
PO Box 2424
Mount Pleasant, SC 29465-2424
dk@buyckfirm.com

HOOD LAW FIRM, LLC

/s/ Mary Agnes Hood Craig

Mary Agnes Hood Craig (SC #6960)
Jean Marie Jennings (SC #100651)
Deborah Harrison Sheffield, *Of Counsel* (SC #2757)
172 Meeting Street ~ P.O. Box 1508
Charleston, South Carolina 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Info@hoodlaw.com
Attorneys for Appellant We Are Sharing Hope SC



MOLLY H. CRAIG
Partner
DIRECT DIAL: (843) 577-1215
EMAIL: molly.craig@hoodlaw.com

May 5, 2021

RECEIVED

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*]
Honorable Debra R. McCaslin [*Via E-Mail*]
John C. Moylan, III, Esquire [*Via E-Mail*]
Mary Lucille Dinkins, Esquire [*Via E-Mail*]
Jack G. Gresh, Esquire [*Via E-Mail*]
Lauren Spears Gresh, Esquire [*Via E-Mail*]
Darren K. Sanders, Esquire [*Via E-Mail*]

172 Meeting Street, Charleston, SC 29401

Phone: (843) 577-4435 • Fax: (843) 722-1630 • Email: Info@hoodlaw.com

www.hoodlaw.com

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May 21 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 United Network for Organ Sharing, is Appellant.

NOTICE OF APPEAL

Pursuant to S.C. Code §44-7-394¹ and Rule 203, SCACR, United Network for Organ Sharing (“UNOS”) appeals from the Order Denying Defendants’ Motions for Protective Orders 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.

HALL BOOTH SMITH, P.C.

/s/ Jack G. Gresh

Jack G. Gresh (SC Bar No. 75188)
Lauren Spears Gresh (SC Bar No. 100994)
111 Coleman Blvd, Suite 301
Mount Pleasant, South Carolina 29464
Phone: 843.720.3460
jgresh@hallboothsmith.com
lgresh@hallboothsmith.com

***Attorneys for Appellant United Network for Organ
Sharing***

May 21, 2021
Mount Pleasant, South Carolina

Other Counsel of Record:

John C. Moylan, III (S.C. Bar No. 11227)
Lucy Dinkins (S.C. Bar No. 101177)
807 Gervais Street, Suite 301
PO Box 12247
Columbia, South Carolina 29201
Telephone: 803-254-6542
Facsimile: 803-254-6544
Email: jmoylan@wyche.com
ldinkins@wyche.com

Attorneys for the Respondent

Darren K. Sanders (S.C. Bar No. 68296)
Hugh W. Buyck (S.C. Bar No. 66462)
Buyck & Sanders LLC
PO Box 2424
Mt. Pleasant SC
29465-2424
Email: dks@buyckfirm.com
**Attorneys for Medical University
of South Carolina**

Mary Agnes Hood Craig (SC #6960)
Jean Marie Jennings (SC #100651)
Deborah Harrison Sheffield, Of Counsel (SC
#2757)
172 Meeting Street ~ P.O. Box 1508
Charleston, South Carolina 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Info@hoodlaw.com

**Attorneys for Defendant We Are Sharing
Hope SC**

NONE OF RECORD as of this date
Attorneys for Defendant Darla Welker

NONE OF RECORD as of this date
**Attorneys for Defendant Jacqueline
Honig, M.D**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

May 21 2021

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge

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

OF WHOM United Network for Organ Sharing, is Appellant.

Certificate of Service

The undersigned certifies that on this 21st 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 address listed below:

John C. Moylan, III (S.C. Bar No. 11227)
Lucy Dinkins (S.C. Bar No. 101177)
807 Gervais Street, Suite 301
PO Box 12247
Columbia, South Carolina 29201
Telephone: 803-254-6542
Facsimile: 803-254-6544
Email: jmoylan@wyche.com
ldinkins@wyche.com
Attorneys for the Respondent

Mary Agnes Hood Craig (SC #6960)
Jean Marie Jennings (SC #100651)
Deborah Harrison Sheffield, Of Counsel (SC #2757)
172 Meeting Street ~ P.O. Box 1508
Charleston, South Carolina 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Info@hoodlaw.com
Attorneys for Defendant We Are Sharing Hope SC

Darren K. Sanders (S.C. Bar No. 68296)
Hugh W. Buyck (S.C. Bar No. 66462)
Buyck & Sanders LLC
PO Box 2424
Mt. Pleasant SC 29465-2424
Email: dks@buyckfirm.com
**Attorneys for Medical University
of South Carolina**

HALL BOOTH SMITH, P.C.

/s/ Jack G. Gresh

Jack G. Gresh (SC Bar No. 75188)
Lauren Spears Gresh (SC Bar No. 100994)
111 Coleman Blvd, Suite 301
Mount Pleasant, South Carolina 29464
Phone: 843.720.3460
jgresh@hallboothsmith.com
lgresh@hallboothsmith.com

*Attorneys for Appellant United Network for Organ,
Sharing*



HALL BOOTH SMITH, P.C.
ATTORNEYS AT LAW

Jack G. Gresh
Phone: (843) 720-3474
Jgresh@hallboothsmith.com

111 Coleman Boulevard
Suite 301
Mount Pleasant, SC 29464

Office: (843) 720-3460
www.hallboothsmith.com

May 21, 2021

VIA E-FILING TO: ctappfilings@sccourts.org
& U.S. MAIL

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

RECEIVED

May 21 2021

SC Court of Appeals

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
Civil Action No.: 2020-CP-10-02902, Charleston CP
Appellate Case No. 2021-_____

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 a Certificate of Service. Also enclosed with this letter is our check in the amount of \$250.00 for the filing fee. By copy of this letter, we are serving all counsel and have also e-filed the Notice with the Charleston County Court of Common Pleas.

Thank you.

Very truly yours,

s/Jack G. Gresh

Jack G. Gresh

Enclosures as stated.

cc: Charleston County Clerk (via e-filing)
Honorable Debra R. McCaslin (via e-mail w/enc.)
John C. Moylan, II, Esq. (via e-mail w/enc.)
Mary Lucille Dinkins, Esq. (via e-mail w/enc.)
Darren K. Sanders, Esq. (via e-mail w/enc.)
Mary Agnes Hood Craig, Esq. (via e-mail w/enc.)
Jean Marie Jennings, Esq. (via e-mail w/enc.)
Deborah Harrison Sheffield, Esq. (via e-mail w/enc.)

MOUNT PLEASANT, SC

ALABAMA | FLORIDA | GEORGIA | NEW JERSEY | NEW YORK | NORTH CAROLINA | SOUTH CAROLINA | TENNESSEE

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF CHARLESTON

4 2020-CP-10-02902

5 Michelle Cha Holliman, as PR of the Estate of Allen B.

6 Holliman

7 Vs.

8 We Are Sharing Hope SC, MUSC, and United Network for Organ

9 Sharing

10

11 Lexington, South Carolina (virtual

12 April 13, 2021

13 Before the Honorable Debra R. McCaslin

14 APPEARANCES

15 For the Plaintiff: Mr. John Moylan, Ms. Mary Dinkins

16 For the Defendant: Ms. Jean Marie Jennings, Ms. Molly

17 Hood-Craig, Mr. Buyck, Mr. Sanders, Mr. Gresh,

18

19 Reported by: DCRP, transcribed by Michael C. Watkins

20 Official Court Reporter

21

22

23

24

25

1 THE COURT: I have Ms. Jennings is here?

2 MS. JENNINGS: Yes, Your Honor, and Ms. Craig is with
3 me.

4 THE COURT: Got Mr. (sic) Craig's name. And y'all here
5 for We Are Sharing Hope for South Carolina.

6 MS. JENNINGS: Yes, Your Honor. Your privilege log
7 does not match the motion that I have. It appears that
8 stuff keeps getting added. I think you probably need to
9 amend your privilege log and refile for a motion on this.
10 I've been through this and ended at 226 and stuff was added
11 and --

12 (At this point the audio picked up mid-argument.)

13 MR. MOYLAN: -- we made last summer and they provided a
14 privilege log to us with those documents about 11:54 today,
15 one hour ago, and if this hearing had been held last week
16 when it was originally scheduled we would not even have
17 known the existence of the documents. That failure alone
18 would waive any argument for privilege, if there were
19 privilege. This is just not the way discovery is supposed
20 to be practiced in South Carolina. So we're here today
21 asking the Court to order production of all of the documents
22 that WASH has submitted to the Court, and frankly to award
23 us attorney's fees as expressly provided in both statutes
24 for having to litigate this issue. They are not a hospital,
25 they are not a professional committee. All right. Now,

1 we're also asking the Court to reconvene the deposition of
2 Darla Welker who was the WASH employee who approved the
3 incorrect blood type reported for Mr. Holliman's donor. So
4 we want her to answer the questions that she was wrongfully
5 instructed not to answer.

6 THE COURT: All right. Ms. Jennings or Mr. (sic)
7 Craig, do y'all want to tell me -- I just pulled the other
8 statute that you were talking about Mr. Moylan, I don't see
9 where they fall under there either. Do y'all want to tell
10 me how y'all get peer review status here?

11 MS. JENNINGS: Yes, Your Honor. And I also just want
12 to talk about at the beginning of the case we have medical
13 records of a donor who is not a party in this case, and so
14 as to those documents we felt like there were some pretty
15 big HIPPA concerns with producing them because we didn't
16 have a valid authorization from a personal representative,
17 and so when the plaintiff asked for those documents we filed
18 a motion to quash that subpoena with the Court. We didn't
19 feel that we could consent to that so we filed an
20 appropriate motion, and I still believe that that was the
21 proper course to take. But it had nothing to do with us not
22 wanting to produce the documents. As you know, HIPPA still
23 protects people's protective health information even after
24 they're dead. But as to the privilege documents, Your
25 Honor, we're dealing with this sort of unique interface

1 between who we represent, an OPO, an Organ Procurement
2 Organization, and UNOS, the United Network of Organ Sharing,
3 and the transmit centers. So there's three sort of parties
4 that are involved in this donor process. And we have --
5 we'd like to think about our privilege documents as sort of
6 being in two buckets. So there is bucket one, which is all
7 of the peer review documents between the Organ Procurement
8 and Transplant Network, and We Are Sharing Hope as an Organ
9 Procurement Organization. So the Organ Procurement and
10 Transplant Network is a network, and all OPO's like We Are
11 Sharing Hope has to be a member, and all transmit centers
12 have to be a member. And in order to be a member you have
13 to abide by their membership standards, you have to follow
14 their policies and follow their bylaws. And so the bylaws
15 of the OPTN specifically speak to this process and they
16 speak to the confidentiality of it. And because the statute
17 doesn't -- I believe that they fall within the statute, but
18 the statute should not apply because we are dealing with a
19 federal organization, OPTN, and We Are Sharing Hope, the
20 South Carolina OPO. So the purpose of the privilege -- of
21 the peer review. So an organization looking at what
22 happened, and honestly and with candor communicating what
23 happened and figuring out how it doesn't happen again, that
24 is the part of the peer review process that the case law in
25 South Carolina; Durham V Benson, McGee, it speaks to that.

1 And it speaks to the confidential nature that these
2 documents shouldn't be disclosed in litigation, but instead
3 they are to promote patient safety and encourage honest
4 communication throughout this process. So we believe that
5 the old statute, which is 40-71-20, and then the new statute
6 was expanded, and Virginia law applies. Because the peer
7 review was done between the two parties, We Are Sharing Hope
8 in South Carolina, and the Membership and Professional
9 Standards Committee in Virginia, and so under South Carolina
10 we believe it applies. And we believe the OPTN is sort of
11 similar to -- I think of it as like the credentialing
12 process with a physician so that We Are Sharing Hope, in
13 order to be a member of the OPTN, has to abide by its
14 membership standards and gets reviewed and the peer review
15 is part of this. And if you look at the first document on
16 our privilege log it says confidential medical peer review.
17 So this big --

18 THE COURT: I understand what it says, that doesn't
19 mean that's what it is. But I want to know which statute it
20 is that you think that you fall under? You're not a
21 hospital, correct?

22 MS. JENNINGS: Correct.

23 THE COURT: So you think you fall under 40-71-10.

24 MS. JENNINGS: Yes --

25 (The video feed was interrupted.)

1 THE COURT: -- which includes legal, medical; it goes
2 on, chiropractor, pharmaceutical, engineering, South
3 Carolina SLED falls under here. That's what you think you
4 fall under?

5 MS. JENNINGS: Yes. Because the appointed committee,
6 we liken that to the OPTN, is monitoring the Organ
7 Procurement Organization in South Carolina.

8 THE COURT: Mr. Moylan, I'll be glad to hear anything
9 in rebuttal on that.

10 MS. JENNINGS: And, Your Honor, I'm sorry, I forgot to
11 mention the second bucket, which is the document 187 to 195,
12 which are the documents with a root cause analysis with
13 Grand Strand. So that's the other statute, 44-7-392.

14 THE COURT: Okay. Go ahead.

15 MS. JENNINGS: The statute reads that all proceedings
16 of and data; documents, records, information procured or
17 acquired by a hospital licensed under this article. So it's
18 a root cause analysis. Those pages are between Grand Strand
19 Hospital, which was the donor hospital, and We Are Sharing
20 Hope, which is the organ procurement organization. And it
21 specifically says sentinel event investigations or root
22 cause analysis. And the members of Sharing Hope who were
23 deposed were at that meeting and they were asked about those
24 documents in that root cause analysis meeting, that's why we
25 instructed them not to answer because that document is on

1 our privilege log.

2 THE COURT: Yeah. I see where you want to, I assume,
3 strike some testimony that was in the deposition of Ms.
4 Welker; is that correct?

5 MR. MOYLAN: Yes, Your Honor.

6 THE COURT: All right. Mr. Moylan?

7 MR. MOYLAN: I'll be very brief, Your Honor. As you
8 know, it doesn't matter what the organization's bylaws are,
9 that doesn't establish a privilege under South Carolina. It
10 doesn't matter what they stamp on documents, that doesn't
11 establish a privilege. What matters are the statutes, there
12 are two of them. I thought they agreed that they weren't a
13 hospital but now I hear them citing that statute again. But
14 the first statute, 44-7-392, applied to a hospital. They
15 are not a hospital. And the second statute, as you know,
16 applies to "An appointed committee which is formed to
17 maintain professional standards of a state or local
18 professional society." I mean, they're not even close to
19 that. There is no protection under either of those statutes
20 any way you cut it.

21 THE COURT: Let me -- Mr. Moylan -- who is hear for
22 MUSC?

23 MR. SANDERS: Hey, Judge. I'm Darren Sanders and Hugh
24 Buyck, we're both here for MUSC.

25 THE COURT: Hello, Mr. Buyck and Mr. Sanders. I'm

1 going to tell you, Mr. Moylan, I've been over their
2 privilege log and I've been over their documents, I think
3 they're right on the money. I think what they have said is
4 privileged is privileged, so I want you to know that. I
5 just have a real concern with this We Are Sharing Hope South
6 Carolina. Mr. Moylan, I'll be glad to hear from you. I'm
7 telling you, I've been over it, I've been over their
8 privilege log, their stuff matches, went through it. I
9 can't find anything that they're hiding from you that
10 they're not privileged to keep.

11 MR. MOYLAN: Your Honor, the last thing I'm going to do
12 today is argue with you. Let me, if I might, just point out
13 some things and I would ask the Court just to review. The
14 problem we have -- and I readily acknowledge, MUSC is a
15 completely different animal than We Are Sharing Hope.

16 THE COURT: Absolutely.

17 MR. MOYLAN: MUSC is a hospital, they are entitled to
18 those protections if the statute applies. The issue that we
19 have is based on the very generic privilege log that we
20 have, it's hard for us to know. But looking at their brief,
21 not the privilege log but looking at their brief, there are
22 two sets of documents that we think we are probably entitled
23 to get, and that is this: MUSC states in its brief that it
24 has withheld accounting records relating to the status of
25 Mr. Holliman's bills, that is whether or not we're going to

1 bill Ms. Holliman \$600,000 after we killed Mr. Holliman.
2 Those records we don't believe are part of the privileged
3 peer review proceedings. And the brief also says that they
4 have withheld over 200 pages of a review of MUSC's lung
5 transplant program that was conducted not by them but by a
6 different defendant, UNOS, United Network for Organ Sharing.
7 UNOS is not a hospital, it is not --

8 THE COURT: But I think they -- correct me if I'm
9 wrong, Mr. Sanders and Mr. Buyck, didn't y'all -- didn't
10 MUSC request that?

11 MR. SANDERS: It's a part of the ongoing evaluation of
12 the transplant program that falls very squarely, Judge, as
13 you pointed out, in Subsection F and C of 44-7-392.

14 THE COURT: Yeah. And I'm going to tell you, Mr.
15 Moylan, I paid special attention to that and went back and
16 looked at their stuff, and I think they're protected under
17 that. Now, the accounting records I'm going to tell you, I
18 don't know. I'm sitting here looking. I don't remember
19 looking at accounting records.

20 MR. SANDERS: He's correct, Your Honor. And what I
21 would just say to that is it's a few pages that are in
22 there. And what happens with this process without sort of
23 getting into the intricacies of the proceedings, part of
24 these proceedings, which are absolutely all of the
25 proceedings from beginning to end are protected. Part of

1 what happens during a root cause analysis is there is a hold
2 placed on accounting for billing purposes until that process
3 completes itself, so that's what those documents are. It's
4 a reference to the hold that's placed and the root cause
5 analysis is pending, it's a part of the proceedings and
6 that's why we kept that out. As far as the actual bills
7 themselves are concerned, those bills have been produced and
8 the documentation about what Medicare paid or what any
9 private insurance would have paid, that's a part of what we
10 would have already produced in our initial production with
11 our medical records, this is just a reference to. And what
12 I claim the privilege on is simply that portion of the
13 proceedings where a hold gets (inaudible.)

14 THE COURT: Mr. Moylan?

15 MR. MOYLAN: Your Honor, we have complete confidence in
16 the Court's ability to review those documents. Again, it's
17 hard for us to argue whether we're entitled to them or not.
18 Mr. Sanders has seen them, we've not, so we really have
19 got -- we --

20 THE COURT: Well, I'm going to tell you -- and I've
21 seen them, and I'm going to rule that MUSC, what they have
22 in their privilege log I think is privileged. Now, let me
23 get back to We Are Sharing Hope because I have a lot of
24 concern about We Are Sharing Hope. Mr. (sic) Craig, do you
25 have anything to add?

1 MS. CRAIG: Your Honor, I do not at this time --

2 THE COURT: I'm sorry. I didn't see you way back
3 there, I thought you were up here in the corner.

4 MS. CRAIG: Well, I'm called a lot of different things,
5 don't worry.

6 THE COURT: Well, I have been there and done that, too.
7 I do apologize.

8 MS. CRAIG: Your Honor, I don't have anything to offer
9 right at this time other than what Ms. Jennings has
10 articulated with regard We Are Sharing Hope.

11 THE COURT: I'm just going to tell you, Ms. Jennings, I
12 had a tough time finding that you fall under either one of
13 those statutes, I really do.

14 MS. JENNINGS: And I think that this is also difficult,
15 and there's not a lot of case law on it --

16 THE COURT: There is not because we've looked. We've
17 looked and there is not.

18 MS. JENNINGS: And I think part of the reason for that,
19 Your Honor, is because under the Uniform Anatomical Gift Act
20 in most states OPO's are immune from suit, and it doesn't
21 ever get to this point. But as far as, you know, I
22 understand MUSC, the new statute, which is the 44-7-392
23 speaks to MUSC, but theirs is also, you know, a part --
24 they're also a member of the OBTN. And so part of their
25 peer review is that that process of peer review -- and we

1 have the same process of peer review with the OPTN. And
2 just because an OPO isn't contemplated, which is, you know,
3 in the statute, which we would argue it is as a medical
4 organization. But even if it's not the policy behind it in
5 the spirit of both of those laws leans toward protecting
6 this self critical analysis with the Organ Procurement
7 Organization and the Organ Procurement and Transplant
8 Network, which is the national network that sort of
9 regulates the Organ Procurement Organizations and the
10 transplant hospitals.

11 MS. CRAIG: Your Honor, this is Molly Craig. If I may?

12 THE COURT: Yes, ma'am.

13 MS. CRAIG: Just to add on what Ms. Jennings is saying
14 is if the whole reason for the peer review statute is to
15 protect patients in the future and to give medical
16 organizations an opportunity to come together, share
17 information, hopefully find out what happened and what can
18 be done better in the future to protect patients, and that
19 is exactly what this OPO, this Sharing Hope did in
20 conjunction not only with Grand Strand but with UNOS, the
21 national group. And so the whole purpose of a peer review,
22 as articulated in the statute, is to do exactly what was
23 done here. And through that process information was
24 learned, confidential and privilege information was
25 obtained, and there was a result put in place because of

1 that. So the entire process is outlined in the statute is
2 what was followed for the same reason that every other
3 medical organization in this state has a peer review
4 process.

5 THE COURT: Are y'all licensed?

6 MS. CRAIG: Your Honor, we're a 501-C Corporation, a
7 non-profit, just like Roper Hospital St. Francis. Grand
8 Strand is a for profit hospital, but Sharing Hope is just
9 like the -- here at Carolinas down here in Charleston.

10 THE COURT: Y'all aren't a committee of any part of a
11 hospital or anything like that?

12 MS. CRAIG: Well, the quality committee for both --
13 there is a quality committee for both Grand Strand Hospital
14 and for Sharing Hope and for UNOS, and it is both medical
15 quality committees that undertook the peer review process to
16 get all of this medical information, come together with all
17 of the doctors, the nurses, everybody involved, try to
18 figure out what happened and then to have a course of action
19 to prevent this from happening ever again. It's classic
20 peer review process.

21 THE COURT: But that's linking with somebody else. Do
22 y'all have that in your own We Are Sharing group?

23 MS. CRAIG: I need to defer to Ms. Jennings. But we
24 have a quality care coordinator, so I believe we do have
25 such a committee. But, Your Honor, I will be happy to

1 confirm that and let Your Honor know.

2 THE COURT: Ms. Jennings, do you know?

3 MS. JENNINGS: You're talking about a committee within
4 Sharing Hope?

5 THE COURT: Right.

6 MS. JENNINGS: There is a, I guess, quality review
7 committee, and then there's the UNOS quality committee, the
8 Membership and Professional Standards Committee.

9 THE COURT: Which that belongs to We Are Sharing Hope?

10 MS. JENNINGS: The Membership and Professional
11 Standards Committee belongs to the United Network for Organ
12 Sharing, and they're the ones that undertook this peer
13 review.

14 THE COURT: Yeah. But United Network is also a
15 defendant in this case so they get to claim their own peer
16 review. Am I wrong, Mr. Moylan?

17 MR. MOYLAN: No, Your Honor, you're exactly right. And
18 look, here's what's going on, the statutes are clear, and --
19 they are clearly not a hospital, they're clearly not an
20 appointed committee formed to maintain professional
21 standards of a state or local professional society, that's
22 the definition of committees, not just any committee of any
23 type. So what they're asking you to do is draft new law
24 that says, "Well, it's okay. As long as you had some
25 interaction with the hospital or a committee you get that

1 protection, too." The legislature didn't say that. The
2 legislature could have easily made this a much broader
3 statute. They're trying to hide an elephant under a really
4 small rock that the legislature put out there that allows
5 hospitals and professional committees that are formed to
6 maintain professional standards. But those are the two that
7 are entitled to protection. Not just anybody can
8 interact with them.

9 MS. JENNINGS: And maybe I was confused, but there is a
10 quality assurance within Sharing Hope and I maybe
11 misunderstood the question, I'm sorry.

12 THE COURT: I just have a -- you know, I understand --
13 I understand the public policy, but that just doesn't mean
14 that you fall under the statute is what I'm telling you. I
15 understand what your group is and everything else and I'm
16 just telling you, reading this I just don't see where you
17 fall under it. I will do this, Mrs. Jennings and Mr.
18 Moylan, I'll let you brief the issue but I'm not going to
19 give you long, because this has been sitting on my desk and
20 I've been trying to get rid of it and I don't want to hold
21 you up and I don't want anymore records from you, that can
22 be for the next person. You know, I wait a week and I get
23 300 more pages. But I'll let you brief and tell me why you
24 fall under one of these two statutes.

25 MS. JENNINGS: Thank you, Your Honor, I would be happy

1 to do that.

2 THE COURT: Mr. Moylan, if you could do the same,
3 though I'm kind of with you, I'm just going to be honest.
4 Just looking at it and all of the research I've done, I
5 just -- and there's not a whole lot of law on it.

6 MR. MOYLAN: Your Honor, the only thing I would note,
7 too, is the statute also expressly allows discovery from /
8 sources that are not covered by the statute even if the
9 documents are shared with the protective source. That is
10 even if WASH shared with MUSC they would still have to
11 produce it. The statute --

12 THE COURT: That's the only way you can get around it,
13 I know. I read that, too.

14 MR. MOYLAN: Your Honor, the only other thing I would
15 ask is that, please -- I'm happy to brief it, but we filed
16 this suit back in June or July of 2019. We've been trying
17 to get these -- WASH has already won the game delay, and we
18 would just ask if you -- we're happy to brief it, do
19 whatever the Court wants. We would just ask that the
20 (inaudible) we need to get these documents.

21 THE COURT: I will. Because I'm going to tell you -- I
22 don't even know -- today is the 13th. If y'all could get me
23 something by Friday I will decide next week and get it out
24 to you. I don't like stuff hanging around my office, I like
25 to get my work done. Again, I'm going to tell MUSC; Mr.

1 Buyck, Mr. Sanders, I see two other people -- I see
2 Mr. Gresh and a Ms. Dinkins. Who are y'all with?

3 MR. MOYLAN: I was just going to say, Ms. Dinkins is
4 with me. She's actually the brains behind the mouthpiece so
5 we're glad to have her on the team.

6 THE COURT: Well, I'm glad to you have you, Ms.
7 Dinkins. And Mr. Gresh?

8 MR. GRESH: Yes, ma'am. I represent the United Network
9 for Organ Sharing. And I did file a -- I didn't really know
10 what to call it, Your Honor, but I filed a memo that says,
11 "Hey, I don't have a dog in this fight." But I'm the
12 corporation that made We Are Sharing Hope investigate their
13 stuff. Right? So if you think about it, United Network for
14 Organ Sharing, there's only one organ sharing company in the
15 country, it's us. Right? We're contracted with the federal
16 government to run this program. The only way we can do that
17 is to then have members who go out and harvest organs like
18 We Are Sharing Hope, and those that put them in like MUSC.
19 And so what happened in this case is once we had an adverse
20 event United Network for Organ Sharing, a Virginia not for
21 profit company be said, "Hey, we need to understand how this
22 happened so that it doesn't happen again in South Carolina
23 or Washington or Texas or anywhere else." And so we say as
24 a condition of We Are Sharing Hope being a member of United
25 Network for Organ Sharing, "WASH, you have to investigate

1 this under the guise of the peer review privilege, you have
2 to look at this and you have to tell us and share your data
3 with other peers around the country so that we all can
4 learn, overcome and adapt on a go forward basis." So I do
5 not know, you know -- if I'm UNOS, a Virginia company and I
6 set up this paradigm under which these investigations are to
7 take place, I can't possibly know the individual state laws
8 of all 50 states. Instead, it's a Virginia company and so
9 it envisions this running under like a Virginia law type.
10 And I know that We Are sharing Hope is not a Virginia
11 company, and I'm not advocating that they should be, but all
12 I would ask, Your Honor, is that when you consider this
13 ruling, consider it on a national level. Instead of this is
14 not just a South Carolina law, but there's other laws -- I
15 briefed very briefly the Virginia laws that talk about what
16 is a committee. It's extraordinarily broad, right? The
17 definitions employed by Virginia to protect this are very
18 broad with the idea of we've got to protect patients so that
19 no harm can come forward. If I didn't do that, right, if I
20 didn't tell the rest of my organ procuring outfits that are
21 like We Are Sharing Hope nationwide that your efforts are
22 not going to be protected by your local state laws, that
23 only the Virginia OPO is protected. Well now what I've done
24 is essentially foreclosed an opportunity to ever learn from
25 the Holliman case, because nobody will ever share data with

1 others so that we can see what happened and are there
2 safeguards we can put in place to prevent it from happening
3 again. So, Your Honor, I just -- I added the Virginia law
4 statute for Your Honor's consideration and perusal. I don't
5 have a privilege log that's before you today, but I did at
6 least want that considered along with the remainder of the
7 requests.

8 THE COURT: Well, you would agree with me, Mr. Gresh,
9 they're not a hospital, they're not a committee of the
10 hospital --

11 MR. GRESH: And Your Honor, I did not -- intentionally
12 I did not brief the South Carolina law and how that would
13 apply, so I would defer entirely so We Are Sharing Hope.

14 THE COURT: Well, I understand what you're telling me
15 and I know that, you know, you've got all of these other
16 states that have their own laws, and basically it's public
17 policy and I understand that, but that doesn't mean that
18 they fit in with South Carolina law, and I'm bound by South
19 Carolina law. This Judge isn't here to make new law, I'll
20 put it to you that way. The other thing, I mean -- I don't
21 know. I just have a hard time seeing it from what I'm
22 reading. What kind of professional associations are they?

23 MR. GRESH: I would defer to We Are Sharing Hope to
24 tell us how they're --

25 THE COURT: You're the one who sends them organs and

1 they disperse them out; is that correct?

2 MR. GRESH: It's a little bit different. The organ
3 procurement outfits like We Are Sharing Hope identify when
4 somebody comes into a hospital and they're going to pass
5 away, We Are Sharing Hope would go in and say, "Okay.
6 There's potential organs here. Can I harvest these organs
7 from the decedent and get them to somebody like MUSC to
8 transplant into somebody like Mr. Holliman," who needed a
9 set of lungs. UNOS is kind of the Match.com of all of this.
10 They take information that's provided by the OPO like We Are
11 Sharing Hope and connect them up with people like the
12 Medical University of South Carolina so that those two can
13 interact and get lungs from a decedent to somebody who is in
14 need.

15 THE COURT: Anything else, Ms. Jennings?

16 MS. JENNINGS: No, Your Honor. We will be happy to
17 brief it for you and get it to you Friday.

18 THE COURT: Okay. Anything from Mr. Banks? I can't
19 hear you.

20 MR. BANKS: Nothing, Your Honor. Thank you for hearing
21 us today.

22 THE COURT: Okay. Mr. Sanders, anything from you?

23 MR. SANDERS: No, ma'am. If you would like a formal
24 order prepared if your intention is to deny the plaintiff's
25 motion I would be happy to pull that together.

1 THE COURT: Let me ask you, Mr. Sanders, I'll be happy
2 to file a form four on it if that suits y'all. I can do
3 that this afternoon unless y'all just want a formal order.

4 MR. SANDERS: You know, Judge, whatever you tell me to
5 do is what I'll do, I'm okay with either one of them.

6 THE COURT: I'll just do a form four and I'll take care
7 of that. Ms. Dinkins, I'm going to give you the opportunity
8 to speak if you need to.

9 MS. DINKINS: I have nothing further, thank you very
10 much.

11 THE COURT: Okay. All right, Mr. Moylan, if I can have
12 those by Friday I will make a decision by next week.

13 MR. MOYLAN: Your Honor, we're grateful for your time.
14 Thank you.

15 THE COURT: Thank y'all.

16 (All attorneys said thank you.)

17 (End of the hearing.)

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JEAN MARIE JENNINGS

Partner

DIRECT DIAL: (843) 577-1217

E-MAIL: jeanmarie.jennings@hoodlaw.com

April 13, 2021

Via E-Mail

Lucy Dinkins, Esquire
John C. Moylan, III, Esquire
Wyche, P.A.
801 Gervais Street, Suite B
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
HLF File No. 269.009

Dear Lucy and John:

Enclosed for service, please find Defendant We Are Sharing Hope SC's Fourth Amended Privilege Log in the above-referenced matter. If you have any questions, please feel free to contact me or my paralegal, Tammy Villanueva.

Kind regards,

Yours truly,

A handwritten signature in cursive script that reads "Jean Marie Jennings".

Jean Marie Jennings

JMJ/jku

Enclosure(s)

cc: ***Via E-Mail***

Darren K. Sanders, Esquire

Jack G. Gresh, Esquire/Lauren Spears Gresh, Esquire

172 Meeting Street, Charleston, SC 29401

Phone: (843) 577-4435 • Fax: (843) 732-1630 • Email: Info@hoodlaw.com
www.hoodlaw.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Michelle Cha Holliman, individually and as
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.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

) C/A No. 2020-CP-10-02902
)
)
)

) **DEFENDANT**
) **WE ARE SHARING HOPE SC's FOURTH**
) **AMENDED**
) **PRIVILEGE LOG**
)
)
)

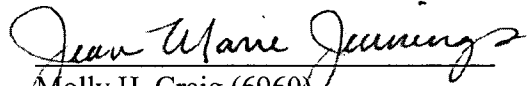
TO: JOHN C. MOYLAN, III AND LUCY DINKINS, ATTORNEYS FOR THE PLAINTIFF:

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 process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS	Peer Review Quality Assurance/Quality Assessment.
Privileged 0187-0195	Root Cause Analysis involving We Are Sharing Hope SC and Grand Strand Medical Center	Peer Review Quality Assurance/Quality Assessment
Privileged 0196-210, 0224	Emails between We Are Sharing Hope and VRL-Eurofins involving ABO testing/part of peer review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS	Peer Review Quality Assurance/Quality Assessment.
Privileged 0211-0223	Emails re: Peer Review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS	Peer Review Quality Assurance/Quality Assessment.

Privileged 0225-0230	Emails between We Are Sharing Hope SC and Kathy Brazil re: adverse event reporting	Peer Review Quality Assurance/Quality Assessment.
Privileged 0231-0235	Printable version of Non-conformance Report	Peer Review Quality Assurance/Quality Assessment.
Privileged 0236-0335	Emails re: Peer Review process involving We Are Sharing Hope SC and the Membership and Professional Standards Committee with UNOS	Peer Review Quality Assurance/Quality Assessment

HOOD LAW FIRM, LLC
172 Meeting Street / Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630


Molly H. Craig (6960)
molly.craig@hoodlaw.com
Jean Marie Jennings (100651)
jeanmarie.jennings@hoodlaw.com

*Attorneys for the Defendant
We Are Sharing Hope SC*

April 13, 2021
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the ***DEFENDANT WE ARE SHARING HOPE SC's FOURTH 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 13th day of April, 2021.



From: Cothran, Ralph F. Jr., Law Clerk (Jeremiah Freeman) [<mailto:rcothranlc@sccourts.org>]
Sent: Monday, July 26, 2021 9:58 AM
To: John C. Moylan <jmoylan@wyche.com>; Jean Marie Jennings <jeanmarie.jennings@hoodlaw.com>
Cc: Jack G. Gresh <JGresh@hallboothsmith.com>; Darren Sanders <DKS@Buyckfirm.com>
Subject: RE: Michelle Cha Holliman v. We Are Sharing Hope SC -- 2020-CP-10-02902

Good morning, I have had an opportunity to speak with Judge Cothran and he said that Judge McCaslin's Order is valid in his view and everything entailed within it... Mr. Moylan, if you will send a proposed Order in accordance with the following:

- 1) WASH's Motion for Protective Order on the depositions of Dr. Whelan and Mr. Stanton. ---DENIED
- 2) Plaintiff's Motion to Compel UNOS to produce the documents it has withheld under a claim of peer review privilege.--GRANTED
- 3) Plaintiff's Motion to Compel WASH to provide complete responses to plaintiff's second set of supplemental requests for production.--GRANTED
- 4) WASH and UNOS' Motion to stay the case. --DENIED
- 5) Plaintiff's Motion to Amend the Complaint.--GRANTED, based on the record that the parties seem to have no objection and in-fact consent to the Motion to Amend by the response filed on May 28th, 2021.

Thank you for your time. Sincerely,
Jeremiah S. Freeman, Esq.
Law Clerk for the Honorable Judge R. Ferrell Cothran, Jr.



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

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Allen B Holliman Estate					Plaintiff		07/09/2020
☒ Anna, Rachael Lewis	200 E Camperdown Way Greenville SC 29601				Plaintiff Attorney		08/05/2021
☒ Bradshaw, Julia Ann	PO Box 22768 40 Calhoun Street Suite 315 (29401) Charleston SC 29413				Defendant Attorney		03/19/2021
☒ Breedon, Melody Joy Edelman(Inactive)	PO Box 2116 Myrtle Beach SC 29578				Mediator		01/28/2021
☒ Buyck, Hugh W.	PO Box 2424 Mt. Pleasant SC 29465				Defendant Attorney		07/27/2020
☒ Cooper, Gordon Wade	PO Box 2424 Mt. Pleasant SC 294652424				Defendant Attorney		09/03/2021
☒ Craig, Mary Agnes Hood	172 Meeting St. PO Box 1508 Charleston SC 294021508				Defendant Attorney		07/14/2020
☒ Daniel, Charles Wilson	96 Broad St. Charleston SC 29401				Plaintiff Attorney		10/29/2021
☒ Dinkins, Mary Lucille	807 Gervais Street Suite 301 Columbia SC 292013163				Plaintiff Attorney		07/09/2020
☒ Duffy, Brian C	96 Broad Street Charleston SC 29401				Plaintiff Attorney		10/29/2021
☒ Gresh, Jack G	111 Coleman Boulevard Suite 301 Mount Pleasant SC 29464				Defendant Attorney		07/21/2020
☒ Gresh, Lauren Spears	111 Coleman Boulevard Suite 301 Mount Pleasant SC 29464				Defendant Attorney		01/28/2021
☒ Holliman, Allen B					Plaintiff		07/09/2020
☒ Holliman, Michelle Cha					Plaintiff		10/20/2021
☒ Jennings, Jean Marie	172 Meeting Street Charleston SC 29401				Defendant Attorney		08/12/2020
☒ May, James Hunter	807 Gervais St. Suite 301 Columbia SC 29201				Plaintiff Attorney		08/05/2021
☒ Medical University Of South Carolina	171 Ashley Avenue Charleston SC 29425				Defendant		07/09/2020
☒ Michelle Cha Holliman Personal Representative					Plaintiff		07/09/2020
☒ Moore, Julie Lauren	96 Broad Street Charleston SC 29401				Plaintiff Attorney		10/29/2021
☒ Moylan, John Carroll III	PO Box 12247 Columbia SC 292112247				Plaintiff Attorney		07/09/2020
☒ Richter, Lawrence E. Jr.(Inactive)	622 Johnnie Dodds Blvd. Mount Pleasant SC 29464				Alternate Mediator		01/28/2021
☒ Sanders, Darren Kent(Inactive)	PO Box 2424 Mt. Pleasant SC 294652424				Defendant Attorney		09/03/2021
☒ United Network For Organ Sharing	700 N 4Th Street Richmond VA 23219				Defendant		04/19/2021
☒ We Are Sharing Hope Sc	3950 Faber Place Drive Suite 400 North Charleston SC 29405				Defendant		10/05/2021

Associated Cases

Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Common Pleas	2019NI1000060	N	MEDMA		07/17/2019	01/23/2020	Dismissed	Ended by Judgment/Dismissal-Arbit/Mediat

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Holliman, Michelle Cha	CASE FILE CREATED	Filing		12/31/2050-06:39		
We Are Sharing Hope Sc	NEF(11-05-2021 09:23:53 AM) Order/Stay	Filing		11/05/2021-09:24		
We Are Sharing Hope Sc	Order Regarding Discovery & To Stay Matters Involving Privil	Order		11/05/2021-09:23		
Holliman, Michelle Cha	NEF(10-29-2021 02:45:19 PM) Notice/Notice of Appearance	Filing		10/29/2021-14:45		
Holliman, Michelle Cha	Notice/Notice of Appearance	Filing		10/29/2021-14:45		
We Are Sharing Hope Sc	NEF(10-20-2021 06:57:55 PM) Memo/Memo in Support	Filing		10/21/2021-09:50		
We Are Sharing Hope Sc	NEF(10-20-2021 05:54:35 PM) Memo/Memo in Opposition	Filing		10/21/2021-09:47		
Holliman, Michelle Cha	NEF(10-20-2021 05:26:12 PM) Memo/Memo in Opposition	Filing		10/21/2021-09:44		
We Are Sharing Hope Sc	NEF(10-20-2021 05:22:12 PM) Memo/Memo in Support	Filing		10/21/2021-09:39		
Holliman, Michelle Cha	NEF(10-20-2021 05:15:52 PM)	Filing	ROA 577	10/21/2021-09:35		

	Memo/Memo in Opposition					
Holliman, Michelle Cha	NEF(10-20-2021 05:07:10 PM) Memo/Memo in Support	Filing			10/21/2021-09:33	
Holliman, Michelle Cha	NEF(10-20-2021 05:10:36 PM) Memo/Memo in Opposition	Filing			10/21/2021-09:32	
We Are Sharing Hope Sc	Memo in Support of Motion to Quash	Filing			10/20/2021-18:57	
We Are Sharing Hope Sc	Memo in Opposition to Motion to Compel	Filing			10/20/2021-17:54	
Holliman, Michelle Cha	Memo in Opposition to Motion for Protective Order	Filing			10/20/2021-17:26	
We Are Sharing Hope Sc	Memo in Support Of Motions For A Protective Order	Filing			10/20/2021-17:22	
Holliman, Michelle Cha	Memo in Opposition To Df We Are Sharings Motion To Quash	Filing			10/20/2021-17:15	
Holliman, Michelle Cha	Memo in Opposition to Joint Motion to Stay Discovery	Filing			10/20/2021-17:10	
Holliman, Michelle Cha	Supplemental Memo in Support Of Motion To Compel Against	Filing			10/20/2021-17:07	
Holliman, Michelle Cha	NEF(10-20-2021 01:32:09 PM) Proposed Order/Other	Filing			10/20/2021-14:51	
Holliman, Michelle Cha	Order/Order Cover Sheet \$25.00	Filing			10/20/2021-13:32	
Moylan, John Carroll III	10/25/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action			10/14/2021-11:55	
Dinkins, Mary Lucille	10/25/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action			10/14/2021-11:55	
Craig, Mary Agnes Hood	10/25/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action			10/14/2021-11:55	
Gresh, Lauren Spears	10/25/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action			10/14/2021-11:55	
Gresh, Jack G	10/25/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action			10/14/2021-11:55	
Buyck, Hugh W.	10/25/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action			10/14/2021-11:55	
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Gresh, Jack G	10/25/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action			10/14/2021-11:54	
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Craig, Mary Agnes Hood	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Gresh, Lauren Spears	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
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Gresh, Lauren Spears	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
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Gresh, Lauren Spears	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Dinkins, Mary Lucille	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Dinkins, Mary Lucille	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Dinkins, Mary Lucille	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Dinkins, Mary Lucille	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Dinkins, Mary Lucille	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Dinkins, Mary Lucille	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Moylan, John Carroll III	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Moylan, John Carroll III	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Moylan, John Carroll III	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Moylan, John Carroll III	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Moylan, John Carroll III	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
Moylan, John Carroll III	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25		
We Are Sharing Hope Sc	NEF(10-04-2021 04:55:07 PM) Motion/Quash	Filing		10/05/2021-08:16		
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) Motion/Protection from Disco	Filing		09/13/2021-12:04		
We Are Sharing Hope Sc	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 Document	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	Filing		07/09/2021-16:57		

	Protective Order for Verandaan					
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		
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		
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		
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		
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		
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		

	01 MOTIONS Roster Publication					
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		
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		
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		
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 Sharing	NEF(05-28-2021 02:45:31 PM) Response	Filing		05/28/2021-15:28		
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 Discov	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 Servi...	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		
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		
Craig, Mary Agnes Hood	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		05/14/2021-14:37		

Craig, Mary Agnes Rouse	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		
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		
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		
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 Young 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 Support of Motion to Compel	Filing		04/19/2021-13:59		
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 Plntff's 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(03-09-2021 02:07:04 PM) Order/Order Cover Sheet \$25....	Filing		04/09/2021-14:07		
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		
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		
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		
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, 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		
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		
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		
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		
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 Pltffs Motion/Compel	Filing		03/12/2021-18:10		
United Network For Organ Sharing	United's Memo/Opposition of Pltffs Motions/Compel	Filing		03/12/2021-17:39		
Holliman, Michelle Cha	Pltffs Response/Opp of Sharing's Motion/Protective Order	Filing		03/12/2021-17:25		
Holliman, Michelle Cha	Pltffs Memo/Support Of Motion/Compel We are Sharing Hope	Filing		03/12/2021-17:22		
Holliman, Michelle Cha	Pltffs 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	Action		03/10/2021-10:50		

	of Motions Roster Publication					
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		
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		
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		
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		
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		
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		
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 of Motions Roster Publication	Action		02/12/2021-11:16		
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, 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		
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		
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		
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		
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		
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 motion 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 Against Jacqueline Honig, Darla	Filing		12/28/2020-09:54		
Holliman, Michelle Cha	Affidavit of Anthony L 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) Motion/Compel	Filing		11/18/2020-15:07		
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		
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		
Gresh, Jack G	11/2/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		10/07/2020-14:34		
United Network For Organ	NEF(08-20-2020 10:43:51 AM)	Filing		08/20/2020-11:24		

Sharing	Motion/Dismiss					
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, Jack G	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		
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 Plt Mot/Compel, Mot/Quash & Mot/Protective Order	Order		07/24/2020-08:46		
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		

Financials

Summary					
Fine/ Costs:	\$900.00	Total Paid for fine/costs:	\$900.00	Balance Due:	\$0.00
Costs					
ROA 588					

CERTIFICATE OF COUNSEL

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

The undersigned further certifies that the Record on Appeal complies with the Order of the South Carolina Supreme Court, dated April 15, 2014, RE: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, Appellate Case No. 2013-002681.

HOOD LAW FIRM, LLC

172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

/s/ Mary Agnes Hood Craig

Mary Agnes Hood Craig (SC #6960)
Jean Marie Jennings (SC #100651)

**Attorneys for Appellant
We Are Sharing Hope SC**

November 19, 2021

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HOOD LAW FIRM, LLC

172 Meeting Street

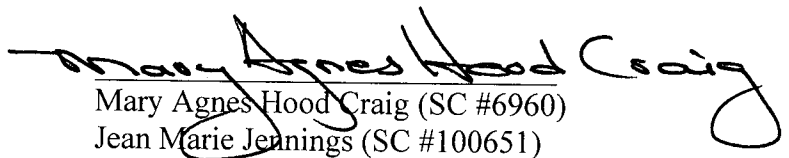
Post Office Box 1508

Charleston, SC 29402

Phone: (843) 577-4435

Facsimile: (843) 722-1630

Email: Info@hoodlaw.com



Mary Agnes Hood Craig (SC #6960)
Jean Marie Jennings (SC #100651)

**Attorneys for Appellant
We Are Sharing Hope SC**

November 19, 2021