

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-212832

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, Deceased.Appellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

Staci L. Versen-Rampey, NP, Individually and as Agent, Servant,
Employee of South Carolina Emergency Physicians, LLC, and as Agent,
Servant, or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as Agent, Servant,
or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
and d/b/a Piedmont Healthcare System; and

James E. Reinhardt, Jr., M.D., Individually and as Agent Servant or
Employee of Rock Hill Radiology Associates, PA. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System,

Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians,
LLC,Respondent.

RECORD ON APPEAL

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APR 15 2013

SC Court of Appeals

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FORM 4

TATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP4603984

Ann P Adams	Jacob E Adams	Tenet Healthcare Corporation Piedmont Medical Center Staci L Versen Rampey James E Reinhardt Jr	Amisub of South Carolina Inc Piedmont Healthcare System Jason Price South Carolina Emergency Physicians LLC
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: _____ Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

**ORDER OF DISMISSAL AS TO ROCK HILL RADIOLOGY ASSOCIATES, P.A.,
 AND JAMES E. REINHARDT, JR., M.D.**

ORDER INFORMATION

Additional Information for the Clerk:

This order ends does not end the case.

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

Applicable, describe the property, including tax map information and address, referenced in the order:

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

/s/ JOHN C. HAYES, III.

Circuit Court Judge

2049

Judge Code

7/31/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on **July 31, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **July 31, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)

Civil Action No.: 11-CP-46-03984

Plaintiff,)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

**ORDER OF DISMISSAL AS TO
ROCK HILL RADIOLOGY ASSOCIATES,
P.A., AND JAMES E. REINHARDT, JR.,
M.D.**

Staci L. Versen-Rampey, NP,)
Individually and as Agent, Servant or)
Employee of South Carolina Emergency)
Physicians, LLC, and as Agent, Servant or)
Employee of Amicus of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Jason Price, Radiologic Technologist,)
Individually and as Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System, and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA, and as Agent, Servant)
Or Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Rock Hill Radiology Associates, P.A.,)
South Carolina Emergency Physicians,)
LLC,)

Defendants.)

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DAVID HAMILTON
C.D. C.P. & G.S.
YORK COUNTY, SC

This matter is before the Court upon a motion to dismiss filed by Defendants Rock Hill Radiology Associates, P.A. ("Rock Hill Radiology"), and James E. Reinhardt, Jr., M.D. ("Dr. Reinhardt"). Defendants Rock Hill Radiology and Dr. Reinhardt have moved for dismissal of the

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Amended Notice of Intent, Amended Summons, and Amended Complaint that Plaintiff has filed against them, on the basis that Plaintiff has failed to comply with South Carolina Code Section 15-79-125 (Supp. 2011).

A hearing was held before the undersigned in York County, and after hearing from all parties at the motion hearing and reviewing the file and submissions offered by the parties, the Court finds that the Plaintiff did not comply with S.C. Code Ann. § 15-79-125 and that the motion to dismiss Plaintiff's Amended Notice of Intent, Amended Summons and Amended Complaint should be granted as to the moving Defendants.

Background

This is a wrongful death and survival action based upon allegations of medical malpractice. On October 20, 2008, Plaintiff's Decedent, after sustaining injuries in an accident, was taken by ambulance to the emergency room of the Piedmont Medical Center, where a CT scan was performed. The Decedent died on October 28, 2008. The Plaintiff filed the original Notice of Intent and original Summons and Complaint on October 20, 2011. Neither Rock Hill Radiology nor Dr. Reinhardt was named as a party in the original Notice of Intent or in the original Complaint.

Subsequently, after the expiration of the three-year statute of limitations had passed on October 28, 2011, the Plaintiff filed an Amended Notice of Intent and Amended Summons and Amended Complaint on December 1, 2011. Plaintiff included affidavits of medical experts with the Amended Complaint. Rock Hill Radiology and Dr. Reinhardt were named for the first time as defendants in Plaintiff's Amended Notice of Intent and Amended Summons and Complaint. The Amended Notice of Intent and Amended Summons and Complaint were mailed to Rock Hill Radiology on January 25, 2012, and served personally on Dr. Reinhardt on February 1, 2012. Plaintiff alleges in her amended pleadings that Rock Hill Radiology and Dr. Reinhardt failed to diagnose a subarachnoid hemorrhage on the post-traumatic CT that was taken on October 20,

2008. These defendants have denied any negligence with respect to the services they provided to the Decedent.

Legal Standard

Pursuant to Rule 12(b)(1), SCRPC, a party may move for dismissal where the court lacks jurisdiction over the subject matter presented. See Rule 12(b)(1), SCRPC. Subject matter jurisdiction is defined as the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Brown v. Evatt, 322 S.C. 189, 193, 470 S.E.2d 848, 850 (1996).

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based upon a plaintiff's failure to state facts sufficient to constitute a cause of action. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Bergstrom v. Roper St. Francis Alliance, 352 S.C. 221, 573 S.E.2d 805 (Ct.App.2002). The trial judge in a civil suit may dismiss a claim when the defendant demonstrates that the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). When ruling upon a motion to dismiss pursuant to Rule 12(b)(6), the trial judge must base its decision solely upon the allegations contained in the plaintiff's complaint. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). A motion to dismiss may be converted to a Rule 56 motion for summary judgment if a party presents matters outside the pleadings that are considered by the court. Gilbert v. Miller, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003).

Analysis

I. The Summons and Complaint must be dismissed because Plaintiff has failed to comply with the mandatory pre-suit requirements of S.C. Code Ann. § 15-79-125.

Section 15-79-125 mandates that prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and affidavit of an expert witness, and such Notice of Intent shall be resolved,

by way of pre-suit mediation prior to the commencement of a lawsuit. See S.C. Code Ann. §15-79-125(B-F). Subsection A of 15-79-125 provides:

(A) Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

Subsections C and E state as follows:

(C) Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon a finding of good cause. Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the mediation conference for all or any part of the State shall govern the mediation process, including compensation of the mediator and payment of the fees and expenses of the mediation conference. The parties otherwise are responsible for their own expenses related to mediation pursuant to this section.

(E) If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed:

(1) within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; or

(2) prior to expiration of the statute of limitations, whichever is later.

See S.C. Code Ann. §15-79-125(B-E).

Thus, in addition to requiring that an expert affidavit be filed simultaneously with a Notice of Intent, "this statute permits the parties to engage in limited prelitigation discovery, establishes a timetable for mandatory prelitigation mediation, and, in the event mediation fails, provides for the commencement of a lawsuit via the timely filing of a summons and complaint." Ranucci v.

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Crain, Op. No. 4935, 2012 WL 243332 at *3 (S.C. Ct. App. filed January 25, 2012). "Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suit and ends with prelitigation mediation." Id at *5.

Here, the required mediation has not been held. Nor has an impasse letter been issued. Therefore the requirements for commencing a civil action for medical malpractice have not been met as a matter of law. Plaintiff conceded this issue at the Hearing on the motion and advised it was not his intent to file the Summons and Complaint separately, but merely as attachments to the Notice of Intent.

II. The expiration of the Statute of Limitations bars the amended Notice of Intent.

The statute of limitations has run on Plaintiff's claims set forth in the Amended Notice of Intent against Rock Hill Radiology and Dr. Reinhardt.

Plaintiff's filings with the Court allege that on October 20, 2008, Plaintiff's Decedent sought treatment at the emergency room of the Piedmont Medical Center after sustaining injuries in an accident. Plaintiff further alleges that the Decedent died on October 28, 2008, as a direct result of the "care or the lack of care" provided to him at the hospital. [Plaintiff's Brief in Opposition to Motions to Dismiss, p. 2.] Yet Rock Hill Radiology and Dr. Reinhardt were not named as defendants in this case until more than three years later on December 1, 2011, when Plaintiff filed an Amended Notice of Intent and Amended Summons and Amended Complaint, asserting causes of action for wrongful death and survival.

In South Carolina, an action for wrongful death must be commenced within three years of the death of the person on account of whose death the action is brought. S.C. Code Ann. § 15-3-530(6). Section 15-3-530(6) provides that the statute of limitations is three years in an action "for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought." Plaintiff's cause of action for wrongful death accrued, and the three-year statute of limitations began to run, at the time of the Decedent's

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death. Therefore, the statute of limitations as to Plaintiff's wrongful death claim expired on October 28, 2011.

Moreover, even if the discovery rule is applied, Plaintiff's claims against Rock Hill Radiology and Dr. Reinhardt are outside of the statute of limitations period. S.C. Code Ann. § 15-3-545(A) provides that "[i]n any action ... to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider ... acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section."

Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or should have been discovered by the exercise of reasonable diligence. Smith v. Smith, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987). Pursuant to this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. Austin v. Conway Hosp., Inc., 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct.App.1987).

In the medical malpractice context, our Supreme Court applies the reasonable diligence analysis under the general discovery rule. "[A]n injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right of his has been invaded or that some claim against another party might exist." Strong v. Univ. of S.C. Sch. of Med., 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994) (quoting Snell v. Columbia Gun Exchange, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)). A cause of action accrues when an injury is discovered or "reasonably ought to have been discovered." Id. The "reasonably ought to have been discovered" requirement is a "reasonable diligence" standard. Id.


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Here, the Plaintiff knew or should have known of the possibility of a legal claim against Rock Hill Radiology and Dr. Reinhardt more than three (3) years prior to filing an action against them. Plaintiff claims that the defendants were allegedly negligent in the manner in which medical care was provided to the decedent after his arrival at the hospital on October 20, 2008. The decedent's medical condition worsened drastically hours after he was discharged from the hospital, and he was admitted to another medical facility. The Decedent died on October 28, 2008, only days after being discharged from the defendant hospital.

As a result of the Decedent's death, under the facts of this case, Plaintiff should have immediately suspected the possibility of negligence on the part of all physicians and medical personnel who were directly involved in diagnosing and treating Decedent at the hospital. The Decedent's death in October 2008 put Plaintiff on notice that possible claims against these diagnosing and treating medical providers might exist. Yet the Plaintiff's action against Rock Hill Radiology and Dr. Reinhardt was not filed until December 1, 2011, well past the expiration of the statute of limitations.

Our courts have repeatedly held that "an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." Snell, S.C. at 303, 278 S.E.2d at 334 (1981). "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Id.

In the instant matter, Plaintiff appears to be arguing that the statute of limitations did not begin to run until after she and her second set of attorneys had developed a full-blown theory of recovery against all potential defendants. Plaintiff points out in her brief that her previous counsel, the McGowan Hood Law Firm, had the medical records in this matter until they released them to her on April 6, 2009. [Brief, p. 2.] She gave these records to her present counsel "about October 2010." [Id.] Plaintiff contends that the first time her new attorney

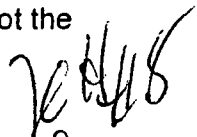
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learned of the name of the radiologist who read the Decedent's CT scan and x-ray was on November 3, 2011, when her attorney received from the hospital "a printed copy showing a clear impression and bearing the name of James E. Reinhardt as the Radiologist that interpreted the film." [Id., at p. 3.] By asserting that the statute of limitations did not begin to run until Plaintiff's counsel was provided a copy of a record with Dr. Reinhardt's name on it, Plaintiff is in essence arguing that the limitations period did not run until she had developed a full-blown theory of recovery against all possible defendants.

Yet Plaintiff knew (or reasonably should have known) on October 28, 2008, when the Decedent died after being treated at the hospital and having a CT scan and x-ray, that a claim against these defendants might exist. That is when the statute of limitations began to run. Additionally, Plaintiff's own affidavit establishes she was told to seek an attorney's advice about her husband's death by her insurance agent when she presented her claim for life insurance.

Further, Plaintiff was in fact aware of the statute of limitations, and filed her original Notice of Intent against the hospital on October 20, 2011, clearly recognizing the cut-off date of the statute. Whether Plaintiff knew of the precise identity of Dr. Reinhardt at that time is irrelevant. The South Carolina Supreme Court has stated, "the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). In Wiggins, the Court further explained "The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury." Wiggins, 314 S.C. at 129 (quoting Tollison v. B & J Machinery Co., Inc., 812 F.Supp. 618, 620 (D.S.C.1993).

The date on which discovery of a cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). "In other words, whether the particular plaintiff actually knew he had a claim is not the


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test." Hackworth v. Greenville County, 371 S.C. 99, 637 S.E.2d 320 (2006), citing Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct.App.1999). "Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Id.

Plaintiff next argues that public policy weighs in favor of equitably tolling the statute of limitations in this case. However, this Court concludes that public policy supports barring Plaintiff's late-filed claims brought against Rock Hill Radiology and Dr. Reinhardt. "Statutes of limitations are not mere technicalities and are rules of law that serve a variety of important public policies." Id. at 225, 525 S.E.2d at 898, quoting Amaker v. New, 33 S.C. 28, 34, 11 S.E. 386, 387 (1890). A statute of limitations is "founded on motives of public policy" and "after the lapse of a prescribed time ... the doors of the court are no longer open to him for the enforcement of a claim which he has neglected to assert within the prescribed time." Id. "[S]tatutes of limitations are not simply technicalities" in that they "stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Id. quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996).

Furthermore, there is no evidence that there were any circumstances that actually prevented or delayed Plaintiff in bringing the claim against Rock Hill Radiology and Dr. Reinhardt. And in fact, Plaintiff's brief itself demonstrates that it wasn't very difficult to obtain the records in question. The brief simply states: "Only after Ms. Berinsky went to Piedmont Medical Center and waited for two (2) hours to obtain the records was the name of James E. Reinhardt shown." [Plaintiff's Brief, p. 7.]

The Court finds that equitable tolling should not be applied.

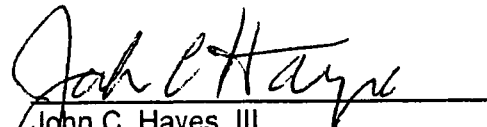
Conclusion

Because Plaintiff has failed to comply with the mandatory pre-suit requirements of S.C. Code Ann. § 15-79-125, and because the statute of limitations for claims brought by Plaintiff against Rock Hill Radiology and Dr. Reinhardt has passed, the Court finds Plaintiff's Amended Notice of Intent, Amended Summons and Amended Complaint against these defendants should be dismissed with prejudice.

IT IS, THEREFORE,

ORDERED that the motion to dismiss of Rock Hill Radiology and Dr. Reinhardt is hereby granted, and the Plaintiff's Amended Notice of Intent, Amended Summons and Amended Complaint are hereby dismissed with prejudice.

AND IT IS SO ORDERED.



John C. Hayes, III
Circuit Judge, Sixteenth Circuit

#10

Rock Hill, South Carolina

7/31, 2012

For Clerk of Court Office Use Only

This judgment was entered on August 13, 2012, and a copy mailed first class or placed in the appropriate attorney's box on August 13, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

D Bradley Jordan Jordan & Dunn LLC PO Box 11785 Rock Hill, SC 29731
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ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

CLERK'S VERIFICATION

Collected by: KQ Date Filed: _____
 MOTION FEE COLLECTED: \$ 2500.00
 CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

This matter came before this Court for a hearing on Defendants Amisub of South Carolina, Inc., Staci L. Versen-Rampey, NP, South Carolina Emergency Physicians, LLC, and Jason Price's (collectively "Defendants") Motions to Dismiss on June 27, 2012. Defendants' Motions to Dismiss are filed upon the basis that Plaintiff's Notice of Intent to File Suit ("Notice") is defective because it does not include a contemporaneously filed expert witness affidavit as required by S.C. Code Ann. §§ 15-79-125 and 15-36-100.

Standard

Under Rule 12(b)(6), SCRCP, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277-79, 648 S.E.2d 295, 298 (Ct. App. 2007) (citing Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct.App.2003) (citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999))). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Id. (citing Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001)). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Id. (quoting Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct.App. 2004)), aff'd 645 S.E.2d 245, 2007 WL 1321978. Accord Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). *See also* Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on face of complaint); Williams, 347 S.C. at 233, 553 S.E.2d at 499 (finding trial

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court's ruling on 12(b)(6) motion must be premised solely upon allegations set forth by plaintiff).

Discussion

On October 20, 2008, Jacob Adams ("Adams") was transported to Piedmont Medical Center for treatment of an injury sustained during an accident. Adams died on October 28, 2008. On October 20, 2011 Plaintiff filed a Complaint and Notice stating that Adams' death was proximately caused by the allegedly negligent medical care and treatment provided by Defendants. Plaintiff's Notice did not include a contemporaneously filed expert witness affidavit. Plaintiff's Notice stated that they had a good faith belief that the statute of limitations would expire and that, pursuant to S.C. Code Ann. §15-36-100(C)(1), they had an additional forty-five days to file their expert witness affidavit. Plaintiff filed their Amended Summons and Complaint and Amended Notice of Intent to File Suit, which included a contemporaneously filed expert affidavit, on December 1, 2011.

Accordingly, Defendants move this Court pursuant to Rules 12(b)(1) and 12(b)(6), SCRPC, on the bases that the statute of limitations has expired and that Plaintiff's Notice is defective because it does not include a contemporaneously filed expert witness affidavit as required by S.C. Code Ann. § 15-79-125.

Defendants' argument is based upon Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct.App. 2012). In that case, plaintiff allegedly suffered complications arising from a medical procedure performed by defendant. Id., 723 S.E.2d at 243. Three years later, plaintiff filed a Complaint and Notice alleging claims of medical malpractice. Id. Plaintiff's Notice stated that they had a good faith belief that the statute of limitations

would expire and that pursuant to S.C. Code Ann. §15-36-100(C)(1) they had an additional forty-five days to file their expert witness affidavit. Id. Defendant filed a Motion to Dismiss on the bases that the statute of limitations expired and that plaintiff's Notice was defective. Id. Shortly thereafter, Plaintiff filed their expert witness affidavit. Id. The circuit court granted defendant's Motion to Dismiss and held that plaintiff failed to timely file an expert witness affidavit as required by S.C. Code § 15-79-125. Id.

The South Carolina Court of Appeals affirmed the circuit court and held that plaintiff failed to comply with the statutorily mandated filing requirements of § 15-79-125. Id., 723 S.E.2d at 246. That statute specifically states, "Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100." S.C. Code Ann. §15-79-125. The court noted that this statute clearly and explicitly imposed "two requirements on the affidavit, that it be filed at the same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100." Ranucci, 397 S.C. 168, 723 S.E.2d at 246.

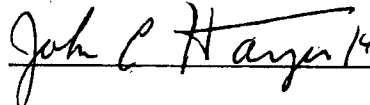
S.C. Code Ann. §§ 15-79-125 and 15-36-100 "operate independently of one another and in distinct time frames." Id., 723 S.E.2d at 247. § 15-79-125 pertains to the time period from filing the Notice to pre-suit mediation and § 15-36-100 pertains to the initial pleadings, which may be filed if mediation is unsuccessful. Id., 723 S.E.2d at 246. Therefore, any plaintiff filing a claim for medical malpractice must comply with the mandates of § 15-79-125; plaintiff must contemporaneously file an expert witness affidavit with their Notice.

Based on the foregoing, this Court holds that Plaintiff failed to comply with the contemporaneous filing requirements of S.C. Code Ann. § 15-79-125. The above-captioned action should be dismissed as to Defendants Amisub of South Carolina, Inc., Staci L. Versen-Rampey, NP, South Carolina Emergency Physicians, LLC, and Jason Price.

Order

Defendants Amisub of South Carolina, Inc., Staci L. Versen-Rampey, NP, South Carolina Emergency Physicians, LLC, and Jason Price's Motions to Dismiss are hereby GRANTED.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

HS

July 12th, 2012
York, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Ann P. Adams, as Personal Representative of
the Estate of Jacob E. Adams, Deceased)

Plaintiff(s))

vs.)

Tenet healthcare Corporation, Amisub of South
Carolina, Inc., d/b/a Piedmont, et al.)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 46-03984

(Please Print)

Submitted By: D. Bradley Jordan

Address: Jordan & Dunn, LLC

PO Box 11785

Rock Hill SC 29730

SC Bar #:

Telephone #: 803-817-7999

Fax #: 803-817-9704

Other:

E-mail: bradjordan@comporium.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

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| <p>Contracts</p> <input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
<input checked="" type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | <p>Real Property</p> <input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
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| <p>Inmate Petitions</p> <input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <input type="checkbox"/> Reinstate Driver's License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | <p>Appeals</p> <input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Administrative Law Judge (980)
<input type="checkbox"/> Public Service Commission (990)
<input type="checkbox"/> Employment Security Comm (991)
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- Special/Complex /Other**
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| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (630) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) |
| <input checked="" type="checkbox"/> Medical (620) | <input type="checkbox"/> Out-of State Depositions (650) |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Sexual Predator (510) |

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2011 OCT 20 PM 1:13
CLERK OF COURT
COMMON PLEAS
ROCK HILL, SC

Submitting Party Signature:

Jeanette Adams

Date: October 20 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-46- 03984

Ann P. Adams, as Personal)
Representative of Estate of)
Jacob E. Adams, Deceased.)
Plaintiff,)

vs.)

Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Staci L. VersenRampey, NP, Individually)
and as Agent, Servant or Employee of)
Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Tenet Healthcare)
Corporation, Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System;)

Defendants)

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2011 OCT 20 PM 4:43
CLERK OF COURT
COURT HOUSE
YORK COUNTY, SC

NOTICE OF INTENT TO FILE SUIT

Pursuant to South Carolina Code Annotated 15-79-125, the above Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is a Complaint that specifies the Plaintiff's short, plain statement of the facts and is a copy of the Complaint that Plaintiff intends to file. Attached as Exhibit B are Answers to Standard Interrogatories as set forth in S.C.R.C.P Rule 33(b). The Plaintiff is unable to provide an affidavit prior to filing the lawsuit the Plaintiff is informed and believe that pursuant to S.C. Code Section

15-36-100 (C) (1). the contemporaneous filing requirement of subsection (B) does not apply to this case due to the Plaintiffs' good faith belief that the period of limitation will expire on the claim stated in the complaint within 10 days of the date of filing and because of the time constraints, the plaintiffs allege that an affidavit of an expert could not be prepared. The Plaintiffs will supplement the pleadings with an *affidavit* within 45 days of the date of filing.

(SIGNATURES ON FOLLOWING PAGE)

BY: James W. Boyd
James W. Boyd
P.O. Box 36425
Rock Hill, SC 29732
(803) 328-2600

BY: D. Bradley Jordan
D. Bradley Jordan
Jordan & Dunn, LLC
P.O. Box 11785
Rock Hill, SC 29731
(803) 817-7999

ATTORNEYS FOR PLAINTIFFS

Rock Hill, South Carolina
~~November 20~~ 2011
October

000027

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-46-_____

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

vs.)

Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

COMPLAINT
(JURY TRIAL REQUESTED)

Staci L. VersenRampey, NP, Individually)
and as Agent, Servant or Employee of)
Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Tenet Healthcare)
Corporation, Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System;)

Defendants)
)
)

The Plaintiff, above named, complaining of the above Defendants would respectfully show to this honorable Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff is a citizen and resident of York County, South Carolina and is the duly appointed personal representative of the Estate of Jacob E. Adams, Deceased, who died on October 28, 2008.

2. Plaintiff brings this action pursuant to S.C. Code Ann. Section 15-51-10 et seq. for the benefit of the statutory beneficiaries of Jacob E. Adams, deceased, as designed by S.C. Code Ann. Section 15-51-20, naming themselves as Personal Representatives to the decedent to recover for damages, injuries, and losses sustained by reason of the wrongful death of Jacob E. Adams.

3. The Defendant, Staci L. Versen-Rampey, upon information and belief, is a nurse practitioner who treated the Plaintiff's decedent, Jacob E. Adams, and, upon information and belief, is a citizen and resident of York County, South Carolina and is, at all times hereinafter mentioned, is a nurse practitioner in the Emergency Department at Piedmont Medical Center. located in York County, Rock Hill, South Carolina. Upon information and belief, at all times hereinafter mentioned, Staci L. Versen-Rampey was and is an agent, servant and employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System.

4. The Defendant, Jason Price, upon information and belief, is a radiologic technologist who treated the Plaintiff's Decedent, Jacob E. Adams, and upon information and belief, is a citizen and resident of York County, South Carolina and, at all times hereinafter mentioned, was and is an agent, servant and employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System.

4. The Defendant, Tenet Healthcare Corporation, Amisub of South Carolina, Inc., (hereinafter "Piedmont" is a South Carolina Corporation with its principal place of business in Rock Hill, York County, South Carolina, and is the corporation that owns and runs the hospital in Rock Hill, South Carolina, and is doing business as Piedmont

Medical Center and also doing business as Piedmont Healthcare System. The Plaintiff was a patient at Piedmont where certain employees of Piedmont were responsible for his treating him on an emergent basis and further assessing his condition.

5. The Plaintiff is unable to provide an affidavit prior to filing the lawsuit. The Plaintiff is informed and believe that pursuant to S.C. Code Section 15-36-100 (C) (1) the contemporaneous filing requirement of subsection (B) does not apply to this case due to the Plaintiffs' good faith belief that the period of limitation will expire on the claim stated in the complaint within 10 days of the date of filing and because of the time constraints, the plaintiffs allege that an affidavit of an expert could not be prepared. The Plaintiffs will supplement the pleadings with an *affidavit* within 45 days of the date of filing.

FOR A FIRST CAUSE OF ACTION

(WRONGFUL DEATH)

6. On or about October 20 2008, the Plaintiff was seen by various individuals in the Emergency Department of Piedmont Medical Center. Mr. Adams' old charts were reviewed by nurse practitioner, Staci L. Versen-Rampey. Mr. Adams was on Coumadin and testing for levels of this drug were performed in the lab work ordered on Mr. Adams. Further, when Mr. Adams sustained the injuries that brought him by ambulance to Piedmont Medical center, he suffered a laceration to his scalp and potential injury to his cervical spine and shoulder

7. The Plaintiff's decedent's vital signs were taken during his first examination and duly noted by the Defendant, Versen-Rampey. Further orders included the testing for his Prothrombin levels and coagulation (issued by Defendant Versen-Rampey). Radiology was contacted to perform a CT of the Head Without Contrast and of the Cervical Spine (again

ordered by Defendant Versen-Rampey). Treatment of the laceration on the Plaintiff's Decedent's head was likewise ordered by Defendant Versen-Rampey.

8. On October 20, 2008, the Plaintiff was taken to radiology for the testing ordered, *vis a vis*, the CT scan without contrast on Mr. Adam's head and a CT scan of his cervical spine. The result of the CT scan of the head's result was not known until October 21, 2008 at 9:55 a.m. The impression was "there are chronic changes with an associated right temporoparietal contusion". So too, the CT scan results for the Cervical spine were not noted in the patient's file until October 22, 2008, long after the patient had been released from the Emergency Department of the Defendant Piedmont Medical Center.

9. The Defendants owed a duty of due care to the Plaintiff's Decedent. The Defendants breached that duty and were negligent, reckless, willful, wonton, and grossly negligent in the following particulars:

- a. in failing to properly assess the true condition of Jacob E. Adams;
- b. in failing to properly monitor the vital signs of Jacob E. Adams in order to note any changes that might indicate a more serious condition, such as an intracranial bleed;
- c. in failing to timely perform proper testing with prompt results to ensure the proper release of Jacob Adams;
- d. in failing to properly note the serious condition in the impression from the CT scan done on Jacob Adams' head;
- e. in failing to properly bring to the attention of the physician in charge of the Emergency Department of Piedmont Medical Center the serious change noted

in the CT scan when it was compared to two prior CT scans performed at this same facility in prior hospital visits;

- f. in failing to hospitalize a patient who was on blood thinners without assessing his condition for a significantly longer period of time.
- g. in failing to recognize, when viewing the head CT scan, that there was already bleeding going on intracranially;
- h. in failing to use the degree of care that reasonably competent medical personnel would have used under the circumstances then and there prevailing.

As a direct and proximate cause of the aforesaid negligence, reckless, willful want and/or gross negligence of the Defendants, Tenet, Versen-Rampey and Price, jointly and severally, Jacob E. Adams lost his life. Furthermore, as a direct and proximate result of the defendant's negligent, grossly negligent, reckless, willful and wanton acts or omissions, the plaintiff sustained personal injuries including, but not limited to:

- a. pecuniary loss;
- b. mental shock and suffering;
- c. wounded feelings;
- d. grief and sorrow;
- e. cost of the funeral expense and related costs;
- f. Loss of companionship and comfort of their father;

10. The Plaintiffs is entitled to actual damages and punitive damages as may be awarded.

FOR A SECOND CAUSE OF ACTION

(SURVIVORSHIP)

11. The Plaintiff incorporates the allegations of paragraphs 1 through 10 as if set forth hereinafter verbatim.

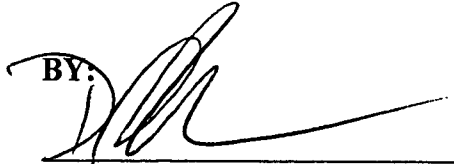
12. The Plaintiff, Ann P. Adams, as the personal representative of the estate of Jacob E. Adams is entitled to recover compensatory damages for the survival claim of Jacob E. Adams, in an amount to be proven at trial.

13. The Plaintiff, Ann P. Adams, as the personal representative of the estate of Jacob E. Adams, is also entitled to recover punitive damages in an amount to be proven at trial.


WHEREFORE, your Plaintiff prays for judgment against Defendants, jointly and severally, ion an amount of actual damages sufficient to compensate the Plaintiff for the damages and losses suffer by the statutory beneficiaries on the wrongful death cause of action and for all actual damages, pain and suffering for the benefit of the estate of Jacob E. Adams on the survivorship cause of action, and for punitive damages as may be awarded by a jury and for such other and further relief as the Court may deem just and proper.

(Signatures next page)

BY:



D. Bradley Jordan
Jordan & Dunn, LLC
546 E. Main Street
Rock Hill, South Carolina 29731
(803) 817-7999



James W. Boyd
Post Office Box 36425
Rock Hill, South Carolina 29732
(803) 328-2600

Oct 20, 2011
Rock Hill, South Carolina

000034

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-46-_____

Ann P. Adams, as Personal)
Representative of Estate of)
Jacob E. Adams, Deceased.)
Plaintiff,)

vs.)

Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Staci L. VersenRampey, NP, Individually)
and as Agent, Servant or Employee of)
Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Tenet Healthcare)
Corporation, Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System;)

Defendants)

PLAINTIFF' RESPONSE TO
STANDARD ITERROGATORIES

TO: THE ABOVE-NAMED DEFENDANTS:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: The Plaintiff, Ann P. Adams
231 Bailey Avenue
Rock Hill, South Carolina 29732

Any and all employees of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System rendering treatment to Plaintiff;

Staci L. VersenRampey, NP, any and all other treating physicians and hospitals, including but not limited to, members of their respective staffs, with respect to treatment rendered to the Plaintiff, Jacob Adams;

Jason Price, Radiologic Technologist, any and all other treating physicians and hospitals, including but not limited to, members of their respective staffs, with respect to treatment rendered to the Plaintiff, Jacob Adams;

No statements have been taken from any of the above witnesses. This interrogatory may be supplemented at such time that Plaintiff becomes aware of additional information responsive to this interrogatory.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: No such items exist at this time

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

RESPONSE:

Piedmont Medical Center
222 S. Herlong Avenue
Rock Hill SC 29732

Presbyterian Hospital (Novant Health)
200 Hawthorne Lane
Charlotte, North Carolina 28204

Plaintiff, through her counsel, is in the process of obtaining further medical records and medical bills and will, therefore, supplement Plaintiff's response to this interrogatory once they are received. Further, the Plaintiff, through counsel, reserves the right to supplement as to any other treating physicians who may become known to Plaintiff's counsel.

4. Set forth the names and addresses of all insurance companies that have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE:

Plaintiff is unaware of insurance companies that have liability coverage and therefore is unable to respond as to numbers of policies or the amounts of liability coverage.

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

RESPONSE: Plaintiff's counsel is in the process of obtaining billing information as to monetary damages and will supplement at such time as these are available.

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

RESPONSE:

Sharon Okun, R.N., M.S.N., CCRN. CAN-BC

Sangjin Oh, M.D.

A.J. Taiouris, M.D.

Plaintiff reserves the right to further supplement her response to the Interrogatory at such time as other experts may be known to her or her counsel.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

Any and all treating physicians and hospitals, including members of their staffs, as to the treatment (past and present) of the Plaintiff and also of the minor child.

Sharon Okun, R.N., M.S.N., CCRN. CAN-BC
will testify in accordance with her Affidavit, which will be supplied within the designated 45-day period

Sangjin Oh will testify in accordance with his Affidavit, which will be supplied within the designated 45-day period.


A.J. Taiouris, M.D. will testify in accordance with his Affidavit which will be supplied within the designated 45-day period.

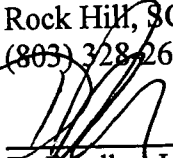
Any and all other treating physicians of the Plaintiff as may be identified in the future.

(Signatures on next page)

The Plaintiff, Ann P. Adams, as
Personal Representative of Estate of
Jacob E. Adams, Deceased

By her attorneys,


James W. Boyd, Esq.
P.O. Box 36425
Rock Hill, SC 29732
(803) 328-2600


D. Bradley Jordan, Esq.
Jordan and Dunn, LLC
P.O. Box 11785
Rock Hill, SC 29731
(803) 817-7999

Rock Hill, South Carolina
~~November~~ 20 2011
October

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COUNTY OF YORK

Ann P. Adams, as Personal Representative of the Estate of Jacob E. Adams, Deceased

CIVIL ACTION COVERSHEET

2011-CP - 46- 03984

vs.

Amisub of South Carolina, Inc., d/b/a Piedmont, et al.

Defendant(s)

FILED-RECEIVED 2011 DEC 21 PM 2:35 DAVID W. MILTON C.C.P. & G.S. YORK COUNTY, SC

(Please Print)

Submitted By: D. Bradley Jordan
Address: Jordan & Dunn, LLC
PO Box 11785
Rock Hill SC 29730

SC Bar #:
Telephone #: 803-817-7999
Fax #: 803-817-9704
Other:
E-mail: bradjordan@comporium.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
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Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Sexual Predator (510)

Submitting Party Signature: [Handwritten Signature]

Date: November 30, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46- 03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA. and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

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C.C.P.&G.S.
YORK COUNTY, SC

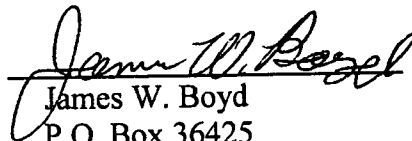
AMENDED

NOTICE OF INTENT TO FILE SUIT

Pursuant to South Carolina Code Annotated 15-79-125, the above Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is a Complaint that specifies the Plaintiff's short, plain statement of the facts and is a copy of the Complaint that Plaintiff intends to file. Attached as Exhibit B are Answers to Standard Interrogatories as set

forth in S.C.R.C.P Rule 33(b). The Plaintiff is unable to provide an affidavit prior to filing the lawsuit the Plaintiff is informed and believe that pursuant to S.C. Code Section 15-36-100 (C) (1). the contemporaneous filing requirement of subsection (B) does not apply to this case due to the Plaintiffs' good faith belief that the period of limitation will expire on the claim stated in the complaint within 10 days of the date of filing and because of the time constraints, the plaintiffs allege that an affidavit of an expert could not be prepared. The Plaintiffs will supplement the pleadings with an *affidavit* within 45 days of the date of filing.

BY:



James W. Boyd
P.O. Box 36425
Rock Hill, SC 29732
(803) 328-2600

ATTORNEYS FOR PLAINTIFFS

Rock Hill, South Carolina
November 30 2011

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46- 03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

AMENDED
SUMMONS

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
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System,)

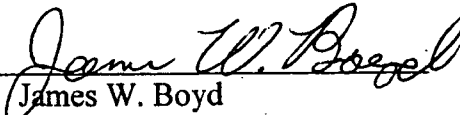
Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

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C.C.P. & G.S.
YORK COUNTY, SC

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE SUMMONED AND REQUIRED to answer the Complaint in this Action of which a copy is herewith served upon you, and to serve a copy of your answer on the subscribed at his office, 546 East Main Street, P.O. Box 11785, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the prescribed time, a

judgment by default may be entered against you for the amount or other remedy requested in the attached complaint.

BY: 

James W. Boyd
1544 Ebenezer Road
Rock Hill, South Carolina 29732
803-328-2600
jamesboyd@comporium.net

Nov. 30, 2011
Rock Hill, South Carolina

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
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Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

AMENDED
COMPLAINT
(JURY TRIAL REQUESTED)

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C.C.C.P. & G.S.
YORK COUNTY, SC

The Plaintiff, above named, complaining of the above Defendants would respectfully show unto this honorable Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff is a citizen and resident of York County, South Carolina and is the duly appointed personal representative of the Estate of Jacob E. Adams, Deceased, who died on October 28, 2008.

2. Plaintiff brings this action pursuant to S.C. Code Ann. Section 15-51-10 et seq. for the benefit of the statutory beneficiaries of Jacob E. Adams, deceased, as designed by S.C. Code Ann. Section 15-51-20, naming themselves as Personal Representatives to the Decedent to recover for damages, injuries, and losses sustained by reason of the wrongful death of Jacob E. Adams.
3. The Defendant, Staci L. Versen-Rampey, upon information and belief, is a nurse practitioner who treated the Plaintiff's decedent, Jacob E. Adams, and, upon information and belief, is a citizen and resident of York County, South Carolina and is, at all times hereinafter mentioned, is a nurse practitioner in the Emergency Department at Piedmont Medical Center. located in York County, Rock Hill, South Carolina. Upon information and belief, at all times hereinafter mentioned, Staci L. Versen-Rampey was and is an agent, servant and employee of South Carolina Emergency Physicians, LLC and of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System.
4. The Defendant, Jason Price, upon information and belief, is a radiologic technologist who treated the Plaintiff's Decedent, Jacob E. Adams, and upon information and belief, is a citizen and resident of York County, South Carolina and, at all times hereinafter mentioned, was and is an agent, servant and employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System.
4. The Defendant, Amisub of South Carolina, Inc., (hereinafter "Piedmont") is a South Carolina Corporation with its principal place of business in Rock Hill, York County, South Carolina, and is the corporation that owns and runs the hospital in Rock Hill, South Carolina, and is doing business as Piedmont Medical Center and also doing

business as Piedmont Healthcare System. The Plaintiff was a patient at Piedmont where certain employees of Piedmont were responsible for treating him on an emergent basis and for further assessing his condition.

The Defendant, South Carolina Emergency Physicians, LLC is a corporation doing business in South Carolina. The Defendant, Rock Hill Radioogy Associates, P.A., is a professional association with its principal place of business in York County, South Carolina.

5. The Plaintiff is unable to provide an affidavit prior to filing the lawsuit. The Plaintiff is informed and believes that pursuant to S.C. Code Section 15-36-100 (C) (1) the contemporaneous filing requirement of subsection (B) does not apply to this case due to the Plaintiffs' good faith belief that the period of limitation will expire on the claim stated in the complaint within 10 days of the date of filling and because of the time constraints, the plaintiffs allege that an affidavit of an expert could not be prepared. The Plaintiffs will supplement the pleadings with an *affidavit* within 45 days of the date of filing.

FOR A FIRST CAUSE OF ACTION

(WRONGFUL DEATH)

6. On or about October 20, 2008, the Plaintiff was seen by various individuals in the Emergency Department of Piedmont Medical Center. Mr. Adams' old charts were reviewed by nurse practitioner, Staci L. Versen-Rampey. Mr. Adams was on Coumadin and testing for levels of this drug were performed in the lab work ordered for Mr. Adams. Further, when Mr. Adams sustained the injuries that brought him by ambulance to Piedmont Medical

center, he suffered a laceration to his scalp and potential injury to his cervical spine and shoulder.

7. The Plaintiff's decedent's vital signs were taken during his first examination and duly noted by the Defendant, Versen-Rampey. Further orders included the testing for his Prothrombin levels and coagulation (issued by Defendant Versen-Rampey). Radiology was contacted to perform a CT of the Head Without Contrast and of the Cervical Spine (again ordered by Defendant Versen-Rampey). Treatment of the laceration on the Plaintiff's Decedent's head was likewise ordered by Defendant Versen-Rampey.

8. On October 20, 2008, the Plaintiff was taken to radiology for the testing ordered, vis a vis, the CT scan without contrast on Mr. Adam's head and a CT scan of his cervical spine. The result of the CT scan of the head's result was not known until October 21, 2008 at 9:55 a.m. The impression was "there are chronic changes with an associated right temporoparietal contusion". So too, the CT scan results for the Cervical spine were not noted in the patient's file until October 22, 2008, long after the patient had been released from the Emergency Department of the Defendant Piedmont Medical Center. On or about October 27, 2011, the Plaintiff's counsel received additional medical records from the Defendant, Piedmont Medical Center, and, at that time, discovered that James E. Reinhardt, Jr., a radiologist of Rock Hill Radiology Associates, P.A. and of Amisub of South Carolina, Inc., et al, had reviewed the CT scan of Plaintiff's Decedent's head and failed to diagnose a subarachnoid hemorrhage on the post-traumatic CT dated October 20, 2008.

9. The Defendants owed a duty of due care to the Plaintiff's Decedent. The Defendants breached that duty and were negligent, reckless, willful, wonton, and grossly negligent in the following particulars:

- a. in failing to properly assess the true condition of Jacob E. Adams;
- b. in failing to properly monitor the vital signs of Jacob E. Adams in order to note any changes that might indicate a more serious condition, such as an intracranial bleed;
- c. in failing to timely perform proper testing with prompt results to ensure the proper release of Jacob Adams;
- d. in failing to properly note the serious condition in the impression from the CT scan done on Jacob Adams' head;
- e. in failing to properly bring to the attention of the physician in charge of the Emergency Department of Piedmont Medical Center the serious change noted in the CT scan when it was compared to two prior CT scans performed at this same facility in prior hospital visits;
- f. in failing to hospitalize a patient who was on blood thinners without assessing his condition for a significantly longer period of time.
- g. in failing to recognize, when viewing the head CT scan, that there was already bleeding going on intracranially;
- h. in failing to use the degree of care that reasonably competent medical personnel would have used under the circumstances then and there prevailing.

As a direct and proximate cause of the aforesaid negligence, reckless, willful wanton and/or gross negligence of the Defendants, Amisub, etal, Versen-Rampey, Price and Reinhardt, jointly and severally, Jacob E. Adams lost his life. Furthermore, as a direct and proximate result of the defendant's negligent, grossly negligent, reckless,

willful and wanton acts or omissions, the plaintiff sustained personal injuries including, but not limited to:

- a. pecuniary loss;
- b. mental shock and suffering;
- c. wounded feelings;
- d. grief and sorrow;
- e. cost of the funeral expense and related costs;
- f. Loss of companionship and comfort of their father;

10. The Plaintiff is entitled to actual damages and punitive damages as may be awarded.

FOR A SECOND CAUSE OF ACTION

(SURVIVORSHIP)

11. The Plaintiff incorporates the allegations of paragraphs 1 through 10 as if set forth hereinafter verbatim.

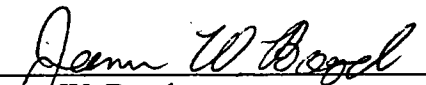
12. The Plaintiff, Ann P. Adams, as the personal representative of the estate of Jacob E. Adams is entitled to recover compensatory damages for the survival claim of Jacob E. Adams, in an amount to be proven at trial.

13. The Plaintiff, Ann P. Adams, as the personal representative of the Estate of Jacob E. Adams, is also entitled to recover punitive damages in an amount to be proven at trial.

WHEREFORE, your Plaintiff prays for judgment against Defendants, jointly and severally, in an amount of actual damages sufficient to compensate the Plaintiff for the

damages and losses suffer by the statutory beneficiaries on the wrongful death cause of action and for all actual damages, pain and suffering for the benefit of the estate of Jacob E. Adams on the survivorship cause of action, and for punitive damages as may be awarded by a jury and for such other and further relief as the Court may deem just and proper.

BY:


James W. Boyd
Post Office Box 36425
Rock Hill, South Carolina 29732
(803) 328-2600

Nov. 30, 2011
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46- 03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
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Carolina, Inc., d/b/a Piedmont Medical)
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System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

AMENDED

PLAINTIFF'S RESPONSE TO STANDARD INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: The Plaintiff, Ann P. Adams
231 Bailey Avenue
Rock Hill, South Carolina 29732

Any and all employees of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System rendering treatment to Plaintiff;

Staci L. Versen-Rampey, NP, any and all other treating physicians and hospitals, including but not limited to, members of their respective staffs, with respect to treatment rendered to the Plaintiff, Jacob Adams;

Jason Price, Radiologic Technologist, any and all other treating physicians and hospitals, including but not limited to, members of their respective staffs, with respect to treatment rendered to the Plaintiff, Jacob Adams;

James E. Reinhardt, M.D., Radiologist, any and all other treating physicians and hospitals, including but not limited to, members of their respective staffs, with respect to treatment rendered to the Plaintiff, Jacob Adams;

No statements have been taken from any of the above witnesses. This interrogatory may be supplemented at such time that Plaintiff becomes aware of additional information responsive to this interrogatory.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: No such items exist at this time

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

RESPONSE:

Piedmont Medical Center
222 S. Herlong Avenue
Rock Hill SC 29732

Presbyterian Hospital (Novant Health)
200 Hawthorne Lane
Charlotte, North Carolina 28204

Plaintiff, through her counsel, is in the process of obtaining further medical records and medical bills and will, therefore, supplement Plaintiff's response to this interrogatory once they are received. Further, the Plaintiff, through counsel, reserves the right to supplement as to any other treating physicians who may become known to Plaintiff's counsel.

4. Set forth the names and addresses of all insurance companies that have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE:

Plaintiff is unaware of insurance companies that have liability coverage and therefore is unable to respond as to numbers of policies or the amounts of liability coverage.

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

RESPONSE: Plaintiff's counsel is in the process of obtaining billing information as to monetary damages and will supplement at such time as these are available.

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

RESPONSE:

Sharon Oken, R.N., M.S.N., CCRN. CAN-BC

Sangjin Oh, M.D.

A.J. Taiouris, M.D.

Plaintiff reserves the right to further supplement her response to the Interrogatory at such time as other experts may be known to her or her counsel.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

Any and all treating physicians and hospitals, including members of their staffs, may testify as to the treatment (past and present) of the Plaintiff's Decedent, Jacob E. Adams;

Sharon Oken, R.N., M.S.N., CCRN. CNA-BC
will testify in accordance with her Affidavit, which is filed herewith.

Sangjin Oh will testify in accordance with his Affidavit, which is filed herewith.

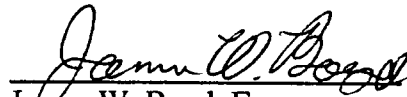
A.J. Taiouris, M.D. will testify in accordance with his Affidavit which is filed herewith

Any and all other treating physicians of the Plaintiff as may be identified in the future.

(Signatures on next page)

The Plaintiff, Ann P. Adams, as
Personal Representative of Estate of
Jacob E. Adams, Deceased

By her attorneys,



James W. Boyd, Esq.
P.O. Box 36425
Rock Hill, SC 29732
(803) 328-2600

Rock Hill, South Carolina
November 30 2011

000058

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46- 03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

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LLC, and as Agent, Servant or Employee)
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Rock Hill Radiology Associates, P.A.)
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Defendants.)

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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Amended

AFFIDAVIT OF EXPERT SANGJIN OH, M.D.

(S.C. Code Ann. §15-36-100)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING
DULY SWORN, STATES AS FOLLOWS:

1. I am Board Certified in Neurology and Vascular Neurology by the
American Board of Psychiatry and Neurology. I have been actively practicing

medicine since 2002 and performed a residency with the University of Maryland Medical Center, Department of Neurology, from 2003 through 2006.

2. I was Neurology Chief Resident – University of Maryland Medical Center, from 2005 through 2006. My clinical practice has involved various aspects of Neurology and, more specifically, Vascular Neurology. Because of my expertise in these areas, I am trained and qualified to deal with health issues such as those presented by the Plaintiff's Decedent in this action, Jacob E. Adams.
3. My education, training, and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care rendered to Jacob Adams.
4. From the year 2007 until the present, I have been a staff Neurologist with the Baltimore Washington Medical Center Primary Stroke Center. I am also an Assistant Clinical Professor in the Department of Neurology at the University of Maryland.
5. Additionally, I have served and continue to serve as a Partner of Maryland Institute of Neurological Disorders and Sleep.
6. I am familiar with the standard of care as to what a reasonably prudent physician would do or not do in assessing a situation as was the case with the Plaintiff's Decedent, Jacob E. Adams.
7. I have reviewed the medical records for Jacob E. Adams from Piedmont Medical Center and Presbyterian Hospital.
8. The records I have reviewed are the type of documents that I would consider in rendering a medical opinion in this case. After my review of these

records, it is my opinion, to a reasonable degree of medical certainty, that Piedmont Medical Center committed negligent acts or omissions, including but not limited to the following

- (a) Failure to monitor a patient who sustained a cerebral contusion/hemorrhage; CT scan at 17:44 on 10/20/08 showed "an area of vague increased attenuation in the right temporoparietal region consistent with an area of contusion".
- (b) Failure to repeat the CT scan of the head in 3-6 hours to be certain that the contusion/hemorrhage had not enlarged (increased in size).
- (c) Failure to monitor a patient who was supratherapeutic on Coumadin (INR of 3.3) and had sustained a contusion on the brain.
- (d) Failure to monitor a patient and provide appropriate care when the bleed worsened.
- (e) Failure to timely offer vitamin K and FFP to reverse the hypercoagulability caused by the Coumadin
- (f) Failure to seek treatment and monitoring by a neurosurgeon when the patient's symptoms worsened. Without this sort of intervention, the outcome after the contusion significantly diminished Mr. Adams' chances of a positive outcome after suffering the cerebral contusion/hemorrhage.

9. For the above reasons, it is my opinion that, in the treatment of the patient, Jacob E. Adams, Piedmont Medical Center and its agents, servants and employees breached the standard of care expected of a prudent physician or

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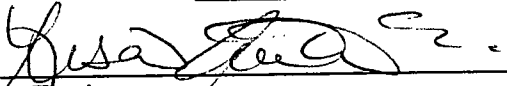
facility and was, to a reasonable degree of medical certainty, responsible for the death of Plaintiff's Decedent, Jacob E. Adams..

10. I reserve the right to supplement or amend this affidavit and/or my professional opinion after reviewing additional medical records, depositions, or other information relating to the care or treatment of Jacob E. Adams.



Sangjin Oh, M.D.

Sworn to me before me this 29th of Oct., 2011

Notary Public: 
My Commission Expires: _____

(Official seal to be affixed to original document)

LISA A. WILKES EVANS
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
MY COMMISSION EXPIRES 08/04/2014

Curriculum Vitae

Sangjin Oh, MD

EDUCATION:	<p>Doctor of Medicine (M.D.) May, 2002 Saint Louis University School of Medicine</p> <p>Bachelor of Science (B.S.), Cum Laude, Neuroscience June, 1997 University of California, Los Angeles</p>
BOARD CERTIFICATION:	<p>Neurology 2007 American Board of Psychiatry and Neurology</p> <p>Vascular Neurology 2009 American Board of Psychiatry and Neurology</p>
EMPLOYMENT:	<p>Partner – neurologist 2007-present Maryland Institute of Neurological Disorders and Sleep MINDS – www.mindsmd.com</p> <ul style="list-style-type: none"> • Comprehensive neurology and sleep clinic • EMG/NCV/EEG/botox/carotid dopplers <p>Staff neurologist 2007-present Baltimore Washington Medical Center Primary Stroke Center</p> <ul style="list-style-type: none"> • Multidisciplinary Stroke Committee • Primary stroke call • Consultant <p>Assistant Clinical Professor 2007-present University of Maryland Medical Center Department of Neurology</p>
TRAINING:	<p>Multiple Sclerosis Fellow 2006-2007 University of Maryland Medical Center VA Medical Center, MS Center of Excellence</p> <p>Neuromuscular Training (part time) 2006-2007 NCV/EMG training</p> <p>Neurology Chief Resident 2005-2006 Neurology Residency 2003-2006 University of Maryland Medical Center</p> <p>Internship 2002-2003 Mercy Medical Center, Baltimore</p>
AWARDS:	<p>Top Doc (Neurology) 2009 <i>What's Up Annapolis Magazine</i></p> <p>Humanism Honor Society 2005 University of Maryland School of Medicine</p>

ADMINISTRATIVE SERVICE:	<p>National Multiple Sclerosis Society Maryland Chapter Clinical Advisory Committee</p> <p>Residency curriculum committee University of Maryland - Department of Neurology</p>	<p>2010-present</p> <p>2005-2006</p>
TEACHING SERVICE:	<p>Resident teaching Harbor Hospital</p> <ul style="list-style-type: none"> • Annual multiple sclerosis lecture <p>Medical student teaching University of Maryland</p> <ul style="list-style-type: none"> • Annual movement disorder video presentation • Monthly case discussions to third-year students 	<p>2008-present</p> <p>2004-2006 2003-2006</p>
RESEARCH:	<p>Cognitive Neurology Research Johns Hopkins University</p> <ul style="list-style-type: none"> • Administer language tests on aphasic patients <p>Research Assistant St. Louis University</p> <ul style="list-style-type: none"> • Conducted spectro-analysis of rat cerebellum 	<p>2001-2002</p> <p>1999</p>
PROFESSIONAL MEMBERSHIP:	<p>Member of American Academy of Neurology</p> <p>Member of American Medical Association</p>	<p>2003-present</p> <p>1998-present</p>
PRESENTATIONS:	<p>Journal club Mercy Medical Center</p> <ul style="list-style-type: none"> • Alzheimer's disease • Multiple sclerosis <p>Neurology Grand Rounds Case Conference University of Maryland</p> <ul style="list-style-type: none"> • Nocturnal frontal lobe epilepsy • Recurrent transverse myelitis • Episodic ataxia type 2 • Korsakoff amnesic syndrome • Mortality and Morbidity • Lymphomatous meningitis <p>Medicine Grand Rounds Baltimore Washington Medical Center Multiple Sclerosis: Overview</p>	<p>2002 2003</p> <p>2005 2005 2005 2006 2006 2006</p> <p>2007</p>
PUBLICATIONS:	<p>Ziai WC, Oh S, Razumovsky AY, Wityk RJ. Quantitation of contrast TCD in patients with and without atrial septal aneurysm. <i>Journal of Neuroimaging</i>, 15(3):250-3, 2005 Jul.</p>	

Hillis AE, Oh S, Ken L. Deterioration of naming nouns versus verbs in primary progressive aphasia. *Annals of Neurology*, 55(2):268-75, 2004.

Hillis AE, Ulatowski JA, Barker PB, Torbey M, Ziai W, Beauchamp NJ, Oh S, Wityk RJ. A pilot randomized trial of induced blood pressure elevation: effects on function and focal perfusion in acute and subacute stroke. *Cerebrovascular Diseases*, 16(3):236-46, 2003.

ABSTRACTS:

ANA Meeting 2005

Shulman LM, Oh S, Anderson KE, Gruber-Baldini A, Fishman PS, Reich SG, Weiner, WJ. *Comparison of Disability and Quality of Life in Chronic Neurological Disorders* [950318].

Stroke Meeting 2003

Oh S, Torbey MT, Ziai WC. *Decompressive Surgery for Brain Edema: Trends and Practices in the State of Maryland* [ID101006, P148].

AAN Meeting 2003

Oh S, Ziai WC, Razumovsky AY, Wityk RJ. *Quantitation of Contrast TCD in Patients with and without Atrial Septal Aneurysm* [S23.003].

Ziai WC, Torbey MT, Oh S. *Trends and Practices of Decompressive Surgery for Refractory Brain Edema* [P05.047].

AAN Meeting 2002

Oh S, Hillis AE. *Disproportionate Impairment of Verbs in Oral but Not Written Naming in Primary Progressive Aphasia* [S65.003].

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46- D3984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA. and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)

Defendants.)

FILED-RECEIVED
2011 DEC -1 PM 2:36
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

AmENDED

AFFIDAVIT OF EXPERT SHARON ABOULAFIA OKEN, R.N., M.S.N., CCRN,
CNA,BC

(S.C. Code Ann. §15-36-100)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING
DULY SWORN, STATES AS FOLLOWS:

1. I became licensed as an R.N. in the State of New York in 1980 and am
currently licensed as such. I received my B.S.N. from Buffalo University in 1980.

Further, I received my M.S.N In Nursing Administration from Hunter CUNY in 1984. I am a certified critical care nurse and have been active in this area since 1984. In 1986, I became a Board Certified Nursing Administrator. Further, I have been an Instructor of Basic Life Support since 1990 and an Instructor of Advanced Cardiac Life Support since 1991.

2. I began my nursing career in 1980 as a clinical nurse in the ICU at the University Hospital of Cleveland, Cleveland, Ohio. In 1982, I served as Charge/Clinical Nurse in the ICU at New York Presbyterian Hospital. As referenced in the attached CV, I have served in this capacity in several other facilities. In 1987, I became the Associate Director of Nursing – Surgical/ICU Division at the State University of New York-Health Sciences Center in Brooklyn, New York. After serving in that position for 3 years, I began working for Bronx-Lebanon Hospital Center, Bronx, New York as Assistant Director of Nursing – Quality Improvement/Risk Management. Further, I was ACLS/BCLS Program Coordinator and Educational Specialist for ICU/ED, Med Surg. In 1990, I began my present position as Clinical Instructor ICU (as well as other noted positions specified on my CV). I am also a Professor/Clinical Instructor at Pace University, Pleasantville New York and have been so since 1996. Likewise, I have reviewed medical cases since 2003 and I am also serving as a Professor/Clinical Instructor at Molloy College, Rockville Center, New York. Because of my expertise in these areas, I am trained and qualified to deal with the emergency room standards of care such as are at issue in the emergent care of the Plaintiff's Decedent in this action, Jacob E. Adams.

3. My education, training, and experience are set forth in the attached CV (Exhibit B). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care rendered to Jacob E. Adams.

4. My qualifications, education and work experience have been expounded upon in Paragraph 2 of this Affidavit..

5. Additionally, I have been recognized in Who's Who in American Nursing each year from 1989 to the present and, as noted in my CV, have had other appointments related to my profession as a Nurse and Nursing Instructor.

6. I am familiar with the standard of care as to what a reasonably prudent nurse would do or not do in assessing a situation as was the case with the Plaintiff's Decedent, Jacob E. Adams.

7. I have reviewed the medical records for Jacob E. Adams from Piedmont Medical Center and Presbyterian Hospital.

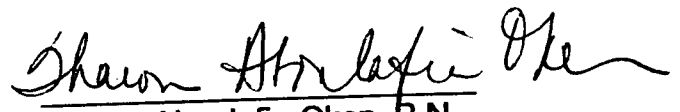
8. The records I have reviewed are the type of documents that I would consider in rendering a medical opinion in this case. After my review of these records, it is my opinion, to a reasonable degree of medical certainty, that Piedmont Medical Center, and Nurse Staci L. Versen-Rampey, Individually and as Agent, Servant, or Employee committed negligent acts or omissions, including but not limited to the following

- (a) Failure to consult a Neurologist knowing the patient's history, the acute injury, CT results and anticoagulation status.

- (b) Failure to recognize and/or consult an MD regarding the implications of the assessment of bradycardia and hypertension in a head trauma patient.
- (c) Failure to recognize and properly monitor for at least 24 hours (which is considered the most dangerous time frame in head trauma patients) given the implications of an anticoagulated patient with head trauma, as it relates to increased risk of hemorrhage.

9. For the above reasons, it is my opinion that, in the treatment of the patient, Jacob E. Adams, Nurse Staci L. Versen-Rampey, NP and Piedmont Medical Center breached the standard of care expected of a prudent emergency department nurse practitioner and was, to a reasonable degree of nursing certainty, contributory in the demise of Plaintiff's Decedent, Jacob E. Adams..

10. I reserve the right to supplement or amend this affidavit and/or my professional opinion after reviewing additional medical records, depositions, or other information relating to the care or treatment of Jacob E. Adams.


Sharon Aboulafia Oken, R.N.

Sworn to me before me this 4th of November, 2011

Notary Public: 

My Commission Expires: 01/24/2015

(Official seal to be applied to original document)

GEETA GANGARAM
Notary Public, State of New York
Qualified in Queens County
No. 01GA0234762
My Commission Expires 01-24-2015

SHARON ABOULAFIA OKEN, R.N., M.S.N., CCRN, CNA

OBJECTIVE: A Nursing Educator position that will allow me to utilize my administrative, teaching and clinical expertise in a self-initiating and strategic manner.

SUMMARY: A dynamic Nurse educator who has successfully elevated standards of practice and professionalism in many hospitals and health care environments. As a focused problem solver and exceptional people motivator, I have evaluated, developed, coordinated and implemented new and revised projects, clinical approaches, and policy changes effectively and efficiently. My comprehensive educational, quality improvement, clinical and management experience, in conjunction with my ability to naturally relate to all levels of health care personnel, has granted accomplishment to each position I have held.

QUALIFICATIONS AND ACHIEVEMENTS

Administrative Experience

- Managed 8 surgical units (including 3 ICU's and 2 outpatient clinics) and the leadership of them. Responsible for hiring, evaluating, directing and counseling management team.
- Supervised a staff of 65 people including 6 Nursing Care Coordinators for 4 ICU's.
- Chaired results oriented committees including: Hospital ICU Reorganization, Interdisciplinary Rounds, Practice and Standards, Quality Improvement, Cardiac Rehabilitation, Oriented Programming, Unit Based Nursing Education and AIDS Task Force.
- Assessed, planned, implemented and evaluated new and/or revised policies and practices for staff and leadership level nurses. These included both clinical and management practice changes.
- Motivated and excited staff toward improvement of performance, time management and acceptance of budgetary reductions.

Educational Experience

- Certified professional staff (including R.N.'s, M.D.'s, P.A.'s, C.R.N.A.'s) and coordinated ACLS and BCLS hospital wide program, embracing an interdisciplinary approach.
- Supervised education and orientation for new Emergency Room nurses and designed ongoing educational programs for ICU and ER staff.
- Presented dozens of highly visible seminars while traveling nationally on relevant topics and state of the art interests; presented at Nursing Grand Rounds in the hospital.
- Lectured, taught and certified laypersons and patients in various health care settings including inpatient, private and professional offices and homes.
- Adjunct and/or Associate Professor and faculty member for Masters, Bachelors and High School level students throughout my career.

Quality Improvement and Clinical Expertise

- Assessed, designed and implemented Quality Improvement Programs, both unit based and hospital wide; responsible for keeping accurate records and presenting to JCAHO.
- Responsible for tackling problems that create high-risk situations, and strategically designing programs to correct them.
- Lead team and Interdisciplinary Quality Improvement Conferences on patient care issues to evaluate and improve clinical outcomes.
- Delivered Intensive Nursing Care to patients in both hospital and home settings, as a Clinical Staff member and as an Independent Consultant.

PROFESSIONAL EXPERIENCE

- 2003 - Present Nursing Consultant
Health Related Case Reviewer
- 1996 - Present Pace University, Pleasantville, NY
Professor / Clinical Instructor
- 1990 - Present Long Island North Shore University/North Shore Hospital System, L.I., NY
Clinical Instructor ICU's/Clinical Nurse ICU's /ACLS /BCLS Instructor
- 1990 - 1996 Bronx-Lebanon Hospital Center, Bronx, NY
1994 - 1996 Assistant Director Nursing - Quality Improvement/Risk Management
1992 - 1994 ACLS/BCLS Program Coordinator
1990 - 1992 Educational Specialist
- 1987 - 1990 State University of New York-Health Science Center at Brooklyn, Brooklyn, NY
Associate Director Nursing - Surgical / ICU Division
- 1984 - 1987 St. Lukes/Roosevelt Hospital Center, NYC
Clinical Manager, ICU's
- 1985 - 1987 Home Health Care America, NYC
Clinical Manager (part-time evenings)
- 1984 - 1985 Florence Nightingale Nursing Home, NYC
Supervisor (part-time evenings)
- 1982 - 1984 New York Hospital-Cornell Medical Center, NYC
Charge/Clinical Nurse
- 1980 - 1982 University Hospital of Cleveland, Cleveland, OH
Clinical Nurse, ICU

APPOINTMENTS

- 2003-Present Surrogate Decision Making Committee Panel Member-New York State Commission on Quality of Care for Mentally Disabled
- 1996-Present Associate Professor/Clinical Instructor for BSN Program and CDP (Combined Degree Program) - Pace University
- 1992-1996 Mentor for Taft High School Students in Health Care Academy Program
- 1985-1989 Adjunct Faculty Member for Masters Clinical Nurse Specialist Program - Columbia University
- 1989-1990 Adjunct Faculty and Preceptor to Masters Students in SUNY HSCB in Clinical Nurse Specialist Program

EDUCATION AND CERTIFICATIONS

- M.S.N. Received in Nursing Administration from Hunter CUNY 1984
- B.S.N. Received from Buffalo University 1980
- CCRN Certified and active since 1984 (#29644)
- CNA Certified and active since 1986 (#1032739)
- BCLS Instructor since 1990
- ACLS Instructor since 1991

PUBLICATIONS AND RECOGNITIONS

- Nursing 1989 IV Drug Handbook - Chapter Author, Springhouse Corp. - 1989
- Recognized in "Who's Who in American Nursing" each year from 1989 to present

PROFESSIONAL AFFILIATIONS

- R.N. License (New York) since 1980 (#333985-1)
- AACN (American Association of Critical Care Nurses) Member since 1981 (#123941)
- Sigma Theta Tau Honor Society 1984 - Present
- AONE (American Organization of Nurse Executives) 1987 - Present
- ANA (American Nurses Association) 1980 - Present

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
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Jason Price, Radiologic Technologist,)
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LLC,)
Defendants.)

FILED-RECEIVED
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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Amended

AFFIDAVIT OF EXPERT, APOSTOLOS J. TSIOURIS M.D.

(S.C. Code Ann. §15-36-100)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING
DULY SWORN, STATES AS FOLLOWS:

1. I am Board Certified in Radiology (since November 2, 2002) and have a
CAQ in Neuroradiology (since November 6, 2005). I attended the Cornell

University Medical College in New York, New York from 1993 – 1997. I began my career in medicine as an Intern at Lenox Hill Hospital, New York, New York from 1997 – 1998. I completed residency in Diagnostic Radiology at the New York Presbyterian Hospital – Weill Cornell Medical Center, New York, New York from 1998 through 2002. I became licensed to practice medicine in New York State in December, 2002. I completed an ECGME approved fellowship in neuroradiology at the New York Presbyterian Hospital – Weill Cornell Medical Center and Memorial Sloan Kettering Cancer Center, New York, New York from July 2002 through June 2003.

3. My clinical practice involves only the practice of neuroradiology. Because of my expertise in the aforementioned area, I am trained and qualified to deal with health issues such as those presented by the Plaintiff's Decedent in this action, Jacob E. Adams.

3. My education, training, and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care rendered to Jacob Adams.

4. I am currently employed as a full-time attending physician with New York Presbyterian Hospital. Additionally, I am an Associated Professor of Clinical Radiology at Weill Cornell Medical Center.

5. Additionally, I teach at the Weill Cornell Medical College and have contributed to numerous articles that have appeared in professional peer-reviewed journals.

6. I am familiar with the standard of care as to what a reasonably prudent physician (and in this particular case, a Neuroradiologist/Radiologist) would do or not do in assessing a situation as was the case with the Plaintiff's Decedent, Jacob E. Adams.

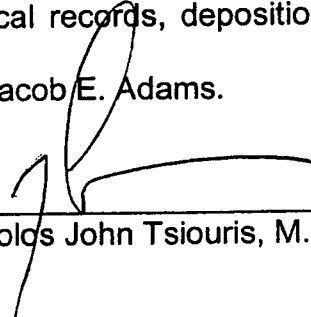
7. I have reviewed the computed tomographic (CT) imaging studies for Jacob E. Adams from Piedmont Medical Center and Presbyterian Hospital.

8. The imaging studies I have reviewed are the type of documents that I would consider in rendering a medical opinion in this case. After my review of these records, it is my opinion, to a reasonable degree of medical certainty, that Piedmont Medical Center, through its agents, servants and employees, committed negligent acts or omissions, including but not limited to the following

(a) Failure to diagnose subarachnoid hemorrhage on the patient's post-traumatic CT scan dated October 20, 2008.

9. For the above reason, it is my opinion that, in the treatment of the patient, Jacob E. Adams, Piedmont Medical Center and its agents, servants and employees breached the standard of care expected of a prudent physician or facility and was, to a reasonable degree of medical certainty, responsible for the death of Plaintiff's Decedent, Jacob E. Adams.

10. I reserve the right to supplement or amend this affidavit and/or my professional opinion after reviewing additional medical records, depositions, or other information relating to the care or treatment of Jacob E. Adams.



Apostolos John Tsiouris, M.D.

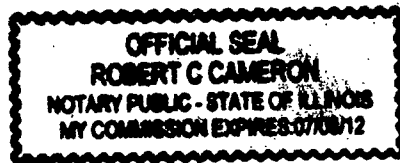
000075

Sworn to me before me this 28th of November, 2011

Notary Public: Robert C. Cameron July 8, 2012

My Commission Expires: 7.8.2012

(Official seal to be affixed to original document)



Weill Cornell Medical College *Curriculum vitae* and Bibliography

Date of preparation: June 2, 2011

A. GENERAL INFORMATION

1. Name: Apostolos John Tsiouris, M.D.
2. Citizenship: USA

If not USA, do you have:

- (a) An immigrant visa?
- (b) A non-immigrant visa?

3. Optional Information:
 - a. Date of birth: January 12, 1972
 - b. Place of birth: Greece
 - c. Marital status: Married
 - d. Spouse's name: Justine Schiro
 - e. Children's names and ages: None
 - f. Race/Ethnicity: White

B. EDUCATIONAL BACKGROUND

1. Degree(s)

Degree	Institution	Dates attended	Year awarded
B.A.	The Johns Hopkins University Baltimore, MD	Aug. 1989 – June 1993	1993
M.D.	Cornell University Medical College New York, NY	Aug. 1993 – June 1997	1997

C. PROFESSIONAL POSITIONS AND EMPLOYMENT

1. Post-doctoral training

Title	Institution name and location	Dates held
Intern	Lenox Hill Hospital, New York, NY; Internship in Medicine	July 1997 – June 1998
Resident	NewYork-Presbyterian Hospital – Weill Cornell Medical Center, New York, NY; Residency in Diagnostic Radiology	July 1998 – June 2002
Fellow	NewYork-Presbyterian Hospital – Weill Cornell Medical Center and Memorial Sloan Kettering, New York, NY; Fellowship in Neuroradiology (Chief)	July 2002 – June 2003

2. Academic positions

Title	Institution	Dates held
Assistant Professor of Radiology	NewYork-Presbyterian Hospital – Weill Cornell Medical Center New York, NY	July 2003 - 2009
Associate Professor of Clinical Radiology	NewYork-Presbyterian Hospital – Weill Cornell Medical Center New York, NY	July 2009 – present

3. Hospital positions

Title	Institution	Dates held
Attending Physician	NewYork-Presbyterian Hospital – Weill Cornell Medical Center New York, NY	July 2003 - present

4. Other Employment

Title	Institution	Dates held
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D. LICENSURE, BOARD CERTIFICATION, MALPRACTICE

1. <u>Licensure</u> State	Number	Date of issue	Date of last Registration
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CV: A. J. Tsiouris, M.D.

Alpha Omega Alpha – Cornell Medical	1995
Hellenic Medical Society Scholarship	1994
NIH Summer Research Fellowship	1994
Phi Beta Kappa – Johns Hopkins	1993
Psi Chi National Psychology Honors Society	1992

G. INSTITUTIONAL/HOSPITAL AFFILIATION

1. Primary Hospital Affiliation
 - a. NYPH – WCMC
2. Other Hospital Affiliations
 - a. Hospital for Special Surgery
3. Other Institutional Affiliations

H. EMPLOYMENT STATUS

1. Name of Current Employer(s):

NYPH - WCMC
2. Employment Status: *Full-time salaried by Cornell*

I. CURRENT AND PAST INSTITUTIONAL RESPONSIBILITIES AND PERCENT EFFORT

1. Teaching
 - (1) Medical Students
 - (a) *Brain and Mind*, 2003-present
 - (i) Present three radiology-anatomy correlative lectures annually to small groups on the skull base, the orbits and the neck
 - (ii) Give two 1½ hr lectures annually on the introduction to neurological imaging
 - (iii) Present B&M lectures via teleconference to the WCMC-Qatar
 - (b) *Human Structure and Function*, 2008-present
 - (i) Give one lecture annually on anatomy and imaging of the spine
 - (c) Medical student advisor, 2004-present
 - (d) Course director/sponsor for the Neuroradiology RAD.110B.NY medical student elective, 2003-present.
 - (e) Give 1 hr monthly lecture to rotating medical students on neuroanatomy and neuroimaging techniques for the Introduction to Clinical Imaging elective RAD.104.NY, 2004-present.
 - (2) Residents

- (a) Radiology residents
 - (i) Didactic neuroradiology lectures, given annually 2005-present
 - 1. Introduction to MR imaging of the Spine, 2 annual 1 hr lectures
 - 2. Clinical MR Spectroscopy
 - 3. Orbital Pathology
 - 4. Imaging of Aneurysms
 - 5. MR Artifacts
 - (ii) Board Review, given annually 2003-present
 - 1. 6 hours of board review in the form of simulated oral board examination including cases in cerebrovascular disease, congenital anomalies of the brain and spine, brain neoplasms, head and neck neoplasms, inflammatory and infectious diseases of the brain, spine, head and neck, spinal neoplasms, head and spine trauma, etc
 - (iii) Rating have been consistently above 4.9/5 by residents
- (3) Neurosurgery residents
 - (a) Weekly neurosurgery teaching conference, 2006-present
 - (i) Review interesting and challenging neurosurgical cases with neurosurgery residents and attendings; discussions include patient presentation, interpretation of imaging examinations, discussion of differential diagnoses, treatment decisions and surgical outcomes.
 - (ii) Annual NS board review in neuroimaging interpretation, 4 hrs
 - (iii) Ratings: Consistently cited by neurosurgery residents as one of the most valuable teaching conferences.
- (4) Neuroradiology fellows
 - (a) Neuroradiology fellow annual lectures, 2003-present
 - (i) MR Spectroscopy
 - (ii) Imaging of Spinal Neoplasms
 - (b) Neuroradiology CAQ review
 - (i) 4 hours annually of simulated oral board CAQ examination
- (5) Neurosurgery PA/RN course instructor, 2006-present
 - (a) Present three annual 1hr lectures followed by a Q&A session to the neurosurgery staff reviewing neuroimaging tailored to the PA/RN level. These lectures are part of a neurosurgery course run by Dr. John Boockvar designed to further educate the neurosurgery physician extenders, assistants and nurses. My lectures focus on radiation and MR safety, issues with contrast in imaging, ordering the appropriate examination, and basic imaging interpretation.
- (6) Invited CME Lectures
 - (a) Brain Attack and Cerebrovascular Disease Update 2010, New York, NY. March 5, 2010. *Advanced Neuroimaging Techniques for Stroke*.
 - (b) Brain Attack and Cerebrovascular Disease Update 2009, New York, NY. March 27, 2009. *Advanced CT and MR Imaging in Stroke*.
 - (c) Neurosurgery Grand Rounds, New York, NY. February 23, 2009. *What You Need To Know About Identity Theft*.
 - (d) American Society for Neuroradiology Annual Meeting 2008, New Orleans, LA. June 1, 2008. *Cerebrovascular Disease Case Based Review*.

CV: A. J. Tsiouris, M.D.

- (e) Cornell Neurology Grand Rounds 2008, New York, NY. March 5, 2008. *Advanced Imaging of Stroke*.
- (f) Brain Attack and Cerebrovascular Disease Update 2007, New York, NY. November 9, 2007. *Advanced CT and MR Imaging in Stroke*.
- (g) Cornell Neurology Grand Rounds 2006, New York, NY, November 9, 2006. *MR Imaging of Creutzfeldt Jacob Disease*.
- (h) HSS CPC on CNS Vasculitis 2006, New York, NY. May 31, 2006. *Neuroimaging of CNS Vasculitis*.
- (i) New York Roentgen Ray Society Annual Meeting 2005, New York, NY. April 1, 2005. *3 Tesla MRI of the Brain*.
- (7) Mentorships, Advising and Supervision
 - (a) Mentor and supervise medical students, residents, and fellows in Neuroradiology research and academic publication:
 - (i) Sahil Sood and Ajay Gupta, 2009. Currently mentoring these radiology residents and co-authoring a chapter in Seminars in Roentgenology on Advanced Brain MR Imaging Techniques (diffusion weighted imaging, perfusion imaging, DTI, tractography).
 - (ii) Stuart Bentley-Hibbert 2007-2008. Mentored this radiology resident in writing an IRB that was accepted in 2007 on utilizing MRA angiography to diagnose recurrent aneurysms status post endovascular GDC embolization. Research project is currently active.
 - (iii) Monica Deshmukh, 2005. Mentored this visiting medical student from UMDNJ in writing a case report on a rare orbital pathological process.
 - (b) Mentor and advise radiology residents and neuroradiology fellows on career opportunities in academic medicine and private practice:
 - (i) Zuzan Cacyi, 2005-2008. Former Cornell neuroradiology fellow, now assistant professor at WCMC.
 - (ii) Walter Zink, 2007-2009. Current Cornell neuroradiology fellow, starting INR fellowship at WCMC July 2009.
 - (iii) Thomas Keane, 2005-2008. Former Cornell radiology resident, now interventional radiology fellow at The Johns Hopkins University.
 - (iv) Sanjay Chakrapani, 2005-2008. Former Cornell radiology resident, now in private practice in Portland, Oregon.
 - (v) Michael Kim, 2005-2006. Former Cornell medical student, now a senior radiology resident at UCSF.
 - (vi) Stella Kang, 2006-2007. Former Cornell medical student, now a radiology resident at NYU.
 - (vii) Rebecca Johnson, 2004-2006. Former Cornell radiology resident, now in private practice in NJ.

2. Clinical care (duties, dates)

- (1) Neuroimaging interpretation, 2003-present
- (2) Neurointerventional procedures (i.e. lumbar punctures, myelograms, biopsies), 2003-present
- (3) Provide consultation to referring physicians and patients

CV: A. J. Tsiouris, M.D.

- (4) Responsible for Neurological MRI imaging quality and protocol management
3. Administrative duties, including committees, dates
 - (1) Education Committee Member, 2003-present
 - (2) Radiology Admissions Committee Member, 2003-present
 - (3) Neuroradiology Fellow Selection Committee, 2003-present
 - (4) QPS Committee Member, 2004-present
 - (5) QPI Committee Member, 2008-present
 - (a) Organize and lead monthly CME QPS Radiology Morbidity and Mortality conference
 - (6) MRI Modality Committee Member, 2003-present
 - (7) Cornell Radiology Web Design and Maintenance, 2005-present
4. Research
 - a. Investigating 1.5 Tesla and 3 Tesla MR angiographic imaging in comparison to digital subtraction angiography for the evaluation of intracranial aneurysms treated with detachable platinum coils (current IRB)
 - b. Collaborating with Dr. Y. Pierre Gobin and Dr. Howard Riina investigating the efficacy of various endovascular coils and Neuroform stents in the treatment of intracranial aneurysms
 - c. Collaborating with Dr. Pina Sanelli investigating CT Perfusion as a clinically useful tool

<u>Current Percent Effort (%)</u>	<u>Does the activity involve WMC students/researchers? (Yes/No)</u>
Teaching 25%	YES
Clinical Care 60%	YES
Administration 5%	YES
Research 10%	YES
TOTAL: 100%	

J. RESEARCH SUPPORT

Funding agency: National Institute of Neurological Disorders and Stroke (NINDS)
Amount: \$171,504 per year
Duration: 8/08 – 7/13
Percent effort: 3%
Title: *Improving Clinical Outcomes in Aneurysmal Subarachnoid Hemorrhage Using CT Perfusion*
Principal investigator: Pina C. Sanelli, MD MPH

Funding agency: American Heart Association
Amount: \$75,000 per year
Duration: 12/07 – 7/08
Percent effort: 1%

CV: A. J. Tsiouris, M.D.

Title: *Improving Clinical Outcomes in Aneurysmal Subarachnoid Hemorrhage Using CT Perfusion*

Principal investigator: Pina C. Sanelli, MD MPH

Funding agency: Neuroradiology Education and Research Foundation

Amount: \$60,000 per year

Duration: 12/07 – 11/09

Percent effort: 1%

Title: *Assessing the Value of CT Perfusion in Improving Clinical Outcomes in Aneurysmal Subarachnoid Hemorrhage Using a Decision Analytic Model*

Principal investigator: Pina C. Sanelli, MD MPH

K. EXTRAMURAL PROFESSIONAL RESPONSIBILITIES

- a. Education committee member, ASNR 2007-present
- b. Radiographics Educational Exhibits Reviewer, RSNA 2007-present
- c. ASNR Abstract Reviewer, 2008-present
- d. Reviewer: The Journal of Radiology Case Reports
- e. Multi-disciplinary conferences
 - (1) Lead weekly INR neurovascular conference
 - (2) Lead weekly neurosurgery case conference
 - (3) Lead weekly ophthalmology conference
 - (4) Participate in weekly neurology neurovascular, neuro-oncology tumor board, and pediatric neurology conferences

L. BIBLIOGRAPHY

1. Articles in professional peer-reviewed journals

1. Bare Platinum Versus Matrix Detachable Coils for the Endovascular Treatment Of Intracranial Aneurysm: A Multivariate Logistic Regression Analysis and Review of the Literature. MJ Smith, J Mascitelli, A Santillan, J Brennan, MA Sousa, AJ Tsiouris, HA Riina, YP Gobin. Neurosurgery, April 2011.
2. The Value of Intraoperative Electrocochography in Surgical Decision-making for Temporal Lobe Epilepsy with Normal MRI. N Luther, E Rubens, N Sethi, P Kandula, D Labar, C Harden, K Perrine, P Christos, JB Iorgulescu, G Lancman, N Schaul, DV Kolesnik, S Nouri, A Dawson, AJ Tsiouris, TH Schwartz. Epilepsia:1-8, 2011
3. Safety and Maximum Tolerated Dose of Superselective Intraarterial Cerebral Infusion of Bevacizumab after Osmotic Blood-Brain Barrier Disruption for Recurrent Malignant Glioma. JA Boockvar, AJ Tsiouris, CP Hofstetter, I Kovanlikaya, S Fralin, K Kesavabhotla, SM Seedial, SC Pannullo, TH

- Schwartz, P Stieg, RD Zimmerman, J Knopman, RJ Scheff, P Christos, S Vallabhajosula, and HA Riina. *J Neurosurg* Oct 2010
4. Endovascular Treatment of Spinal Arteriovenous Lesions: Beyond the Dural Fistula. A. Patsalides, J Knopman, A Santillan, **AJ Tsiouris**, H Riina, YP Gobin. *AJNR* 2010
 5. Endovascular Management of Spinal Dural Arteriovenous Fistulas. A. Patsalides, A. Santillan, J Knopman, **AJ Tsiouris**, H Riina, YP Gobin. *J. Neurointervent Surg* 2010
 6. Balloon-assisted Superselective Intra-arterial Cerebral Infusion of Bevacizumab for Malignant Brainstem Glioma. A Technical Note. HA Riina, J Knopman, JP Greenfield, S Fralin, YP Gobin, **AJ Tsiouris**, MM Souweidane, JA Boockvar. *Interv Neuroradiol* 2010; 16(1): 71-6
 7. Validation of a New Reference Standard for the Diagnosis of Vasospasm. M Reichman, R Gold, E Greenberg, J Ivanidze, E Elias, J Comunale, **AJ Tsiouris**, C Johnson, PC Sanelli. *Acad Radiol* 2010; 17:1083–1089
 8. Developing a New Reference Standard: Is Validation Necessary? R Gold, M Reichman, E Greenberg, J Ivanidze, E Elias, **AJ Tsiouris**, JP Comunale, CE Johnson, PC Sanelli. *Acad Radiol* 2010; 17:1079–1082
 9. Utilization Guidelines for Reducing Radiation Exposure in the Evaluation of Aneurysmal Subarachnoid Hemorrhage: A Practice Quality Improvement Project. ML Loftus, S Minkowitz, **AJ Tsiouris**, RJ Min, PC Sanelli. *AJR* 2010; 195:176–180
 10. The vertebral artery and the cervical pedicle: morphometric analysis of a critical neighborhood. A Tomasino, K Parikh, H Koller, W Zink, **AJ Tsiouris**, J Steinberger, and R Härtl. *J Neurosurg Spine* 13:52–60, 2010
 11. Endoscopic third ventriculostomy in patients with a diminished prepontine interval. MM Souweidane, PF Morgenstern, S Kang, **AJ Tsiouris**, J Roth. *Journal of Neurosurgery: Pediatrics*, 2010; Vol 5, No. 3
 12. Atraumatic epidural hematoma secondary to a venous sinus thrombosis: a novel finding. J Knopman, **AJ Tsiouris**, MM Souweidane. *Journal of Neurosurgery: Pediatrics*, 2008; Vol 2, No. 6
 13. Reproducibility of Postprocessing of Quantitative CT Perfusion Maps. P Sanelli, G Nicola, **AJ Tsiouris**, I Ougorets, C Knight, B Frommer, S Veronelli and RD Zimmerman. *AJR* 2007; 188:213-218.
 14. Effect of Training and Experience on Qualitative and Quantitative CT Perfusion

CV: A. J. Tsiouris, M.D.

Data. PC Sanelli, G Nicola, R Johnson, AJ Tsiouris, I Ougorets, C Knight, B Frommer, S Veronelli and RD Zimmerman. AJNR 28:428-432, March 2007.

15. Is routine intraoperative angiography in the surgical treatment of cerebral aneurysms justified? A consecutive series of 147 aneurysms. JM Katz, Y Gologorsky, AJ Tsiouris, D Wells-Roth, J Mascitelli, YP Gobin, PE Stieg, HA Riina. Neurosurgery. 2006 Apr; 58(4):719-27.
16. Advances in endovascular aneurysm treatment: are we making a difference? JM Katz, AJ Tsiouris, A Biondi, KA Salvaggio, I Ougorets, PE Stieg, HA Riina, YP Gobin. Neuroradiology. 2005 Sep; 47(9):695-701. Jul 19 2005.
17. Bilateral dacryops: correlation of clinical, radiologic, and histopathologic features. AJ Tsiouris, M Deshmukh, PC Sanelli, BG Brazzo. AJR. 2005 Jan; 184(1):321-3.
18. Leptomeningeal and ependymal invasion by glioblastoma multiforme. M Begemann, AJ Tsiouris, MG Malkin. Neurology. 2004 Aug 10; 63(3):E8.
19. Diffusion-tensor MR imaging in children with developmental delay: preliminary findings. CG Filippi, DD Lin, AJ Tsiouris, R Watts, AM Packard, LA Heier, Am Ulug. Radiology. 2003 Oct; 229(1):44-50. Epub 2003 Aug 14.

2. Books, book chapters and reviews.

Chapter editor: S Sood, A Gupta, AJ Tsiouris. Advanced Magnetic Resonance Techniques in Neuroimaging: Diffusion, Spectroscopy, and Perfusion. *Seminars in Roentgenology* April 2010 (Vol. 45, Issue 2, Pages 137-146)

Section editor: Jeffrey, Zimmerman, Manaster. *Diagnostic Imaging: Emergency*. AMIRSYS; 1 edition, October 4, 2007

3. Abstracts (Optional, not encouraged)
4. Presentations (Optional, not encouraged)

Date:

Signature:

CV: A. J. Tsiouris, M.D.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF
COMMON PLEAS

Ann P. Adams, as Personal)
Representative of Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

NOTICE OF MOTION
TO DISMISS

vs.)

Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

C. A. No. 2011-CP-46-03984

Jason Price, Radiologic Technologist,)
Individually and as Agent, Servant or)
Employee of Tenet Healthcare)
Corporation, Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Defendants.)

TO: JAMES W. BOYD, Esquire and D. BRADLEY JORDAN, Esquire of Jordan & Dunn,
LLC, Attorneys for Plaintiff

YOU WILL PLEASE TAKE NOTICE that Defendants Amisub of South Carolina,
Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System ("Amisub"),
and Jason Price, Radiologic Technologist, both individually and as alleged to be agent,
servant, and employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center

and d/b/a Piedmont Healthcare System ("Price"), will move, on the tenth (10th) day after service hereof, at 10:00 a.m., or as soon as counsel can be heard, before the presiding Judge of the Court of Common Pleas for York County, at such place as shall be established by the Court, for an Order dismissing the Notice of Intent to File Suit in this action, dated October 20, 2011 and filed on the same date. Additionally, Amisub and Price will move to dismiss the Summons and Complaint in this action, filed the same date, October 20, 2011. The said motion will be made pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. More particularly, both the Summons and Complaint and the Notice of Intent to File Suit are defective as a matter of law, inasmuch as the Notice of Intent to File Suit was not accompanied by a contemporaneously filed affidavit of an expert witness, pursuant to §15-79-125(A) of the Code of Laws of South Carolina (1976 as amended). More particularly, affidavits of purported experts were filed in this action on or about December 1, 2011 with the Amended Notice of Intent to File Suit, well after expiration of the three-year statute of limitations. Such subsequent filing of the purported affidavits of experts would be violative of §15-79-125(A) of the Code of Laws of South Carolina (1976 as amended) and the recent decision of the South Carolina Court of Appeals in Ranucci v. Crain, Op. No. 4935, filed January 25, 2012.

HOLCOMBE BOMAR, P.A.

By: 

William U. Gunn
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com

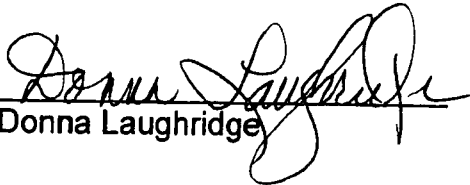
Spartanburg, SC

February 29, 2012

COUNSEL SERVED:

D. Bradley Jordan, Esquire
Jordan and Dunn, LLC
P.O. Box 11785
Rock Hill, SC 29731

James W. Boyd, Esquire
P.O. Box 36425
Rock Hill, SC 29732


Donna Laughridge

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF
COMMON PLEAS

Ann P. Adams, as Personal
Representative of Estate of
Jacob E. Adams, Deceased,

Plaintiff,

NOTICE OF MOTION
TO DISMISS AMENDED
NOTICE OF INTENT TO
FILE SUIT

vs.

Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

Staci L. Versen-Rampey, NP, Individually
and as Agent, Servant or Employee of
South Carolina Emergency Physicians,
LLC, and as Agent, Servant or Employee
of Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

C. A. No. 2011-CP-46-03984

Jason Price, Radiologic Technologist,
Individually and As Agent, Servant or
Employee of Amisub of South Carolina,
Inc., d/b/a Piedmont Medical Center and
d/b/a Piedmont Healthcare System; and

James E. Reinhardt, Jr., M.D.,
Individually and as Agent, Servant or
Employee of Rock Hill Radiology
Associates, PA, and as Agent, Servant or
Employee of Amisub of South
Carolina, Inc., d/b/a Piedmont Medical
Center and d/b/a Piedmont Healthcare
System;

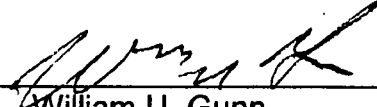
Rock Hill Radiology Associates, P.A.,
South Carolina Emergency Physicians,
LLC,

Defendants.

TO: JAMES W. BOYD, Esquire and D. BRADLEY JORDAN, Esquire of Jordan & Dunn, LLC, Attorneys for Plaintiff

YOU WILL PLEASE TAKE NOTICE that Defendants Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System ("Amisub"), and Jason Price, Radiologic Technologist, both individually and as alleged to be agent, servant, and employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System ("Price"), will move, on the tenth (10th) day after service hereof, at 10:00 a.m., or as soon as counsel can be heard, before the presiding Judge of the Court of Common Pleas for York County, at such place as shall be established by the Court, for an Order dismissing the Amended Notice of Intent to File Suit and Amended Summons and Amended Complaint. The said motion will be made pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. Additionally, moving Defendants will assert that it is undisputed on the record in this case that the three-year medical malpractice statute of limitations expired prior to filing of the Amended Notice of Intent to File Suit and Amended Summons and Complaint in this action. The said motion will be made pursuant to the case law and statutory law of the State of South Carolina and upon such further information or oral argument and submission of authorities as may be received by the Court.

HOLCOMBE BOMAR, P.A.

By: 
William U. Gunn
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com

Spartanburg, SC

February 29, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF
COMMON PLEAS

Ann P. Adams, as Personal)
Representative of Estate of)
Jacob E. Adams, Deceased,)

Plaintiff,)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA, and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System;)

Rock Hill Radiology Associates, P.A.,)
South Carolina Emergency Physicians,)
LLC,)

Defendants.)

CERTIFICATE OF SERVICE

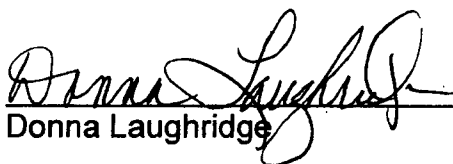
C. A. No. 2011-CP-46-03984

I, the undersigned paralegal in the law offices of Holcombe Bomar, P.A., attorneys for Defendants Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and Piedmont Healthcare System, and Jason Price, Radiology Technologist, certify that I have mailed by United States Mail a copy of the hereinbelow listed pleading to counsel in this matter on the 29th day of February, 2012 as follows:

PLEADING: Notice of Motion to Dismiss
Amended Notice of Intent to File Suit

COUNSEL SERVED: D. Bradley Jordan, Esquire
Jordan and Dunn, LLC
P.O. Box 11785
Rock Hill, SC 29731

James W. Boyd, Esquire
P.O. Box 36425
Rock Hill, SC 29732


Donna Laughridge

**TO: THE ABOVE-NAMED PLAINTIFF AND THEIR ATTORNEYS
JAMES W. BOYD AND D. BRADLEY JORDAN:**

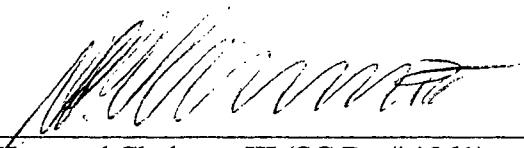
PLEASE TAKE NOTICE that the undersigned attorneys for Staci L. Versen-Rampey, NP, individually and South Carolina Emergency Physicians, LLC, will move before the Court at such time and place as the Court may determine for an Order pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, dismissing this matter on the ground that that the Notice of Intent to File Suit is defective because an affidavit of an expert witness was not filed contemporaneously with the Notice of Intent and, also, because any action against these Defendants is barred by the applicable statute of limitations.

Specifically, the Defendants move to dismiss the Notice of Intent because the filing did not comply with the requirements of §15-79-125 of the Code of Laws of the State of South Carolina (1976, as amended) in that the Plaintiff did not contemporaneously with filing the Notice of Intent to File Suit file an affidavit of an expert witness pursuant to the provisions of §15-36-100 of the Code of Laws of the State of South Carolina (1976, as amended). Furthermore, the Plaintiff is barred from filing an action against these Defendants because the statute of limitations bars any action against these Defendants.

This Motion shall be based upon the common and statutory laws of the State of South Carolina, and such other and further affidavits and documents which may hereafter be presented.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

CLARKSON, WALSH, TERRELL & COULTER, P.A.



N. Heyward Clarkson, III (SC Bar# 1261)

P.O. Box 6728

Greenville, SC 29606

Phone: (864) 232-4400

Fax: (864) 235-4399

Attorneys for Defendants Staci L. Versen-Rampey and South
Carolina Emergency Physicians, LLC

Greenville, South Carolina
February 14, 2012

0 00100

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

Civil Action No.: 11-CP-46-03984

vs.)

**NOTICE OF MOTION AND MOTION
TO DISMISS AMENDED NOTICE OF
INTENT TO FILE SUIT ON BEHALF OF
DEFENDANTS ROCK HILL RADIOLOGY
ASSOCIATES, P.A. and JAMES E.
REINHARDT, JR., M.D.**

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP,)
Individually and as Agent, Servant or)
Employee of South Carolina Emergency)
Physicians, LLC, and as Agent, Servant or)
Employee of Amicus of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Jason Price, Radiologic Technologist,)
Individually and as Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System, and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA, and as Agent, Servant)
Or Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Rock Hill Radiology Associates, P.A.,)
South Carolina Emergency Physicians,)
LLC,)

Defendants.)

TO: PLAINTIFF AND PLAINTIFF'S ATTORNEY

YOU WILL TAKE NOTICE that the Defendants, Rock Hill Radiology Associates, P.A.,
and James E. Reinhardt, Jr., M.D., ten days hence or soon thereafter as counsel may be heard,

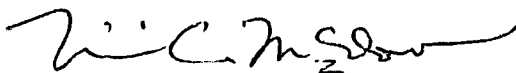
will move pursuant to SCRCP 12(b), for an Order dismissing the within Amended Notice of Intent to File Suit, on the grounds that it is barred as a matter of law by the statute of limitations.

The record before the Court shows that the medical care complained of is alleged to have occurred on October 20, 2008, and as a result of the care complained of Plaintiff's deceased died on October 28, 2008. The Amended Notice of Intent was filed December 1, 2011 and served by mail January 25, 2012, on the Defendant PA, and on February 1, 2011, on the Defendant Reinhardt individually.

THEREFORE, based on the undisputed record before the Court, it is apparent that the medical malpractice statute of limitations expired prior to the filing of the Amended Notice of Intent against these Defendant. Said Motion shall be based upon the case and statute laws of South Carolina, and upon such other and further information or argument as may be received by the Court.

This the 20th day of February, 2012, in Columbia, South Carolina.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, SC 29202
Phone: (803) 771-4400
Fax: (803) 779-0016

By: 
for George C. Beighley
Attorneys for Defendants
Rock Hill Radiology Associates, P.A. and
James E. Reinhardt, Jr., M.D.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

Civil Action No.: 11-CP-46-03984

vs.)

**NOTICE OF MOTION AND MOTION
TO DISMISS AMENDED SUMMONS
AND COMPLAINT**

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP,)
Individually and as Agent, Servant or)
Employee of South Carolina Emergency)
Physicians, LLC, and as Agent, Servant or)
Employee of Amicus of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Jason Price, Radiologic Technologist,)
Individually and as Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System, and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA, and as Agent, Servant)
Or Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Rock Hill Radiology Associates, P.A.,)
South Carolina Emergency Physicians,)
LLC,)

Defendants.)

TO: PLAINTIFF AND PLAINTIFF'S ATTORNEY


YOU WILL TAKE NOTICE that the Defendants, Rock Hill Radiology Associates, P.A.,
and James E. Reinhardt, Jr., M.D., hereby move to dismiss the Amended Summons and
Complaint in this action pursuant to SCRCP 12(b).

Said Motion shall be based upon the grounds that pursuant to South Carolina Code (Supp. 2010, Section 15-79-125 (A), prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice the plaintiff shall contemporaneously file a Notice of Intent to File Suit and affidavit of an expert witness, and such Notice of Intent shall be resolved by way of pre-suit mediation prior to the commencement of a lawsuit, all as spelled out in §15-79-125(B-F). No such mediation has been held, nor has an impasse letter been issued and therefore the requirements for commencing a civil action for medical malpractice have not been met as a matter of law.

Said Motion shall be based upon the case and statute laws of South Carolina, including the case of *Ranucci v. Crain*, Op. No. 4935, filed 01/25/12, South Carolina Court of Appeals.

This the 20th day of February, 2012, in Columbia, South Carolina.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, SC 29202
Phone: (803) 771-4400
Fax: (803) 779-0016

By: 
George C. Beighley
Attorneys for Defendants
Rock Hill Radiology Associates, P.A. and
James E. Reinhardt, Jr., M.D.

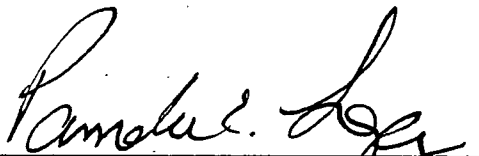
CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, an employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for the Defendants, Rock Hill Radiology Associates, P.A. and James E. Reinhardt, Jr., M.D., do hereby certify that I have this date served the foregoing Notice of Motion and Motion to Dismiss Amended Notice of Intent to File Suit, on the below-listed individuals by depositing a copy of same into the United States Mail, first-class, postage pre-paid, addressed to:

James W. Boyd, Esquire
P.O. Box 36425
Rock Hill, SC 29732

D. Bradley Jordan, Esq.
Jordan Law Firm, PC
P.O. Box 11785
Rock Hill, SC 29731

William U. Gunn, Esquire
Holcombe Bomar, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304



Pamela E. Lopez, Legal Assistant to
George C. Beighley, Attorney

February 20 2011

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) FAMILY COURT
)

) Ann P. Adams, as Personal Representative of the
) Estate of Jacob E. Adams, deceased,
)

) CASE NO.
) 11-CP-46-03984
)

) Plaintiff
)
) V.
)

) **MOTION AND ORDER INFORMATION**
) **FORM AND COVERSHEET**
)

) Amisub of South Carolina, Inc., d/b/a Piedmont
) Medical Center and d/b/a Piedmont Healthcare
) System, et al.,
)
)
)

) Defendants

) Check box above indicating submitting party

<p><u>name, S.C. Bar No. and address of plaintiff's attorney</u> James W. Boyd, Esquire P.O. Box 36425 Rock Hill, SC 29732 telephone: (803) 328-2600 fax: (803) 328-5747 email: other:</p>	<p><u>name, S.C. Bar No. and address of defendant's attorney</u> George C. Beighley, Esquire Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 telephone: 803-771-4400 fax: 803-779-0016 email: gbeighley@richardsonplowden.com other:</p>
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss Amended Summons and Complaint
Estimated Time Needed: 15 Minutes Court Reporter Needed: Yes

SECTION II: Motion Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

W.C. Johnson for GCB
Signature of Attorney for Plaintiff/Defendant

02/20/12
Date

SECTION III: Motion Fee

- PAID - AMOUNT \$25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
(check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE

	CODE:	Date:
CLERK'S VERIFICATION		
Collected by: _____ (print name)	<u>DATE FILED</u>	
<input type="checkbox"/> MOTION FEE COLLECTED: _____		
<input type="checkbox"/> CONTESTED - AMOUNT DUE: _____		

STATE OF SOUTH CAROLINA)
County of York)

COURT OF COMMON PLEAS
11-CP-46-03984

ANN P. ADAMS, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JACOB E. ADAMS, DECEASED,)

PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

AMISUB OF SOUTH CAROLINA,)
INC., d/b/a PIEDMONT MEDICAL)
CENTER AND d/b/a PIEDMONT)
HEALTHCARE SYSTEM; STACI L.)
VERSEN-RAMPEY, NP,)
INDIVIDUALLY AND AS AGENT,)
SERVANT OR EMPLOYOEE OF SOUTH)
CAROLINA EMERGENCY PHYSICIANS,)
LLC, AND AS AGENT, SERVANT OR)
EMPLOYEE OF AMICUS OF SOUTH)
CAROLINA, INC. d/b/a PIEDMONT)
MEDICAL CENTER AND d/b/a)
PIEDMONT HEALTHCARE SYSTEM,)
JASON PRICE, RADIOLOGIC)
TECHNOLOGIST, INDIVIDUALLY)
AND AS AGENT, SERVANT OR)
EMPLOYEE OF AMISUB OF SOUTH)
CAROLINA, INC., d/b/a PIEDMONT)
MEDICAL CENTER AND d/b/a)
PIEDMONT HEALTHCARE SYSTEM,)
AND JAMES E. REINHARDT, JR.)
M.D., INDIVIDUALLY AND AS)
AGENT, SERVANT OR EMPLOYEE OF)
ROCK HILL RADIOLOGY)
ASSOCIATES, PA, AND AS AGENT,)
SERVANT OR EMPLOYEE OF AMISUB)
OF SOUTH CAROLINA, INC., d/b/a)
PIEDMONT MEDICAL CENTER AND)
d/b/a PIEDMONT HEALTHCARE)
SYSTEM, ROCK HILL RADIOLOGY)
ASSOCIATES, PA, SOUTH CAROLINA)
EMERGENCY PHYSICIANS, LLC.,)

DEFENDANTS,)

June 27, 2012
Columbia, South Carolina

BEFORE:

JOHN C. HAYES, III, JUDGE.

APPEARANCES:

JAMES W. BOYD, ESQ.
Attorney for the Plaintiff

GEORGE C. BEIGHLEY, ESQ.
Attorney for the Defendants Rock Hill Radiology,
Dr. Reinhardt

HEYWARD N. CLARKSON, III, ESQ.
Attorney for the Defendants Staci Versen-Rampey,
South Carolina Emergency Physicians

KYLE CLELLAND, ESQ.
Attorney for the Defendants Piedmont Medical Center,
and Jason Price

KAREN AMBROZIAK
Official Court Reporter

000109

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. This is a -- for motions to
2 dismiss. It appears on the nature of it, some sort of
3 medical case.

4 I don't -- take a few minutes to go through and find
5 who -- who is on first, who is first, but if -- the people
6 making the motions, those people representing the medical
7 entities.

8 Do you have an order you want to proceed? Let's
9 proceed. I guess that's really who goes first.

10 MR. BEIGHLEY: Judge, I'm -- for the record, I'm
11 George Beighley. I represent Rock Hill Radiology,
12 Dr. Reinhardt.

13 I have -- it's -- before the Court is a motion to
14 dismiss the Notice of Intent to file suit and a motion to
15 dismiss the summons and complaint for medical malpractice.

16 To facilitate the presentation this morning, I've
17 given Boyd a copy. I have prepared a timeline for the
18 court to try to follow along here with -- with what some
19 of the major landmarks are in this case.

20 Basically, Judge --

21 THE COURT: I probably ought to let you know that
22 your client, when I was playing high school football,
23 played for one of our opposing teams. It beat the heck
24 out of us. I won't hold that against him.

25 MR. BEIGHLEY: But -- he did not tell me that in

1 advance, but thank you for disclosing that. I appreciate
2 it.

3 Judge, basically this is a case arising out of
4 medical care rendered to the plaintiffs, deceased. The
5 deceased suffered a fall at his home and was taken to the
6 emergency room on October 20th, 2008. A CT was ordered
7 and performed.

8 The result -- the CT was interpreted by my client.
9 The results were reviewed by the medical provider and
10 discussed with the patient.

11 The next morning, a report was that -- what they
12 called the draft report was entered in the computer on the
13 -- at 9:55, but the important thing is the deceased was
14 discharged that night from the hospital, from the
15 emergency room, I should say.

16 He went home at one a.m. on the 21st, woke up with
17 severe headache and shoulder pain; 2:10, his wife called
18 an ambulance. At 3:21 a.m., he goes to stay in the
19 Presbyterian Hospital. The CT report is signed in the
20 computer on the 22nd. The patient dies on the 28th of
21 October 2008.

22 The plaintiff went to the McGowan, Hood firm. She
23 was given advice by her insurance agent that after she
24 went to see him about her husband's death, and I assume
25 his life insurance, that she needed to have a lawyer look

1 at it about malpractice.

2 So she went to McGowan, Hood -- who the court is
3 familiar with as a specialist in medical malpractice --
4 and they had the case evaluated and informed her on
5 April 6th, 2009 that there was no malpractice.

6 On September 20th of 2010, 15 months, 16 months
7 later, she goes to -- contacts her present attorneys. On
8 October 20th, 2011, three years after the date of the
9 emergency room visit, she files a Notice of Intent without
10 an affidavit against the hospital and the nurse
11 practitioner who saw the patient in the emergency room and
12 the radiology technician. Also on that same date, she
13 filed a complaint against the same defendants.

14 The 21st of November 2011, the hospital filed the
15 motion to dismiss. On December 1st, 2011, the plaintiff
16 filed an amended Notice of Intent, complaint, and
17 affidavits now adding as parties Rock Hill Radiology and
18 Dr. Reinhardt, my clients.

19 On January 25th, 2012, the notice, the amended Notice
20 of Intent, was served on the PA by mail on February 1st,
21 2012. It says 11, year. That's a typo. It should be a
22 12. The amended Notice of Intent was personally served on
23 Dr. Reinhardt.

24 We have the information -- you might ask how I would
25 have that much factual information at this point in the

1 proceedings, which is a motion to dismiss, but that is in
2 the record by way of affidavits submitted by the plaintiff
3 individually and a legal assistant with the plaintiff's
4 attorneys' law firm.

5 That's where the information that's -- other than
6 what's apparent in the court filings, that's where these
7 other factual pieces of information come from or the
8 medical records of -- of the hospital.

9 So based on the fact -- now that you've got the
10 overall chronology, our position is that the statute of
11 limitations has run, and the Notice of Intent was filed
12 outside the statute of limitations. It should be
13 dismissed.

14 As to the summons and complaint, there -- it's very
15 clear as a matter of law that before a party can file a
16 summons and complaint for medical malpractice, they have
17 to file the Notice of Intent, and that has to result in a
18 mediation, which has the result of impasse. Then the
19 filing of the impasse with the clerk's office then allows
20 the commencement of the action or the filing of the
21 summons and complaint.

22 So I really -- I don't -- I don't see any dispute as
23 to the fact that you can't file a malpractice summons and
24 complaint until the Notice of Intent has produced an
25 impasse.

1 So I've spent my time this morning just directing the
2 Court's attention. I sent a memorandum to you. I don't
3 know if you've had the chance to review it.

4 THE COURT: I have not had a chance to review it, but
5 I do have --

6 MR. BEIGHLEY: I think you have a memorandum from all
7 of the parties in the file, but going forward on the
8 hospital's position, it's basically that in this
9 situation, when you go to an emergency room and you're
10 treated and evaluated, you're discharged and within hours
11 you have a serious problem.

12 You're taken to a hospital and die as a result of
13 that problem, it would put a person of ordinary knowledge
14 on notice of a potential claim.

15 In this case, we have the fact that the personal
16 representative was advised by the -- by her insurance
17 agent that she needed to go and see a lawyer about medical
18 malpractice which, in fact, was done and not -- the law
19 firm evaluated that claim and advised her she didn't have
20 a claim.

21 So that occurred on the 6th of April 2009, and she
22 delayed until September of 20 -- September 20th of 2010
23 before seeking further review, and then the case was
24 commenced by Notice of Intent against the hospital, nurse
25 practitioner, radiology technician.

1 The plaintiff claims that because the -- the name of
2 the radiologist that interpreted the study was not
3 available to them until after the three years ran, that
4 somehow that should extend the statute of limitations.

5 The South Carolina cases are abundantly clear that it
6 is when a person of reasonable knowledge would be put on
7 notice that there might be some claim that the statute
8 begins to run.

9 I've cited those cases for the court and my brief,
10 but I think that it's very clear that the three-year
11 statute was recognized because the initial Notice of
12 Intent was filed exactly three years after the hospital
13 encounter that gives rise to this situation.

14 The fact that it was later determined that there
15 was -- determined the name of the radiologist would not
16 create any basis to toll or delay the statute.

17 There is -- there is no evidence that that
18 information was -- was withheld in some way by any
19 defendant or any identity was concealed.

20 The medical records contained the report of the
21 radiologist, and the -- and the ER records show that the
22 information was -- the communication took place between
23 radiology and the person who was rendering care in the
24 emergency room.

25 So our position is that plaintiffs were on notice.

1 They had three years to file this claim, in fact, did file
2 it against the hospital, the physician's assistant who saw
3 the patient and the radiology technician.

4 So now to commence by way of another Notice of Intent
5 against my clients more than three years after the statute
6 has run, the Notice of Intent should be barred and should
7 be dismissed as to Rock Hill Radiology and Dr. Reinhardt.

8 THE COURT: Mr. Boyd, let's take them one at a time
9 since there's four, I understand. I see three lawyers --

10 MR. BOYD: Yes.

11 THE COURT: -- but I'll get to that.

12 MR. BOYD: Your Honor, I can -- I had also filed a
13 brief in opposition to motions to dismiss. I don't know
14 if you have that. I think it was e-mailed to you maybe
15 yesterday.

16 THE COURT: I don't have it.

17 MR. BOYD: I don't see it. I'd like to pass it up,
18 make it a part of the record.

19 THE COURT: Please.

20 MR. BOYD: If it would be suitable.

21 I e-mailed that to the defense counsel earlier. This
22 was set for a hearing once before judge Alford. He had to
23 recuse himself, so it was also submitted to Judge Alford
24 but -- from that time.

25 Your Honor, the -- basically, when it states a filing

1 of summons and complaint, it was not our intention to file
2 a summons and complaint.

3 The summons and -- the complaint that was attached to
4 the Notice of Intent was intended to comply with the
5 statute to recite a -- the recitation of facts that's
6 required by the Notice of Intent statute. So basically,
7 what we were filing is a Notice of Intent.

8 As to the defendant, Reinhardt and Rock Hill
9 Radiology, Your Honor, we do contend that the discovery
10 rule would apply to that.

11 The medical records that had been received throughout
12 this process had nothing about a radiologist having
13 reviewed it.

14 The expert said that would be very unusual, but it
15 just wasn't there. Finally, and we've submitted
16 affidavits on it, somebody from my office. We had
17 requested all the graphs from the hospital and everything.

18 There was the delay in difficulty in getting that.
19 We have -- when we finally received it, which was after
20 the normal date of the statute of limitations -- it did
21 have Dr. Reinhardt and Rock Hill Radiology as having read
22 it.

23 I noted the defense has cited in their opposition a
24 case of -- a Wiggins case, and that case would certainly
25 appear to be adverse to my position on that in that it

1 says the negligence in the case is not the case of the
2 initial injury, but the -- the -- the case doesn't go from
3 the time of the -- of a -- of the discovery of a
4 particular defendant but as the time and the date of the
5 injury.

6 However, Wiggins was a car accident, Your Honor.
7 It's quite clear in a car accident that there is
8 negligence or somebody is at fault.

9 In this case, Mr. Adams was injured in a fall at his
10 home. The initial injury itself was not the fault of any
11 of the injured -- the defendants, but the negligence in
12 this case was the failure to properly treat the injury.

13 Until we had information that Dr. Reinhardt had, what
14 we contend, properly -- failed to read the films, there
15 was no way to know there was a cause of action against
16 him.

17 Your Honor, I would point out at this point, this is
18 at the point of a motion to dismiss, not a motion for
19 summary judgment or anything of that nature. I would ask
20 the Court to consider that may be a proper motion at some
21 point.

22 Potentially a statute of limitations can be a
23 question of fact that even goes to the jury. I think it's
24 very early in the case.

25 There may be additional facts come forward in

1 discovery that shed light on the statute of limitations
2 issue one way or the other.

3 So I would ask the Court to deny the motion to
4 dismiss; to allow discovery to go forward, and we would --
5 we may or may not revisit this issue at a later time.

6 THE COURT: All right. I'll take -- anything else
7 Mr. Beighley?

8 MR. BEIGHLEY: Yes.

9 THE COURT: I'll take it under advisement, of course,
10 but...

11 MR. BEIGHLEY: Yes, Your Honor. Regarding the
12 summons and complaint, the problem is it -- it was filed
13 with a civil action number and it is a document.

14 We moved to dismiss it, and procedurally, I think
15 there is -- while you can attach a proposed summons and
16 complaint as your statement of facts, certainly you -- my
17 position is you can't file one because that commences a
18 malpractice action, and certainly in the records of this
19 courthouse, there's a malpractice action commenced, which
20 we move to dismiss. So I think I'm entitled to have that
21 dismissed.

22 Regarding the other issue in terms of the timeliness
23 of this motion, the facts that are before the court now
24 are unusual in the sense that you do have a basis of
25 documents submitted by the plaintiff and not in dispute by

1 the plaintiff upon which I'm supporting my motion, but you
2 also have the basic law, as counsel alluded to it. It
3 is -- the cause of action runs when you're aware of
4 injury, not when you discover the identity of every
5 wrongdoer.

6 So I think that you have a legal basis right now.
7 There's -- there's nothing else that would be necessary to
8 allow the court to rule on the statute of limitations
9 defense.

10 We think that that is on the record before the Court
11 clearly warranted as to the Notice of Intent filed against
12 Dr. Reinhardt and the PA. We urge you to dismiss that, as
13 well.

14 Thank you.

15 THE COURT: Okay.

16 MR. BOYD: Your Honor.

17 THE COURT: Yes.

18 MR. BOYD: I would just state as far as the summons
19 and complaint issue, I think he's right. It shouldn't
20 have been given a case number. I think that's just an
21 error.

22 It would be the commencement by a Notice of Intent,
23 not the summons and complaint. That wasn't -- it was
24 never our intention to file a summons and complaint
25 commencing a lawsuit.

1 Now, I just want to -- we have no objection to
2 dismissing the summons and complaint to the extent as
3 showing it's active --

4 THE COURT: Well, when the Court gets a summons and
5 complaint, that is filed as a lawsuit. You said it was
6 attached to flesh out the facts.

7 MR. BOYD: No.

8 THE COURT: I thought -- I thought you said it was
9 a -- well, tell me then. I missed it.

10 MR. BOYD: All right. We filed the Notice of Intent.
11 In the Notice of Intent, it said attached is a proposed --
12 I don't know the exact words used now, but the proposed
13 complaint in order to set forth the facts.

14 That's what we've done in every malpractice lawsuit
15 -- Notice of Intent we filed. We filed a -- or submitting
16 a proposed complaint that sets forth the proposed facts.

17 THE COURT: But the summons doesn't.

18 MR. BOYD: And I don't know why we -- we probably
19 shouldn't have submitted a summons, but I'm just saying it
20 wasn't our intent to commence a lawsuit --

21 THE COURT: I don't know where you're going, what the
22 intent was. We have to go on what's filed.

23 MR. BOYD: I understand but --

24 THE COURT: If the summons doesn't -- I mean, the
25 summons is addressed to a defendant to respond.

1 MR. BOYD: Right.

2 THE COURT: It has nothing do with a factual basis of
3 it. So if you just filed a complaint, I think it might be
4 a little different, but if you file a summons and a
5 complaint, that is -- I think -- I'm not ruling now, but I
6 think that's a significant difference.

7 MR. BOYD: Well, what I'm just saying, just to
8 clarify, we have no objection to dismissing a complaint.
9 I don't think it would be a dismissal with prejudice,
10 but -- but we were going on the Notice of Intent, not on
11 the -- that was our intention.

12 I just want to let the Court know that. We're not
13 trying to commence -- we're not trying to commence the
14 filing of a lawsuit itself but a Notice of Intent.

15 THE COURT: Well, when you sent a summons and
16 complaint to the clerk of court, what do you expect?

17 MR. BOYD: Well, it was attached to the Notice of
18 Intent, and we -- we have done that in the past and not
19 had that problem, but apparently --

20 THE COURT: It was --

21 MR. BOYD: -- it was -- clerically, it was our fault.
22 I mean, the clerk's office didn't understand not to give
23 that a case number and treat it as a complaint, but that
24 wasn't our intention to do that.

25 THE COURT: Okay.

1 MR. BOYD: I'm just...

2 THE COURT: All right.

3 Yes, sir.

4 MR. CLELLAND: Your Honor, my name is Kyle Clelland.
5 I'm here on behalf of defendant Piedmont Medical Center
6 and Price.

7 As counsel has stated --

8 THE COURT: Your last name being?

9 MR. CLELLAND: Clelland, that's C-L-E-L-L-A-N-D.

10 THE COURT: Okay. Go ahead and state it for us.

11 MR. CLELLAND: As counsel stated --

12 THE COURT: Okay.

13 MR. CLELLAND: Yes, sir.

14 -- Jacob Adams was transported via ambulance on
15 October 20th, 2008 to Piedmont Medical Center for
16 treatment of a cranial laceration. He passed away several
17 days later.

18 THE COURT: Wait a minute. I hate to interrupt you,
19 but I'm trying to piece things together. I now have what
20 looks like the...

21 MR. CLELLAND: We had two motions, Your Honor.

22 THE COURT: I know. I'm still backing up. I'm going
23 slow. I'm still looking at this Notice of Intent to --
24 there's a civil action cover sheet with it that requests a
25 jury trial. It does -- it does notice the notice to file

1 medical malpractice.

2 (Pause).

3 I'm sorry, go ahead. I understand.

4 MR. CLELLAND: Yes, Your Honor. I will speak to
5 that.

6 THE COURT: Okay.

7 MR. CLELLAND: On October 20th, Jacob Adams presented
8 to Piedmont Medical Center. This was in 2008, and three
9 years later to the very day that Jacob Adams presented
10 with that cranial laceration, plaintiff filed a summons, a
11 complaint, and a Notice of Intent to file a suit.

12 Our motions to dismiss are based on the fact that
13 plaintiff failed to include a contemporaneously filed
14 expert affidavit pursuant to South Carolina code section
15 15-79-125.

16 According to that section of the code, before filing
17 a complaint alleging a claim of medical malpractice,
18 plaintiff is required to file a Notice of Intent to file
19 suit containing a short and plain statement of the facts,
20 and they must also include a contemporaneously filed
21 expert affidavit.

22 After those two documents are filed, the parties are
23 to participate in pre-suit mediation and only after
24 mediation has been declared at an impasse may the
25 plaintiff proceed with filing their complaint.

1 Your Honor, the issue that we take in this case is
2 that the plaintiff's Notice of Intent stated that they
3 were not required to file the statutorily required
4 contemporaneously filed expert affidavit under South
5 Carolina code section 15-36-100.

6 It is our position that this is a misreading of the
7 statute, and as recently as January of 2012, the South
8 Carolina Court of Appeals discussed this issue at great
9 length in the case of Ranucci v. Crain.

10 In that case, the plaintiff suffered a punctured lung
11 that occurred as a result of a biopsy performed by the
12 medical caregiver.

13 Three years to the day of that incident, the
14 plaintiff, just like in this case, filed a complaint.
15 Just as in this case, the plaintiff did not file the
16 contemporaneously filed expert affidavit with their Notice
17 of Intent.

18 The defendant in that case moved to dismiss the case,
19 and the motion was heard in front of of the Honorable S.
20 Jackson Kimball, III, and Judge Kimball granted
21 defendant's motion to dismiss in that case finding that
22 plaintiff's failure to include a contemporaneously filed
23 expert affidavit was a blatant error and ran against
24 statutory law which requires an expert affidavit to be
25 contemporaneously filed.

1 Your Honor, Ranucci v. Crain is directly on point to
2 this case. The Court of Appeals affirmed Judge Kimball's
3 holding, and the facts in that case are the very same as
4 we have today.

5 In that case, the plaintiff alleged a claim of
6 medical malpractice. They filed their Notice of Intent,
7 their summons and complaint, at the very expiration of the
8 statute of limitations and stated that pursuant to
9 15-36-100, they weren't required to file a contemporaneous
10 expert affidavit.

11 We would ask that this court's holding be the same
12 that Judge Kimball held, and that was affirmed by the
13 Court of Appeals, by dismissing plaintiff's complaint for
14 failure to comply with 15-79-125.

15 Both of these statutes were created to ensure that
16 the plaintiff has a declarable claim before filing a
17 lawsuit and to ensure that pre-suit mediation can take
18 place to try and resolve the matter in a timely manner.

19 They were both passed as part of the Tort Reform Act
20 of 2005, and in accordance with South Carolina law, the
21 plaintiff alleging a claim of medical negligence is
22 required to establish proximate causation. And because of
23 these facts and all facts in medical malpractice cases
24 involve technical, medical treatment that's outside --

25 THE COURT: I thought -- I thought we had a case that

1 said you didn't have to show proximate causation, just the
2 negligence. Isn't there a case recently?

3 MR. CLELLAND: I'm not aware of that, Your Honor, but
4 I'd be glad to look into that and brief that for the
5 court.

6 THE COURT: Go ahead. Okay.

7 MR. CLELLAND: The expert affidavit is required to be
8 contemporaneously filed to show that the allegedly
9 negligent acts of the sophisticated medical party caused
10 the damages of the plaintiff.

11 Your Honor, we would move for a motion to dismiss
12 pursuant to 12(b). Under 12(b)(1), Your Honor, this court
13 doesn't even have jurisdiction over this matter because
14 the plaintiff has failed to pursue the proper procedural
15 avenues to ensure that their claim is in front of this
16 court, and because they have not established proximate
17 causation, they have failed to state facts sufficient to
18 constitute a cause of action, Your Honor.

19 Thank you.

20 THE COURT: All right.

21 Mr. Boyd, do you want to address that?

22 MR. BOYD: Your Honor, I think the next motion is on
23 the same grounds.

24 THE COURT: Okay.

25 MR. BOYD: So I prefer just to wait.

1 THE COURT: Okay.

2 MR. CLARKSON: Thank you, Your Honor. Hayward
3 Clarkson. I represent Staci Versen-Rampey, Nurse
4 Practitioner, and South Carolina Emergency Physicians.

5 I filed a memorandum with the Court earlier that
6 should be in the file. My grounds are pretty much
7 identical to the others, so I'm not going to rehash all
8 the facts.

9 All I want to point out to you that my client, the
10 nurse practitioner, was the person that ordered the CT
11 scan when he was first admitted to the hospital on
12 October 20th, 2008.

13 From the court record, what was filed with the Court,
14 it's our understanding that a Notice of Intent was filed
15 prior to the expiration of the statute of limitations
16 naming my clients.

17 However, that Notice of Intent did not include any
18 affidavit directed to my client or any affidavit at all
19 from an expert as required. Furthermore, that Notice of
20 Intent was never served on my clients as the statute
21 requires.

22 These statutes are not just fluff. They are
23 statutory law that must be abided by all litigants. It
24 was not until December 1st of 2011, as you can see on the
25 chronology there, that an amended Notice of Intent which

1 says no statutory authority allowing an amended Notice of
2 Intent was filed that did contain an affidavit, but that
3 was beyond the running of the statute of limitations.

4 That Notice of Intent was not filed on my client
5 until January of this year, 2012. So it would appear very
6 clear that the plaintiff was aware of the three-year
7 statute of limitations by the filing of the defective
8 initial Notice of Intent which did not contain the
9 required affidavits of the expert witnesses.

10 It was only after the filing of amended notice which
11 isn't allowed by the statutory law that an affidavit
12 was -- was filed.

13 I also want to point out that this Ranucci case,
14 which the court is familiar with, was written by Judge
15 Cureton, concurred by Judge Konduros, but of importance, I
16 think, to this matter is Judge Few wrote a very long and
17 comprehensive concurring opinion that is even more strong
18 with respect to the requirements that a plaintiff -- to
19 comply with all of the medical malpractice statutory
20 provisions which say it did not comply with.

21 The only other thing I would like to point out is
22 that the Ranucci case went up to the Court of Appeals and
23 was decided by Judge -- Judge Kimball on a motion to
24 dismiss. So our motions to dismiss are appropriate and
25 they're ripe.

1 The plaintiff didn't meet the timeframe. There is no
2 issue that she was -- that the plaintiff was not on notice
3 to pursue this matter, and I submit that given enough
4 unlimited time, an expert can be found for almost
5 anything. That's what we have here.

6 THE COURT: All right.

7 Mr. Boyd?

8 MR. BOYD: Yes, sir. Your Honor, there -- I'll have
9 to concede there is no distinction as far as those two
10 defendants that distinguishes this case from the Ranucci
11 case.

12 I know the Court has to follow the Court of Appeals.
13 We are opposing this motion and filed a brief with our
14 reasons to preserve the rights. I understand that the
15 Ranucci case is being taken on up to the Supreme Court.
16 There is a motion to reconsider filed. I'm not sure if
17 that's been ruled on, but I understand it will go on up.

18 We want to preserve our rights under that to -- in
19 case the Supreme Court would reverse Ranucci. Basically,
20 Ranucci held that the -- that the only limited affidavit
21 requirements of 15-79 -- of 15-36-100 were covered by
22 15-79-125. If our -- that's our position, that the --
23 that the allowing of 45 days to file an affidavit should
24 be included in that.

25 I understand the Court of Appeals has disagreed with

1 our position on that, so I'm just opposing this to
2 preserve our rights in case the Supreme Court or the Court
3 of Appeals reconsiders this decision.

4 THE COURT: All right. And Ranucci would apply to
5 which defendants?

6 MR. BOYD: That would apply to all defendants
7 except --

8 THE COURT: Except --

9 MR. BOYD: -- Reinhardt.

10 THE COURT: Reinhardt.

11 MR. BOYD: And the -- his group, Rock Hill Rad---

12 THE COURT: All right. Well, based on that, I'm
13 going to ask counsel, either one of you, to prepare a
14 proposed order granting motions to dismiss based on the
15 Ranucci case. Let Mr. Boyd look at it, and we'll go
16 from -- we'll go from -- go from there.

17 If it's basically in the proceeding that you're
18 entitled to that based on the current law. So we'll get
19 that prepared, and then I'll take the Reinhardt issue
20 under advisement.

21 MR. BOYD: Thank you.

22 MR. BEIGHLEY: Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded.)

24

25

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA. and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2012 MAY 25 AM 9:17

FILED-RECEIVED

AFFIDAVIT OF DIANE BERINSKY, LEGAL ASSISTANT

1. My name is Diane Berinsky and I am currently employed as a Legal Assistant to Attorneys James W. Boyd and D. Bradley Jordan. I have worked in this capacity since January, 2004. working solely on the medical negligence cases.
2. I am a current resident of York County, South Carolina and have been so since 1996.

000134

3. Prior to coming to our office for advice, Mrs. Adams had asked the firm of McGowan, Hood and Felder to obtain Mr. Adams' medical records and to render an opinion as to whether she had a cause of action. After the McGowan firm reviewed the records they had secured, a letter was written to Mrs. Ann Adams on April 6, 2009 in which it was stated that there was no medical negligence committed, she had no case, and the medical records were returned to her..
4. In the fall of 2010, I received several phone calls from Mrs. Ann Adams and from her son, Jay Adams. In discussing the matter with Mrs. Adams and her son, , I set an appointment for Mrs. Adams to meet with Mr. Boyd and Mr. Jordan so that they might discuss the circumstances surrounding the treatment Mr. Adams received at Piedmont Medical Center. After speaking with Mr. Boyd and Mr. Jordan, Mrs. Adams made the decision for our office to gather any further information and review the medical records.. That meeting took place on September 20, 2010.
5. Mrs. Adams thought over what she had learned from our attorneys and approximately 10 days to 2 weeks thereafter, delivered to me all of the records she had in her possession concerning the death of her late husband..
6. In December of 2010, a copy of the medical records was sent to Dr. Samjim Oh, a Neurologist, for his review. Upon his favorable assessment of the case, he began to prepare his affidavit in early 2011. Since no neurology assessment was provided to Mr. Adams in his stay at Piedmont Medical Center, an Emergency Room expert was sought. Dr. Michael Kerr, an Emergency Room physician, reviewed the case for approximately 6 – 8 weeks and opined that he saw no deviations in the standard of care by the emergency room physician on duty at Piedmont Medical Center. He did, however, believe that it might be prudent to contact an emergency room nurse and a radiologist to further review the case.
7. In the late Smmer and early Fall, the case was sent out for review to Sharon Okn, an ER nurse and to AJ Tsiouris, a radiologist.
8. On several occasions , I contacted the medical records department of Piedmont Medical

Center via telephone in order to obtain clear, readable copies of the portion of the file pertaining to the tests performed on Mr. Adams. No where in the file obtained by the McGowan Firm was there any indication of a radiologist reading the films (The CT scan and x-ray). I was informed by PMC that it might take weeks to find the information I sought. Expert Tsiouris insisted that there had to be a sign off by the reading radiologist and that there must be copies of the films (which had also been requested numerous times).

9. Finally, on November 3, 2011, I personally went to the Imaging Department and Medical Records department at Piedmont Medical Center. I waited for approximately 2 hours to obtain this necessary information (films and a copy of who read the films). It was not until November 3, 2011 that I received only a printed copy showing a clear impression and bearing the name of James E. Reinhardt as the radiologist who interpreted the films,
10. Mrs. Ann Adams was informed approximately one week later that all three experts were of the opinion that medical negligence occurred and I am the person who made that phone call to her. That was the first time she knew that medical negligence had occurred.

Diane Berinsky
Diane Berinsky, Legal Assistant

SWORN TO BEFORE ME THIS
17th day of April, 2012
J. Justine Miller
Notary Public for South Carolina
My Commission Expires: 4-29-2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

-vs-

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

BRIEF IN OPPOSITION TO
MOTIONS TO DISMISS

Staci L. Versen-Rampey, NP,)
Individually and as Agent, Servant,)
Employee of South Carolina Emergency)
Physicians, LLC, and as Agent, Servant,)
or Employee of Amisub of South)
Carolina, Inc. d/b/a Piedmont Healthcare)
System;)

Jason Price, Radiologic Technologist,)
Individually and as Agent, Servant, or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent Servant or)
Employee of Rock Hill Radiology)
Associates, PA. And as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc. d/b/a Piedmont Medical)
Center and d/b/s Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

The above named Plaintiff, by and through her undersigned counsel, presents this Brief in Opposition to the Motions to Dismiss.

FACTS

On October 20, 2008, Jacob P. Adams sought medical treatment from Piedmont Medical Emergency room. As a result of the care or the lack of care complained of Jacob Adams died several days later. A Notice of Intent to Sue was filed on October 20, 2011 naming as Defendants, Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System, Staci L. Versen-Rampey, NP, Individually and as Agent, Servant, Employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, and d/b/a Piedmont Healthcare System, and Jason Price, Radiologic Technologist, Individually and as Agent, Servant, or Employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System. An Amended Notice stated that the Plaintiff was prevented from contemporaneously filing an affidavit of a medical expert and that Plaintiff would file such an affidavit within the next forty-five (45) days. An Amended Notice of Intent was filed on December 1, 2011, which included affidavits from experts and adding James E. Reinhardt, Jr., M.D., Individually and as Agent Servant or Employee of Rock Hill Radiology Associates, PA. and as Agent, Servant or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center and d/b/s Piedmont Healthcare System, and Rock Hill Radiology Associates, P.A.A.

A. THE STATUTE OF LIMITATIONS BEGAN TO RUN ON NOVEMBER 3, 2011

Ann P. Adams received the medical records in this matter back from the McGowan Hood Lawfirm on or about April 6, 2009. Ms. Adams turned over the records to her attorneys on or about October 2010. The records reviewed did not have an indication of a radiologist reading

the CT scan and x-ray. For this reason the original notice of intent to sue did not name James E. Reinhardt or Rock Hill Radiology Associates.

On November 3, 2011, the Plaintiff's attorney received from Piedmont Medical Center a printed copy showing a clear impression and bearing the name of James E. Reinhardt as the Radiologist that interpreted the film.

In 1994, the Supreme Court of South Carolina held a statute of limitations to began to run when the cause of a patient's injuries were noted in his medical records. See *Strong v. University of South Carolina School of Medicine*, 316 S.C. 189, 447 S.E. 2d 850 (SC 1994). In *Strong*, the appellant underwent several eye operations performed by Dr. Ferguson, an employee of the University of South Carolina School of Medicine. *Id* at 190. Gregory Strong was blind after his third eye operation on May 11, 1989. *Id*. In June of that year, a colleague of Dr. Ferguson noted in Strong's medical records that his blindness was due to poor follow-up care. *Id*. Strong's medical records were received by his attorney in February of 1991 and an action was filed in May of 1992. *Id*. The respondents filed a motion for summary judgment, claiming that the statute of limitations had run on the plaintiff's action. *Id*. The trial court granted summary judgment to the respondents, holding that the statute of limitations began to run when Strong knew he was blind. *Id*. Strong claimed that the statute began to run when he discovered that (1) he had an injury and (2) the injury was caused by the negligence of a third party. *Id*. He contended that, because of his educational background and blindness, he did not know he had a compensable injury until his medical records were forwarded to his attorney in February 1991. *Id*. The Court affirmed the decision of the trial court, ultimately finding the statute of limitations to bar recovery. *Id* at 192. However, the Court did not hold the statute of limitations to run in May of 1989 when Strong knew he was blind. *Id* at 191. Rather, the Court held that the

limitations period began to run in June of 1989, a month later, when a colleague of Dr. Ferguson noted in Strong's medical records that the cause of his blindness was poor follow-up care. *Id.*

Three years after Strong, the Court issued a similar decision when a patient brought a medical malpractice claim against her obstetrician and gynecologist. *Arrant v. Kressler*, 327 S.C. 225 (SC 1997). In Kressler, the appellant gave birth on December 30, 1989. The delivery was performed by Dr. Parr. *Id.* at 227. The delivery was normal except the placenta had to be removed manually. *Id.* On January 24, the appellant was still suffering bleeding and visited Dr. Kressler. *Id.* Suspecting that remnants of the placenta remained, Kressler recommended a procedure called dilation and curettage to remove them. *Id.* On January 25, Kressler performed the procedure. *Id.* On March 27, the appellant was diagnosed with Asherman's Syndrome, a known complication of the procedure, in which the walls of the uterus grow together and result in infertility. *Id.* at 227, 228. The action was commenced on February 2, 1993. *Id.* Because the appellant's complaint only alleged a cause of action from the surgery, the appellant sought to amend her complaint to conform to Dr. Parr's testimony. *Id.* The trial judge did not allow the amendment, citing the statute of limitations. *Id.* The Supreme Court affirmed. *Id.* at 230. By the appellant's own admission, Dr. Kressler told her on January 24, 1990, that the reason she was bleeding and required surgery was because Dr. Parr had not removed all of the placenta. *Id.* at 229. The Court held that the statute of limitations began to run when the appellant was informed by another physician that her injury was caused by the treating physician's negligence. *Id.*

In *Strong and Kressler*, the Supreme Court of South Carolina held that the statute of limitations began to run when medical specialists informed the plaintiffs of the cause of their injury. In the present case, the statute of limitations began to run on November 3, 2011 when records were obtained from Piedmont Medical Center showing that Dr. James E. Reinhardt was

involved in reading the x-rays and CT scan films. Like the plaintiff in Strong, Ann P. Adams did not have notice of a claim against Dr. Reinhardt until the cause was noted in the medical records. All the medical records that had been previously obtained did not list Dr. Reinhardt. Applying these decisions the statute of limitations did not begin to run when Mr. Adams was injured but began to run when it became apparent that Dr. Reinhardt was involved in the matter.

The Supreme Court of South Carolina has held that when there is conflicting testimony regarding the time of discovery of facts giving notice of a medical malpractice claim, the date on which discovery should have been made becomes an issue for the jury to decide. *Arrant v. Kessler*, 327 S.C. 225, 489 S.E. 2d. 206 (S.C. 1997); *Brown v. Finger*, 240 S.C. 102, 124 S.E. 2d 781 (S.C. 1962) Dismissal of this case at this stage is a drastic remedy. Allowing the parties to go forward with discovery may shed additional light on the issue.

B. THE STATUTE OF LIMITATIONS SHOULD BE EQUITABLY TOLLED.

“Tolling” refers to the suspending or stopping the running of a statute of limitations. Equitable tolling is a judicially created mechanism stemming from the judiciary’s inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (2009). Equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P. 3d 58, 66 (2004). South Carolina allows a plaintiff to initiate an action beyond the statute of limitations deadline if a claimant was prevented in some extraordinary way from exercising his or her rights. *Hooper v. Ebenezer Senior Services and Rehabilitation Center*, 377 S.C. 217, 659 S.E. 2d 213 (SC App. 2008), (reversed by 386 S.C. 108, 687 S.E. 2d 29 (S.C. 2009)).

In *Hooper*, it was undisputed that the statute of limitations period had expired on the plaintiff's wrongful death and survival action. *Hooper*, 377 S.C. 217, 229. Hooper did not commence the action within the statutory period. *Id.* Hooper argued before the Court of Appeals that the statute of limitations should have been tolled due to circumstances out of her control which prevented her from filing the claim within the statutory period. *Id.* The facts of *Hooper* are as follows. In 2003, Albert Clinton became a resident of Ebenezer, a nursing home facility. *Id.* at 223. Two months later, Clinton was taken to a hospital and remained there until his death on May 15, 2003. *Id.* Hooper, as Personal Representative of Clinton's Estate, filed an action against Ebenezer on February 6, 2006. *Id.* When Hooper's attorney tried contacting Ebenezer by phone a receptionist answered, "Agape Rehabilitation." *Id.* Hooper's attorney was told that Ebenezer Senior Services had been sold and was now Agape Rehabilitation. *Id.* The signage at the facility even read, "Agape Rehabilitation of Rock Hill." *Id.* The South Carolina Secretary of State's website still listed Ebenezer as a domestic entity in good standing and provided contact information for an agent, but the listed agent could not be located even by a hired private investigator. *Id.* Upon exhausting all other options of service, a private investigator was hired to take the papers to Agape. *Id.* at 224. An administrator of Agape indicated that she was authorized to accept service on Ebenezer's behalf. *Id.* Service was completed 129 days after the filing of the summons and complaint, beyond the 120-day period. *Id.*

According to the Court of Appeals, equitable tolling has been available where –

- extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.

- the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the deadline to pass.
- the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. *Hooper*, 377 S.C. 217, 231. While similar and often merged with the doctrine of equitable estoppel, the federal equitable tolling doctrine does not require any conduct by the defendant. *Id*; *Abbot v. State*, 979 P. 2d 994, 997-988 (Alaska 1999).

The South Carolina Court of Appeals declined to apply the doctrine of equitable tolling, but was reversed in 2009 by the Supreme Court. See *Hooper*, 386 S.C. 108, 687 S.E. 2d 29 (S.C. 2009). The Court held it appropriate to equitably toll the statute of limitations for the time Hooper spent in pursuit of Ebenezer's nonexistent agent. *Id* at 119. The Court stated that the situations described by the Court of Appeals do not constitute an exclusive list of circumstances to justify the application of equitable tolling, adding that public policy and the interests of justice weigh heavily in favor of allowing Hooper's claim to proceed. *Id* at 117, 119.

In the present case public policy and the interest of justice weigh heavily in favor of allowing the Plaintiff's claim against Dr. Reinhardt to proceed. Plaintiffs have to rely on the medical records that are provided by the medical providers. There was no indication of Dr. Reinhardt's involvement in this matter from the records from Piedmont Medical Center. Only after Ms. Berinsky went to Piedmont Medical Center and waited two (2) hours to obtain the records was the name of James E. Reinhardt shown. Without proper notation in the medical records Plaintiffs are unable to accurately assess what parties are responsible. Therefore, the statute of limitations should be tolled until the discovery that the Dr. Reinhardt was a properly named defendant.

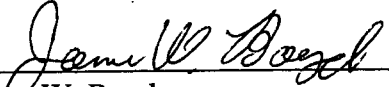
C. SECTION 15-36-100(C1) APPLIES TO SECTION 15-79-125.

The Plaintiff is aware of the case *Ranucci v. Crain*, Opinion No. 4935 filed January 25, 2012. In that case *Ranucci* the Court of Appeal found that §15-79-125(A) invokes only the provisions of §15-36-100 governing the preparation and content of the affidavit. The Court held that the remaining §15-36-100 and §15-79-125 operate independently of one another. The Plaintiff is informed and believes that a petition for rehearing has been filed in the *Ranucci* case and that this matter will ultimately be decided by the South Carolina Supreme Court. The Plaintiff files this Brief to preserve all her rights in this matter.

It is the Plaintiff's position that the South Carolina Code of Law §15-36-100 is applicable to the filing of the expert affidavit and modifies the requirements of §15-79-125 regarding the contemporaneous filing of the expert affidavit when the Notice of Intent to File Suit is filed within Ten (10) days of the statute of limitations for the actions which are the bases of the lawsuit. Section 15-79-125 is the only applicable statute relating to the filing of an expert affidavit where a medical doctor is a defendant in the case. The language in the final §15-36-100 specifically states that the statute is applicable to medical doctors. The plain meaning of §15-79-125 which incorporates §15-36-100 combined with the clear language of this statute is applicable to medical doctors means that the enlargement of time to file the expert affidavit is applicable to this case. Any other reading of the statute would create a special right to medical doctors that was denied to all other professions discovered by the applicable statute. Section 15-79-125 clearly sets forth that the requirements for an affidavit are contained in §15-36-100. The statute §15-79-125 does not limit the parts of §15-36-100 that applies to §15-79-125. Had the legislature intended to limit the parts of §15-36-100 that apply to §15-79-125 it could have done so by setting it forth in the statutes.

In the event that the Court in *Ranucci* is correct that §15-79-125(A) involves only the provisions of §15-36-100 governing the preparation and content of the affidavit then the provision of §15-36-100 allowing 45 days for the supplementation of the pleading with an affidavit would lead to a Plaintiff being allowed to wait until 10 days prior to the expiration of the statute of limitations and skip the notice of intent. This could not be the result of the legislature intended.

Rock Hill, South Carolina
May 29, 2011


James W. Boyd
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jamesboyd@comporium.net

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

AFFIDAVIT OF ANN P. ADAMS

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, P.A. and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

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2012 MAY 29 AM 9:17
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

1. My name is Ann P. Adams. I am a citizen and resident of York County, South Carolina and I am the duly appointed personal representative of the Estate of Jacob E. Adams, Deceased, who died on October 28, 2008.

2. I was urged to seek a legal opinion on this case as to whether medical negligence occurred by the insurance agent who assisted me with the estate.

3. I contacted the firm of McGowan Hood and they ordered the medical records.

4. On or about April 6, 2009, I received the records and was instructed by the firm of McGowan Hood that that there was no case.

5. On or about September 20, 2010, I contacted James Boyd and D. Bradley Jordan regarding this matter.

6. I later found out that not all of the records had been produced by Piedmont Medical Center for interpretation of certain films and who interpreted the films had not been provided.

7. Once this information was provided, it was determined that there had been a breach in the standard of care by Dr. James F. Reinhardt and Rock Hill Radiology, P.A. This occurred on or about November 3, 2011.

Ann P. Adams
Ann P. Adams

SWORN TO BEFORE ME THIS

16th day of April, 2012

J. Singson Milk
Notary Public for South Carolina

My Commission Expires: 4-29-2014

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

Civil Action No.: 11-CP-46-03984

**ROCK HILL RADIOLOGY ASSOCIATES,
P.A., AND JAMES E. REINHARDT, JR.,
M.D.'S REPLY TO PLAINTIFF'S BRIEF IN
OPPOSITION TO MOTIONS TO DISMISS**

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP,)
Individually and as Agent, Servant or)
Employee of South Carolina Emergency)
Physicians, LLC, and as Agent, Servant or)
Employee of Amicus of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
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Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System,)

Rock Hill Radiology Associates, P.A.,)
South Carolina Emergency Physicians,)
LLC,)

Defendants.)

Defendants Rock Hill Radiology Associates, P.A. ("Rock Hill Radiology"), and James E. Reinhardt, Jr., M.D. ("Dr. Reinhardt"), by and through the undersigned counsel, hereby submit their Reply to Plaintiff's Brief in Opposition to Motions to Dismiss.

A. The Statute of limitations began to run on the date of the Decedent's death, October 28, 2008.

On October 20, 2008, Plaintiff's Decedent sought treatment at the emergency room of the Piedmont Medical Center after sustaining injuries in an accident. Plaintiff alleges that the Decedent died on October 28, 2008, as a direct result of the "care or the lack of care" provided to him at the hospital. [Plaintiff's Brief in Opposition to Motions to Dismiss, p. 2.] Rock Hill Radiology and Dr. Reinhardt were not named as defendants in this case until more than three years later on December 1, 2011, when Plaintiff filed an Amended Notice of Intent and Amended Summons and Amended Complaint, asserting causes of action for wrongful death and survival.

In South Carolina, an action for wrongful death must be commenced within three years of the death of the person on account of whose death the action is brought. S.C. Code Ann. § 15-3-530(6). Section 15-3-530(6) provides that the statute of limitations is three years in an action "for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought." Plaintiff's cause of action for wrongful death accrued, and the three-year statute of limitations began to run, at the time of the Decedent's death. Therefore, the statute of limitations as to Plaintiff's wrongful death claim expired on October 28, 2011.

Moreover, Plaintiff's claims against Rock Hill Radiology and Dr. Reinhardt were also filed outside of the statute of limitations period even if the discovery rule is applied. S.C. Code Ann. § 15-3-545(A) provides that "[i]n any action ... to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider ... acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section."

Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or should have been discovered by the exercise of reasonable diligence. Smith v. Smith, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987). Pursuant to this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. Austin v. Conway Hosp., Inc., 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct.App.1987).

In the medical malpractice context, our Supreme Court applies the reasonable diligence analysis under the general discovery rule. "[A]n injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right of his has been invaded or that some claim against another party might exist." Strong v. Univ. of S.C. Sch. of Med., 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994) (quoting Snell v. Columbia Gun Exchange, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). A cause of action accrues when an injury is discovered or "reasonably ought to have been discovered." Id. The "reasonably ought to have been discovered" requirement is a "reasonable diligence" standard. Id.

Here, the Plaintiff knew or should have known of the possibility of a legal claim against Rock Hill Radiology and Dr. Reinhardt more than three (3) years prior to filing an action against them. Plaintiff claims that the defendants were allegedly negligent in the manner in which medical care was provided to the decedent after his arrival at the hospital on October 20, 2008. The decedent's medical condition worsened drastically hours after he was discharged from the hospital, and he was admitted to another medical facility. The Decedent died on October 28, 2008, only days after being discharged from the defendant hospital.

As a result of the Decedent's death, under the facts of this case, Plaintiff should have immediately suspected the possibility of negligence on the part of all physicians and medical

personnel who were directly involved in diagnosing and treating Decedent at the hospital. The Decedent's death in October 2008 put Plaintiff on notice that possible claims against these diagnosing and treating medical providers might exist. Yet the Plaintiff's action against Rock Hill Radiology and Dr. Reinhardt was not filed until December 1, 2011, well past the expiration of the statute of limitations.

Our courts have repeatedly held that "an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." Snell, S.C. at 303, 278 S.E.2d at 334 (1981). "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Id.

In the instant matter, Plaintiff appears to be arguing that the statute of limitations did not begin to run until after she and her second set of attorneys had developed a full-blown theory of recovery against all potential defendants. Plaintiff points out in her brief that her previous counsel, the McGowan Hood Law Firm, had the medical records in this matter until they released them to her on April 6, 2009. [Brief, p. 2.] She gave these records to her present counsel "about October 2010." [Id.] Plaintiff contends that the first time her new attorney learned of the name of the radiologist who read the Decedent's CT scan and x-ray was on November 3, 2011, when her attorney received from the hospital "a printed copy showing a clear impression and bearing the name of James E. Reinhardt as the Radiologist that interpreted the film." [Id., at p. 3.] By asserting that the statute of limitations did not begin to run until Plaintiff's counsel was provided a copy of a record with Dr. Reinhardt's name on it, Plaintiff is in essence arguing that the limitations period did not run until she had developed a full-blown theory of recovery against all possible defendants.

Yet Plaintiff knew (or reasonably should have known) on October 28, 2008, when the Decedent died after being treated at the hospital and having a CT scan and x-ray, that a claim against these defendants might exist. That is when the statute of limitations began to run. Additionally, Plaintiff's affidavit establishes she was told to seek an attorney's advice about her husband's death by her insurance agent when she presented her claim for life insurance.

Further, Plaintiff was in fact aware of the statute of limitations, and filed her original Notice of Intent against the hospital on October 20, 2011, clearly recognizing the cut-off date of the statute. Whether Plaintiff knew of the precise identity of Dr. Reinhardt at that time is irrelevant. The South Carolina Supreme Court has stated, "the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). In Wiggins, the Court further explained "The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury." Wiggins, 314 S.C. at 129 (quoting Tollison v. B & J Machinery Co., Inc., 812 F.Supp. 618, 620 (D.S.C.1993)).

The date on which discovery of a cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). "In other words, whether the particular plaintiff actually knew he had a claim is not the test." Hackworth v. Greenville County, 371 S.C. 99, 637 S.E.2d 320 (2006), citing Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct.App.1999). "Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Id.

In attempting to support her untenable position that the limitations period did not begin to run for claims against Dr. Reinhardt and Rock Hill Radiology until November 2011 when her

attorney received a record that included Dr. Reinhardt's name, Plaintiff relies upon Strong v. University of South Carolina School of Medicine, 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994) and Arrant v. Kressler, 327 S.C. 225, 489 S.E.2d 206 (1997). Plaintiff basically contends that these cases stand for the proposition that a statute of limitations does not begin to run in a medical malpractice action until a plaintiff has medical records in his possession that informs the plaintiff of the exact cause of an injury and the precise identity of the alleged wrongdoer. This argument stands contrary to established case law precedent, as described above, regarding the triggering of statutes of limitations. Moreover, Plaintiff's argument is based upon an incorrect interpretation of these cases' actual holdings.

For instance, Plaintiff's brief incorrectly contends that in Strong the Supreme Court concluded that the statute of limitations did not begin to run when plaintiff's injury (blindness) became known to him, but rather began to run only when he obtained medical records in which another physician placed blame for the plaintiff's blindness on the follow-up care provided by the defendant doctor. [Plaintiff's Brief, p.3.] An actual reading of Strong indicates that the court did not draw this conclusion. The court simply stated, without deciding exactly when the statute of limitations began to run, that the statute began to run **at the latest** when the plaintiff obtained medical records in which another physician placed blame on the defendant doctor's follow-up care. See Strong, 316 S.C. 191 ("Plaintiff's blindness was known to Plaintiff in May 1989. The cause of the injury was readily discoverable by a 'person of common knowledge' through reasonable diligence **by at least** June 1989 when Dr. Martin noted in Plaintiff's medical records that Plaintiff's blindness was due to poor follow-up care.") (emphasis added). Accordingly, Plaintiff's interpretation of this case is incorrect.

B. Equitable tolling does not apply in this case.

Plaintiff next argues that public policy weighs in favor of equitably tolling the statute of limitations in this case. To the contrary, public policy supports barring Plaintiff's late-filed claims

brought against Rock Hill Radiology and Dr. Reinhardt. "Statutes of limitations are not mere technicalities and are rules of law that serve a variety of important public policies." Id. at 225, 525 S.E.2d at 898, quoting Amaker v. New, 33 S.C. 28, 34, 11 S.E. 386, 387 (1890). A statute of limitations is "founded on motives of public policy" and "after the lapse of a prescribed time ... the doors of the court are no longer open to him for the enforcement of a claim which he has neglected to assert within the prescribed time." Id. "[S]tatutes of limitations are not simply technicalities" in that they "stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Id. quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996). Accordingly, public policy does not support equitable tolling in this case.

Furthermore, there is no evidence that there were any circumstances that actually prevented or delayed Plaintiff in bringing the claim against Rock Hill Radiology and Dr. Reinhardt. And in fact Plaintiff's brief itself demonstrates that it wasn't very difficult to obtain the records in question. The brief simply states: "Only after Ms. Berinsky went to Piedmont Medical Center and waited for two (2) hours to obtain the records was the name of James E. Reinhardt shown." [Plaintiff's Brief, p. 7.]

Plaintiff has not shown that all reasonable diligence was exercised in pursuing this claim prior to the expiration of the limitations period. Plaintiff sat on her rights and did not adequately investigate her claim in a timely manner and now she wants the Court to toll the statute of limitations so that she can maintain a stale claim. This should not be permitted.

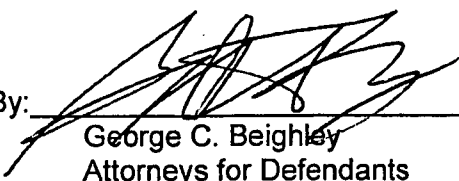
Conclusion

Because the statute of limitations for claims brought by Plaintiff against Rock Hill Radiology and Dr. Reinhardt has passed, and because Plaintiff failed to comply with the mandatory pre-suit requirements of S.C. Code Ann. § 15-79-125, the Plaintiff's Notice of Intent should therefore be dismissed with prejudice.

This the 21 day of June, 2012, in Columbia, South Carolina.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, SC 29202
Phone: (803) 771-4400
Fax: (803) 779-0016

By: _____


George C. Beighley
Attorneys for Defendants
Rock Hill Radiology Associates, P.A. and
James E. Reinhardt, Jr., M.D.

CERTIFICATE OF SERVICE BY MAIL

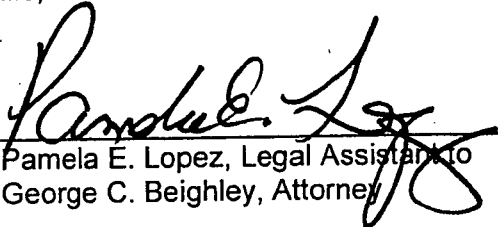
I, the undersigned, an employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for the Defendants, Rock Hill Radiology Associates, P.A. and James E. Reinhardt, Jr., M.D., do hereby certify that I have this date served the foregoing Reply to Plaintiff's Brief in Opposition to Motions to Dismiss, on the below-listed individuals by depositing a copy of same into the United States Mail, first-class, postage pre-paid, addressed to:

James W. Boyd, Esquire
P.O. Box 36425
Rock Hill, SC 29732

D. Bradley Jordan, Esq.
Jordan Law Firm, PC
P.O. Box 11785
Rock Hill, SC 29731

William U. Gunn, Esquire
Holcombe Bomar, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304

N. Heyward Clarkson, III, Esquire
Clarkson, Walsh, Terrell & Coulter, P.A.
Post Office Box 6728
Greenville, SC 29606


Pamela E. Lopez, Legal Assistant to
George C. Beighley, Attorney

June 23 2011

AFFIDAVIT OF SERVICE

State of South Carolina

County of York

Common Pleas Court

Case Number: 2011-CP-46-03984

Plaintiff:

Ann P. Adams, as Personal Representative of the Estate of Jacob E. Adams, deceased

vs.

Defendant:

Amisub of South Carolina, Inc., d/b/a Piedmont Medical and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant or Employee of South Carolina Emergency Physicians, LLC, et al.

For:

James Boyd
Law Office of James W. Boyd
1544 Ebenezer Road
Rock Hill, SC 29732

FILED-RECEIVED
2012 MAR 29 PM 1:26
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Received by AJS Investigations, LLC to be served on James E. Reinhardt Jr., MD, 5263 Harmony Church Road, Edgemoor, SC.

I, Andrew Staffileno, being duly sworn, depose and say that on the 1st day of February, 2012 at 2:05 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Civil Action Coversheet, Amended Notice of Intent to File Suit, Amended Summons, Amended Complaint, Amended Plaintiff's Response to Standard Interrogatories, Amended Affidavit of Expert Sangjin Oh, M.D., Amended Affidavit of Expert Sharon Aboulafia Oken, R.N., M.S.N., CCRN, CNA, BC and Amended Affidavit of Expert, Apostolos J. Tsiouris, M.D., to: James E. Reinhardt Jr., MD at the address of: 5263 Harmony Church Road, Edgemoor, SC.


I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 13 day of February, 2012 by the affiant who is personally known to me.



NOTARY PUBLIC

My Commission Expires: _____



Andrew Staffileno
Process Server

AJS Investigations, LLC
PO Box 37382
Rock Hill, SC 29732
(803) 980-5005

Our Job Serial Number: AJI-2012000028

Melissa M. Staffileno
Notary Public
State of South Carolina

My Commission Expires 11/30/2014

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, P.A. and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

CERTIFICATE OF SERVICE

(Certificate on following page 2)

I hereby certify that I have served a copy of the Amended Notice of Intent to File Suit, together with Amended Summons and Complaint, Plaintiff's Amended Responses to Standard Interrogatories, together with Affidavits (with current expert CVs attached) for three experts on Bruce A. Leonard, as Registered Agent on behalf of the Defendant Rock Hill Radiology Associates, P.A.; by placing a copy of the same in the United States Post Office, postage prepaid, this 25th day of January, 2012, and addressed as follows:

Bruce A. Leonard, M.D.
 Registered Agent
 Rock Hill Radiology Associates, P.A.
 218 S. Herlong Avenue
 Rock Hill, South Carolina 29732

Diane Berinsky
 Diane Berinsky, Legal Assistant to
 James W. Boyd
 Counsel for Plaintiff, Ann P. Adams

Rock Hill, South Carolina

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>Marshie Neely</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) <input type="checkbox"/> Marshie Neely C. Date of Delivery <input type="checkbox"/> 1-25-12
1. Article Addressed to: <i>Dr. Bruce Leonard</i> <i>Reg. Agent</i> <i>RH Radiology Associates, P.A.</i> <i>218 S. Herlong Ave</i> <i>Rock Hill, SC</i> <i>29732</i>	D. Is delivery address different from item 1? <input type="checkbox"/> If YES, enter delivery address below: <input type="checkbox"/> 3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
2. Article Number (Transfer from service label) <i>70110470 0002 4018 5277</i>	DAVID HAMILTON ROCK HILL, SC 2012 MAR 20 PM 1:26 FILED-RECEIVED

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF
COMMON PLEAS

Ann P. Adams, as Personal)
Representative of Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

MEMORANDUM IN SUPPORT OF
DEFENDANTS AMISUB AND
PRICE'S MOTION TO DISMISS
AND MOTION TO DISMISS
AMENDED NOTICE OF INTENT
TO FILE SUIT

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

C. A. No. 2011-CP-46-03984

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA, and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System;)

Rock Hill Radiology Associates, P.A.,)
South Carolina Emergency Physicians,)
LLC,)

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2012 MAY 30 AM 9:59
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C.C.P. & G.S.
YORK COUNTY, SC

56

Defendants.)

TO: D. BRADLEY JORDAN of Jordan & Dunn, LLC and JAMES W. BOYD, Attorneys
for Plaintiff

Defendants Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and
d/b/a Piedmont Healthcare System ("Amisub"), and Jason Price, Radiologic Technologist,
both individually and as alleged to be agent, servant, and employee of Amisub of South
Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System
("Price") offers the following Memorandum in Support of their Motion to Dismiss and Motion
to Dismiss Amended Notice of Intent to File Suit.

BACKGROUND

Ann Adams, as Personal Representative of Estate of Jacob Adams ("Plaintiff")
alleges that on or about October 20, 2008, Jacob Adams ("Decedent") was transported via
ambulance to Piedmont Medical Center's Emergency Department. Exhibit A, ¶ 6. There,
Decedent was treated for a cranial laceration; Decedent also underwent additional testing
including vital signs, blood tests, and CT scans. Exhibit A, ¶ 7. After discharge, Decedent
passed away. Exhibit A, ¶ 8. Plaintiff alleges that Decedent's death was caused by a
failure to properly diagnose and treat a subarachnoid hemorrhage. Exhibit A, ¶ 8.

Plaintiff filed Notice of Intent to File Suit, Complaint, and Responses to Standard
Interrogatories on October 20, 2011, three years after Decedent's treatment at Amisub.
Exhibit A, B, and C. Plaintiff's Responses to Standard Interrogatories identifies three expert
witnesses. Exhibit B. Plaintiff's Notice of Intent to File Suit does not include a
contemporaneously filed expert affidavit as required in S.C. Code Ann. 15-79-125(A).
Exhibit C. Plaintiff's Notice of Intent to File Suit states that under S.C. Code Ann. 15-36-

100(C)(1), Plaintiff is not required to file a contemporaneous expert affidavit because the statute of limitation period would have expired before Plaintiff was able to obtain an expert affidavit. Exhibit C. Plaintiff filed their Amended Notice of Intent to File Suit with expert affidavits on December 1, 2011. Exhibit D.

Because Plaintiff did not comply with the Notice of Intent ("NOI") requirements in S.C. Code Ann § 15-79-110(A) Plaintiff's Complaint and Notice of Intent to File Suit and Plaintiff's Amended Complaint and Amended Notice of Intent to File Suit must be dismissed.

ARGUMENT

It is unquestioned that Plaintiff has alleged claims of medical malpractice against Amisub. "Medical malpractice" is defined as "doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances." S.C. Code Ann. § 15-79-110(6). "Health care provider" is defined to include doctors and nurses as well as any similar category of licensed health care provider. S.C. Code Ann. § 15-79-110(3). "Health care institution" is defined to include hospitals. S.C. Code Ann. § 15-79-110(2).

In addition to the definition of "medical malpractice" provided by S.C. Code Ann. § 15-79-110(6), South Carolina case law distinguishes ordinary negligence from medical malpractice at the point at which the plaintiff's allegations concern matters of proper diagnosis or treatment involving technical knowledge outside of the knowledge of laymen. See, e.g., Botelho v. Bycura, 282 S.C. 578, 583, 320 S.E.2d 59, 63 (Ct.App. 1984) ("The reason for requiring expert testimony [in medical malpractice actions] is that matters of

proper diagnosis and treatment ordinarily involve technical knowledge beyond the ken of laymen.”).

There is no question that, pursuant to the NOI requirements, Amisub is a “health care institution;” Plaintiff alleges throughout their Complaint that Amisub is in fact a hospital. Exhibit A, ¶ 4. There is also no question that Plaintiff’s allegations concern “health care providers” as Plaintiff alleges that it was Amisub’s staff who failed to provide adequate medical care or treatment to Decedent. Exhibit A, ¶ 4. As such, for purposes of the NOI requirements, Plaintiff’s Complaint alleges numerous claims of medical malpractice on the part of Amisub and its staff.

Prior to filing or initiating a civil action alleging medical malpractice, NOI requirements mandate that a plaintiff must file a Notice of Intent to File Suit with a contemporaneously filed affidavit of a qualified expert witness. S.C. Code Ann. § 15-79-125(A). The Notice of Intent to File Suit must, among other things, “contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief.” *Id.* The accompanying expert witness affidavit “must specify at least one negligent act or omission claimed to exist and the factual basis for each claim.” S.C. Code Ann. § 15-36-100(B).

On January 25, 2012, The Court of Appeals of South Carolina decided Ranucci v. Crain, a case with strikingly similar facts to those of the case at hand. Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct.App. 2012). In that case, plaintiff suffered a collapsed lung as a result of a biopsy performed by defendant. *Id.* at 168, 723 S.E.2d at 243. Three years later, plaintiff filed notice of intent, complaint, and responses to interrogatories. *Id.* Plaintiff identified Dr. Boortz-Marx as her expert witness but stated that they were unable

to file a contemporaneous expert affidavit before the expiration of the statute of limitation. Id. Plaintiff stated that they intended to file the expert affidavit within the 45 days permitted by S.C. Code Ann. § 15-36-100(C)(1). Id.

In response, defendant filed a motion to dismiss on the grounds that plaintiff's notice should be dismissed due to her failure to contemporaneously file an expert affidavit per S.C. Code Ann. § 15-79-125(A). Id. Plaintiff filed their expert affidavit on July 23, 2009. Id. This Court granted defendant's motion to dismiss for failure to contemporaneously file an expert affidavit with the notice of intent to file suit per S.C. Code Ann. § 15-79-125(A). Id. Upon plaintiff's motion to alter or amend judgment, this Court clarified that S.C. Code §§ 15-79-125 and 15-36-100 "operate independently of each other, and ... [section] 15-36-100 does not offer a procedural alternative to [section] 15-79-125." Id. The court of appeals affirmed this Court's holding and held that plaintiff's notice of intent was properly dismissed for "failure to comply with the contemporaneous affidavit filing requirement of section 15-79-125." Id. at 168, 723 S.E.2d at 248. Rehearing of Ranucci was denied on March 15, 2012.

Just as in Ranucci, Plaintiff in the case at bar failed to comply with the NOI requirements when they did not contemporaneously file the requisite expert affidavit with their notice of intent as required by S.C. Code Ann. § 15-79-125. See Exhibit E. Accordingly, Plaintiff is not entitled to maintain an action against Amisub, and their claim is subject to dismissal pursuant to S.C. Code Ann. § 15-79-125 and S.C. Code Ann. § 15-36-100(F).

In addition to the above-described right of dismissal, Amisub is entitled to have this action dismissed with prejudice pursuant to Rule 12(b)(1) of the South Carolina Rules of

Civil Procedure. Section 15-79-125(D) provides that a circuit court has jurisdiction to enforce S.C. Code Ann. § 15-79-125. The negative implication of said grant of jurisdiction is that where a plaintiff fails to comply with the NOI requirements, the circuit court does not have jurisdiction over the plaintiff's case. Plaintiff's failure to comply with the NOI requirements deprives this Court of subject matter jurisdiction to consider Plaintiff's claims; accordingly, Plaintiff's Complaint and Notice of Intent to File Suit and Plaintiff's Amended Complaint and Amended Notice of Intent to File Suit should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

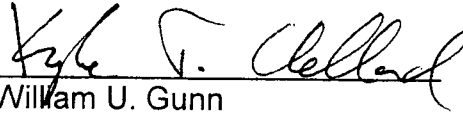
Finally, by failing to comply with the NOI requirements, Plaintiff cannot maintain the present action because it is filed improperly. Section 15-79-125(E) of the South Carolina Code provides that a plaintiff may institute a civil action in a medical malpractice case by filing a summons and complaint *only after* it is determined that the matter cannot be resolved in pre-suit mediation pursuant to the NOI requirements. By failing to comply with the NOI requirements, Plaintiff has improperly filed their Complaint and Amended Complaint when they have no legal right do so. As such, Plaintiff's Complaint and Amended Complaint fail to state a cause of action upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

CONCLUSION

For the reasons set forth above, Defendants Amisub and Price respectfully request that this Court grant their Motion to Dismiss and Motion to Dismiss Amended Complaint and Amended Notice of Intent to File Suit with prejudice.

HOLCOMBE BOMAR, P. A.

By:



William U. Gunn

Kyle T. Clelland

Post Office Box 1897

Spartanburg, SC 29304

(864) 594-5300

Attorneys for Defendant

May 30, 2012

Spartanburg, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-46-_____

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
)
Plaintiff,)

vs.)

Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

COMPLAINT
(JURY TRIAL REQUESTED)

Staci L. VersenRampey, NP, Individually)
and as Agent, Servant or Employee of)
Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Tenet Healthcare)
Corporation, Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System;)

Defendants)

The Plaintiff, above named, complaining of the above Defendants would respectfully show to this honorable Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff is a citizen and resident of York County, South Carolina and is the duly appointed personal representative of the Estate of Jacob E. Adams, Deceased, who died on October 28, 2008.

2. Plaintiff brings this action pursuant to S.C. Code Ann. Section 15-51-10 et seq. for the benefit of the statutory beneficiaries of Jacob E. Adams, deceased, as designed by S.C. Code Ann. Section 15-51-20, naming themselves as Personal Representatives to the decedent to recover for damages, injuries, and losses sustained by reason of the wrongful death of Jacob E. Adams.

3. The Defendant, Staci L. Versen-Rampey, upon information and belief, is a nurse practitioner who treated the Plaintiff's decedent, Jacob E. Adams, and, upon information and belief, is a citizen and resident of York County, South Carolina and is, at all times hereinafter mentioned, is a nurse practitioner in the Emergency Department at Piedmont Medical Center, located in York County, Rock Hill, South Carolina. Upon information and belief, at all times hereinafter mentioned, Staci L. Versen-Rampey was and is an agent, servant and employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System.

4. The Defendant, Jason Price, upon information and belief, is a radiologic technologist who treated the Plaintiff's Decedent, Jacob E. Adams, and upon information and belief, is a citizen and resident of York County, South Carolina and, at all times hereinafter mentioned, was and is an agent, servant and employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System.

4. The Defendant, Tenet Healthcare Corporation, Amisub of South Carolina, Inc., (hereinafter "Piedmont" is a South Carolina Corporation with its principal place of business in Rock Hill, York County, South Carolina, and is the corporation that owns and runs the hospital in Rock Hill, South Carolina, and is doing business as Piedmont

Medical Center and also doing business as Piedmont Healthcare System. The Plaintiff was a patient at Piedmont where certain employees of Piedmont were responsible for his treating him on an emergent basis and further assessing his condition.

5. The Plaintiff is unable to provide an affidavit prior to filing the lawsuit. The Plaintiff is informed and believe that pursuant to S.C. Code Section 15-36-100 (C) (1) the contemporaneous filing requirement of subsection (B) does not apply to this case due to the Plaintiffs' good faith belief that the period of limitation will expire on the claim stated in the complaint within 10 days of the date of filing and because of the time constraints, the plaintiffs allege that an affidavit of an expert could not be prepared. The Plaintiffs will supplement the pleadings with an *affidavit* within 45 days of the date of filing.

FOR A FIRST CAUSE OF ACTION

(WRONGFUL DEATH)

6. On or about October 20 2008, the Plaintiff was seen by various individuals in the Emergency Department of Piedmont Medical Center. Mr. Adams' old charts were reviewed by nurse practitioner, Staci L. Versen-Rampey. Mr. Adams was on Coumadin and testing for levels of this drug were performed in the lab work ordered on Mr. Adams. Further, when Mr. Adams sustained the injuries that brought him by ambulance to Piedmont Medical center, he suffered a laceration to his scalp and potential injury to his cervical spine and shoulder

7. The Plaintiff's decedent's vital signs were taken during his first examination and duly noted by the Defendant, Versen-Rampey. Further orders included the testing for his Prothrombin levels and coagulation (issued by Defendant Versen-Rampey). Radiology was contacted to perform a CT of the Head Without Contrast and of the Cervical Spine (again

ordered by Defendant Versen-Rampey). Treatment of the laceration on the Plaintiff's Decedent's head was likewise ordered by Defendant Versen-Rampey.

8. On October 20, 2008, the Plaintiff was taken to radiology for the testing ordered, *vis a vis*, the CT scan without contrast on Mr. Adam's head and a CT scan of his cervical spine. The result of the CT scan of the head's result was not known until October 21, 2008 at 9:55 a.m. The impression was "there are chronic changes with an associated right temporoparietal contusion". So too, the CT scan results for the Cervical spine were not noted in the patient's file until October 22, 2008, long after the patient had been released from the Emergency Department of the Defendant Piedmont Medical Center.

9. The Defendants owed a duty of due care to the Plaintiff's Decedent. The Defendants breached that duty and were negligent, reckless, willful, wonton, and grossly negligent in the following particulars:

- a. in failing to properly assess the true condition of Jacob E. Adams;
- b. in failing to properly monitor the vital signs of Jacob E. Adams in order to note any changes that might indicate a more serious condition, such as an intracranial bleed;
- c. in failing to timely perform proper testing with prompt results to ensure the proper release of Jacob Adams;
- d. in failing to properly note the serious condition in the impression from the CT scan done on Jacob Adams' head;
- e. in failing to properly bring to the attention of the physician in charge of the Emergency Department of Piedmont Medical Center the serious change noted

in the CT scan when it was compared to two prior CT scans performed at this same facility in prior hospital visits;

- f. in failing to hospitalize a patient who was on blood thinners without assessing his condition for a significantly longer period of time.
- g. in failing to recognize, when viewing the head CT scan, that there was already bleeding going on intracranially;
- h. in failing to use the degree of care that reasonably competent medical personnel would have used under the circumstances then and there prevailing.

As a direct and proximate cause of the aforesaid negligence, reckless, willful want and/or gross negligence of the Defendants, Tenet, Versen-Rampey and Price, jointly and severally, Jacob E. Adams lost his life. Furthermore, as a direct and proximate result of the defendant's negligent, grossly negligent, reckless, willful and wanton acts or omissions, the plaintiff sustained personal injuries including, but not limited to:

- a. pecuniary loss;
- b. mental shock and suffering;
- c. wounded feelings;
- d. grief and sorrow;
- e. cost of the funeral expense and related costs;
- f. Loss of companionship and comfort of their father;

10. The Plaintiffs is entitled to actual damages and punitive damages as may be awarded.

FOR A SECOND CAUSE OF ACTION

(SURVIVORSHIP)

11. The Plaintiff incorporates the allegations of paragraphs 1 through 10 as if set forth hereinafter verbatim.

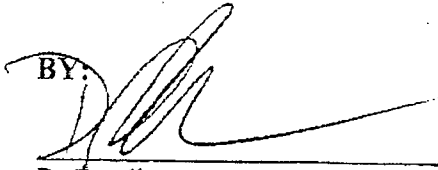
12. The Plaintiff, Ann P. Adams, as the personal representative of the estate of Jacob E. Adams is entitled to recover compensatory damages for the survival claim of Jacob E. Adams, in an amount to be proven at trial.

13. The Plaintiff, Ann P. Adams, as the personal representative of the estate of Jacob E. Adams, is also entitled to recover punitive damages in an amount to be proven at trial.

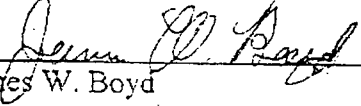
WHEREFORE, your Plaintiff prays for judgment against Defendants, jointly and severally, ion an amount of actual damages sufficient to compensate the Plaintiff for the damages and losses suffer by the statutory beneficiaries on the wrongful death cause of action and for all actual damages, pain and suffering for the benefit of the estate of Jacob E. Adams on the survivorship cause of action, and for punitive damages as may be awarded by a jury and for such other and further relief as the Court may deem just and proper.

(Signatures next page)

BY:



D. Bradley Jordan
Jordan & Dunn, LLC
546 E. Main Street
Rock Hill, South Carolina 29731
(803) 817-7999



James W. Boyd
Post Office Box 36425
Rock Hill, South Carolina 29732
(803) 328-2600

Oct 20, 2011
Rock Hill, South Carolina

0 00174

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-46-_____

Ann P. Adams, as Personal)
Representative of Estate of)
Jacob E. Adams, Deceased.)
Plaintiff,)

vs.)

Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Staci L. VersenRampey, NP, Individually)
and as Agent, Servant or Employee of)
Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Tenet Healthcare)
Corporation, Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System;)

Defendants)

PLAINTIFF' RESPONSE TO
STANDARD ITERROGATORIES

TO: THE ABOVE-NAMED DEFENDANTS:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: The Plaintiff, Ann P. Adams
231 Bailey Avenue
Rock Hill, South Carolina 29732

0 0 0 1 7 6

Any and all employees of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System rendering treatment to Plaintiff;

Staci L. VersenRampey, NP, any and all other treating physicians and hospitals, including but not limited to, members of their respective staffs, with respect to treatment rendered to the Plaintiff, Jacob Adams;

Jason Price, Radiologic Technologist, any and all other treating physicians and hospitals, including but not limited to, members of their respective staffs, with respect to treatment rendered to the Plaintiff, Jacob Adams;

No statements have been taken from any of the above witnesses. This interrogatory may be supplemented at such time that Plaintiff becomes aware of additional information responsive to this interrogatory.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: No such items exist at this time

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

RESPONSE:

Piedmont Medical Center
222 S. Herlong Avenue
Rock Hill SC 29732

Presbyterian Hospital (Novant Health)
200 Hawthorne Lane
Charlotte, North Carolina 28204

Plaintiff, through her counsel, is in the process of obtaining further medical records and medical bills and will, therefore, supplement Plaintiff's response to this interrogatory once they are received. Further, the Plaintiff, through counsel, reserves the right to supplement as to any other treating physicians who may become known to Plaintiff's counsel.

4. Set forth the names and addresses of all insurance companies that have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE:

Plaintiff is unaware of insurance companies that have liability coverage and therefore is unable to respond as to numbers of policies or the amounts of liability coverage.

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

RESPONSE: Plaintiff's counsel is in the process of obtaining billing information as to monetary damages and will supplement at such time as these are available.

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

RESPONSE:

Sharon Okun, R.N., M.S.N., CCRN. CAN-BC

Sangjin Oh, M.D.

A.J. Taiouris, M.D.

Plaintiff reserves the right to further supplement her response to the Interrogatory at such time as other experts may be known to her or her counsel.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

Any and all treating physicians and hospitals, including members of their staffs, as to the treatment (past and present) of the Plaintiff and also of the minor child.

Sharon Okun, R.N., M.S.N., CCRN, CAN-BC
will testify in accordance with her Affidavit, which will be supplied within the designated 45-day period

Sangjin Oh will testify in accordance with his Affidavit, which will be supplied within the designated 45-day period.

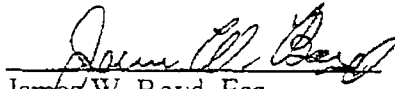
A.J. Tajouris, M.D. will testify in accordance with his Affidavit which will be supplied within the designated 45-day period.

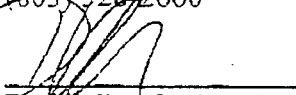
Any and all other treating physicians of the Plaintiff as may be identified in the future.

(Signatures on next page)

The Plaintiff, Ann P. Adams, as
Personal Representative of Estate of
Jacob E. Adams, Deceased

By her attorneys,


James W. Boyd, Esq.
P.O. Box 36425
Rock Hill, SC 29732
(803) 328-2600


D. Bradley Jordan, Esq.
Jordan and Dunn, LLC
P.O. Box 11785
Rock Hill, SC 29731
(803) 817-7999

Rock Hill, South Carolina
~~September~~ 20 2011
October

000180

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of Estate of)
Jacob E. Adams, Deceased.)
Plaintiff,)

vs.)

Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Staci L. VersenRampey, NP, Individually)
and as Agent, Servant or Employee of)
Tenet Healthcare Corporation, Amisub)
of South Carolina, Inc., d/b/a Piedmont)
Medical Center and d/b/a Piedmont)
Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Tenet Healthcare)
Corporation, Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System;)

Defendants)

FILED - RECEIVED
2011 OCT 20 PM 4:13
DAVID W. HAMILTON
CLERK OF COURT
YORK COUNTY, SC

NOTICE OF INTENT TO FILE SUIT

Pursuant to South Carolina Code Annotated 15-79-125, the above Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is a Complaint that specifies the Plaintiff's short, plain statement of the facts and is a copy of the Complaint that Plaintiff intends to file. Attached as Exhibit B are Answers to Standard Interrogatories as set forth in S.C.R.C.P Rule 33(b). The Plaintiff is unable to provide an affidavit prior to filing the lawsuit the Plaintiff is informed and believe that pursuant to S.C. Code Section

15-36-100 (C) (1). the contemporaneous filing requirement of subsection (B) does not apply to this case due to the Plaintiffs' good faith belief that the period of limitation will expire on the claim stated in the complaint within 10 days of the date of filing and because of the time constraints, the plaintiffs allege that an affidavit of an expert could not be prepared. The Plaintiffs will supplement the pleadings with an *affidavit* within 45 days of the date of filing.

(SIGNATURES ON FOLLOWING PAGE)

BY: James W. Boyd
James W. Boyd
P.O. Box 36425
Rock Hill, SC 29732
(803) 328-2600

BY: D. Bradley Jordan
D. Bradley Jordan
Jordan & Dunn, LLC
P.O. Box 11785
Rock Hill, SC 29731
(803) 817-7999

ATTORNEYS FOR PLAINTIFFS

Rock Hill, South Carolina
~~November 20~~ 2011
October

EXHIBIT D

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46- 03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, PA. and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

FILED-RECEIVED
2011 DEC - 1 PM 2:34
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

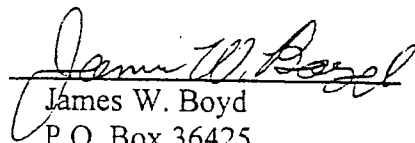
AMENDED

NOTICE OF INTENT TO FILE SUIT

Pursuant to South Carolina Code Annotated 15-79-125, the above Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A is a Complaint that specifies the Plaintiff's short, plain statement of the facts and is a copy of the Complaint that Plaintiff intends to file. Attached as Exhibit B are Answers to Standard Interrogatories as set

forth in S.C.R.C.P Rule 33(b). The Plaintiff is unable to provide an affidavit prior to filing the lawsuit the Plaintiff is informed and believe that pursuant to S.C. Code Section 15-36-100 (C) (1). the contemporaneous filing requirement of subsection (B) does not apply to this case due to the Plaintiffs' good faith belief that the period of limitation will expire on the claim stated in the complaint within 10 days of the date of filing and because of the time constraints, the plaintiffs allege that an affidavit of an expert could not be prepared. The Plaintiffs will supplement the pleadings with an *affidavit* within 45 days of the date of filing.

BY:



James W. Boyd
P.O. Box 36425
Rock Hill, SC 29732
(803) 328-2600

ATTORNEYS FOR PLAINTIFFS

Rock Hill, South Carolina
November 30 2011

000187

EXHIBIT E

RANUCCI v CRAIN

Jun 7, 2006

Plaintiff presents
to Defendant

Jun 8, 2009

Plaintiff files Notice of Intent
without expert affidavit

Jul 23, 2009

Plaintiff files Amended
Notice of Intent with
expert affidavit

May 2006 Sep 2006 Jan 2007 May 2007 Sep 2007 Jan 2008 May 2008 Sep 2008 Jan 2009 May 2009

ADAMS v AMISUB

000190

Oct 20, 2008

Plaintiff's decedent presents to Defendant Amisub

Oct 20, 2011

Plaintiff files Notice of Intent without expert affidavits

Dec 1, 2011

Plaintiff files Amended Notice of Intent with expert affidavits

Sep 2008 Jan 2009 May 2009 Sep 2009 Jan 2010 May 2010 Sep 2010 Jan 2011 May 2011 Sep 2011

LAW

0 00191

SECTION 15-79-125. Notice of Intent to File Suit as prerequisite to filing action; subpoena of medical of records; depositions; mandatory prelitigation mediation; initiating action; ADR participation.

(A) Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

(B) After the Notice of Intent to File Suit is filed and served, all named parties may subpoena medical records and other documents potentially related to the medical malpractice claim pursuant to the rules governing the service and enforcement of subpoenas outlined in the South Carolina Rules of Civil Procedure. Upon leave of court, the named parties also may take depositions pursuant to the rules governing discovery outlined in the South Carolina Rules of Civil Procedure.

(C) Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon a finding of good cause. Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the mediation conference for all or any part of the State shall govern the mediation process, including compensation of the mediator and payment of the fees and expenses of the mediation conference. The parties otherwise are responsible for their own expenses related to mediation pursuant to this section.

(D) The circuit court has jurisdiction to enforce the provisions of this section.

(E) If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed:

(1) within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; or

(2) prior to expiration of the statute of limitations, whichever is later.

(F) Participation in the prelitigation mediation pursuant to this section does not alter or eliminate any obligation of the parties to participate in alternative dispute resolution after the civil action is initiated. However, there is no requirement for participation in more than one alternative dispute resolution forum following the filing of a summons and complaint to initiate a civil action in the matter.

HISTORY: 2005 Act No. 32, Section 5, eff July 1, 2005, for causes of action arising after that date.

SECTION 15-36-100. Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission.

(A) As used in this section, "expert witness" means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who:

(1) is licensed by an appropriate regulatory agency to practice his or her profession in the location in which the expert practices or teaches; and

(2)(a) is board certified by a national or international association or academy which administers written and oral examinations for certification in the area of practice or specialty about which the opinion on the standard of care is offered; or

(b) has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(i) the active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding the opinion;

(ii) the teaching of the area of practice or specialty of his or her profession for at least half of his or her professional time as an employed member of the faculty of an educational institution which is accredited in the teaching of his or her profession for at least three of the last five years immediately preceding the opinion; or

(iii) any combination of the active practice or the teaching of his or her profession in a manner which meets the requirements of subitems (i) and (ii) for at least three of the last five years immediately preceding the opinion;

(3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual

basis for each claim based on the available evidence at the time of the filing of the affidavit.

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(2) The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

(D) This section does not extend an applicable period of limitation, except that, if the affidavit is filed within the period specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely and provides no basis for a statute of limitations defense.

(E) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(F) If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section

and the failure to file the affidavit is the result of a mistake. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(G) This section applies to the following professions:

- (1) architects;
- (2) attorneys at law;
- (3) certified public accountants;
- (4) chiropractors;
- (5) dentists;
- (6) land surveyors;
- (7) medical doctors;
- (8) marriage and family therapists;
- (9) nurses;
- (10) occupational therapists;
- (11) optometrists;
- (12) osteopathic physicians;
- (13) pharmacists;
- (14) physical therapists;
- (15) physicians' assistants;
- (16) professional counselors;
- (17) professional engineers;
- (18) podiatrists;
- (19) psychologists;
- (20) radiological technicians;

(21) respiratory therapists; and

(22) veterinarians.

HISTORY: 2005 Act No. 32, Section 4, eff July 1, 2005, for causes of action arising after that date.

SECTION 15-79-110. Definitions.

As used in this chapter:

(1) "Ambulatory surgical facility" means a licensed, distinct, freestanding, self-contained entity that is organized, administered, equipped, and operated exclusively for the purpose of performing surgical procedures or related care, treatment, procedures, and/or services, by licensed health care providers, for which patients are scheduled to arrive, receive surgery or related care, treatment, procedures, and/or services, and be discharged on the same day. This term does not include abortion clinics.

(2) "Health care institution" means an ambulatory surgical facility, a hospital, an institutional general infirmary, a nursing home, and a renal dialysis facility.

(3) "Health care provider" means a physician, surgeon, osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor, optometrist, podiatrist, or any similar category of licensed health care provider, including a health care practice, association, partnership, or other legal entity.

(4) "Hospital" means a licensed facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment, and care of such persons over a period exceeding twenty-four hours and provides medical and surgical care of acute illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina. This term includes a hospital that provides specialized service for one type of care, such as tuberculosis, maternity, or orthopedics.

(5) "Institutional general infirmary" means a licensed facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents, or inmates with illness, injury, or infirmity for a period exceeding twenty-four hours for the diagnosis, treatment, and care of such persons and which provides medical, surgical, and professional nursing care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina.

(6) "Medical malpractice" means doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances.

(7) "Nursing home" means a licensed facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty-four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing skilled nursing services for persons who are not in need of hospital care. This term does not include assisted living, independent living, or community residential care facilities that do not provide skilled nursing services.

(8) "Renal dialysis facility" means an outpatient facility which offers staff assisted dialysis or training and supported services for self-dialysis to end-stage renal disease patients.

(9) "Skilled nursing services" means services that:

(a) are ordered by a physician;

(b) require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists; and

(c) are furnished directly by, or under the supervision of such personnel.

HISTORY: 2005 Act No. 32, Section 5, eff July 1, 2005, for causes of action arising after that date.

▷

Court of Appeals of South Carolina.
Patsy BOTEHLO, Appellant,
v.
Blair M. BYCURA, Respondent.

No. 0246.
Heard March 19, 1984.
Decided Aug. 30, 1984.

Former patient brought negligence action against podiatrist alleging professional malpractice. The Court of Common Pleas, York County, Robert L. McFadden, J., granted podiatrist's motion for summary judgment, and patient appealed. The Court of Appeals, Bell, J., held that: (1) podiatrist had not admitted in his testimony that he had violated standard of care of a recognized authority in podiatric field; thus, patient was required to offer expert testimony regarding standard of care of a podiatrist; (2) orthopedic surgeon was not expert on standards of good podiatric practice; and (3) inquiry into facts of patient's informed consent claim was not required after patient presented no expert testimony on standard of disclosure a reasonable podiatrist would be required to meet.

Affirmed.

West Headnotes

[1] Health 198H ⚡821(4)

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(G) Actions and Proceedings

198Hk815 Evidence

198Hk821 Necessity of Expert Testimony

198Hk821(4) k. Gross or Obvious Negligence and Matters of Common Knowledge. Most Cited Cases

(Formerly 299k18.80(8) Physicians and Surgeons)

In a medical malpractice action plaintiff must es-

tablish by expert testimony both required standard of care and defendant's failure to conform to that standard, unless subject matter lies within ambit of common knowledge or experience, so that no special learning is needed to evaluate defendant's conduct.

[2] Judgment 228 ⚡185.3(21)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185.3 Evidence and Affidavits in Particular Cases

228k185.3(21) k. Torts. Most Cited

Cases

In medical malpractice action, on defendant's motion for summary judgment, there will usually be no genuine issue of material fact unless plaintiff presents expert testimony on the standard of care and its breach by defendant.

[3] Evidence 157 ⚡363

157 Evidence

157X Documentary Evidence

157X(C) Private Writings and Publications

157k360 Books and Other Printed Publications

157k363 k. Scientific and Technical Works; Safety Standards. Most Cited Cases

Journal article by authority in field of podiatry was not competent evidence of standard of care required of podiatrist in the circumstances. Circuit Court Rule 44(d).

[4] Evidence 157 ⚡264

157 Evidence

157VII Admissions

157VII(E) Proof and Effect

157k264 k. Construction. Most Cited Cases

Health 198H ⚡821(5)

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(G) Actions and Proceedings

198Hk815 Evidence

198Hk821 Necessity of Expert Testimony

198Hk821(5) k. Particular Procedures. Most Cited Cases
(Formerly 299k18.80(8) Physicians and Surgeons)

Podiatrist's testimony that he agreed with journal article recommending treatment for persons with conditions similar to that of former patient's which differed from that he had given to former patient, but that he did not agree that article represented professional standard to be observed in patient's case did not constitute admission by podiatrist that he had deviated from standard of care required of a podiatrist treating patient's condition; thus, expert testimony was necessary to establish standard of care required of a podiatrist.

[5] **Health 198H** ⚡688

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(C) Particular Procedures

198Hk688 k. Podiatry. Most Cited Cases

(Formerly 299k14(2) Physicians and Surgeons)

Podiatrist's duty of care must be measured by practices and principles of particular branch of healing arts in which he is trained and licensed; he is not bound to possess an exercise degree of skill and learning required of a physician or surgeon. Code 1976, §§ 40-51-10 to 40-51-270.

[6] **Health 198H** ⚡628

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(B) Duties and Liabilities in General

198Hk628 k. School of Medicine. Most Cited Cases

(Formerly 299k14(2) Physicians and Surgeons)

When patient chooses a practitioner of a recog-

nized branch of the healing professions, he elects to undergo kind of care and treatment common to that particular profession; he cannot afterward complain that care he received fell short of standards in another profession.

[7] **Health 198H** ⚡688

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(C) Particular Procedures

198Hk688 k. Podiatry. Most Cited Cases

(Formerly 299k14(1) Physicians and Surgeons)

In malpractice action against podiatrist, former patient had to present evidence of the standard of care required of a podiatrist, not physicians and surgeons. Code 1976, §§ 40-51-10 to 40-51-270.

[8] **Health 198H** ⚡821(5)

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(G) Actions and Proceedings

198Hk815 Evidence

198Hk821 Necessity of Expert Testimony

198Hk821(5) k. Particular Procedures. Most Cited Cases

(Formerly 299k18.80(8) Physicians and Surgeons)

Standard of care in podiatry must be established by testimony of one knowledgeable or skilled in podiatric practice.

[9] **Evidence 157** ⚡536

157 Evidence

157XII Opinion Evidence

157XII(C) Competency of Experts

157k536 k. Knowledge, Experience, and Skill in General. Most Cited Cases

To be competent as expert, witness must have acquired by reason of study or experience or both such knowledge and skill in business, profession, or science that he is better qualified than jury to form opinion on particular subject of his testimony.

[10] Evidence 157 536

157 Evidence

157XII Opinion Evidence

157XII(C) Competency of Experts

157k536 k. Knowledge, Experience, and Skill in General. Most Cited Cases

Test of whether witness is competent as an expert is a relative one, depending on the particular witness' reference to the subject; expert is not limited to any class of persons acting professionally.

[11] Evidence 157 538

157 Evidence

157XII Opinion Evidence

157XII(C) Competency of Experts

157k538 k. Due Care and Proper Conduct in General. Most Cited Cases

Orthopedic surgeon who testified that he did not have any training in podiatry, was unfamiliar with any publications written by podiatrists, was unfamiliar with standards of professional care generally observed by podiatrists and was unfamiliar with surgical procedure involved in case was not an expert on standards of good podiatric practice. Code 1976. §§ 40-47-10 to 40-47-270, 40-51-10 to 40-51-270.

[12] Evidence 157 571(3)

157 Evidence

157XII Opinion Evidence

157XII(F) Effect of Opinion Evidence

157k569 Testimony of Experts

157k571 Nature of Subject

157k571(3) k. Due Care and Proper Conduct. Most Cited Cases

Testimony by orthopedic surgeon that podiatrist had not observed standard of care required of an orthopedic surgeon did not establish that podiatrist had violated standard of care required of a podiatrist.

[13] Health 198H 688

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(C) Particular Procedures

198Hk688 k. Podiatry. Most Cited Cases

(Formerly 299k15(17.1), 299k15(17) Physicians and Surgeons)

Rule that scope of physician's duty to disclose is measured by those communications a reasonable medical practitioner in same branch of medicine would make under same or similar circumstances applies in malpractice action against a podiatrist.

[14] Health 198H 926

198H Health

198HVI Consent of Patient and Substituted Judgment

198Hk922 Proceedings and Actions

198Hk926 k. Weight and Sufficiency of Evidence. Most Cited Cases

(Formerly 299k18.80(8) Physicians and Surgeons)

Further inquiry into facts of former patient's informed consent claim against podiatrist was not required after patient presented no expert testimony on standard of disclosure reasonable podiatrist would be required to meet under circumstances of case.

****61 *580** John C. Hayes, III of Hayes, Brunson & Gatlin, Rock Hill, for appellant.

John L. Choate of Nelson, Mullins, Grier & Scarborough, Columbia, for respondent.

BELL, Judge:

Patsy Botelho brought this negligence action against Blair Bycura, a podiatrist, alleging professional malpractice. The issues joined were (1) whether Bycura exercised reasonable care in performing foot surgery without first attempting to alleviate Botelho's problem by conservative management and (2) whether he breached a duty to inform Botelho of the nature and risks of the surgery, including healing time, before obtaining her consent to the procedure. The circuit judge granted Bycura's motion for summary judgment on the ground that Botelho failed to present expert testimony on *581 either issue and Bycura was therefore entitled to judgment as a matter of law. Botelho appeals. We affirm.

The material facts are largely undisputed. Botelho suffered from a painful callus on the sole of her left foot. The callus had been there for about thirty-five years, but she had never sought medical treatment for the problem. In April 1980, she went to Bycura, a licensed podiatrist who practices in Rock Hill. After examining Botelho and x-raying her foot, Bycura diagnosed her as having an intractable plantar keratoma, that is, a callus on the sole of her foot which would not go away. He told her the second and third metatarsals of the left foot were sitting lower than the others. These bones exerted a downward pressure which caused the callus and her painful symptoms. He told her the condition could be corrected by a surgical procedure which involves fracturing the bones and putting them back in place. He also told her she could wear a wide shoe as an alternative to surgery. Botelho indicated she wanted the surgery and asked Bycura to perform it that same day. Bycura agreed.

With the assistance of a nurse, Botelho then filled out and signed three written forms. One was a fee schedule indicating the cost of the operation. Another was a diagram of the left foot illustrating which bones would be fractured during the surgery. This form indicated the operation involved "bone fracture" and "bone removal." It listed healing time for the operation as:

85% - 3 mos.

95% - 9 mos.

100% - at least 1 year.

It also listed complications and dangers of the surgery. Botelho signed and dated this **62 form in a blank immediately to the right of the list of healing times.

The third form was an authorization for and consent to surgery. It contained a detailed list of complications that might occur as a result of the surgery. On the reverse side it listed seven alternatives instead of surgery. These included seeking a second opinion. Botelho indicated on the form she did not wish to seek a second opinion. She signed the consent form on the front and the back. Before she signed it, a de-

scription of the operation ("Bone fracture Bone removal 2d & 3d *582 metatarsals left foot") was written immediately below the space for her signature on both the front and back of the form.

After Botelho signed these forms, Bycura returned and performed the operation, called an osteotomy, on the second and third metatarsals of her left foot. As a result of the operation Botelho experienced pain, swelling, discoloration, and other discomfort. Because her foot hurt, she had difficulty sleeping at night for several weeks. Although she was able to return to her regular desk job the second day after the surgery, for three months she was unable to return to her parttime job as a sales clerk at a pharmacy, because she could not stand on her foot for any length of time without pain. She testified that her second and third toes no longer moved like the others, that she sometimes had shooting pains in her foot, and that she wished her foot was back the way it was. She felt Bycura had misled her about the amount of pain and disability she would suffer from the operation.

After returning to Bycura's office once to have her surgical dressing changed and once to have her stitches removed, Botelho failed to keep any further postoperative appointments with Bycura. The purpose of the additional appointments was to fit her with an orthotic device to be worn in her regular shoes. This was supposed to relieve pressure on her foot and reduce the possibility of transfer lesions, i.e., the reappearance of calluses on another part of her foot. Instead of returning to Bycura, she consulted an orthopaedic surgeon, Dr. Robert M. Scoville, who treated her for a period of about six months. According to her own testimony, Botelho told Dr. Scoville:

... I would not wear an orthopaedic shoe. I didn't wear one before the surgery and I wasn't going to wear the ugly things now. He did say something about, well, that might help.

In his deposition Dr. Scoville testified that the osteotomies were done in the correct place, that they healed normally, and that there was no question they did take care of Botelho's plantar keratosis. By the end of September 1980 the callus was gone and weight reduction from the second and third metatarsals had been accomplished. However, Scoville also testified he would have tried an oxford shoe with padding and a metatarsal*583 bar for six months be-

fore considering surgery to correct Botelho's problem. He agreed that this conservative course of treatment might not have alleviated Botelho's preoperative problem and that surgery might have been necessary anyway.

I.

The first issue on appeal is whether Botelho was required to offer expert testimony on the issue of Bycura's failure to use conservative management before performing surgery.

[1][2] In a medical malpractice action the plaintiff must establish by expert testimony both the required standard of care and the defendant's failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge or experience, so that no special learning is needed to evaluate the defendant's conduct. See *Burke v. Pearson*, 259 S.C. 288, 191 S.E.2d 721 (1972); *Welch v. Whitaker*, 317 S.E.2d 758 (S.C.App.1984). The reason for requiring expert testimony is that matters of proper diagnosis and treatment ordinarily involve technical knowledge beyond the ken of laymen. See *Bessinger v. DeLoach*, 230 S.C. 1, 94 S.E.2d 3 (1956). Thus, on a defendant's motion for summary judgment, there will usually be no genuine issue of **63 material fact unless the plaintiff presents expert testimony on the standard of care and its breach by the defendant. See *Sheppard v. Kimbrough*, 318 S.E.2d 573 (S.C.App.1984).

The disputed issue in this case is whether Bycura's decision to perform surgery violated the professional standard of care required of podiatrists. A decision to perform surgery involves medical judgment outside the realm of lay knowledge or experience. Therefore, expert testimony would normally be required.

Botelho argues, however, that expert testimony was unnecessary, because Bycura himself admitted he deviated from the standard of care laid down by a recognized authority in the podiatric field. She claims this creates an exception to the normal rule requiring expert testimony. We find the evidence upon which Botelho relies does not support her position.

During Bycura's deposition, Botelho's lawyer examined him using an article from the *Journal of Foot Surgery* co-authored by Dr. Joseph B. Addante.

Bycura admitted Addante's writings are authoritative in the field of podiatry. The *584 article discussed the metatarsal osteotomy as a means of treating painful intractable plantar keratosis. One part of the article stated: "In considering use of this procedure [i.e., the metatarsal osteotomy] biomechanical management should be tried first. Surgery is considered if the biomechanical management is not enough to render the patient comfortable." When asked if he agreed with this statement, Bycura said, "With reservations, I agree with it." In response to further questioning, Bycura explained that the statement did not apply to all cases. He believed the statement was not valid in Botelho's case where the problem had lasted over thirty years. In his judgment, after thirty years Botelho's problem would not go away with conservative management.

[3][4] This testimony cannot fairly be characterized as an admission by Bycura that he deviated from the standard of care required of a podiatrist treating Botelho's problem. The Addante article was not competent evidence of the standard of care required of podiatrists in the circumstances. See *Edwards v. Union Buffalo Mills Co.*, 162 S.C. 17, 159 S.E. 818 (1931) (medical treatise not competent evidence even though author is a standard authority on the subject). Therefore, the article itself could not be relied on to create the material issue of fact which would preclude summary judgment. See Rule 44(d), Rules of Practice for the Circuit Courts of South Carolina (motion must be opposed by such facts as would be admissible in evidence). Moreover, Bycura did not agree the statement quoted from the article represented the professional standard to be observed in a case like Botelho's. As he made no such admission, his own testimony did not create an exception to the rule that the plaintiff must present expert testimony on the issue of malpractice to survive a defendant's motion for summary judgment.

II.

Since expert testimony was required, the next issue is whether Dr. Scoville, an orthopaedic surgeon, could testify as an expert regarding the standard of care to be observed by a podiatrist. This is a question of first impression in South Carolina.^{FNI}

^{FNI} The courts of other states have addressed the question in different ways. In *Dolan v. Galluzzo*, 77 Ill.2d 279, 396 N.E.2d

13 (1979), the Supreme Court of Illinois held that to testify on the standard of care in podiatry, the witness must be licensed to practice podiatry. Thus, an orthopaedic surgeon was not competent to give expert testimony against a podiatrist. In contrast, the Georgia Court of Appeals in Sanford v. Howard, 161 Ga.App. 495, 288 S.E.2d 739 (1982), permitted such testimony where the witness was knowledgeable in the procedure used by the podiatrist and the method of treatment was the same in both professions. In Whitehurst v. Boehm, 41 N.C.App. 670, 255 S.E.2d 761 (1979), the court held the applicable standard of care for podiatrists and other "allied occupations" to medicine must be established by other practitioners in the particular field of practice or by other expert witnesses equally familiar with and competent in that field. An orthopaedic surgeon was found not to have the knowledge required to qualify as an expert on the podiatric standard of care. Similarly, in Darby v. Cohen, 101 Misc.2d 516, 421 N.Y.S.2d 337 (N.Y.Sup.1979), a New York court ruled that a general surgeon was not competent to testify as to standards of podiatric care.

**64 *585 [5][6][7] Podiatry is a recognized profession in South Carolina. See §§ 40-51-10 to -270, Code of Laws of South Carolina, 1976, as amended. The duty and liability of a podiatrist correspond to those of health care professionals generally. The law requires a podiatrist to use reasonable care in the performance of professional services and to act according to his best judgment in treating his patients; but he is only bound to possess and exercise that degree of skill and learning which is ordinarily possessed and exercised by similarly situated members of his profession in good standing. Cf. Bessinger v. DeLoach, 230 S.C. 1, 94 S.E.2d 3 (1956) (dentists). In other words, the podiatrist's duty of care must be measured by the practices and principles of the particular branch of the healing arts in which he is trained and licensed. He is not bound to possess and exercise the degree of skill and learning required of a physician or surgeon. Whitehurst v. Boehm, 41 N.C.App. 670, 255 S.E.2d 761 (1979). When a patient chooses a practitioner of a recognized branch of the healing professions, he elects to undergo the kind of care and treatment common to that particular profession. He cannot afterward complain that the care

he received fell short of the standards in another profession. *Id.* For this reason, Botelho had to present evidence on the standard of care required of podiatrists, not physicians and surgeons.

[8][9][10] The standard of care in podiatry must be established by the testimony of one knowledgeable or skilled in podiatric practice. Cf., Whitehurst v. Boehm, *supra*. To be competent as an expert, a witness must have acquired by *586 reason of study or experience or both such knowledge and skill in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony. Hopkins v. Comer, 240 N.C. 143, 81 S.E.2d 368 (1954); Sanford v. Howard, 161 Ga.App. 495, 288 S.E.2d 739 (1982). The test is a relative one, depending on the particular witness's reference to the subject; an expert is not limited to any class of persons acting professionally: Memorial Hospital of Alamance County, Inc. v. Brown, 50 N.C.App. 526, 274 S.E.2d 277 (1981); cf., State v. Merriman, 34 S.C. 16, 12 S.E. 619 (1891) (not necessary for witness with medical training and experience to be regularly licensed to practice medicine to qualify as expert); Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545 (1943) (physician not incompetent to testify as an expert merely because he is not a specialist in the particular branch of his profession involved); Daniels v. Bernard, 270 S.C. 51, 240 S.E.2d 518 (1978) (chiropractor competent to testify as medical expert to extent of his knowledge and experience); Avret v. McCormick, 246 Ga. 401, 271 S.E.2d 832 (1980) (nurse competent to testify in medical malpractice action against physician as to standard of care in keeping sterile a needle used to draw blood); Sanford v. Howard, *supra* (orthopaedist competent to testify against podiatrist where orthopaedic and podiatric methods of treatment are same and witness has knowledge of procedure used by podiatrist).

The standards of education and licensure for podiatrists are different from those of medical doctors. Compare §§ 40-51-10 to -270, Code of Laws of South Carolina, 1976, as amended, with §§ 40-47-10 to -270, Code of Laws of South Carolina, 1976, as amended. Both Bycura and Dr. Scoville testified that methods of treatment may differ between podiatry and medicine. Both also testified that the procedures for performing a metatarsal osteotomy are different in podiatry and orthopaedic surgery.^{FN2}

FN2. Bycura testified that the osteotomy he performs is ambulatory foot surgery done in his office on an outpatient basis. He applies a local anesthetic to the foot and makes a quarter inch incision through the top of the foot. He then uses a drill to fracture the metatarsal, saws through it, and raises it. He removes any bone fragments by grinding them to a fine powder with a dental burr. The patient leaves the office the same day. Dr. Scoville testified that his method of performing an osteotomy requires the patient to be hospitalized for three days. He uses different surgical instruments and makes a wider incision "so you can see what you are doing." If he uses a dental burr he retracts the soft tissues and tendons so they will not be injured by the burr or bone fragments. This is one reason for the larger incision.

****65 *587 [11]** The circuit judge properly concluded Dr. Scoville was not an expert on the standards of good podiatric practice. Dr. Scoville testified he does not have any training in podiatry, is not licensed in podiatry, and has received no instruction in the practice of podiatry. He was not familiar with any journals, periodicals, or books written by podiatrists. He had never attended any seminars in podiatry. He further testified that he is not familiar with the standards of professional care generally observed by podiatrists, nor the standards of practice of members of the American Academy of Ambulatory Foot Surgeons or the American College of Podiatric Foot Surgeons. Dr. Scoville admitted he had never performed ambulatory foot surgery and that he was not familiar with the surgical procedure Bycura performed on Botelho. He said he did not know if conservative management was a generally accepted standard for podiatric practice. When asked if he held himself out as an expert, Dr. Scoville answered: "No, not in podiatry. No."

[12] Taking Dr. Scoville's testimony in the light most favorable to Botelho, as we must in reviewing a summary judgment,^{FN3} it amounts to an assertion that Bycura did not observe the standard of care Dr. Scoville, as an orthopaedic surgeon, would have observed in deciding to perform surgery on Botelho's foot. Since the material question was not the standard required of orthopaedic surgeons, but the standard

required of podiatrists, Dr. Scoville's testimony created no genuine issue of fact for trial. The circuit court was, therefore, correct in granting judgment as a matter of law on the issue of Bycura's failure to attempt conservative management before performing surgery to alleviate Botelho's problem.

FN3. *Shea v. State Department of Mental Retardation*, 279 S.C. 604, 310 S.E.2d 819 (S.C.App.1983).

III.

The final question is whether expert testimony was required on the issue of informed consent. Botelho alleged that ***588** Bycura breached his duty to inform her of the consequences of foot surgery before obtaining her consent to the procedure. However, she presented no expert testimony on the standard of care required of podiatrists in disclosing the nature and risks of a metatarsal osteotomy prior to obtaining consent to perform the procedure. In view of this lack of expert testimony, the circuit judge found it unnecessary to decide whether Botelho gave her informed consent to the operation and entered summary judgment against her.

[13] Our recent decision in *Hook v. Rothstein*, 316 S.E.2d 690 (S.C.App.1984), disposes of this issue. In *Hook* we held the scope of a physician's duty to disclose is measured by those communications a reasonable medical practitioner in the same branch of medicine would make under the same or similar circumstances. Because disclosure is an integral part of the physician's diagnosis and treatment of his patient and because the reasonableness of a disclosure often involves questions of medical knowledge and judgment, we determined the plaintiff in a malpractice action against a physician must ordinarily establish a breach of the duty to disclose by expert testimony. *Id.* We now hold this same rule applies in a malpractice action against a podiatrist.

[14] Because Botelho presented no expert testimony on the standard of disclosure a reasonable podiatrist would be required to meet under the circumstances of her case, the trial judge was not obliged to enquire further into the facts of her informed ****66** consent claim. We note, however, that the disclosures Bycura actually made to her, both orally and on the written forms she signed, were full and appear to cover all ill effects of the surgery of which she later

complained.

The judgment of the circuit court is

AFFIRMED.

SANDERS, C.J., and SHAW, J., concur.

S.C.App., 1984.
Botelho v. Bycura
282 S.C. 578, 320 S.E.2d 59

END OF DOCUMENT

H

Court of Appeals of South Carolina.
 Shannon RANUCCI, Appellant,
 v.
 Corey K. CRAIN, Respondent.

No. 4935.

Heard Dec. 7, 2011.

Decided Jan. 25, 2012.

Rehearing Denied Mar. 15, 2012.


Background: Patient filed notice of intent to file medical malpractice action against physician and subsequently filed affidavit of a medical expert. The Circuit Court, York County, S. Jackson Kimball, III, Special Circuit Court Judge, granted physician's motion to dismiss for failure to timely file expert affidavit. Patient appealed.

Holding: The Court of Appeals, Cureton, A.J., held that medical malpractice provision, requiring the contemporaneous filing, along with notice of intent to file medical malpractice suit, of an expert affidavit "subject to the requirements" of another statute relating to expert affidavits filed as part of complaint in a professional negligence action, invokes only provisions of the latter statute governing the preparation and content of the affidavit.

Affirmed.

Few, C.J., filed a concurring opinion.

West Headnotes


[1] Health 198H  803198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(G) Actions and Proceedings
198Hk803 k. Conditions precedent in general. Most Cited Cases

Medical malpractice is a type of professional


negligence and, therefore, falls within the domain of both the statute that deals specifically with prelitigation requirements for medical malpractice actions and the statute that establishes the procedure for commencing suits for professional negligence. Code 1976, §§ 15-36-100, 15-79-125(A).

[2] Health 198H  807198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(G) Actions and Proceedings
198Hk807 k. Notice. Most Cited Cases

Statute that deals specifically with notice of intent to file suit as prerequisite to filing medical malpractice action does not conflict with statute that establishes the procedure for commencing suits for professional negligence, despite the apparent confusion generated by their internal cross-references, as each statute governs a district time period during the litigation process, and those time periods are consecutive. Code 1976, §§ 15-36-100, 15-79-125(A).

[3] Health 198H  804198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(G) Actions and Proceedings
198Hk804 k. Affidavits of merit or meritorious defense; expert affidavits. Most Cited Cases

Medical malpractice statute, requiring the contemporaneous filing, along with notice of intent to file medical malpractice suit, of expert affidavit subject to the "requirements" of another statute relating to expert affidavits filed as part of complaint in a professional negligence action, invokes only provisions of the latter statute concerning preparation and content of expert affidavit. Code 1976, §§ 15-36-100, 15-79-125(A).

*242 Eric Christopher Davis and Michael E. Atwater, both of Rock Hill, for Appellant.

Lee Cannon Weatherly, of Charleston, for Respondent.

CURETON, A.J.

Three years after suffering a collapsed lung following a medical procedure, Shannon Ranucci filed a Notice of Intent to File Suit (Notice) against Corey K. Crain, M.D. Ranucci subsequently filed an affidavit of a medical expert. The circuit court granted Dr. Crain's motion to dismiss Ranucci's Notice*243 for failure to file the medical expert's affidavit timely. Ranucci appeals, arguing the circuit court erred in finding the affidavit of her medical expert was not timely filed and in reading sections 15-79-125 and 15-36-100 of the South Carolina Code independently of each other. We affirm.

FACTS

On June 7, 2006, Dr. Crain performed a needle biopsy of Ranucci's breast. Afterward, Ranucci suffered severe respiratory pain. On June 10, 2006, an x-ray revealed Ranucci had suffered a collapsed lung.

On June 8, 2009, Ranucci filed the Notice with the circuit court, describing the preceding events and naming Dr. Crain as a defendant. The Notice stated "time constraints" prevented Ranucci from contemporaneously filing an affidavit of a medical expert. Furthermore, the Notice stated either she would file such an affidavit within the next forty-five days or her allegations of negligence would be "within the ambit of common knowledge and experience" so that Dr. Crain's conduct could be evaluated without the assistance of special learning.

Along with the Notice, Ranucci filed her Responses to Standard Interrogatories (Responses), which indicated she claimed partial and total temporary disability, loss of enjoyment of life, and medical and surgical expenses in addition to a collapsed lung. Ranucci identified Richard L. Boortz-Marx, M.D., and her treating physicians as expert witnesses she intended to call at trial.

In response, Dr. Crain filed an Answer to Notice of Intent to File Suit and a Motion to Dismiss. Dr. Crain moved for dismissal based upon Ranucci's failure to file an expert witness's affidavit contemporaneously with her Notice. He further contended the statute of limitations procedurally barred Ranucci from filing an action against him for her injuries be-

cause her expert witness's affidavit was defective.

On July 23, 2009, Ranucci filed an affidavit of Dr. Boortz-Marx (Affidavit), indicating Dr. Boortz-Marx practiced medicine in the areas of Anesthesiology and Anesthesiology Pain Management. Dr. Boortz-Marx averred Dr. Crain had violated the applicable standard of care by failing to document Ranucci's informed consent. Subsequently, Dr. Crain filed a supplemental memorandum pointing out Ranucci had not explained the "time constraints" that prevented her from timely filing an expert's affidavit ^{FN1} and adding to his grounds for dismissal the various deficiencies in the filing and substance of the Affidavit.

^{FN1} In his supplemental memorandum and at the hearing on his motion, Dr. Crain pointed out Ranucci retained counsel in this matter prior to August 9, 2006, when her counsel requested her medical records from Dr. Crain.

On August 13, 2009, the circuit court heard arguments on Dr. Crain's motion. The parties extensively argued both procedure and substance. In an order dated September 21, 2009, the circuit court found Ranucci failed to file the Affidavit timely as required by section 15-79-125 and granted Dr. Crain's motion to dismiss the Notice. However, because the Notice and Affidavit did not constitute an "action," the circuit court denied Dr. Crain's motion to dismiss based upon the applicable statute of limitations.

On October 5, 2009, Ranucci filed a motion to alter or amend the judgment seeking clarification of the circuit court's interpretation of sections 15-36-100 and 15-79-125. The circuit court denied the motion but stated the two statutes "operate independently of each other, and ... [section] 15-36-100 does not offer a procedural alternative to [section] 15-79-125." This appeal followed.

STANDARD OF REVIEW

An issue regarding statutory interpretation is a question of law. S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010). "When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to

correction of errors of law.” *Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

*244 LAW/ANALYSIS

Ranucci asserts the circuit court erred in finding the Affidavit was not timely filed and in reading sections 15-79-125 and 15-36-100 of the South Carolina Code independently of one another. We disagree.

A. Statutory Interpretation

“The cardinal rule of statutory interpretation is to determine the intent of the legislature.” *Bass v. Isochem*, 365 S.C. 454, 469, 617 S.E.2d 369, 377 (Ct.App.2005); see also *Gordon v. Phillips Utils., Inc.*, 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005) (“The primary purpose in construing a statute is to ascertain legislative intent.”). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). Courts should ascertain the legislature's intent “primarily from the plain language of the statute.” *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct.App.1996). We must read the language “in a sense that harmonizes with its subject matter and accords with its general purpose.” *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

Terms that are clear and unambiguous on their face leave no room for statutory construction, and we must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005); see also *City of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (“Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.”). “An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute.” *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). However, when two statutes conflict, a specific statute prevails over a more general statute. *Spectre, LLC v. S.C. Dep't of Health & Envtl. Control*, 386 S.C. 357, 372, 688

S.E.2d 844, 852 (2010).

B. Professional Negligence and Medical Malpractice Filings

Section 15-79-125(A) of the South Carolina Code (Supp.2010) imposes prelitigation filing requirements upon individuals intending to file suit for medical malpractice:

Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

The remainder of this statute permits the parties to engage in limited prelitigation discovery, establishes a timetable for mandatory prelitigation mediation, and, in the event mediation fails, provides for the commencement of a lawsuit via the timely filing of a summons and complaint. S.C.Code Ann. § 15-79-125(B)-(F) (Supp.2010).

Section 15-36-100 of the South Carolina Code (Supp.2010) establishes requirements for filing complaints in actions for damages based upon professional negligence. Specifically, subsection B requires:

Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) *245 the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis

for each claim based on the available evidence at the time of the filing of the affidavit.

Id. Subsection A identifies who may qualify as an expert witness for purposes of fulfilling the affidavit requirement and provides, in the case of an affidavit filed pursuant to subsection B, the defendant may “challenge the sufficiency of the expert’s credentials pursuant to subsection (E).” *Id.* However, section 15-36-100(D) clarifies that it is not intended to “extend an applicable period of limitation, except that, if the affidavit is filed within the period specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely and provides no basis for a statute of limitations defense.”

Subsections C, E, and F detail additional rules pertaining to filing and challenging affidavits filed pursuant to subsection B:

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(2) The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common

knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

....

(E) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff’s complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(F) If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

Finally, subsection G states section 15-36-100 applies to twenty-two specific professions, including medical doctors.

***246 C. Analysis**

We affirm the circuit court’s dismissal of Rannucci’s Notice for her failure to comply with the contemporaneous filing requirement of section 15-79-125. “Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature’s language.” City of Camden, 326 S.C. at 561, 486 S.E.2d

at 495. The language at issue here is both clear and explicit.

[1][2] This appeal turns upon the proper application of two statutes that treat related situations and reference one another. Here, section 15-36-100 establishes the procedure for commencing suits for professional negligence against professionals in twenty-two different areas, including medical doctors. § 15-36-100(B), (G). By contrast, section 15-79-125 deals specifically with prelitigation requirements for medical malpractice actions. § 15-79-125(A).^{FN2} Medical malpractice is a type of professional negligence and, therefore, falls within the domain of both statutes. See *Doe v. Am. Red Cross Blood Servs., S.C. Region*, 297 S.C. 430, 435, 377 S.E.2d 323, 326 (1989) (recognizing physicians and other medical professionals are subject to professional negligence actions). Despite the apparent confusion generated by their internal cross-references, these statutes do not conflict. Each statute governs a distinct time period during the litigation process, and those time periods are consecutive. Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suit and ends with prelitigation mediation. If the parties are unable to resolve their dispute through mediation, section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit.

FN2. Both statutes were added to the South Carolina Tort Claims Act by Act. No. 32, 2005 S.C. Acts 133.

Section 15-79-125(A) mandates that, prior to filing suit, a plaintiff “shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100.” This provision imposes two requirements on the affidavit, that it be filed at the same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100.

[3] The narrow question in this matter is precisely which requirements of section 15-36-100 constitute the affidavit requirements referenced by section 15-79-125(A). Section 15-36-100 sets forth requirements for the qualification of an expert witness-

affiant and for the content of an expert witness's affidavit. It also establishes a contemporaneous-filing requirement and exceptions thereto for affidavits filed pursuant to subsection B, rights to challenge or cure affidavits filed pursuant to subsection B and the procedures for doing so, and a limitation on the effects of section 15-36-100 on any applicable statutes of limitation. Further distilled, section 15-36-100 institutes, on the one hand, substantive requirements for the authorship and content of affidavits by expert witnesses and, on the other, procedural requirements relating to such affidavits when filed with a complaint.

We find section 15-79-125(A) invokes only the provisions of section 15-36-100 governing the preparation and content of the affidavit. In particular, section 15-79-125(A) implicates the scheme for qualifying an expert witness as an affiant and the instruction that the affidavit “must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” § 15-36-100(A), (B). The plain language of section 15-36-100, which ties the filing of affidavits under that statute to a complaint or other initial pleading, prevents the remaining provisions from applying to affidavits filed pursuant to section 15-79-125. Provisions concerning affidavits filed pursuant to subsection B or the contemporaneous filing provision of subsection B do not apply to affidavits filed under the authority of section 15-79-125.^{FN3} Similarly, provisions requiring parties to file additional documents contemporaneously with an “initial responsive pleading” are meaningless in the context *247 of section 15-79-125, in which no initial pleading yet exists.^{FN4} Section 15-79-125 is silent as to any procedures for challenging an affidavit filed with a Notice of Intent to File Suit. Rather than signifying adoption of the provisions in section 15-36-100, we find this silence denotes those provisions do not apply to affidavits filed in compliance with section 15-79-125.

FN3. See, e.g., § 15-36-100(A)(3), (C)(1) & (2).

FN4. See, e.g., § 15-36-100(C)(1), (E), (F).

Nothing in either statute suggests the legislature intended an affidavit filed pursuant to section 15-79-125 to affect a plaintiff's obligation to file a similar

affidavit later “as part of the complaint” pursuant to section 15-36-100.^{FN5} Rather, the legislature clearly intended the two statutes to operate independently of one another and in distinct time frames, with the specific exception that they share the criteria for preparing affidavits of expert witnesses.

FN5. Ranucci's contention that section 15-79-125 establishes the affidavit and Notice of Intent to File Suit as alternative initial pleadings to be used in commencing a lawsuit for medical malpractice is unpersuasive. This interpretation would obviate the need for section 15-36-100 to apply directly to medical malpractice actions. She misinterprets the prefatory language in section 15-36-100(B), “[e]xcept as provided in Section 15-79-125,” as supporting her proposition. Not only does other language in section 15-36-100 fail to support this assertion, but section 15-79-125 clearly states its scope is limited to prelitigation matters. Furthermore, section 15-79-125(E) sets forth a timetable for filing suit should mediation fail.

This intent is further reflected in the effects of each statute's provisions on the process of resolving medical malpractice claims and on the parties' rights. Section 15-79-125 enables potential litigants to identify likely causes of action, gather information, and pursue a resolution of their medical malpractice disputes through mediation, while shielding the potential plaintiff from the fear of losing his or her right to file suit. An affidavit filed pursuant to this section serves as notice to potential defendants of the claim and qualifies potential plaintiffs and defendants to engage in prelitigation discovery. Such an affidavit is a threshold requirement a medical malpractice claimant must satisfy in order to seek disclosure of sensitive and often highly technical information. However, it does not appear to carry any additional significance that would necessitate implementing measures to test the authorship or content of the affidavit.

By contrast, section 15-36-100 requires the plaintiff to craft a viable complaint supported by the sworn testimony of a qualified expert witness. Because an affidavit filed pursuant to this section is “part of the complaint,” it is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case. *See, e.g., Rule 56(c).*

SCRCP (permitting entry of summary judgment based in part upon “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any”). Recognizing the importance of such a document, the legislature provided the parties the rights to challenge it and cure any defects in it.

Based upon the above analysis, we affirm the circuit court's dismissal of Ranucci's Notice. At issue here are Ranucci's Notice and Affidavit, her prelitigation filings pursuant to section 15-79-125. The record clearly reflects Ranucci filed her Affidavit forty-five days after she filed her Notice. By filing her Affidavit after her Notice, Ranucci failed to comply with the contemporaneous filing requirement of section 15-79-125. Her argument that the affidavit requirements of section 15-36-100 permitted her to file the Affidavit late without violating section 15-79-125 is unpersuasive. The affidavit requirements invoked by section 15-79-125 govern only authorship and content. They do not permit a potential plaintiff to file her expert witness's affidavit after she files her Notice of Intent to File Suit. Accordingly, the circuit court did not abuse its discretion in dismissing ^{FN6} her Notice.

FN6. We conclude the circuit court's action in dismissing the Notice is equivalent to striking it from the court's records.

CONCLUSION

We find sections 15-36-100 and 15-79-125 operate independently of one another, except that section 15-79-125 relies upon the provisions*248 of section 15-36-100 concerning the preparation and content of an affidavit of a medical expert. Therefore, we find the circuit court did not err in this case when it dismissed the Notice for Ranucci's failure to comply with the contemporaneous affidavit filing requirement of section 15-79-125. Accordingly, the decision of the circuit court is

AFFIRMED.

KONDUROS, J., concurs.

FEW, C.J., concurring.

I concur with the majority's interpretation of the statutes at issue in this appeal. However, I believe our interpretation requires the conclusion that the statute of limitations has expired on any civil action Ranucci

might have brought for malpractice. Therefore, the issues raised in this appeal are moot, and I would dismiss the appeal.

It is fundamental to our system of justice that a civil action must be commenced within the applicable statute of limitations. S.C.Code Ann. § 15-3-20(A) (2005) (“Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued...”); Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996) (“Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system.”). A civil action is commenced by the filing and service of a summons and complaint. § 15-3-20(B); Rule 3(a)(1), SCRPC. The statute of limitations on a medical malpractice action is three years. S.C.Code Ann. § 15-3-545(A) (2005). Ranucci’s medical malpractice action accrued no later than June 10, 2006, and no civil action has ever been commenced.

Ranucci argues, however, that sections 15-36-100 and 15-79-125 of the South Carolina Code operate to toll the statute of limitations under the circumstances of this case. The majority has explained that Ranucci’s argument is invalid. To the majority’s analysis, I would add that section 15-36-100 does not ever toll the statute of limitations. The forty-five day extension in the section comes into play only after a summons and complaint have been filed and served. § 15-36-100(C)(1) (“In such a case, the plaintiff has forty-five days *after the filing of the complaint* to supplement the pleadings with the affidavit.” (emphasis added)). Therefore, it is never necessary under that section to toll the statute. Moreover, section 15-36-100(D) specifically provides “[t]his section does not extend an applicable period of limitation.”

Section 15-79-125, on the other hand, does toll the statute of limitations. However, the maximum tolling period is explicitly stated in the section. Section 15-79-125(C) requires that “the parties shall participate in a mediation conference” “no later than one hundred twenty days from the service of the Notice” with the possibility that a circuit judge may extend the deadline sixty days for good cause. Section 15-79-125(E) then requires that an action for malpractice “must be filed: (1) within sixty days after” mediation. Thus, section 15-79-125 tolls the statute

of limitations for a maximum of 240 days. Any further tolling must be prescribed by statute. § 15-3-20(A) (providing a civil action must be commenced within the statute of limitations “except when ... a different limitation is prescribed by statute”). There is no statute, nor any other provision of law, which tolls the statute of limitations beyond 240 days, even if the sufficiency of the Notice is being litigated before the circuit court, or during an appeal.

The law imposes upon a prospective plaintiff the duty of commencing a civil action within the applicable statute of limitations. Section 15-79-125 requires prelitigation mediation and other steps to be taken before a medical malpractice action may be commenced. To accommodate the additional requirements, the section allows the statute of limitations to be tolled for up to 240 days. When a medical malpractice defendant contends the additional steps required by section 15-79-125 have not been met, it may resist participating in the mediation. Anticipating the possibility that a prospective plaintiff may need a court order to force the mediation, the statute provides that “[t]he circuit court has jurisdiction to enforce the provisions of this section.” § 15-79-125(D).

These provisions give a prospective medical malpractice plaintiff the tools to complete *249 the necessary steps to commence a medical malpractice lawsuit within the statute of limitations. There is no provision of law, however, which would allow a prospective plaintiff to commence any civil action five-and-a-half years after the statute of limitations began to run. Even if this court ruled in Ranucci’s favor, we could grant no more relief than to declare that the Notice was properly filed, and the circuit court erred in ruling to the contrary. We could never enable a summons and medical malpractice complaint to be filed and served before June 10, 2009.^{FN7} Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy....”). The case is over, and the issues raised in this appeal are moot.

FN7. Ranucci appears to have filed even the Notice after the expiration of the statute of limitations. According to that document, Ranucci began experiencing pain in her right

breast. After an ultrasound, her gynecologist referred her to Dr. Crain for a biopsy, which was performed on June 7, 2006. According to Ranucci's Notice, "[s]ubsequent to the biopsy, the Plaintiff suffered severe pain with her respirations." This "severe pain with her respirations" appears to have been of a different character and a different intensity from the previous "pain in her breast." Thus, the statute of limitations would have begun to run as soon as she felt the different character of pain, not several days later when the cause of the pain was confirmed to be a collapsed lung. See *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 571-72, 608 S.E.2d 459, 462 (Ct.App.2005) (holding the statute on a medical malpractice action began to run upon the experience of pain the patient recognized to be different, not when the cause of the pain was subsequently diagnosed). It therefore appears that the statute of limitations expired even before the Notice was filed on June 8, 2009.

S.C.App.,2012.
Ranucci v. Crain
397 S.C. 168, 723 S.E.2d 242.

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-46-03984

Ann P. Adams, as Personal)
Representative of the Estate of)
Jacob E. Adams, Deceased,)
Plaintiff)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Staci L. Versen-Rampey, NP, Individually)
and as Agent, Servant or Employee of)
South Carolina Emergency Physicians,)
LLC, and as Agent, Servant or Employee)
of Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center and d/b/a)
Piedmont Healthcare System;)

Jason Price, Radiologic Technologist,)
Individually and As Agent, Servant or)
Employee of Amisub of South Carolina,)
Inc., d/b/a Piedmont Medical Center and)
d/b/a Piedmont Healthcare System; and)

James E. Reinhardt, Jr., M.D.,)
Individually and as Agent, Servant or)
Employee of Rock Hill Radiology)
Associates, P.A. and as Agent, Servant or)
Employee of Amisub of South)
Carolina, Inc., d/b/a Piedmont Medical)
Center and d/b/a Piedmont Healthcare)
System,)

Rock Hill Radiology Associates, P.A.)
South Carolina Emergency Physicians,)
LLC,)
Defendants.)

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2012 MAR 29 PM 1:26
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

CERTIFICATE OF SERVICE

(Certificate on following page 2)

I hereby certify that I have served a copy of the Amended Notice of Intent to File Suit, together with Amended Summons and Complaint, Plaintiff's Amended Responses to Standard Interrogatories, together with Affidavits (with current expert CVs attached) for three experts on CT Corporation System on behalf of the Defendant South Carolina Emergency Physicians, LLC; by placing a copy of the same in the United States Post Office, postage prepaid, this 25th day of January, 2012, and addressed as follows:

CT Corporation System
 2 Office Park Court, Suite 103
 Columbia SC 29223

Diane Berinsky
 Diane Berinsky, Legal Assistant to
 James W. Boyd
 Counsel for Plaintiff, Ann P. Adams

Rock Hill, South Carolina

DAVID HAN
 C.C.P. &
 YORK COUN

2012 MAR 28 PM 1:26

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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> Pam Johnson <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <i>CT Corporation System 2 Office Park Ct. Suite 103 Columbia, SC 29223</i>	B. Received by (Printed Name) <i>Pam Johnson</i>	C. Date of Delivery <i>1/27/12</i>
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No 3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7011 0470 0002 4018 5284		

PS Form 3811, February 2004

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AFFIDAVIT OF SERVICE

State of South Carolina

County of York

Common Pleas Court

Case Number: 2011-CP-46-03984

Plaintiff:

Ann P. Adams, as Personal Representative of the Estate of Jacob E. Adams, deceased

vs.

Defendant:

Amisub of South Carolina, Inc., d/b/a Piedmont Medical and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant or Employee of South Carolina Emergency Physicians, LLC, et al.

For:

James Boyd
Law Office of James W. Boyd
1544 Ebenezer Road
Rock Hill, SC 29732

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2012 MAR 29 PM 1:26
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Received by AJS Investigations, LLC to be served on Staci L. Versen-Rampey, 222 South Herlong Avenue, Rock Hill, SC 29732.

I, Andrew Staffileno, being duly sworn, depose and say that on the 10th day of February, 2012 at 1:40 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Civil Action Coversheet, Amended Notice of Intent to File Suit, Amended Summons, Amended Complaint, Amended Plaintiff's Response to Standard Interrogatories, Amended Affidavit of Expert Sangjin Oh, M.D., Amended Affidavit of Expert Sharon Aboulafia Oken, R.N., M.S.N., CCRN, CNA, BC and Amended Affidavit of Expert, Apostolos J. Tsiouris, M.D., to: Staci L. Versen-Rampey at the address of: 1436 River Chase Blvd, Rock Hill, SC 29732.

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 13 day of February, 2012 by the affiant who is personally known to me.


NOTARY PUBLIC

My Commission Expires: _____

Melissa M. Staffileno
Notary Public
State of South Carolina

My Commission Expires 11/30/2014



Andrew Staffileno
Process Server

AJS Investigations, LLC
PO Box 37382
Rock Hill, SC 29732
(803) 980-5005

Our Job Serial Number: AJI-2012000026

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-212832

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, Deceased.Appellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

Staci L. Versen-Rampey, NP, Individually and as Agent, Servant,
Employee of South Carolina Emergency Physicians, LLC, and as Agent,
Servant, or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as Agent, Servant,
or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
and d/b/a Piedmont Healthcare System; and

James E. Reinhardt, Jr., M.D., Individually and as Agent Servant or
Employee of Rock Hill Radiology Associates, PA. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System,

Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians,
LLC,Respondent.

CERTIFICATE OF COUNSEL

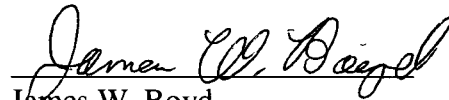
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APR 15 2013

South Carolina Court of Appeals

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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.



James W. Boyd
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

April 5, 2013

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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-212832

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, Deceased.Appellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a
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Staci L. Versen-Rampey, NP, Individually and as Agent, Servant,
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Servant, or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as Agent, Servant,
Or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
And d/b/a Piedmont Healthcare System; and

James E. Reinhardt, Jr., M.D., Individually and as Agent Servant or
Employee of Rock Hill Radiology Associates, PA. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System,

Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians,
LLC,Respondent.

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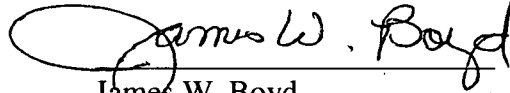
APR 15 2013

SC Court of Appeals

PROOF OF SERVICE

I, certify that I served the Record on Appeal of the Appellant on Amisub of South Carolina, Inc., Jason Price, Staci L. Versen-Rampey, South Carolina Emergency Physicians, James E. Reinhardt, Jr. M.D. and Rock Hill Radiology Associates, P.A. by depositing a copies of the same in the United States mail, postage prepaid, on

April 11, 2013, addressed to its attorney of record, George C. Beighley, Richardson Plowden Carpenter & Robinson PA, PO Drawer 7788, Columbia, SC 29202, N. Heyward Clarkson, III, 1164 A Woodruff Road, Greenville, SC 29607, and William U. Gunn, PO Box 1897, Spartanburg, SC 29304.

A handwritten signature in black ink that reads "James W. Boyd". The signature is written in a cursive style with a large, looping initial "J".

James W. Boyd
Post Office Box 36425
1544 Ebenezer Road
Rock Hill, SC 29732
(803) 328-2600

Attorney for Appellant

April 11, 2013