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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2021-001036

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Travis Walker, Individually and ..... Appellants,  
as Personal Representative of  
the Estate of Douglas Williford,  
and Lolita Moore,

v.

Anderson Emergency Associates  
P.A. and Kevin Moore NP, ..... Respondents.

---

**RECORD ON APPEAL**

---

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Circuit Court Judge	2155 Judge Code	Date
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**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney’s box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

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

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Travis Walker , plaintiff, et al VS Anmed Health , defendant, et al

**Case Number:** 2021CP0400470

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-07-26 09:42:50 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2021 CP-04-00470

TRAVIS WALKER
PLAINTIFF(S)

ANMED HEALTH, ET AL
DEFENDANT(S)

Submitted by: Attorney for : [ ] Plaintiff [ ] Defendant or [ ] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

DEFENDANTS MORTON AND AEA'S MOTION TO DISMISS IS GRANTED. MR. PASCHAL TO PREPARE FORMAL ORDER.

This order [ ] ends [X] does not end the case.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Includes a row for describing property if applicable.

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge Judge Code Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

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

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Travis Walker , plaintiff, et al VS Anmed Health , defendant, et al

**Case Number:** 2021CP0400470

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-08-27 15:21:33 page 3 of 3

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NO. 2021 CP-04-00470**

TRAVIS WALKER ET, AL.  
PLAINTIFF(S)

ANMED HEALTH ET, AL.  
DEFENDANT(S)

<b>Submitted by:</b>	<b>Attorney for :</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

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

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

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

**ORDER INFORMATION**

**PLAINTIFF MOTION TO RECONSIDER IS DENIED WITHOUT THE NECESSITY OF A HEARING.  
NO FORMAL ORDER IS REQUESTED UNLESS REQUESTED BY COUNSEL.**

This order  ends  does not end the case.

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**  
**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

<b>Circuit Court Judge</b>	2155	<b>Date</b>
	<b>Judge Code</b>	

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

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\_\_\_\_\_  
\_\_\_\_\_  
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Anderson Common Pleas

**Case Caption:** Travis Walker , plaintiff, et al VS Anmed Health , defendant, et al

**Case Number:** 2021CP0400470

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-09-08 14:06:55 page 3 of 3

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

Travis Walker, Individually and as )  
Personal Representative of the )  
Estate of Douglas Williford, and )  
Lolita Moore, )

Civil Action No. 2021-CP-04-470

Plaintiffs, )

v. )

ORDER APPROVING )  
WRONGFUL DEATH AND )  
SURVIVAL SETTLEMENT )

AnMed Health, Anderson )  
Emergency Associates, PA, Kevin )  
Morton NP, Jamie Moon, RN, and )  
Betty Boyles, RN, )

Defendants. )

This matter came to be heard before me upon the attached verified Petition of Travis Walker, as Personal Representative of the Estate of Douglas Vincent Williford, Jr., deceased ("Plaintiff/Petitioner"), and of Lolita Moore, Douglas Vincent Williford's common law wife, seeking approval of the proposed settlement of the claims and causes of action of Plaintiff/Petitioner for wrongful death pursuant to S. C. Code Ann. §15-51-10, et. seq., and for survival (conscious pain and suffering) pursuant to S. C. Code Ann. §15-5-90, and of the claim and cause of action of Lolita Moore for loss of consortium, against AnMed Health ("Defendant") for the injuries to and death of Douglas Vincent Williford, Jr., which allegedly resulted from care and treatment rendered to him by Defendant and its present and former agents, servants, and employees, while he was a patient at the AnMed Health Emergency Room on January 24, 2018, as set forth in the Complaint.

Plaintiff/Petitioner and Lolita Moore were duly sworn and testified before me. From the testimony taken from Plaintiff/Petitioner and Lolita Moore and from the information furnished to the Court by their attorney, Jay F. Wright, Esquire, I find that:

Plaintiff/Petitioner and Lolita Moore agree that the claims and causes of action regarding the liability of Defendant for the injuries to and death of Douglas Vincent Williford, Jr., are disputed, that Defendant does not admit liability, and that Defendant denies liability of any nature or kind; however, Defendant has offered to pay Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) to Plaintiff/Petitioner and Lolita Moore to effectuate a final and complete disposition of all claims and causes of action against Defendant and to secure a Release.

From the settlement proceeds, \$75,000.00 shall be apportioned to the wrongful death claim to be distributed to the statutory beneficiaries of Douglas Vincent Williford, Jr., deceased, according to S. C. Code Ann. §15-51-20, \$0.00 shall be apportioned to the survival claim (conscious pain and suffering) to be paid to Plaintiff/Petitioner to be distributed to the beneficiaries of the Estate of Douglas Vincent Williford, Jr., deceased, and \$0.00 shall be apportioned to the loss of consortium claim on behalf of Lolita Moore, who is Douglas Vincent Williford's common law wife.

From the settlement proceeds, Plaintiff/Petitioner agrees to pay the following:

- a. attorneys' fees incurred in the prosecution of this lawsuit in the amount of \$30,000.00 to the McGowen Hood law firm (contingency fee of 40%)
- b. costs and expenses incurred in the prosecution of this lawsuit in the amount of \$5,147.98 to the McGowen Hood law firm
- c. \$752.97 to Medicaid to satisfy all medical lien(s)
- d. \$39,099.05 to the statutory beneficiaries of Douglas Vincent Williford, Jr., deceased

- e. \$0.00 to the Estate of Douglas Vincent Williford, Jr., deceased
- f. \$0.00 to Lolita Moore

The \$39,099.05 will be held in the trust account of McGowan, Hood and Felder, LLC, pending resolution of the remaining claims and causes of action against Co-Defendants Anderson Emergency Associates, P.A., and Kevin Morton, NP, and will be distributed after resolution of the remaining claims and causes of action, minus any additional costs incurred by the McGowan Hood law firm.

This settlement shall cover and include and does cover and include all past, present, and future, injuries, death, expenses, or damages, which are known to the Parties, and which are not now known, but which may later develop or be discovered, including the effects and consequences thereof, that arise out of the injuries to and death of Douglas Vincent Williford, Jr.

The settlement proceeds paid herein shall be paid as full and complete settlement and satisfaction of the past, present, and future claims against Defendant for all of Douglas Vincent Williford, Jr.'s medical expenses, which are known to the Parties, and which are not now known, and may later develop or be discovered. Plaintiff/Petitioner and Lolita Moore and their attorney and representatives certify that any valid subrogation claims/liens in this matter, including any workers' compensation, Medicaid, Medicare, TRICARE, or private health insurance claims/liens, resulting from the injuries to and death of Douglas Vincent Williford, Jr., and attributable to Petitioners, shall be paid from the settlement proceeds as required by law.

Douglas Vincent Williford, Jr. died intestate on February 3, 2018, with Travis Walker (son) and Lolita Moore (common law wife) as his statutory beneficiaries. Defendant has insurance coverage through Continental Insurance Company pursuant to the limits set forth in S. C. Code Ann. §33-56-180 and §15-78-120.

Plaintiff/Petitioner and Lolita Moore and their attorney have fully investigated the matter and, after giving careful consideration to all aspects of the situation, have concluded that the settlement is fair, just and reasonable, and is in the best interests of Plaintiff/Petitioner, as Personal Representative of the Estate of Douglas Vincent Williford, Jr., deceased, of the statutory beneficiaries of Douglas Vincent Williford, Jr., deceased, of the Estate of Douglas Vincent Williford, Jr., deceased, and of Lolita Moore, and have asked this Court to approve the same.

I have carefully considered the matter and have concluded that this settlement, under all the circumstances, is fair, just, and reasonable, and should be approved.

IT IS, THEREFORE, ORDERED that upon payment by or on behalf of Defendant of the sum of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) to Plaintiff/Petitioner and Lolita Moore, they are empowered and authorized to execute a Release regarding all claims and causes of action of the statutory beneficiaries of Douglas Vincent Williford, Jr., deceased, of the Estate of Douglas Vincent Williford, Jr., deceased, of Plaintiff/Petitioner, as Personal Representative of the Estate of Douglas Vincent Williford, Jr., deceased, and of Lolita Moore, against Defendant, its heirs, successors, assigns, and present and former agents, servants and employees.

AND IT IS SO ORDERED.

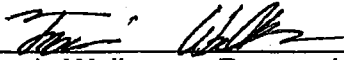
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R. Lawton McIntosh  
Presiding Judge, 10<sup>th</sup> Judicial Circuit

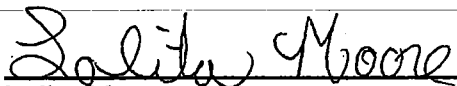
Anderson, South Carolina

September \_\_\_\_, 2021

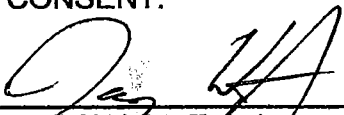
I CONSENT:

  
Travis Walker, as Personal  
Representative of the Estate of  
Douglas Vincent Williford, Jr., deceased  
Plaintiff/Petitioner

I CONSENT:

  
Lolita Moore  
Douglas Vincent Williford, Jr.'s  
Common Law Wife

I CONSENT:

  
Jay F. Wright, Esquire  
Attorney for Plaintiff/Petitioner and  
Lolita Moore



Anderson Common Pleas

**Case Caption:** Travis Walker , plaintiff, et al VS Anmed Health , defendant, et al

**Case Number:** 2021CP0400470

**Type:** Order/Consent Order

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-09-13 13:25:24 page 6 of 6



I SO MOVE AND CONSENT:

s/James E. Parham, Jr.  
James E. Parham, Jr., Esquire  
Attorney for Defendant,  
Betty Boyles, RN

I CONSENT:

s/Jay F. Wright  
Jay F. Wright, Esquire  
Attorney for Plaintiffs



Anderson Common Pleas

**Case Caption:** Travis Walker , plaintiff, et al VS Anmed Health , defendant, et al

**Case Number:** 2021CP0400470

**Type:** Order/Consent Order

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-09-13 13:24:41 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

Travis Walker, Individually and as )  
Personal Representative of the )  
Estate of Douglas Williford, and )  
Lolita Moore, )  
 )  
Plaintiffs, )

Civil Action No. 2021-CP-04-470

v. )

ORDER OF DISMISSAL  
ON BEHALF OF DEFENDANT,  
JAMIE MOON, RN

AnMed Health, Anderson )  
Emergency Associates, PA, Kevin )  
Morton NP, Jamie Moon, RN, and )  
Betty Boyles, RN, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Upon Motion by the attorney for Defendant, Jamie Moon, RN, and with the consent of the attorney for Plaintiffs, it is,

ORDERED, ADJUDGED AND DECREED that the above-entitled action against Defendant, Jamie Moon, RN, is hereby dismissed, discontinued, and forever ended with prejudice and without the payment of money.

The lawsuit remains in effect and shall continue against Defendants, Anderson Emergency Associates, PA, and Kevin Morton, NP.

AND IT IS SO ORDERED.

\_\_\_\_\_  
R. Lawton McIntosh  
Presiding Judge, 10th Judicial Circuit

Anderson, South Carolina

September \_\_\_\_, 2021

I SO MOVE AND CONSENT:

s/James E. Parham, Jr.  
James E. Parham, Jr., Esquire  
Attorney for Defendant,  
Jamie Moon, RN

I CONSENT:

s/Jay F. Wright  
Jay F. Wright, Esquire  
Attorney for Plaintiffs



Anderson Common Pleas

**Case Caption:** Travis Walker , plaintiff, et al VS Anmed Health , defendant, et al

**Case Number:** 2021CP0400470

**Type:** Order/Consent Order

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-09-13 13:23:40 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No. 2021CP0400470

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore, Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN, Defendants.

**Order of Dismissal  
Order Granting Defendant’s  
Motion to Dismiss**

This matter came before the Court on a Motion to Dismiss for an absent affidavit in the Notice of Intent to Sue (herein after referred to as “NOIS”) brought by Nurse Practitioner (NP) Kevin Morton, as well as the physician group for which he works (Anderson Emergency Associates, or “AEA”) which provides the medical services for the AnMed Emergency Room. The matter was heard by this Court on July 23, 2021, at which time the Defendants were represented by H.W. Pat Paschal of the Greenville Bar, while the Plaintiff \s were represented by Jay Wright of the Anderson Bar. Based on the arguments heard and exhibits presented, this Court makes the following findings of fact and law and the conclusions from those facts and law, all as detailed below.

**INTRODUCTION**

This is a medical malpractice action brought on November 5, 2021 by the Personal Representative for the alleged professional negligence in the treatment of the Plaintiffs’ decedent in the AnMed Emergency Room by the medical and nursing providers. The Plaintiffs brought this lawsuit against NP Kevin Morton as well as registered nurses employed by AnMed by filing a NOIS in accordance with the S.C. Medical Malpractice Act. The only affidavit contemporaneously filed by the Plaintiffs in support of the NOIS as required in the Section 15-79-125 was by a Registered Nurse, Richard Kevin High. The Motion to Dismiss was brought as a specific defense in the Answer filed on April 13, 2021, and by a Motion to Dismiss filed contemporaneously with that Answer on the same day. The basis of the Motion to Dismiss is the failure of the Plaintiffs to provide any affidavit by a licensed medical provider in the NOIS as required by the S.C. Medical Malpractice Act. S.C. Code Section 15-79-125 and Section 15-36 -100.

## FACTS AND FACTUAL BACKGROUND

1. This lawsuit involves the treatment in the Emergency Room of the Plaintiff-decedent on January 24, 2018, by the Nurse Practitioner Kevin Morton, the medical provider, as well as AnMed registered nurses following an automobile collision earlier that same day. The Plaintiff-decedent was discharged that night by NP Kevin Morton. Two weeks later, on February 3, 2018, the Plaintiff-decedent died from an aortic dissection.

2. There are three different health care providers involved in the treatment of this patient:

a. The physician extender Nurse Practitioner (“NP”), Kevin Morton, the Movant in this motion, is a nurse practitioner and in this case was the designated “medical provider” performing the *medical acts* as the physician extender the same as if performed by an AEA physician.

b. The physician group for which the NP worked (Anderson Emergency Associates or “AEA”) provides the physicians and the physician extenders, both the NPs and PAs, to be the *medical providers* in the ER.

c. The two co-defendants, Jamie Moon and Betty Boyles, are *registered nurses* employed by AnMed. The Court is aware that the nurses and AnMed Health have settled with the Plaintiffs and are no longer parties in this action. Importantly for purposes of the instant motion, the only expert to provide an affidavit in support of the NOI and prior to filing the lawsuit was also a registered nurse, that being Richard Kevin High. A nurse, however, is not trained or licensed to practice as either a nurse practitioner, physician, or other physician extender. Accordingly, a nurse is not qualified to opine on the standard of care for a nurse practitioner or physician in the practice of medicine including the practice of medical acts as outlined above.

3. A nurse practitioner is a physician extender and is trained and licensed in the practice medicine as is a physician, in particular, performance of medical acts, specifically:

- a. ordering and interpreting diagnostic tests,
- b. diagnosing any disease process,
- c. determining medical treatment plans,
- d. ordering any work-up on a patient,
- e. ordering the disposition of a patient.

All parties agree that a nurse practitioner is held to the standard of care for a physician in the performance of these medical acts. As a matter of fact, a nurse is not trained or licensed to practice as either a nurse practitioner, physician, or other physician extender. Accordingly, a nurse is not qualified to opine on the standard of care for a nurse practitioner or physician in the practice of medicine, the performance of or otherwise on the issues of the practice of medical acts as outlined above.

4. The NOIS and the Complaint both alleged professional negligence against NP Kevin Morton in failing in his performance as a Nurse Practitioner to provide medical acts or, more particular, in the performance as a nurse practitioner and physician extender in the following:

- a. the ordering and interpreting of tests,
- b. the forming a medical diagnosis,
- c. determining a medical treatment plan and prescribing medications,
- d. ordering any work-up on a patient,
- e. ordering the disposition of a patient.

5. The only affidavit in support of the NOIS and filed prior to the filing of the lawsuit was by a RN Richard Kevin High. The affidavit was executed on July 18, 2020—110 days prior to the filing of the NOIS. The affidavit never identifies NP Kevin Morton, but made assertions against the AnMed Nurses, employees of AnMed Health (which NP Morton is not) and “private practices staffing the AnMed health ER”.

6. The Motion to Dismiss before the Court was filed on April 13, 2021, contemporaneously with the Answer which also raised this matter.

7. Subsequent to the filing of the Motion to Dismiss before the Court, the Plaintiffs responded to Requests for Admission from the Defendant NP Kevin Morton. Those Requests for Admission included three specific requests (#4, #5 and #6) regarding the qualifications of a nurse to express an opinion on the standard of care of nurse practitioners and physicians:

- “4. That a nurse cannot testify as to standard of care or the exercise of the standard of care in the practice of medicine by a physician or nurse practitioner.
5. That a nurse cannot testify as to the standard of care by a physician or physician extender, i.e., a nurse practitioner in the performance of the medical acts defined in Request #3 above.
6. That Richard Kevin High is not qualified to testify as to the standard of care for the practice of medicine or medical acts by a physician or nurse practitioner.”

To each, the Plaintiffs replied:

“Denied. *However, Plaintiffs would note that Nurse High is not rendering specific opinions as to the “practice of medicine” or the standard of care of a “physician or nurse practitioner.”* Nurse High is offering opinions of the appropriate ER treatment that reasonable healthcare providers should provide to patients presenting in Mr. Williford’s condition and has the appropriate qualifications to express an opinion as to the appropriateness of a patient’s treatment in the emergency room irrespective of the provider.”  
Emphasis provided.

Section 15-36-100 (B) requires “an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist...” Although the RN High affidavit may meet this requirement as to the Nurse Defendants, the Plaintiffs concede by these Responses that the affidavit offers no opinion as to standard of care of a “physician or nurse practitioner”. As a result, the Court finds no affidavit as to standard of care or deviation from the standard of care was produced contemporaneously with and in support of the NOIS against NP Morton or AEA as required by statute-an absent affidavit. The statute requires the expert’s allegation to be particularized as to the Defendant’s practice. There is no one standard of care in the emergency room for all “healthcare providers...irrespective of provider.” Instead, the S.C. Medical Act and the Nurse Practice Act, as discussed below, apply a different standard of care to nurses from that of the medical standard of care for physicians and nurse practitioners. As a matter of fact, RN High may opine as to the patient’s appropriate treatment by nurses but does not and cannot form an opinion to the appropriate treatment by the physicians and the nurse practitioner because the licensing laws prohibits it.

8. RN Richard Kevin High, is employed at Vanderbilt University Medical Center. In reply to a subpoena, VUMC has replied that Mr. High does not engage in the practice of medicine at VUMC and is not engaged in the following:

- a. ordering and interpreting diagnostic tests,
- b. diagnosing any disease process,
- c. determining medical treatment plans,
- d. ordering any work-up on a patient,
- e. ordering the disposition of a patient.

9. On April 21, 2021, which was 157 days after the filing the NOI and 46 days after the lawsuit itself was filed, the Plaintiffs filed a second affidavit, purportedly in support of the NOI, by a physician, Dr. Michael Chansky, alleging a deviation of standard of care by NP Kevin Morton.

## LEGAL ANALYSIS

### I. S.C. Code Sections 15-36 -100 requirements for an affidavit by an expert.

S.C. Code Section 15-79-125 requires an affidavit by an expert and a NOIS as a legal prerequisite to file a medical malpractice lawsuit. Section 15-36-100 (A) that provides the requirements for that affidavit. Pursuant to Subsection A of that statute, an "expert witness" is defined as "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.

S.C. Code Ann. § 15-36-100(A).

In applying this language, the Court concludes that Nurse High may meet requirements to provide an affidavit *as to the registered nurses*, but none *as to the physician extender*, NP Morton. RN High is not licensed, board certified nor does he work within the same discipline (nursing vs. medicine) as NP Morton<sup>1</sup>.

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<sup>1</sup> The Plaintiffs stated in the Response to this Motion to Dismiss that Nurse High was an "Associate Professor" at VUMC, however, the VUMC's return to the subpoena indicates that Nurse High is not.

## II. Under the S.C. Medical Practice Act, giving testimony by affidavit in a civil matter is “the practice of medicine.”

The South Carolina Medical Practice Act defines the “*practice of medicine*” as including: “testifying as a physician in an administrative, civil, or criminal proceeding in this State by *expressing an expert medical opinion.*” § 40-47-20 (36)(h) (Emphasis provided.) As a result, the submitting of an affidavit to the court that *expresses a medical opinion as to medical acts* is the “practice of medicine”. Accordingly, only a physician or a “physician extender” like a nurse practitioner can “practice medicine” as defined by this statute. See Section 40-33-29, *et seq.* A registered nurse cannot. In addition, an expert can only testify as to acts which the licensing statutes authorizes the witness to perform. If the statutes prohibit a witness from performing *medical acts*, then that witness cannot testify as to those *medical acts*. As explained below, a nurse is prohibited from performing medical acts and therefore cannot testify as to medical acts.

## III. The Nurse Practice Act and the practice of medicine.

The South Carolina Nurse Practice Act makes a clear distinction between a nurse (RN) and a nurse practitioner (NP). Each has its own distinct licensing scheme, educational requirements, and area of specializations. The difference is: the nurse practitioner can *practice medicine*, i.e., do “*delegated medical acts*”; whereas the registered nurse cannot. See S.C. Code Section 44-33-20. More specifically, the difference is as follows:

### a. A nurse practitioner:

1. Training: A Nurse Practitioner is a nurse with a specific/unique course of additional medical training. Section 40-33-34 requires a minimum of a master’s degree from an accredited college *in a nurse practitioner program* and a current certification by a board-approved credentialing organization. As a result, NP Morton has this specific additional training greater than that of RN High.

2. By practice: As a result, of this additional training, the NP is licensed to “practice medicine” as an extension of the physician conducting the *medical acts* referenced above including, but not limited to: the work up evaluation, medical diagnosis, prescribing medication, and forming medical treatment plans. A nurse is not. See Section 40-33-20, *et seq.* Between the practice agreement, the employment agreement and the authorizations granted to NPs under the S.C. Nurse Practice Act, an NP is authorized to “practice medicine” in certain, among other, delegated medical acts, including:

- a. the ordering and interpreting of tests,
- b. the forming a medical diagnosis,
- c. determining a medical treatment plan and prescribing medications,
- d. ordering any work-up on a patient,
- e. ordering the disposition of a patient.

3. License and certification: South Carolina recognizes by statute these differences between a nurse and a NP:

- a. To practice as a nurse practitioner in South Carolina, one must have an APRN (“Advanced Practice Registered Nurse”) license in addition to any nursing license. S.C. Code Section 40-33-5, et seq.
- b. The NP license authorizes performance of *medical* care prohibited to a nurse. Section 40-33-20(5) was amended in 2018 to read specifically:

"(5) 'Advanced Practice Registered Nurse' or 'APRN' means a registered nurse who is prepared for an advanced practice registered nursing role by virtue of additional knowledge and skills gained through an advanced formal education program of nursing in a specialty area that is approved by the board. ...

...  
An APRN also may perform specified medical acts pursuant to a practice agreement as defined in item (45) and approved written guidelines as defined in item (9)."

In this case, the Court finds that NP Kevin Morton was:

1. licensed and trained to perform medical acts, (and is held to the standards of a physician in the performance of those medical acts),
2. was hired by AEA to provide medical care and perform medical acts as a physician extender, and
3. the chart identified him as the medical provider.

Accordingly, the Court finds NP Morton acted as the extender of the physician to provide delegated medical acts in the work up of this patient, just like the doctor:

- a. the ordering and interpreting of tests,
- b. the forming a medical diagnosis,
- c. determining a medical treatment plan and prescribing medications,
- d. ordering any work-up on a patient,
- e. ordering the disposition of a patient.

As explained below, the Court also finds that a nurse is not trained nor qualified to perform these acts and is prohibited by law from offering testimony on these subjects. *Section* 40-33-34.

**b. A registered nurse (RN):**

1. In contrast, a registered nurse is *not* trained nor qualified and as a result, cannot do any of these delegated medical acts by statute and it is sanctionable misconduct to do so. Section 40-33-110.

2. The registered nurse can assess a patient, implement doctor's or physician extender's orders and treatment plans. However, a RN cannot medically diagnose, order or interpret diagnostic tests, provide a medical treatment plan or issue prescriptions —unlike a NP which is by law licensed to do each of these medical acts and, mor specifically, the medical acts described above. See Section 40-33-20 (46) and (48).

3. In fact, it is unlawful for a registered nurse RN to practice as a NP or practice outside the scope of the RN license. Section 40-33-110 states the grounds for discipline of licensees as follows:

“(A) In addition to the grounds provided in Section 40-1-110, upon finding misconduct the board may cancel, fine, suspend, revoke, issue a public reprimand or a private reprimand, or restrict, including probation or other reasonable action such as requiring additional education and training, the authorization to practice of a person who has:

...  
 (21) *practiced outside the scope of the license by assuming duties and responsibilities without adequate education as determined by the board.*

...  
 (27) *engaged in practice as an NP, CNS, or CNM without a compliant practice agreement as defined in Section 40-33-20(45)*”.  
 (Emphasis provided)

4. Notably, RN High is licensed as a registered nurse in the Tennessee. The Tennessee Nursing Act provides that: “the practice of professional nursing does not include acts of *medical diagnosis or the development of a medical plan of care and therapeutics for a patient, ...*” Tenn. Code Section 63-7-103 (b).

Although the Plaintiffs have provided an affidavit regarding nursing acts effective against the nurse codefendants, the Court concludes that the Plaintiffs failed to file an affidavit contemporaneously with the NOIS from a qualified medical expert regarding the medical providers' care in this case, specifically the care by NP Morton and AEA, resulting in an absent affidavit as to those Defendants.

#### IV. Common Law

Although an expert need not be of the same specialty, the proffered witness must be qualified in the subject matter of the proffered testimony. *Watson v. Ford Motor*, 389 SC 434, 699 S.E.2d 169, (2010). *Watson* holds that Rule 702, *SCRE*, requires that a proffered expert need not be of the same specialty but must have “acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” 699 S.E. 2d at 175. In the case at bar, the subject matter in question is the performance of medical acts (diagnosis, ordering and interpretation of tests and forming medical treatment plans).

#### V. The Plaintiffs Arguments

The Plaintiffs make two arguments that contends the High affidavit should be accepted by the Court:

a. First, the Plaintiffs contend that the affidavit should be accepted and the Motion to Dismiss should be denied because it was not raised at the time of the NOIS and instead raised contemporaneously with (and as part of) the Answer once the Complaint was filed. The Court finds that argument to lack merit because two statutory provisions exclusively govern the time to raise an objection:

1. Section 15-36-100(E) directly addresses the timing of a motion to dismiss for an “allegedly defective” affidavit:

“(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....” (Emphasis provided.)

2. In addition, Section 15-36-100(F) provides when a motion to dismiss is to be filed in a case when no affidavit is filed:

“(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...” (Emphasis provided.)

Accordingly, the statute provides that the Motion to Dismiss should be filed *contemporaneously with the filing of the Answer*. See also, *Ranucci vs Crain*, where our Supreme Court held that “any challenge to alleged deficiencies” and “assertions regarding defects in the authorship and content” of the purported expert’s qualifications or in the affidavit “would be made by (the Defendant) filing the appropriate motion to dismiss in circuit court pursuant to 15-36-100(E)”, as was done here. 409 S.C. 493, 507, 763 S.E.2d 189, 196 (SC 2014).

b. Secondly, the Plaintiffs contend that the affidavit by a physician, Dr. Michael Chansky, --submitted 157 days after the NOIS, 46 days after the lawsuit was filed, and 7 days after this Motion to Dismiss was filed-- is an “amendment” and cures a “defect” in the RN High affidavit. The NOIS statute allows for one limited situation for a *second affidavit* to cure a defect. However, this is not that situation, and no exception applies to an absent affidavit. As discussed above, the requirements for a NOIS affidavit are provided in the two governing statutes, Section 15-79-125 and 15-36-100. The two statutes are in *pari materia* and must be *construed together*. *Ranucci v Crain*, 763 S.E.2d at 193. Notably, no *amended* affidavit by Nurse High has been filed. Instead, only a new and separate affidavit by a completely different affiant, Dr. Chansky, was filed over 5 months after, not contemporaneously with, the NOIS.

As indicated, the two statutory provision, Section 15-79-125 and 15-36-100, provides the statutory framework and requirements for affidavits. Those two statutes combine to specifically govern the case before the bar as follows:

1. The General Rule: contemporaneous affidavit required: Section 15-79-125 (A) specifically requires a “*contemporaneous filing*” of an affidavit with the NOIS:

“(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. ...”

2. Two exceptions: The statute, however, provides for only two exceptions to this general rule – the “safe harbor” exception and the “amended affidavit” exception.

a. The “Safe Harbor” exception- Section 15-36-100 (C) (1): The General Assembly provided *one, and only one, exception* to general rule requiring a contemporaneous filing to allow a filing of a new or different *after* the NOIS—known as “safe harbor” provision—and applicable only in a certain set of cases under statute of limitation time constraints.

Section 15-36-100 (C) (1) reads (with emphasis provided):

“(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... .”

This Court concludes that sub-section (C) is the only exception to the general rule requiring a contemporaneous filing of the expert affidavit. It is the only provision allowing a filing of any new or different affidavit after the NOIS. The General Assembly exclusively limited the safe harbor provision to one specific class of medical malpractice suits—*those actions filed within ten days prior to the expiration of the statute of limitations.* In the case at bar, the NOIS was filed on November 5, 2020, which was three months prior to the expiration of the statute of limitations on February 4, 2021. In addition, to avail of this safe harbor, the Plaintiffs must file an affidavit as to why a contemporaneous expert affidavit could not be obtained. In this case, the Plaintiffs do not and could not because he had the RN High affidavit *seven months* prior to expiration of the statute of limitations.

***b. Amended affidavit exception:*** The only other exception to the general rule is “the amended affidavit” provision in Section 15-36-100 (E). The statute does not allow for a new and separate affidavit to be filed after the NOIS. Instead, it only allows for an “*amendment*” to the initial properly filed contemporaneous affidavit. This is not the case here, where a new and different affidavit by a new author, not an amendment to the existing affidavit, has been filed for an absent affidavit. The statute reads:

“(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. ...”. Section 15-36-100(E), *emphasis provided.*

The most fundamental rule of statutory interpretation require a finding of a “plain meaning” and that “(w)hen faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.” *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994). The Court may rely on dictionaries “where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” *Estate of Nicholson vs SC Department of Health and Human Services*, 377 S.C. 590, 660 S.E. 2d 303 (SC 2008). In particular, the Courts have consistently resorted to *Black’s Law Dictionary* to provide the meaning of a word not defined in the statute. *See e.g., Centex Int’l, Inc. v. S.C. Department of Revenue*, 406 S.C. 132, 750 S.E.2d 65 (2013) (*Black’s Law Dictionary* and *Merriam-Webster’s Collegiate Dictionary* were used as authorities). All of the defining authorities are consistent in defining the term “amendment” as “a change in an existing document.” *See, Black’s Law Dictionary* (4th Edition), *Merriam-Webster’s Collegiate Dictionary*, *Oxford Dictionary*, and *Funk and Wagnalls International Dictionary of the English Language*. None of these dictionaries define the term “amendment” as the Plaintiff contends as a subsequent, new, and different document executed almost a year after the first document by a different author and with no reference to the initial document.

In sum, the Court finds that the Chansky affidavit does not cure the High affidavit for three reasons:

First, a party cannot amend an absent affidavit. Second, an amendment to an unqualified unlawful affidavit would be just as unqualified and unlawful.

Third, the Chansky affidavit is not an “amendment” to an existing affidavit which is the only subsequent affidavit permitted by statute. It is a new and separate affidavit by a different author with no reference to the High affidavit.

The statute does now allow for a “substitute” affidavit.<sup>2</sup>

In addition, the Plaintiffs must demonstrate that the second affidavit constitutes an “amendment.” That requires, in the Court’s view, the same expert correcting an error in the first affidavit. That is not the case here. In fact, Nurse High cannot file an amendment in this case because he is not qualified, and it is unlawful for him to do so. If Nurse High filed an amendment, he would still be unqualified to offer the opinions on medical acts and the amended affidavit would remain improper and illegal. Thus, this Court concludes that the Chansky affidavit is not proper under S.C. Code Ann. § 15-36-100(E).

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<sup>2</sup> The provision in S.C. Code Ann. § 15-36-100(F) allowing for an affidavit where “the failure to file the affidavit is the result of a mistake” does not apply in this case.

**VI. S.C. Code Ann. § 15-79-125 requires an affidavit as a prerequisite to suit.**

It is well settled that S.C. Code Section 15-79-125 requires an affidavit by an expert and the NOIS as a legal prerequisite to file a medical malpractice lawsuit. Our Supreme Court has been clear that a purpose of the NOIS statute, in part, is to discourage frivolous claims and the affidavit requirement is not “meaningless” in serving this purpose. *Ross vs. Waccamaw Community Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013), see also, *Ranucci v Crain*, 409 S.C. 493, 763 S.E.2d 189 (S.C. 2014). Failure to comply can result in dismissal. *Ranucci v Crain*, *supra* and *Ross vs Waccamaw Community Hosp.*, *supra*. The Plaintiffs have not appealed to the Court’s discretion, and nonetheless, any exercise of discretion to allow the matter to proceed would ignore the fact that the Plaintiffs knew or should have known at the inception of this case that a nurse is not qualified to offer testimony on the standard of care to be practiced by a nurse practitioner and proceeded without a legally sufficient affidavit subjecting NP Morton to this lawsuit. This is admitted in the responses to the requests for admission discussed above. In addition, the Plaintiffs admit the medical records were obtained within 35 days after the death of the Plaintiff-decedent over two years prior to filing suit. The RN High affidavit was executed 110 days before the NOIS. Despite this knowledge that a nurse could not testify as to standard of care of a nurse practitioner, the Plaintiffs pursued this litigation for 221 days without providing the mandatory statutory protection, the affidavit, required by the statute nor providing an acceptable legal excuse for the failure. The result of filing an unqualified and unlawful opinion is in effect the filing of no affidavit.

The Court has reviewed the caselaw provided by the parties.<sup>3</sup> This case is different. This is not a technical or mere procedural defect like failing to meet a mediation deadline as in *Ross vs Waccamaw Community Hosp.*, *supra*. Nor is it a question of interpretation of statutory language as in *Grier vs AMISUB*, *supra* and *Ranucci vs Crain*, *supra*. It is not an affidavit by a qualified doctor against a defendant doctor of a different specialty as in *Eades vs Palmetto Cardi vascular*, *supra*. The language of Section 15-36-100 is plain: it requires an affidavit by a duly qualified expert “which must specify at least one negligent act or omission claimed to exist.” This requirement is the substantive core of the protection for professionals offered by this statute against frivolous, unmerited, or stale claims. Accordingly, to hold otherwise would be to eviscerate the statute requirements and protections. The Court thereby concludes that the failure to provide an affidavit by a duly qualified expert is mandatory grounds for a dismissal. Section 15-79-125, See also, *Seastrunk v. U.S.*, 25 F.Supp.3d 812, and *Duckett v. SCP*, 225 F.Supp.3d 432 (D.S.C 2006).

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<sup>3</sup> In particular, the Court has reviewed the five recent cases offered by the parties involving the pre-suit procedure of Sections 15-37-125 and Section 15-36-100: *Eades vs. Palmetto Cardiovascular*, 422 S.C. 196, 810 S.E.2d 848 (S.C.-2018); *Ranucci v Crain*, (409 SC 493, 763 SE2d 189 (SC 2014); ), *Brouwer vs Sisters of Charity*, 409 S.C. 514, 763 S.E.2d 200 (S.C. 2014); *Ross vs Waccamaw Community Hospital*, 404 S.C. 56, 744 S.E.2d 547 (2013); *Grier vs AMISUB*, 397 S.C. 532, 725 S.E.2d 693 (2012)

## VII. The statute of limitations was not tolled.

Finally, the Court concludes that the statute of limitations in Section 15-3-545 was not tolled. A valid, qualified, and legal affidavit filed contemporaneously with the NOIS is mandatory requirement of the Section 15-79-125. The requirement of the expert's affidavit is the one provision of a statute drafted to provide protection from frivolous suits. See *Ross vs. Waccamaw Community Hosp.*, *supra*. Section 15-79-125 will toll the statute—only when all the requirements of the statute are met: including a legal affidavit by a qualified and lawful affiant. In this case, as addressed above, no legal affidavit was filed against these Defendants, and accordingly, the statute was never tolled against these Defendants.

Nonetheless, even if a qualified and lawful affidavit had been filed, the statute of limitations would have been tolled only to the present action. Section 15-36-100 provides for a motion to dismiss the *subsequent lawsuit after the NOIS* with no caveat that any statute of limitations is tolled if the Motion is successful. Section 15-79-125 only tolls the statute until an action is filed. It does not toll the statute indefinitely or preclude any defenses once the lawsuit is filed. A motion to dismiss is just that, a motion to dismiss.

Moreover, the Court finds that the statute of limitations also provides citizens protection and is a substantive right. To knowingly submit an unqualified and unlawful affidavit (as evidenced by the responses to request for admissions discussed above) and to claim that this unlawful affidavit tolls the statute of limitations indefinitely and for any subsequent lawsuits would effectively render meaningless any protection health care providers could have in the statute of limitations. It would be particularly injurious if a plaintiff could effectively toll the statute of limitations by obtaining an unlawful affidavit six months prior to the expiration of the statute and then file a new affidavit two months after the statute had run with no repercussions.

**Conclusion:**

Each of the above conclusions and findings of fact are repeated and incorporated here. In addition, based on the law and evidence, the Court further specifically concludes:

1. A nurse is not qualified and accordingly cannot, as a matter of law, offer testimony as to the standard of care or deviations from that standard of care by a nurse practitioner or as to the performance of medical acts by a nurse practitioner. In addition, the affidavit of Nurse High fails to specify a standard of care or deviation of standard care as to any physicians or nurse practitioners as required by Section 15-36-100.

2. As a result, the Plaintiffs have failed to provide a contemporaneous affidavit with the NOIS by a duly qualified expert as required by statute. S.C. Code Sections 15-79-125 and 15-36-100.

3. Accordingly, the Motion to Dismiss filed by the Defendants Morton and Anderson Emergency Associates, with prejudice, is hereby granted.

**IT IS SO ORDERED.**

September \_\_\_\_, 2021

\_\_\_\_\_  
R. Lawton McIntosh  
Judge, Fourteenth Judicial Circuit



Anderson Common Pleas

**Case Caption:** Travis Walker , plaintiff, et al VS Anmed Health , defendant, et al

**Case Number:** 2021CP0400470

**Type:** Order/Dismissal

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No \_\_\_\_\_

**Notice of Intent**

Pursuant to S. C. Code Ann. § 15-79-125, Plaintiff(s) file this Notice of Intent to File Suit. Attached as Exhibit A is a Complaint which specifies Plaintiffs' short and plain statement of the facts. Attached as Exhibit B is the Affidavit from expert witness delineating at least one negligent act or omission which would allow Plaintiffs to recover damages from Defendants in this case. Attached as Exhibit C are answers to Standard Interrogatories as set forth in Rule 33(b) of the *South Carolina Rules of Civil Procedure*.

Respectfully submitted,

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright  
\_\_\_\_\_  
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November 5, 2020

**ATTORNEYS FOR THE PLAINTIFFS**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No \_\_\_\_\_

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**Complaint for Damages and Demand for Jury Trial**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

Plaintiff, Travis Walker, individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore complaining of the Defendants herein, would respectfully show unto the Court and allege as follows:

**Parties and Venue**

1. Plaintiff, Travis Walker (“Mr. Walker”) is the duly appointed, qualified, and acting personal representative of the Estate of Douglas Williford.
2. Plaintiff, Lolita Moore (“Mrs. Moore”) was the wife of the Decedant, Douglas Williford.
3. The Decedent, Douglas Williford (“Mr. Williford”), was a citizen and resident of Anderson County, South Carolina, at the time of his death on February 3, 2018. The medical treatment hereinafter referenced was rendered to Mr. Williford in Anderson County, South Carolina.
4. This is a wrongful death action brought pursuant to *S.C. Code Ann. § 15-51-10, et seq.* for the benefit of the statutory beneficiaries of Douglas Williford as defined in *S.C. Code Ann. § 15-51-20*. This is also a survival action brought pursuant to *S.C. Code Ann. § 15-51-90* for the

benefit of the Estate of Douglas Williford. Further, this is an action for loss of consortium brought pursuant to *S.C. Code Ann. §15-75-20*.

5. Upon information and belief, Defendant AnMed Health (hereinafter “AnMed”) is organized and existing under the laws of the State of South Carolina as a corporation and does business in the County of Anderson, State of South Carolina and, upon information and belief, was the employer of Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN at all relevant times herein.

6. Defendant, Anderson Emergency Associates, P.A. (hereinafter “AEA”), is, was a for profit professional association organized and existing under the laws of the State of South Carolina in the County of Anderson, State of South Carolina. At all relevant times herein, AEA was held out to the public-at-large and to the Plaintiff as being a medical practice specializing in the field of emergency medicine and its employees were held out to be competent in the ordinary and customary standards of medicine provided by medical practitioners specializing in the field of emergency medicine. Upon information and belief, AEA dissolved on December 31, 2018.

7. At all relevant times herein, AnMed held itself and its employees out to the public-at-large and to Plaintiffs to be competent in the ordinary and customary standards of emergency medicine and nursing care.

8. Upon information and belief, Kevin Morton NP, is a resident of Anderson County South Carolina and Nurse Practitioner. At all relevant times herein, Nurse Morton was an employee of AnMed Health and held himself out to the public-at-large and to Plaintiffs as a skilled and nurse practitioner in the ordinary and customary standards of a nurse practitioner.

9. Upon information and belief, Jamie Moon, RN is a resident of Anderson County South Carolina and is a Registered Nurse (RN). At all relevant times herein, Nurse Moon was an

employee of AnMed Health and held himself / herself out to the public-at-large and to Plaintiffs as a skilled and competent RN in the ordinary and customary standards of nursing.

10. Upon information and belief, Betty Boyles RN, is a resident of Anderson County South Carolina and is a registered nurse (RN). At all relevant times herein, Nurse Boyles was an employee of AnMed Health and held herself out to the public-at-large and to Plaintiffs as a skilled and competent RN in the ordinary and customary standards of nursing.

11. The above-named Defendants are jointly and severally liable for all damages alleged herein since their negligent acts and omissions, singularly or in combination, are the contributing proximate cause of the Plaintiff's damages, injuries, and losses.

12. Venue is proper in Anderson County, South Carolina.

**General Factual Allegations Applicable to All Claims**

13. On Wednesday January 18, 2018, Decedent, Douglas Williford, was involved in a motor vehicle accident wherein his vehicle was hit in the rear.

14. Mr. Williford transported himself to AnMed Emergency Room arriving at approximately 9:08pm.

15. On arrival, Mr. Williford's blood pressure was significantly elevated at 244/130.

16. A blood pressure in this range is considered a hypertensive crisis given that a hypertensive crisis is defined medically as a blood pressure with a systolic pressure of 180 or a diastolic pressure of 120.

17. Mr. Williford met the criteria for hypertensive crisis for both the systolic and diastolic pressures.

18. Additionally, it is noted at the ER that Mr. Williford rated his pain as a 9 out of 10 at 9:14pm.

19. In the ED provider note of 10:29pm, Nurse Morton noted that Mr. Williford was complaining of pain in his left mid back describing it as a “catch” in his left back near the left shoulder blade.

20. Also, Mr. Williford informed the medical personnel that the motor vehicle accident had been quite dramatic relaying that he estimated the vehicle that struck him in the rear must have been going 25-30 mph at the time of the collision.

21. It is known to medical providers working in emergency rooms that pain in the mid back is a known sign and/or symptom of aortic aneurysm and/or dissection.

22. It is also known to medical providers working in emergency rooms that motor vehicle accidents and other forms of trauma are known to cause tears in major blood vessels resulting in aortic aneurysms and/or dissections.

23. It is also known to medical providers working in emergency rooms that motor vehicle accidents and other forms of trauma are known risk factors for aortic aneurysm and/or dissection.

24. It is also known to medical providers working in emergency rooms that patients with a history of hypertension are at increased risk of aortic aneurysm and/or dissection.

25. It is also known to medical providers working in emergency rooms that patients over the age of 50 are at increased risk of aortic aneurysm and/or dissection due to the reduced resistance of arterial walls with age.

26. It is also known to medical providers working in emergency rooms that hypertensive crisis is often associated with aortic aneurysms and/or dissection.

27. Given the many of potential warning signs of aortic aneurysm, the medical professionals treating Mr. Williford should have considered aortic aneurysm / dissection potential causes of his symptoms.

28. However, despite these many warning signs of aortic aneurysm / dissection, Nurse Practitioner Morton did not include aortic aneurysm / dissection in his list of potential diagnoses in his medical decision making.

29. Upon information and belief, Nurse Practitioner Morton did not properly consider aortic aneurysm / dissection or any other life-threatening condition to be a possible cause of Mr. Williford's symptoms.

30. Confirmation of aortic aneurysm / dissection is obtained by using contrast-enhanced computed tomography (CT) or transesophageal echocardiogram (TEE).

31. Nurse Practitioner Morton did not order any imaging studies such as CT or TEE for Mr. Williford even though they are readily available in an emergency room setting.

32. The only orders Nurse Practitioner Morton submitted were to order Aspirin and Coreg medications.

33. Despite Mr. Williford presenting in a state of a hypertensive crisis of 240/130, his blood pressure was not rechecked at any time prior to his discharge.

34. At 10:38pm, Mr. Williford was still rating his pain at an 8/10.

35. Nurse Practitioner Morton diagnosed Mr. Williford with a muscle strain of his left upper back.

36. Nurse Morton improperly made this diagnosis without considering other life-threatening potential diagnoses such as aortic aneurysm and without ordering any testing to rule out aortic aneurysm in order to properly protect the health and safety of Mr. Williford.

37. Nurse Morton improperly made the diagnosis of muscle strain and discharged Mr. Williford without rechecking his blood pressure even though he presented with a blood pressure meeting the criteria for hypertensive crisis.

38. Mr. Williford was discharged at 10:39pm, ten minutes after his brief examination by Nurse Morton.

39. Mr. Williford returned to AnMed hospital two weeks later on February 3, 2018 arriving at 6:57am.

40. Mr. Williford described that he had an aching back pain since the time of the motor vehicle wreck and that the pain had gotten worse causing him to be unable to sleep.

41. Mr. Williford was discharged with some pain medication at 10:44am.

42. Mr. Williford was then found unresponsive, not breathing, and pulseless in his car in the emergency room parking lot and was brought back into the emergency room at 3:45pm.

43. Despite aggressive treatment and resuscitative efforts, Mr. Williford was determined to be deceased at 3:52pm.

44. An autopsy was performed by Brett Woodard, MD on February 4, 2018.

45. Dr. Woodard determined that Mr. Williford had suffered a rupture of an aortic aneurysm resulting in an aortic dissection in the ascending aorta.

46. Dr. Woodard determined the cause of Mr. Williford's death to be cardiac tamponade due to a ruptured aortic aneurysm.

47. Plaintiffs are informed and believe that Nurse Practitioner Morton, and employees of AnMed failed to provide Mr. Williford with proper medical treatment in accordance with the appropriate standard of care.

48. The failure to provide proper medical treatment in accordance general common sense and/or with the appropriate standard of care to Mr. Williford was the direct and proximate result of and was caused and occasioned by the negligence and carelessness on the part Nurses Morton, Moon, Boyles and/or other employees of AnMed Health in failing to possess and exercise that degree of care, competence, and skill ordinarily and customarily possessed and exercised by

employees rendering nursing care under similar circumstances and thereby rendered improper treatment to Mr. Williford by deviating from common sense and/or falling below the prevailing and acceptable standards of care in one or more of the specifications as set forth below:

- a. in failing to adhere to the prevailing standard of emergency medicine by failing to properly treat a patient in a hypertensive crisis;
- b. in failing to adhere to the prevailing standard of emergency medicine by failing to consider aortic aneurysm / dissection as possible causes of the patient's complaints;
- c. in failing to adhere to the prevailing standard of emergency medicine by performing an inadequate triage;
- d. in failing to adhere to the prevailing standard of emergency medicine by performing an inadequate workup;
- e. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain repeat vitals;
- f. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain repeat pain assessments;
- g. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain / record vitals prior to discharge;
- h. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain further imaging prior to discharge;
- i. in failing to adhere to the prevailing standard of emergency medicine by discharging Mr. Williford inappropriately; and
- j. in such other action or inaction that may be shown at trial.

The affidavit of a medical professional is attached hereto and is incorporated herein by this reference.

49. If Mr. Williford had received medical treatment in accordance with the common sense and/or the appropriate standard of care as set forth above, more likely than not, his aortic aneurysm would have been identified and treated preventing his premature death.

50. If Mr. Williford had received timely treatment for his aortic aneurysm, more likely than not, he would have lived to a normal life expectancy.

51. The acts and omissions of Kevin Morton, NP were reckless, willful, wanton, grossly negligent, and in conscious disregard of the rights of Mr. Williford. Accordingly, punitive damages should be awarded to punish Kevin Morton, NP; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Mr. Williford which were wrongfully invaded.

**FOR A FIRST CAUSE OF ACTION**  
**(Wrongful Death)**

52. The relevant and consistent allegations of paragraphs 1-51 are incorporated herein by this reference.

53. As a direct and proximate result of the acts and/or omissions as herein alleged, Mr. Williford suffered a premature and untimely death. As a result, his family has incurred and will in the future incur the following damages:

- a. lost future income, lost future earning capacity, the value of the loss of household services, and other economic losses;
- b. mental shock and suffering;
- c. wounded feelings;
- d. grief and sorrow;
- e. loss of companionship;
- f. deprivation of the use and comfort of Mr. Williford's society, including loss of his experience, knowledge, and judgment; and
- g. funeral and burial expenses.

54. Plaintiff, Travis Walker, as personal representative of the Estate of Douglas Williford, is informed and believes that based upon the allegations set forth herein judgment should be rendered against AnMed Health, AEA, and Kevin Morton, NP, jointly and/or severally, for actual damages in such fair, just and reasonable amounts as may be determined by a jury and punitive damages against AEA and Kevin Morton, NP in such fair, just and reasonable amounts as may be determined by a jury.

**FOR A SECOND CAUSE OF ACTION**  
**(Survival Action)**

55. The relevant and consistent allegations of paragraphs 1-54 are incorporated herein by this reference.

56. As a direct and proximate result of the acts and/or omissions as herein alleged, Mr. Williford suffered the following damages:

- a. pain and discomfort;
- b. mental and emotional suffering;
- c. past hospital and related expenses; and
- d. lost past wages, household services, and other past economic losses.

57. Plaintiff, Travis Walker, as personal representative of the Estate of Douglas Williford, is informed and believes that based upon the allegations set forth herein judgment should be rendered against AnMed Health, AEA, and Kevin Morton, NP, jointly and/or severally, for actual damages and punitive damages against AEA and Kevin Morton, NP in such fair, just and reasonable amounts as may be determined by a jury.

**FOR A THIRD CAUSE OF ACTION**  
**(Loss of Consortium)**

58. The relevant and consistent allegations of paragraphs 1-57 are incorporated herein by this reference.

59. This claim is instituted against Defendants for loss of consortium pursuant to *S.C. Code Ann. §15-75-20*.

60. As a direct and proximate result of the acts and/or omissions as heretofore alleged Lolita Moore suffered the loss of companionship, aid, society, and services of her husband.

61. Plaintiff, Lolita Moore, is informed and believes that based upon the allegations set forth herein, judgment should be rendered against AnMed Health, AEA, and Kevin Morton, NP, jointly and/or severally, for actual damages and punitive damages against AEA and Kevin Morton, NP in such fair, just and reasonable amounts as may be determined by a jury.

**WHEREFORE**, Plaintiffs, respectfully demand and pray as follows:

- (a) for a trial by jury pursuant to *Rule 38(b) of the SCRCP*;
- (b) for judgment under the first cause of action against AnMed Health Anderson Emergency Associates, P.A., and Kevin Morton, NP, jointly and/or severally, for actual damages and against Anderson Emergency Associates, P.A., and Kevin Morton, NP for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in **excess** of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in *Rule 30(h) of the SCRCP*;
- (c) for judgment under the second cause of action against AnMed Health, Anderson Emergency Associates, P.A., and Kevin Morton, NP, jointly and/or severally, for actual damages and against Anderson Emergency Associates, P.A. and Kevin Morton, NP for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in **excess** of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in *Rule 30(h) of the SCRCP*;
- (d) for judgment under the third cause of action against AnMed Health Anderson Emergency Associates, P.A., and Kevin Morton, NP, jointly and/or severally, for actual damages and against Anderson Emergency Associates, P.A. and Kevin Morton, NP for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in **excess** of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in *Rule 30(h) of the SCRCP*
- (e) for the costs of this action; and
- (f) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright

Jay F. Wright

South Carolina Bar No. 78738

[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)

135 Edinburgh Court, Suite 202

Greenville, SC 29607

(864) 252-4406

November 5, 2020

(864) 252-4480 (facsimile)

**ATTORNEYS FOR THE PLAINTIFFS**

**AFFIAVIT of RICHARD KEVIN HIGH, RN, EMT, CEN, ACLS**

**PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, AND SAYS AS FOLLOWS:**

1. I am a practicing emergency nurse. My clinical practice involves treating all types of patients in a busy ER setting as well as bedside, clinical and didactic teaching of nurses, clinical staff, residents, fellows and faculty the proper work up for emergency medicine patients. I am board certified by the Board of Certification for Emergency Nursing. 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 expected care that should have been rendered to Douglas Williford in this case.

2. My medical practice is primarily in Nashville, TN. I have been practicing Emergency Nursing for over 30 years.

3. I have reviewed the medical records of Douglas Williford, which consisted in part of records from AnMed Health, Anderson County Coroner's Office, and AnMed Family Medicine. The records I have reviewed are the type documents, which I would consider in rendering an expert medical opinion in this case.

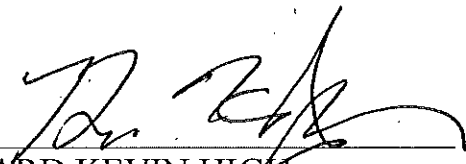
4. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department committed negligent acts or omissions in their care and treatment of Douglas Williford. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:

- Inappropriate triage;
- Inadequate workup;
- Failure to do repeat vitals;
- Failure to do repeat pain;
- Failure to obtain / record vitals prior to discharge;
- Failure to obtain further imaging prior to discharge;
- Inappropriate discharge

5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department caused or contributed to the injuries, damage, pain and suffering and premature death of Mr. Williford.

6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department at this time are the medical records of Douglas Williford.

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
RICHARD KEVIN HIGH

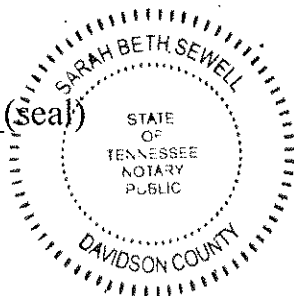
Sworn to and signed before me  
this 18 day of July 2019



Notary Public in and for

County of Anderson  
State of Tennessee

Commission Exp: July 9, 2022





**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.**

**ANSWER:**

The physicians who treated Douglas Williford are listed in answer to Interrogatory 1.

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

**ANSWER:**

Douglas Williford had medical insurance with Medicaid.

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

**ANSWER:**

The damages, exclusive of pain and suffering, include, but are not limited, to past medical expenses; physical, mental, and emotional pain and suffering; anxiety; disfigurement; lost wages; loss of household services; premature death; and loss of consortium

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

**ANSWER:**

a. Richard Kevin High  
Vanderbilt University Medical Center  
1211 Medical Center Drive,  
Nashville, TN 37232

b. Any treating physicians or healthcare professionals who rendered orthopedic and/or medical treatment to Ricky Harper.

**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.**

**ANSWER:**

- a. Travis Walker is a Plaintiff in this action and is the Personal Representative of the Estate of Mr. Williford. Mr. Walker is expected to testify regarding Mr. Williford's condition before and after the treatment rendered to him by Defendants and the damages suffered by the Estate as a result of Mr. Williford's premature injuries.
- b. Lolita Moore is a Plaintiff in this action and was the wife of Mr. Williford. Mrs. Moore is expected to testify regarding Mr. Williford's condition before and after the treatment rendered to him by Defendants and the damages suffered by the Estate as a result of Mr. Williford's premature injuries.
- c. Any treating physicians or healthcare professionals who rendered treatment to Mr. Williford are expected to testify in conformity to the medical records.
- d. The Defendants are expected to testify in conformity to the medical records.

Respectfully submitted,

**McGowan, Hood & Felder, LLC**

s/ Jay Wright

Jay F. Wright

McGowan, Hood & Felder, LLC

135 Edinburgh Court, Suite 202

Greenville, SC 29607

(864) 252-4406

[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)

**ATTORNEYS FOR THE PLAINTIFFS**

November 5, 2020  
Anderson, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No \_\_\_\_\_

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**SUMMONS**

**ANMED HEALTH**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

**TO: ANMED HEALTH**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 135 Edinburgh Court, Suite 202, Greenville, SC 29607, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright  
Jay F. Wright  
South Carolina Bar No. 78738  
[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)  
135 Edinburgh Court, Suite 202  
Greenville, SC 29607  
(864) 252-4406  
(864) 252-4480 (facsimile)

March 6, 2021

**ATTORNEYS FOR THE PLAINTIFFS**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No \_\_\_\_\_

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**SUMMONS**

**ANDERSON EMERGENCY ASSOCIATES, P.A.**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

**TO: ANDERSON EMERGENCY ASSOCIATES, P.A.**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 135 Edinburgh Court, Suite 202, Greenville, SC 29607, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright  
Jay F. Wright  
South Carolina Bar No. 78738  
[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)  
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March 6, 2021

**ATTORNEYS FOR THE PLAINTIFFS**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No \_\_\_\_\_

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**SUMMONS**

**KEVIN MORTON, NP**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

**TO: KEVIN MORTON, NP**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 135 Edinburgh Court, Suite 202, Greenville, SC 29607, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright  
Jay F. Wright  
South Carolina Bar No. 78738  
[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)  
135 Edinburgh Court, Suite 202  
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March 6, 2021

**ATTORNEYS FOR THE PLAINTIFFS**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No \_\_\_\_\_

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**SUMMONS**

**JAMIE MOON, RN**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

**TO: JAMIE MOON, RN**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 135 Edinburgh Court, Suite 202, Greenville, SC 29607, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright  
Jay F. Wright  
South Carolina Bar No. 78738  
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March 6, 2021

**ATTORNEYS FOR THE PLAINTIFFS**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No \_\_\_\_\_

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**SUMMONS**

**BETTY BOYLES, RN**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

**TO: BETTY BOYLES, RN**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 135 Edinburgh Court, Suite 202, Greenville, SC 29607, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright  
Jay F. Wright  
South Carolina Bar No. 78738  
[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)  
135 Edinburgh Court, Suite 202  
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March 6, 2021

**ATTORNEYS FOR THE PLAINTIFFS**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No \_\_\_\_\_

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**Complaint for Damages and Demand for Jury Trial**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

Plaintiff, Travis Walker, individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore complaining of the Defendants herein, would respectfully show unto the Court and allege as follows:

**Parties and Venue**

1. Plaintiff, Travis Walker (“Mr. Walker”) is the duly appointed, qualified, and acting personal representative of the Estate of Douglas Williford.
2. Plaintiff, Lolita Moore (“Mrs. Moore”) was the wife of the Decedent, Douglas Williford.
3. The Decedent, Douglas Williford (“Mr. Williford”), was a citizen and resident of Anderson County, South Carolina, at the time of his death on February 3, 2018. The medical treatment hereinafter referenced was rendered to Mr. Williford in Anderson County, South Carolina.
4. This is a wrongful death action brought pursuant to *S.C. Code Ann. § 15-51-10, et seq.* for the benefit of the statutory beneficiaries of Douglas Williford as defined in *S.C. Code Ann.*

§ 15-51-20. This is also a survival action brought pursuant to *S.C. Code Ann. § 15-51-90* for the benefit of the Estate of Douglas Williford. Further, this is an action for loss of consortium brought pursuant to *S.C. Code Ann. §15-75-20*.

5. Upon information and belief, Defendant AnMed Health (hereinafter “AnMed”) is organized and existing under the laws of the State of South Carolina as a corporation and does business in the County of Anderson, State of South Carolina and, upon information and belief, was the employer of Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN at all relevant times herein.

6. Defendant, Anderson Emergency Associates, P.A. (hereinafter “AEA”), is, was a for profit professional association organized and existing under the laws of the State of South Carolina in the County of Anderson, State of South Carolina. At all relevant times herein, AEA was held out to the public-at-large and to the Plaintiff as being a medical practice specializing in the field of emergency medicine and its employees were held out to be competent in the ordinary and customary standards of medicine provided by medical practitioners specializing in the field of emergency medicine. Upon information and belief, AEA dissolved on December 31, 2018.

7. At all relevant times herein, AnMed held itself and its employees out to the public-at-large and to Plaintiffs to be competent in the ordinary and customary standards of emergency medicine and nursing care.

8. Upon information and belief, Kevin Morton NP, is a resident of Anderson County South Carolina and Nurse Practitioner. At all relevant times herein, Nurse Morton was an employee of AnMed Health and held himself out to the public-at-large and to Plaintiffs as a skilled and nurse practitioner in the ordinary and customary standards of a nurse practitioner.

9. Upon information and belief, Jamie Moon, RN is a resident of Anderson County South Carolina and is a Registered Nurse (RN). At all relevant times herein, Nurse Moon was an

employee of AnMed Health and held himself / herself out to the public-at-large and to Plaintiffs as a skilled and competent RN in the ordinary and customary standards of nursing.

10. Upon information and belief, Betty Boyles RN, is a resident of Anderson County South Carolina and is a registered nurse (RN). At all relevant times herein, Nurse Boyles was an employee of AnMed Health and held herself out to the public-at-large and to Plaintiffs as a skilled and competent RN in the ordinary and customary standards of nursing.

11. The above-named Defendants are jointly and severally liable for all damages alleged herein since their negligent acts and omissions, singularly or in combination, are the contributing proximate cause of the Plaintiff's damages, injuries, and losses.

12. Venue is proper in Anderson County, South Carolina.

**General Factual Allegations Applicable to All Claims**

13. On Wednesday January 18, 2018, Decedent, Douglas Williford, was involved in a motor vehicle accident wherein his vehicle was hit in the rear.

14. Mr. Williford transported himself to AnMed Emergency Room arriving at approximately 9:08pm.

15. On arrival, Mr. Williford's blood pressure was significantly elevated at 244/130.

16. A blood pressure in this range is considered a hypertensive crisis given that a hypertensive crisis is defined medically as a blood pressure with a systolic pressure of 180 **or** a diastolic pressure of 120.

17. Mr. Williford met the criteria for hypertensive crisis for both the systolic and diastolic pressures.

18. Additionally, it is noted at the ER that Mr. Williford rated his pain as a 9 out of 10 at 9:14pm.

19. In the ED provider note of 10:29pm, Nurse Morton noted that Mr. Williford was complaining of pain in his left mid back describing it as a “catch” in his left back near the left shoulder blade.

20. Also, Mr. Williford informed the medical personnel that the motor vehicle accident had been quite dramatic relaying that he estimated the vehicle that struck him in the rear must have been going 25-30 mph at the time of the collision.

21. It is known to medical providers working in emergency rooms that pain in the mid back is a known sign and/or symptom of aortic aneurysm and/or dissection.

22. It is also known to medical providers working in emergency rooms that motor vehicle accidents and other forms of trauma are known to cause tears in major blood vessels resulting in aortic aneurysms and/or dissections.

23. It is also known to medical providers working in emergency rooms that motor vehicle accidents and other forms of trauma are known risk factors for aortic aneurysm and/or dissection.

24. It is also known to medical providers working in emergency rooms that patients with a history of hypertension are at increased risk of aortic aneurysm and/or dissection.

25. It is also known to medical providers working in emergency rooms that patients over the age of 50 are at increased risk of aortic aneurysm and/or dissection due to the reduced resistance of arterial walls with age.

26. It is also known to medical providers working in emergency rooms that hypertensive crisis is often associated with aortic aneurysms and/or dissection.

27. Given the many of potential warning signs of aortic aneurysm, the medical professionals treating Mr. Williford should have considered aortic aneurysm / dissection potential causes of his symptoms.

28. However, despite these many warning signs of aortic aneurysm / dissection, Nurse Practitioner Morton did not include aortic aneurysm / dissection in his list of potential diagnoses in his medical decision making.

29. Upon information and belief, Nurse Practitioner Morton did not properly consider aortic aneurysm / dissection or any other life-threatening condition to be a possible cause of Mr. Williford's symptoms.

30. Confirmation of aortic aneurysm / dissection is obtained by using contrast-enhanced computed tomography (CT) or transesophageal echocardiogram (TEE).

31. Nurse Practitioner Morton did not order any imaging studies such as CT or TEE for Mr. Williford even though they are readily available in an emergency room setting.

32. The only orders Nurse Practitioner Morton submitted were to order Aspirin and Coreg medications.

33. Despite Mr. Williford presenting in a state of a hypertensive crisis of 240/130, his blood pressure was not rechecked at any time prior to his discharge.

34. At 10:38pm, Mr. Williford was still rating his pain at an 8/10.

35. Nurse Practitioner Morton diagnosed Mr. Williford with a muscle strain of his left upper back.

36. Nurse Morton improperly made this diagnosis without considering other life-threatening potential diagnoses such as aortic aneurysm and without ordering any testing to rule out aortic aneurysm in order to properly protect the health and safety of Mr. Williford.

37. Nurse Morton improperly made the diagnosis of muscle strain and discharged Mr. Williford without rechecking his blood pressure even though he presented with a blood pressure meeting the criteria for hypertensive crisis.

38. Mr. Williford was discharged at 10:39pm, ten minutes after his brief examination by Nurse Morton.

39. Mr. Williford returned to AnMed hospital two weeks later on February 3, 2018 arriving at 6:57am.

40. Mr. Williford described that he had an aching back pain since the time of the motor vehicle wreck and that the pain had gotten worse causing him to be unable to sleep.

41. Mr. Williford was discharged with some pain medication at 10:44am.

42. Mr. Williford was then found unresponsive, not breathing, and pulseless in his car in the emergency room parking lot and was brought back into the emergency room at 3:45pm.

43. Despite aggressive treatment and resuscitative efforts, Mr. Williford was determined to be deceased at 3:52pm.

44. An autopsy was performed by Brett Woodard, MD on February 4, 2018.

45. Dr. Woodard determined that Mr. Williford had suffered a rupture of an aortic aneurysm resulting in an aortic dissection in the ascending aorta.

46. Dr. Woodard determined the cause of Mr. Williford's death to be cardiac tamponade due to a ruptured aortic aneurysm.

47. Plaintiffs are informed and believe that Nurse Practitioner Morton, and employees of AnMed failed to provide Mr. Williford with proper medical treatment in accordance with the appropriate standard of care.

48. The failure to provide proper medical treatment in accordance general common sense and/or with the appropriate standard of care to Mr. Williford was the direct and proximate result of and was caused and occasioned by the negligence and carelessness on the part Nurses Morton, Moon, Boyles and/or other employees of AnMed Health in failing to possess and exercise that degree of care, competence, and skill ordinarily and customarily possessed and exercised by

employees rendering nursing care under similar circumstances and thereby rendered improper treatment to Mr. Williford by deviating from common sense and/or falling below the prevailing and acceptable standards of care in one or more of the specifications as set forth below:

- a. in failing to adhere to the prevailing standard of emergency medicine by failing to properly treat a patient in a hypertensive crisis;
- b. in failing to adhere to the prevailing standard of emergency medicine by failing to consider aortic aneurysm / dissection as possible causes of the patient's complaints;
- c. in failing to adhere to the prevailing standard of emergency medicine by performing an inadequate triage;
- d. in failing to adhere to the prevailing standard of emergency medicine by performing an inadequate workup;
- e. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain repeat vitals;
- f. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain repeat pain assessments;
- g. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain / record vitals prior to discharge;
- h. in failing to adhere to the prevailing standard of emergency medicine by failing to obtain further imaging prior to discharge;
- i. in failing to adhere to the prevailing standard of emergency medicine by discharging Mr. Williford inappropriately; and
- j. in such other action or inaction that may be shown at trial.

The affidavit of a medical professional is attached hereto and is incorporated herein by this reference.

49. If Mr. Williford had received medical treatment in accordance with the common sense and/or the appropriate standard of care as set forth above, more likely than not, his aortic aneurysm would have been identified and treated preventing his premature death.

50. If Mr. Williford had received timely treatment for his aortic aneurysm, more likely than not, he would have lived to a normal life expectancy.

51. The acts and omissions of Kevin Morton, NP were reckless, willful, wanton, grossly negligent, and in conscious disregard of the rights of Mr. Williford. Accordingly, punitive damages should be awarded to punish Kevin Morton, NP; to deter like defendants from engaging in similar conduct in the future; and to vindicate the rights of Mr. Williford which were wrongfully invaded.

**FOR A FIRST CAUSE OF ACTION**  
**(Wrongful Death)**

52. The relevant and consistent allegations of paragraphs 1-51 are incorporated herein by this reference.

53. As a direct and proximate result of the acts and/or omissions as herein alleged, Mr. Williford suffered a premature and untimely death. As a result, his family has incurred and will in the future incur the following damages:

- a. lost future income, lost future earning capacity, the value of the loss of household services, and other economic losses;
- b. mental shock and suffering;
- c. wounded feelings;
- d. grief and sorrow;
- e. loss of companionship;
- f. deprivation of the use and comfort of Mr. Williford's society, including loss of his experience, knowledge, and judgment; and
- g. funeral and burial expenses.

54. Plaintiff, Travis Walker, as personal representative of the Estate of Douglas Williford, is informed and believes that based upon the allegations set forth herein judgment should be rendered against AnMed Health, AEA, and Kevin Morton, NP, jointly and/or severally, for actual damages in such fair, just and reasonable amounts as may be determined by a jury and punitive damages against AEA and Kevin Morton, NP in such fair, just and reasonable amounts as may be determined by a jury.

**FOR A SECOND CAUSE OF ACTION**  
**(Survival Action)**

55. The relevant and consistent allegations of paragraphs 1-54 are incorporated herein by this reference.

56. As a direct and proximate result of the acts and/or omissions as herein alleged, Mr. Williford suffered the following damages:

- a. pain and discomfort;
- b. mental and emotional suffering;
- c. past hospital and related expenses; and
- d. lost past wages, household services, and other past economic losses.

57. Plaintiff, Travis Walker, as personal representative of the Estate of Douglas Williford, is informed and believes that based upon the allegations set forth herein judgment should be rendered against AnMed Health, AEA, and Kevin Morton, NP, jointly and/or severally, for actual damages and punitive damages against AEA and Kevin Morton, NP in such fair, just and reasonable amounts as may be determined by a jury.

**FOR A THIRD CAUSE OF ACTION**  
**(Loss of Consortium)**

58. The relevant and consistent allegations of paragraphs 1-57 are incorporated herein by this reference.

59. This claim is instituted against Defendants for loss of consortium pursuant to *S.C. Code Ann. §15-75-20*.

60. As a direct and proximate result of the acts and/or omissions as heretofore alleged Lolita Moore suffered the loss of companionship, aid, society, and services of her husband.

61. Plaintiff, Lolita Moore, is informed and believes that based upon the allegations set forth herein, judgment should be rendered against AnMed Health, AEA, and Kevin Morton, NP, jointly and/or severally, for actual damages and punitive damages against AEA and Kevin Morton, NP in such fair, just and reasonable amounts as may be determined by a jury.

**WHEREFORE**, Plaintiffs, respectfully demand and pray as follows:

- (a) for a trial by jury pursuant to *Rule 38(b) of the SCRCP*;
- (b) for judgment under the first cause of action against AnMed Health Anderson Emergency Associates, P.A., and Kevin Morton, NP, jointly and/or severally, for actual damages and against Anderson Emergency Associates, P.A., and Kevin Morton, NP for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in **excess** of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in *Rule 30(h) of the SCRCP*;
- (c) for judgment under the second cause of action against AnMed Health, Anderson Emergency Associates, P.A., and Kevin Morton, NP, jointly and/or severally, for actual damages and against Anderson Emergency Associates, P.A. and Kevin Morton, NP for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in **excess** of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in *Rule 30(h) of the SCRCP*;
- (d) for judgment under the third cause of action against AnMed Health Anderson Emergency Associates, P.A., and Kevin Morton, NP, jointly and/or severally, for actual damages and against Anderson Emergency Associates, P.A. and Kevin Morton, NP for punitive damages in such fair, just, and reasonable amount as may be determined by a jury, which the Plaintiff alleges to be in **excess** of One Hundred Thousand and No/100 (\$100,000) Dollars actual damages, such allegation being made for the purpose set forth in *Rule 30(h) of the SCRCP*
- (e) for the costs of this action; and
- (f) for such other and further relief as this Court deems just and proper.

**(Signature Page to Follow)**

Respectfully submitted,

**McGowan, Hood & Felder, LLC**

s/ Jay F. Wright

Jay F. Wright

South Carolina Bar No. 78738

[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)

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Greenville, SC 29607

(864) 252-4406

(864) 252-4480 (facsimile)

March 6, 2021

**ATTORNEYS FOR THE PLAINTIFFS**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. File No. 2021CP0400470

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

**ANSWER BY  
DEFENDANTS ANDERSON  
EMERGENCY ASSOCIATES, P.A. AND  
KEVIN MORTON, NP**

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

These Defendants, answering the Complaint of the Plaintiff, herein, would respectfully allege as follows:

**FOR A FIRST DEFENSE**

1. Answering the allegations of paragraphs 1 through 13, these Defendants answer:

a. Answering the allegations of paragraphs 1 through 3, these Defendants are without information sufficient to form a belief as to the truth of the averments in these paragraphs and on that basis must deny the same including the allegations asserting a loss of consortium and the alleged facts in support of that claim.

b. Answering the allegations of paragraph 4, these allegations generally state legal conclusions to which no response is required. To the extent a response is required, these Defendants are without information sufficient to form a belief as to the truth of the averments in these paragraphs and on that basis must deny the same.

c. These Defendants admit the allegations in paragraphs 5 except any allegation that NP Kevin Morton was an employee of AnMed and affirmatively assert that NP Kevin Morton was, at times relevant, an employee of AEA.

d. Answering the allegations of paragraph 6, these Defendants admit that AEA is a professional associations of ER physicians and Phys extenders specializing in emergency medicine and providing by contract medical practitioners, including physicians and physician extender to AnMed Health and that AEA held itself out to the public as competent in the standard of the practice of medicine by the AEA physicians and physician extenders including the AEA nurse practitioners. Furthermore, AEA did dissolve as alleged in 2018. However, any other averment and any other inference which the Plaintiff may intend or seek to draw from this paragraph is denied.

- e. These Defendants admit paragraph 7.
  - f. Answering paragraph 8, these Defendants admit the allegation except that NP Kevin Morton, NP, was an employee of Anderson Emergency Associates as a nurse practitioner.
  - g. These Defendants admit paragraphs 9 and 10.
  - h. These Defendants deny paragraph 11
  - i. These Defendants admit paragraphs 12.
2. As to the allegations in paragraphs 13 through 46 entitled “General Factual Allegations Applicable to All Claims” these Defendants would show:
- a. As to paragraphs, 13 and 14 these Defendants lack sufficient information to form a belief as to the truth of the allegations and therefore deny the same, although it was reported that Mr. Williford had been in an automobile collision however on January 24, 2018.
  - b. As to allegations of paragraph 15, these Defendants admit that Mr. Williford blood pressure was charted as 244/130 at 2114 hours on January 24, 2018 but deny the rest of the allegations of this this paragraph.
  - c. These Defendants deny paragraphs 16 and 17.
  - d. These Defendants admit paragraph 18.
  - e. As to paragraph 19, these Defendants admit that the ER provider, Nurse Practitioner Kevin Morton, charted that “the patient stated he had little “catch” in left back near left shoulder blade” but deny the remainder of this paragraph.
  - f. As to paragraph 20, these Defendants admit that the triage nurse charted that the patient estimated the vehicle that struck the rear of his car had been going 25-30 mph but deny the remaining allegations of paragraph 20.
  - g. As to the allegations in paragraphs 21, these Defendants admit that back pain is a non-specific common symptom of many conditions and may in some rare cases be associated with aortic aneurysm or dissection dependent on presentation and other distinctive features but deny any other implication and the remainder of this paragraph.
  - h. As to the allegations in paragraphs 22, these Defendants admit that, in general, high velocity motor vehicle collision and some other forms of trauma may, very rarely, cause injuries to blood vessels, but deny any other implication and the remainder of this paragraph.

i. As to the allegations in paragraph 23, these Defendants admit that, in general, high velocity motor vehicle collision and some other forms of trauma may, very rarely, associated with an increased risk of causing a dissection, but deny any other implication and the remainder of this paragraph.

j. These Defendants deny the allegations in paragraphs 24.

k. As to the allegations in paragraph 25, these defendants deny all of the allegations of tis paragraph 25, though these Defendants admit that the increasing age of the elderly presents an increased risk, although rare, of developing an aortic aneurysm and/or dissection due to multiple factors including the chronic weakening of the walls of the artery.

l. These Defendants deny 26 through 29.

m. These Defendants admit the allegations in paragraph 30, that, among other diagnostics, a CT and TEE can confirm an aortic aneurysm and dissection but deny the remaining allegations on this paragraph.

n. As to the allegations in paragraph 31, these Defendants admit that NP Morton did not order a CT or TEE but deny the remainder of the paragraph.

p. These Defendants deny paragraphs 32

o. As to the allegations of paragraph 33, these Defendants admit there is no record of the blood pressure being re-checked although these Defendants deny all the remaining allegations of this paragraph.

p. These Defendants admit paragraph 34.

q. As to the allegations of paragraph 35, these Defendants admit that NP Kevin Morton made an impression of muscle strain of left upper back and motor vehicle collision but deny any allegations inconsistent with this response.

r. These Defendants deny paragraphs 36 through 38.

s. As to paragraphs 39 through 43, these Defendants were not involved in the care described in those paragraphs but do believe these allegations involve care which was charted in the medical records and incorporate herein the medical records as they relate to the medical care, condition, and treatment of the decedent and, accordingly deny any allegations inconsistent with that record. In addition, these Defendants are not custodian of any records and reserve the right to amend this answer upon a review of the record and the completion of discovery in this case.

t. As to paragraphs 44 through 46, these paragraphs involved the post-mortem examination by Dr. Brett Woodard to which these Defendants were not involved, but do believe the post-mortem examination is charted in medical records which these Defendants incorporate into this answer, but these Defendants are otherwise without information sufficient to form a belief as the truth of these averments and must, on that basis, deny the same.

3. These Defendants deny all the remaining paragraphs, specifically the allegations in paragraphs 47 through 61.

#### **FOR A SECOND DEFENSE**

4. Any injuries and damages sustained by the Plaintiff-decedent did not result from any alleged negligence of willfulness on the part of these Defendants, but instead proximately resulted as a consequence and complication of the underlying illnesses and/or co-morbidities of the Plaintiff-decedent and not by any alleged negligence or fault on the part of these Defendants. Accordingly, the Plaintiff is not entitled to recover damages against these Defendants.

#### **FOR A THIRD DEFENSE**

5. These Defendants realleges the previous defenses where not inconsistent wherewith as if fully set forth herein.

6. These Defendants allege and would show that even if these Defendants were negligent in the manner described by the Plaintiff in the Complaint, which is denied and admitted solely for the purpose of this defense and for no other purpose, the Plaintiff-decedent was also negligent and his own negligence combined and concurred with the alleged negligence on the part of these Defendants as a direct and proximate result cause of the Plaintiff's alleged injuries and resulting damages complained of, if any, and without which the same would not have occurred. The Plaintiff-decedent was negligent, grossly negligent, careless, reckless, willful, and wanton in one or more of the following particulars:

- a. In failing to take adequate steps, measures, follow up and precautions with regard to his own health and care,
- b. In failing to follow and adhere to the instructions of medical personnel; and
- c. In failing to exercise the degree of care and prudence that a reasonable person would have exercised under the same and similar circumstances.

7. The negligence of the Plaintiff-decedent constituted more than fifty percent (50%) of the direct and proximate cause of his injuries and, therefore, the Plaintiff is barred from any recovery from these Defendants.

8. Alternatively, these Defendants would show that in the event the negligence of the Plaintiff is determined to have been fifty percent (50%) or less of the direct and proximate cause of his injuries, any recovery by the Plaintiff in this matter should be reduced by the percentage of the Plaintiff-decedents' own negligence.

**FOR A FOURTH DEFENSE**  
**S.C. Code Section Statutory Defenses**

9. These Defendants are subject and entitled to all rights, limitations, and restrictions of the Tort Reform Act of 2005, including but not limited to limitations on the amount of any recovery as provided in S.C. Code §15-32-220, and this Defendants pleads all rights, limitations and restrictions of the Tort Reform Act of 2005 in the defense of this matter.

**FOR A FIFTH DEFENSE**  
**Punitive Damages and SC Code Section 15-32-530**

10. Further answering the Complaint, and as an additional defense thereto, these Defendants assert that any award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the S.C. State Constitution, Article 1, Section 3.

11. Plaintiffs' claim for punitive damages violates the Defendants' right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments and creates the threat of an award of unlimited punitive damages which chills the Defendant's exercise of that right.

12. Plaintiffs' claim for punitive damages violates the Due Process and Equal Protection clauses of the Fourteenth Amendment for the following reasons:

- (a) The standard or test for determining the requisite mental state of mind of these Defendants for imposition of punitive damages is void for vagueness; and
- (b) Insofar as punitive damages are not measured against actual injury to the Plaintiffs and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damage that may be awarded is indeterminate at the time of these Defendants' alleged conduct.

13. These Defendants specifically plead, in conjunction with the defenses plead above, the protections provided in S.C. Code Section 15-32-530(A) and further alleges that no act or omission of this defendant justifies or supports any finding of the requisite conduct, omissions or state of mind supports an award of punitive damages and if the issue of punitive damages is submitted for determination, that none of the factors identified in Section 15-32-530(B) are present in this case.

**FOR A SIXTH DEFENSE**  
**Absent affidavit under SC Code Section 15-36-100 and 15-79-125**

14. The Plaintiff has failed to provide an affidavit in support of the Notice of Intent to Sue these specific Defendants, physician extender, Kevin Morton, NP and AEA, in accordance with Section 15-79-125 and 15-36-100 as required to file this malpractice action. Accordingly, these Defendants are entitled to have this case dismissed. This defense is raised in full by this answer and this paragraph and also by the Motion to Dismiss filed this same day and incorporated verbatim into this answer by this reference. This matter is raised as a defense in accordance with Section 15-36-100 (E) providing that the issue of the failure to provide an affidavit or a defective affidavit can be raised by Answer, as it is by this paragraph, and, in addition, by Motion to Dismiss filed contemporaneously with this Answer.

WHEREFORE, having fully answered the Complaint of the Plaintiff herein, these Defendants pray that the same be dismissed with costs and for such other and further relief as this court deems necessary and proper.

s/ H. W. Paschal

H. W. Pat Paschal, Jr., SC Bar # 4350  
644 E. Washington Street  
Greenville, South Carolina 29601  
ATTORNEY FOR DEFENDANTS ANDERSON  
EMERGENCY ASSOCIATES,  
AND KEVIN MORTON, NP

April 13, 2021

Certificate of Service

I certify that I have served this Answer on the counsel for the Plaintiff electronically by email to the email address at jaywright@mcgowanhood.com on April 13, 2021 and by mail on the same date to the address:

Jay Wright, Esquire  
135 Edinburgh Court Suite 202  
Greenville, SC 29607

S/HW Paschal

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In the Court of Common Pleas for the  
State of South Carolina, County of Anderson

Case No.: 2021CP0400470

Travis Walker,

Plaintiff(s),

vs.

AnMed Health,

Defendant(s).

July 23, 2021

Anderson, South Carolina

BEFORE:

The Honorable Lawton McIntosh

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APPEARANCES

REPRESENTING THE PLAINTIFF:

Jay Wright, Esquire  
135 Edinburgh Court  
Suite 202  
Greenville, SC 29607

REPRESENTING ANDERSON EMERGENCY ASSOCIATES and KEVIN

MORTON:

Howard Paschal, Jr., Esquire  
644 Washington Street  
Greenville, SC 29601

REPRESENTING ANMED HEALTH:

James Parham, Esquire  
Post Office Box 1576  
Irmo, SC 29063

1 PROCEEDINGS

2 THE COURT: All right. This is  
3 slated as a Motion to Compel and a Motion to  
4 Dismiss. I also see a Motion for Sanctions. Is  
5 that --

6 MR. PASCHAL: Not mine, Judge. I'm  
7 not doing that.

8 THE COURT: No, it's Plaintiff's  
9 Motion for Sanctions, I think. What all motions am  
10 I resolving today?

11 MR. PASCHAL: Your Honor, I have a  
12 Motion to Dismiss and I have a Motion to Compel.

13 THE COURT: Okay.

14 MR. PASCHAL: Which I would like,  
15 with the Court's permission, to go to the Motion to  
16 Dismiss, which is a larger, more substantial motion,  
17 first.

18 THE COURT: Absolutely.

19 MR. PASCHAL: It may make the second  
20 motion -- it may alter the second motion.

21 THE COURT: Okay.

22 MR. WRIGHT: Your Honor, the  
23 Plaintiffs only have the Motion for Sanctions.

24 THE COURT: Okay.

25 MR. PASCHAL: I'm ready to go

1 forward, Judge.

2 THE COURT: Go for it.

3 MR. PASCHAL: Your Honor, my name is  
4 Pat Paschal, I represent the nurse practitioner  
5 Kevin Morton, and I represent the physician group,  
6 Anderson Emergency Associates, which I'll refer to  
7 as AEA. Your Honor, this is a Motion to Compel I  
8 would like to hand up to the Court. And I don't  
9 know how to do this. And that is one. And I  
10 remember from long ago, have a copy for the clerk.

11 THE COURT: This is her last day.

12 MR. PASCHAL: Oh, is it her last day?

13 THE COURT: Yeah, so I doubt that she  
14 is going to be much help for me today.

15 (Laughter.)

16 MR. PASCHAL: Well, she may either  
17 love or hate me at the conclusion.

18 Your Honor, also I am going to hand  
19 exhibits to the court reporter to be incorporated.  
20 Although many of these are just copies of the law,  
21 so they are not true exhibits. But I want to make  
22 them a part of the record.

23 THE COURT: All right.

24 MR. PASCHAL: Your Honor, this is a  
25 motion -- this is a Motion to Dismiss for the

1 failure to provide an affidavit of a qualified  
2 witness and as to particular standards of care  
3 violations in the notice of intent to sue as  
4 required by Section 15-36-100, incorporated by  
5 15-79-135.

6                   What I'm going to do, Your Honor, I  
7 believe the analysis is going to be two things. One  
8 is, is this witness qualified. And after we  
9 establish that, then the next would be, is there an  
10 exception or reason that the defendant -- the  
11 plaintiffs brought up that, even if it's  
12 unqualified, that the action should proceed at this  
13 point in time. And what I would like to do, Judge,  
14 I know that I'm taking up the Court's time --

15                   THE COURT: Well, let me ask you  
16 this: At a Motion to Dismiss, can I waive  
17 qualifications in making that determination?

18                   MR. PASCHAL: No, sir. No, sir.

19                   THE COURT: I didn't think that I  
20 could. Okay.

21                   MR. PASCHAL: And I'll get into that.

22                   THE COURT: All right.

23                   MR. PASCHAL: And that is -- and  
24 there are five cases that deal with this.

25                   MR. WRIGHT: Your Honor, one point on

1 that --

2 THE COURT: No, sir. Go ahead.

3 MR. PASCHAL: And there are five  
4 cases that deal with that, and I'll come back to  
5 that, that deal with this affidavit requirement  
6 that, and in particular, the statute deals with it.  
7 With the Court's permission, if I can first show  
8 that this witness was not qualified, then I'll  
9 directly answer your question. I've been before you  
10 enough to know that when you ask -- I know at some  
11 point in time you are going to ask me questions and  
12 you don't want me to evade that question, you want  
13 me to answer it, and I am. But if you will give me  
14 the liberty to establish that, I will come right  
15 back to it.

16 What I have done is this, Judge, I  
17 know I am taking up the Court's time, so I have  
18 tried to organize this.

19 THE COURT: I'm fine. I'm good.

20 MR. PASCHAL: And what I have done is  
21 I have on the -- as I have said, we have copied the  
22 law and would like to go through it. Judge, the  
23 issue is this: Is a nurse qualified to testify  
24 against a physician or a physician extender; in  
25 particular, nurse practitioners and physician

1 assistants. And the law is clear that testifying in  
2 South Carolina by statute is the practice of  
3 medicine.

4 THE COURT: Say that again.

5 MR. PASCHAL: Testifying by statute  
6 in South Carolina is the practice of medicine, it is  
7 part of the practice of medicine. In any event, the  
8 law is clear that a nurse cannot practice medicine.  
9 What I mean by practice medicine is I'll point to  
10 the statute. The statute is specific in defining  
11 practice of medicine as certain medical acts, which  
12 is a term of art throughout the statute includes the  
13 medical decision process to diagnose. The  
14 evaluation is more important -- the diagnosis, the  
15 forming of a treatment plan, the carrying out of  
16 that treatment plan, and making prescriptions,  
17 ordering tests, and interpreting those tests --  
18 doctor physicians. And the law is clear that a  
19 nurse cannot do doctor functions.

20 And, Your Honor, the section that we  
21 have given you, that Section 10036 -- excuse me,  
22 15-36-100 specifically provides that a -- that the  
23 affidavit, the notice of intent to proceed, must  
24 begin with an expert witness who means an expert who  
25 is qualified as to the acceptable conduct of the

1 professional whose conduct is at issue. That is  
2 physician and physician assistants, that is nurse  
3 practitioners. In other words, we have a nurse that  
4 must be qualified in the conduct of a nurse  
5 practitioner and a physician.

6           Judge Kitt -- Justice Kittredge in  
7 one of the cases we mentioned, Ross versus Waccamaw  
8 said that the case, that the affidavit requirement  
9 is not meaningless, and that a case can be dismissed  
10 for not complying with the affidavit requirement.  
11 He said that the intention of this statute, that --  
12 and the five cases, and I am sure that the Court is  
13 aware of those, the procedural cases, where Justice  
14 Kittredge points out that this is a substantive  
15 matter and that a case may be dismissed because this  
16 statute, the intent of the Legislature, was a  
17 protection to a certain degree of the health -- not  
18 just healthcare professionals, but the 22 different  
19 professions that are identified in 15 -- in the  
20 section that we are dealing with here, 15-36-100.

21           And in particular it mentions the  
22 physicians. Justice Kittredge said, This is the  
23 protection against unfounded or frivolous lawsuits,  
24 and it is a substantive right.

25           Now, the section that we pointed out

1 to you, Your Honor, is Kevin Morton, the nurse  
2 practitioner, was identified as the medical  
3 provider, which is also a term of art. The medical  
4 provider is that, either the physician or an  
5 extender of the physician, in the place of the  
6 physician, the nurse practitioner or a physician  
7 assistant.

8                   These are governed by the South  
9 Carolina Medical Practices Act. The standard for  
10 them are set by the South Carolina Medical Practices  
11 Act. They are authorized to carry out those things  
12 that I told you, the practice of medicine and the  
13 medical acts, the medical decision making, the  
14 diagnosis and carrying out of the treatment process.

15                   So, you have three health care  
16 providers involved in this case. You have the  
17 physician. Number two, you have the nurse  
18 practitioner who is an extension of the physician.  
19 And number three, you have the nurse.

20                   Now, it's clear in this case that,  
21 even from the inception in the complaint that that  
22 is what we were dealing with in this particular  
23 case.

24                   THE COURT: Can I ask you a question  
25 right quick so I understand?

1 MR. PASCHAL: Yes, sir.

2 THE COURT: What is the distinction  
3 between a nurse and a nurse practitioner?

4 MR. PASCHAL: The nurse -- the  
5 distinction between the nurse and nurse  
6 practitioner, Your Honor, is going to be if not the  
7 primary, the essential issue that is going to be  
8 before you today.

9 THE COURT: Is going to be what?

10 MR. PASCHAL: If not the primary, the  
11 essential, controlling item.

12 THE COURT: I can't hear you. I hate  
13 these things.

14 MR. PASCHAL: It is disconcerting,  
15 and I apologize. What I said, Judge, was this:  
16 Your question is the difference between a nurse  
17 practitioner and a nurse is going to be the primary,  
18 if not dispositive, controlling issue in this case.  
19 And the difference is night and day.

20 A nurse is not qualified to carry out  
21 the functions, to carry out the duties and opine on  
22 either the standard of care or the practice of a  
23 nurse practitioner. The nurse practitioner, for  
24 yours purposes, is an extension of the doctor. That  
25 the nurse practitioner, by licensing, as I'll point

1 out right now, by licensing, by practice, and by  
2 this case in South Carolina, which is not unique to  
3 South Carolina, because we are a member of what is  
4 called a nurses licensure compact -- everything  
5 compact to a nurse's licensure. These rules apply  
6 in all 48 contiguous states. And I venture that,  
7 but on a large scale.

8                   That is what I wanted to point out to  
9 you right now is the difference between a nurse and  
10 a nurse practitioner.

11                   THE COURT: Okay.

12                   MR. PASCHAL: Unfortunately, the  
13 difference in this case is controlled by what the  
14 issue is. And in the complaint there's no question  
15 about what the issue is against Kevin Morton, the  
16 nurse practitioner. And that is that the nurse  
17 practitioner didn't properly consider aortic  
18 aneurysm and likely the possible cause, which means  
19 it is a diagnosis function. He didn't diagnose that  
20 disease.

21                   That nurse practitioner did not  
22 include aneurysm in his potential diagnosis. That  
23 the confirmation of an aneurysm dissection was not  
24 done ICT. He didn't order or interpret a test.  
25 That the only orders that the nurse practitioner did

1 was aspirin, and that he diagnosed a muscle strain  
2 that would be an error.

3 In other words, the complaint, as it  
4 should, makes allegations of a deviation in the  
5 finding of the practice of medicine and these  
6 medical acts: Diagnosis, treatment, prescriptions.

7 Now, in South Carolina, Your Honor,  
8 to answer your question, that is clear in South  
9 Carolina, that only a physician or a physician  
10 assistant or nurse practitioner can do those acts.  
11 And you ask what is the difference, the difference  
12 is, first of all, that only the physician can do the  
13 practice of medicine. And let me first -- that they  
14 define this as medical act. Your Honor, for the  
15 record, this is Section 40-47-20 out of the Medical  
16 Practices Act.

17 That the practice of medicine means  
18 the offering and undertaking to prescribe, order,  
19 give, or administer any drug, medicine to another  
20 person. The offering or undertaking to prevent or  
21 to diagnose, correct or treat in any manner, by any  
22 methods -- means, methods, or devices, disease,  
23 illness, pain, wound, fracture, infirmity, or  
24 defect.

25 In other words, Your Honor, it is

1     undertaking to diagnose, the treatment and the  
2     diagnosis of a disease. A nurse can't do that.  
3     I'll show you that in a minute. That rendering a  
4     written or otherwise documented medical opinion  
5     concerning the diagnosis or treatment of a patient  
6     or the actual rendering of the treatment to a  
7     patient within this state. And again, Your Honor,  
8     it is the diagnosis to create a treatment and  
9     carrying out the treatment. Rendering a  
10    determination of a medical necessity or decision  
11    affecting the diagnosis -- and I'll skip here --  
12    and/or treatment of the patient is the practice of  
13    medicine.

14                   And section (h) is what I referred to  
15    earlier. It is testifying, either by deposition,  
16    trial testimony, or in this case by affidavit is the  
17    practice of medicine. As a result, only physicians  
18    are licensed to do that. Now, we have provided  
19    earlier to the Court and, Your Honor, we filed a  
20    brief in this case back in April when we filed the  
21    initial complaint. I don't know if you have had an  
22    opportunity to see that, Your Honor. We sent more  
23    copies, so I can get you another copy.

24                   THE COURT: I think I -- I'll double  
25    check that I have everything.

1                   MR. PASCHAL: I know this particular  
2 Court reads briefs, so we sent one in April. But in  
3 that, Your Honor, we get into that a nurse  
4 practitioner's scope is established by his scope of  
5 practice agreement with the hospital. And in  
6 Anderson, without going in detail because we made  
7 reference to it earlier, the core duties of nurse  
8 practitioners recognize that statute and allows  
9 them, especially in this case, emergent nurse  
10 practitioner, to carry out the medical acts of a  
11 doctor, prescription, ordering, prescribing,  
12 interpreting tests, medical necessity, medical  
13 opinion, and practice of medicine. Which is the  
14 exact allegations against Kevin Morton in this case.

15                   Now, a nurse, as you said, what is  
16 the difference, a nurse is a deviant, because a  
17 nurse is covered -- and South Carolina is not  
18 unique -- to have the practice of medicine governed  
19 by one board, LLR, and the doctors governed by  
20 another board. We have a medical board down there  
21 and we have a medical board governing and regulating  
22 the doctors' conduct. We have a nursing board  
23 regulating a nurse's conduct because they are  
24 separate disciplines and separate professions.

25                   But more important is that we had a

1 statute, which is not the Nursing Practice Act,  
2 40-33-20, which specifically provides what a nurse  
3 can do and what a nurse cannot do. And what a  
4 nurse -- the practice of registered nursing means  
5 performance of health acts in the nursing process.  
6 And the nursing process is defined as certain  
7 limited functions carrying out orders by a doctor  
8 for all practical purposes.

9           Now it goes through, without going  
10 into detail, the specifics, section -- the section  
11 in the medical act, 40-32-20 goes to specifically  
12 what a nurse is authorized to do. But it's more  
13 important what a nurse is not authorized to do. And  
14 a nurse cannot, as a matter of law in South  
15 Carolina, do those acts that Kevin Morton is accused  
16 of in the complaint and that we pointed out are  
17 permitted in the medical -- in the doctors act of,  
18 again, the medical acts of evaluation, diagnosing,  
19 treatment, plan of treatment, ordering, interpreting  
20 the tests, and carrying out the treatment. And a  
21 nurse, by law, can't do it.

22           Now, two other things in that regard,  
23 Your Honor, and that is this: That South Carolina  
24 and Tennessee, where this nurse is from, are members  
25 of the interstate impact -- the interstate compact

1 for the license of -- nurse licensure. Which means  
2 that we incorporate both laws both ways. So,  
3 whatever I'm telling you applicable today will be  
4 applicable in Tennessee for this nurse that filed  
5 the affidavit. Because the only thing between that,  
6 the affidavit in this case is by a nurse, and that  
7 is why we say they are not qualified.

8           The difficulty there is that he's in  
9 Tennessee so -- but by law in South Carolina, the  
10 testifying in South Carolina is the practice, so  
11 he's subject to our laws. It doesn't matter,  
12 because we are in an interstate compact with  
13 Tennessee, so in Tennessee he would subject to the  
14 same laws. And those laws are only a doctor can  
15 practice medical acts, without going through it  
16 again. And that a specific nurse cannot do those  
17 things.

18           But in South Carolina, and Tennessee,  
19 have a particular statute that says not only by  
20 practice and training is a nurse not qualified to do  
21 what a nurse practitioner does. If a nurse attempts  
22 to do so, as in this case, that it would not only be  
23 improper, it would violate the law. And it would  
24 violate the law in Section 100 -- 110 of the medical  
25 act. That the ground providing -- that this is a

1 grounds for discipline.

2           Without going into it, the grounds  
3 for discipline for licenses, in addition to the  
4 grounds provided in Section 40-1-110, upon finding  
5 misconduct the board may cancel, fine, suspend,  
6 revoke, issue a public reprimand, a private  
7 reprimand -- in other words, can carry out the  
8 disciplines against the nurse. This is a nurse  
9 statute.

10           And in that statute, Your Honor, it  
11 provides that practice outside of the scope of  
12 license by assuming duties, responsibilities without  
13 accurate education is determined by the board. And  
14 the board has made that determination that only  
15 doctors and nurse practitioners can exercise and  
16 carry out medical acts. The board has noted  
17 specifically that nurses cannot.

18           So, it is not only, they are not  
19 licensed to do it, to attempt to do so would violate  
20 the law. Section 27 says, To engage in practice as  
21 an NP could not be more direct. When you said, What  
22 is the difference in a nurse and nurse practitioner,  
23 if a nurse tries to practice as a nurse  
24 practitioner, they would have violated the statutory  
25 law of South Carolina. And that is the difference.

1                   So, the difference is training,  
2   standard of care, but in this case also licensing.  
3   And in particular, it is illegal for a nurse to  
4   attempt to do those acts and perform those acts that  
5   they are making an affidavit for/against a nurse  
6   practitioner. A nurse is disqualified to opine on  
7   the conduct of a nurse practitioner in this state.  
8   In every state that is a member of that compact,  
9   including Tennessee, it is illegal, a nurse is not  
10   qualified to opine on the conduct of a nurse  
11   practitioner.

12                   Now, that is what you asked me. So,  
13   that is why I didn't want to belabor that, but I  
14   wanted to answer it correctly, and that is what the  
15   status of the case is. So, three things, Your  
16   Honor, three things in this particular case. And  
17   the second one that I have got is Section 7 and  
18   Section 8. Three things. First, a nurse is not  
19   qualified to testify against a nurse practitioner as  
20   a matter of law. The second thing is the affidavit  
21   that Mr. High, a nurse, provided is clearly a nurse,  
22   only a nurse, not a nurse practitioner, not a  
23   doctor.

24                   However, in this affidavit, his  
25   affidavit is an opinion within a reasonable degree

1 of medical certainty that agent and/or employees of  
2 AnMed Health and private practices staffing the  
3 AnMed Health emergency department committed  
4 negligent acts or omissions. Your Honor, it is no  
5 more particularized than that.

6 He's given an affidavit that doctors,  
7 nurses, consultants, nurse practitioners, scrub  
8 nurses, medical assistants, secretaries have to meet  
9 the standard of care. I'll come back to that.  
10 Because, if anything, our statute requires some  
11 particularization as to the individual. But we do  
12 know this, Your Honor, we know that, in particular,  
13 this statute requires, (100), that items of  
14 negligence be dealt with. That is, Statute 100  
15 requires that a nurse -- that the witness be  
16 qualified. It is subsection (A). But it goes on  
17 that --

18 THE COURT: Is "qualified" defined in  
19 the statute?

20 MR. PASCHAL: I am sure qualified may  
21 well be defined somewhere. I don't know whether it  
22 is in the medical act or nurses act, no, sir, I  
23 don't. But I am not -- I am going back to my law  
24 school experience where they said that the weakest  
25 subject that law students have is statute

1 interpretation. A common -- the most common statute  
2 interpretation is the words have to be understood in  
3 their most common and everyday selves.

4           And qualified means only one thing.  
5 And it goes through it. But it, by inference, does  
6 qualify it because it says it has got to be someone  
7 that is qualified -- let me answer that too, that  
8 the statute says that it has to be qualified. We,  
9 as we sit here, we know that we have this statute.  
10 We also know that we have Rule 702.

11           THE COURT: Say that again.

12           MR. PASCHAL: We also know that we  
13 have Rule 702, and we also know that we have the  
14 legacy of Watson versus Ford as you sit here as the  
15 gatekeeper today. So, qualification definitely,  
16 under statutory rule or regulatory, definitely means  
17 a nurse who is legal by law to perform -- to  
18 practice that and to form opinions is not qualified  
19 to testify against a nurse practitioner.

20           Now, one other thing the statute  
21 does, it requires the itemization of medicals. The  
22 Grier case, Justice Hearn's case, says -- we are  
23 going to read that -- it doesn't mention proximate  
24 cause, it doesn't require proximate cause. But you  
25 have got to name an element of negligence.

1                   So, number one, this nurse and this  
2 affidavit is not qualified. Number two is this:  
3 This week we got a request for admissions by the  
4 plaintiff so -- answered by the plaintiff. Earlier  
5 we sent to the plaintiff a request that went right  
6 straight from the statutory language that a nurse  
7 was not qualified to answer -- excuse me, that a  
8 nurse was not qualified to opine on conduct of a  
9 nurse practitioner.

10                   And we ask for -- to recognize the  
11 definition of the medical act as the statute  
12 identifies, to order and interpret tests, form a  
13 medical diagnosis, matters that I have gone through.  
14 These are nurse practitioner functions, not a nurse  
15 function. And they can deny that, that is fine, we  
16 can handle that on another day if that is denied.  
17 The denial, if it is a problem, we will just handle  
18 it another day.

19                   But this is what is critical in these  
20 answers that we got Tuesday. In these answers we  
21 ask that a nurse cannot testify to standard of care  
22 or the exercise of the standard of care in the  
23 practice of medicine by a physician or nurse  
24 practitioner. That was the particularization of the  
25 negligence that the affidavit requires. Their

1 answer was this: Denied. However -- excuse me,  
2 Denied. They have offered to withdraw Mr. High as a  
3 witness. In any event, they said, However,  
4 plaintiff would note that Nurse High is not  
5 rendering specific opinions as to standard of care  
6 of physicians or nurse practitioners.

7 Affidavit must provide a qualified  
8 finding, and he is not. But at a minimum it has got  
9 to state some deviation of care. And they admit  
10 here that he is not testifying as to standard of  
11 care for a doctor or a nurse practitioner. He is  
12 qualified to standard of care on a nurse. A nurse  
13 is fine, I have got no problem with that. We had no  
14 problem since the inception on that.

15 But this, so first, Your Honor, as  
16 the Court sits here today you have got an  
17 unqualified witness, and now you have an admission  
18 that he is not even going to identify a particular  
19 negligence. He is not testifying to standard of  
20 care in his affidavit. So you have a completely --  
21 what we said is this: We said this affidavit is  
22 illegal. And when you read the brief, I define  
23 "illegal" for these purposes. I define illegal as  
24 being in the most conventional sense of the word.

25 THE COURT: Say that again.

1                   MR. PASCHAL: In the most  
2 conventional sense of the word, illegal, which is  
3 contrary to law. That this affidavit is contrary to  
4 law, because it is not a qualified witness, that  
5 this affidavit is contrary to law because it doesn't  
6 give the particulars of negligence, or negligence at  
7 all. As a result, Your Honor, it is not an act  
8 affecting the affidavit, it is an absent affidavit.  
9 It is a completely empty shell, absent affidavit  
10 this lawsuit has brought. And that is what we  
11 presented to the Court, Your Honor.

12                   Now, Judge, we got, we got their  
13 reply to our brief yesterday afternoon. And we have  
14 anticipated, so you will see, we actually filed a  
15 supplemental brief because we anticipated that they  
16 might bring up subsection (E), so we amend.

17                   But in that, and I appreciate it, I  
18 got the brief very, very late, so I was looking at  
19 it, but I appreciate the brief. You have got people  
20 coming to argue, and I got the brief at the last  
21 minute, but I'm glad that I got this brief. And the  
22 reason is, let's talk, let's talk about it, let's  
23 get to the bare -- let's get to the issues. And if  
24 this is what he's raising, then let's look at the  
25 issues that they are raising.

1                   And what they are raising, Your  
2 Honor, is this: Is they are raising four points.  
3 And I would be -- I would not be honest with the  
4 Court if I didn't say that a couple of these points  
5 should be considered by you. They should be. They  
6 are material issues. Now, the first one is that  
7 they raise in their affidavit -- I mean, the brief  
8 that was provided to you, they raise first this:  
9 That the three-year statute of limitations was  
10 tolled due to the Defendant's failure to object to  
11 the deficiency of Nurse Hide's affidavit when it was  
12 filed as part of the notice of intent to sue.

13                   Now, two things. The toll -- we are  
14 not bringing up the tolling of the statute of  
15 limitations. That, in this case, will be an issue  
16 eventually, on another day perhaps, but it is not an  
17 issue today. But they are correct -- not correct,  
18 they may have a legitimate question that we didn't  
19 file this, which I anticipated, that we didn't file  
20 this complaint -- excuse me, we didn't file this  
21 objection to the affidavit when we first got the  
22 notice of intent to sue.

23                   And they -- you know, and that is  
24 what they are raising. And you may say, Well, why  
25 didn't y'all do that; why are you coming after the

1 suit and asking me to do this? And the reason is  
2 very simple, Your Honor, we are doing exactly what  
3 the statute told us to do.

4 The statute in particular, Your  
5 Honor, says this, it tells you when, be it right, be  
6 it wrong, be it better or worse, it tells us when to  
7 file a complaint about deficiencies in the  
8 qualification or the content of the affidavit. And  
9 it specifically provides -- and if I had to file a  
10 reply brief to their brief, it would be inconclusive  
11 to this -- I hand you section 100, Statute 100.

12 But it says, in particular this, If a  
13 plaintiff files an affidavit which is allegedly  
14 defective -- this is subsection (E) 15-36-100,  
15 subsection (E), If a plaintiff files an affidavit  
16 which is allegedly defective, and the defendant to  
17 whom it pertains alleges, which specifically --  
18 excuse me. Excuse me, Ms. Court Reporter.

19 Let me read it again, Your Honor. If  
20 a plaintiff files an affidavit which is allegedly  
21 defective, and the defendant to whom it pertains  
22 alleges, with specificity, by motion to dismiss  
23 filed contemporaneously with its initial responsive  
24 pleading.

25 If you will look at the record, that

1 is why I gave you, to the Court, a brief in April,  
2 because that is when we filed our answer. We filed  
3 this motion the same day we filed our initial  
4 response to the pleading, in accordance with the  
5 statute. So, when it is asked, why did we file on a  
6 certain day, we filed it because the statute  
7 directed us to. And the record clearly demonstrates  
8 that.

9                   It is not just subsection (E), which  
10 is a defective affidavit. Our position is, there is  
11 no affidavit at all in this case because it is an  
12 illegal affidavit. But this same language applies,  
13 if a plaintiff fails to file an affidavit as  
14 required by this section and the defendant raises  
15 failure to file by affidavit by -- to file an  
16 affidavit by a Motion to Dismiss filed  
17 contemporaneously with responsive pleadings. We did  
18 exactly what the statute told us.

19                   Now, Justice Kittredge recognized  
20 that in one of five cases -- and we have given the  
21 Court a copy. Justice Kittredge recognized that in  
22 the Ross versus Waccamaw -- excuse me, Ranucci  
23 versus Crain, which is a finding -- a needle  
24 aspiration on a lung collapse. And it is section --  
25 it is going to be section 9 in the packet that we

1 gave you.

2                   And I am going to come back to this  
3 case in a minute, Your Honor. I am trying not to  
4 take up too much of your time. This is a case where  
5 the complaint was, it should be dismissed because  
6 they didn't conduct pretrial mediation in 180 days.  
7 And Justice Kittredge points out that, medical  
8 malpractice -- and this is right in this -- is the  
9 most complicated, complex civil litigation that we  
10 have. And it is busy stuff. And he said, If you  
11 couldn't be in mediation today, that doesn't go to  
12 the substance.

13                   Now, he will go on and say, But it is  
14 not meaningless and there is some substance to this,  
15 and if the substance was violated, then this could  
16 be dismissed. And if not, it is a protection  
17 against a frivolous lawsuit. It is not meaningless.

18                   Now, in doing so he talked about the  
19 complaints of deficiency in qualifications, which we  
20 have. It also talks about failures of the  
21 affidavit, which we have, since they filed to  
22 suppress their admissions saying there was no --  
23 this guy -- excuse me, this witness is not  
24 testifying as to standard of care. So, two flaws in  
25 this affidavit.

1                   But in doing so he talks about, as  
2 they sit there, that you can look at the face of the  
3 affidavit. And he discusses that in detail, and  
4 that there was nothing wrong with the face of the  
5 affidavit in that case. Not like this case. This  
6 case, on the very face of the affidavit, you have a  
7 nurse testifying against a nurse practitioner on  
8 medical acts. On its face.

9                   But that's not what is important for  
10 your consideration. What is important for your  
11 consideration is this: He goes on and says that  
12 they talk about when this should be ready, because  
13 this was a notice of intent to sue case. That, when  
14 should this be ready. And what he's talking about  
15 there, in particular, is not the procedural  
16 complaint of not -- the date of mediation, but the  
17 alleged deficiencies in the qualifications of the  
18 expert, the exact same issue that we have here.

19                   And in that he said that the  
20 qualifications of that expert are to be raised, can  
21 be raised, despite the affidavit. But when is the  
22 issue. And he said, Thus, we conclude that any  
23 challenge to the alleged deficiencies have to be  
24 made by Dr. Crain on the appropriate Motion to  
25 Dismiss in circuit court pursuant to subsection (E).

1 And subsection (E) is the one that says that it is  
2 to be filed contemporaneous with the filing, with  
3 the answer. That is what we have.

4 Now, I am not going to go into much  
5 detail, Your Honor, but this -- I do invite -- but  
6 that is where we are. Your Honor, it is not a  
7 question of balancing equities.

8 THE COURT: It is not a question  
9 about what?

10 MR. PASCHAL: Of balancing equities in  
11 making this determination. This particular case,  
12 and this exhibit in this particular case, Exhibit  
13 9A, the plaintiff had the medical records in this  
14 case three years prior to filing suit. The  
15 affidavit that we complained of was got in July.  
16 The suit was filed in March. So, now you have got  
17 another seven months.

18 The burden of proof is on the  
19 plaintiff to provide a sufficient affidavit, and  
20 that is why I say it is not a balance of equities.  
21 The law is clear, and we complied with the law and  
22 filed this on the date that the law told us to do  
23 so. Your Honor, the second thing that they raised  
24 in their brief is this: They raised that the  
25 plaintiff has complied with expressed requirements

1 of S.C. Code Section 15-79-125 of the medical  
2 malpractice statute and 15-36-100(A). And they  
3 allege allegations, you will see this, they say that  
4 High is qualified. And in doing so they make a  
5 statement that Nurse High is an associate professor  
6 in emergency medicine. And I'm going to get to that  
7 in a second.

8                   Nurse High is not a doctor. There is  
9 not a medical school from our research, and I would  
10 bet the proverbial dollar against a doughnut, there  
11 is not a medical school that is a member of the AAMC  
12 that allows a non-doctor to be a tenured tract  
13 assistant professor or associate. Never. It  
14 doesn't happen. I think, to defend Mr. Wright, I  
15 think that he just misspoke. And I'll get to that  
16 in a second. Because Mr. High doesn't say that in  
17 his affidavit.

18                   But it goes on to say that he is  
19 qualified to offer testimony as to the appropriate  
20 care and treatment of the patient. He's qualified  
21 to testify as to appropriate care by a nurse, but he  
22 is not qualified to testify about medical acts and  
23 carrying out the practice of medicine. As we  
24 explained before, it is only a doctor question.

25                   Now, we have -- three things in that

1 regard. The first thing is this: Is that we have  
2 provided in section 10 this -- we have provided Mr.  
3 High's actual affidavit. And Mr. High is, indeed,  
4 an associate in medical -- an associate in emergency  
5 medicine, not an associate professor. But he, clear  
6 by what he does, and that is, I teach regularly to a  
7 multitude of disciplines on all issues related to  
8 trauma care, airway management, emergency nursing,  
9 EM, EMS, and transport.

10 I don't doubt for a second that Mr.  
11 High can teach anybody, a physician, brain surgeon,  
12 anybody, on how to handle a patient. He is EMS  
13 flight certified. We had a case -- I'm trying to  
14 remember if you sat on it -- we had a case where an  
15 orthopedic surgeon one time, they said, Why didn't  
16 you do intubation on this patient and why would you  
17 step back and let the respiratory,  
18 high-school-educated respiratory do it? And he  
19 said, Because they are more qualified than I am. I  
20 can tell you when to do -- be intubated, but a nurse  
21 is more qualified to intubate. It is a skill set.

22 I have no doubt that he can teach  
23 certain skill sets, but he doesn't teach medical  
24 acts. He doesn't teach the diagnosing and  
25 recognizing, the creation of medical treatment,

1 interpreting tests, and creating medical care. He  
2 doesn't. That is number one in the CV.

3           And number two is this: Is that in  
4 this particular case, when this was raised in the  
5 affidavit, and this is in subsection 10. This idea  
6 that he taught, our immediate step was to do this,  
7 our immediate step was to subpoena Vanderbilt his  
8 teaching information, his license that would allow  
9 him to practice medicine, make medical diagnosis,  
10 interpret tests, to determine medical treatment, the  
11 medical acts of a doctor. We wanted to know what  
12 licensing is required to teach medical providers the  
13 practice of medicine. We wanted to know that. If  
14 he's teaching doctors like they claim, medical acts,  
15 in Vanderbilt, show us that. So, we did that.

16           We filed the affidavit -- excuse me,  
17 we filed a subpoena down here with the Clerk of  
18 Court. We took that subpoena and we filed it in  
19 Davidson County, Tennessee pursuant to the  
20 interstate -- the Uniform Interstate Deposition  
21 Discovery Act. Had an order issued up there and  
22 served it on them. They were friendly service.  
23 Called them. Vanderbilt had no objection to it. We  
24 went and we talked to them. Nurse High never  
25 registered an objection.

1 THE COURT: Nurse High --

2 MR. PASCHAL: Nurse High never  
3 registered an objection. Nobody objected to this.  
4 This is exactly what they claim we have failed to be  
5 able to show. And we subpoenaed and nobody objected  
6 until, Your Honor, the plaintiff did. And we filed  
7 this earlier. The plaintiff filed a Motion to Quash  
8 the exact stuff they are complaining we don't have.  
9 And when we tried to get it, they filed a Motion to  
10 Quash, which is still pending in Davidson County,  
11 and probably will be forever up there. Because I  
12 notified them, as I was under the duty to do, that  
13 the pending litigation down here was still pending.  
14 And we know well that no Tennessee judge is going to  
15 step into a South Carolina case.

16 But the point is this: They should  
17 not -- they have not established that he has some  
18 special qualifications. Because his CV doesn't show  
19 that, number one. And, number two, they should be  
20 estopped. And now that I am clear about it, they  
21 took steps to stop us from using the appropriate  
22 mechanism in the appropriate way to get the same  
23 information.

24 Now, the third thing is this, Judge:  
25 Both of those matters are, what is he authorized to

1 do. And we don't know on that. And what I mean by  
2 that, you don't know either way. They have got the  
3 burden to establish it, they don't establish it.  
4 So, that is an issue we are way beyond allowed to  
5 do, and we don't know it. And we do -- the third  
6 thing we are dealing with, what we knew was what he  
7 is not authorized to do. And we know that, because  
8 Tennessee is a member of the nurses licensure  
9 compact. And it is subject to the same rules here.

10                   And the rules here, that those  
11 specific medical acts that we put in an affidavit,  
12 that are in the complaint, that are in -- excuse me,  
13 that we put in the subpoena, that are in the  
14 complaint and are in the affidavit, that he can't  
15 practice those as a matter of law and licensing.  
16 Tennessee has the exact same act, that if a nurse  
17 attempted to do so, they would be in violation of  
18 the law and they would lose their license and be  
19 subject to fines. That is what you know. So, the  
20 answer to that, was Mr. High qualified, it is  
21 unquestionable as a matter of law, but also as a  
22 matter of fact that he is not qualified to state  
23 that position.

24                   Now, the other thing is this, Your  
25 Honor: The third thing they raised is one that we,

1 in fact, anticipated. I filed a supplemental brief  
2 because of the emails they indicated, and they  
3 filed, since the lawsuit began, they filed another  
4 affidavit by a doctor. They filed another  
5 affidavit. And that is explaining the facts of the  
6 brief that we gave them. And what they basically  
7 say is, that that second affidavit cures the defect  
8 in the first affidavit where they said, We are going  
9 to recall, we are not going to use Mr. High.

10 THE COURT: When was the second  
11 affidavit filed?

12 MR. PASCHAL: It was filed seven days  
13 after the lawsuit was filed. And let me get to  
14 that, let -- the statute, Your Honor, 100 discusses  
15 that. We anticipated that, that this might be an  
16 issue, and it is in our supplemental brief we gave  
17 to the Court earlier this week. But the statute  
18 recognizes this. The statute recognizes that there  
19 is a requirement for a -- excuse me, the statute  
20 provides that the general rule is a  
21 contemporaneously filed affidavit. An affidavit  
22 must be filed contemporaneously with the complaint,  
23 that is the general rule. They want to say -- I  
24 will get to that in a second.

25 The affidavit -- the statute only

1 recognizes two exceptions. And the first exception,  
2 Your Honor, is in subsection (E) which -- excuse me,  
3 subsection (C), which is the safe harbor provision.  
4 And this is what was the subject matter of the  
5 Ranucci case. We handed a copy up to you. And what  
6 that was is that section 100 has in it that, If a  
7 contemporaneous affidavit -- if the statute of  
8 limitations are expired in ten days, and the  
9 plaintiff files an affidavit that I cannot get an  
10 expert affidavit, that he's allowed to file an  
11 affidavit subsequent to the filing, not  
12 contemporaneously, but after it is filed. That is  
13 the exception. It doesn't apply in this case.

14 In this case they had this affidavit  
15 in July of 2020. And the statute of limitations  
16 expired in February 2021. So, by -- that exception  
17 doesn't apply. Now, the other exception is this:  
18 The other exception is subsection (E), and  
19 paraphrases, and I won't paraphrase, (E) says that  
20 if an affidavit is defective, plaintiff's complaint  
21 is subject to dismissal for failure to state a  
22 claim, except the plaintiff may cure the alleged  
23 defect by amendment within 30 days of the motion  
24 alleging. And that is what they claim this Dr.  
25 Chansky affidavit is.

1                   This is the only other exception.

2   And this exception by language says this: You can  
3   cure it by amendment. You can cure it by amendment.  
4   It doesn't say that you can cure it by a second  
5   affidavit.

6                   THE COURT: That amendment applies to  
7   the pleadings?

8                   MR. PASCHAL: No, sir, the amendment  
9   would apply to the original affidavit that was  
10  filed.

11                  THE COURT: Okay.

12                  MR. PASCHAL: In other words, if you  
13  file an affidavit contemporaneously with the  
14  complaint, as required by law, and then I come up,  
15  assuming you are plaintiff and I am defendant, I  
16  come and say, There is a defect in this claim. You  
17  have the right to cure that affidavit by filing an  
18  amendment to the affidavit. But that is it. That  
19  is the only two exceptions. The only two exceptions  
20  is that the statute of limitations is expiring,  
21  which don't apply in this case. And the only other  
22  one is if you have a defect you can amend your  
23  existing affidavit. It doesn't say you can file a  
24  new affidavit.

25                  They want to argue, as they filed in

1 their brief, Oh, new means amended. Again, that is  
2 the common everyday sense of the words. Amendment  
3 doesn't mean new.

4 THE COURT: Is that not defined in  
5 the code, amended?

6 MR. PASCHAL: I'm assuming that it  
7 is, but this particular one is not.

8 THE COURT: I mean this particular  
9 section.

10 MR. PASCHAL: But, again, the  
11 everyday sense of the word amendment. Here is the  
12 problem they have, they could have filed Mr. High.  
13 They could have filed an amended affidavit for Mr.  
14 High, that would comply with the statute. But the  
15 problem is, he's not qualified and he didn't have  
16 the particular standard of care. So, they did not  
17 meet the standard. They did not meet the statute.  
18 And what they did was invent a cure, say that it is  
19 a cure by filing a completely, third -- a new  
20 affidavit.

21 Your Honor, if a plaintiff was  
22 allowed to file an affidavit like this one, that  
23 doesn't comply with the statute, and doesn't comply  
24 with regulations, it is not within the statute of  
25 limitations safe harbor exception, it is not in the

1 amended exception, but it is just a completely new  
2 one they filed. This trial court should be asking,  
3 effectively, goes right to those acts, right to the  
4 law. And to create a whole new one that allows  
5 another affidavit -- and it would allow, Your Honor,  
6 if they wanted to file anything, like in this case,  
7 if they wanted to file a lab technician affidavit,  
8 who is in the same position as a nurse, commonly a  
9 nurse practitioner, knowing, as they should have  
10 known in this case, it wasn't all right.

11           Just to stop it and toll the statute  
12 and then say, well, we are going to file it after  
13 the statute and well within the lawsuit. That is  
14 subversive and not in line and in step and in the  
15 spirit of what Justice Kittredge wrote in Ross  
16 versus Waccamaw Community Hospital, that there is a  
17 purpose and an intention of these statutes to  
18 prevent frivolous lawsuits, and that it is  
19 meaningless -- it is not meaningless, it has a  
20 meaning. And that is what this case is.

21           Now, Your Honor, and I'll hand for  
22 the Court's convenience, that section 100. Again,  
23 it is -- the Court I'm sure has a copy, but just for  
24 the Court's convenience. The fourth thing that they  
25 offer is this: Is that the case of Dr. Elizabeth

1 Calls (phonetic) of Chansky's Howard A. Chansky's  
2 deposition. That is not the test. The test is not  
3 what you would give to this particular expert  
4 witness, who on the stand in litigation we have had  
5 in this case, states that he's testified 15 times  
6 for this particular plaintiff's firm, or that's my  
7 recollection.

8                   That the standard is not go to -- the  
9 merit of the case is not an issue for determination  
10 that has to be made right now. All this is is the  
11 same argument so they can come after the fact and  
12 cure by filing an affidavit which they know violates  
13 the regulation, which they know violates the  
14 statute, and which they know violates the case law  
15 of Ranucci versus Crain, in particular, in this  
16 case.

17                   So, that is our position, Your Honor.  
18 It is unqualified, number one. But as of Tuesday in  
19 these requests for admissions, I think the more  
20 fatal effect is he is not testifying to standard of  
21 care. It just can't stand. We filed this as the  
22 statute told us to do, and they have not found an  
23 exception.

24                   Your Honor, let me just finish. I  
25 know that I have taken up too much of the Court's

1 time, but let me finish with this. As the Court is  
2 aware, it is basically five cases on this affidavit.  
3 There is this case -- there is the Ranucci case we  
4 talked to that talked about the aspiration of the  
5 lung where, in that case the issue was -- the  
6 affidavit section 100 incorporated in full the  
7 medical malpractice statute. Completely procedural.  
8 And, in fact, they intentionally don't comment on  
9 the area of any expert disqualification.

10                   Then we have the Grier case, which is  
11 Justice Hearn's case, dealing with bed sores in a  
12 nurse's case, where she ruled that the statute  
13 doesn't require proximate cause, but nothing about  
14 expert qualifications. Again, that is a procedural  
15 matter. And nothing about substance.

16                   We have Ross versus Waccamaw, Justice  
17 Kittredge ruled in that, the pretrial mediation  
18 deadline is not a fatal defect or jurisdictional  
19 defect. But that statute is not meaningless and it  
20 is there to protect against frivolous claims.  
21 Nothing about expert qualifications, other than you  
22 raise them at the time of the answer.

23                   We have got the Brouwer case, Your  
24 Honor, Brouwer versus Sisters of Charity, the latex,  
25 the latex gloves, where Justice Beatty said that

1 that is not within the -- that that is within the  
2 ambit of common knowledge of a juror, so it doesn't  
3 require an expert affidavit at all. In doing so, he  
4 says that this will pass the 702 standard, which is  
5 discussed in the affidavit. He is saying this will  
6 pass the Rule 702, which by its nature brings in,  
7 again, Watson versus Ford. And this doesn't meet  
8 the Watson versus Ford 702 standard. He is not  
9 qualified and he is not testifying to standard of  
10 care.

11           And the last thing is the Eades case,  
12 where there was an objection that a vascular surgeon  
13 could not testify against an emergency room doctor  
14 about an aneurysm, because they weren't in the same  
15 practice. But it's clear they were both the same,  
16 doctors. And it is clear that they both treated  
17 aneurysms. So, again, it doesn't go to the  
18 substance of the protection.

19           In other words this, Your Honor, all  
20 of those cases, this case -- the point I'm trying to  
21 make is, this case is different. All of those  
22 cases, we dealt with procedural complaints. This is  
23 a complaint of substance, the heart of the  
24 protection. We did it just like the statute told us  
25 to do. All of those cases had varying different

1 types of experts. This is the only case where they  
2 had been a purported expert, and put it in the  
3 affidavit offered to the Court, testifying about  
4 acts that this affiant would be illegal to perform.  
5 You don't have that in any of the other cases.

6 And that is what we have. I  
7 appreciate the Court's time. Thank you very much.

8 THE COURT: Thank you. All right.  
9 Mr. Wright.

10 MR. WRIGHT: Yes, Your Honor. Given  
11 that that is a lot to respond to, but I think Mr.  
12 Paschal and I would be in agreement, there are three  
13 ways that the plaintiff is successful in arguing  
14 that the Court should dismiss or should not grant  
15 his Motion to Dismiss.

16 Number one is whether the statute was  
17 tolled by our filing the notice of intent. And this  
18 is in the brief. Your Honor, it gets confusing  
19 because there's two statutes involved here. Number  
20 one is 15-79-125. And that is the statute that  
21 deals with the filing requirements with the notice  
22 of intent. Okay?

23 The other one, 15-36-100, deals with  
24 the filing requirements with the summons and  
25 complaint. So, there are two different statutes.

1 The only time that 15-79-125, or the NOI statute,  
2 references the other one is basically to say, Hey,  
3 if you are filing an affidavit it has to conform to  
4 the same requirements as when you filed the summons  
5 and complaint.

6 The portions that he references, as  
7 far as the timing of filing and objection to the  
8 affidavit, that is from 15-36-100. That is not part  
9 of 15 -- the NOI statute at all. So, him  
10 referencing that, saying, Hey it's okay, we don't  
11 have to object to the filing, to the affidavit in  
12 the NOI until a responsive filing is required by  
13 referencing 15-36-100 is just a complete misuse of  
14 that statute. That is dealing with the affidavit as  
15 filed with the summons and complaint.

16 There is no written statute anywhere  
17 to say that if an affidavit filed with an NOI is  
18 defective and you think that it's defective, that  
19 you can waive and not bring that up. Okay? And  
20 just like we saw Wednesday, it is perfectly fine to  
21 make a Motion to Dismiss a notice of intent if they  
22 felt the statute -- that my affidavit that I filed  
23 with the notice of intent was defective, they  
24 certainly could have been free to file for a Motion  
25 to Dismiss and bring all of this up. Instead they

1 -- there was no allegation of any defective  
2 affidavit with the notice of intent for five months.  
3 We did the pre mediation, went through all of that.  
4 The NOI case has been closed. Okay?

5 THE COURT: Does the NOI statute have  
6 any language in there about filing the Motion to  
7 Dismiss?

8 MR. WRIGHT: No, it does not.

9 THE COURT: Have any language at all?

10 MR. WRIGHT: No, no, it does not.

11 But just like anything in law, the standard is to do  
12 a contemporaneous objection, unless the statute says  
13 otherwise. You are supposed to -- if there is  
14 something wrong with a filing, with anything, any  
15 objection that you have, you are supposed to do that  
16 immediately.

17 And, Your Honor, it is the black  
18 letter law in 15-79-125(A), that filing the notice  
19 of intent to file suit tolls all applicable statute  
20 of limitations. There is no disagreement on that.

21 So, when we -- so, our first  
22 argument, Your Honor, would be, when we filed the  
23 notice of intent with the affidavit and there was no  
24 objection as to the sufficiency of the NOI or the  
25 affidavit that was filed with the NOI, all

1 applicable statute of limitations would be tolled.  
2 And so the only time bar going forward, since there  
3 was no objection at the time of the NOI, and that  
4 has been closed, it has been done, would be the  
5 six-year statute of repose, which doesn't run until  
6 2024. Okay?

7                   So, Your Honor, that would be our  
8 first argument. If the Court agrees that the  
9 statute of limitations has been tolled, as  
10 specifically identified in 15-79-125(A), then there  
11 is no argument here. The statute has been tolled.  
12 We filed the motion -- or filed the affidavit of Dr.  
13 Chansky and, you know, their Motion to Dismiss  
14 should be denied.

15                   And I think that Mr. Paschal would  
16 agree with that, that if the Court agrees with that,  
17 then his motion should be denied. He would just  
18 argue that you shouldn't rule that way. So, that  
19 would be the first way that his motion should be  
20 defeated.

21                   The second one is, if the Court were  
22 to argue or were to find that, okay, the statute  
23 hasn't been tolled, you know, that it is perfectly  
24 okay for him to wait 5 months to not object or to  
25 not file any kind of Motion to Dismiss the NOI.

1 Then the second way that the motion should be  
2 defeated is if we -- if the affidavit of Nurse High  
3 is actually acceptable. And, Your Honor, it is very  
4 clear that 15-36-100 that you asked, you know, is  
5 there any specification, as far as what is a  
6 qualified expert. Yes, there is.

7                   15-36-100 says, section (A) says, As  
8 used in this section, an expert witness means an  
9 expert who is qualified as to the acceptable conduct  
10 of the professional whose conduct is at issue and  
11 who -- and then there is three categories.

12                   In Mr. Paschal's, both of his  
13 memorandum in support, he only referenced the first  
14 two. He did not even make reference to the third  
15 section, which is what we are arguing Nurse High  
16 would be qualified under. That third section  
17 specifically says, Your Honor, that a -- Your Honor,  
18 that this is 15-36-100(A)(3), that if an individual  
19 not covered by sections (A)(1) or (A)(2), basically  
20 who has the educational or essentially has the same  
21 credentials as the defendant in question, that an  
22 expert witness can still be qualified under this  
23 statute if he has scientific, technical, or other  
24 specialized knowledge which may assist the trier of  
25 fact in understanding the evidence and determining a

1 fact or issue in the case, by reason of the  
2 individual's study, experience, or both.

3                   Now, it is uncontroverted, Your  
4 Honor, that Nurse High has been working in an  
5 emergency room setting dealing with emergency room  
6 medicine for -- since the late '80s. He essentially  
7 runs the emergency room at Vanderbilt University.  
8 And, in fact, as we talked about it, he's an  
9 associate in emergency medicine at Vanderbilt  
10 University and teaches --

11                   THE COURT: Why didn't you file a  
12 Motion to Quash Mr. Paschal and give him that  
13 information?

14                   MR. WRIGHT: I want to address that.  
15 He said that there was no objection to that. That  
16 is a bold-faced misstatement. I was called at my  
17 home by the representative for Vanderbilt and said,  
18 What is going on, why do we have to -- we are not  
19 involved in this, why do we have to spend time and  
20 effort to answer the subpoena. And I said, Well,  
21 this is kind of a standard thing, blah, blah, blah.  
22 And so they told me, like, Can you do anything about  
23 it. I was specifically asked that. And I know that  
24 you talked to somebody different.

25                   MR. PASCHAL: I --

1                   MR. WRIGHT:  And I don't need you to  
2  interrupt.  But that is -- I was called, I was  
3  contacted.  I did not reach out.  I have -- I don't  
4  care if he gets a subpoena for that.  I have no --  
5  but when my expert and his boss calls me and says,  
6  You need to file a subpoena, or we would like you  
7  to.  And second of all, his subpoena didn't even  
8  comply with Tennessee law.  He only gave them five  
9  days to respond.  And that subpoena is going to fail  
10 because he didn't give them the required 20 days'  
11 notice.

12                   But, no, I was contact -- there was  
13 definitely objection from me and from my nurse  
14 expert.  And Mr. Paschal has done this in another  
15 case, he could have easily come to me and said, Hey,  
16 Jay, can you ask your expert to give us all of his  
17 syllabuses, all of his, you know, if there is any  
18 kind of authorization for him to practice medicine.

19                   THE COURT:  Do you agree to withdraw  
20 your objection to that subpoena up there now?

21                   MR. WRIGHT:  Your Honor, I --

22                   THE COURT:  Yes or no.

23                   MR. WRIGHT:  Again --

24                   THE COURT:  Yes or no.

25                   MR. WRIGHT:  I would, yes.

1 THE COURT: Good. It is withdrawn.  
2 Let's go forward with your argument.

3 MR. WRIGHT: Yes. And so, and so 100  
4 (A) (3) is very clear that you don't have to have,  
5 and even the case law that he cited is very clear  
6 that an expert witness under the filings of the NOI  
7 or the summons and complaint does not have to be the  
8 same medical specialty as the defendant.

9 THE COURT: Well, I think that that's  
10 not his argument. I think that what I understood  
11 him to say is that you have somebody who is a nurse  
12 that is trying to opine as to what a nurse  
13 practitioner or a doctor might do that is against  
14 the statute of what they are allowed to do.

15 MR. WRIGHT: Well, Your Honor, we  
16 would disagree with that. I think, and Nurse High  
17 is well aware of these requirements. He knows, as  
18 far as his licensing, what would put his license at  
19 stake and would never sign an affidavit that he knew  
20 would put him at stake of being sanctioned by his  
21 medical board, or his nursing board.

22 These are fictitious labels, Your  
23 Honor. When a person goes into an emergency room  
24 setting, he's supposed to receive appropriate  
25 medical emergency treatment, Your Honor. And that

1 is what Nurse High is qualified by 30 years of  
2 experience. And specifically, Your Honor, he is a  
3 certified, not just an RN, he is a certified  
4 emergency nurse. And, again, he's been basically  
5 running the emergency room for 30 years.

6                   It is a false label to say, Oh, well,  
7 what is the standard of care for a nurse  
8 practitioner, where is the standard of care to an ER  
9 doctor. When a patient goes into the emergency  
10 room, he's supposed to receive appropriate medical  
11 -- emergency medicine treatment. And that is  
12 exactly what we put in our affidavit, or in our  
13 answers to the requests for admissions, Your Honor.  
14 We said, Nurse High is not rendering specific  
15 opinions as to the practice of medicine or the  
16 standard of care of a physician or nurse  
17 practitioner, as Mr. Paschal pointed out, but he  
18 didn't read this.

19                   THE COURT: Well, let me ask you  
20 this: In your complaint you are alleging actual  
21 omissions by the nurse practitioner and the doctor,  
22 aren't you?

23                   MR. WRIGHT: Yes. No actually --

24                   THE COURT: So, when you do that in  
25 your complaint, don't you have to support that by

1 expert affidavit as to the standard of care and how  
2 they deviated from it?

3 MR. WRIGHT: Well, actually, Your  
4 Honor, there is no MD involved, it is just a nurse  
5 practitioner.

6 THE COURT: There is no MD, okay.  
7 Just a nurse practitioner?

8 MR. WRIGHT: Yes. Nurse High --

9 THE COURT: But even so, if you are  
10 saying to me -- if you are saying, I think I saw  
11 where you said, we are not saying any -- we are not  
12 rendering an opinion about the nurse practitioner,  
13 then doesn't that cause you a problem from the  
14 get-go, because you don't have an affidavit?

15 MR. WRIGHT: That is false. That is  
16 semantics. We said we are not -- our expert is not  
17 saying, Hey, I'm coming in to render an opinion as  
18 to what a nurse practitioner did wrong, he is coming  
19 in to say, Look, this is how a patient in this  
20 setting should get treated. It includes an  
21 appropriate diagnosis. It includes appropriate CT  
22 studies. He's giving those opinions, that this  
23 patient did not receive an accurate diagnosis.

24 He is going to give testimony that  
25 this patient did not receive the CT imaging studies

1 that would have shown his aneurysm and would have  
2 prevented his death. He is going to say that this  
3 patient being discharged with a blood pressure of  
4 244 over 180 in hypertensive crisis is absolutely  
5 inappropriate and inexcusable. But he is going to  
6 say, I don't care who you point the finger at,  
7 whether you point it at a nurse, point it at a nurse  
8 practitioner, you point it at an MD, this is  
9 inappropriate medical emergency medicine treatment.

10           And my expert is giving that opinion.  
11 And he's qualified to give that opinion based on his  
12 extensive experience under 100(A)(3), his extensive  
13 experience in the emergency room, seeing patients  
14 every day, making those decisions. And to say that  
15 he cannot, he's totally unqualified to say when a  
16 patient who is coming in with -- when there is  
17 incredible concern for aortic aneurysm and has a  
18 current blood pressure of 244 over 180, in  
19 hypertensive crisis, that he is not qualified to say  
20 that letting that patient walk out the door and  
21 eventually had a ruptured aortic aneurysm and die in  
22 the hospital parking lot is inappropriate, that is  
23 just ridiculous.

24           And so, Your Honor, we would say that  
25 the affidavit of Nurse High 100 percent meets the

1 qualifications of 100(A)(3), that he is accepted,  
2 that he is perfectly qualified to render the  
3 opinions that he's going to give. And as far as Mr.  
4 Paschal putting up on the board, you know, the laws  
5 and stuff, I think that is taking those all out of  
6 context. I think those list specific medical acts  
7 that apply to an MD. I don't think that that is  
8 trying to prohibitively say that an MD can't offer  
9 any kind of opinions related to these issues. I  
10 think that there is a vast difference between --

11 THE COURT: Now, hold on. Say that  
12 again, what you said about an MD.

13 MR. WRIGHT: Yes. These requirements  
14 for what make an MD, Your Honor. That is one  
15 standard. There's a totally different standard that  
16 is expressly put forth in 100 (A)(3) as to the  
17 qualif -- the level of qualification that an expert  
18 needs in order to render an affidavit in a  
19 complaint. These are totally separate standards.  
20 And for him to reference this when there is a  
21 specific listing and description of what qualifies  
22 as an expert -- as an affidavit -- as an expert as  
23 far as an affidavit for a summons and complaint is  
24 just -- is trying to move the ball.

25 If you look at the definition of what

1 satisfies as an affidavit in the actual affidavit  
2 statute, 100, 15-36-100, it gives its own  
3 definition. You don't need to go to these other  
4 places to try to get any kind of further definition,  
5 it's very clear what is set forth in the actual  
6 statute.

7           So, that would be number two, Your  
8 Honor. We feel like specifically, that even if the  
9 Court were to disagree that the statute of  
10 limitations was tolled, which we argue is very clear  
11 from the statute that Nurse High's affidavit would  
12 qualify under 15-36 (A) (3).

13           Your Honor, the third way that the  
14 Motion to Dismiss can be defeated is if the Court  
15 were to rule that the statute -- were to disagree  
16 with me that the statute was not tolled based on  
17 their lack of any kind of an objection during the  
18 notice of intent. And that Nurse High's affidavit  
19 is not sufficient, then specifically 15-36-100(E)  
20 states that, Whenever there is an allegation that an  
21 affidavit is defective, which is what we are talking  
22 about in this case, it specifically says that the  
23 plaintiff has 30 days to file an amended affidavit  
24 to cure the alleged defect.

25           Now, Your Honor, it has been stated,

1 and it is in our brief, that any -- Your Honor, that  
2 any statute that limits the ability of a person to  
3 bring a lawsuit is a statute restricting the common  
4 law will, and that a statute limiting a claimant's  
5 right to bring suit are subject to the rule that the  
6 statutes are to be strictly construed. Okay?

7           And so there is no description on --  
8 there is no limitation put forth in the statute as  
9 to what amendments can be made, Your Honor. There  
10 is no saying, Hey, you know, it only applies to --  
11 there is no limitations. And in strictly construing  
12 the statute, that means that we are entitled, that  
13 if they say that the defect in the affidavit is the  
14 title or the person giving the affidavit, basically  
15 the identity of the affiant, then Your Honor, we  
16 would be entitled to amend that, specifically under  
17 Rule 100(E). Which we did.

18           We said, All right, fine, if you  
19 have -- if you think that, for whatever reason, that  
20 our expert, the identity of our expert is  
21 unqualified, we will be happy to amend that within  
22 30 days, directly as we are entitled to under the  
23 statute. Which we did. And so, Your Honor, again,  
24 strictly construing that statute, there is no  
25 limitations on the amendment. And this is not us

1 trying to, you know, put forth some, you know, make  
2 an affidavit of Joe Schmoe on the street. This is,  
3 again, a qualified expert who has been working in  
4 the emergency room for 30 years and basically runs  
5 an ER. And, you know, again, we feel like his  
6 affidavit is totally -- you know, that he's totally  
7 qualified to give the opinions that he's giving.  
8 But if they disagree, fine, we will amend the  
9 affidavit. You know, if you want an MD, we will  
10 give you an MD. If you want a NP, we will give you  
11 an NP.

12 But, Your Honor, it is very clear  
13 that we are entitled to that step. You know, if  
14 they say, Hey, here is a defect, we get 30 days to  
15 make whatever amendment we need to make, which we  
16 have done. And so, Your Honor, if you would also  
17 agree that, you know, we have met that statutory  
18 allowance in 100(E), then their Motion to Dismiss  
19 would also fail.

20 And I put that fourth thing in a  
21 brief, Your Honor, not to make that as any kind of  
22 basis for the Court's determination, as far as a  
23 frivolous lawsuit. It was referenced in Mr.  
24 Paschal's briefs that the whole reason these  
25 affidavit requirements exist is to protect the court

1 system from frivolous lawsuits. And I was just  
2 making the point, Your Honor, as a matter of public  
3 -- I don't know, anyway, that this is obviously not  
4 a frivolous lawsuit.

5                   This is a patient that went to the  
6 emergency room after a motor vehicle accident, had a  
7 blood pressure of 244 over 180. And that is  
8 definitely the definition of a hypertensive crisis.  
9 Was complaining of pain right in the middle of his  
10 back, which the experts, you know, at least our  
11 experts will say that that is very indicative of an  
12 aortic dissection, especially after a motor vehicle  
13 accident.

14                   We took the deposition of Nurse  
15 Morton. He even said that it was on his  
16 differential diagnosis in that -- and he testified  
17 that the aortic aneurysm, if he had done the test to  
18 look for it they would have found it. Now, but he  
19 said even if it -- even though it was on his  
20 differential, he didn't do the test. And then it is  
21 no question that he died because the aortic aneurysm  
22 wasn't identified and it ruptured and he died in the  
23 AnMed parking lot.

24                   So, this is not a frivolous case,  
25 Your Honor. And, again, the three ways we feel

1 like, number one, the filing of the notice of intent  
2 without objections, that the statute of limitations  
3 was tolled. So, there is no statute of limitations  
4 once the NOI was filed without objection. And the  
5 only time bar is the six-year statute of repose,  
6 which doesn't run until 2024.

7           Number two, we feel like Nurse High  
8 is duly qualified to render -- to give an affidavit.  
9 He would not have provided us with an affidavit that  
10 he knew was controverted by law and could get him  
11 into sanctions by the medical boards.

12           And, number three, Your Honor, even  
13 if, for whatever reason it is determined that Nurse  
14 High is unqualified, we are allowed 30 days to make  
15 amendments, which we did. And there is no  
16 limitations to what amendments we can make under  
17 statute; it has to be strictly construed.

18           THE COURT: All right. Thank you,  
19 sir.

20           MR. PASCHAL: Real quick. I'm not  
21 going to repeat everything.

22           THE COURT: Oh yeah, you would. I  
23 know you, Mr. Paschal, you would go back and plow  
24 the whole field again.

25           MR. PASCHAL: If I know you, Judge,

1 you wouldn't let me do it. Just this, to say that  
2 125 and 100 are to be interpreted separate, it  
3 contradicts Ranucci versus Crain, where they said  
4 that 100 incorporates in full. 100, the affidavit  
5 statute, it is incorporated in full, or incorporates  
6 in full the medical malpractice statute, 125. You  
7 can't pick and choose between them, and that is what  
8 they are urging.

9           The second thing is this: The expert  
10 qualification that Mr. Wright read to you, you are  
11 probably not familiar with that language, because  
12 that language was put in there because that is the  
13 ambit of common knowledge of a juror where no expert  
14 is necessary. And that is Justice Beatty's case.  
15 And wreck cases, I imagine, you have ruled thousands  
16 of times there are certain things that are within  
17 the ambit of common knowledge and you don't need an  
18 expert. That is all that is. It just incorporates  
19 it, it is not a new groundbreaking qualification.

20           And the only other thing is that,  
21 regardless of what his affidavit says about the  
22 practice of medicine, and to allege that we read out  
23 of context when we gave the Court the entire  
24 document, prevents us from taking anything out of  
25 context. He can testify about the practice of

1 emergency medicine by nurses, but he can't testify  
2 as to doctors and nurse practitioners.

3           And as to the amendment statute, the  
4 amendment statute says you can amend an existing  
5 affidavit, it doesn't say that you can get a brand  
6 new, second affidavit to come in.

7           THE COURT: Are there any cases out  
8 there that you are aware of where there was a  
9 substituted affidavit for, you know, like there was  
10 done in this case?

11           MR. PASCHAL: I can answer that. I'm  
12 not perfect, I could have missed something, but I  
13 can -- the five affidavit cases are those five cases  
14 that I told the Court about.

15           THE COURT: They don't, none of them,  
16 okay.

17           MR. PASCHAL: And that is why I'm  
18 going to point out, this is a different case because  
19 of that reason.

20           THE COURT: All right.

21           MR. PASCHAL: I appreciate the  
22 opportunity, Your Honor. Thank you.

23           THE COURT: Thank you. Do you have  
24 anything you want to add?

25           MR. PARHAM: Me, Your Honor?

1 THE COURT: Yes, sir.

2 MR. PARHAM: I have got a lot of  
3 opinions, but I'm no longer in the case.

4 THE COURT: Oh, you are not?

5 MR. WRIGHT: No, sir.

6 THE COURT: That is right, you  
7 settled your part, didn't you?

8 MR. PARHAM: Yes, sir, we settled our  
9 part two or three weeks ago.

10 THE COURT: I thought I was going to  
11 let y'all go outside and just wrestle around for a  
12 whole --

13 MR. PARHAM: I am sorry, what?

14 THE COURT: I said I thought I was  
15 going to let you and Mr. Wright just go out in front  
16 and just wrestle around for a little bit.

17 MR. PARHAM: I wouldn't, you know, I  
18 am from a family that my father didn't graduate from  
19 high school, and in my younger days I would be happy  
20 to do that.

21 THE COURT: Me too.

22 MR. PARHAM: And now I'm too old and  
23 fat to do that now.

24 THE COURT: I hear you. All right.  
25 So, you don't really have anything over here? Do

1 you want to put anything on the record about your  
2 settlement?

3 MR. PARHAM: Your Honor, we are  
4 fighting over whether certain depositions should be  
5 taken when I'm not available.

6 MR. WRIGHT: No, the Motion to  
7 Dismiss is the only thing we are --

8 MR. PARHAM: Oh, yes, sir, we don't  
9 have documents ready. I don't have the check, so  
10 there's nothing.

11 MR. WRIGHT: As to the Motion to  
12 Dismiss?

13 MR. PARHAM: Oh, well, I have an  
14 opinion, Your Honor, if you want to hear it I'll  
15 tell you. I didn't think that you wanted to.

16 THE COURT: No.

17 MR. PARHAM: I am out of the case,  
18 but I have done medical malpractices --

19 THE COURT: For a long time.

20 MR. PARHAM: -- a long, long time,  
21 Your Honor, and I could tell you what I think about  
22 these things but --

23 THE COURT: That is okay.

24 MR. PARHAM: I knew that you didn't  
25 want to hear it. Your Honor, if we are going to go,

1 could I go to the restroom?

2 THE COURT: Yeah, yeah, go ahead.

3 MR. PARHAM: It's been several hours,  
4 like maybe someone else wants to.

5 THE COURT: That would be great.

6 MR. PASCHAL: I have got that Motion  
7 to Compel, but if they are going to withdraw the  
8 objections up there, that is -- or we are talking  
9 about withdrawing the witness?

10 THE COURT: Is your Motion to Compel  
11 as to those?

12 MR. PASCHAL: That is.

13 THE COURT: Well, you withdrew your  
14 objection.

15 MR. WRIGHT: Correct, Your Honor.  
16 And we have already expressed to Pat that if the  
17 Motion to Dismiss is denied and we are allowed to go  
18 forward, then we don't intend to call Nurse High or  
19 involve him in the case any further, that we would  
20 go forward with Dr. Chansky anyway.

21 MR. PASCHAL: And I would like to  
22 incorporate that in my Motion to Dismiss also, they  
23 are not planning to call his witness anyway. But I  
24 would need to get an order to the Motion to Compel  
25 to send to Tennessee. I could prepare one for the

1 Court if you give me permission.

2 THE COURT: Absolutely.

3 MR. PASCHAL: Okay. Thank you.

4 THE COURT: So, do you have any  
5 issues -- well, I'll wait until Mr. Parham gets  
6 back.

7 MR. PASCHAL: Your Honor, on that  
8 motion for the Tennessee stuff, that Motion to  
9 Compel, we filed an affidavit. Excuse me, a  
10 memorandum on that, and I would like to incorporate  
11 that in the record. So, if I get an order from you  
12 there is some reference that that supplemental was  
13 there.

14 THE COURT: Okay. Absolutely.

15 MR. PASCHAL: Pursuant to the  
16 interstate compact and the depositions and discovery  
17 requirements take part, that is what I was going to  
18 do.

19 (Pause.)

20 MR. PARHAM: Thank you, Your Honor.

21 THE COURT: Yes, sir. Now, let me  
22 ask you this: Are there any matters that I need to  
23 address to hear today? I mean, I know y'all had  
24 some back and forth going over these.

25 MR. PARHAM: I don't mind. I had a

1 Motion to Quash the deposition, I don't care if you  
2 hear it that way. Or if he has a Motion for  
3 Sanctions against me, which is unbelievable, but  
4 I'll have the same argument for both of them, Your  
5 Honor, so we can go forward.

6 MR. WRIGHT: Your Honor, Mr. Parham  
7 has withdrawn, via email, his Motions to Quash.

8 MR. PARHAM: Yes, Your Honor. I'm  
9 happy to hear his Motion for Sanctions, it is the  
10 same argument for the Motion to Quash.

11 MR. WRIGHT: Your Honor, the Motion  
12 for Sanctions was not on the roster today, so I  
13 mean, I didn't come prepared with all of the emails.  
14 But essentially it just boils down to, look, we  
15 filed the notice of Intent in November. We filed  
16 the summons and complaints in March. Since late  
17 March I have been trying to just schedule a  
18 deposition of the employees for AnMed. And every  
19 time I have tried, I have said, you know, here is a  
20 notice of deposition, date, two months, two and a  
21 half months out, if this doesn't work for you, give  
22 me an alternative date.

23 The first two times I did that, Mr.  
24 Parham ref -- he just said, Hey, that doesn't work  
25 for me. He gave no explanation to say that doesn't

1 work for me. You know, it doesn't work for my time  
2 schedule. Did not provide any alternative dates.  
3 So, then I tried again in May. I worked with Mr.  
4 Paschal and said, Hey, guys, we have got about four  
5 depositions of AnMed employees that we need to do,  
6 can y'all give me some dates.

7 I worked with Mr. Paschal, and we  
8 said, we said, July 15th or July 15th and July 29th,  
9 again giving almost two months' notice. And we sent  
10 it over to Jim saying, or Mr. Parham, Hey, you know,  
11 Mr. Parham, does this work for you. You know, we  
12 wait a week. Mr. Parham, does this work for you.  
13 Got no response. Mr. Par -- we wait another week.  
14 Finally after 25 days or something, or 21 days,  
15 finally I said, Look, you know, do you want to be  
16 involved in helping us to set deposition dates, and  
17 again got no response.

18 So, then, I said, All right, fine. I  
19 sent a notice of deposition that me and Pat had  
20 worked on for the 15th and 29th. Only then did I  
21 get a response back, immediately, saying, Oh, those  
22 dates don't work with us. And, again, not providing  
23 alternative dates, but just being like, Hey, that  
24 doesn't work with my schedule, it doesn't matter.  
25 Your Honor, I have been trying to communicate with

1 Mr. Parham for literally four months. I have sent  
2 emails. I have sent voice mails. 95 percent of  
3 those go completely unanswered. No response at all.

4           The ones that he does enter a  
5 response to he's just saying, Hey, that doesn't work  
6 for me, but gives no solution saying, Hey, you know,  
7 this date doesn't work for me, but how about this  
8 date. And even today I said, you know, we have  
9 scheduled depositions on the 29th. And I said, Hey,  
10 Mr. Parham, are your guys going to be there? And he  
11 said, No. And, in fact, he said, I don't care what  
12 Judge McIntosh says, my guys are not going to be  
13 there. And he said --

14           THE COURT: I might take offense to  
15 that.

16           MR. PARHAM: I understand that, Your  
17 Honor. I am going to fill in the blanks for you  
18 when he finishes, Your Honor.

19           THE COURT: Okay.

20           MR. WRIGHT: And so, when somebody  
21 doesn't even engage in the basic communication of  
22 responding to emails, responding to voice messages,  
23 it basically says, The entire court system has to  
24 revolve around my schedule, which, you know,  
25 evidently requires about five months' notice to do a

1 deposition. I don't know what to do.

2           So, we -- the motion specifically,  
3 the Motion for Sanctions involves, we had that  
4 deposition, we tried to schedule a deposition for  
5 the 15th. We had the court reporter there. Mr.  
6 Paschal was there. The witness didn't show up. I  
7 don't know if Mr. Parham even told the witness about  
8 the deposition. But, again, it didn't just come out  
9 of the blue. It evolved out of numerous attempts to  
10 be like, Here is the deposition date, does this work  
11 for you, if not give me alternative dates.

12           Mr. Parham has never provided me  
13 alternative dates, except recently where he said,  
14 Oh, I have some availability in September for a date  
15 that you asked me about all the way back in May.  
16 So, like, yeah, I can give you dates four or five  
17 months out.

18           And my duty, Your Honor, under the  
19 Rules of Professional Conduct, it is my duty.  
20 Specifically it says, I am to expedite my cases. I  
21 have a duty to work cases up as quickly as I can,  
22 Your Honor. And we need to do depositions of  
23 witnesses, because those inevitably lead to more,  
24 you know, lead to other discoveries that identify  
25 other potential witnesses that we need to do.

1                   And I am working with clients who  
2 their primary breadwinner of their family has died.  
3 They are in financial distress. They need a  
4 resolution to this case. And for Mr. Parham to just  
5 say that -- you know, I know that he has I think  
6 over 50 active cases, for him to say, No, the family  
7 has to wait, I need to take as many cases as I can  
8 and make as much money as I can, so this family who  
9 has had significant injury and death and is in  
10 financial distress, they have to wait on my  
11 schedule. That is not right, Your Honor.

12                   And it is not right for him to  
13 completely ghost me on emails and voice mails, and  
14 not even have the least bit of professional courtesy  
15 to say, Jay, I'm responding to you, hey, if you want  
16 a date in July, hey, you know, I will try to give  
17 you the best alternative date I can. It is just --  
18 and, again, you know, he's been doing this for  
19 longer than I have, but in the 10 or 15 years that I  
20 have been doing it, I have never experienced this  
21 level of professional disrespect, discourtesy, and  
22 that is the reason that I brought it forward to you,  
23 Your Honor.

24                   And for somebody to sit in the back  
25 of the courtroom while a Judge is ruling on cases

1 and say, I don't care what the hell the Judge says  
2 regarding these depositions, it is just like -- I  
3 have just never experienced it before in my 10 or 15  
4 years.

5 MR. PARHAM: I don't want to belabor  
6 the issue, Your Honor. All of that is patently  
7 untrue. This case got filed on March 6th. March 24  
8 he unilaterally noticed depositions of all of us,  
9 March 24th. He said in a later email, two months  
10 later, he never does that. Well, he did. And he  
11 has been doing it continuously since he did it on  
12 March 24th.

13 He set these depositions for June 9.  
14 I was actually available. I was available. There  
15 is no emails where I said that I am not available;  
16 however, Mr. Paschal was not available. So, he  
17 gives him a pass on June 9th for all of these  
18 depositions. But later on, you will hear, he  
19 doesn't give me any passes.

20 So, when that happened we had more  
21 emails. He said, I want to do them in May, and he  
22 gave two dates. And I responded and said, I'm  
23 unavailable on those dates. And it didn't matter  
24 anyway, because Mr. Paschal's client, Kevin Morton,  
25 wasn't available. So, he gave Mr. Paschal a pass

1 and didn't say anything about me.

2                   So, then he starts emailing me in  
3 May. And, Your Honor, I wrote him in April and I  
4 told him that I wasn't available for those May  
5 dates. And he starts emailing, and I told him, I am  
6 completely swamped in May and I have numerous family  
7 vacations. My children were in town from out of  
8 state, first time I had seen them in a long time  
9 because of COVID. And I do not respond to my emails  
10 when I'm on vacation, Your Honor. I am sorry, I  
11 don't. I don't care about my emails when I'm on  
12 vacation.

13                   So, when I finally got back to the  
14 office on May 26th, I merely responded and said, I'm  
15 not available on the 15th and the 29th. Mr. Paschal  
16 had offered two other dates, the 13th and 14th of  
17 July. I was available those dates, however he  
18 wasn't. He decided his schedule was more important.  
19 And I told him on the 15th and 19th I had to file  
20 another Motion to Quash, which is the one that I  
21 have here in my hand, and I laid out the scenario  
22 for Your Honor.

23                   Interestingly, Mr. Paschal, after he  
24 chose the date that he wouldn't change on the 15th,  
25 Mr. Paschal noticed on May 10th the depositions of

1 the plaintiffs. It took him five weeks later. Now  
2 he's complaining about me not responding in four  
3 weeks. It took him five weeks later to tell Mr.  
4 Paschal that he couldn't find one of his clients.  
5 And when he finally found her five weeks later she  
6 had a vacation. And what did Mr. Paschal do,  
7 because he is professional, he said, Okay, no  
8 problem, we will reschedule it.

9                   So, after all of that happened, I got  
10 with Mr. Paschal, we talked on the phone in early  
11 June, and I can hand up two letters that were  
12 written by Mr. Paschal to Mr. Wright where Mr.  
13 Paschal, in the first one, said, I am tired of being  
14 in the middle, I have never had anybody try and make  
15 me show up for depositions on the days when I am  
16 already scheduled for other things. Life is too  
17 short, let's get this together.

18                   We talked at length, and I said,  
19 These are the dates I'm available in August. And  
20 Mr. Paschal said, Well, I'm not available, these are  
21 the dates I'm available. I said, I am not  
22 available. Because the first half of August, Your  
23 Honor, I am going on a very lengthy family vacation  
24 and then I am participating in a medical malpractice  
25 trial in Columbia. I checked yesterday to make sure

1 that it was still going forward and it is.

2 Mr. Paschal has a trial at the end of  
3 August and needs a full week of preparation before  
4 that. We have no dates in August, the two of us.  
5 So, we got together and gave Mr. Wright four days in  
6 September. Four days. I still have two of those  
7 available. The other two are gone because I have  
8 got other things to do.

9 And I'm sorry that I am -- I have a  
10 very good practice, Your Honor. Always have. And,  
11 thank God I do, because I get paid by the hour. And  
12 I am very busy, and people in my cases are booked  
13 out four and five months, Your Honor. In fact, just  
14 Wednesday of this week, to give you an example, we  
15 had scheduled a deposition two months ago of a  
16 doctor in the case. And the attorney for the doctor  
17 wrote us an email two hours before the deposition  
18 and said, I can't do it today.

19 Did we act like him? Nobody acted  
20 like him, including the plaintiff's lawyer that was  
21 supposed to depose this guy that he had been waiting  
22 two months for in a case that is much older than  
23 this one, two years. And they said, Okay, just let  
24 us know when you are available. Real simple, Your  
25 Honor.

1                   But we gave him dates in September.  
2   And I have an email here where he said, I don't  
3   care, I'm not going to give him -- I'm available  
4   those dates, but I'm not letting him go on those two  
5   dates because he wants to file a Motion for  
6   Sanctions. So, if you rule on that, he can flash it  
7   around. But, Your Honor, I have never refused to  
8   let these two nurses be deposed.

9                   To add to it, Your Honor, that after  
10   all of this went down about the 15th and the 29th in  
11   the beginning of June, he files an offer of  
12   judgment. Which we, to quote the Godfather, it was  
13   an offer we couldn't refuse. It was so good we  
14   couldn't believe it, we thought it was a typo, it  
15   had to have another number on it, so we accepted it.

16                   So, my clients no longer are  
17   defendants in this case, Your Honor. I mean, they  
18   are fact witnesses. Even less a reason. In July,  
19   right now, Your Honor, this case is four months old.  
20   There is no scheduling order. As you know from the  
21   Rules of Civil Procedure, it cannot be put on the  
22   roster until 12 months, which is March of 2022. I  
23   don't know about you here in Anderson County, but I  
24   can tell you right now in Richland County we have --  
25   I have cases from 2018 that still can't get set.

1                   In fact, the depositions I have on  
2 the 29th, Your Honor, are for a 2019 case that is on  
3 the roster for this Monday. And Judge Manning has  
4 given us a break about that, but we are going to  
5 have a status conference when he gets back from  
6 Kershaw County a week from now to talk about when  
7 that case is going to be set.

8                   So, I'm supposed to just drop these  
9 depositions on the 29th and 30th that have been  
10 scheduled for months because he wants to do a  
11 deposition that he could handle any other time. It  
12 is four months old, Your Honor. I don't get it.

13                   But we gave him dates. I was  
14 available on the 9th of June. I was available on  
15 the 13th and 14th of July. We got together. Pat  
16 can confirm this, because Pat was tired with all of  
17 this mess going on between Mr. Wright and me, and we  
18 gave him four dates. And he said, No, I'm  
19 available, I don't care.

20                   Now, Your Honor, you know, it is your  
21 discretion, Your Honor, but I can't be two places at  
22 once. And believe me, I would love to take these  
23 depositions, I get paid by the hour. But I can't on  
24 those two dates. And I have other dates I was  
25 available. He gave --

1                   THE COURT: Let me stop you for a  
2 second if I may. First of all, I'm not issuing any  
3 sanctions. Second, Jay, this is not the first time  
4 where I have had you noticing depositions without  
5 consulting with opposing counsel. And it is -- no.  
6 And it is something that is a repetitive issue that  
7 comes from -- and it stems from you. And you are  
8 just going to have to learn to work with people  
9 better than what you are doing.

10                   I mean, this is not the first case  
11 where we have had similar type conduct, similar  
12 complaints. But it's reversed. And it is just not  
13 going to be put up with anymore. I'm telling you.  
14 I know that you are very zealous and you are a good  
15 lawyer, but you need to learn how to play  
16 appropriately. I don't want you moving.

17                   Now, right now, I want to set those  
18 dates in September. Okay? Is that a problem, or  
19 you have a problem?

20                   MR. PASCHAL: I am the one who  
21 proposed those dates, but I didn't expect that I was  
22 going to be called. I may have a conflict.

23                   THE COURT: Sir?

24                   MR. PASCHAL: I may have developed a  
25 conflict since June, Your Honor.

1                   MR. PARHAM: The only one that I'm  
2 available on those four dates, are the 8th and the  
3 13th. And I could have my witnesses, because I  
4 talked to them this week about those dates.

5                   THE COURT: Okay. Let's stop right  
6 now, and let's go check and see if y'all can come up  
7 with the dates. I want those done today before we  
8 get out of here.

9                   MR. PASCHAL: Judge, let me say this.  
10 My only problem -- I will do anything. I have been  
11 willing to do anything from day one. I have a very  
12 small case on the docket.

13                   THE COURT: If you can't do it, then  
14 let's come up with alternative dates.

15                   MR. PASCHAL: I have a very small  
16 condemnation case that is not date certain in  
17 Laurens, and I could get a phone call, that is all  
18 I'm saying. I don't want it to disrupt any if we  
19 get this back together during that time frame.

20                   THE COURT: Well, I am going to take  
21 a five-minute break. Y'all try to get together. I  
22 will come back out here and we are going to put the  
23 date on the record.

24                   MR. PASCHAL: That is the date.

25                   THE COURT: Okay. Y'all share that

1 around some.

2 (Recess.)

3 THE COURT: All right. Have y'all  
4 come up with a time?

5 MR. WRIGHT: Yes, sir, we have.

6 THE COURT: Okay.

7 MR. WRIGHT: Yes, sir, September 8th  
8 at 9:30 a.m. at AnMed Hospital.

9 MR. PARHAM: For both nurses?

10 MR. WRIGHT: Yes, sir.

11 THE COURT: That is good for you?

12 MR. PARHAM: Yes, sir.

13 THE COURT: And even though you  
14 resolved your aspect of the case, you are going to  
15 still attend, I assume?

16 MR. PARHAM: Yes, sir. Well, he  
17 asked me that. Right now I think so, Your Honor.  
18 You know, anybody beyond that, I'm not sure whether  
19 I will still be in it or not. And, Your Honor,  
20 since you did such a good job with the schedule I  
21 will just keep contacting you about helping me to  
22 get things set.

23 THE COURT: I am sorry?

24 MR. PARHAM: I said, Since you did a  
25 good job with this schedule today, you don't mind me

1 contacting you again later on down the road in other  
2 cases?

3 THE COURT: No, call me. But I tell  
4 you what now, if you have got Paschal involved with  
5 it, don't call me. Okay? No.

6 (Laughter.)

7 THE COURT: All right. So, Pat, you  
8 are good to go with that time too?

9 MR. PASCHAL: Yes, sir, whenever it  
10 is, I don't care. We talk, we will make the  
11 schedule, we will get whatever needs to be done.

12 THE COURT: All right. I am going to  
13 read your submissions. Do I have your memoranda, as  
14 to the other?

15 MR. WRIGHT: Oh, yes, sir. As to the  
16 Motion to Dismiss? It was filed along with the CV  
17 of Nurse High.

18 THE COURT: All right, guys. Between  
19 that and listening to planning commission testimony,  
20 I am going to have a fun weekend. But I will see  
21 y'all later. Thank you. Good to see you.

22 (Whereupon, the hearing concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF OCONEE:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 18th day of September, 2021.

*Mona L. Manley /s/*

MONA L. MANLEY  
South Carolina Court Reporter  
Circuit Reporter for the 10th Circuit  
(850) 893-6662  
mmanley@sccourts.org

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore, Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN, Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

**MEMORANDUM IN SUPPORT  
OF  
MOTION TO DISMISS  
FOR ABSENT AFFIDAVIT  
BY  
DEFENDANTS ANDERSON  
EMERGENCY ASSOCIATES, P.A. AND  
KEVIN MORTON, NP**

This motion is brought by the Nurse Practitioner Kevin Morton, as well as the physician group for which he works (Anderson Emergency Associates, or “AEA”) which provides the medical services for the AnMed Emergency Room. Although the Plaintiff has provided an affidavit regarding nursing acts effective against the nurse codefendants (See Exhibit A), the Plaintiff failed to file an affidavit from a qualified *medical* expert regarding the *medical providers’* treatment in this case: to wit, Nurse Practitioner Morton and AEA. As a result, this is a motion to dismiss for the failure of the Plaintiff to provide an affidavit against the physicians and physician extender, Nurse Practitioner Kevin Morton, as required as a mandatory prerequisite to bring of a medical malpractice action under the S.C. Medical Malpractice Act. S.C. Code Section 15-79-125 and Section 15-36 -100.

**Facts:**

The allegations of the complaint involve the treatment rendered to the Plaintiff-decedent while a patient in the AnMed Emergency Room for a motor vehicular collision. The Plaintiff alleges the Defendants failed to diagnose or otherwise prevent a fatal aneurysm and/or dissection which occurred two weeks later. There are three different health care providers involved in the treatment of this patient:

- a. The physician extender Nurse Practitioner (“NP”), Kevin Morton, who brings this motion, is a nurse practitioner and at all times in this case was the designated “medical provider” performing the *medical acts* as the physician extender the same as if performed by an AEA physician.
- b. The physician group for which the NP worked (Anderson Emergency Associates). AEA provides the physicians and the physician extenders, both the NPs and PAs, to be the *medical* providers in the ER.
- c. The nurses (a registered nurse, also referred to as “RN”). The two co-defendants, Jamie Moon and Betty Boyles, are registered nurses. The nurses are employed by AnMed.

As explained below, there are three dispositive facts pertinent to this motion:

1. The first is the operative term “*medical acts*” in both practice and the S.C statutory scheme. A medical act is the practice of medicine by a physician or physician extender acting as the physician (e.g., a NP) including, among other things, conducting a medical workup or “practicing medicine” involving the following:

- ordering and interpreting of tests,
- forming a medical diagnosis,
- determining a medical treatment plan and prescribing medications.

2. The second operative fact is *the legal difference between an NP (nurse practitioner) and a RN (nurse)*. A *nurse practitioner* is first trained and licensed as a registered nurse, but in addition completes a two-year master’s degree, other specialized medical training, certification, and, more important, a separate licensing. In other words, a NP receives additional training and is licensed for a higher degree of care and authorized to do acts in accordance with those higher skills than that of a nurse. The NP is “a physician extender” and as such is trained, licensed, and authorized to do those “*medical acts*” of a physician such as physical evaluation, ordering and interpreting of tests, forming a medical diagnosis, prescribing medications, and determining a medical treatment plan. The best example of this is NP Morton’s practice agreement attached as Exhibit B and Job Description attached as Exhibit C. A nurse, as explained below, does not have this degree of training or licensing, and is prohibited by statute from doing these medical acts.<sup>1</sup>

3. The third fact is that the sole expert for the Plaintiff and the only expert to file the required pre-suit affidavit is Richard Kevin High, *who is a registered nurse, licensed to practice nursing, but not a physician or physician extender (like a NP) licensed to do medical acts*. Mr. High has provided an affidavit as to nursing acts, however, also as to the “medical acts” described above, more specifically: the work up, ordering diagnostics and decision to discharge the patient—all of which are outside his training or licensing.

Therein lies the *three-fold problem* with the affidavit without which the action against NP Kevin Morton and AEA must be dismissed and all of which are explained below:

1. The affidavit does not mention NP Kevin Morton.

2. Nurse practitioner vs. Nurse and Medical Acts: The affidavit cannot imply NP Morton. Kevin Morton is a nurse practitioner and a physician extender. Richard High is neither. He is a nurse. Mr. High, as a nurse, cannot form an opinion and is prohibited from testifying, by law, about the performance of *medical acts* by a physician or a NP as a physician extender, such as: a medical work up, ordering test and medical decisions—all listed in the affidavit.

<sup>1</sup> In fact, the Plaintiff admits the difference in the Complaint where the Plaintiff states three matters:

- a. First, the Plaintiff states in Paragraph 6 that AEA provided “medical practitioners specializing in the field of emergency medicine.” Medical practitioners include AEA employees both physicians and physician extenders, such as a NP,
- b. Second, in Paragraph 9 and 10, the Plaintiff asserts, correctly, that the nurses are held to “the ordinary and customary standards of nursing,
- c. Third, however, the Plaintiff acknowledges in Paragraph 8, and again correctly, that a NP is held to the different standard of a nurse practitioner—a different standard than a nurse.

3. The Plaintiff has failed to provide an affidavit by a licensed medical provider (a physician or NP) regarding the medical acts conducted by NP Morton as required by statute. S.C. Code Sections 15-79-125 and 15-36 -100. There is no legal affidavit against NP Morton or AEA. The action can stand against the co-defendant nurses, but not against, NP Morton and AEA as the medical providers.

**Issue:**

**Should the action be dismissed for the Plaintiff's failure to provide an affidavit by a medical expert as required by law as a prerequisite to bring a medical malpractice action?**

**Law**

***1. S.C. Code Sections 15-79-125 and 15-36 -100 requires an affidavit by an expert.***

S.C. Code Section 15-79-125 requires an affidavit by a qualified expert supporting a Notice of Intent to Sue as an *imperative prerequisite* for the filing a professional malpractice case. The term "expert witness" is defined in Section 15-36-100 (A):

"(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;..."

Mr. High meets all of these requirements to provide an affidavit *as to the registered nurses*, but none *as to the physician extender*, NP Morton. He is not licensed, board certified nor does he work within the same discipline as NP Morton.

The failure to provide an affidavit by a duly qualified expert is mandatory grounds for a dismissal. Section 15-79-125, See also, *Seastrunk v. U.S.*, 25 F.Supp.3d 812, and *Duckett v. SCP*, 225 F.Supp.3d 432 (D.S.C 2006).

**2. Under the S.C. Medical Practice Act, giving testimony by affidavit in a civil matter by a health care provider is “the practice of medicine.”**

The Medical Practice Act, at § 40-47-20 (36) (h), defines the “*practice of medicine*” as including:

“testifying as a physician in an administrative, civil, or criminal proceeding in this State by *expressing an expert medical opinion.*” (Emphasis provided.)

As a result, the submitting of an affidavit to the court that *expresses a medical opinion as to medical acts* is the “practice of medicine”. Accordingly, only a physician or a “physician extender” like a nurse practitioner can “practice medicine” as defined by this statute. See Section 40-33-29, *et seq.*, discussed below. A nurse cannot. In addition, an expert can only testify as to acts which the licensing statutes authorizes the witness to do. If the statutes prohibit a witness from performing *medical acts*, then that witness cannot testify as to those *medical acts*. As explained below, a nurse is prohibited from performing medical acts and therefore cannot testify as to medical acts.

**3. The Nursing Practice Act and the practice of medicine, i.e., medical acts.**

The South Carolina Nursing Act makes a clear this distinction between a nurse (RN) and a Nurse Practitioner (NP). Each has its own distinct licensing scheme, educational requirements, and area of specializations. The difference is: one (the NP) can *practice medicine*, i.e., do “*delegated medical acts*”; whereas the other one (the registered nurse) cannot. See S.C. Code Section 44-33-20. More specifically, the difference is if as follows:

**a. A nurse practitioner:**

1. Training: A Nurse Practitioner is a nurse with a specific/unique course of additional medical training. Section 40-33-34 requires a minimum of a master’s degree from an accredited college *in a nurse practitioner program* and a current certification by a board-approved credentialing organization. As a result, NP Morton has this specific additional training above that of a RN like Mr. High.<sup>2</sup>

2. By practice: As a result, of this additional training, the NP is licensed to “practice medicine” as an extension of the physician conducting the *medical acts* referenced above including, but not limited to: the work up evaluation, medical diagnosis, prescribing medication, and forming medical treatment plans. A nurse is not. See Section 40-33-29, *et seq.* The NP’s scope of practice (that includes medical acts) is identified broadly in a written practice agreement. NP Kevin Morton’s practice agreement is attached as Exhibit B. NP Morton’s current Employment Agreement is attached as Exhibit C for reference which authorizes the providing of “medical services”. Between the practice agreement, the employment agreement and the authorizations granted to NPs under the S.C. Nursing Act, an NP is authorized to “practice medicine” in certain, among other, delegated medical acts, including:

- a. evaluation work up,
- b. formulating a differential diagnosis,
- c. ordering and interpreting diagnostic tests,
- d. prescribing medicine, and
- e. determining a care plan.

<sup>2</sup> Mr. High represents that he has a master’s degree in public health and that does not require a nursing degree for admission. However, the S.C. statute requires a master’s degree specifically in a nurse practitioner program.

In fact, NP Kevin Morton served as the “medical provider” as was charted and was for all purposes the “doctor”. As a result, the NP Morton was performing physician acts and is held to the standards of a physician in the performance of those medical acts. A nurse is not licensed, trained or qualified to perform these acts, and cannot opine as to the standard of care in the performance of these acts regardless of if performed by a physician or physician extender like a NP.

3. License and certification: South Carolina recognizes by statute these differences between a nurse and a NP:

a. To practice as a nurse practitioner in South Carolina, one must have a APRN (“Advanced Practice Registered Nurse”) license in addition to any nursing license. S.C. Code Section 40-33-5, et seq.

b. The NP license authorizes performance of *medical* care prohibited to a nurse. Section 40-33-20(5) was amended in 2018 to read specifically:

"(5) 'Advanced Practice Registered Nurse' or 'APRN' means a registered nurse who is prepared for an advanced practice registered nursing role by virtue of additional knowledge and skills gained through an advanced formal education program of nursing in a specialty area that is approved by the board. ...

...

An APRN also may perform specified medical acts pursuant to a practice agreement as defined in item (45) and approved written guidelines as defined in item (9)."*(Note: NP Morton's practice agreement is attached as Exhibit B.)*

In this case, NP Kevin Morton was:

1. licensed and trained to perform medical acts,
2. was hired by AEA to provide medical care and perform medical acts as a physician extender, and
3. the chart identified him as the medical provider.

Accordingly, NP Morton acted as the extender of the physician to provide delegated medical acts in the work up of this patient, just like the doctor:

- a. order and interpret diagnostic tests,
- c. provide a medical diagnosis,
- d. provide a medical treatment plan and prescribe medications.

As explained below, a nurse is not trained or qualified to perform these acts and cannot offer testimony on these subjects. *Section 40-3-34.*

**b. A registered nurse (RN):**

1. On the other hand, a RN is *not* trained or qualified and as a result, cannot do any of these delegated medical acts by statute and it is sanctionable misconduct to do so. Section 40-33-110.

2. The RN can assess a patient, implement doctor's or physician extender's orders and treatment plans. However, a RN cannot medically diagnose, order or interpret diagnostic tests, provide a medical treatment plan or make prescriptions —unlike a NP which is by law licensed to do all these acts. See Section 40-33-20 (46) and (48).

3. In fact, it is unlawful for a RN to practice as a NP or practice outside the scope of the RN license—such as any of the medical acts described above. Section 40-33-110 states the grounds for discipline of licensees as follows:

“(A) In addition to the grounds provided in Section 40-1-110, upon finding misconduct the board may cancel, fine, suspend, revoke, issue a public reprimand or a private reprimand, or restrict, including probation or other reasonable action such as requiring additional education and training, the authorization to practice of a person who has: ...

*(21) practiced outside the scope of the license by assuming duties and responsibilities without adequate education as determined by the board.*

...

*(27) engaged in practice as an NP, CNS, or CNM without a compliant practice agreement as defined in Section 40-33-20(45)”.*

(Emphasis provided)

4. Notably, Mr. High is licensed as a nurse in the State of Tennessee. The Tennessee Nursing Act provides that: “the practice of professional nursing does not include acts of *medical diagnosis or the development of a medical plan of care and therapeutics for a patient, ...*” Tenn. Code Section 63-7-103 (b). Mr. High's testimony would be a violation of law if given in Tennessee.

Although the Plaintiff has provided an affidavit regarding nursing acts effective against the nurse codefendants, the Plaintiff failed to file an affidavit from a qualified medical expert regarding the medical providers' care in this case: NP Morton and AEA.

**5. Common Law:** Even without the statutory prohibition, Nurse High would not qualify as an expert under S.C. caselaw. Although an expert need not be of the same specialty, the proffered witness must be qualified in the subject matter of the proffered testimony. *Watson v. Ford Motor*, 389 SC 434, 699 S.E.2d 169, (2010). *Watson* was clear that Rule 702, *SCRE*, requires that a proffered expert need not be of the same specialty, “must have acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” 699 S.E. 2d at 672. The subject matter in question and raised by the affidavit is the performance of medical acts (diagnosis, ordering and interpretation of tests and forming medical treatment plans). *Watson* reversed a lower court's finding on the basis that the proffered expert did not meet the Rule 702 requirement of qualification where the witness was indeed an expert experienced in training in the automotive industry, but had no experience working on the subject

matter of the case--cruise control systems. Mr. High has the training to testify in any court about the standards of nursing. However, Mr. High is not qualified to testify as to the performance by a NP of medical acts--the subject matter raised in the affidavit. The Plaintiff may attempt to rely on *Eades vs. Palmetto Cardiovascular and Thoracic*. 422 S.C. 196, 810 S.E.2d 848 (S.C. 2018). However, the facts of the present case are not only unlike *Eades*, but *Eades* points out the failure of the affidavit in this case. *Eades* found the affidavit by a vascular surgeon to be sufficient against an emergency room physician. But that is the exact point--both were physicians licensed to practice medicine. The condition at issue was aneurysm and blockage—the diagnosis and treatment of which is within the “practice of medicine” of both ER doctors and vascular surgeons. See 810 S.E.2d at 852. Both were trained in medical school and licensed to conduct “these medical acts”. This is not the case here with a nurse and nurse practitioner.

#### **Application to the Facts:**

S.C. Code Section 15-79-125 and 15-31 -100 require as a mandatory requirement an affidavit to file suit. No affidavit was filed by an expert licensed by law to practice medical acts. The only affidavit filed was by Nurse Richard Kevin High. In that affidavit, Mr. High makes allegations against “the agents and employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Room” but mentions no names and with no distinction between the nurse and the NP nor with any allegations specifically identifying the NP. The affidavit *does not mention NP Kevin Morton*. Instead, the affidavit makes several key allegations.

a. In Paragraph 1 of his affidavit, Mr. High states he is a “practicing emergency nurse”, to wit: a RN. He also states that his “education, training and experience qualify” him to “render an expert opinion”. He may well be qualified as a RN to opine as the nursing care but not by statute to offer opinions as to the medical provider, the NP.

b. In Paragraph 3, Mr. High affirms that he is “rendering an expert medical opinion”. He may give an opinion as to nursing, but not as to the practice of medicine.

c. In Paragraph 4, addition, Mr. High first states that he gives his opinion to a “reasonable degree of medical certainty” (as he does again in Paragraph 5). He can state an opinion to a “reasonable degree of nursing certainty” as to the nursing care but not to “medical degree of certainty” as to the medical acts by the physician extender. Although Nurse High makes allegations against the AnMed nursing care, he also alleges deviations of the standard of care in the *medical* treatment rendered by NP Morton, working in the role of the *medical provider*, in specific *medical acts*:

1. Inadequate work up,
2. Failure to obtain further imaging prior to discharge
3. Inappropriate discharged.

*These are the only allegations against the medical provider and all three are clearly medical acts*. Mr. High is prohibited by law as a nurse from offering opinions on these *medical acts* and from opining as to the standard of care for the discipline of a physician or a physician extender including NP, Kevin Morton.

In this regard, it must be noted that the Complaint makes no allegations of a breach of any standard of care of a nurse practitioner. Instead, in Paragraph 48, the Plaintiff alleges several breaches, but all are exclusively of the standard of care “exercised by employees rendering *nursing* care”. The Complaint then incorporates Nurse High’s affidavit. This is further evidence that the affidavit purports to opine on nursing standards but fails to address the nurse practitioner standards (a distinction made by the Plaintiff in Paragraphs 8-10).

The result is that the Plaintiff failed to file a legal affidavit against NP Morton and AEA for three reasons:

**1. Common law:** A nurse does not have the requisite training, knowledge and skill to meet the requirements of Rule 702 to testify as the performance of medical acts by an NP, in particular, the work up, obtaining diagnostic imaging and the discharge of the patient. *Watson v. Ford Motor, supra*.

**2. S.C. Code Sections 15-36-100 (A):** Mr. High is neither licensed, educated, or practices medical acts. Section 15-36-100 (A) requires the purported expert to meet one of three requirements: a license in the area of the testimony, board certification in specialty or practice of the defendant, actual professional knowledge of experience in the area or specialty involved. Mr. High fails on all three. He is not licensed, board certified nor does he work within the same discipline as NP Morton.

**3. South Carolina Nursing Act:** The S.C. Nursing Act prohibits a nurse from the practice of medicine and specifically performing medical acts. See Section 40-33-20 (46) and (48). Testimony to medical acts is the practice of medicine. Section 40-47-20 (36) (h). Since a nurse cannot practice medical acts, a nurse cannot testify to medical acts because it is outside the scope of the restrictions of the nursing license. Section 40-33-110. In other words, a nurse, like any citizen, cannot practice medicine without a license and testifying in a court is practicing medicine.<sup>3</sup>

#### Conclusion:

As a result, the Plaintiff failed to provide the prerequisite legal affidavit against NP Morton and AEA. The failure of which requires dismissal of the action.

S/ HW Paschal  
H. W. Pat Paschal, Jr. S. C. Bar #4350  
644 E. Washington Street  
Greenville, South Carolina 29601  
Attorney for Defendant

April 13, 2021

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<sup>3</sup> The Plaintiff may attempt to claim that the requirement of an affidavit is not fatal, and dismissal is discretionary citing *Ranucci vs Crain*, 409 S.C. 493, 763 S.E.2d 189 (SC 2014). However, *Ranucci* held that dismissal for the failure to conduct pre-suit *mediation* was discretionary but recognized that the statutory language requiring the filing pre-suit affidavit as a prerequisite to file a medical malpractice lawsuit was clear and unambiguous. *Id.*, citing *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 725 S.E.2d 693 (2012). Therefore, the failure is enforceable by dismissal of the action.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal  
Representative of the Estate of Douglas  
Williford, and Lolita Moore,

Plaintiffs,

vs.

AnMed Health, Anderson Emergency  
Associates, P.A., Kevin Morton NP, Jamie  
Moon RN, and Betty Boyles RN,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

**MOTION TO DISMISS**  
**Section 15-36-100 and 15-79-125**  
**FAILURE TO PROVIDE AFFIDAVIT**

**BY**  
**DEFENDANTS ANDERSON**  
**EMERGENCY ASSOCIATES, P.A. AND**  
**KEVIN MORTON, NP**

ELECTRONICALLY FILED - 2021 Jul 13 6:16 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0400470

**TO: PLAINTIFF ABOVE-NAMED AND THEIR ATTORNEY:**

YOU WILL TAKE NOTICE that he undersigned attorney for these Defendants will move before the Court on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order for Dismissing this action for the failure to provide an affidavit in violation of *S.C. Code Section 15-36-100 and 15-79-125*. The basis of the Memorandum of Support attached hereto incorporated verbatim by this reference.

s/ H. W. Paschal

H. W. Pat Paschal, Jr., SC Bar # 4350  
644 E. Washington Street  
Greenville, South Carolina 29601  
ATTORNEY FOR DEFENDANTS  
ANDERSON EMERGENCY ASSOCIATES,  
AND KEVIN MORTON, NP

April 13, 2021

Certification of Service

I certify that I have served this Motion to Dismiss on the counsel for the Plaintiff electronically at [jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com) on April 13, 2021 and by mail on the same date to the address:

Jay Wright, Esquire  
135 Edinburgh Court Suite 202  
Greenville, SC 29607

s/ H. W. Paschal

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore, Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN, Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

**MEMORANDUM IN SUPPORT  
OF  
MOTION TO DISMISS  
FOR ABSENT AFFIDAVIT  
BY  
DEFENDANTS ANDERSON  
EMERGENCY ASSOCIATES, P.A. AND  
KEVIN MORTON, NP**

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**Facts:**

The allegations of the complaint involve the treatment rendered to the Plaintiff-decedent while a patient in the AnMed Emergency Room for a motor vehicular collision. The Plaintiff alleges the Defendants failed to diagnose or otherwise prevent a fatal aneurysm and/or dissection which occurred two weeks later. There are three different health care providers involved in the treatment of this patient:

- a. The physician extender Nurse Practitioner ("NP"), Kevin Morton, who brings this motion, is a nurse practitioner and at all times in this case was the designated "medical provider" performing the *medical acts* as the physician extender the same as if performed by an AEA physician.
- b. The physician group for which the NP worked (Anderson Emergency Associates). AEA provides the physicians and the physician extenders, both the NPs and PAs, to be the *medical* providers in the ER.
- c. The nurses (a registered nurse, also referred to as "RN"). The two co-defendants, Jamie Moon and Betty Boyles, are registered nurses. The nurses are employed by AnMed.

As explained below, there are three dispositive facts pertinent to this motion:

1. The first is the operative term “*medical acts*” in both practice and the S.C statutory scheme. A medical act is the practice of medicine by a physician or physician extender acting as the physician (e.g., a NP) including, among other things, conducting a medical workup or “practicing medicine” involving the following:

- ordering and interpreting of tests,
- forming a medical diagnosis,
- determining a medical treatment plan and prescribing medications.

2. The second operative fact is *the legal difference between an NP (nurse practitioner) and a RN (nurse)*. A nurse practitioner is first trained and licensed as a registered nurse, but in addition completes a two-year master’s degree, other specialized medical training, certification, and, more important, a separate licensing. In other words, a NP receives additional training and is licensed for a higher degree of care and authorized to do acts in accordance with those higher skills than that of a nurse. The NP is “a physician extender” and as such is trained, licensed, and authorized to do those “*medical acts*” of a physician such as physical evaluation, ordering and interpreting of tests, forming a medical diagnosis, prescribing medications, and determining a medical treatment plan. The best example of this is NP Morton’s practice agreement attached as Exhibit B and Job Description attached as Exhibit C. A nurse, as explained below, does not have this degree of training or licensing, and is prohibited by statute from doing these medical acts.<sup>1</sup>

3. The third fact is that the sole expert for the Plaintiff and the only expert to file the required pre-suit affidavit is Richard Kevin High, *who is a registered nurse, licensed to practice nursing, but not a physician or physician extender (like a NP) licensed to do medical acts*. Mr. High has provided an affidavit as to nursing acts, however, also as to the “medical acts” described above, more specifically: the work up, ordering diagnostics and decision to discharge the patient—all of which are outside his training or licensing.

Therein lies the *three-fold problem* with the affidavit without which the action against NP Kevin Morton and AEA must be dismissed and all of which are explained below:

1. The affidavit does not mention NP Kevin Morton.

2. Nurse practitioner vs. Nurse and Medical Acts: The affidavit cannot imply NP Morton. Kevin Morton is a nurse practitioner and a physician extender. Richard High is neither. He is a nurse. Mr. High, as a nurse, cannot form an opinion and is prohibited from testifying, by law, about the performance of *medical acts* by a physician or a NP as a physician extender, such as: a medical work up, ordering test and medical decisions—all listed in the affidavit.

<sup>1</sup> In fact, the Plaintiff admits the difference in the Complaint where the Plaintiff states three matters:

- a. First, the Plaintiff states in Paragraph 6 that AEA provided “medical practitioners specializing in the field of emergency medicine.” Medical practitioners include AEA employees both physicians and physician extenders, such as a NP,
- b. Second, in Paragraph 9 and 10, the Plaintiff asserts, correctly, that the nurses are held to “the ordinary and customary standards of nursing,
- c. Third, however, the Plaintiff acknowledges in Paragraph 8, and again correctly, that a NP is held to the different standard of a nurse practitioner—a different standard than a nurse.

3. The Plaintiff has failed to provide an affidavit by a licensed medical provider (a physician or NP) regarding the medical acts conducted by NP Morton as required by statute. S.C. Code Sections 15-79-125 and 15-36 -100. There is no legal affidavit against NP Morton or AEA. The action can stand against the co-defendant nurses, *but not against, NP Morton and AEA as the medical providers.*

**Issue:**

**Should the action be dismissed for the Plaintiff's failure to provide an affidavit by a medical expert as required by law as a prerequisite to bring a medical malpractice action?**

**Law**

***1. S.C. Code Sections 15-79-125 and 15-36 -100 requires an affidavit by an expert.***

S.C. Code Section 15-79-125 requires an affidavit by a qualified expert supporting a Notice of Intent to Sue as an *imperative prerequisite* for the filing a professional malpractice case. The term "expert witness" is defined in Section 15-36-100 (A):

"(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;..."

Mr. High meets all of these requirements to provide an affidavit *as to the registered nurses*, but none *as to the physician extender*, NP Morton. He is not licensed, board certified nor does he work within the same discipline as NP Morton.

The failure to provide an affidavit by a duly qualified expert is mandatory grounds for a dismissal. Section 15-79-125, See also, *Seastrunk v. U.S.*, 25 F.Supp.3d 812, and *Duckett v. SCP*, 225 F.Supp.3d 432 (D.S.C 2006).

**2. Under the S.C. Medical Practice Act, giving testimony by affidavit in a civil matter by a health care provider is “the practice of medicine.”**

The Medical Practice Act, at § 40-47-20 (36) (h), defines the “*practice of medicine*” as including:

“testifying as a physician in an administrative, civil, or criminal proceeding in this State by *expressing an expert medical opinion.*” (Emphasis provided.)

As a result, the submitting of an affidavit to the court that *expresses a medical opinion as to medical acts* is the “practice of medicine”. Accordingly, only a physician or a “physician extender” like a nurse practitioner can “practice medicine” as defined by this statute. See Section 40-33-29, *et seq.*, discussed below. A nurse cannot. In addition, an expert can only testify as to acts which the licensing statutes authorizes the witness to do. If the statutes prohibit a witness from performing *medical acts*, then that witness cannot testify as to those *medical acts*. As explained below, a nurse is prohibited from performing medical acts and therefore cannot testify as to medical acts.

**3. The Nursing Practice Act and the practice of medicine, i.e., medical acts.**

The South Carolina Nursing Act makes a clear this distinction between a nurse (RN) and a Nurse Practitioner (NP). Each has its own distinct licensing scheme, educational requirements, and area of specializations. The difference is: one (the NP) can *practice medicine*, i.e., do “*delegated medical acts*”; whereas the other one (the registered nurse) cannot. See S.C. Code Section 44-33-20. More specifically, the difference is if as follows:

**a. A nurse practitioner:**

1. Training: A Nurse Practitioner is a nurse with a specific/unique course of additional medical training. Section 40-33-34 requires a minimum of a master’s degree from an accredited college *in a nurse practitioner program* and a current certification by a board-approved credentialing organization. As a result, NP Morton has this specific additional training above that of a RN like Mr. High.<sup>2</sup>

2. By practice: As a result, of this additional training, the NP is licensed to “practice medicine” as an extension of the physician conducting the *medical acts* referenced above including, but not limited to: the work up evaluation, medical diagnosis, prescribing medication, and forming medical treatment plans. A nurse is not. See Section 40-33-29, *et seq.* The NP’s scope of practice (that includes medical acts) is identified broadly in a written practice agreement. NP Kevin Morton’s practice agreement is attached as Exhibit B. NP Morton’s current Employment Agreement is attached as Exhibit C for reference which authorizes the providing of “medical services”. Between the practice agreement, the employment agreement and the authorizations granted to NPs under the S.C. Nursing Act, an NP is authorized to “practice medicine” in certain, among other, delegated medical acts, including:

- a. evaluation work up,
- b. formulating a differential diagnosis,
- c. ordering and interpreting diagnostic tests,
- d. prescribing medicine, and
- e. determining a care plan.

<sup>2</sup> Mr. High represents that he has a master’s degree in public health and that does not require a nursing degree for admission. However, the S.C. statute requires a master’s degree specifically in a nurse practitioner program.

In fact, NP Kevin Morton served as the “medical provider” as was charted and was for all purposes the “doctor”. As a result, the NP Morton was performing physician acts and is held to the standards of a physician in the performance of those medical acts. A nurse is not licensed, trained or qualified to perform these acts, and cannot opine as to the standard of care in the performance of these acts regardless of if performed by a physician or physician extender like a NP.

3. License and certification: South Carolina recognizes by statute these differences between a nurse and a NP:

a. To practice as a nurse practitioner in South Carolina, one must have a APRN (“Advanced Practice Registered Nurse”) license in addition to any nursing license. S.C. Code Section 40-33-5, et seq.

b. The NP license authorizes performance of *medical* care prohibited to a nurse. Section 40-33-20(5) was amended in 2018 to read specifically:

"(5) 'Advanced Practice Registered Nurse' or 'APRN' means a registered nurse who is prepared for an advanced practice registered nursing role by virtue of additional knowledge and skills gained through an advanced formal education program of nursing in a specialty area that is approved by the board. ...

...

An APRN also may perform specified medical acts pursuant to a practice agreement as defined in item (45) and approved written guidelines as defined in item (9)."*(Note: NP Morton's practice agreement is attached as Exhibit B.)*

In this case, NP Kevin Morton was:

1. licensed and trained to perform medical acts,
2. was hired by AEA to provide medical care and perform medical acts as a physician extender, and
3. the chart identified him as the medical provider.

Accordingly, NP Morton acted as the extender of the physician to provide delegated medical acts in the work up of this patient, just like the doctor:

- a. order and interpret diagnostic tests,
- c. provide a medical diagnosis,
- d. provide a medical treatment plan and prescribe medications.

As explained below, a nurse is not trained or qualified to perform these acts and cannot offer testimony on these subjects. *Section 40-3-34.*

**b. A registered nurse (RN):**

1. On the other hand, a RN is *not* trained or qualified and as a result, cannot do any of these delegated medical acts by statute and it is sanctionable misconduct to do so. Section 40-33-110.

2. The RN can assess a patient, implement doctor's or physician extender's orders and treatment plans. However, a RN cannot medically diagnose, order or interpret diagnostic tests, provide a medical treatment plan or make prescriptions —unlike a NP which is by law licensed to do all these acts. See Section 40-33-20 (46) and (48).

3. In fact, it is unlawful for a RN to practice as a NP or practice outside the scope of the RN license—such as any of the medical acts described above. Section 40-33-110 states the grounds for discipline of licensees as follows:

“(A) In addition to the grounds provided in Section 40-1-110, upon finding misconduct the board may cancel, fine, suspend, revoke, issue a public reprimand or a private reprimand, or restrict, including probation or other reasonable action such as requiring additional education and training, the authorization to practice of a person who has: ...

*(21) practiced outside the scope of the license by assuming duties and responsibilities without adequate education as determined by the board.*

...

*(27) engaged in practice as an NP, CNS, or CNM without a compliant practice agreement as defined in Section 40-33-20(45)”.*

(Emphasis provided)

4. Notably, Mr. High is licensed as a nurse in the State of Tennessee. The Tennessee Nursing Act provides that: “the practice of professional nursing does not include acts of *medical diagnosis or the development of a medical plan of care and therapeutics for a patient, ...*” Tenn. Code Section 63-7-103 (b). Mr. High's testimony would be a violation of law if given in Tennessee.

Although the Plaintiff has provided an affidavit regarding nursing acts effective against the nurse codefendants, the Plaintiff failed to file an affidavit from a qualified medical expert regarding the medical providers' care in this case: NP Morton and AEA.

**5. Common Law:** Even without the statutory prohibition, Nurse High would not qualify as an expert under S.C. caselaw. Although an expert need not be of the same specialty, the proffered witness must be qualified in the subject matter of the proffered testimony. *Watson v. Ford Motor*, 389 SC 434, 699 S.E.2d 169, (2010). *Watson* was clear that Rule 702, *SCRE*, requires that a proffered expert need not be of the same specialty, “must have acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” 699 S.E. 2d at 672. The subject matter in question and raised by the affidavit is the performance of medical acts (diagnosis, ordering and interpretation of tests and forming medical treatment plans). *Watson* reversed a lower court's finding on the basis that the proffered expert did not meet the Rule 702 requirement of qualification where the witness was indeed an expert experienced in training in the automotive industry, but had no experience working on the subject

matter of the case--cruise control systems. Mr. High has the training to testify in any court about the standards of nursing. However, Mr. High is not qualified to testify as to the performance by a NP of medical acts--the subject matter raised in the affidavit. The Plaintiff may attempt to rely on *Eades vs. Palmetto Cardiovascular and Thoracic*. 422 S.C. 196, 810 S.E.2d 848 (S.C. 2018). However, the facts of the present case are not only unlike *Eades*, but *Eades* points out the failure of the affidavit in this case. *Eades* found the affidavit by a vascular surgeon to be sufficient against an emergency room physician. But that is the exact point--both were physicians licensed to practice medicine. The condition at issue was aneurysm and blockage—the diagnosis and treatment of which is within the “practice of medicine” of both ER doctors and vascular surgeons. See 810 S.E.2d at 852. Both were trained in medical school and licensed to conduct “these medical acts”. This is not the case here with a nurse and nurse practitioner.

#### **Application to the Facts:**

S.C. Code Section 15-79-125 and 15-31 -100 require as a mandatory requirement an affidavit to file suit. No affidavit was filed by an expert licensed by law to practice medical acts. The only affidavit filed was by Nurse Richard Kevin High. In that affidavit, Mr. High makes allegations against “the agents and employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Room” but mentions no names and with no distinction between the nurse and the NP nor with any allegations specifically identifying the NP. The affidavit *does not mention NP Kevin Morton*. Instead, the affidavit makes several key allegations.

a. In Paragraph 1 of his affidavit, Mr. High states he is a “practicing emergency nurse”, to wit: a RN. He also states that his “education, training and experience qualify” him to “render an expert opinion”. He may well be qualified as a RN to opine as the nursing care but not by statute to offer opinions as to the medical provider, the NP.

b. In Paragraph 3, Mr. High affirms that he is “rendering an expert medical opinion”. He may give an opinion as to nursing, but not as to the practice of medicine.

c. In Paragraph 4, addition, Mr. High first states that he gives his opinion to a “reasonable degree of medical certainty” (as he does again in Paragraph 5). He can state an opinion to a “reasonable degree of nursing certainty” as to the nursing care but not to “medical degree of certainty” as to the medical acts by the physician extender. Although Nurse High makes allegations against the AnMed nursing care, he also alleges deviations of the standard of care in the *medical* treatment rendered by NP Morton, working in the role of the *medical provider*, in specific *medical acts*:

1. Inadequate work up,
2. Failure to obtain further imaging prior to discharge
3. Inappropriate discharged.

*These are the only allegations against the medical provider and all three are clearly medical acts*. Mr. High is prohibited by law as a nurse from offering opinions on these *medical acts* and from opining as to the standard of care for the discipline of a physician or a physician extender including NP, Kevin Morton.

In this regard, it must be noted that the Complaint makes no allegations of a breach of any standard of care of a nurse practitioner. Instead, in Paragraph 48, the Plaintiff alleges several breaches, but all are exclusively of the standard of care “exercised by employees rendering *nursing* care”. The Complaint then incorporates Nurse High’s affidavit. This is further evidence that the affidavit purports to opine on nursing standards but fails to address the nurse practitioner standards (a distinction made by the Plaintiff in Paragraphs 8-10).

The result is that the Plaintiff failed to file a legal affidavit against NP Morton and AEA for three reasons:

**1. Common law:** A nurse does not have the requisite training, knowledge and skill to meet the requirements of Rule 702 to testify as the performance of medical acts by an NP, in particular, the work up, obtaining diagnostic imaging and the discharge of the patient. *Watson v. Ford Motor, supra*.

**2. S.C. Code Sections 15-36-100 (A):** Mr. High is neither licensed, educated, or practices medical acts. Section 15-36-100 (A) requires the purported expert to meet one of three requirements: a license in the area of the testimony, board certification in specialty or practice of the defendant, actual professional knowledge of experience in the area or specialty involved. Mr. High fails on all three. He is not licensed, board certified nor does he work within the same discipline as NP Morton.

**3. South Carolina Nursing Act:** The S.C. Nursing Act prohibits a nurse from the practice of medicine and specifically performing medical acts. See Section 40-33-20 (46) and (48). Testimony to medical acts is the practice of medicine. Section 40-47-20 (36) (h). Since a nurse cannot practice medical acts, a nurse cannot testify to medical acts because it is outside the scope of the restrictions of the nursing license. Section 40-33-110. In other words, a nurse, like any citizen, cannot practice medicine without a license and testifying in a court is practicing medicine.<sup>3</sup>

#### Conclusion:

As a result, the Plaintiff failed to provide the prerequisite legal affidavit against NP Morton and AEA. The failure of which requires dismissal of the action.

S/ HW Paschal  
H. W. Pat Paschal, Jr. S. C. Bar #4350  
644 E. Washington Street  
Greenville, South Carolina 29601  
Attorney for Defendant

April 13, 2021

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<sup>3</sup> The Plaintiff may attempt to claim that the requirement of an affidavit is not fatal, and dismissal is discretionary citing *Ranucci vs Crain*, 409 S.C. 493, 763 S.E.2d 189 (SC 2014). However, *Ranucci* held that dismissal for the failure to conduct pre-suit *mediation* was discretionary but recognized that the statutory language requiring the filing pre-suit affidavit as a prerequisite to file a medical malpractice lawsuit was clear and unambiguous. *Id.*, citing *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 725 S.E.2d 693 (2012). Therefore, the failure is enforceable by dismissal of the action.

Certificate of Service

I certify that I have served this Memorandum on the counsel for the Plaintiff electronically at jaywright@mcgowanhood.com on April 13, 2021 and by mail on the same date to the address:

Jay Wright, Esquire  
135 Edinburgh Court Suite 202  
Greenville, SC 29607

April 13, 2021

S/HW Paschal

# Exhibit A to Memorandum in Support

AFFIAVIT of RICHARD KEVIN HIGH, RN, EMT, CEN, ACLS

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED,  
BEING DULY SWORN, AND SAYS AS FOLLOWS:

1. I am a practicing emergency nurse. My clinical practice involves treating all types of patients in a busy ER setting as well as bedside, clinical and didactic teaching of nurses, clinical staff, residents, fellows and faculty the proper work up for emergency medicine patients. I am board certified by the Board of Certification for Emergency Nursing. 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 expected care that should have been rendered to Douglas Williford in this case.

2. My medical practice is primarily in Nashville, TN. I have been practicing Emergency Nursing for over 30 years.

3. I have reviewed the medical records of Douglas Williford, which consisted in part of records from AnMed Health, Anderson County Coroner's Office, and AnMed Family Medicine. The records I have reviewed are the type documents, which I would consider in rendering an expert medical opinion in this case.

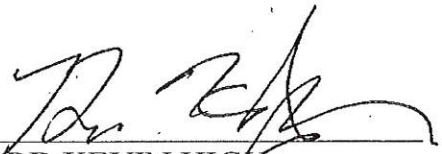
4. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department committed negligent acts or omissions in their care and treatment of Douglas Williford. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:

- Inappropriate triage;
- Inadequate workup;
- Failure to do repeat vitals;
- Failure to do repeat pain;
- Failure to obtain / record vitals prior to discharge;
- Failure to obtain further imaging prior to discharge;
- Inappropriate discharge

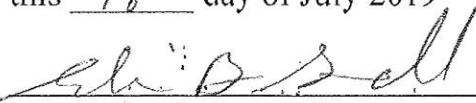
5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department caused or contributed to the injuries, damage, pain and suffering and premature death of Mr. Williford.

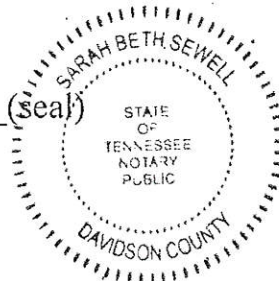
6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department at this time are the medical records of Douglas Williford.

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
RICHARD KEVIN HIGH

Sworn to and signed before me  
this 18 day of July 2019

  
Notary Public in and for



County of Davidson  
State of Tennessee

Commission exp: July 1, 2022

## To Memorandum in Support

### SCOPE OF PRACTICE FOR NURSE PRACTITIONERS

**Preamble:** Nothing in this Scope of Practice should be construed to remove or lessen the limitations on an individual practitioner's activities as set forth by the State Board of Nursing. Activities that are disallowed by the licensure body are likewise disallowed by this document.

**Category:** Nurse Practitioner

**Scope of Service:** The services that Nurse Practitioners may provide to patients in the AnMed Health System are pursuant to this scope of practice. Additionally, Nurse Practitioners employed by AnMed Health will have a job description describing their duties. An individual Nurse Practitioner may provide only those services specifically authorized for him/her in accordance with the procedures set forth in the "Policy for the Granting of Permission to Provide Services for Individuals Not Eligible for Medical Staff Membership." The services specified for a Nurse Practitioner may not exceed the clinical privileges granted to the supervising physician. Nurse Practitioners agree to adhere to professional and ethical behavior established by the profession, law, and in accordance with the mission, vision, and values of the medical center. Nurse Practitioners will adhere to confidentiality of patient related information.

**Core Duties** Any employed Nurse Practitioner will have a job description that is within this Scope of Practice for Nurse Practitioners. Any Nurse Practitioner who is a physician employee must apply for permission to perform duties listed on the application and within this scope of practice.

The specific core duties may include some, or all of the following:

- Screen patients to determine the need for medical attention;
- Review patient records to determine health status;
- Obtain a relevant health and medical history;
- Perform a physical examination based on age and history;
- Perform developmental screening examinations on children;
- Conduct non-surgical preventive screening procedures based on age and history inclusive of development screening examination on children;
- Identify medical and health risks and needs
- Formulate the appropriate differential diagnosis based on the history, physical examination, and clinical findings;
- Identify needs of the individual, family, or community as a result of the evaluation of the collected data;
- Develop a patient education plan;
- Provide relevant patient education;
- Make appropriate referrals to other health professionals and community agencies;
- Determine the effectiveness of the plan of care through documentation of patient care outcomes;
- May make daily rounds on patients.
- Record pertinent patient data and update and record changes in health status;
- Make decisions regarding data gathering and appropriate management & treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition;
- Prepare patient summaries;
- Initiate requests for diagnostic studies in the outpatient setting;

- Collect specimens for and carry out commonly performed blood, urine, and stool analyses and cultures.
- Identify normal and abnormal findings in history, physical examination and commonly performed laboratory studies;
- Initiate appropriate evaluation and emergency management for emergency situations for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage;
- Perform the following clinical procedures: venipuncture, care and suturing of minor lacerations, control of external hemorrhage, application of dressings and bandages, removal of superficial foreign bodies, cardiopulmonary resuscitation, audiometry screening, visual screening, and aseptic and isolation techniques;
- Provide counseling and instruction regarding common patient problems;
- Make entries in medical records and patient charts.
- Provide medical care or services in an emergency department so long as he or she has training in emergency medicine, is subject to standard emergency protocols, functions within the parameters of an approved job description which govern his or her performance, and is under the supervision of a physician with whom he or she has ready contact and who is willing to assume full responsibility for the Nurse Practitioner's performance;
- At the direction of his or her supervising physician, write or sign prescriptions or transmit prescriptions by word of mouth, telephone, or other means of communication, but only if the Nurse Practitioner provides documentation that he or she is specifically authorized to do so by the South Carolina Board of Nursing, as applicable;
- Reassess and modify the plan as necessary to achieve medical and health goals; and
- Participate in quality review on a periodic basis, including systematic review of records and treatment plans.

A Nurse Practitioner shall not

- Admit patients to the medical center;
- Perform any activity that is outside the specific scope of practice that has been granted by the system;
- Perform any services which are not included in his or her job description if applicable;
- Independently practice medicine;
- Independently bill patients for services provided;
- Independently delegate a task assigned to him/her by the supervising physician(s) to another individual;
- Perform any services unless wearing a name tag identifying the individual as a Nurse Practitioner.

**General Relationship**

The Nurse Practitioner has no authority to direct Hospital personnel in the provision of services to patients, except to the extent specifically authorized to write orders.

**Qualification**

Nurse Practitioners are registered nurses with advanced education and clinical competency necessary for the delivery of primary health and medical care.

Applicant must have a current license from the State Board of Nursing of South Carolina.

Applicant must have a Master's degree. AnMed Health will consider applicants

meeting the noted exception in the Nurse Practice Act.

Applicant must be employed by, or have an agreement with one or more supervising physicians who will supervise the Nurse Practitioner's practice in the AnMed Health System. The supervising physician(s) shall be an appointee to the Medical Staff of AnMed Health and granted clinical privileges; and provide AnMed Health with a written agreement signed by the supervising physician(s), where by the supervising physician(s):

- Assumes responsibility for observing, directing, and evaluating the work, records, and practices of each Nurse Practitioner under his/her supervision pursuant to the Level of Supervision of this Scope of Practice;
- Acknowledges that he/she is legally responsible for all acts of Nurse Practitioner(s) whom he/she supervises;
- Is continuously available to provide consultation to the Nurse Practitioner when requested and to intervene when necessary;
- Assumes total responsibility for the care of any patient when requested by the Nurse Practitioner or required by this Scope or in the interest of patient care;
- Affirms that the duties set forth in the job description or Scope of Practice are consistent with the skills and training of the supervising physician and the Nurse Practitioner.

Applicant must have as minimum formal training certification in the Nurse Practitioner's area of specialization.

**Location of Service**

A Nurse Practitioner provides primary health care and specialized health services to individuals, families, groups, and communities. Nurse Practitioners may provide services including but not limited to the Medical Center, Women's and Children's Hospital, ambulatory care facilities, and/or community or public health settings.

**Level of Supervision & Responsible Party**

Supervision and direction on any specific patient shall be provided by the primary supervising physician. The degree of supervision/collaboration required for each service shall be as defined in the job description or this scope of practice for physician employees. Consultation/referral to the supervising physician is required for any medical history, symptoms or abnormal findings that may require medical evaluation and treatment and for which no therapeutic regimens have been established under which the Nurse Practitioner can care for the patient.

- A. Physician supervision requires, at all times, a direct, continuing, and close supervisory relationship between the Nurse Practitioner and the supervising physician. An appropriate degree of supervision includes:
  - Active and continuing overview of the Nurse Practitioner's activities to determine that the Supervising Physician's directions are being implemented;
  - Availability of the supervising physician to the Nurse Practitioner for necessary consultations;
  - Regular education and review sessions between the supervising physician and the Nurse Practitioner for the purpose of discussing specific conditions, protocols, procedures, and specific patients.
- B. If the supervising physician(s) is unavailable to supervise the Nurse Practitioner when required, the supervising physician(s) may not

delegate patient care to the Nurse Practitioner unless appropriate arrangements for alternate physician supervision have been made and approved by the Medical Center.

- C. A supervising physician shall supervise no more than three Nurse Practitioners.
- D. No Nurse Practitioner may render medical services to a patient until the patient has been informed that:  
The Nurse Practitioner is not a physician; and the Nurse Practitioner will act pursuant to the direction of the supervising physician(s).

**Affiliation with Medical Staff Appointee**

Each Nurse Practitioner must have a current formal arrangement (preceptor) for employment/supervision with a current member in good standing of the medical staff of AnMed Health who has an appropriate level of clinical privileges in the specific clinical area. In the case of a Nurse Practitioner who will be an AnMed Health System employee, this affiliation will be deemed to be satisfied by the chief of the applicable department/division, chief's designee, or previously approved arrangement with primary and secondary preceptors.

**Written Orders**

Nurse Practitioners may write orders in the acute care and ambulatory setting.

**Categories of Patients That Nurse Practitioners May Treat**

A Nurse Practitioner approved for specific services may provide those services to the patients of the medical staff members with whom he/she has documented a formal association or to such patients as are assigned to him/her by the applicable department chief/division director.

**Medical Record Charting Responsibilities**

A Nurse Practitioner is required to clearly, legibly, completely and in timely fashion describe in the patient's medical record each service, procedure, test, function, etc., he/she performs and findings there from. The rules of the medical staff regarding authentication, necessary content of and required time frames for preparing and completing the medical record and portions thereof are applicable to all entries made by Nurse Practitioners.

**Verification Process & Elements**

All applicants must submit an application. Those applicants who are employees will append the job description. Application and job description will be submitted to Medical Affairs Staff. An application must be complete before it will be processed. Completion means:

- all blanks on the application are filled in and necessary additional explanations provided; and
- verification of the information is complete; that is, all information necessary to properly evaluate an applicant's qualifications has been received and is consistent with the information provided in the application form.  
Information includes but is not restricted to:
  - current South Carolina licensure;
  - school graduation and granting of degree;
  - liability coverage
  - three letters of reference
  - annual TB skin testing
  - annual influenza vaccination.

**Approval Process**

When all the information provided on the application form has been verified and all requested documents submitted, the application can be deemed complete and forwarded to the Allied Health Credentialing Committee. Upon approval, the

application will then be submitted to the Credentials Committee, the Medical Executive Committee, and to the Board of Trustees.

Notification will be sent to the applicable areas upon completion of the approval process.

An orientation program will be completed before arrival to the specific unit.

**Initial Evaluation**

Initial evaluation is performed upon a completed application by the Allied Health Credentialing Committee with input from the preceptors and chief of the appropriate service.

**Subsequent Evaluation**

Subsequent evaluation will be performed at least yearly. Evaluations will be conducted for employees of AnMed Health by the preceptors. The supervising physician or preceptor will be required to provide comments or additional information.

Nurse Practitioners who are practicing under this Scope of Practice for physician employees will be evaluated yearly by the supervising physician. Nurse Practitioners will be reappointed every two years per process.

The Medical Affairs Department will provide any information from the indicator measurement system that is applicable to individual Nurse Practitioners at the time of review.

Performance issues for all Nurse Practitioners will be addressed concurrently by the supervising physicians and Allied Health Credentialing Committee.

In the event of an adverse recommendation regarding a performance evaluation or continued ability to perform duties the Nurse Practitioner may request a meeting with the Allied Health Credentialing Committee.

The Allied Health Credentialing Committee will forward its recommendation to the Medical Executive Committee, and to the Board of Trustees.

Approved by MEC 03/07/00  
Approved by Board of Trustees 03/27/00

Approved by MEC 06/2012  
Approved by Board of Trustees 06/2012

Reference Document:  
South Carolina Code of Laws, Title 40, Chapter 33, Article 1 Nurse Practice Act.

Reviewed 06/2018

**NURSE PRACTITIONER EMPLOYMENT AGREEMENT**

THIS NURSE PRACTITIONER EMPLOYMENT AGREEMENT ("Agreement"), is made and entered into as of the September 1, 2018, (the "Effective Date"), by and between ICH ER SERVICES, LLC, a South Carolina limited liability company ("Employer"), and Kevin Morton, FNP, an individual duly licensed and credentialed as a nurse practitioner residing in the State of South Carolina ("Employee").

**ARTICLE I  
DEFINITIONS**

- 1.1 "Facility" means, collectively, the following locations (as amended from time to time) where Company and Practitioner have agreed Practitioner shall render medical services pursuant to an agreement between Company and each Facility identified on Exhibit A. Company and Practitioner hereafter may mutually agree to change the Facility(s), and any such change will be accomplished by a written amendment or addendum to this Agreement, signed by or on behalf of Company and Practitioner.
- 1.2 "Licensing State" means the jurisdiction in which the Facility(s) is located.

**ARTICLE II  
EMPLOYMENT; TERM**

Employer hereby employs Employee as a duly licensed, qualified, and credentialed nurse practitioner, and Employee hereby accepts employment as a nurse practitioner upon the terms and conditions hereinafter set forth. The term of this Agreement shall begin on the Effective Date and continue for a period of twelve (12) months thereafter (the "Initial Term"), unless sooner terminated pursuant to Article VI below. At the end of the Initial Term, Employee's term of employment under this Agreement shall be extended automatically for additional, successive twelve (12) month terms thereafter (the "Subsequent Terms"), unless sooner terminated pursuant to Article VI below. The Initial Term and each Subsequent Term shall be referred to collectively as the "Term."

**ARTICLE III  
DUTIES AND RESPONSIBILITIES OF EMPLOYEE**

3.1 Exclusive Services. Employee shall render services as a nurse practitioner solely as an employee of Employer, and, except as hereinafter provided, shall devote his or her entire professional time to the business and practice of Employer during the Term of Employee's employment under this Agreement. Employee agrees not to engage, without the express written consent of Employer, in any professional or business activities that may adversely affect Employee's ability to devote such full-time services to Employer. Employee shall perform all duties hereunder to the best of Employee's ability and shall use his or her best efforts to promote the success of the business of Employer.

3.2 Duties. Employee shall render medical services to patients provided by Employer pursuant to arrangements between Employee and such Supervising Physicians as may be designated by Employer ("Supervising Physicians"). Employee shall perform medical services for Employer's or Supervising Physician's patients as directed by the Supervising Physician, only as delegated or specified herein, and as authorized by the laws, rules and regulations of the Licensing State and Employee's nursing license. Such services may include, but shall not be limited to, providing medical services required under any contractual arrangement by Employer or by Facility with health maintenance organizations or other managed care plans, private or public networks, or others. In addition to providing medical services, Employee shall act in such administrative capacities and participate in such quality assurance and continuing education programs as Employer may require, from time to time. Employee acknowledges that it is essential that Employer meet standards of quality assurance and continuing education established by private contractors and governmental agencies and that Employee's adherence to these standards is an essential part of this Agreement. Without limiting the generality of the foregoing, Employee shall:

3.2.1 Furnish to Employer, faithfully and to the best of his or her knowledge, experience, and skill those services as may be reasonably required of Employee in providing assistance to the Supervising Physician, in accordance with the Supervising Physician's direction and laws of the Licensing State, and otherwise within the scope of Employee's license. It is mutually understood and agreed that the relationship of the parties for the duration and purposes of this Agreement is that of employer-employee and not that of customer and independent contractor or otherwise;

3.2.2 Perform all services required or appropriate in satisfying Employer's or Facility's obligations under fee-for-service and provider agreements;

3.2.3 Participate in informal teaching and learning interactions with health care professionals;

3.2.4 Participate in professional peer review activities as may be mandated by Employer or by Facility. Such activities may include audits of medical records and other sources of data as may be provided by Employer to measure performance against standards provided by Employer, and to measure the effectiveness of procedures and practices;

3.2.5 Maintain patient records that allow audit of performance, and accept review by peers and Supervising Physicians;

3.2.6 Participate in the development and implementation of outcome-oriented methods of quality assurance;

3.2.7 Participate in grievance procedures established by Employer or by Facility in order to promote prompt resolution of grievances and complaints of patients;

3.2.8 Contribute to and comply with all applicable federal and state laws, regulations, policies, guidelines and interpretations, and established policies and procedures for Employer and for Facility;

3.2.9 Serve, as may be requested by Employer from time to time, on committees established by Employer or by Facility for grievance resolution, professional activity review and coordination, and other purposes;

3.2.10 Participate in continuing education programs as necessary to satisfy Employee's licensure, certification, and credentialing requirements as a nurse practitioner; and

3.2.11 Maintain ancillary or advanced practitioner provider membership on the medical staff of Facility as may be approved or required by Employer to fulfill Employee's duties and responsibilities hereunder and abide by the medical staff by-laws and the policies, rule and regulations of Facility.

3.3 Hours. As of the Effective Date, by which time Employee shall obtain the necessary credentials to provide the services hereunder, Employee shall perform his or her duties on such days, during such hours, pursuant to a schedule. In addition, but without compensation in excess of that set forth in Section 4.1 of this Agreement, Employee shall participate in the night, holiday, and weekend schedule established by Employer, as it may be promulgated and amended from time to time.

3.4 Standards of Conduct. Employee shall adhere faithfully to the principles and disciplinary and ethical standards and other applicable requirements of the American Academy of Nurse Practitioners or the American Nurses Credentialing Center, the laws of the Licensing State, the rules, regulations and policies of the nursing and medical regulatory agencies of the Licensing State, and shall avoid all personal acts, habits, and practices that might injure in any way, directly or indirectly, the professional reputation of Employer.

3.5 Assignment and Fees. Employee acknowledges that Employer or Supervising Physician shall have the sole right to designate and assign patients to Employee for treatment. Employer shall have the sole right to determine the fee to be charged for the professional services rendered by Employee hereunder. Further, Employer shall have the final authority of acceptance or refusal of any contracts, agreements or class of persons for whom professional services may be rendered. Employee hereby authorizes and appoints such persons as may be designated by Employer as his or her attorney-in-fact to endorse, by facsimile, electronic mail or otherwise, any and all insurance forms and any and all payments made to Employee from any sources for services rendered to patients of Employer or Supervising Physician by Employee pursuant to the terms of this Agreement. Employee acknowledges and agrees that all remuneration and other benefits earned by Employee from professional activities other than the compensation and benefits described in Article IV herein shall belong to and vest solely in Employer. All fees for services to patients of Employer or Supervising Physician provided by Employee pursuant to this Agreement shall be made payable to Employer and deposited in Employer's business account. In no event shall Employee deposit any payments for services rendered by Employee pursuant to this Agreement in any account other than that of Employer, and Employee shall promptly pay over any such amounts received by Employee to Employer.

3.6 Impaired Employee. Employer has determined that the following may constitute a threat to the health and safety of patients, other employees of Employer and Facility staff: (i) use of illegal drugs; (ii) being under the influence of alcohol or over-the-counter or prescribed drugs (which may impair clinical judgment or ability) while rendering or participating in patient care; or (iii) suffering from certain psychiatric or other medical conditions. Therefore, Employee hereby consents to appropriate tests or evaluations as set forth below:

3.6.1 Employee hereby consents to chemical test(s) of blood, breath, urine and other bodily substances for the purpose of determining alcoholic or other drug content of Employee's system if there is a "reasonable suspicion" (as defined below) that Employee may be using or may be under the influence of alcohol or other drugs while rendering or participating in patient care. For purposes of this Section 3.6, there shall be a rebuttable presumption that the presence of Employee in Facility is in connection with the rendering or participation in patient care.

3.6.2 Employee hereby consents to psychiatric or other medical evaluation if there is a reasonable suspicion that Employee may suffer from a psychiatric or other medical condition that may impair Employee's ability to render or participate in patient care.

3.6.3 For purposes of this Section 3.6, in determining "reasonable suspicion" of substance abuse or psychiatric or other medical, Employer may consider information provided by the medical staff, nursing staff or administrative staff of Facility or the staff of Employer.

3.6.4 In the event testing is to occur pursuant to this Section 3.6, such testing shall be at the request of Employer. The results of any such tests or evaluations and the refusal to consent to testing or evaluation may be communicated to and considered by Employer. Refusal to consent to such testing or evaluation shall constitute grounds for Employee's immediate termination for "cause" in conjunction with Section 6.2.

3.6.5 Nothing in this Section 3.6 shall reduce or lessen the authority of Employer to suspend Employee's services at Facility, which authority to suspend is hereby expressly reserved by Employer, or to terminate this Agreement in accordance with Article VI, particularly including, but not limited to, provisions related to patient care.

**ARTICLE IV  
COMPENSATION AND RELATED MATTERS**

4.1 Compensation. Employee's compensation pursuant to this Agreement is set forth in Exhibit B, as amended from time to time and attached hereto and incorporated by reference herein.

4.2 Removed.

4.3 Qualified Retirement and Other Benefit Plans. Employer may make available to Employee qualified retirement plans and other fringe benefit programs, including life, health, and disability insurance, that exist, at Employer's sole discretion, either now or in the future. Employee shall be fully responsible for paying the premiums for any dependent and spouse health insurance coverage maintained through Employer's health insurance plan to the extent that Employee and Employee's dependent(s) and/or spouse satisfy and maintain eligibility and participation requirements for such plan.

4.4 Professional Liability Insurance. During the Term, Employer shall furnish professional liability insurance, specifically "claims made" insurance, in such amounts and with such types of coverage as shall be determined appropriate by Employer, covering Employee and Employer for Employee's performance of the services as set forth in this Agreement, but not covering any other services that Employee renders during the Term and not covering any services that Employee renders before or subsequent to the Term. At Employer's sole discretion, the amounts and types of coverage may be adjusted from time to time during the Term. Employer shall provide Employee with evidence of such coverage. In the event that Employee's employment is terminated by Employer, Employer shall obtain, maintain and pay all premiums for insurance covering all prior acts performed pursuant to this Agreement ("Tail Coverage") during the Term of this Agreement.

4.5 Removed.

4.6 Total Compensation. Employee agrees that the compensation and benefits provided under this Agreement shall be the only compensation and benefits to which Employee shall be entitled for his or her services hereunder, including services as a committee member, or in any other capacity assigned by the Supervising Physician or by Employer.

4.7 Substantiation of Expenses. Employer shall not reimburse Employee for expenses incurred by Employee in the regular course of providing services hereunder unless such expense reimbursement is approved by Employer in advance and in writing. Such pre-approved expenses will be reimbursed by presenting to Employer an itemized expense voucher. Employee must substantiate all expenses with appropriate receipts and/or documentation before Employer will reimburse or pay for those expenses.

**ARTICLE V  
OUTSIDE INCOME**

Unless otherwise approved by Employer, or specifically provided in this Article V, Employee agrees that all compensation (other than compensation paid to Employee pursuant to Article IV above) relating to professional services rendered by Employee pursuant to this Agreement, shall be and remain the property of Employer, and Employee shall assign all right and interest therein to Employer.

**ARTICLE VI  
TERMINATION**

6.1 Automatic Termination. This Agreement shall be terminated upon occurrence of any of the following circumstances:

6.1.1 Death. Employee's employment under this Agreement shall terminate immediately upon his or her death.

6.1.2 Disability. Employee's employment under this Agreement shall terminate immediately upon the determination by Employer that Employee has suffered a disability that renders Employee unable to perform Employee's duties hereunder as certified by a physician approved by Employer.

6.2 Termination for Cause. Employer may terminate Employee's employment immediately under this Agreement for cause and without prior notice if any of the following events occur: (i) Employee is found guilty of professional misconduct by any professional organization having jurisdiction over Employee; (ii) Employee's license or certification to provide services hereunder as a nurse practitioner expires or such license is revoked, terminated, limited, conditioned, or restricted in any way (other than on account of temporary administrative matters); (iii) Employee is charged with a felony crime or any crime involving moral turpitude such as fraud, theft, embezzlement, or the like; (iv) Employee shall commit any act that Employer determines may cause material harm to Employer or patients at Facility; (v) Employee breaches or fails or refuses to perform or fulfill any of Employee's duties, obligations, or covenants under this Agreement, which breach is not cured within five (5) days of Employee's receipt of notice of such breach from Employer; (vi) Employee ceases to be covered by a policy of professional liability insurance maintained by Employer (other than as a result of Employer's failure to pay the premium for such policy); (vii) Employee has made a material misrepresentation or omission regarding his or her education or training to Employer or any other party whatsoever; (viii) Employee commits or omits an act that may affect the ability of Employer or Facility to contract with or obtain payment or reimbursement for Employee's services from any H.M.O., P.P.O., or similar provider, on other than a temporary basis; (ix) Employee is excluded, terminated, suspended, or restricted from participating as a provider in the federal Medicare, any state Medicaid, or any other governmental program that provides compensation for services

rendered to patients participating in any federal or state health care program; (x) Employee commits or omits an act which may adversely affect Employer's or Facility's status as a provider under Medicare, Medicaid, or any other governmental program providing compensation for services rendered to patients; (xi) Employee engages in any act that materially interferes with or potentially jeopardizes Employer's business relationships with Facility, other physicians, personnel, hospitals, managed care entities, or other business corporations; (xii) Employee breaches any warranty contained in Article IX or the provisions contained in Article X herein; or (xiii) Employee repeatedly fails to exercise reasonable skill and care in the delivery of patient care, in Employer's sole discretion.

6.3 Termination Without Cause. Either party may terminate this Agreement without cause upon not less than ninety (90) days prior written notice to the other party, which notice shall not be prior to the Effective Date of this Agreement and shall specify the date of such termination.

6.4 Effect of Termination. In the event of any termination of this Agreement by either party Employer shall be liable to Employee only for accrued compensation described in Article IV herein, if any, to the effective date of termination of employment, provided that Employee continues to fulfill his or her duties and obligations under this Agreement from the date that notice of termination is given by either party until the effective date of such termination. Notwithstanding the foregoing, the parties acknowledge and agree that Employer may offset any obligations or liabilities owed by Employee to Employer through the effective date of such termination against any amounts due to Employee by Employer, including any compensation or bonus that may be owed to Employee. Employer shall retain the right to terminate Employee effective immediately in the event a "with cause" circumstance arises during any "without cause" notice period, which shall relieve Employer of any further obligations to pay Employee any compensation beyond that which accrued prior to the effective date of the "with cause" termination. Employer shall also retain the right to terminate Employee at any time during the notice period of a "without cause" termination, provided Employer shall pay Employee all compensation owed through the end of the notice period. In the event of termination of Employee's employment pursuant to Section 6.2, Employee shall not be entitled to any bonus described in Section 4.1 during the year of such termination.

#### **ARTICLE VII CONFIDENTIALITY**

7.1 Proprietary Information. Employee acknowledges that Employer considers confidential much information that will be made available to Employee for purposes of performing Employee's duties and obligations under this Agreement. Employee shall not, without the prior written consent of Employer, disclose any information designated confidential by Employer or otherwise known by Employee to be considered confidential by Employer. Employee agrees that any information designated confidential by Employer or otherwise known by Employee to be considered confidential by Employer shall remain the sole and exclusive property of Employer, and in no event shall Employee, as such, acquire any interest therein, or right to use the same without the prior written consent of Employer. Information generally considered confidential shall include, without limitation: patient accounts, patient lists, patient files, copyrighted items, trade secrets, business assets, medical records, processes, machines, technical documentation, computer programs, business plans, marketing plans, programs and techniques, pricing data, financial data, financial institution files, technical expertise and know how, tangible or intangible items which Employee works on or develops during the Term, records from "medical review committees" and "review organizations," as such terms or similar terms are defined under the laws of the Licensing State, and individually identifiable health information or other "protected health information" ("PHI") as defined under and governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinic Health Act ("HITECH") and any current and future regulations promulgated thereunder, (hereinafter, collectively referred to as "Confidential Information").

7.2 Use and Return of Confidential Information. Employee will receive Confidential Information in confidence and will use, copy and disclose such Confidential Information only to the extent needed in connection with the services provided pursuant to this Agreement. Employee agrees that Employee will protect Confidential Information from unauthorized use, reproduction and disclosure and will not disclose Confidential Information to any person outside Facility, or to any person within Facility not having a need to know for the purposes of this Agreement. Employee will take appropriate action for the protection, safekeeping, and restricted use, reproduction, and disclosure of Confidential Information received under or pursuant to this Agreement. Employee will return within three (3) days to Employer the originals and all copies (in whatever form) of Confidential Information as are in Employee's possession or under Employee's control (in whatever form), upon receipt of a request from Employer.

7.3 Period of Protection. Confidential Information received hereunder or pursuant hereto shall be protected by Employee as required by this Agreement during the Term and for a period of four (4) years thereafter; provided that PHI shall be protected by Employee for as long as required by HIPAA, HITECH and other applicable law. Employee shall at all times maintain the terms and conditions of this Agreement in confidence and shall not disclose such terms and conditions to any person other than Employee's legal, financial and tax advisors, or as required by applicable law.

#### **ARTICLE VIII EQUITABLE RELIEF AND INDEMNIFICATION**

8.1 Damages. If Employee breaches this Agreement, Employee agrees that: (a) Employer would suffer irreparable harm; (b) it would be difficult to determine damages, and money damages alone would be an inadequate remedy for the injuries suffered by Employer; and (c) if Employer seeks injunctive relief to enforce this Agreement, Employee will waive and will not (i) assert any defense that Employer has an adequate remedy at law with respect to the breach, (ii) require that Employer submit proof of the economic value of any Trade Secret or Confidential Information, or (iii) require Employer to post a bond or any other security. Nothing contained in this Agreement shall limit Employer's right to any other remedies at law or in equity.

8.2 Indemnification. Employee hereby agrees to indemnify and defend Employer from any and all debts, penalties, rights, claims, controversies, demands, damages (whether direct, consequential, compensatory, exemplary, liquidated or unliquidated), judgments, actions, suits, proceedings, and causes of action brought by any third party and of any nature whatsoever, including reasonable attorney's fees incurred by Employer in defense of the same, whether known or unknown, direct or indirect, whether in law or in equity, which arise out of the breach of Employee's duties and obligations under this Agreement.

8.3 Litigation Assistance. Employee agrees that following the voluntary termination of his or her employment hereunder, regardless of the reason for or manner of such termination, other than death or disability that prevents his or her cooperation, Employee shall, upon reasonable notice, furnish such information and give such assistance to Employer in any controversy or matter involving pending or threatened litigation as may reasonably be requested by Employer. Employer shall compensate Employee for all reasonable out-of-pocket expenses incurred while so assisting Employer. Employee is not obligated to assist in any controversy or litigation between Employer and Employee.

**ARTICLE IX  
ADDITIONAL WARRANTIES AND REPRESENTATIONS OF EMPLOYEE**

9.1 Warranties. Employee represents and warrants that as of the Effective Date and during the Term of this Agreement: (i) Employee is certified as a nurse practitioner by either the American Academy of Nurse Practitioners or the American Nurses Credentialing Center; (ii) Employee is licensed as a registered professional nurse and is authorized to practice as a nurse practitioner by the Licensing State; (iii) Employee has not been the subject of a medical malpractice action or claim within the last five (5) years; (iv) the undertaking of employment by Employee with Employer under this Agreement will not constitute a breach of any agreement to which Employee is a party or any obligation to which Employee is bound; (v) Employee has no obligation to others that is inconsistent with Employee's obligations under this Agreement; (vi) Employee's certification or licensure as a nurse practitioner has never been suspended or revoked; (vii) Employee has never been reprimanded, sanctioned, or disciplined by the nursing licensing agency of the Licensing State or any other licensing agency or state or local medical society or specialty society; (viii) Employee's provider status under the Medicare, Medicaid, or any other government program has never been revoked, terminated, limited, conditioned, suspended, or voluntarily relinquished while under investigation or threat of disciplinary action, restricted in any way or not renewed; (ix) Employee has never been subjected to any type of criminal or civil sanction, fine, civil money penalty, debarment, or other penalty by a private or public health insurance program, including, but not limited to, Medicare, Medicaid, or any other federal or state health insurance program; (x) Employee has never been, and is not currently, under investigation for suspected health care fraud or abuse or violation of any other state or federal law or regulation; (xi) Employee has never been accused, convicted, or entered a plea of guilty or no contest to a felony crime or any other act involving moral turpitude, such as fraud, theft, embezzlement, or the like; and (xii) Employee is in compliance with all applicable federal and state laws, regulations, policies, guidelines, and interpretations and all policies and procedures of Employer.

9.2 Patient Records. All case records, case histories, x-rays, accounts receivable cards, computer printouts, computer tapes, computer diskettes, electronic media, patient lists, and all other professional, medical, or financial information regarding patients of Employer or Supervising Physician, whether or not primarily consulted, interviewed, or treated and cared for by Employee, shall belong to and remain the property of Employer.

9.3 Non-Disparagement/Defamation. During Employee's employment with Employer and for two (2) years after Employee's employment with Employer ends, Employee will not make any disparaging statements, whether written or verbal, regarding Employer. During Employee's employment with Employer and at any time after Employee's employment with Employer ends, Employee will not make any defamatory statements, whether written or verbal, regarding Employer. Upon termination of this Agreement, in response to inquiries concerning Employee's employment, Employer will disclose only Employee's dates of employment and job titles.

**ARTICLE X  
RESTRICTIVE COVENANTS**

10.1 Non-Solicitation of Employees. Employee agrees, during the Term of this Agreement and for a period of one (1) year following the termination of this Agreement (for any reason and with or without cause), not to recruit actively, engage in passive hiring efforts, solicit or induce, directly or indirectly, any employee or contractor of Employer to leave or terminate his or her employment or association with Employer.

10.2 Non-Competition. Removed.

**ARTICLE XI  
GENERAL PROVISIONS**

11.1 Assignment. This Agreement is personal in nature and may not be assigned by either Employer or Employee without the express written consent of the other party; provided, however, that the provisions of this Agreement shall, regardless of whether Employee consents, inure to the benefit and be binding upon any successor in interest of Employer whether by merger, consolidation, transfer of all or substantially all of its assets or otherwise.

11.2 Severability. If any term, provision or condition of this Agreement is held by a court of competent jurisdiction or arbitrator to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated as a result of such decision.

11.3 Governing Law. This Agreement has been entered into and shall be governed by the laws of the State of Georgia.

11.4 Consent to Jurisdiction and Venue. Employee hereby consents to the sole and exclusive jurisdiction and venue of the courts of Fulton County, Georgia or the U.S. District Court for the Northern District of Georgia, Atlanta Division, for adjudication of all disputes between Employer and Employee. Employee hereby waives any objections or defenses to jurisdiction or venue in any such proceeding before such courts.

11.5 Captions. The captions set forth in this Agreement are for convenience or reference only and are not to be used in interpreting this Agreement.

11.6 Survival. Notwithstanding the termination or expiration of this Agreement, both of the parties acknowledge that various terms in this Agreement shall survive such termination or expiration.

11.7 Notices. All notices shall be in writing and will be deemed to have been duly provided if delivered personally or if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, properly addressed as follows:

If to Employer:

ICHER SERVICES, LLC  
318 Maxwell Street  
Alpharetta, Georgia 30009  
Attention: Dan Fuller

If to Employee:

The address set forth after Employee's signature below

Each such mailed notice shall be deemed to have been received by, or served upon, the party to which addressed on the third (3<sup>rd</sup>) business day following the date the same is deposited in United States registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner provided above. Any party thereto may change its address for the service of notice hereunder by delivering written notice of said change to the other party hereunder, in the manner provided above, at least ten (10) days prior to the effective date of such change.

11.8 Waiver of Breach. The failure or delay of either party to insist upon compliance of any provision hereof will not operate as, and shall not be construed as, a waiver of any subsequent breach, irrespective of whether such breach occurs under similar or dissimilar circumstances.

11.9 Entire Agreement. This Agreement, including all attachments and exhibits, constitutes the sole and entire arrangement between Employer and Employee and may be modified only by a written amendment or addendum to this Agreement, signed by or on behalf of Employer and Employee. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.

11.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.


11.11 Relationship Between the Parties. Employee has no authority to enter into any contract binding Employer or to create any obligation on behalf of Employer without written authorization from Employer.

11.12 Attachments and Exhibits. All Attachments and Exhibits to this Agreement are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

**Employer:**

ICH ER SERVICES, LLC

By:  \_\_\_\_\_  
Dan Fuller  
President  
8/6/2018 | 3:21 PM EDT  
Date: \_\_\_\_\_

**Employee:**

 \_\_\_\_\_  
Signature

Name Print: Kevin Morton, FNP

Address: 138 Durham Rd

Abbeville SC 29620

8/6/2018 | 3:06 PM EDT  
Date: \_\_\_\_\_

ELECTRONICALLY FILED - 2021 Jul 13 6:16 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0400470

Exhibit A

"Facility" includes the following locations as amended from time to time:

<u>Facility</u>	<u>Licensing State</u>
<b>AnMed Health Medical Center</b> 800 North Fant Street Anderson, SC 29621	<b>South Carolina</b>

**EXHIBIT B**  
Compensation Terms

Program Name: **AnMed Health Medical Center**

Effective Date: September 1, 2018

Pay Rate per Hour: \$ 65.00

Night Differential (10pm – 7am): \$ 15.00 per Hour

Schedule Expectation: 125 Hours per Month

Licensure and CE Allowance: Annual reimbursement of not to exceed \$1,000 per year, any unused Allowance can be carried forward for two (2) years. Expenses must be related to Employee's employment with Employer and be for licensure and/or continuing education expenses. Expenses must be pre-approved and submitted for reimbursement in writing with supporting documentation and receipts.

ELECTRONICALLY FILED - 2021 Jul 13 6:16 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0400470

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore, Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN, Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

**SUPPLEMENTAL  
MEMORANDUM IN SUPPORT  
OF  
MOTION TO DISMISS  
FOR ABSENT AFFIDAVIT**

**BY  
DEFENDANTS KEVIN MORTON, NP  
AND AEA**

**Facts:**

This Motion to Dismiss asserts the NOIS affidavit by Nurse High fails to comply with statutory requirements and, as a result, no legal affidavit was filed as required by law. Although admitting an affidavit is required prior to filing suit, the Plaintiff now contends that an affidavit by Dr. Michael Chansky, signed and submitted 157 days after the filing of the NOIS, “cures” any “defect” in the affidavit (by Nurse High) filed contemporaneous with the NOIS. *No amended or supplemental affidavit by Nurse High has been filed.* Instead, only a new affidavit by Dr. Chansky. There are six facts about this new defense:

1. **July 18, 2020:** The affidavit by Nurse Richard High, the subject of this motion, was executed and notarized on July 18, 2020. (See Exhibit A.)
2. **November 5, 2020:** However, the Notice of Intent to Sue was not filed until November 5, 2020---or 110 days after the High affidavit had been executed. In other words, the Plaintiff had the High affidavit for 110 days prior to filing the Notice.
3. **March 6, 2021:** The lawsuit was filed on March 6, 2021, or 101 days after the NOIS filing and 221 days after getting the High affidavit. The only affidavit filed contemporaneously with the NOIS was the July 18<sup>th</sup>, 2020 High affidavit.
4. **February 4, 2021:** The Statute of Limitations expired in this case on February 4, 2021 (or 202 days after the execution of the High affidavit).
5. **April 13, 2021:** The Answer by these Defendant (NP Morton and AEA) with this Motion to Dismiss was served on April 13, 2021.
6. **April 21, 2021:** Thereafter, a second affidavit, by Dr. Michael Chansky, was filed April 21, 2021 (see Exhibit B), which is:
  - a. 267 days after the execution of the High affidavit,
  - b. 157 days after the Notice of Intent to Sue,
  - c. 46 days after the lawsuit itself was filed, and
  - d. 7 days after this Motion to Dismiss by these Defendants.

### Issue

Is there any exception to the general rule (i.e., the requirement of a contemporaneous affidavit) to allow the filing of a *new* affidavit 157 days after the filing of the NOIS and 46 days after filing the lawsuit in an attempt to completely replace in full an earlier unlawful and accordingly an absent affidavit?

### Discussion

**1. The two affidavits: High and Chansky:** The Plaintiff has filed two affidavits. The first affidavit by Nurse High (Exhibit A) accompanied the NOIS. The second affidavit by Dr. Chansky (Exhibit B) was filed over five months after the NOIS. The Plaintiff contends that the Chansky affidavit “cures” any “defect” in the High affidavit. The High affidavit perhaps could be categorized as a “defect”, but it is much more. The affidavit is illegal against these Defendants in the most conventional sense of the word—it is contrary to requirements of the law. In specific, the affidavit, *on its face*, fails to meet two threshold legal requisites:

a. First, it is admittedly the testimony by a nurse (RN) as to the standard of care for the practice of medicine by a nurse partitioner (NP), of which the same nurse is prohibited by law to practice, perform or provide sworn testimony regarding these medical acts in civil medical malpractice cases. See Medical Practice Act, at § 40-47-20, *et seq.* and Nursing Practice Act at S.C. Code Section 44-33-20, *et seq.* The crucial fact is that, simply put, Nurse High cannot be an “expert” against a nurse practitioner as a matter of law.

b. Second, the affidavit also fails to name any party other than AnMed and AnMed practices. It does not name Kevin Morton or AEA. Instead, it states that deviations of the standard of care were committed by “agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department”. (Paragraphs 4). In other words, it alleges deviations by the entire AnMed employment—regardless of if doctor, nurse practitioner, nurse, or clinical support and each with their own SOC.

Accordingly, the affidavit is not just defective, but unlawful in that, on its face, it fails to conform to the law. Nurse High is not an “expert”. Our Supreme Court has been clear that a purpose of the NOIS statute, in part, is to discourage frivolous claims and the affidavit requirement is not “meaningless” in serving this purpose. *Ross vs. Waccamaw Community Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013), see also, *Ranucci v Crain*, 409 S.C. 493, 763 S.E.2d 189 (S.C. 2014). There is no dispute that the expert affidavit requirement is part of the design to provide health care providers with that protection. However, how can a frivolous claim be prevented if the Court allows unlicensed and unqualified individuals to file an affidavit as to medical acts to which the affiant is prohibited by law to practice? This is not a defected affidavit but an affidavit contrary to the law.<sup>1</sup>

<sup>1</sup> The fact that the nurse was recognized by all the parties as unqualified to testify as to medical acts is established by the Plaintiff comment in his Motion to Quash filed in Tennessee where he said: “Counsel for the Defendant is an experienced medical malpractice defense attorney defending medical malpractice claims for over 30 years. He knows full well that nurses do not have medical license and are (not) allowed to give medical orders beyond their scope of practice.” (Page 3)

**2. This statutory framework for NOIS affidavits:** The requirements for a NOIS affidavit are provided in the two governing statutes, Section 15-79-125 and 15-36-100. The two statutes are in *pari materia* and must be construed together. *Ranucci v Crain, Id.* Notably, no amended or supplemental affidavit by Nurse High has been filed. Instead, only a new affidavit by Dr. Chansky filed over 5 months after the NOIS. The two statutory provisions are:

**a. The General Rule: contemporaneous affidavit required Section 15-79-125 (A)** specifically requires a “*contemporaneous filing*” of an affidavit in support of NOIS:

“(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”. **Section 15-79-125 (A), emphasis provided.**

**b. Two exceptions:** There is equally no dispute that the statutes provide only two exceptions to this general rule—otherwise the general rule governs:

**1. The “Safe Harbor” exception- Section 15-36-100 (C) (1):** The Legislature provided *one, and only one, exception* to general rule requiring a contemporaneous filing to allow a filing of a new or second *after* the NOIS—known as “safe harbor” provision—and applicable only in a certain set of cases under statute of limitation time constraints. Section 15-36-100 (C) (1) reads:

“(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), *SRCP.*” **Sec 5-36-10 ( C) (1), emphasis provided.**

This sub-section (C) is the only exception to the general rule requiring a contemporaneous filing of the expert affidavit. It is the only provision allowing a filing of any new or different affidavit after the NOIS--be it the first or a subsequent new affidavit. The Legislature exclusively limited the safe harbor provision to one specific class of medical malpractice suits—*those actions filed within ten days prior to the expiration of the Statute of Limitations*. Here, the NOIS was filed on November 5, 2020, which was three months *prior* to the expiration of the Statute of Limitations on February 4, 2021. In addition, to avail of this safe harbor, the Plaintiff must file an affidavit as to why a contemporaneous expert affidavit could not be obtained. In this case, the Plaintiff could not because he had the High affidavit *seven months* prior to expiration of the Statute of Limitations.

**2. Amended affidavit exception:** The only other modification to the general rule is in Section 15-36-100 (E). This statute is not a true exception to the general rule and does not allow for a new affidavit to be filed after the NOIS. Instead, it only allows for an “*amendment*” to the initial properly filed contemporaneous affidavit. This is not the case here, where a new affidavit, not an amendment to the existing affidavit, has been filed. The statute reads:

“(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.” Section 15-36-100(E), *emphasis provided*.

As a result, this sub-section (E) requires the showing of two elements:

1. That the second affidavit must address a “defect” in the first affidavit. The High affidavit here in more than defected. It is illegal because it is by an individual that is prohibited by law to practice or provide sworn testimony regarding these medical acts. Mr. High cannot be an expert, and, as a result, there is no affidavit.
2. That the second affidavit must be an “amendment”. In other words, by the same expert correcting an error in the first affidavit—not this case. In fact, Nurse High cannot file an amendment in this case because he is not qualified to do so. If High filed an amendment, he would still be unqualified.

Most importantly, the purpose of the statute is, in part, the protection to the professional against frivolous suits. *Ross vs Waccamaw Hosp., supra*. To allow the Plaintiff to file a second affidavit by a separate purported expert would effectively write out the requirement of a legal contemporaneous affidavit. It would be particularly injurious, if a plaintiff could effectively toll the Statute of Limitations by obtaining an unlawful affidavit six months prior to the expiration of the Statute and then file a new affidavit two months after the Statute had run.

**Conclusion:**

There are only two exceptions to the general rule requiring a contemporaneous filing of an expert affidavit: the safe harbor provision in Section 15-36-100 (C) and the amendment provision in Section 15-36-100 (C). Neither apply in this case. As a result, the Plaintiff was required to file a legally sufficient affidavit in conformity with the law and has failed to do so. The complaint should be dismissed against these Defendants.

S/ HW Paschal  
H. W. Pat Paschal, Jr. S. C. Bar #4350  
644 E. Washington Street  
Greenville, South Carolina 29601  
Attorney for Defendant

July 21, 2021

Certificate of Service

I certify that I served this Memorandum on the counsel for the Plaintiff by email at jaywright@mcgowanhood.com on July 21, 2021.

S/HW Paschal

**AFFIAVIT of RICHARD KEVIN HIGH, RN, EMT, CEN, ACLS**

**PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED,  
BEING DULY SWORN, AND SAYS AS FOLLOWS:**

1. I am a practicing emergency nurse. My clinical practice involves treating all types of patients in a busy ER setting as well as bedside, clinical and didactic teaching of nurses, clinical staff, residents, fellows and faculty the proper work up for emergency medicine patients. I am board certified by the Board of Certification for Emergency Nursing. 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 expected care that should have been rendered to Douglas Williford in this case.

2. My medical practice is primarily in Nashville, TN. I have been practicing Emergency Nursing for over 30 years.

3. I have reviewed the medical records of Douglas Williford, which consisted in part of records from AnMed Health, Anderson County Coroner's Office, and AnMed Family Medicine. The records I have reviewed are the type documents, which I would consider in rendering an expert medical opinion in this case.

4. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department committed negligent acts or omissions in their care and treatment of Douglas Williford. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:

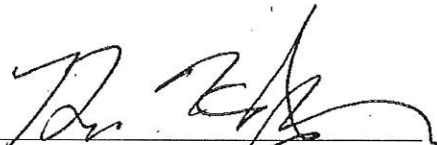
- Inappropriate triage;
- Inadequate workup;
- Failure to do repeat vitals;
- Failure to do repeat pain;
- Failure to obtain / record vitals prior to discharge;
- Failure to obtain further imaging prior to discharge;
- Inappropriate discharge

**Exhibit A**  
**To Supp Memo**

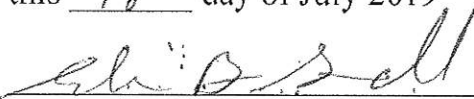
5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department caused or contributed to the injuries, damage, pain and suffering and premature death of Mr. Williford.

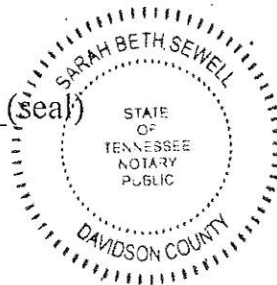
6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of AnMed Health and/or private practices staffing the AnMed Health Emergency Department at this time are the medical records of Douglas Williford.

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
\_\_\_\_\_  
RICHARD KEVIN HIGH

Sworn to and signed before me  
this 18 day of July 2019

  
\_\_\_\_\_  
Notary Public in and for



County of Anderson  
State of Tennessee

Commission Exp: July 1, 2022

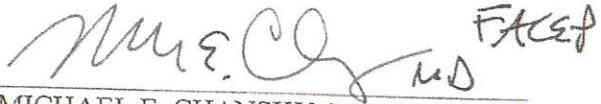
**AFFIAVIT of MICHAEL E. CHANSKY, M.D., F.A.C.E.P, F.A.A.E.M.**

**PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, AND SAYS AS FOLLOWS:**

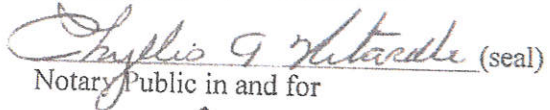
1. I am a practicing emergency physician. My clinical practice involves treating all types of patients in a busy ER setting as well as teaching resident physicians the proper work up for emergency medicine patients. I work closely with and supervise advanced practice providers, (PA's and APN's). I am board certified by the American Board of Emergency Medicine. 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 expected care that should have been rendered to Douglas Williford in this case.
2. My medical practice is primarily in Camden, New Jersey. I have been practicing Emergency Medicine for more than 30 years.
3. I have reviewed the medical records of Douglas Williford, which consisted in part of records from AnMed Health, Anderson County Coroner's Office, and AnMed Health Family Medicine Center. The records I have reviewed are the type documents, which I would consider in rendering an expert medical opinion in this case.
4. It is my opinion, within a reasonable degree of medical certainty, that agents, and/or employees of Anderson Emergency Associates, P.A. and Kevin Morton, N.P. committed negligent acts or omissions in their care and treatment of Douglas Williford. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents or employees of the Defendants are as follows:
  - Inappropriate triage;
  - Failure to address severe high blood pressure and tachycardia;
  - Failure to perform repeat vital signs;
  - Failure to address and properly work up severe hypertension and tachycardia in the setting of a MVA and left upper thoracic back pain;
  - Failure to obtain appropriate imaging prior to discharge;
  - Inappropriate discharge
5. It is my opinion, within a reasonable degree of medical certainty that the deviations from the standard of care by agents, and/or employees of Anderson Emergency Associates, P.A., Kevin Morton, N.P., and/or agents or employees of AnMed Health caused or contributed to the injuries, damage, pain and suffering and ultimately caused and/or contributed to Mr. Williford's death.
6. The factual basis for my opinion about the breaches of the standard of care by agents, and/or employees of Anderson Emergency Associates, P.A. and Kevin Morton, N.P. at this time are the medical records of Douglas Williford.

**Exhibit B**  
**To Supp Memo**

7. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

  
MICHAEL E. CHANSKY, M.D., F.A.C.E.P.

Sworn to and signed before me  
this 21<sup>st</sup> day of April 2021

 (seal)  
Notary Public in and for

County of Camden  
State of New Jersey

Phyllis A. Vitarelli  
NOTARY PUBLIC OF NEW JERSEY  
ID # 50003675  
My Commission Expires 10/10/2024

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

***PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS***

**TO: Defendants and their attorneys.**

Plaintiffs respectfully submit this memorandum of law in opposition to Defendants Motion to Dismiss. Defendant's motion should be denied because (1) the three year statute of limitations was tolled due to Defendants failure to object to the sufficiency of Nurse High's affidavit when it was filed as part of the Notice of Intent to File Suit, (2) Plaintiffs have complied with the express requirements of S.C. Code §15-79-125 and §15-36-100(A), (3) if Plaintiffs original affidavit was defective, then Plaintiffs complied with §15-36-100(E) which allows amendment of an alleged defective affidavit within 30 days, and (4) Plaintiffs case is not "frivolous" as evidenced by the fact that they have obtained the affidavit of an expert emergency room doctor.

**BACKGROUND**

Plaintiffs filed a Notice of Intent to File Suit on November 5, 2020. The case was assigned the case number 2020NI0400020. S.C. Code §15-79-125 requires the filing of an affidavit of an expert witness "***subject to the affidavit requirements of §15-36-100***" as part of the requirements for filing the Notice of Intent to File Suit. Subject to §15-79-125(A), "filing the Notice of Intent

to File Suit *tolls all applicable statutes of limitations*". During the following four months, Defendant AEA / Morton make no accusation that the affidavit filed with the Notice of Intent was insufficient and proceeded with participating in the pre-suit mediation on March 4, 2021 without objection. The proof of ADR was subsequently filed on March 22, 2021 and the Walker v. Anmed et al Case No: 2020NI0400020 was closed.

Subsequently, Plaintiffs filed the Summons and Complaint on March 6, 2021 using the same affidavit as was used when filing the prior Notice of Intent to File Suit. Defendant first raised the issue of a defective affidavit in their Answer submitted on April 13, 2021. Pursuant to §15-36-100(E), Plaintiffs then amended the alleged affidavit to replace Kevin High, RN with Michael Chansky, MD on April 21, 2021.

### **LEGAL STANDARD**

“Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below.” Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). Statutes in derogation of the common law are to be strictly construed. Epstein v. Coastal Timber Co., 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011). “Under this rule, a statute restricting the common law will ‘not be extended beyond the clear intent of the legislature.’ ” Grier, 397 S.C. at 536, 725 S.E.2d at 696 (quoting Crosby v. Glasscock Trucking Co., 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) ). Statutes limiting a claimant's right to bring suit are subject to this rule. Id. In Grier, this Court reviewed subsection (B) of 15-36-100 and found the statute restricted a plaintiff's common law right to bring a malpractice claim, requiring the Court to strictly construe the statute's requirements. 397 S.C. at 538, 725 S.E.2d at 697. Prior to initiating a medical malpractice action, section 15-79-125(A) requires a plaintiff to contemporaneously file a supporting affidavit from an expert witness in compliance with section

15-36-100. Specifically, §15-36-100(A)(3) provides that an “expert witness” includes individuals that have 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.

### ARGUMENT

**1. The three year statute of limitations was tolled due to Defendants failure to object to the sufficiency of Nurse High’s affidavit when it was filed as part of the Notice of Intent to File Suit.**

As noted above, Plaintiffs first submitted the affidavit of Nurse High in conjunction with the Notice of Intent filed on November 5, 2020. Pursuant to S.C. Code §15-79-125 the same affidavit requirements are required at the point of filing the Notice of Intent as are imposed when filing a Summons and Complaint. Defendant AEA / Morton made no objection to the sufficiency of Nurse High’s affidavit as it pertained to the Notice of Intent and proceeded in participating in the pre-suit mediation without ever raising the objection of the insufficiency of Nurse High’s affidavit.

Subject to §15-79-125(A), “filing the Notice of Intent to File Suit *tolls all applicable statutes of limitations*”. As such, even if Plaintiffs were to agree *in arguendo* that Nurse High’s affidavit was defective, the Motion to Dismiss should be denied because the applicable three year statute of limitations would have been tolled. Once the Notice of Intent was filed without objection any applicable statute of limitation was tolled and the only time bar to any future filings would be the six year statute of repose which would not run until January 18, 2024. Plaintiffs subsequently filed an amended affidavit naming Michael Chansky, MD as the expert witness on April 21, 2021. It is undeniable that Dr. Chansky would meet any and all affidavit requirements and that his affidavit was filed prior to January 18, 2024.

As such, Defendants AEA / Morton's Motion to Dismiss should be denied because they filed to raise any contemporaneous objection to the sufficiency of the affidavit at the time of the filing of the Notice of Intent to File Suit that tolled any applicable statute of limitations and Plaintiffs have inarguably filed a sufficient affidavit within the timeframe of the six year statute of repose.

**2. Plaintiffs have complied with the express requirements of S.C. Code § 15-79-125 and §15-36-100(A).**

Even if the Court were to disagree that the applicable timeframe to file the Summons and Complaint (and sufficient affidavits) does not run until January 2024 and has already passed, the Motion to Dismiss should be denied because Plaintiffs have complied with the affidavit requirements of §15-79-125 and §15-36-100(A). Nowhere does either statute set forth a requirement that the expert affidavit be from an expert in the same field / specialty as Defendants. In fact, Defendant AEA / Morton even makes reference to a specific case – Eades vs. Palmetto Cardiovascular and Thoracic, 422 S.C. 196, 810 S.E.2d 848 (S.C. 2018) – wherein the Court found that a medical professional's affidavit was not barred simply because he was not of the same specialty as the Defendant.

Specifically, §15-36-100(A)(3) provides that an “expert witness” includes individuals that have 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. Looking at Nurse High's affidavit, it is readily apparent that he has extensive personal experience, training, and education in emergency medicine. (***See attached hereto Kevin High, RN's affidavit as “Exhibit 1”***) In fact, Nurse High is an Associate Professor ***in Emergency Medicine*** at the Vanderbilt School of Medicine. *See Id.* at pg. 4. Nurse High not only has extensive experience in emergency medicine going back to the late 1980s, but he also

teaches emergency medicine at the Vanderbilt School of Medicine. As such, Nurse High is extensively qualified to offer expert testimony opinions as to the appropriate care and treatment that Mr. Williford should have received while in the emergency department that would have prevented his premature death and his affidavit is not defective merely because he does not have an MD or NP behind his name.

Therefore, Defendants AEA / Morton's Motion to Dismiss should be denied because Kevin High, RN's affidavit complies with §15-36-100(A)(3) and Plaintiffs, therefore, have met the requirements of both §15-36-100 and §15-79-125.

**3. If Plaintiffs original affidavit was defective, then Plaintiffs complied with §15-36-100(E).**

Even if the Court were to disagree that the applicable timeframe to file the Summons and Complaint (and sufficient affidavits) does not run until January 2024 and that Nurse High's affidavit complies with the affidavit requirements of § 15-79-125 and §15-36-100(A), the Motion to Dismiss should still be denied because Plaintiffs have complied with the requirements of §15-36-100(E).

Pursuant to §15-36-100(E), in situations where an affidavit filed with a medical malpractice complaint or Notice of Intent is alleged to be defective (as in this case), Plaintiffs have the express ability to amend the affidavit to cure any alleged defect within 30 days. Specifically, §15-36-100(E) explicitly sets forth that if a Defendant alleges Plaintiffs' affidavit is defective, then "the plaintiff *may cure the alleged defect* by amendment within thirty days of service of the motion alleging that the affidavit is defective."

In the present case, it is undisputed that Defendant AEA / Morton first raised the allegation of Nurse High's affidavit being defective on April 13, 2021. It is also undisputed that Plaintiff amended the affidavit within the 30 day time limit substituting Michael Chanksy, MD in for Kevin

High, RN on April 21, 2021. Defendant makes no argument that the amended affidavit naming Michael Chansky, MD as the expert witness is insufficient. Rather, Defendant AEA / Morton attempts to couch the amended affidavit as a “new” affidavit rather than an “amended” affidavit. Simply put, §15-36-100(E) puts no restrictions on the types of amendments that can be used to cure an alleged defect. As such, there is no prohibition in §15-36-100(E) preventing the amendment of the affiant if that is what the Defendant is alleging is defective. As noted above, statutes limiting a claimant's right to bring suit are to be strictly construed.

Therefore, Plaintiffs have properly amended the affidavit within 30 days of the allegation of the defect pursuant to §15-36-100(E) and Defendants motion to dismiss should be denied.

**4. Plaintiffs case is not “frivolous” as evidenced by the fact that they have obtained the affidavit of an expert emergency room doctor**

Defendants AEA / Morton point out that the entire point of the affidavit requirements is to discourage frivolous claims. (*See* Def Supp. Memo in Support pg. 2 ¶5). This case involves a medical malpractice claim wherein a man died because his aortic aneurysm was not diagnosed when he came the emergency room. Nurse Morton has even admitted in deposition that the aneurysm that would later rupture causing Mr. Williford’s death was on his differential diagnosis, would have been present at the ER visit, could have been identified with proper imaging studies, but that he chose not to order the imaging studies even though aortic aneurysm was still on his differential. Additionally, Plaintiffs have submitted two affidavits from medical experts both affirming that Mr. Williford received substandard emergency treatment and that the inappropriate treatment caused Mr. Williford’s death. Simply put, this is not a frivolous case and is a case that should go to a jury to decide the potential fault of the parties based on the merits of the case.

**CONCLUSION**

For the reasons set forth above, Plaintiffs pray that the Court would find that (1) the three year statute of limitations was tolled due to Defendants failure to object to the sufficiency of Nurse High’s affidavit when it was filed as part of the Notice of Intent to File Suit, (2) Plaintiffs have complied with the express requirements of S.C. Code §15-79-125 and §15-36-100(A), (3) even if Plaintiffs original affidavit was defective, then Plaintiffs complied with §15-36-100(E) which allows amendment of an alleged defective affidavit within 30 days, and (4) Plaintiffs case is not “frivolous”.

Respectfully submitted,

*Jay Wright*

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Jay F. Wright  
McGowan, Hood & Felder, LLC  
135 Edinburgh Court, Suite 202  
Greenville, SC 29607  
(864) 252-4406  
jaywright@mcgowanhood.com

Attorney for Plaintiff

July 21, 2021  
Anderson, SC

**01/24/2018 - ED in AnMed Health Emergency Department**

**Reason for Visit**

**Chief Complaint** [last edited by Jamie B Moon, RN on 1/24/2018 2115]

- Motor Vehicle Crash (patient was restrained driver of vehicle with minor driver rear damage. patient co neck and L hip pain. patient refused to be boarded per EMS, ambulatory at this time. patient noted to be hypertensive---has not taken BP medication tonight. )

**Visit Diagnoses** [last edited by Kevin Morton, NP on 1/24/2018 2232]

Name	Is ED?
Motor vehicle collision, initial encounter (primary)	Yes
Muscle strain of left upper back, initial encounter	Yes

**Visit Information**

**Admission Information**

Arrival Date/Time:	01/24/2018 2108	Admit Date/Time:	01/24/2018 2133	IP Adm. Date/Time:	
Admission Type:	Urgent	Point of Origin:	Non-healthcare Facility	Admit Category:	
Means of Arrival:	Car	Primary Service:	Emergency Medicine	Secondary Service:	N/A
Transfer Source:		Service Area:	AH ANMED HEALTH SERVICE AREA	Unit:	AnMed Health Emergency Department
Admit Provider:		Attending Provider:		Referring Provider:	

**Discharge Information**

Discharge Date/Time	Discharge Disposition	Discharge Destination	Discharge Provider	Unit
01/24/2018 2239	Home Or Self Care	None	None	AnMed Health Emergency Department

**Follow-up Information**

Follow-up With	Details	Why	Contact Info
No Pcp		As needed	
AnMed Health Emergency Department		If symptoms worsen	800 North Fant Street Anderson South Carolina 29621 864-512-1000

**Treatment Team**

Provider	Service	Role	Specialty	From	To
Kevin Morton, NP		Nurse Practitioner	Emergency Medicine	01/24/18 2225	—

**Events**

**ED Arrival at 1/24/2018 2108**

Unit: AnMed Health Emergency Department  
User: Danielle Alexander

**Admission at 1/24/2018 2133**

Unit: AnMed Health Emergency Department  
Room: Minor 08  
Bed: MIN08  
User: Betty A Boyles, RN  
Patient class: Emergency

**ED Roomed at 1/24/2018 2133**

Unit: AnMed Health Emergency Department  
Room: Minor 08  
Bed: MIN08  
User: Betty A Boyles, RN  
Patient class: Emergency

**Discharge at 1/24/2018 2239**

Unit: AnMed Health Emergency Department  
Room: Minor 08  
Bed: MIN08  
User: Jamie B Moon, RN  
Patient class: Emergency

H. W. PAT PASCHAL, JR.

ATTORNEY-AT-LAW  
644 E. WASHINGTON STREET  
GREENVILLE, SOUTH CAROLINA 29601  
TELEPHONE (864) 282-1976  
FACSIMILE (864) 282-1971  
frontdesk@ppalaw.com

Carol L. Adkins, RN, BSN, CLNC  
*Medical-Legal Consultant*

August 19, 2021

The Honorable Richard Shirley  
(by email: rshirley@andersoncountysc.org)

Re: *RE: Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore, Plaintiffs, vs. AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN, Defendants. C.A. File No. 2021CP0400470*

Dear Mr. Shirley:

Please find attached an Exhibit VUMC Return to subpoena) being efiled this same day in support of the pending Motion to Dismiss.

The exhibit has been efiled and no additional filing or action is required. .

With warmest regards,

Very truly yours,  
S/Pat Paschal  
H.W. Pat Paschal, Jr.

Cc: The Honorable Lawton McIntosh (via email to Ms. Tammy Jennings at lmcintoshsc@sccourts.org)  
Counsel of record by email only.

**Response to Subpoena**  
**Case Number 2021-CP-0400470**

The following documents involving Richard Kevin High:

1. any license or license waiver that allows Richard Kevin High to:

a. practice medicine: i.e., to make a medical diagnosis, order and interpret tests and determine medical treatment plans and workups, and order a disposition.

*RESPONSE: VUMC has no documents responsive to this request. Mr. High does not engage in the practice of medicine at VUMC.*

b. teaches medical providers and physician practices in the practice of medicine defined above.

*RESPONSE: VUMC has no documents responsive to this request. Mr. High does not engage in the practice of medicine at VUMC.*

*Subject to and notwithstanding the response set out above, Documents A, B, and C (attached) provide information regarding courses and training provided by Mr. High to VUMC residents, fellows, staff and faculty.*

2. a list of what courses and the syllabus for each in which Mr. High teaches the practice of medicine to physicians as defined above.

*RESPONSE: VUMC has no documents responsive to this request. Mr. High does not engage in the practice of medicine at VUMC.*

*Subject to and notwithstanding the response set out above, Documents A, B, and C (attached) provide information regarding courses and training provided by Mr. High to VUMC residents, fellows, staff and faculty.*

3. any job description that would allow Mr. High to practice medicine, as defined above.

*RESPONSE: VUMC has no documents responsive to this request. Mr. High does not engage in the practice of medicine at VUMC.*

4. any documents that limit or allow a nurse to practice medicine including any protocols, policies and procedures.

*RESPONSE: VUMC has no documents responsive to this request. Mr. High does not engage in the practice of medicine at VUMC.*

5. any medical records of patients (with appropriate HIPAA redaction and excluding any standing doctor orders or medically approved protocols) that evidence Mr. High:

- a. ordering and interpreting diagnostic tests,
- b. diagnosing any disease process,
- c. determining medical treatment plans,
- d. ordering any work-up on a patient,
- e. ordering the disposition of a patient.

*RESPONSE: VUMC has no documents responsive to this request. Mr. High does not engage in the practice of medicine at VUMC.*

*Signed this 18<sup>th</sup> day of August, 2021*



*Deborah W. Larios, Esq.  
Vanderbilt University Medical Center  
Office of Legal Affairs  
3322 West End Avenue, Suite 1100  
Nashville, TN 37203  
ph. (615) 875-7643; fax (615) 936-0329; cell (615) 927-5470  
OLA website <https://www.vumc.org/general-counsel/>*

## DOCUMENT A

### Multidisciplinary Trauma Conference

Sponsored by

Vanderbilt University School of Medicine Department of Emergency Medicine and Division of Trauma

Monday, weekly (see website for exceptions due to scheduling conflicts)

Oxford House 703

11:00-Noon

#### Objectives

After participating in this CME activity, participants should be able to describe and discuss:

- Core resuscitative strategies for the trauma patient
- List specific resuscitative measures for the poly trauma patient
- Describe the components of the primary and secondary survey
- List the triggers for blood product administration

#### Course Faculty

Course Director:

Corey M. Slovis, MD  
Chairman, Department of Emergency Medicine  
Vanderbilt University School of Medicine

Course Instructor:

Kevin High, RN, MPH  
Senior Associate in Emergency Medicine  
Department of Emergency Medicine / Emergency Services  
Vanderbilt University Medical Center  
1301 Medical Center Drive  
Room 1508 / TVA  
Nashville, TN 37232-7240  
Office: 615-936-5291  
Mobile: 615-818-9185  
Trauma Alert Pager: 615-835-4076  
E-Mail: [kevin.high@vanderbilt.edu](mailto:kevin.high@vanderbilt.edu)

#### Faculty Disclosure

It is the policy of the ACCME and Vanderbilt University School of Medicine to require disclosure of financial relationships from individuals in a position to control the content of a CME activity; to identify and resolve conflicts of interest related to those relationships; and to make disclosure information available to the audience prior to the CME activity. Presenters are required to disclose discussions of unlabeled/unapproved uses of drugs or devices during their presentations.

**All course directors, planners, and speakers indicated no financial relationships to disclose.**

#### Accreditation

Vanderbilt University School of Medicine is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians.

## DOCUMENT A

### Designation of Credit

Vanderbilt University School of Medicine designates this live activity for a maximum of 2 *AMA PRA Category 1 Credit(s)*<sup>™</sup>. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

- a. To obtain credit for your participation in today's activity, complete the Vanderbilt CME Documentation of Attendance form.
- b. Place the completed form on the registration desk as you leave today.
- c. You will receive email notification of online credit availability 1-2 weeks after data is submitted to Vanderbilt CME.
- d. You may access your record of participation at anytime by visiting the Division of CME web-site at [www.cme.vanderbilt.edu](http://www.cme.vanderbilt.edu) and following the instructions to obtain a transcript.

### Attendees

Residents, fellows, staff, and faculty of VUMC

### Commercial Support

**This educational activity received no commercial support.**

## DOCUMENT B

### Emergency Medicine Resuscitative Skills Cadaver Lab

Sponsored by

Vanderbilt University School of Medicine Department of Emergency Medicine  
2<sup>nd</sup> Wednesday, monthly (see website for exceptions due to scheduling conflicts)

Pro-section Lab / MCN

9:00a – 11:00a

#### Objectives

After participating in this CME activity, participants should be able to describe and discuss:

- Demonstrate core oxygenation/ventilation technique
- Achieve first pass success with curved blade laryngoscopy
- Perform one of three surgical airway techniques
- List indications for thoracostomy
- Perform successfully both proximal humeral IO insertion and thoracostomy

#### Course Faculty

**Course Director:** Corey M. Slovis, MD  
Chairman, Department of Emergency Medicine  
Vanderbilt University School of Medicine

**Course Instructor:** Kevin High, RN, MPH  
Senior Associate in Emergency Medicine  
Department of Emergency Medicine / Emergency Services  
Vanderbilt University Medical Center  
1301 Medical Center Drive  
Room 1508 / TVA  
Nashville, TN 37232-7240  
Office: 615-936-5291  
Mobile: 615-818-9185  
Trauma Alert Pager: 615-835-4076  
E-Mail: [kevin.high@vanderbilt.edu](mailto:kevin.high@vanderbilt.edu)

#### Faculty Disclosure

It is the policy of the ACCME and Vanderbilt University School of Medicine to require disclosure of financial relationships from individuals in a position to control the content of a CME activity; to identify and resolve conflicts of interest related to those relationships; and to make disclosure information available to the audience prior to the CME activity. Presenters are required to disclose discussions of unlabeled/unapproved uses of drugs or devices during their presentations.

**All course directors, planners, and speakers indicated no financial relationships to disclose.**

#### Accreditation

Vanderbilt University School of Medicine is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians.

## DOCUMENT B

### Designation of Credit

Vanderbilt University School of Medicine designates this live activity for a maximum of 2 *AMA PRA Category 1 Credit(s)*<sup>™</sup>. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

- a. To obtain credit for your participation in today's activity, complete the Vanderbilt CME Documentation of Attendance form.
- b. Place the completed form on the registration desk as you leave today.
- c. You will receive email notification of online credit availability 1-2 weeks after data is submitted to Vanderbilt CME.
- d. You may access your record of participation at anytime by visiting the Division of CME web-site at [www.cme.vanderbilt.edu](http://www.cme.vanderbilt.edu) and following the instructions to obtain a transcript.

### Attendees

Residents, fellows, staff, and faculty of VUMC

### Commercial Support

**This educational activity received no commercial support.**

**Richard Kevin High**  
*Curriculum Vitae*

**Present Address**

103 Lynnbrook Court  
Nashville, TN 37215

**Birth Date**

March 2<sup>nd</sup>, 1962

**Marital Status**

Single

**Education**

Vanderbilt University School of Medicine  
Nashville, TN  
Masters in Healthcare Professional Education  
Summer 2013

Columbus University  
New Orleans, LA  
Masters in Public Health  
March 2000

Regents College  
Albany, NY  
Bachelors of Science  
September 1992

Darton College  
Albany, GA  
School of Nursing  
Associate Degree in Nursing  
December 1985

**Licensure**

TN Registered Nurse  
TN Emergency Medical Technician

**Certifications**

Certified Emergency Nurse  
Certified Flight Registered Nurse  
Trauma Certified Registered Nurse  
Advanced Cardiac Life Support  
Advanced Trauma Life Support  
Basic Trauma Life Support  
Pediatric Advanced Life Support  
Basic Cardiac Life Support  
Neonatal Resuscitation Program  
Trauma Nurse Core Course  
Tactical Combat Casualty Course

**Academic Appointments**

**Vanderbilt School of Medicine**  
Nashville, TN  
Senior Associate in Emergency Medicine  
July 2007-present

**Southeastern Institute**  
Nashville, TN  
Adjunct Faculty EMT/Paramedic Program  
2013-2015

**Columbia State Community College**  
Franklin, TN  
Adjunct Faculty EMT/Paramedic Program  
May 1990-September 1991  
January 2005-January 2006

**Volunteer State Community College**  
Gallatin, TN  
Adjunct Faculty, Paramedic Preceptor  
May 1990-August 1990/Summer Semester

**Professional Experience**

**Vanderbilt University Medical Center**  
**Senior Associate in Emergency Medicine**  
**April 2007-present**

My position includes administrative, teaching and patient care duties within the Vanderbilt Emergency system.

Vanderbilt is an academic medical system that acts as a tertiary care center, Level 1 Trauma Center and Burn Center for a referral area of roughly 50,000 square miles.

My work entails bedside, clinical and didactic teaching of nurses, clinical staff, residents, fellows and faculty within the Vanderbilt system; mainly within the Emergency Department and Vanderbilt's prehospital provider system. I perform clinical work within the department and on occasion with LifeFlight. I'm also responsible for managing the oversight of the intake and resuscitation of ~8000 trauma patients that present to the department.

**Vanderbilt University Medical Center  
LifeFlight Air Medical Program  
Clinical Associate**

2007-present

I work with LifeFlight as a Clinical Associate serving as a subject matter expert on clinical, practice and operational issues. I assist the program director and medical directors and act as a resource to the program at large. I perform transport nurse/EMS duties including the care of adults and children thru LifeFlight's Event Medicine Division.

**Monroe Carell Jr Children's Hospital at Vanderbilt  
Critical Care Transport Team  
Clinical Associate**

July 2012 thru December 2016

I worked with the Pediatric Critical Care Transport Team serving as a subject matter expert on clinical and practice issues. My duties included teaching airway and resuscitative skills to team members, assisting the medical director and acting as a resource to the program at large. The program transports critically ill children via ground ambulance serving the populace of TN and KY.

**Air Methods Corporation**

November 2006-July 2007

Air Methods is the largest airborne healthcare company in the world and supplies aircraft, air medical crew and transport solutions to hospitals and communities. My role consisted of working with customers and employees to develop existing and emerging programs to maximize their performance within their market space; mainly in the southeastern US region, an area holding 28 programs and 11 states.

**Vanderbilt University Medical Center  
LifeFlight Air Medical Program  
Clinical Outreach Nurse**

November 1993-November 2006

During my tenure at LifeFlight I worked as a transport nurse and as a leader in their business/program development efforts. My full time clinical career encompassed 13 years and ~2000 patient transports within the rotor, fixed wing and ground environment. I cared for a myriad of patients; including neonates, pediatric and adult patients. LifeFlight performs both scene and interfacility transport, is a CAMTS accredited program and clinical leader in the prehospital/EMS community.

**Vanderbilt University Medical Center  
Emergency Department  
Staff/Charge Nurse**

June 1989-September 1991

August 1993-July 2005

I worked both full and part time as a staff/charge nurse caring for acutely ill/injured adults and children.

**Bedford County Medical Center  
Emergency Department  
Staff Nurse**

April 2000-June 2001

BCMC is a rural hospital with <50 acute beds along with a eight bed Emergency Department. I worked both part time as a staff nurse caring for acutely ill/injured adults and children

**Rutherford County EMS  
Staff RN/EMT**

January 1991-September 1993

RCEMS is serves a populace of >100,000 people; I worked full time as a 911/ALS prehospital provider caring for adults and children.

**Metro Nashville General Hospital  
Emergency Department  
Nashville, TN  
Per Diem Staff RN**

June 1989-January 1991

NGH is an inner city charity hospital serving the indigent community of Nashville; I worked here as a staff nurse in the Emergency Department caring for acutely ill/injured adults and children.

**Williamson Medical Center  
Emergency Department  
Post Anesthesia Care Unit/PACU**

February 1988-June 1993

WMC is a community hospital of 110 beds; I worked both full and part time in the Emergency Department and PACU caring for adults and children.

**Williamson Medical Center EMS  
Staff RN/EMT**

February 1989-January 1999

WMC EMS is serves a populace of >120,000 people; I worked part time as a 911/ALS prehospital provider caring for adults and children.

**Medical Aviation**

**Nashville, TN**

**Staff RN**

February 1990-June 1991

Medical Aviation offers elective fixed wing aircraft service within the continental US; transporting both adults and children. I worked here as a PRN staff nurse.

**Archobold Memorial Hospital**

**Emergency Department**

**Thomasville, GA**

**Staff RN**

January 1987-January 1988

AMH is a rural hospital with <50 acute beds along with a twelve bed Emergency Department. I worked part time as a staff nurse caring for acutely ill/injured adults and children

**Colquitt Regional Medical Center**

**Emergency Department**

**Moultrie, GA**

**Staff/Charge RN**

September 1986-February 1988

CRMC is a rural hospital with 100 acute beds along with a fourteen bed Emergency Department. I worked full time as a staff nurse caring for acutely ill/injured adults and children

## Professional Organizations

### **Air and Surface Transport Nurses Association**

#### **President 2007-2010**

ASTNA is a nonprofit member organization whose mission is to advance the practice of transport nursing and enhance the quality of patient care. The association consists of over 2000 nurses from around the world. I remain a member at large of ASTNA. I was elected the President of ASTNA in 2007; this is a three year term that moves thru annual stages. My term ended in October of 2010. During my tenure I testified at the 2009 National Transportation Board hearing on safety in helicopter EMS.

### **Air and Surface Transport Nurses Association**

#### **Board of Directors/Director at Large**

#### **2003-2007**

I served in a Director at Large position on the ASTNA board from 2003-07.

### **Royal College of Surgeons at Edinburgh Faculty of Prehospital Care**

#### **Level V Faculty Member**

The FPHC faculty work to promote high standards of teaching and research in pre-hospital emergency medicine and to set and maintain standards of clinical practice in the United Kingdom and around the world.

### **Association of Air Medical Services/Safety Core Committee**

The AAMS Safety Committee consists of representatives from each discipline within the air medical industry along with representatives from the government/regulatory agencies. The committee serves as one of the leading groups regarding safety within the air medical community. I served as the representative for ASTNA and transport nurses at large.

### **Sigma Theta Tau International**

I was inducted in June of 2006 to Sigma Theta Tau; the Honor Society of Nursing. My induction centered on my work as a leader in emergency and transport nursing. STT is an international society and has a membership of >20,000.

**Emergency Nurses Association**

Current Member at large; I was the local chapter president from 1991-92.

**Air and Surface Transport Nurses Association**

I am a current member at large

**Society of Airway Management**

I am a current member at large

**Professional Activities/Awards**

**Rosamond Gabrielson Staff Nurse of the Year/2002**

I was one of several staff nurses from Vanderbilt University Medical Center to win this award. There were multiple winners this year and I was fortunate enough to be among them.

**Medical Crew Member of the Year by the (AAMS) Association of Air Medical Services /2003**

This award is given by AAMS for outstanding contributions that “enhance the development or promote the improvement of patient care in the air medical transport community.” I was privileged to be chosen by a panel of peers for this prestigious award.

**Vanderbilt Department of Emergency Medicine Faculty Teaching Award/2009**

This award is presented annually to an individual that excels in teaching residents and medical students.

**Teaching Activities**

**Vanderbilt Multidisciplinary Trauma Resuscitation Conference**

I coordinate, moderate and teach a weekly conference that focuses on trauma resuscitation of trauma patients presenting to Vanderbilt’s Emergency Department. This conference involves the review of patient resuscitations, team dynamics, injury patterns and treatment rendered. The conference is attended by nurses, prehospital/EMS personnel, medical students, residents and faculty. I began this work in 2007 and teach 47 of these conferences per year.

**Emergency Medicine Residency Programme**  
**Bachelor's Programme in Emergency Nursing**  
**GPHC/Georgetown Public Hospital Corporation,**  
**Georgetown Guyana**

Vanderbilt, in conjunction with Georgetown Public Hospital, Guyana's Ministry of Health and the University of Guyana manage a residency program and nursing program within GPHC. I guest lecture and do clinical/bedside teaching at both the residency and nursing programs doing both clinical/bedside teaching and lecture at GPHC.

**Vanderbilt Emergency Medicine Cadaver Lab**

I coordinate, moderate and teach a monthly case conference to the LifeFlight clinical staff that focuses on patient cases, current treatment and management of acutely ill children and adult patients.

**Vanderbilt Emergency Medicine Cadaver Lab**

In 2009; in conjunction with the Chairman and Residency Director of Emergency Medicine I developed a cadaver lab that focuses on airway management, laryngoscopy skills, use of the rescue airway and surgical airway skills. Other invasive skills are also taught along with surgical dissection. The lab is a part of the Emergency Medicine residency training program and caters to a multitude of disciplines within the Vanderbilt community. I coordinate 16-20 of these per year and serve as the lead instructor; teaching faculty, residents, fellows and prehospital personnel.

**The Difficult Airway Course for EMS**

DAC EMS is a two day course that teaches the full range of airway management techniques and is specifically aimed at EMS providers. The course is offered internationally and I am the Course Director for Vanderbilt (a DAC EMS Authorized Training Center)

**Vanderbilt LifeFlight Educational Outreach Program**

I spearheaded the development of this program in 1997; including the curriculum and presentations. It is a program that LifeFlight provides within their service area. This was a major undertaking, involving developing 20 lectures, objectives, course materials, and instructor books for the program. The program consists of 3-four hour seminars that are presented on demand to customers within the LifeFlight referral area. This program has been well received by our referring community and is well attended. I have published several articles, abstracts and done presentations on the development of this program.

### EMS Night Out

This is a monthly program that LifeFlight produces aimed at EMS. It is 2 hours in length and has 2-3 speakers per program. A colleague and I began this program in 1996 and it has been very successful. This program has been featured in the "Vanderbilt Reporter", several mid-state newspapers and on Nashville TV. The concept of EMS Night Out has been duplicated in several flight programs across the country such as Calstar, Tulsa LifeFlight, Memorial Lifestar, and Wellborn LifeFlight. I've presented at two national air medical industry meetings on the program and its development.

### Presentations

These are the major presentations I've done over the last twenty years. I've presented at the majority of national/international air medical, emergency/critical care nursing and/or EMS conferences during my career including the Air Medical Transport Conference, Critical Care Transport Conference, Emergency Nurses Association Scientific Assembly, American Academy of Critical Care Nursing NTI and EMS Expo.

"Winning the PR Battle: Developing Educational Outreach Programs"  
Critical Care Transport Symposium  
Region V11 Association of Air Medical Services  
Charleston, SC August 1998

"Drowning/Near Drowning"  
Search and Rescue/Disaster Response World Conference  
Nashville, TN  
June 1999

"Drowning/Near Drowning"  
Upper Cumberland EMS Directors Conference  
Cookeville, TN  
November 1999

"Geriatric Trauma"  
"Case Based Studies in Trauma"  
Southern TN EMS Directors Conference  
Lewisburg, TN  
September 2000

"Drowning/Near Drowning"  
"Case Based Studies in Pediatric Emergencies"  
KY EMS Expo and Conference  
Owensboro, KY  
September 2001

“Developing A Satellite Base”  
Air Medical Transport Conference  
Orlando, FL  
September 2001

“Pediatric Trauma Assessment”  
Pediatric Emergencies: A Case Based  
Conference/Nashville, TN  
Sponsored by Vanderbilt University Medical Center  
Department of Emergency Medicine  
April 2002

“Pediatric Trauma: Perils/Pitfalls”  
KY EMS Expo  
September 2002/Owensboro, KY

“The Nasal Intubation Primer”  
“Drowning and Immersion Injury”  
NAEMT/EMS Expo/October 2002  
Nashville, TN

“Trauma Rounds”  
Southern TN EMS Directors Conference  
Lewisburg, TN  
October 2002

“EMS Night Out: A Success Story”  
Air Medical Transport Conference 2002  
November 2002  
Kansas City, MO

“Topics in Airway Management “  
2<sup>nd</sup> Annual Vanderbilt Emergency Care Conference,  
Nashville, TN November 2002

“Pitfalls in Pediatric Trauma”  
14<sup>th</sup> Annual Trauma Care Conference  
Jackson-Madison Medical Center  
November 2002

“Trauma Rounds”  
“Drowning/Immersion Injury”  
Wisconsin Flight for Life Annual Conference  
Milwaukee, WI/March 2003

“Pitfalls in Pediatric Trauma”  
Pediatric Emergencies: A Case Based  
Conference/Nashville, TN  
Sponsored by Vanderbilt University Medical Center  
Department of Emergency Medicine  
April 2003

“Trauma for the Non-Surgeon”  
21<sup>st</sup> Annual Primary Care Conference  
-Nashville, TN Sponsored by Vanderbilt University  
Medical Center  
May 2003

“EMS Expo”  
Monroe Fire School  
Monroe, WI  
August 2003

“Controlling Competitiveness”  
Air Medical Transport Conference 2003  
November 2003  
Reno, NV

“Penetrating Trauma: Get in the Zone”  
“Trauma Rounds”  
15<sup>th</sup> Annual Trauma Care Conference  
Jackson-Madison Medical Center  
November 2003

“Thoracic Park”  
“Acute Coronary Syndromes”  
Wisconsin Flight for Life Annual Conference  
Milwaukee, WI/March 2004

“Penetrating Trauma: Get in the Zone”  
“Airway Best Management Practices”  
AMPA Critical Care Transport Medicine  
Conference  
San Antonio, TX  
March 2004

Nursing CE: A Workshop at the Beach  
“Pediatric/Trauma Potpourri”  
Hilton Head, SC  
August, 2004

“Transport Considerations in the Pediatric Patient”  
Advancing the Frontiers of Pediatric Emergency Medicine-  
Tennessee Chapter of the American Academy of Pediatrics  
3<sup>rd</sup> Annual Conference  
Madison, TN  
September 2004

“Get the Batphone: Utilizing a Direct Access Line to Boost  
Flight Requests”  
Air Medical Transport Conference 2004  
October 2004  
Cincinnati, OH

“The Ten Commandments of Airway Management”  
“Penetrating Trauma: Get in the Zone”  
LifeStar of Kansas Critical Care Symposium  
November 2004-Topeka, KS

“Successful Leadership in a Competitive Environment”  
Association of Air Medical Services Spring Conference  
March, 2005-Washington, DC

“Successful Leadership in a Competitive Environment”  
Air Methods Customer Conference  
April, 2005-Denver, CO

“Immersion Injury”  
KY EMS Expo and Conference  
Owensboro, KY  
September 2005

“Above the Rest: Leading and Flourishing in a Competitive  
Environment”  
Air Medical Transport Conference 2005  
Austin, TX  
October 2005

“Creating a Winning Transport Culture”  
“System Performance as a Differentiator”  
Association of Air Medical Services Spring Conference  
March, 2006-Washington, DC

“Presenting to Win”  
Air Medical Transport Conference 2006  
Phoenix, AZ  
September 2006

“Pediatric Potpourri: Illness and Injury”  
“Pediatric Drowning and Immersion Injury”  
AMPA Critical Care Transport Medicine Conference  
Las Vegas, NV-April 2006

“Outreach and Marketing: Principles and Practice”  
Air Methods Customer Conference  
April, 2006-Denver, CO

“Safety in the Transport Nursing Environment”  
Emergency Nurses Association Scientific Assembly  
Austin, TX  
September 2006

“Presenting to Win”  
Air Medical Transport Conference 2006  
Phoenix, AZ  
September 2006

“Reducing Error in the Trauma Suite”  
Chicago Trauma Symposium  
Chicago, IL  
November 2006

“Marketing Transport Programs”  
Air Methods Customer Conference  
April, 2007-Denver, CO

Trauma Update: Trends/Issues  
TN EMS Educators Symposium  
August, 2007-Nashville, TN

“Safety Practices in Transport Nursing”  
AMPA Critical Care Transport Medicine Conference  
San Antonio, TX-April 2008

“Safety Practices in Transport Nursing”  
Air Medical Transport Conference 2008  
Minneapolis, MN-October 2008

"Creating a Culture of Safety and Quality"  
Case Western Reserve University/International Flight  
Nurse Academy/Cleveland Clinic, Cleveland, OH  
August 2009

“Life as a Trauma Aficionado”  
“Case Studies in Trauma Resuscitation”  
West TN Healthcare Trauma Conference  
Jackson, TN  
November 2009

“Trends and Issues in Air Medical Transport”  
Colorado Flight for Life Staff Conference  
Colorado Springs, CO  
February 2010

“Life as a Trauma Aficionado”  
“Case Studies in Trauma Resuscitation”  
Midwest Trauma Society Annual Conference  
Kansas City, MO  
May 2010

“Blood, Bullets and Ballistics: A Look at Penetrating  
Trauma”  
Vanderbilt LifeFlight iServe Conference  
Franklin, TN  
September 2011

“Practical Emergency Airway Management”  
Society for Respiratory Care  
March 2012  
Nashville, TN

Advanced Practice Emergency Nursing Lab  
Emergency Nurses Association Scientific Assembly  
San Diego, CA  
October 2012

“Air Medical Transport: Trends and Issues, Past, Present  
and Future”  
Vanderbilt University Medical Center Department of  
Emergency Medicine Grand Rounds  
July 2013

Requisite Airway Skills Faculty for “The Emergency  
Medicine Boot Camp” – a collaborative intensive fast  
paced emergency care program for Nurse Practitioners,  
Physician Assistants, and Family Practice Physicians-  
Vanderbilt School of Nursing/Medicine August 2013-17

“Massive Transfusion: State of the Art Trauma Care Using Blood Component Therapy”  
Emergency Nurses Association Conference and Scientific Assembly: September 2013

“Surgical Cricothyrotomy: The Old, The New, The Tried and True”  
AAMS Air Medical Transport Conference:  
Washington, DC October 2014

“Transfusion Confusion: Administering Blood Products in the Prehospital Setting”  
“Prehospital Airway Management: Is Our Teaching Really State of Art?”  
EMS World Expo: November 2014

“Life as a Trauma Aficionado”  
“Tales from the Trauma Bay/Case Studies in Trauma Resuscitation”  
Cox Air Care EMS Conference  
Springfield, MO  
March 2015

“That Doesn’t Belong There; Misadventure in Prehospital Procedures”  
“Five Ways to Increase the Margin of Safety in Prehospital Airway Management”  
Air Medical Transport Conference  
Long Beach, CA  
October, 2015

“Absolute Requisites in Airway Management”  
“Five Pitfalls in Trauma Care of Adults and Children”  
“Air Medical Transport in the Austere Environment”  
Jordadas Medicas: An International Emergency Care Conference  
Quito, Ecuador  
February 2016

“Direct Laryngoscopy and Video Laryngoscopy: Is There a Difference?”  
“That Doesn’t Belong There: Misadventure in Prehospital Procedures”  
EMS Today: 2016  
Baltimore, MD  
February 2016

“Helicopter EMS 2016”  
“Burn Resuscitation: The First Hour”  
“Absolute Requisites in Airway Management”  
“Five Pitfalls in Trauma Care”  
Emergency Medicine Update  
Key West, FL  
June 2016

“Vascular Strategies in the Emergency Department”  
“Massive Resuscitation in Trauma”  
Emergency Nurses Association Scientific Assembly  
September 14-17, 2016

“Needle, Finger or Tube; Decompression Dilemmas”  
Air Medical Transport Conference  
Charlotte, NC  
September 2016

“Needle, Finger or Tube; Decompression Dilemmas”  
“Cut to Air; The Old, The New, The Tried and True”  
“Airway Disasters; Closed Claims”  
EMS Today 2017  
Salt Lake City, UT  
February, 2017

“Simplifying the Surgical Airway”  
Salad Park Airway Conference  
Rome, Italy  
April 2017

“Prehospital Airway Issues”  
Invited Speaker/Yellowstone Advanced Airway Course  
by Rich Levitan, MD  
Jackson, WY  
June 2017

“Emerging Trends in EMS”  
“Burn Resuscitation: The First Hour”  
“Absolute Requisites in Airway Management”  
“Five Pitfalls in Trauma Care”  
Trends in Emergency Medicine Update  
Charleston, SC  
July 2017

“Emerging Trends in EMS”

“Burn Resuscitation: The First Hour”  
“Drowning and Immersion Injury”  
“Needle, Tube or Finger: Decompression Dilemmas”  
“Absolute Requisites in Airway Management”  
“Five Pitfalls in Trauma Care”  
Trends in Emergency Medicine Update  
Las Vegas, NV  
March 2018

“Prehospital Airway Trends and Issues”  
Invited Speaker/Yellowstone Advanced Airway Course  
by Rich Levitan, MD  
Jackson, WY  
June 2018

“Simplifying Cricothyrotomy: Front of Neck Access  
(FONA) Made Easy”  
“REBOA 101: Resuscitative Endovascular Balloon  
Occlusion of The Aorta for EMS”  
EMS World Expo  
November 2018

### **Publications**

Journal:

**High, Richard K.**, “Penetrating Neck Trauma  
with Airway Compromise” Journal of Emergency Nursing  
October 1989

**High, Richard K.**, “Atypical Presentation of Acute  
Myocardial Infarction” Journal of Emergency Nursing  
January 1990

**High, Richard K.**, and Vassar, Jeanne, “Issues in Flight  
Crew Safety”, Journal of Emergency Nursing March 1996

**High, Richard K.**, “Modified Sellick Maneuver”  
Emergency Medicine June 1998

**High, Richard K.**, and Yeatman, Jeanne “Developing an  
Educational Outreach Program” Journal of Emergency  
Nursing June 1997

**High, Richard K.**, and Yeatman, Jeanne “Flight Crew  
Safety” Air Med November 1998

**High, Richard K.**, "I/E ratio" A personal essay Air Med May 1999

**High, Richard K.**, and Jones, Judy, "Atlantooccipital Disassociation: A Case Report" Air Medical Journal January 2000

**High, Richard K.**, and Yeatman, Jeanne, "Transport Considerations in the Pediatric Trauma Patient" Journal of Emergency Nursing August 2000

**High, Richard K.**, and High, Vona W. "ACE Inhibitor Induced Airway Obstruction: A Case Report" Air Medical Journal Jan/Feb 2001

**High, Richard K.**, "Becoming A Flight Crew Member" Emergency Medical Services Magazine March 2001

**High, Richard K.**, "Controlling Competitiveness" Guest Editorial Air Medical Journal Mar/Apr 2004

**High, Richard K.**, Hayes, L., Gleaves A. "LifeFlight-20 Years of Excellence" Air Med Journal August 2004

**High, Richard K.**, "Current Competitive Trends" Guest Editorial Air Medical Journal Feb/2005

**High, Richard K.**, Gleaves A, "Marfan Syndrome: A Case Study" Journal of Emergency Nursing Feb/2005

Slovis, C., **High Richard K.**, "The Ten Commandments of Airway Management" Journal of EMS/JEMS August, 2005

**High, Richard K.**, Frakes, M, Stocking, J. "Transport Nurse Safety Practices, Perceptions, and Experiences: The ASTNA Survey" Air Med Journal October 2009

Patel, M, **High, K.**, Eckert, M, "Tension Pneumoperitoneum after Traumatic Gastric Rupture" The American Surgeon 78 (9) 435-6 2012

**High, K,** Moore, A “Unknown, unrecognized, and underreported: flicker vertigo in helicopter EMS” Air Med Journal October 2012

**High, K,** Vansell, H “An Asian woman with upper arm burns” Journal of Emergency Nursing, November 2014

Brywczynski, J, **High K** “Hidden Object Turned Lawnmower Projectile Causes Surprise Heart Agitation” JEMS/Journal of EMS, December 2014

Thomson, D. P., Braude, D., **High, K.**, & Miller-Tester, R. “An Instrument Approach to Airway Management”. Air Medical Journal March 2015, 113-116.

**High, K,** Van Meter, Jessica “An 8-Year Old boy With Altered Mental Status” Air Medical Journal, May-June 2015 34: 3

Smith, K. A., **High, K.**, Collins, S. P., & Self, W. H. ‘A Preprocedural Checklist Improves the Safety of Emergency Department Intubation of Trauma Patients” Academic Emergency Medicine, 2015, 22(8), 989-992.

**High, K.**, Johnson, M. “A 62-year-old man with home oxygen therapy facial burns.” Journal of Emergency Nursing. 2016 Mar 4.

**High, K,** Brywczynski, J, Guillaumondegui, O. “Safety and Efficacy of Thoracostomy in the Air Medical Environment” Air Medical Journal 2016, July-August, 227-230. 35., 4

Upchurch CP, Grijalva CG, Russ S, Collins SP, Semler MW, Rice TW, Liu D, Ehrenfeld JM, **High K,** Barrett TW, McNaughton CD, Self WH. “Comparison of Etomidate and Ketamine for Induction during Rapid Sequence Intubation of Adult Trauma Patients.” Annals of Emergency Medicine. September 2016

**High, K.**, Walsh, M., & Kidd, R. Trauma arrest and spinal injury in a 3-year-old girl. Pediatric Emergency Care, 33(12)-2017

**High, K.**, Brywczyński, J., & Han, J. H. (2017). Cricothyrotomy in Helicopter Emergency Medical Service Transport. *Air Medical Journal*.

Luckey-Smith, K., & **High, K.** (2018). A 20-Year-Old-Trauma Patient with Suspected Malignant Hyperthermia Following Induction With Succinylcholine: A Case Study. *Advanced Emergency Nursing Journal*, 40(3), 171-175.

**K High**, Brywczyński, J. (2019). Impaled unexploded ordnance involving fireworks mishap. *The American Surgeon*, 85(1), E61-E62.

Casey, J., Semler, M., **High, K.**, & Self, W. (2019) How I manage a difficult intubation. *Critical Care* 23 (1)

Luckey-Smith, K., **High, K.**, Cole E. (May 2020) Evaluation of Training and Skill Fade in Surgical Airway Establishment. *Air Medical Journal*

- Position Paper: I reviewed and co-authored the 2006 revision/edition of the Air/Surface Transport Nurses Association's Safety Position Paper "Transport Nurse Safety in the Transport Environment". This is the only position paper of its kind by nurses/health professionals. .
- Section Author: I authored a monthly feature on the EMS Village website thru 2002. Emergency Care Essentials focuses on specific skills and illness/injury issues common to the EMS provider.
- Book Chapter: Standards of Critical Care and Specialty Transport: Air and Surface Nurses Transport Association 2002: Marketing Air Medical Programs Chapter
- Flight Operations: Air and Surface Nurses Transport Association Core Curriculum: Winter 2006
- Airway Management: Air and Surface Nurses Transport Association Core Curriculum: Winter 2006
- Air Medical Physician's Association (AMPA) Handbook-Strategic Marketing Chapter-October 2006

Transport Nursing: Principles and Practice: Elsevier  
Publishing: Outreach and Marketing Chapter: October 2009

Avoiding Common Prehospital Errors: Air Medical  
Chapter, September 2012

Airway Management: The Atlas of Emergency Medicine;  
4<sup>th</sup> Edition June 2016

Airway Management: Air and Surface Nurses Transport  
Association Critical Care Transport Core Curriculum: April  
2017

Air and Surface Nurses Transport Association Patient  
Transport Principles and Practice: Airway Management  
Chapter: September 2017

Book Chapter Review: Foundations for Advanced Emergency Care  
Airway Anatomy, Airway Management, Medication  
Administration Chapters  
Delmar Learning/Publishing November 2002

Editorial Board: Air Medical Journal by Elsevier Publishing-I am a member  
of the Air Medical Journal Editorial Board since October  
2011 and have also served as a reviewer for AMJ since  
2005.

Journal of Emergency Nursing by Elsevier Publishing  
I've been a reviewer for JEN since 2009.

Advanced Emergency Nursing Journal by Wolters Kluwer  
I've reviewed for AENJ since January 2017

Abstracts:

“Developing Educational Outreach Programs”  
**High, Richard K.**, and Yeatman, Jeanne  
Vanderbilt Nursing Research Council Program  
May 1999

“Implementing a Safety Walk Around”  
**High, Richard K.**, and Yeatman, Jeanne  
Association of Air Medical Services  
Air Medical Transport Conference  
November 1999

“Developing Educational Outreach Programs”  
**High, Richard K.**, and Yeatman, Jeanne  
Association of Air Medical Services  
Air Medical Transport Conference  
November 1999

“Chemical Extrication”  
**High, Richard K.**, and Worf, Neil  
Vanderbilt Nursing Research Council Program  
May 2002

“The Use of Etomidate: The Chemical Extrication”  
**High, Richard K.**, and Worf, Neil  
Association of Air Medical Services  
Air Medical Transport Conference  
Scientific Assembly October 2005

“Air Medical Thoracostomy: Efficacy, Survival and Complications” Vanderbilt University Medical Center Annual Research Council Program. October 2014  
**High, Kevin** and Van Meter, Jessica

“Prebrief as an Example of Crew Resource Management in Trauma Resuscitation” American College of Surgeons 96<sup>th</sup> Annual Clinical Congress  
 Oliver L. Gunter, MD FACS, Kirby R. Gross MD, FACS, Richard S. Miller MD, FACS, **Kevin High RN, MPH**, Kyla P. Terhune MD

“A pre-procedural checklist improves the safety of emergency department intubation of trauma patients.” Society for Academic Emergency Medicine (SAEM) Annual Meeting. May 2015. San Diego, California. Smith KA, **High K**, Collins SP, Self WH.

“Safety and Efficacy of Thoracostomy in the Air Medical Environment” September 2016 Air Medical Transport Conference Scientific Assembly, Charlotte, NC, **High, K**, Brywczyński, J, Guillaumondegui, O.

“Evaluation of Trauma Team Performance during Initial Resuscitation Utilizing Video” November 2017 American College of Surgeons TQIP Scientific Meeting, Smith, M, **High, K**, Dye, S. Dennis, B

“A Novel Alert System for Burn Team Response to the Emergency Department” April 2019 American Burn Association Annual Meeting, Blankush, J, Erickson, C. Gondek S, **High K**, Dennis, B.”

“Evaluation of Trauma Team Performance during Initial Resuscitation Utilizing Video Review”  
**Kevin High**, MPH RN MHPE CEN CTRN CFRN, Sally Dye RN, BSN CEN, Melissa Smith RN MSN  
 Emergency Nurses Association Scientific Assembly (Virtual) September 11<sup>th</sup>, 2020

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

**PLAINTIFFS' MOTION TO RECONSIDER**

**TO: Defendants and their attorneys.**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, through their undersigned attorneys, pursuant to the provisions of *Rule 59(e) SCRPC*, hereby move this Honorable Court to alter or amend its judgment as it relates to the Court's order granting Defendants Anderson Emergency Associates, P.A., and Kevin Morton, NP's motion to dismiss.

Based upon the records and filings, including the Plaintiffs' memorandum in opposition to the Defendants' motion to dismiss, as well as the transcript of the hearing on the Defendants' motion to dismiss, the Plaintiffs respectfully contend that the Court erred as a matter of law in granting the Defendants' motion to dismiss. Respectfully, the Plaintiffs submit that issues relevant to Defendants' motion to dismiss have been misunderstood, not consider, or not ruled upon, and Plaintiffs respectfully moves this court to reconsider its Order granting Defendants' motion to dismiss.

## **PROCEDURAL HISTORY**

Plaintiffs filed a Notice of Intent to File Suit on November 5, 2020. The case was assigned the case number 2020NI0400020. S.C. Code §15-79-125 requires the filing of an affidavit of an expert witness “subject to the affidavit requirements of §15-36-100” as part of the requirements for filing the Notice of Intent to File Suit. Subject to §15-79-125(A), “filing the Notice of Intent to File Suit tolls all applicable statutes of limitations”. During the following four months, Defendant AEA / Morton make no accusation that the affidavit filed with the Notice of Intent was insufficient and proceeded with participating in the pre-suit mediation on March 4, 2021 without objection. The proof of ADR was subsequently filed on March 22, 2021 and the Walker v. Anmed et al Case No: 2020NI0400020 was closed.

Subsequently, Plaintiffs filed the Summons and Complaint on March 6, 2021 using the same affidavit as was used when filing the prior Notice of Intent to File Suit. Defendant first raised the issue of a defective affidavit in their Answer submitted on April 13, 2021. Pursuant to §15-36-100(E), Plaintiffs then amended the alleged affidavit to replace Kevin High, RN with Michael Chansky, MD on April 21, 2021.

Defendants filed a motion to dismiss on April 13, 2021 alleging that the affidavit filed with the Complaint pursuant to §15-36-100 was defective. On July 21, 2021 Plaintiffs filed a memorandum in opposition to Defendants’ motion to dismiss, attached hereto as **Exhibit “1”**. A hearing was held on July 23, 2021 before Judge Lawton McIntosh. Thereafter, on August 27, 2021, the Court entered a Form 4 Order granting Defendant’s motion to dismiss, attached hereto as **Exhibit “2”**, stating “Defendants Morton and AEA’s Motion to Dismiss is granted. Mr. Paschal to prepare formal order”. This motion to reconsider follows.

## **LEGAL STANDARD**

“[A] party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” Elam v. S.C. Dep’t Transp., 361 S.C. 9, 21-22, 602 S.E.2d 772, 779 (2004). A Rule 59(e) motion provides a vehicle through which a party may (1) request that the circuit court reconsider matters properly encompassed in a decision on the merits or “alter or amend” its judgment, or (2) attempt to obtain a ruling on issues or arguments previously raised to the court. Id. A party may file a Rule 59(e) motion when it believes the court “misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Id. at 24, 602 S.E.2d at 780.

### ARGUMENT

#### **A. The Court’s ruling fails to consider Plaintiffs’ argument that the three year statute of limitations was tolled due pursuant to § 15-79-125(A)**

As noted above, Plaintiffs first submitted the affidavit of Nurse High in conjunction with the Notice of Intent filed on November 5, 2020. Pursuant to S.C. Code §15-79-125 the same affidavit requirements are required at the point of filing the Notice of Intent as are imposed when filing a Summons and Complaint. Defendant AEA / Morton made no objection to the sufficiency of Nurse High’s affidavit as it pertained to the Notice of Intent and proceeded in participating in the pre-suit mediation without ever raising the objection of the insufficiency of Nurse High’s affidavit. After the pre-suit mediation was conducted without objections, the proof of ADR was subsequently filed on March 22, 2021 and the Walker v. Anmed et al Case No: 2020NI0400020 was closed.

Subject to §15-79-125(A), “filing the Notice of Intent to File Suit *tolls all applicable statutes of limitations*” attached hereto as **Exhibit “3”**. As such, even if Nurse High’s affidavit was defective as it pertains to the filing of the Summons and Complaint, the Motion to Dismiss should be denied because the applicable three year statute of limitations would have been tolled

upon the filing of the Notice of Intent and/or upon the filing of the proof of ADR / closing of the Walker v. Anmed et al Case No: 2020NI0400020. Once the Notice of Intent was filed without objection and/or the NOI case was closed, any applicable statute of limitation was tolled and the only time bar to any future filings would be the six year statute of repose which would not run until January 18, 2024. Plaintiffs subsequently filed an amended affidavit naming Michael Chansky, MD as the expert witness on April 21, 2021. It is undeniable that Dr. Chansky would meet any and all affidavit requirements of §15-36-100(E) and that his affidavit was filed prior to January 18, 2024.

As such, Defendants AEA / Morton's Motion to Dismiss should be denied because they failed to raise any contemporaneous objection to the sufficiency of the affidavit at the time of the filing of the Notice of Intent to File Suit and/or prior to the NOI case being closed resulting in a tolling of the applicable statute of limitations and Plaintiffs have inarguably filed a sufficient affidavit within the timeframe of the six year statute of repose.

**B. The Court's ruling fails to consider Plaintiffs' argument that if the original affidavit was defective, then Plaintiffs complied with §15-36-100(E).**

Pursuant to §15-36-100(E), attached hereto as **Exhibit "4"**, in situations where an affidavit filed with a medical malpractice complaint or Notice of Intent is alleged to be defective (as in this case), Plaintiffs have the ability to amend the affidavit to cure any alleged defect within 30 days. Specifically, §15-36-100(E) explicitly sets forth that if a Defendant alleges Plaintiffs' affidavit is defective, then "the plaintiff *may cure the alleged defect* by amendment within thirty days of service of the motion alleging that the affidavit is defective."

In the present case, it is undisputed that Defendant AEA / Morton first raised the allegation of Nurse High's affidavit being defective on April 13, 2021. It is also undisputed that Plaintiff amended the affidavit to cure this alleged defect within the 30 day time limit substituting Michael

Chansky, MD in for Kevin High, RN on April 21, 2021. Defendant makes no argument that the amended affidavit naming Michael Chansky, MD as the expert witness is insufficient. Rather, Defendant AEA / Morton attempts to couch the amended affidavit as a “new” affidavit rather than an “amended” affidavit.

Simply put, §15-36-100(E) puts no restrictions on the types of amendments that can be used to cure an alleged defect. As such, there is no prohibition in §15-36-100(E) preventing the amendment of the affiant if that is what the Defendant is alleging is defective. South Carolina case law is clear that statutes limiting a claimant's right to bring suit are to be strictly construed. Statutes in derogation of the common law are to be strictly construed. *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011). “Under this rule, a statute restricting the common law will ‘not be extended beyond the clear intent of the legislature.’ ” *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012), 397 S.C. at 536, 725 S.E.2d at 696 (quoting *Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000)). Statutes limiting a claimant's right to bring suit are subject to this rule. *Id.* In *Grier*, this Court reviewed subsection (B) of 15-36-100 and found the statute restricted a plaintiff's common law right to bring a malpractice claim, requiring the Court to strictly construe the statute's requirements. 397 S.C. at 538, 725 S.E.2d at 697.

The Legislative intent of §15-36-100 was to prevent the filing of frivolous civil lawsuits, not to act as a procedural stumbling block to prevent a claimant from exercising their Constitutional right to a trial by jury in legitimate cases of potential professional negligence.

This case involves a medical malpractice claim wherein a man died because his aortic aneurysm was not diagnosed when he came the emergency room. Defendant Morton has even admitted in deposition that the aneurysm that would later rupture causing Mr. Williford’s death

was on his differential diagnosis, would have been present at the ER visit, could have been identified with proper imaging studies, but that he chose not to order the imaging studies even though aortic aneurysm was still on his differential diagnosis. Additionally, Plaintiffs have submitted affidavits from two medical experts both affirming that Mr. Williford received substandard emergency treatment and that the inappropriate treatment caused Mr. Williford's death. Simply put, this is not a frivolous case and is a case that should go to a jury to decide the potential fault of the parties based on the merits of the case.

Furthermore, it is inarguable that amended affidavit substituting Dr. Chansky for Nurse High filed by Plaintiffs would be sufficient to meet the standard of §15-36-100. As such, Plaintiffs have met the statutory requirements showing this case is not a frivolous claim. As such, Plaintiffs should be allowed to amend the affidavit pursuant to §15-36-100(E) so that jury can rightly determine whether Mr. Williford's death was due to professional negligence instead of §15-36-100(E) being used to prevent a valid claim of wrongful death which was never the Legislative intent.

Therefore, Plaintiffs have properly amended the affidavit within 30 days of the allegation of the defect pursuant to §15-36-100(E) and Defendants' motion to dismiss should be denied.

### **CONCLUSION**

Plaintiffs respectfully requests the Court alter or amend its order of August 27, 2021 to deny Defendants' motion to dismiss.

Respectfully submitted,

s/ Jay Wright

\_\_\_\_\_  
Jay F. Wright, SC Bar No. 78738  
McGowan, Hood & Felder, LLC  
135 Edinburgh Court, Suite 202  
Greenville, SC 29607  
(864) 252-4406

[jaywright@mcgowanhood.com](mailto:jaywright@mcgowanhood.com)

Attorney for Plaintiff

September 2, 2021  
Anderson, SC





STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )  
 )  
Travis Walker, Individually and as Personal )  
Representative of the Estate of Douglas )  
Williford, and Lolita Moore, )  
 )  
Plaintiff(s), )  
 )  
-vs- )  
 )  
AnMed Health, Anderson Emergency )  
Associates, P.A., Kevin Morton NP, Jamie )  
Moon RN, and Betty Boyles RN, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C. A. No.: 2020-NI-04-00020

**PROOF OF ADR OR EXEMPTION**

**PURSUANT TO** the Court's Standing Order for Alternative Dispute Resolution dated July 14, 1999,

A. \_\_\_\_\_ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

\_\_\_\_\_  
Plaintiff(s)/Attorney for Plaintiff(s)

\_\_\_\_\_  
Defendant(s)/Attorney for Defendant(s)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone/Fax

\_\_\_\_\_  
Phone/Fax

Date: \_\_\_\_\_

B. 1. Alternative Dispute Resolution (ADR) was conducted in the form of: **Mediation via Telephone Conference.**

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator): **L. Lee Plumblee**

3. The ADR was conducted on **March 4, 2021.**

4. As a result of ADR, this case should be considered (please check one):

( ) Fully Settled (please check one):

( ) By Consent Judgment, to be filed by \_\_\_\_\_, or  
(Name of Designee)

( ) By Voluntary Dismissal to be filed by \_\_\_\_\_.  
(Name of Designee)

( ) Partially settled.

(X) At an impasse.

( ) In need of further ADR. (I \_\_\_ am/\_\_\_not willing to continue as neutral.

5. Plaintiff X was \_\_\_ was not present  
Defendant X was \_\_\_ was not present

6. Other participants were:

Attorney for Defendant: James Parham, Esq. and Howard Paschal, Esq.

Attorney for Plaintiff: Jay Wright, Esq.

Representatives for insurance carrier \_\_\_\_\_

Guardian ad Litem \_\_\_\_\_

Experts \_\_\_\_\_

Others \_\_\_\_\_

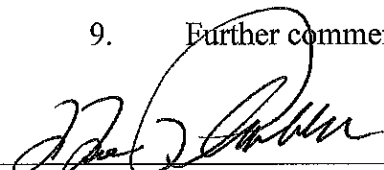
7. Choice of the neutral was by:

X Stipulation

\_\_\_ Court Order

8. The total number of hours spent in ADR was: 1:00 HOUR

9. Further comments of the neutral:

  
\_\_\_\_\_  
Neutral's Signature

L. Lee Plumblee

Phone: (864) 235-2600 Fax: (864) 235-4600

Date: March 10, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

**ACCEPTANCE OF SERVICE**

**DEFENDANTS ANDERSON  
EMERGENCY ASSOCIATES, P.A. AND  
KEVIN MORTON, NP**

As Counsel for Defendants Anderson Emergency Associates, P.A. and Kevin Morton, NP, I accept service of the Summons and Complaint in the above-captioned action on behalf of Anderson Emergency Associates, P.A. and Kevin Morton, NP.



Howard "Pat" W. Paschal, Jr., Esq.

March 15, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Travis Walker, Individually and as Personal Representative of the Estate of Douglas Williford, and Lolita Moore,

Plaintiffs,

vs.

AnMed Health, Anderson Emergency Associates, P.A., Kevin Morton NP, Jamie Moon RN, and Betty Boyles RN,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2021CP0400470

**PLAINTIFFS' ANSWERS TO  
DEFENDANT ANDERSON  
EMERGENCY ASSOCIATES AND  
KEVIN MORTON, NP'S FIRST  
REQUESTS FOR ADMISSION**

Comes now Plaintiffs, by and through their undersigned counsel, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, and hereby answer Defendant Anderson Emergency Associates and Kevin Morton, NP's First Requests for Admission to the Plaintiffs as follows:

1. That Richard Kevin High is a registered nurse and not licensed now or ever as a nurse practitioner or physician.

**ANSWER: Admitted.**

2. That in accordance with the South Carolina Nursing Act and South Carolina Medical Act, the practice of medicine includes the performance of "medical acts".

**ANSWER: Denied. Plaintiffs see no definition in either act specifically defining the practice of medicine to include "medical acts". However, Plaintiff would admit that the practice of medicine does require medical professionals to perform medical acts.**

3. That in accordance with the South Carolina Nursing Act and South Carolina Medical Act, the term "medical acts" includes these specific acts:

- a. ordering and interpreting of tests,
- b. forming a medical diagnosis,
- c. determining a medical treatment plan,
- d. prescribing medications, and
- e. deciding admission or discharge of a patient.

**ANSWER:** Denied. Plaintiffs see no definition in either act specifically defining “medical acts” and as such can make no determination as to whether the specific acts would require the classification of the listed acts as “medical acts”.

4. That a nurse cannot testify as to standard of care or the exercise of the standard of care in the practice of medicine by a physician or nurse practitioner.

**ANSWER:** Denied. However, Plaintiffs would note that Nurse High is not rendering specific opinions as to the standard of care of a “physician or nurse practitioner.” Nurse High is offering opinions of the appropriate ER treatment that reasonable healthcare providers should provide to patients presenting in Mr. Williford’s condition and has the appropriate qualifications to express an opinion as to the appropriateness of a patient’s treatment in the emergency room irrespective of the provider.

5. That a nurse cannot testify as to the standard of care by a physician or physician extender, i.e., a nurse practitioner in the performance of the medical acts defined in Request #3 above.

**ANSWER:** Denied. However, Plaintiffs would note that Nurse High is not rendering specific opinions as to the “practice of medicine” or the standard of care of a “physician or nurse practitioner.” Nurse High is offering opinions of the appropriate ER treatment that reasonable healthcare providers should provide to patients presenting in Mr. Williford’s condition and has the appropriate qualifications to express an opinion as to the appropriateness of a patient’s treatment in the emergency room irrespective of the provider

6. That Richard Kevin High is not qualified to testify as to the standard of care for the practice of medicine or medical acts by a physician or nurse practitioner.

**ANSWER:** Denied. However, Plaintiffs would note that Nurse High is not rendering specific opinions as to the “practice of medicine” or the standard of care of a “physician or nurse practitioner.” Nurse High is offering opinions of the appropriate ER treatment that reasonable healthcare providers should provide to patients presenting in Mr. Williford’s condition and has the appropriate qualifications to express an opinion as to the appropriateness of a patient’s treatment in the emergency room irrespective of the provider.

Respectfully submitted,

*Jay Wright*

Jay F. Wright  
McGowan, Hood & Felder, LLC  
135 Edinburgh Court, Suite 202  
Greenville, SC 29607  
(864) 252-4406

jaywright@mcgowanhood.com  
Attorney for Plaintiff

July 20, 2021  
Anderson, SC

**CERTIFICATE OF SERVICE**

I certify on this date a copy of the foregoing was served on each party or counsel of record by \_\_\_ mailing, X e-mailing, \_\_\_ facsimile, or \_\_\_ hand delivery in a manner prescribed by applicable Rules of Civil Procedure.

July 20, 2021

*Jay Wright*

---

Jay F. Wright

**RECEIVED**  
**Sep 17 2021**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-CP-04-00470

Travis Walker, Individually ..... Appellants,  
and as Personal Representative  
of the Estate of Douglas Williford,  
and Lolita Moore,

v.

Anderson Emergency Associates ..... Respondents.  
P.A., and Kevin Morton NP,

**NOTICE OF APPEAL**

Appellants Travis Walker and Lolita Moore, appeal from an order of the Honorable R. Lawton McIntosh granting Respondents Anderson Emergency Associates, P.A. and Kevin Morton, NP’s Motion to Dismiss and order denying Appellants’ Motion to Reconsider. Appellants received notice of the form 4 order granting dismissal on August 27, 2021 and filed a timely Rule 59(e), SCRCF motion on September 2, 2021. Appellant received written notice of entry of the form 4 order denying Plaintiff’s Motion to Reconsider on September 8, 2021 and the formal order granting the motion to dismiss on September 14, 2021. Pursuant to Rule 203(d)(1)(B), SCACR, a copy of the orders Appellant challenges on appeal are attached to this Notice.

- Signature Page to Follow -

Respectfully submitted,

s/ Jay Wright

Jay F. Wright (SC Bar # 78738)  
Jordan C. Calloway (SC Bar # 78728)  
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135 Edinburgh Court Suite 202  
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Attorneys for Respondent

September 17, 2021  
Greenville, SC

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Sep 17 2021

SC Court of Appeals

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**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of McGowan Hood & Felder, LLC, for Appellants, Travis Walker and Lolita Moore, do hereby certify that I have this date served the foregoing Noitce of Appeal dated September 17, 2021 by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated August 25, 2021, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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**Attorneys for Appelants**  
**Travis Walker & Lolita Moore**

Dated: September 17, 2021

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September 17, 2021

***Via e-mail (ctappfilings@sccourts.org)***

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

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**Sep 17 2021**

**SC Court of Appeals**

**Re: Walker et al v. Anderson Emergency Associates et al  
Case No. 2021-CP-04-00470**

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order dated August 25, 2021, we are submitting for filing at the Court's e-mail address, [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org), the attached Notice of Appeal on behalf of Appellants Travis Walker and Lolita Moore, along with a copy of our Certificate of Service.

We have served this Notice on all counsel of record pursuant to Section (d)(1) of the Supreme Court's Order dated August 25, 2021.

Should you have any questions regarding this matter, please do not hesitate to call.

Sincerely,

/s Jay F. Wright

Jay F. Wright

The Honorable Jenny Abbott Kitchings

September 17, 2021

Page 2

Attachment

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2021-001036

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Travis Walker, Individually and ..... Appellants,  
as Personal Representative of  
the Estate of Douglas Williford,  
and Lolita Moore,

v.

Anderson Emergency Associates  
P.A. and Kevin Moore NP, ..... Respondents.

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**CERTIFICATE OF COUNSEL**

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Pursuant to Rule 210(g), SCACR, Appellants counsel hereby certifies the Record on Appeal contains all material proposed to be included by the parties and not any other material.

Respectfully submitted,

/s/ Jordan C. Calloway

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