

**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON**

) **IN THE COURT OF COMMONS PLEAS  
) NINTH JUDICIAL CIRCUIT**

**Mark Waller and Donna Berry-Waller**

) **Civil Action No.: 2021-CP-\_\_\_\_ - \_\_\_\_\_**

**Plaintiffs,**

**vs.**

**SUMMONS  
(Jury Trial Demanded)**

**Roper Hospital, Inc., Roper St. Francis  
Healthcare, Roper St. Francis  
Physicians Network, Vanessa  
Shamrock, John Doe, Lowcountry  
Infectious Diseases, P.A., and Kent  
Stock, M.D.,**

**Defendants.**

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the Complaint on the undersigned, Bluestein Thompson & Sullivan, LLC, 1614 Taylor Street, Post Office Box 7965, Columbia, South Carolina, 29202, within THIRTY (30) DAYS after the service hereof, exclusive of the date of such service; and if you fail to appear and defend this action within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

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October 15, 2021  
Columbia, South Carolina

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMONS PLEAS</b>
<b>COUNTY OF CHARLESTON</b>	)	<b>NINTH JUDICIAL CIRCUIT</b>
	)	
<b>Mark Waller and Donna Berry-Waller</b>	)	<b>Civil Action No.: 2021-CP-____ - _____</b>
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>COMPLAINT</b>
	)	<b>(Jury Trial Demanded)</b>
	)	
<b>Roper Hospital, Inc., Roper St. Francis</b>	)	
<b>Healthcare, Roper St. Francis</b>	)	
<b>Physicians Network, Vanessa</b>	)	
<b>Shamrock, John Doe, Lowcountry</b>	)	
<b>Infectious Diseases, P.A., and Kent</b>	)	
<b>Stock, M.D.,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

The Plaintiffs, Mark Waller and Donna Berry-Waller, complaining of the Defendants, alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiffs, Mark Waller and Donna Berry-Waller, are citizens and residents of Charleston County, South Carolina.
2. Defendant Roper Hospital, Inc. is a South Carolina legal entity engaging in business and having their principal place of business in Charleston County.
3. Defendant Roper St. Francis Healthcare is a South Carolina legal entity engaging in business and having their principal place of business in Charleston County.
4. Roper St. Francis Physicians Network is a South Carolina legal entity engaging in business and having their principal place of business in Charleston County.
5. At all relevant times to this action, a doctor-patient relationship existed between

Plaintiffs and Defendants Roper, Physicians Network and these defendants owed Mark Waller a duty to exercise the degree of care and skill ordinarily employed by those in the medical profession given the circumstances.

6. At all relevant times to this action, Vanessa Shamrock was an employee/agent of Defendants Roper Hospital, Inc., Roper St. Francis Healthcare, Roper St. Francis Physicians Network and, with respect to the acts alleged herein, acted within the scope of her agency and/or employment there.

7. At all relevant times to this action, John Doe was an employee/agent of Defendants Roper Hospital, Inc., Roper St. Francis Healthcare, Roper St. Francis Physicians Network and, with respect to the acts alleged herein, acted within the scope of her agency and/or employment there.

8. Defendants Roper Hospital, Inc., Roper St. Francis Healthcare, Roper St. Francis Physicians Network are liable for the negligent acts Ms. Shamrock and John Doe committed in the course and scope of their employment/agency under the doctrine of *respondeat superior*.

9. Defendant Lowcountry Infectious Diseases, P.A. (hereinafter, "Lowcountry Disease") is a South Carolina legal entity engaging in business and having their principal place of business in Charleston County.

10. At all relevant times to this action, Dr. Stock was an employee/agent of Defendant Lowcountry Infectious Diseases, P.A. and, with respect to the acts alleged herein, acted within the scope of his agency and/or employment there.

11. Defendant Lowcountry Infectious Diseases, P.A. is liable for the negligent acts Dr. Stock committed in the course and scope of his employment/agency under the doctrine of

*respondeat superior.*

12. At all relevant times to this action, a doctor-patient relationship existed between Plaintiffs and Dr. Stock and Defendants owed Mark Waller a duty to exercise the degree of care and skill ordinarily employed by those in the medical profession given the circumstances.

13. The events that give rise to this action occurred in Charleston County.

14. This Court has personal jurisdiction over the parties to this action, subject matter jurisdiction over the claims alleged herein, and venue is proper in Charleston County pursuant to S.C. Code Ann. § 15-7-30.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15. Plaintiffs re-allege the allegations in Paragraphs 1-14 above as if fully set forth herein and stated verbatim.

16. On February 5, 2018, Mark Waller strained his lower back while working in Huntsville, Alabama.

17. That same day, Mr. Waller visited an urgent care clinic in Huntsville, Alabama and was given an intramuscular injection to the right gluteus maximus.

18. On February 6, 2018, Mr. Waller presented to the Huntsville Hospital Medical Mall complaining of increased pain in the lower back. He received dilaudid via intramuscular injection into the right buttock.

19. Mr. Waller returned home to Charleston, South Carolina, and presented to his family doctor, Dr. Richard Wilkes, on February 8, 2018. Dr. Wilkes referred Mr. Waller for dry needling and physical therapy.

20. On February 8, 2018, Mr. Waller was seen at Carolina Physical Therapy and

Sports Medicine where he received dry needling and manual therapy.

21. On February 9, 2018, Mr. Waller presented to the Defendants Roper Hospital and Roper Healthcare Mt. Pleasant Emergency Room located at 3500 N Hwy 17, Mt. Pleasant, SC 29403 with increased lower back pain and was admitted to the hospital where he would stay until February 13, 2018.

22. Defendant Dr. Stock treated Mr. Waller during his hospital admission from February 8, 2018, through February 13, 2018.

23. While a patient of Defendants Roper Hospital, Roper Healthcare, and/or Roper Physicians, blood cultures were taken during his stay and analyzed at the Defendant Roper Hospital and Roper Healthcare's Roper Labs.

24. The initial blood cultures indicated Methicillin-Resistant Staphylococcus Aureus (hereinafter "MRSA") and Mr. Waller was given the antibiotic vancomycin for treatment.

25. An MRI was performed on his lumbar spine during his stay and no significant findings were reported.

26. On February 13, 2018, a corrected Roper Labs report of the blood cultures reported the infection as Methicillin-Sensitive Staphylococcus Aureus (hereinafter "MSSA").

27. Upon information and belief, Defendant Dr. Stock was consulted regarding the blood culture reports during Mr. Waller's February 8-13, 2018 stay at Roper Hospital.

28. Upon information and belief, vancomycin is effective in treating both MRSA and MSSA.

29. At discharge, Mr. Waller's infection diagnosis was changed to MSSA, vancomycin was discontinued, and he was started on cefazolin, an antibiotic that is ineffective in

treating MRSA.

30. Upon discharge, Mr. Waller continued treating with Defendant Dr. Stock and Defendant Lowcountry Disease.

31. On February 27, 2018, Mr. Waller presented at Defendants Roper Hospital and Roper Healthcare hospital located at 316 Calhoun St., Charleston, South Carolina with continued back pain.

32. An MRI of Mr. Waller's lumbar spine was ordered during his stay on February 27, 2018, revealing discitis at T12-L1.

33. On February 28, 2018, Mr. Waller presented to Defendants Stock and Lowcountry Disease and discussed the MRI findings from February 27, 2018.

34. At this time, Defendants Dr. Stock and Lowcountry Disease continued Mr. Waller on the same cefazolin therapeutic treatment plan that he was receiving upon discharge from Roper Hospital on February 13, 2018.

35. On March 21, 2018, Mr. Waller was admitted to Defendants Roper Hospital and Roper Healthcare's hospital located at 2095 Henry Tecklenburg Dr., Charleston, South Carolina for increased back pain.

36. Mr. Waller stayed in the Defendants' care from March 21, 2018, through March 26, 2018.

37. While admitted, Mr. Waller underwent a disc biopsy and the culture returned with a positive infection for MRSA.

38. During his stay, Defendants' attending physicians concluded Mr. Waller should not undergo surgical intervention and should continue antibiotic therapy.

39. Upon discharge from Defendants Roper Hospital and Roper Healthcare's hospital on March 26, 2018, Mr. Waller flew to New York and was admitted to NYU Langone Hospital-Long Island (previously, NYU Winthrop Hospital, hereinafter, "NYU Langone") the same day.

40. While at NYU Langone, Mr. Waller was diagnosed with severe discitis/osteomyelitis with extensive bone destruction and kyphotic collapse from pathological fractures at T12-L1.

41. Following this diagnosis, Mr. Waller underwent a reconstructive fusion to repair the kyphotic collapse.

**FOR A FIRST CAUSE OF ACTION AS TO THE ROPER DEFENDANTS, SHAMROCK  
AND JOHN DOE**  
**(Medical Malpractice, Negligence, and Gross Negligence)**

42. Plaintiffs re-allege all prior paragraphs as if fully restated here verbatim.

43. Because Defendants Roper Hospital, Roper Healthcare, and/or Roper Physicians failed to follow the prevailing standard of care when Defendant Roper Hospital and/or Roper Healthcare changed the MRSA diagnosis to MSSA without additional testing, Mr. Waller suffered extensive bone destruction and kyphotic collapse at T12-L1. Had Mr. Waller been properly diagnosed and treated by the Defendants Roper Hospital, Roper Healthcare, and/or Roper Physicians he would more likely than not have completed successful treatment of his MRSA infection, preventing the extensive bone destruction and kyphotic collapse.

44. While Plaintiff was under the care of the Defendants Roper Hospital, Roper Healthcare and/or Roper Physicians and their agents, employees and/or assistants including but not limited to Defendants Shamrock and John Doe, the above-captioned Defendants departed from the prevailing professional standards of care and treatment of Mr. Waller and were thereby

negligent, reckless and acted in violation of the duties owed to the Plaintiff in that they committed any or all of the below which were departures from the prevailing professional standards of care:

- a. Changing the report of MRSA to MSSA without additional testing;
- b. Relying on susceptibility testing to reverse MRSA diagnosis without additional testing;
- c. Failing to order the necessary follow-up tests to resolve the discrepancy in testing; and
- d. Failing to communicate the discrepancy to the physicians in a timely manner to allow for appropriate informed therapeutic choice.

45. Had the Defendant Roper Lab, by and through Defendants Shamrock and John Doe, acted in accordance with the standard of care, initial diagnosis of MRSA and the subsequent vancomycin therapeutic treatment would have continued, thereby preventing Mr. Waller's extensive bone destruction and kyphotic collapse that eventually occurred and led to a reconstructive fusion performed at NYC Langone on March 28, 2018.

**FOR A SECOND CAUSE OF ACTION AS TO**  
**LOWCOUNTRY DISEASE AND STOCK**  
**(Medical Malpractice, Negligence, and Gross Negligence)**

46. Plaintiffs re-allege all prior paragraphs as if restated here verbatim.

47. Mr. Waller suffered extensive bone destruction and kyphotic collapse because of the Defendants Lowcountry Disease and Dr. Stock's failure to follow the prevailing standard of care thereby failing to recognize the cefazolin treatment plan was ineffective in the treatment of Mr. Waller's infection. Had the Defendants timely recognized this ineffective treatment and

considered a differential diagnosis, particularly during Mr. Waller's hospital stay on February 27 and 28, 2018, the MRSA infection would have been properly diagnosed, an appropriate treatment plan would have been prescribed accordingly, and Mr. Waller would have been given surgical options that would have prevented the reconstructive fusion that was ultimately performed.

48. While Plaintiff was under the care of the Defendants Lowcountry Disease and Dr. Stock, and their agents, employees and/or assistants from the above-captioned Defendants, they departed from the prevailing professional standards of care and treatment of Mr. Waller and were thereby negligent, reckless and acted in violation of the duties owed to the Plaintiff in that they committed any or all of the below which were departures from the prevailing professional standards of care:

- a. Failing to recognize cefazolin treatment plan was ineffective while Mr. Waller was in the hospital from February 27 to February 28, 2018;
- b. Failing to recommend an orthopedic consult or neurosurgery consult to obtain a biopsy of spine tissue while Mr. Waller was admitted to the hospital on February 27, 2018; and
- c. Failing to consider a differential infection diagnosis due to lack of response to the cefazolin treatment plan as evidenced by ongoing pain, persistently elevated inflammatory markers, and progression of disease on the MRI.

49. Had the Defendants Lowcountry Disease and Dr. Stock acted in accordance with the standard of care, Mr. Waller would have been afforded various surgical options that would have prevented the extensive bone destruction and kyphotic collapse at T12-L1.

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

50. Plaintiffs re-allege all prior paragraphs as if restated here verbatim.

51. At all times relevant to this action, Mark Waller and Donna Berry-Walker were a legally married couple living together as husband and wife at their marital residence in the State of South Carolina.

52. The Defendants, individually and by and through their agents and servants, were negligent, grossly negligent, careless, and reckless thereby proximately causing injury to Mark Waller.

53. As described herein, the negligent, grossly negligent, careless, reckless, willful, and wanton conduct of the Defendants directly and proximately resulted in injuries to Donna Berry-Walker's spouse.

54. As a result of Defendants' negligent, grossly negligent, careless, reckless, willful, and wanton conduct as set forth above, Donna Berry-Walker is entitled to recover from Defendants the requested relief as set forth herein in accordance with S.C. Code Ann. § 15-75-20 *et seq.*

55. As a direct and proximate result of the injuries to her spouse, Donna Berry-Walker has suffered:

- a. The lost companionship of her spouse;
- b. The loss of the aid of her spouse;
- c. The loss of society and companionship of her spouse;
- d. The loss of services of her spouse;
- e. The expenditure of money for medical expenses, therapies, and other

ancillary medical and health-related services for her spouse;

- f. The lost income relating to caring for her spouse and relating to her taking her spouse to receive the various medical, therapeutic, and other ancillary health-related services that he has required; and,
- g. Other damages as may be proven.

56. For the aforementioned injuries that Defendants proximately caused, Plaintiff Donna Berry-Walker is entitled to receive actual and consequential damages as well as punitive damages from the Defendants in an amount as a jury may determine.

**PRAYER FOR RELIEF**

57. **Wherefore**, Plaintiffs pray that the Court hold the Defendants liable for this conduct complained of herein; to enter judgment against the Defendants and in favor of the Plaintiffs; and to award actual damages, compensatory damages, and for such other relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

58. Plaintiffs demand a jury trial.

Respectfully submitted,

s/ J. Clarke Newton  
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