

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2010-CA-01137

**SHIRLEY BULLOCK, INDIVIDUALLY
AND O/B/O ALL WRONGFUL DEATH
BENEFICIARIES OF LARRY BULLOCK**

APPELLANTS

VS.

**DR. MICHAEL PATTERSON, SOUTHERN
BONE & JOINT SPECIALISTS, P.A.,
AND WESLEY MEDICAL CENTER**

APPELLEES

**ON APPEAL FROM THE CIRCUIT COURT
OF JEFFERSON DAVIS COUNTY, MISSISSIPPI**

BRIEF OF APPELLEES

DR. MICHAEL PATTERSON AND SOUTHERN BONE & JOINT SPECIALISTS, P.A.

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PARTIES

In order that the Justices of the Supreme Court or the Judges of the Court of Appeals may evaluate possible disqualification or recusal, the undersigned counsel of record certifies that the following listed persons/entities have an interest in the outcome of this case:

Shirley Bullock, Delois Kimbra Smith, Jeffrey Bullock, wrongful death beneficiaries of Larry Bullock, Appellants;

Isaac K. Byrd, Jr., Suzanne G. Keys; Byrd & Associates, Attorneys for Appellants;

Dr. Michael Patterson, Appellee;

Southern Bone & Joint Specialists, P.A., Appellee;

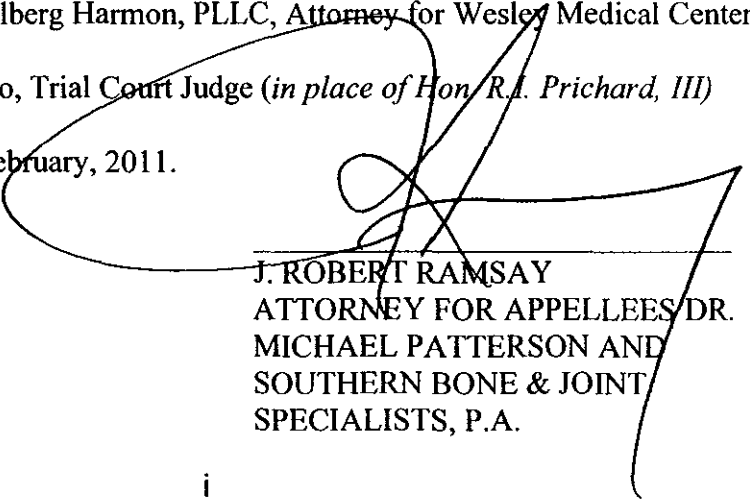
J. Robert Ramsay; Ramsay & Hammond, Attorney for Dr. Michael Patterson and Southern Bone & Joint Specialists, P.A.;

Wesley Medical Center, Appellee;

Stuart B. Harmon; Heidelberg Harmon, PLLC, Attorney for Wesley Medical Center;

Honorable Tony Mozingo, Trial Court Judge (*in place of Hon. R.A. Prichard, III*)

THIS, the 18th day of February, 2011.



J. ROBERT RAMSAY
ATTORNEY FOR APPELLEES DR.
MICHAEL PATTERSON AND
SOUTHERN BONE & JOINT
SPECIALISTS, P.A.

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STATEMENT REGARDING ORAL ARGUMENT

The Appellant did not request oral argument. Appellees herein concur and submit that the facts and legal arguments are adequately presented in the briefs and appellate record and that this Court would not be significantly aided by oral argument. M.R.A.P. 34 (a)(3).

**STATEMENT OF THE ISSUES INVOLVING DR. MICHAEL PATTERSON AND
SOUTHERN BONE & JOINT SPECIALISTS, P.A.**

- A. Whether the Circuit Court Properly Granted Dr. Michael Patterson's and Southern Bone & Joint Specialists' Motion for Summary Judgment because Bullock Failed to Establish a Prima Facie Case of Medical Negligence with Sworn Expert Testimony;***
- B. Whether the Circuit Court Properly Denied Bullock's Motion for Reconsideration.***

STATEMENT OF THE CASE

In October 2008, Shirley Bullock filed a Complaint then an Amended Complaint in the Jefferson Davis County Circuit Court against Wesley Medical Center ("WMC"), Dr. Michael Patterson ("Dr. Patterson"), Southern Bone & Joint Specialists, P.A. ("Southern Bone & Joint"), and other parties who have since been dismissed.¹ (R5) This Amended Complaint alleges, as to Dr. Patterson and his employer, Southern Bone & Joint, that they deviated from the standard of care regarding the medical care and treatment of Larry Bullock and that their negligence proximately caused Larry Bullock's death. (R14-20) Dr. Patterson and Southern Bone & Joint Answered and simultaneously filed a Motion to Dismiss and Motion for Change of Venue. (R5) After Answering a second Amended Complaint, Dr. Patterson and Southern Bone & Joint moved to exclude Bullock's proposed medical expert pursuant to *Daubert* and for Summary Judgment or, alternatively, for partial Summary Judgment. (R117-239) Bullock responded to this Motion, then prior to the trial court's entry of its Order and Judgment granting same, prematurely filed a Motion to Reconsider. (R240-381, 410-423) On June 11, 2010, the trial court entered an Order and Judgment granting the Appellee's Motion for Summary Judgment and dismissing Dr. Patterson and Southern Bone & Joint with prejudice. (R424-429) On June 16, 2010, the Trial Court denied Bullock's Motion to Reconsider. (R434) Bullock thereafter perfected this appeal. (R435-436)

STATEMENT OF FACTS²

Larry Bullock suffered a heart attack in 2003, which resulted in placement of a stent and prescription of Plavix, an anti-coagulant that works to inhibit blood clotting in stent patients.

1 Prior to trial scheduled for August 4, 2010, Bullock and the Co-Defendants, Prentiss Regional Medical Center (Jeff Davis Community Hospital) and AAA Ambulance Service, settled for \$475,000.00, and these Defendants were dismissed.

2 With permission, Dr. Patterson and Southern Bone & Joint have adopted and reproduced herein portions of WMC's Appellee brief, beginning with the Statement of Facts.

(R22, 39, 136) Four years later, on July 26, 2007, Mr. Bullock was admitted to Wesley Medical Center for cervical surgery, wholly unrelated to his cardiac condition. (R22-23) Based on Mr. Bullock's clinical presentation and the radiographic imaging studies, this surgery was needed and appropriate. (R23, 38, 136) Dr. Michael Patterson, an employee of Southern Bone & Joint, successfully performed the cervical surgery without complication. The day before the surgery, Dr. Patterson discontinued Mr. Bullock's Plavix. (R265) On the day of the surgery, ten (10) units of platelets were administered to Mr. Bullock to reverse the effects of the Plavix. The platelets were effective and Mr. Bullock suffered virtually no blood loss with the surgery. (R136-37) Post-operatively, a Hemovac drain was placed to collect and remove any bleeding; but again, there was virtually no bleeding or drainage in the sixteen hours after surgery. (R118, 120-121, 137, 195, 239-05) The day after his surgery, on July 27, Mr. Bullock had maintained adequate hemostasis, was hemodynamically stable, and totally stable in terms of coagulation. (R118, 120-121, 137, 239-05)

Before discharging Bullock from WMC, Dr. Patterson verbally instructed the Bullocks about after-care, including his advise to withhold Plavix for a couple of days. Mrs. Bullock's testimony was conflicting on whether the withholding of Plavix was discussed with Dr. Patterson. (R265-266, 275, 329-330) However, Dr. Patterson, an orthopedic surgeon, followed his usual practice and ordered that Dr. Kurt Bruckmeier, a board certified and very experienced internist, make the final decision on Mr. Bullock's home medications, including when to resume Plavix. (R194-195, 294, 306) Dr. Bruckmeier, an employee of WMC, is an internist who specializes in reviewing and ordering home medications, including anti-coagulants such as Plavix. (R23-24, 194-195) Rather than withholding Plavix for two days, Dr. Bruckmeier instructed that Mr. Bullock should resume the Plavix following discharge from WMC to avoid the risk of a stroke or clotting, which could be fatal due to his stent. (R23-24, 302-304) Dr.

Patterson, as a surgeon, deferred to Dr. Bruckmeier, as an internist, on this decision regarding when the Plavix needed to be resumed. (R194-195, 294-298)

Nurse Kerr also instructed the Bullocks at discharge. Her discharge notes state that Mr. Bullock was advised not to do any lifting, bending, neck flexing or head turning after discharge. (R24, 53) Mr. Bullock was also advised to keep his incision clean and dry, with a light dressing, and to see Dr. Patterson for a post-op visit on August 17, but that he should notify a physician if he experienced any numbness, tingling, fever, or any worsening condition. Mrs. Bullock was present for this discharge conversation and she signed a document indicating that she had received and understood these instructions. Mrs. Bullock agrees that they received these instructions from Nurse Kerr, including the take home medication sheet and information regarding resumption of medications. Mrs. Bullock also agrees that she and Mr. Bullock understood that they were to notify a physician if any of the noted developments occurred. (R24, 52-53, 101, 278, 289-290) After Dr. Bruckmeier had signed off on it, Nurse Kerr gave Mr. Bullock a copy of his discharge medications, which indicated he should resume Plavix at home. (R24, 53, 277, 290, 307)

Mr. Bullock returned home after his discharge from WMC. Later that evening, he began complaining of shortness of breath and thought he needed to go to the emergency room. According to Mrs. Bullock, his voice became raspy and hoarse; he complained of difficulty swallowing, a sensation of choking and feeling like his throat was "closing off"; and she observed swelling around his neck. (R24, 45, 280-281) Immediately upon the development of these symptoms, instead of merely notifying a physician, Mrs. Bullock actually drove Mr. Bullock straight to Jefferson Davis Community Hospital/Prentiss Regional Medical Center. (R24-25, 45, 54, 55, 282) Upon arrival at Jefferson Davis/Prentiss Regional ER, Mr. Bullock's primary complaint was increasing shortness of breath and increased neck edema. Dr. James

Locke, emergency physician at Jefferson Davis/Prentiss Regional, examined Mr. Bullock, but did not examine or assess his airway and did not intubate him. (R186) Dr. Locke ordered that Mr. Bullock be transported to WMC by ground ambulance. (R186-187, 225, 239. 239-11)

AAA Ambulance arrived at Jefferson Davis Community Hospital/Prentiss Regional about forty-five minutes after the Bullocks had arrived and soon departed with Mr. Bullock, heading to WMC. Despite being given oxygen via a non-rebreather mask, Mr. Bullock continued to complain of shortness of breath shortly after departure. Mr. Bullock continued to struggle and asked to be intubated. (R119; 231-232; 238-9; 285-87) The ambulance personnel realized Mr. Bullock would not make it to WMC by ground ambulance, so less than 6 minutes after departure, called the air ambulance to meet them en route. The AAA Ambulance EMT unsuccessfully attempted intubation three times, then inserted a Combitube, but Mr. Bullock continued to deteriorate and the EMT started CPR. (R119; 231-232; 238) The ground and air ambulances met in Sumrall and Mr. Bullock was transferred to the helicopter staff (flight ambulance), who took over CPR. (R119; 238) The flight ambulance personnel removed the Combitube and successfully intubated Mr. Bullock, but he was pronounced dead upon arrival at WMC. (R92-93, 119; 238; 239-11, 239-12) The family declined an autopsy. (R239-13)

SUMMARY OF THE ARGUMENT

Dr. Patterson, a board certified orthopedic spine surgeon, successfully performed cervical surgery on Mr. Bullock. Nonetheless, Ms. Bullock makes two claims: (1) Dr. Patterson deviated from the standard of care in failing to discontinue the medication Plavix for 5-7 days before commencing surgery; and (2) in failing to “prevent the resumption” of Plavix after discharge. However, Bullock cannot survive summary judgment because she has failed to make a *prima facie* case as to either of these issues.

The sworn testimony of Dr. Raymond Vance, Bullock's singular expert offered as to Dr. Patterson, establishes that he is not qualified as an expert in the subject area, nor is he familiar with the applicable standards of care with regard to these two issues. That aside, with regard to Dr. Vance's criticism that surgery should have been delayed during which period the medication Plavix should have been withheld, in Dr. Vance's sworn testimony, he essentially abandoned this issue, conceding that the infusion of platelets pre-operatively, effectively reversed the effects of the Plavix which Mr. Bullock had taken previously, and that post-operatively Mr. Bullock had no bleeding; at time of discharge, he was hemodynamically stable and stable with regard to coagulation. Without sworn proof as to the standard of care, deviation therefrom by Dr. Patterson, and causation, the Plaintiff has failed to make a *prima facie* case and summary judgment was appropriately granted.

With regard to the other allegation as to Dr. Patterson, that Dr. Patterson "failed to prevent the resumption" of Plavix, Dr. Vance admitted that he could not articulate any particulars concerning the standard of care for resumption of Plavix upon discharge other than that Dr. Patterson should have consulted with and deferred to a cardiologist. Dr. Vance conceded that fields of cardiology and internal medicine are outside his area of expertise, and, he could not and declined to opine as to what a cardiologist would direct with regard to the timing of Mr. Bullock's resumption of Plavix, in light of his cardiology comorbidity. Dr. Patterson did consult with and defer to Dr. Bruckmeier, an experienced, board certified internist, with regard to the resumption of Plavix after discharge. Assuming Dr. Patterson deviated from the standard of care, as contended by Bullock, by consulting and deferring to an internist (as opposed to a cardiologist), there is no way to causally connect this alleged deviation to Mr. Bullock's death. The deferral by Dr. Patterson to Dr. Bruckmeier, the internist, cannot be the proximate cause of Mr. Bullock's death, whether or not Dr. Bruckmeier deviated from the standard of care of an

internist in directing the resumption of Plavix after discharge. Further, the only sworn medical expert testimony in this record regarding whether the resumption of Plavix, whether by an internist or cardiologist, was a deviation from the standard of care, is the sworn Affidavit of Dr. Malcolm Taylor, a board certified cardiologist, that Dr. Bruckmeier's directive with regard to the timing of the resumption of Plavix was *consistent* with the standard of care. In any event, the deferral by Dr. Patterson to an internist (a specialty outside of Dr. Patterson's area of expertise), cannot be the proximate cause of Mr. Bullock's death.

Further, had Bullock successfully established a *prima facie* case on either of these issues as to Dr. Patterson, sworn testimony from Bullock's qualified emergency physician expert, establishes, as a matter of law, that the unforeseeable, subsequent, superseding negligence of the emergency physician, Dr. Locke at Prentiss Regional Medical Center in not examining/assessing Mr. Bullock's airway and intubating Mr. Bullock, and by AAA Ambulance personnel in not successfully intubating Mr. Bullock, was the proximate cause of Mr. Bullock's death. Under the circumstances, in the best case scenario for Bullock, the decision by Dr. Patterson to defer to Dr. Bruckmeier, the internist, with regard to the timing of the resumption of the Plavix after discharge is not the proximate cause of Mr. Bullock's death, or at the very least is a *remote cause*.

As a matter of law, Bullock has failed to establish a *prima facie* case i.e. duty, breach of duty, and proximate cause. There is no issue of material fact with regard to this issues and Dr. Patterson and Southern Bone & Joint were entitled to Summary Judgment in their favor. The Circuit Court properly granted Summary Judgment dismissing Dr. Patterson and Southern Bone & Joint.

ARGUMENT

A. *The Circuit Court Properly Granted Dr. Michael Patterson's and Southern Bone & Joint Specialists' Motion for Summary Judgment because Bullock Failed to Establish a Prima Facie Case of Medical Negligence with Sworn Expert Testimony.*

This Court's review of a trial court's grant or denial of summary judgment is *de novo*. *Townsend v. Doosan Infracore American Corp.*, 3 So.3d 150, 153 (¶ 5) (Miss. App. 2009) (citing *Webb v. Braswell*, 930 So.2d 387, 395 (¶ 12) (Miss. 2006)); *MIGA v. Cole*, 954 So.2d 407, 409 (¶ 8) (Miss. 2007) (citations therein omitted). When the evidence considered in the light most favorable to the nonmoving party reveals no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. *Townsend*, 3 So.3d at 153 (¶ 5) (citing *Hubbard v. Wansley*, 954 So.2d 951, 956 (¶ 9) (Miss. 2007) (citing M.R.C.P. 56 (c))).

In order for a plaintiff to make a *prima facie* case of medical malpractice and survive summary judgment, sworn expert testimony is vital to establish the applicable standard of care and the defendant's breach of same, as well as proximate cause. *Northrop v. Hutto*, 9 So.3d 381, 384 (¶ 9) (Miss. 2009); *Palmer v. Biloxi Regional Medical Center*, 564 So.2d 1346, 1357 (Miss. 1994) (citations therein omitted); *Walker v. Skiwski*, 529 So.2d 184, 185-86 (Miss. 1988). *See also McDonald v. Memorial Hospital at Gulfport*, 8 So.3d 175, 180 (Miss. 2009). More specifically, a plaintiff must establish by sworn expert proof that the defendant failed in some particular respect to conform to the applicable standard of care exercised by minimally competent health care providers in the same field, under like or similar circumstances, and that such failure is the proximate cause of the alleged injuries. *Walker*, 529 So.2d at 185-86. In sum, to avoid summary judgment, a plaintiff in a medical malpractice action must establish a *prima facie* case by providing sworn expert testimony to prove the existence of a duty, the particular

duty owed³, each defendant's deviation therefrom, and proximate cause. *Northrop*, 9 So.3d at 384 (¶ 9); *Hubbard*, 954 So.2d at 956-57 (¶ 12) (citations therein omitted); *Walker*, 529 So.2d at 185-86; *Boyd v. Lynch*, 493 So.2d 1315, 1318 (Miss. 1986).

Bullock's claims against Dr. Patterson are twofold⁴. First, she urges that Dr. Patterson's performance of the subject surgery on Mr. Bullock without first discontinuing Plavix for five to seven days⁵ constitutes a deviation from the standard of care which proximately caused or contributed to Mr. Bullock's death. (Appellant's Brief, p. 14) Next, Bullock asserts that Dr. Patterson's failure to prevent the resumption of Plavix following discharge constitutes a breach of the appropriate standard of care which proximately caused or contributed to Mr. Bullock's death. (Appellant's Brief, p. 15) Both claims are meritless.

1. Bullock failed to provide any sworn testimony by a competent medical expert orthopedic spine surgeon establishing the standard of care for Dr. Patterson and any deviation therefrom.

"The success of a plaintiff in establishing a case of medical malpractice rests heavily on the shoulders of the plaintiff's selected medical expert." *Northrop*, 9 So.3d at 384 (¶ 10). The plaintiff's medical expert must first be qualified as an expert in the area, generally, then the plaintiff must lay a proper predicate for the expert to express his opinion regarding the content of the applicable standard of care and deviation therefrom. *Walker*, 529 So.2d at 187; *Hickox v. Holleman*, 502 So.2d 626, 637, 638-39 (Miss. 1987) (citations therein omitted); superseded on other grounds by *Miss. Transportation Commission v. McLemore*, 863 So. 2d 31 (Miss. 2003).[^] This predicate requires a showing beyond being properly qualified and accepted as an expert in the particular area. It also requires a showing that the witness is familiar with the applicable

3 Applicable standard of care.

4 Southern Bone & Joint, as Dr. Patterson's employer, may be liable for any alleged negligence of Dr. Patterson.

5 Although Bullock's Brief claims as the alleged breach only the failure to wean Mr. Bullock from Plavix, her previous efforts in the Trial Court more specifically alleged that Dr. Patterson should have stopped Mr. Bullock's Plavix for five to seven days prior to the surgery. (R 249)

standard of care. *Trapp v. Cayson*, 471 So.2d 375, 379-80 (Miss. 1985). Although a physician in a particular specialty may certainly testify to the standard of care in another specialty, he must first be familiar with the standards of the second specialty. *McDonald v. Memorial Hospital at Gulfport*, 8 So.3d 175, 181 (¶ 17) (Miss. 2009) (citations therein omitted). While qualification of an expert and laying a predicate for expression of his expert opinion are typically contemplated in the context of trial testimony, these same basic requisites apply at other procedural stages, such as on motion for summary judgment. See *Walker*, 529 So.2d at 187.

a. Failure to Discontinue Plavix for 5 – 7 Days before Surgery

Bullock's first step toward surviving summary judgment on this claim requires that she establish, by sworn expert testimony, the particulars of the standard of care exercised by minimally competent orthopedic spine surgeons under circumstances similar to those faced by Dr. Patterson. *Northrop*, 9 So.3d at 384 (¶ 9); *Hubbard*, 954 So.2d at 956-57 (¶ 12) (citations therein omitted); *Walker*, 529 So.2d at 185-86; *Boyd*, 493 So.2d at 1318. The circumstances at play here are an orthopedic spine surgeon determining the timing of cervical surgery on a cardiac stent patient on Plavix or, more specifically, whether and for what number of days Plavix should be discontinued in such patients prior to this surgery. Bullock's sole orthopedic expert, Dr. Raymond Vance, must first be qualified as an expert in the area, generally, then show that he is familiar with the applicable standard of care before he is allowed to express his opinion regarding the content of that standard and deviation therefrom. *Walker*, 529 So.2d at 187; *Hickox*, 502 So.2d at 637, 638-39 (citations therein omitted). This is in accord with M.R.E. 702.

Dr. Vance admitted in his deposition testimony that he does not hold himself out as being a spine specialist in the orthopedic community. In fact, his orthopedic practice consists predominantly of arthroscopy of the knee and shoulder and, in the previous 15 years, he has not performed any type of spinal surgery. He has never performed anterior cervical spine surgery,

which is the surgery Dr. Patterson performed on Mr. Bullock. (R131-132, 135, 136) In fact, Dr. Vance testified that from a surgical perspective, he did not manage *any* patients with cervical disc disease - the condition from which Mr. Bullock suffered. Rather, he referred such patients out to a (spine) orthopedist or neurosurgeon because he is not competent to perform such surgeries. (R142-143) Dr. Vance testified that he was familiar with the fact that patients taking Plavix may temporarily discontinue the Plavix when they undergo surgery. He was also familiar with the view that administration of platelets would reverse the anticoagulant effects of Plavix. (R136) Yet, while Bullock seeks to rely on Dr. Vance's expert opinion testimony concerning how many days prior to surgery Dr. Patterson should have discontinued Mr. Bullock's Plavix, *Dr. Vance readily admitted that medication of stent patients for coagulopathy was beyond his area of expertise.* (R136, 143-144) Because not within his area of knowledge, among other unspecified reasons, Dr. Vance opined that it would be necessary to consult with the patient's cardiologist before surgery regarding any temporary discontinuation of Plavix. Dr. Vance further conceded that he had not reviewed any of Mr. Bullock's cardiology records nor had he consulted with Mr. Bullock's cardiologist. (R136, 143-144)

Restated, Dr. Vance's sworn testimony is that he was not only *not* an expert in the subject area, but was also *not* familiar with the applicable standard of care regarding precisely the issue at hand. On the basis of his own sworn testimony, Dr. Vance is not qualified by training or experience as an expert in the area, generally, nor is he familiar with the applicable standard of care. *Walker*, 529 So.2d at 187; *Hickox*, 502 So.2d at 637, 638-39 (citations therein omitted). It follows that he cannot offer expert opinion testimony regarding the content of that standard and deviation therefrom. *Walker*, 529 So.2d at 187; *Hickox*, 502 So.2d at 637, 638-39 (citations therein omitted); *Trapp*, 471 So.2d at 379-80.

For Bullock to survive summary judgment and proceed to a trial on the merits, she was required to produce *sworn* testimony from a *qualified expert* regarding the applicable standard of care for an orthopedic spine surgeon determining whether and for what number of days Plavix should be discontinued in cardiac stent patients before cervical surgery, Dr. Patterson's deviation therefrom, and proximate cause. *Northrop*, 9 So.3d at 384 (§ 9); *Palmer*, 564 So.2d at 1357; *Walker*, 529 So.2d at 185-86. Without a qualified expert who is familiar with the applicable standard of care, Bullock has not and cannot make a *prima facie* case. *Walker*, 529 So.2d at 187; *Hickox*, 502 So.2d at 637, 638-39; *Trapp*, 471 So.2d 379-80. There is no genuine issue of material fact, Dr. Patterson and Southern Bone & Joint are entitled to summary judgment as a matter of law, and this Court must affirm the trial court's grant of summary judgment. *Townsend*, 3 So.3d at 153 (§ 5) (citations therein omitted).

b. Failure to Prevent Resumption of Plavix upon Discharge

On this point, Bullock takes no issue with Dr. Patterson's advice to the Bullocks to wait two days after discharge before resuming Plavix, but she complains that Dr. Patterson failed to note this in Mr. Bullock's chart or otherwise communicate this two-day Plavix hold to Dr. Bruckmeier. (Appellant's Brief, p. 14) Dr. Patterson's sworn testimony, however, makes clear that his not memorializing a two day delay in resuming Plavix was no accident. Rather, Dr. Patterson relied upon Dr. Bruckmeier's experience as an internist and purposely and appropriately deferred to Dr. Bruckmeier on the timing of Mr. Bullock's Plavix resumption after discharge. (R194)

Plaintiff's expert, Dr. Vance, conceded that he was neither a cardiologist nor an internist and, would have to defer to a specialist, outside the area of his expertise with regard to the timing of the resumption of Plavix. Consequently, the fact that Dr. Patterson requested a consult with and deferred to a specialty outside the area of his expertise, Dr. Bruckmeier, a board certified,

experienced internist, cannot be the basis for a deviation. Further, Dr. Vance's criticism as to Dr. Patterson is that Dr. Patterson should have consulted with Mr. Bullock's cardiologist and deferred concerning the timing of the resumption of Plavix post-surgery versus deferral to Dr. Bruckmeier, an experienced internist with regard to the timing of the resumption of Plavix, both of which areas of specialty, i.e. cardiology and internal medicine, were outside Dr. Vance's area of expertise. Ostensibly, if Dr. Bruckmeier's advises with regard to the resumption of Plavix is in compliance with the standard of care of a board certified internist or cardiologist, then Dr. Patterson's not preventing the resumption of Plavix after discharge, is irrelevant.

To avoid summary judgment on this claim, Bullock must establish, again by sworn expert testimony, the particulars of the standard of care exercised by minimally competent spine orthopedist under circumstances similar to those faced by Dr. Patterson. *Northrop*, 9 So.3d at 384 (¶ 9); *Hubbard*, 954 So.2d at 956-57 (¶ 12) (citations therein omitted); *Walker*, 529 So.2d at 185-86; *Boyd*, 493 So.2d at 1318. The circumstances at play here is the request for a consult and deferral to an internist reviewing and ordering post-surgical home medications for a cardiac stent patient. The sole expert Bullock designated to offer any opinion as to Dr. Bruckmeier and Dr. Patterson is again Dr. Vance, an orthopedic surgeon, who readily admitted he does not hold himself out as an internist or as an expert in internal medicine. (R38, 88-89, 136, 145) Further, Dr. Vance testified under oath that the effect of different types of stents on the medication of patients for coagulopathy, *precisely the issue about which Dr. Bruckmeier is criticized*, is beyond his (Dr. Vance's) area of expertise! (R144-146)

The simplicity of the issue was squarely framed and squarely addressed by Dr. Vance in his deposition:

Q. Okay. And it says there, "There was no communication between Dr. Patterson and Dr. Bruckmeier concerning Mr. Bullock's resumption of Plavix postoperatively and no communication with Mr. Bullock's cardiologist concerning the surgery or when and how he should resume his Plavix."

Does that fairly summarize your opinion in that regard?

A. Yes.

Q. All right. Is it your opinion that there should have been, once again, some communication with a cardiologist following surgery to determine when and how the Plavix should be resumed? I think I read that correctly, but –

A. Yes. Except I think that that might have been hammered out before surgery ever occurred. I don't know that the conversation would have to occur after surgery.

Q. Okay. But –

A. But, yes, the issues would have been how long shall I discontinue his Plavix, on the one hand, and contemplating the fact that I'm doing an operation on his neck –

Q. Right.

A. – when should it safely be reinstituted.

Q. Let's talk about that for a minute. You should agree that at some point, his Plavix was going to have to be reinstituted. Correct?

A. It would seem to me that would be true.

Q. Once again, you would really lean on or defer to a cardiologist for that decision?

A. Yes, sir.

Q. All right. And when it was going to be resumed, how it was going to be resumed, the dosage at which it would be resumed, would depend at least in part on what type of stint he had in. Would it not?

A. It would seem to me that it would.

Q. And, once again, that would be an area that would be beyond your area of expertise. Correct?

A. Correct.

Q. You would defer to a cardiologist on that issue?

MR. BYRD: To his cardiologist, you mean?

THE WITNESS: That is true.

(R144-145) (emphasis added)

The parties agree that Mr. Bullock needed his Plavix, secondary to the stent which was already in place because of his heart condition. As set forth above, Dr. Vance agreed that following surgery, the Plavix was going to need to be re-started at some point. That is not disputed. The pivotal issue as to Dr. Patterson is whether Dr. Patterson deviated from the standard of care in deferring to a specialist in internal medicine (outside of Dr. Patterson's area of expertise) as to the timing of the resumption of Plavix.

While conceding that the standard of care applicable to the timing of the resumption of Plavix, after discharge, was "outside his area of expertise," Dr. Vance opined that Mr. Bullock's

cardiologist should have been consulted and deferred to concerning when to resume Plavix after discharge. It is undisputed that Dr. Patterson requested a consult with and deferred to Dr. Bruckmeier, an internist (also outside Dr. Patterson's area of expertise) with regard to the timing of Mr. Bullock's resumption of Plavix after discharge. Cardiology is simply a subspecialty of internal medicine (i.e. all cardiologists are, first and foremost, internists). Plaintiff's expert, Dr. Vance conceded that he too would have deferred to a physician with expertise in internal medicine/cardiology, which is exactly what Dr. Patterson did. However, he attempts to criticize the fact that the deferral by Dr. Patterson was to a board certified internist rather than a cardiologist.

In addition, for Bullock to survive summary judgment and proceed to a trial on the merits, she was required to produce *sworn* testimony from a *qualified expert* regarding the applicable standard of care for when to resume Plavix for a cardiac stent patient after cervical surgery, Dr. *Bruckmeier's* deviation therefrom⁶, and proximate cause. *Northrop*, 9 So.3d at 384 (¶ 9); *Palmer*, 564 So.2d at 1357; *Walker*, 529 So.2d at 185-86. Dr. Vance, Bullock's only expert on that issue, clearly and unequivocally testified he did not know the answer to the question and that it was beyond his area of expertise. He candidly agreed that he would have to consult with a cardiologist regarding *when* the Plavix needed to be re-started. Bullock has no cardiologist or any other qualified expert who has opined or can opine that the Plavix should not have been resumed at the time of discharge.

To the contrary, the only sworn proof before the Court is the Affidavit of Dr. Malcolm Taylor – a cardiologist - that it complied with the standard of care to resume Mr. Bullock's Plavix after discharge. (R112-113) Thus, the sworn, probative proof in the record affirmatively establishes that Dr. Bruckmeier's resumption of Plavix after discharge was appropriate, and

⁶ And, likewise, Dr. Patterson's deviation therefrom.

therefore Dr. Patterson's deference to an internist regarding resumption of Plavix after discharge, was not a deviation from the standard of care. Consequently, this claim against Dr. Patterson and Southern Bone & Joint was properly dismissed. Bullock obviously has not and cannot show that Dr. Vance is familiar with the applicable standard of care; therefore, she has also failed to prove a *prima facie* case. *Walker*, 529 So.2d at 187; *Hickox*, 502 So.2d at 637, 638-39; *Trapp*, 471 So.2d at 379-80.

Even presuming Dr. Vance's proper expert qualification and familiarity with the applicable standard of care, Bullock still fails to thwart summary judgment via Dr. Vance's testimony. Although Bullock's expert designation purports to set out the appropriate standard of care, this designation is not sworn expert testimony and is insufficient to defeat summary judgment. (R88-89) *Scales v. Lackey Memorial Hospital*, 988 So.2d 426, 433 (¶ 18) (Miss. App. 2008). The only *sworn* testimony from Dr. Vance is contained in his deposition. (R131-149) Relevant to the standard of care applicable to post-surgical resumption of Plavix, Dr. Vance's sworn testimony is that Mr. Bullock's cardiologist should have been consulted with and deferred to concerning when to resume Plavix post-surgery. (R136, 144-146) Notwithstanding that Dr. Vance unequivocally testified that anything concerning cardiology was beyond his area of expertise, including the effect of different types of stents on the medication of cardiac patients for coagulopathy, Dr. Vance also testified that he had not reviewed any of Mr. Bullock's cardiology records and he had not consulted with any cardiologist in regard to Mr. Bullock's case. (R144-146) Consequently, Dr. Vance expressly admitted that he could not (and did not) articulate any further particulars concerning the standard of care, such as when Plavix needed to be resumed in like or similar circumstances. Bullock's own motion to reconsider concedes that Dr. Vance declined to testify as to when Mr. Bullock could safely resume Plavix. (R413) Beyond being unqualified to give an expert opinion in the first instance, because he is admittedly

wholly lacking any familiarity with the applicable standard of care, Dr. Vance failed to articulate the content and details of the appropriate standard of care, which is necessary to prevent summary judgment. *Trapp*, 471 So.2d at 379-80; *Walker*, 529 So.2d at 187.

Based on the flimsy standard of care articulated by Dr. Vance's sworn testimony, and without further sworn particulars from a cardiologist, internist or other qualified medical expert as to when Plavix should have been resumed, it cannot be said that Dr. Bruckmeier's instruction to resume Plavix upon discharge or Dr. Patterson's deferral to an experienced internist regarding the resumption of Plavix after discharge constituted improper medical care. Without sworn, competent expert testimony stating when Mr. Bullock needed to resume his Plavix after surgery to guard against the risks of clotting with his cardiac co-morbidities, it is impossible for Bullock to establish that Dr. Patterson breached the standard of care by failing to "prevent resumption of Plavix" after discharge. *Northrop*, 9 So.3d at 384 (§ 9); *Hubbard*, 954 So.2d at 956-57 (§ 12) (citations therein omitted); *Walker*, 529 So.2d at 185-86; *Boyd*, 493 So.2d at 1318.

Accepting, *arguendo*, the incomplete, non-specific standard of care established via Dr. Vance's sworn testimony, notwithstanding his lack of qualification to offer such an opinion, admitting it is beyond his area of expertise, and further accepting that Dr. Patterson (and/or Dr. Bruckmeier for that matter) deviated from a standard of care simply by not consulting with and deferring to a cardiologist, there is no way to causally connect Mr. Bullock's death to Dr. Patterson's mere "failure" to consult and defer to a cardiologist (as opposed to an experienced internist) without knowing what a cardiologist would have recommended! The failure to defer to a cardiologist could not possibly, in and of itself, have caused Mr. Bullock's death.

Given Dr. Vance's complete lack of knowledge and Bullock's failure to provide any sworn testimony from a cardiologist, internist or other qualified physician, there is no evidence in the record that a minimally competent spine orthopedist in similar circumstances would have

done anything other than what Dr. Patterson did regarding requesting a consult with an internist with regard to the timing of the resumption of Mr. Bullock's Plavix. Bullock's evidence is so indisputably deficient that she has failed to make a *prima facie* case against Dr. Patterson. Having failed to establish via sworn, competent expert testimony the applicable standard of care on this point and breach of same, summary judgment dismissing Dr. Patterson and Southern Bone & Joint was appropriate. *Northrop*, 9 So.3d at 384 (¶ 9); *Palmer*, 564 So.2d at 1357 (citations therein omitted); *Walker*, 529 So.2d at 185-86.

Finally, contrary to Bullock's insufficient evidence, and although not their burden to establish particulars of the appropriate standard of care or compliance therewith, WMC nonetheless designated as an expert Dr. Malcolm Taylor, a physician board certified in cardiology and internal medicine. The record reflects Dr. Taylor's sworn, competent expert opinion that Dr. Bruckmeier's instruction for Mr. Bullock to resume Plavix after discharge is in compliance with the appropriate standard of care. (R112-113) Dr. Taylor's sworn opinion is unrefuted by opposing sworn, competent medical expert testimony. Consequently, this Court need not address Dr. Patterson's consult/deferral to *Dr. Bruckmeier*, regarding Plavix resumption instructions. There is no genuine issue of material fact and Dr. Patterson and Southern Bone & Joint are entitled to summary judgment as a matter of law. This Court should affirm the Trial Court's grant of summary judgment in favor of Dr. Patterson and Southern Bone & Joint *Townsend*, 3 So.3d at 153 (¶ 5) (citations therein omitted); *Scales*, 988 So2d at 433 (¶ 18); *Walker*, 529 So.2d at 185-86.

2. Bullock failed to provide any sworn medical expert testimony that Dr. Patterson's actions proximately caused Larry Bullock's death.

a. Failure to Discontinue Plavix 5 – 7 Days before Surgery

Even assuming, *arguendo*, that Dr. Vance is qualified by training or experience as an expert in the area, that he is familiar with the applicable standard of care, as to which he offered

opinion testimony and opined that Dr. Patterson deviated therefrom, Bullock would still be required to establish, by sworn expert testimony, that the administration of platelets and proceeding with surgery (rather than waiting five to seven days while discontinuing Plavix) proximately caused Mr. Bullock's death. Without such evidence of proximate cause, Bullock cannot prevent summary judgment. *Northrop*, 9 So.3d at 384 (§ 9); *Hubbard*, 954 So.2d at 956-57 (§ 12) (citations therein omitted); *Palmer*, 564 So.2de at 1357 (citations therein omitted); *Walker*, 529 So.2d at 185-86; *Boyd*, 493 So.2d at 1318.

If he were qualified as an expert and had Bullock laid a proper predicate, Dr. Vance's opinion on this topic would be that Dr. Patterson breached the standard of care by administering platelets and proceeding with Mr. Bullock's surgery, rather than discontinuing the Plavix for five to seven days to allow for reversal of the drug's anticoagulant effects before performing the surgery. (R136-137, 144) **However, in his deposition, Dr. Vance essentially abandoned this issue!** Regarding the administration of ten units of platelets to Mr. Bullock pre-operatively, Dr. Vance's sworn opinion testimony was as follows:

Q.... [d]o you anticipate expressing at trial an opinion as to whether or not the ten units of platelets were adequate to reverse the effects of the Plavix that Mr. Bullock had taken prior to the date of the surgery on July 27th?

A. **I would anticipate that might come up, and my opinion would be that it appears to have worked.**

Q. Alright. So then as I understand your testimony, is it fair for me to assume that your - your (only) criticism is with regard to the timing of the resumption of the Plavix.

A. Yes. I would be critical of the decision to have proceeded and have done the platelets. On the other hand, it appears that no significant damage arose by virtue of these decisions regardless of the prudence. And so, **but far**, the resumption of the Plavix I am not sure there would have been an issue.

(R137)

There was virtually no blood loss associated with the subject surgery and no significant drainage for 16 hours post-operatively. (R137) Dr. Vance conceded that the infusion of ten units of platelets preoperatively in fact *effectively* reversed the effects of the Plavix Mr. Bullock had

taken prior to that day. (R136-137)

Consequently, the unrefuted sworn medical “expert” testimony from the Appellant’s own expert, Dr. Vance conclusively establishes, as a matter of law, that the administration of platelets and proceeding with surgery, rather than discontinuing Plavix for 5-7 days preoperatively cannot be the proximate cause of Mr. Bullock’s death. Bullock’s own expert testimony makes it impossible for her to prove a *prima facie* case of medical malpractice regarding discontinuation of Plavix pre-surgery. See *Northrop*, 9 So.3d at 384 (¶ 9); *Hubbard*, 954 So.2d at 956-57 (¶ 12); *Palmer*, 564 So.2d at 1357; *Walker*, 529 So.2d at 185-86. There is no genuine issue of material fact; Dr. Patterson and Southern Bone & Joint are entitled to judgment as a matter of law. *Townsend*, 3 So.3d at 153 (¶ 5) (citations therein omitted). This Court must affirm.

b. Failure to “Prevent Resumption of Plavix” after Discharge

To reach this point in the analysis, it is necessary to presume that Bullock succeeded in providing sworn, competent medical expert testimony sufficient to establish the applicable standard of care regarding resumption of Plavix post-operatively and *Dr. Bruckmeier’s* deviation therefrom. Even if this were the case, which it is not, Bullock has still failed to provide sworn medical expert testimony establishing that the resumption of Plavix after discharge proximately caused Mr. Bullock’s death. Without such evidence of proximate cause, Bullock cannot prevent summary judgment. *Northrop*, 9 So.3d at 384 (¶ 9); *Hubbard*, 954 So.2d at 956-57 (¶ 12) (citations therein omitted); *Palmer*, 564 So.2de at 1357 (citations therein omitted); *Walker*, 529 So.2d at 185-86; *Boyd*, 493 So.2d at 1318.

According to Bullock’s expert designation, Dr. Vance was of the opinion that Dr. Patterson’s breach of the standard of care proximately caused or contributed to Mr. Bullock’s death. (R89) However, an expert designation, which is wholly separate and distinct from sworn expert testimony, is insufficient to defeat summary judgment in this medical negligence action.

Scales, 988 So.2d at 433 (§ 18); *Walker*, 529 So.2d at 187. There is simply no such sworn expert testimony in the record.

The only sworn medical expert testimony in the record regarding whether, or not, Plavix resumption after discharge constitutes proximate cause of Mr. Bullock's death is that of WMC's expert, Dr. Taylor. Dr. Taylor's sworn Affidavit plainly states that the resumption of Plavix was *not* the proximate cause of Mr. Bullock's death. (R112-113) It follows that Dr. Patterson's "failure to prevent resumption" of Plavix after discharge, i.e. Dr. Patterson's consult/deferral to an internist, also cannot, as a matter of law, be the proximate cause of Mr. Bullock's death. Bullock has failed to establish proximate cause through sworn medical expert testimony, there is no genuine issue of material fact, summary judgment is proper, and this Court must affirm. *Northrop*, 9 So.3d at 384 (§ 9); *Townsend*, 3 So.3d at 153 (§ 5) (citations therein omitted); *Hubbard*, 954 So.2d at 956-57 (§ 12) (citations therein omitted); *Palmer*, 564 So.2d at 1357 (citations therein omitted); *Walker*, 529 So.2d at 185-86; *Boyd*, 493 So.2d at 1318.

Assuming arguendo that the Plaintiff had provided sworn, qualified expert testimony that Dr. Bruckmeier, the internist, deviated from the standard of care of an internist with regard to the timing of the resumption of Mr. Bullock's medications including Plavix, such testimony would be totally insufficient to demonstrate a causal connection between Mr. Bullock's death and Dr. Patterson's referral/deferral to the internist as to the timing of the resumption of the medication Plavix. Dr. Patterson requested a consult and deferred to the internist, Dr. Bruckmeier, with regard to the timing of the resumption of this medication in light of Mr. Bullock's medical maladies unrelated to the cervical procedure. This Court has repeatedly stated that:

negligence which merely furnishes the condition or occasion upon which injuries were received, but does not put in motion the agency through which the injuries are inflicted, is not the proximate cause thereof.

Causey v. Sanders, 998 So. 2d 393 ¶39 (Miss. 2009) citing *Robison v. McDowell*, 247 So.2d 686, 688 (Miss. 1971) Dr. Patterson's consult/deferral to *Dr. Bruckmeier*

regarding the post discharge medication issue cannot be the proximate cause of Mr. Bullock's death.

3. Even presuming Bullock established a *prima facie* case as to Dr. Patterson/Southern Bone & Joint, including proximate cause, subsequent, superseding, intervening causes exist.

Bullock urges on appeal that there may be more than one proximate cause of an accident and posits that it is for a jury to determine whether a succession of events is so linked together as to make it a natural whole or whether some independent cause intervened. (Appellant's Brief, pp. 18-20) First, this Court should not reach this issue because Bullock has failed to establish a *prima facie* case of medical negligence in the first instance. The question of superseding, intervening causes would not be relevant unless Bullock was able to avoid summary judgment and proceed to trial. Assuming without conceding that Bullock has succeeded in establishing a *prima facie* case, any alleged negligence and corresponding liability of Dr. Patterson/Southern Bone & Joint would be extinguished by subsequent, superseding, intervening causes.

Even Appellant concedes that the "issue" is not whether Plavix caused the bleed because "Plavix does not cause bleeding". Plavix merely inhibits clotting in the event one begins bleeding (as a result of another cause). (Appellant's Brief p.15) Consequently, the decision by Dr. Bruckmeier to resume Plavix after discharge cannot be the proximate cause of Mr. Bullock's death. *Causey v. Sanders*, 998 So. 2d 393 ¶39 (Miss. 2009) citing *Robison v. McDowell*, 247 So.2d 686, 688 (Miss. 1971)

This Court has consistently stated:

[i]f the act complained of is only a remote cause, superseded by an independent, efficient intervening cause that leads in unbroken sequence to the injury, the original negligent act is not a proximate, but a remote, cause. Thus not, being foreseeable, the original cause is not actionable.

Causey v. Sanders, 998 So.2d 393, 405 (¶ 39) (Miss. 2008) (citations therein omitted).

This again is far removed from Dr. Patterson request for a consult and deferral to an experienced

internist. A superseding, intervening act must be unforeseeable in order to extinguish liability of the earlier allegedly negligent actor. *Causey*, 998 So.2d at 405 (§ 37) (citations therein omitted). If the defendant has reason to anticipate the intervening cause under the particular circumstances, it is not unforeseeable. *Entrican v. Ming*, 962 So.2d 28, 35-36 (§ 24) (Miss. 2007) (citations therein omitted). The net result is that the original actor's negligence may be superseded by the subsequent actor's negligence if the subsequent actor's negligence was unforeseeable and "leads in unbroken sequence to the injury". *Causey*, 998 So.2d at 405 (§§ 38, 39) (internal quotation and citations therein omitted). It is the unforeseeability of the second negligent act that breaks the chain of events between the first chargeable act of alleged negligence by *Dr. Bruckmeier* and the injury. *Causey*, 998 So.2d at 405 (§ 37) (citations therein omitted).

Bullock brought her claims against not only Dr. Patterson, Southern Bone & Joint, and WMC; but she also initiated the underlying suit intent on proving the negligence and liability of Jefferson Davis Hospital/Prentiss Regional Medical, its ER physician Dr. Locke, and AAA Ambulance Service, alleging that they were responsible for Mr. Bullock's death. After the Trial Court granted the Motions for Summary Judgment of Dr. Patterson, Southern Bone & Joint, and WMC, Bullock then settled her claims with the remaining Defendants. But before these settlements were reached, Bullock designated Dr. Richard Zane as an expert in the field of emergency and critical care. (R90, 93, 189)

Dr. Zane's sworn deposition testimony is dispositive that Dr. Locke's failure to examine Mr. Bullock's airway or to establish an airway by intubating Mr. Bullock before allowing him to be transported by AAA ambulance was a deviation from the standard of care. (R188, 189, 192) Dr. Zane also testified that the failure to intubate Mr. Bullock by Dr. Locke (that is, before he was successfully intubated while on the helicopter) was the proximate cause of his death. Dr. Zane testified that but for this failure of the emergency physician, Dr. Locke to assess Mr.

Bullock's airway and to intubate at Jefferson Davis/Prentiss Regional, Mr. Bullock would not have died; also, but for the failure of AAA to intubate, Mr. Bullock would not likely have died. (R103-106, 115, 189)

Assuming, Dr. Patterson's deferral to an internist regarding the timing of the resumption of Plavix after discharge constituted a deviation from the applicable standard of care and a causal connection was demonstrated with his decision to defer and the death of Mr. Bullock, according to Bullock's own expert's testimony, Dr. Locke's and AAA's failure to intubate Mr. Bullock renders at most Dr. Patterson's decision to consult/defer to Dr. Bruckmeier *a remote cause* and not actionable. *Causey*, 998 So.2d at 405 (¶ 39) (citations therein omitted). The medical negligence of both Dr. Locke and of AAA Ambulance was unforeseeable. Even given the particular circumstances, Dr. Patterson would have had no cause to reasonably anticipate either Dr. Locke's or AAA's negligence. *Entrican*, 962 So.2d at 35-36 (¶ 24) (citations therein omitted). According to the sworn testimony of Dr. Zane, both Dr. Locke's negligence and AAA's negligence would each, separately have led directly to Mr. Bullock's death. *Causey*, 998 So.2d at 405 (¶¶ 38, 39).

There is exists no competent evidence in the record refuting Dr. Zane's sworn testimony. There is no genuine issue of material fact that, regardless of whether or not Mr. Bullock had taken Plavix prior to his arrival at Jefferson Davis/Prentiss Regional, Mr. Bullock would not have died but for Dr. Locke's negligence and may not have died but for AAA's negligence. By virtue of her own theory, Bullock has lain to rest any claim that Dr. Patterson proximately caused Mr. Bullock's death because the acts/omissions of Dr. Locke and of AAA constitute superseding, intervening causes. *Causey*, 998 So.2d at 405 (¶¶ 38) (citations therein omitted); *Entrican*, 962 So.2d at 35-36 (¶ 24) (citations therein omitted). Had Bullock succeeded in making a *prima facie* case against Dr. Patterson in the first instance, the unforeseeability of the subsequent,

superseding, intervening causes would have broken the chain of events and terminated any liability Dr. Patterson/Southern Bone & Joint may otherwise have borne. *Causey*, 998 So.2d at 405 (¶ 37) (citations therein omitted). The Trial Court properly found that the failure to timely and appropriately intubate Mr. Bullock was a subsequent, superseding, intervening proximate cause of Mr. Bullock's death. (R433) Should this Court reach this issue, it should affirm.

B. *The Circuit Court Properly Denied Bullock's Motion for Reconsideration.*

Although Bullock recites this as an issue in her "Statement of Issues" (Appellant's Brief p. 1), it appears she has abandoned this claim because the text of her brief contains no argument on this point. It follows that this Court is precluded from considering this issue due to Bullock's failure to cite any authority. *Gren. Living Ctr. V. Coleman*, 962 So.2d 33, 37 (¶14) (Miss. 2007) (citation therein omitted). In any event, Bullock's Motion to Reconsider the grant of Summary Judgment in favor of Dr. Patterson and Southern Bone & Joint is meritless. These Appellees adopt and incorporate herein the positions stated in the Brief of the Appellee, Wesley Medical Center.

CONCLUSION

In summary, Bullock has failed in her burden of proof and there is no genuine issue as to any material fact relating to Dr. Patterson and Southern Bone & Joint. The record before this Court reflects that the following material facts are undisputed:

1. Bullock had no qualified expert who could provide an opinion that the decision to administer platelets and proceed with surgery rather than delay surgery for 5 to 7 days while discontinuing Plavix was a deviation from the standard of care. Dr. Vance's sworn testimony was that he was not only *not* an expert in the subject area, but was also *not* familiar with the applicable standard of care regarding

precisely the issue at hand. Accordingly, the Trial Court's dismissal of this claim against Dr. Patterson/Southern Bone & Joint must be affirmed.

2. Bullock had no sworn probative proof that Dr. Patterson's "failure to prevent resumption" of Mr. Bullock's Plavix, i.e. Dr. Patterson's consult/deferral to a board certified internist, at the time of discharge was a deviation from the standard of care. Dr. Vance testified that he too would have consulted and deferred to a specialist outside his area of practice regarding this issue, but opined that he would have consulted a cardiologist-internist. The sworn Affidavit of Dr. Malcolm Taylor, cardiologist, establishes Dr. Bruckmeier's advice with regard to the timing of the resumption of the Plavix was consistent with the standard of care. Accordingly, the Trial Court's dismissal of this claim against Dr. Patterson and Southern Bone & Joint must be affirmed.
3. Bullock had no sworn probative proof that the decision to administer platelets and proceed with surgery (rather than delay surgery for 5 to 7 days while discontinuing Plavix) proximately caused Mr. Bullock's death. Dr. Vance's deposition testimony conclusively establishes that the administration of platelets *effectively reversed* the effects of Plavix and postoperatively, Mr. Bullock had no bleeding and maintained total stability in terms of coagulation as of the time of discharge, and thus cannot be the proximate cause of Mr. Bullock's death. Accordingly, the Trial Court's dismissal of this claim against Dr. Patterson/Southern Bone & Joint must be affirmed for lack of causation.
4. Bullock has no sworn probative proof that Dr. Patterson's failure to "prevent resumption" of Mr. Bullock's Plavix i.e. consult/deferral to the internist regarding the timing at the time of discharge proximately caused his unfortunate death.

First and foremost, Dr. Patterson's request for a consult/deferral as to this issue CANNOT be the proximate cause of Mr. Bullock's death. Further, Dr. Taylor's Affidavit, regarding the appropriateness of Dr. Bruckmeier's advise in light of Mr. Bullock's cardiology issues, in conjunction with Plaintiff's expert, Dr. Vance totally abandoning this issue, coupled with the testimony of Bullock's expert, Dr. Zane, uniformly establish just the opposite. Accordingly, the Trial Court's dismissal of this claim against Dr. Patterson/Southern Bone & Joint must be affirmed for lack of causation.

5. Bullock's experts' sworn testimony establishes that (**but for**) the failures to timely and appropriately intubate Mr. Bullock was the proximate cause of his death and/or at least a subsequent, superseding, intervening proximate cause of Mr. Bullock's death. Accordingly, the Trial Court's dismissal of the claims against Dr. Patterson and Southern Bone & Joint must be affirmed.

For all of the above and foregoing reasons, the decision of the Jefferson Davis County Circuit Court granting Summary Judgment in favor of Dr. Michael Patterson and Southern Bone & Joint Specialists, and the Trial Court's denial of Bullock's Motion for Reconsideration, must be affirmed.

THIS the 18th day of February, 2011.

Respectfully submitted,

**DR. MICHAEL PATTERSON AND SOUTHERN
BONE & JOINT SPECIALISTS, P.A., APPELLEE**

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CERTIFICATE OF SERVICE

I, the undersigned, J. Robert Ramsay, hereby certify that I have this date mailed, via U.S. Mail, first class mail postage prepaid, the original and three paper copies and one copy on CD of the **Brief of Appellees, Dr. Michael Patterson and Southern Bone & Joint Specialist, P.A.** in Case No. 2010-CA-01137, *Shirley Bullock versus Dr. Michael Patterson, Southern Bone & Joint Specialist, P.A., and Wesley Medical Center* addressed to the Clerk of the Supreme Court of Mississippi, and to the following:

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THIS, the 18th day of February, 2011.



J. ROBERT RAMSAY