

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

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Case No. 09-ALJ-07-0332-CC

SC Court of Appeals

Trident Medical Center, LLC, d/b/a
Berkeley Medical Center, Appellant/Respondent,

v.

South Carolina Department of Health and
Environmental Control and Roper St. Francis
Hospital-Berkeley d/b/a Roper St. Francis Hospital,

Of Whom South Carolina Department of Health and
Environmental Control is the Respondent, and

Roper St. Francis is the Respondent/Appellant.

Case No. 09-ALJ-07-0333-CC

Trident Medical Center, LLC, d/b/a
Berkeley Regional Medical Center, Appellant/Respondent,

v.

South Carolina Department of Health and
Environmental Control, and Roper St. Francis
Hospital-Berkeley, Inc. d/b/a Roper St. Francis
Hospital-Berkeley,

Of Whom South Carolina Department of Health and
Environmental Control is the Respondent, and

Roper St. Francis is the Respondent/Appellant.

INITIAL BRIEF OF APPELLANT/RESPONDENT

(caption continued from cover page):

Case No. 09-ALJ-07-0336-CC

CareAlliance Health Services and Roper
St. Francis Hospital-Berkeley, Respondents/Appellants,

v.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC Respondents,
Of whom Trident Medical Center, LLC is the Appellant.

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STATEMENT OF ISSUES ON APPEAL

I. DID THE ADMINISTRATIVE LAW COURT CORRECTLY DETERMINE THAT TRIDENT'S PROPOSED MONCK'S CORNER HOSPITAL IS CONSISTENT WITH THE NEED METHODOLOGY OF THE 2004-2005 STATE HEALTH PLAN?

II. MUST THE COURT REVERSE THE ADMINISTRATIVE LAW COURT'S DECISION APPROVING TRIDENT'S APPLICATION TO THE EXTENT THAT THE COURT FINDS THAT THE NEED METHODOLOGY OF THE 2004-2005 STATE HEALTH PLAN DOES NOT EXPRESSLY ALLOW TRIDENT TO UTILIZE ITS NEED AT ITS EXISTING MONCK'S CORNER LOCATION?

STATEMENT OF THE CASE

On November 28, 2012, Trident Medical Center, LLC d/b/a Berkeley Medical Center ("Trident") timely filed its appeal of the September 26, 2012 Final Order and Decision ("Order") of the Administrative Law Court ("ALC") upholding the decision of the Department of Health and Environmental Control ("Department") to approve the Certificate of Need ("CON") applications of both Trident and Roper St. Francis Hospital-Berkeley, Inc. d/b/a Roper St. Francis Hospital-Berkeley ("Roper") to construct new hospitals in Berkeley County. On December 3, 2012, Roper timely filed its cross-appeal of the ALC's Order.

One of the issues raised by Trident in its appeal is that the ALC committed legal error when it deferred to the Department's decision to apply the Bed Transfer Standard found in the *2008-2009 South Carolina Health Plan* ("*2008-2009 Plan*") to Roper's CON application to establish a new hospital at Carnes Crossroads in Berkeley County¹ ("Carnes Crossroads Hospital"). In order to create the new 50-bed Carnes Crossroads Hospital, Roper requested a CON to transfer 50 existing licensed hospital beds from its

¹ The Department acknowledges that the Bed Transfer Standard is the only provision of the *2008-2009 Plan* under which the Department would consider Roper's application because at the time Roper applied, Roper had no need for additional hospital beds and the Charleston-Berkeley-Dorchester planning region ("Tri-county Service Area") as a whole had an excess of hospital beds. (Tr., p. 684, lines 9-18; Tr. p. 1068, line 22-p. 1070, line 12).

Roper Downtown hospital to the Carnes Crossroads site, on which Roper proposed to construct an entirely new receiving hospital with all new ancillary services and equipment, including operating rooms, imaging equipment, emergency department and laboratory services, and outpatient functions to support the transferred beds. (Jt. Ex. 2, p. 0005 – 0007, 0009, 0317-0318; Tr., p. 642, line 24 – p. 643, line 8; p. 2652, lines 12-17).

At the undeveloped Carnes Crossroads site, there currently is no existing hospital or any other medical facility affiliated with Roper to receive the transfer of the beds. (Tr., p. 695, lines 12-16). In its main brief on this issue, Trident argues that, because the plain language of the Bed Transfer Standard requires that both hospitals be in existence in order to transfer beds between themselves², the ALC erred as a matter of law in deferring to the Department's interpretation of the *2008-2009 Plan* in a manner that allows Roper to use the Bed Transfer Standard to construct a new hospital at the undeveloped Carnes Crossroads site.³

In its cross-appeal of the ALC's Order, Roper asserts the false equivalence argument that, if this Court reverses the Department's erroneous decision to approve Roper's CON application under the Bed Transfer Standard of the *2008-2009 Plan*, the Court must also reverse the Department's decision to approve Trident's CON application to establish a new hospital in Moncks Corner, Berkeley County ("Moncks Corner Hospital"), even though Trident's approval was made under a different provision of a different State Health Plan and in recognition of Trident's actual need for the additional

² For example, the Bed Transfer Standard states as its purpose in its preamble: "Changes in the delivery system due to health care reform have resulted in the *consolidation of facilities* and the establishment of provider networks. These consolidations and agreements may lead to situations where *affiliated hospitals* may wish to transfer beds *between themselves* in order to serve *their patients* in a more efficient manner." (Jt. Ex. 4, pp. 0017-0018)(emphasis added).

³ Trident continues to assert as an alternate grounds for reversal of the ALC's Order that Trident and Roper are competing applicants under the law, and this case should be reversed and remanded to the Department for a comparison review.

hospital beds at a location where Trident already had an existing hospital department. For the following reasons, Trident urges the Court to reject Roper's flawed logic and to affirm the ALC's Order insofar as it approves Trident's proposed Moncks Corner Hospital as consistent with the *2004-2005 Plan* under which it was filed.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THAT TRIDENT'S PROPOSED MONCK'S CORNER HOSPITAL IS CONSISTENT WITH THE NEED METHODOLOGY OF THE 2004-2005 STATE HEALTH PLAN.

In the Tri-county Service Area, Trident owns and operates Trident Medical Center, a 296-bed tertiary care hospital located in North Charleston, Summerville Medical Center, a 94-bed acute care hospital located in Dorchester County, and a freestanding emergency department located in Moncks Corner in Berkeley County. (Tr., p. 86, line 18-p. 87, line 17; Tr., p. 316, line 22-p. 317, line 1). All of Trident's current facilities operate under a single hospital license issued to Trident. (Tr., p. 320, lines 14-20).

On August 13, 2008, Trident filed a CON application to develop the Moncks Corner Hospital by using Trident's specific bed need pursuant to Chapter II, Section G.1(A)(4)(d) of the *2004-2005 State Health Plan*. (Jt. Ex. 1, pp. 0009 and 0884; Jt. Ex. 3, p. 17). This section of the *2004-2005 Plan*, known as the "50 Bed Rule", provides:

Should there be a need shown for additional beds for a hospital, then an increase may be approved. In order to provide for a cost-effective addition, up to the greater of 50 beds or the actual projected number of additional beds may be approved, provided the hospital can document and demonstrate the need for additional beds.

In its CON application, Trident applied to use its own need for 17 new hospital beds to add 50 new hospital beds in Moncks Corner at the site of its existing freestanding

emergency department.⁴ Trident plans to relocate and incorporate the existing emergency services into the new hospital building and to convert the existing emergency department building into a medical office building upon the opening of the new hospital. (Jt. Ex. 1, p. 0008). The new Moncks Corner Hospital would be operated under the single Trident hospital license. (Jt. Ex. 1, 0016).

In its cross-appeal, Roper argues that the language of the 50 Bed Rule is silent on where a hospital with need can locate its new beds and, therefore, Trident's CON application is the same as Roper's application with regard to the Department's "interpretation" allowing a new hospital facility. Roper's argument is flawed both as to its premise and its reasoning.

First, the 50 Bed Rule is not silent as to where new hospital beds awarded under the Rule can be located. Under the Rule as stated in the *2004-2005 Plan*, a hospital which has a demonstrated need for additional beds can apply to add those beds (and more, up to 50) in the form of a "cost effective addition" for a hospital that needs the beds. In this case, Trident Medical Center is the hospital that needed the beds. Trident proposed to add its needed beds at the site of its existing freestanding emergency department, which, under the Plan, is considered to be "an extension of the existing hospital's emergency services." (Jt. Ex. 3, pp. II-86-87) Thus, Trident's proposal to use its need at a site where it already had an existing presence is entirely consistent with the language of the 50 Bed Rule without the need for further Department interpretation.

Second, even assuming that the 50 Bed Rule can be considered "silent" on the ability of Trident to use its need at its own facility, this silence does not equate Trident's case to Roper's. As Trident argues in its main brief in support of its appeal, the

⁴ Trident proposed to locate its Moncks Corner Hospital on a 21-acre site adjoining the site of Trident's existing freestanding emergency department and outpatient center. (Jt. Ex. 1, p. 0008).

Department is not simply “filling in the details” of the Bed Transfer Standard when it allows Roper to transfer beds to a non-existent hospital because the Bed Transfer Standard is not silent on when beds can be transferred.⁵ Rather, the Department, in Roper’s case, is interpreting and applying the Bed Transfer Standard *in contravention of* the clearly expressed language of the provision.

The Bed Transfer Standard plainly states its purpose and the criteria for its use. As set forth in detail in Trident’s main brief, an attempt to transfer beds to a receiving hospital that does not exist and has no historical utilization requires the Department to ignore the explicit requirements of the Standard and to “make up” other requirements not found in the Standard.⁶ To the extent that the 50 Bed Rule is silent because it does not explicitly state that the facility with need can use the need where-ever the facility with need exists, the Department can reasonably interpret the Rule in this manner consistent with its intent and without ignoring explicit requirements and making up new ones.

Thus, no legal equivalence exists between the Department’s application of the 50 Bed Rule to Trident’s proposed project in a manner consistent with the meaning of the Rule and the Department’s application of the Bed Transfer Standard to Roper’s proposed project in plain contradiction of the meaning and the words of the Standard. In the former case, the Department is entitled to apply the 50 Bed Rule and is entitled to deference in its decision. In the latter case, the Department is not entitled to deference and must be

⁵ Cf., *Young v. S.C. Dep’t of Highways & Pub. Transp.*, 287 S.C. 108, 113, 336 S.E.2d 879, 882 (Ct.App. 1985)(“Administrative agencies may be authorized ‘to fill up the details’ by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.”).

⁶ For example, in its main brief Trident points to the Department’s practice of allowing the facility transferring the beds to submit historical utilization data for itself because no receiving facility exists to comply with the stated requirements of the Bed Transfer Standard that “the *“applicants* must document with patient origin data the *historical utilization of the receiving facility* by residents of the county giving up beds” and “[t]he *facility receiving the beds must* demonstrate the need for the *additional* capacity based on both *historical* and projected *utilization patterns*.” (Tr., p. 699, lines 11-25, p. 705, line 13-p. 706, line 16; Tr., p. 1076, line 22-1077, line 4).

reversed. *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149–50, 694 S.E.2d 525, 530–31 (2010) (“An agency’s long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute’s plain language.”).

Trident contends, for all of the reasons stated above, that the differences between the proposed projects justify the approval of Trident’s CON application and the denial of Roper’s. Therefore, the Administrative Law Court’s decision granting approval of Trident’s proposed Moncks Corner Hospital should be affirmed.

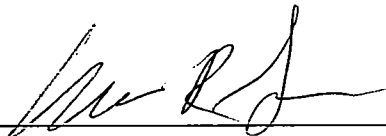
II. TO THE EXTENT THAT THE COURT FINDS THAT THE NEED METHODOLOGY OF THE 2004-2005 STATE HEALTH PLAN DOES NOT EXPRESSLY ALLOW TRIDENT TO UTILIZE ITS NEED AT ITS EXISTING MONCKS CORNER LOCATION, THE COURT MUST REVERSE THE ADMINISTRATIVE LAW COURT’S DECISION APPROVING TRIDENT’S APPLICATION.

As argued above, the plain and express language of the 50 Bed Rule allows Trident to utilize its need stated in the *2004-2005 State Health Plan* at its existing Moncks Corner location. However, Trident agrees that, to the extent that the Court determines that the 50-Bed Rule of the *2004-2005 Plan* does not expressly allow for the establishment of a new hospital through the use of an applicant’s need, the Court must reverse the ALC and Department’s decisions approving Trident’s application in the same manner as the Court must reverse Roper’s approval as being inconsistent with the applicable *Plan*. Trident’s position in this matter was and is that the Department lacks the authority to “interpret” the *Plan* in a way that materially adds to or amends the Plan’s duly promulgated provisions.

CONCLUSION

For the reasons stated herein, Trident respectfully requests that the Court hold that Trident's proposed Moncks Corner Hospital is consistent with the 50 Bed Rule set forth in the *2004-2005 State Health Plan* as determined by the Department and the ALC. In the alternative, Trident requests that, if this Court determines that the 50 Bed Rule does not expressly allow Trident to utilize its facility specific need to create a new hospital at its current Moncks Corner location, Trident's application be denied in order to be logically consistent with the Court's decision to deny Roper's application.

Respectfully submitted,



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Of whom Trident Medical Center, LLC is the Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on June 12, 2013 s/he has caused a copy of Appellant/Respondent's Initial Brief to be served on all parties of record by hand delivering the same, addressed as follows:

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