

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2012-213506
Case No. 09-ALJ-07-0332-CC

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 SCDHEC is theRespondent, and

Roper St. Francis is theRespondent/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 d/b/a Roper St. Francis Hospital - Berkeley,

Of Whom SCDHEC is theRespondent, and

Roper St. Francis is theRespondent/Appellant.

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SC Court of Appeals

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.

RESPONDENTS-APPELLANTS REPLY BRIEF
(CareAlliance Health Services and Roper St. Francis Hospital – Berkeley)

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INTRODUCTION

CareAlliance Health Services and Roper St. Francis Hospital – Berkeley (hereinafter collectively “Roper St. Francis”) submit this reply brief to address the argument raised by Trident Medical Center, LLC (“Trident”) in response to the Initial Appellants’ Brief of Roper St. Francis. Trident’s argument that the Department of Health and Environmental Control’s (“DHEC” or “Department”) interpretation of the *2004-2005 State Health Plan* approving Trident’s CON Application is “reasonable” and entitled to deference but the Department’s interpretation of the *2008-2009 State Health Plan* in favor of Roper St. Francis’s CON Application is in “plain contradiction of the meaning and the words” of the Plan is nonsensical and should be rejected. Roper St. Francis reiterates to the Court in this cross-appeal that the Administrative Law Court’s (“ALC”) decision to affirm DHEC’s approval of both CON Applications is correct; however, if the Court reverses the decision to approve the Roper St. Francis CON Application, it must similarly reverse the DHEC decision approving the Trident CON Application.

ARGUMENTS

I. THE 2004-2005 STATE HEALTH PLAN DOES NOT EXPRESSLY ALLOW THE TRANSFER OF FACILITY-SPECIFIC BED NEED TO A GREEN FIELD.

As explained in Roper St. Francis' Initial Brief, Trident's CON Application to build a new hospital in Moncks Corner uses facility-specific bed need of 17 beds assigned to its tertiary hospital facility in North Charleston under the *2004-2005 State Health Plan* to place 50 new beds in a to-be-constructed hospital, slated for building on a vacant lot adjacent to its Moncks Corner Medical Center, an emergency department owned by Trident. Trident's reference to its emergency department as "an existing hospital department" is misleading. It is undisputed that Trident's emergency department in Moncks Corner is not a hospital. A hospital requires beds because by definition it must accommodate the "diagnosis, treatment and care of [] persons over a period exceeding 24 hours" S.C. Code Ann. Regs. § 61-15.103(15). The emergency department in Moncks Corner does not have hospital beds. (**Joint Ex. 3 II-17**) The provision of the *2004-2005 State Health Plan* under which Trident applied for its 50-bed hospital in Moncks Corner 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 the additional beds.

(**Joint Ex. 3 II-7**, emphasis added) Trident contends that the Department can "reasonably interpret" this provision to allow the transfer of facility-specific bed need to construct a new hospital on a vacant field. Trident continues to challenge, however, the Department's reasonable interpretation of the bed transfer provision to allow the transfer of existing licensed beds to construct a new hospital on vacant land. Nowhere does

Trident explain how the words “cost-effective addition” or how the construction of a new facility on vacant land is consistent with an *addition* to the hospital showing the facility-specific need.¹ It is simply inconsistent for Trident to argue that the Department’s interpretation of the bed transfer provision is a “plain contradiction of the meaning and words” of the provision, and yet ignore the “plain language” of the Plan and assert that the 50-bed hospital at Moncks Corner is a cost-effective addition to the hospital in North Charleston forecasting bed need. **(ALC Final Order & Decision, Finding #73, 30)**

The only consistent position in these appeals is the position of Roper St. Francis that neither Application contradicts the plain language of the State Health Plan and, therefore, the Applications are consistent with the intent of the Plan as shown by the Department’s consistent interpretation, which is entitled to deference. It remains the position of Roper St. Francis that the ALC correctly affirmed the decisions of the Department in finding both Applications satisfied the applicable State Health Plans. This Court, as the ALC, will not read parts of the State Health Plan in isolation as encouraged by Trident, but instead must “construe the regulation as a whole.” *Spruill v. Richland Cty. Sch. Dist.* 2, 363 S.C. 61, 64-65, 609 S.E.2d 524, 526 (2005) (holding that even in the presence of an ambiguous regulation, the court will defer to the agency’s interpretation representing a sound policy decision absent a compelling reason).

¹ In fact, the Department subsequently revised the very provision under which Trident applies in the *2008-2009 State Health Plan* to explicitly state that the facility-specific bed need “may be approved for that hospital to allow for the construction of an economical unit at either the existing hospital site *or another site.*” (**Joint Ex. 4 II-7**, emphasis added) Unlike the bed transfer provision, which has been consistently interpreted to allow for the construction of satellite facilities as proposed by Roper St. Francis, and which has not been revised in subsequent Health Plans, the proposal made by Trident was explicitly *added* to the subsequently enacted State Health Plan, thus making its absence from the *2004-2005 State Health Plan* even more obvious. “In interpreting a regulatory amendment, [the Court will] presume a regulatory agency, in adopting an amendment to a regulation, intended to make a change in the existing law.” *Converse Power Corp. v. S.C. Dep’t of Health and Envtl. Control*, 350 S.C. 39, 48, 564 S.E.2d 341, 346 (Ct. App. 2002).

Neither with regard to the Department's interpretation of the facility-specific bed need provision nor the bed transfer provision, does a compelling reason exist to overturn the Department's interpretation of its own State Health Plan. *See Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006) ("The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons.") Other than its status as a disgruntled provider, Trident cannot show that the Department's interpretation was arbitrary or capricious. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Converse Power Corp.*, 350 S.C. at 47, 564 S.E.2d at 345. As to both CON Applications at issue on appeal, the Department correctly interpreted and applied the applicable provisions of the State Health Plan using the principles, rules and standards found therein.

II. TRIDENT CONCEDES THAT IN THE EVENT THE COURT CONCLUDES THAT THE 2004-2005 STATE HEALTH PLAN DOES NOT ALLOW THE TRANSFER OF FACILITY-SPECIFIC BED NEED TO CONSTRUCT A NEW HOSPITAL, THE ALC'S DECISION MUST BE REVERSED AND TRIDENT'S APPLICATION MUST BE DENIED.


Trident concedes in its Initial Respondent's Brief that in the event this Court concludes that the *2004-2005 State Health Plan* does not allow the transfer of facility-specific bed need to a green field, then its Application must be denied. Trident postures this concession by stating that if the State Health Plan does not "expressly" allow the creation of its satellite hospital through transfer of facility-specific bed need, the decision must be reversed. It is interesting that that the plain text of the provision under which Trident filed its Application does not *expressly* allow the transfer of facility-specific bed

need to a green field. Trident, however, encouraged the Department to make a reasonable interpretation of the facility-specific bed need provision to allow the creation of the Moncks Corner hospital, but rejects that same agency's reasonable interpretation of the bed transfer provision (affirmed by the Department's Board) to allow the creation of a satellite hospital through the bed transfer provision. Trident has no basis for this distinction beyond its manipulative word play to argue in opposition Roper St. Francis' CON Application. The inclusion once again of the bolding and italics to set forth the bed transfer provision within its most recent brief evidences the fact that Trident cannot support its own argument without ignoring the Department Board's stated interpretation of the bed transfer provision and violating basic tenants of statutory construction, including the use of a forced construction to limit the bed transfer provision's application. *See Converse Power*, 350 S.C. at 48, 564 S.E.2d at 346. In the event, however, that this Court disapproves of the Department's interpretation and the ALC's affirmance with regard to the bed transfer provision and Roper St. Francis' CON Application, that same disapproval must apply to the CON Application filed by Trident.

CONCLUSION

Roper St. Francis respectfully urges this Court to find that the ALC's Final Order affirming the Department's approval of both CON Applications was proper and dismiss the appeal of Trident. In the event the Court determines that the Department and the ALC were incorrect in the construction and application of the bed transfer provision, that same logic must apply to the facility-specific bed need provision and Trident's CON Application must be denied.

Respectfully submitted,


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