

2011-202787

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Judge

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Opinion No 4873  
Heard June 7, 2011 – Filed August 17, 2011

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SC Supreme Court

MRI at Belfair, LLC,

Petitioner,

v

South Carolina Department of Health and  
Environmental Control and Coastal Carolina Medical Center,

Respondents

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

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MRI at Belfair, LLC,

Appellant,

v

South Carolina Department  
of Health and Environmental  
Control and Coastal  
Carolina Medical Center,

Respondents

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Appeal From Richland County  
Ralph K. Anderson, III, Administrative Law Judge

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Opinion No 4873  
Heard June 7, 2011 – Filed August 17, 2011

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**AFFIRMED**

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Control, Travis Dayhuff and Holly G. Gillespie, of  
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**WILLIAMS, J** On appeal, MRI at Belfair, LLC (Belfair) contends the Administrative Law Court (ALC) erred in finding Coastal Carolina Medical Center's (Coastal) changes to its proposed MRI project were not substantial, and, therefore, not a new project under South Carolina Code of Regulations 61-15 section 605 (Supp 2010) Specifically, Belfair contends the ALC (1) failed to properly apply the relevant statutory and regulatory provisions governing the issuance of a certificate of need (CON), (2) erred in finding Coastal's changes were not substantial when Belfair presented substantial evidence to the contrary, (3) failed to apply the proper burden of proof, and (4) erred when it failed to find Coastal's CON for the MRI project was voided by the transfer of ownership from Coastal to another entity We affirm

## FACTS

Coastal is a forty-one unit hospital located near Interstate 95 in Jasper County, South Carolina Belfair is a free-standing imaging facility, located approximately 13.8 miles away in Beaufort County, South Carolina Belfair provides magnetic resonance imaging (MRI) services for Beaufort and Jasper Counties Dr Albert J Borelli, Jr, a radiologist, is the owner of Belfair Belfair competes with Coastal for MRI services Pursuant to the South Carolina Certificate of Need and Health Facility Licensure Act<sup>1</sup> (the CON Act), Belfair is an "affected person"<sup>2</sup> and thus is able to contest the issuance of Coastal's CON pursuant to the CON Act

On May 7, 2004, Coastal submitted an application for a CON to South Carolina Department of Health and Environmental Control (DHEC) to construct a fixed MRI suite onto its existing hospital in Jasper County pursuant to the 2003 State Health Plan<sup>3</sup> (the Plan) Coastal's application

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<sup>1</sup> See S C Code Ann §§ 44-7-110 to -385 (2002 & Supp 2010)

<sup>2</sup> Specifically, Belfair is a "person[]" located in the health service area in which the project is to be located and who provide[s] similar services to the proposed project " S C Code Ann § 44-7-130(1) (2002)

<sup>3</sup> The State Health Plan is required by the CON Act The Plan contains specific standards and information for health care facilities and health care equipment DHEC may not issue a CON unless an application complies with

proposed that Coastal would purchase a new 1.5 tesla General Electric MRI unit and house it in an addition to be constructed at the hospital. DHEC granted the CON to Coastal on November 22, 2004.

On November 24, 2004, Belfair requested a contested case hearing to challenge DHEC's issuance of the CON to Coastal on the grounds that the MRI project did not satisfy the project review criteria.<sup>4</sup> After an evidentiary hearing, the ALC granted partial summary judgment to Coastal and DHEC in an order dated November 10, 2005. The ALC determined a CON was appropriate because an on-site MRI was necessary to make MRI services "available" to Coastal's inpatients and emergency room patients under the Plan. Belfair appealed to the South Carolina Board of Health and Environmental Control (the Board), which affirmed the ALC's order. After certification from this court, our supreme court held the Board erred when it determined Coastal did not have to establish compliance with the project review criteria. MRI at Belfair, LLC v S.C. Dep't of Health & Env'tl Control, 379 S.C. 1, 9-10, 664 S.E.2d 471, 475 (2008). The supreme court reversed and remanded for a determination on the sole issue<sup>5</sup> of whether Coastal's application complied with the project review criteria. Id. at 10, 664 S.E.2d at 476. On remand, the ALC consolidated Belfair's initial case with the current case before this court. Upon motion of Belfair and with consent of Coastal and DHEC, Belfair conceded Coastal's MRI project, as set forth in its CON application, satisfied the relevant project review criteria. Accordingly, the ALC dismissed Belfair's initial case and proceeded on

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the Plan, project review criteria, and other regulations. See 24A S.C. Code Ann. Regs. 61-15 § 801 (Supp. 2010).

<sup>4</sup> DHEC considered the following project review criteria in determining whether a CON was appropriate in this case: (1) community need, (2) distribution/accessibility, (3) cost containment, (4) acceptability, (5) financial feasibility, and (6) adverse impact. See 24A S.C. Code Ann. Regs. 61-15 § 802 (Supp. 2010).

<sup>5</sup> The supreme court affirmed the Board's finding that the Plan standards for MRI services did not violate state statutes on CONs. It also affirmed the Board's conclusion that substantial evidence existed to support Coastal's need for an onsite MRI unit. MRI at Belfair, 379 S.C. at 9-10, 664 S.E.2d at 475-76.

Belfair's claim of whether Coastal's amendments<sup>6</sup> to its MRI project were substantial, thereby creating a new project pursuant to section 605 of South Carolina Code of Regulations 61-15

After hearing from the parties, the ALC concluded the amendments to Coastal's MRI project were not substantial, therefore, the amended project was not a new project under section 605, and Coastal's CON was not void. This appeal followed.

### STANDARD OF REVIEW

Appeals from the ALC are governed by the Administrative Procedures Act (APA).<sup>7</sup> Pursuant to the APA, this court may reverse or modify the ALC if the appellant's substantial rights have been prejudiced because the administrative decisions are (a) in violation of constitutional or statutory provisions, (b) in excess of the statutory authority of the agency, (c) made upon unlawful procedure, (d) affected by an error of law, (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S C Code Ann § 1-23-380(5) (Supp 2010). "As to factual issues, judicial review of administrative agency orders is limited to a determination [of] whether the order is supported by substantial evidence." MRI at Belfair, 379 S C at 6, 664 S E 2d at 474.

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<sup>6</sup> Specifically, Coastal sought a determination from DHEC as to whether its plan to convert its mobile MRI unit to a fixed MRI unit was a substantial change to the originally approved project. DHEC determined this amendment was not a substantial change because the location of the project did not change, the cost of the project decreased, and the 1.5 tesla mobile MRI was substantially the same as the 1.5 tesla MRI proposed in Coastal's CON application. Belfair requested the Board to review DHEC's staff decision, which the Board declined to do, prompting Belfair's request for a contested case hearing before the ALC.

<sup>7</sup> See S C Code Ann §§ 1-23-310 to -400 (2006 & Supp 2010).

## LAW/ANALYSIS

### I Application of Statutory and Regulatory Provisions

Belfair contends the ALC erred in applying the project review criteria instead of certain statutory and regulatory provisions as part of its substantial change analysis. Specifically, Belfair claims the ALC improperly considered the project review criteria<sup>8</sup> to approve Coastal's amended MRI project and thereby excused substantial changes to the MRI project that would have otherwise resulted in voiding the CON. We disagree.

Initially, we note the purpose of the CON Act "is to promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public needs, and ensure that high quality services are provided in health facilities in this State." S.C. Code Ann. § 44-7-120 (2002). To help achieve this purpose, an applicant is required to obtain a CON before undertaking a project prescribed by the CON Act. See § 44-7-120(1).

South Carolina Code of Regulations 61-15 section 801 states that "[t]he [project review] criteria listed in Section 802 are to be used in reviewing all projects under the Certification of Need program." Additionally, an application for a CON "must address all applicable standards and requirements set forth in departmental regulations, Project Review Criteria of the department, and the South Carolina Health Plan." S.C. Code Ann. § 44-7-200(A) (Supp. 2010) (emphasis added). Once issued, a CON is "valid only for the project described in the application including location, beds and services to be offered, physical plant, capital or operating costs, or other factors as set forth in the application, except as may be modified in accordance with regulations." S.C. Code Ann. § 44-7-230(A) (2002). If modifications occur after DHEC grants a CON, "[DHEC] will decide whether or not the amendment is substantial and thereby constitutes a new project." 24A S.C. Code Ann. Regs. 61-15 § 605 (Supp. 2010).

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<sup>8</sup> The project review criteria DHEC applied and the ALC subsequently considered were (1) need, (2) accessibility/distribution, (3) cost containment, (4) acceptability, (5) financial feasibility, and (6) adverse impact.

Here, the ALC was asked to determine whether Coastal's modifications to the MRI project were substantial. The ALC stated in its final amended order,

Review of this issue requires a comparison of the amended project to the original project proposed in the CON application to determine whether the amendment is substantial. In making that determination, I find that consideration of the project review criteria is relevant. In other words, whether the amendments to the project substantially change the project's compliance with the relevant project review criteria is pertinent in determining whether amendments to this permit were substantial under Section 605.

Subsequently, in the ALC's order denying Belfair's motion for reconsideration, the court expounded on why consideration of the project review criteria was appropriate. The ALC stated, "In making that determination in this contested case, it is apodictic that the ALC may consider properly admitted relevant evidence. Following that reasoning, this [c]ourt [] included an analysis of whether the amended project meets those same project review criteria it originally met in substantially the same way" (emphasis in original). We construe the above-quoted language as a permissible comparison of the original MRI project's compliance with the project review criteria to the amended MRI project's compliance with the same criteria. We find this comparison proper in determining whether Coastal's changes were "substantial" under section 605.

We are not persuaded by Belfair's argument that consideration of the project review criteria is statutorily prohibited by section 44-7-230(A). First, as a prerequisite to obtaining a CON from DHEC, section 44-7-200 expressly requires an applicant to address how its project will comply with the relevant project review criteria. See § 44-7-200 (2002 & Supp. 2010). Once approved by DHEC, a CON is "valid only for the project described in the application including location, beds and services to be offered, physical plant,

capital or operating costs, or other factors as set forth in the application, except as may be modified in accordance with regulations " § 44-7-230(A) (emphasis added) In addition to reviewing certain specific factors enumerated in section 44-7-230(A), we find it logical that a review of "other factors as set forth in the application," which necessarily includes the project review criteria, to also be appropriate when determining whether a CON is valid Accordingly, if satisfaction of the project review criteria is a statutory prerequisite to obtaining a CON, we find any change that would impact the applicant's ability to comply with the same criteria as relevant evidence on whether the change is substantial enough to create a new project

Moreover, in addition to the project review criteria, the ALC considered other factors from section 44-7-230(A) to support its conclusion that Coastal's CON was valid despite its amendments to the project Regarding location, the ALC found despite the MRI unit being located adjacent to the hospital instead of inside the hospital, the MRI unit was "nevertheless built to be an integral part of the hospital" and the "distance between the emergency room and [] Coastal's MRI unit would [not] reduce the standard of care of emergency room patients " The ALC also considered any differences in the services to be offered as well as the physical layout of the project when it addressed all the clinical and operational issues Belfair claimed were substantial under the amended project Regarding the services offered by Coastal, the ALC noted the maximum gradient amplitude would be slightly lower under the amended project, which would affect the rate at which the MRI completes a scan However, this slight decrease in gradient strength would only increase a scan by approximately sixty seconds, which "would not increase the wait time for patients since Coastal's volume is approximately four scans per day " Furthermore, the lack of MRI-safe monitoring equipment would not preclude Coastal from scanning unstable patients "if the radiologist and patient's physician determine the patient can be safely removed from monitoring during the MRI scan " In addition, the ALC addressed the difference in the physical layout of the amended project when it concluded changes in how patients would access the MRI unit would not make the MRI less safe than the proposed MRI

Last, testimony elicited at the contested case hearing supports the ALC's decision to consider the project review criteria in its substantial change analysis. Ms. Tibshirany, a former CON reviewer for DHEC, testified regarding what DHEC considers in its substantial change analysis. When asked how the project review criteria identified as important in the original CON application factors into the substantial change determination, she stated, "They would still be relevant. We're looking to see that the changes that are being made to the project don't affect the initial criteria that were deemed to be important at the time of review." She also testified the applicant is still required to meet the same project review criteria as in the original application if changes are made. Because DHEC's interpretation in this instance was not contrary to the plain language of section 44-7-230(A) or section 802 of Regulation 61-15, we find the ALC properly deferred to DHEC in this instance. See S.C. Coastal Conservation League v. S.C. Dep't of Health & Env'tl Control, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) ("Courts defer to the relevant administrative agency's decisions with respect to its own regulations unless there is a compelling reason to differ"), see also Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("We recognize the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation.")

Based on the foregoing, we find the ALC properly considered the appropriate factors, both from section 44-7-230(A) and from section 802 of Regulation 61-15, when it concluded Coastal's changes to its MRI project were not substantial.

## **II Burden of Proof**

Next, Belfair contends the ALC placed an impermissible burden of proof upon Belfair when it held Belfair had to prove by a preponderance of the evidence that Coastal's changes were substantial enough to warrant voiding the CON. We find this issue is not preserved for our review.

After the ALC issued its final order, Belfair filed a motion for reconsideration, but it never specifically objected that the ALC placed an impermissible burden of proof upon Belfair. Belfair's failure to do so precludes review of this issue on appeal. See Brown v. S.C. Dep't of Health

& Env'tl Control, 348 S C 507, 519, 560 S E 2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the ALJ are not preserved for appellate consideration") Belfair argues in its reply brief that it was "legally unnecessary" to make this assertion in its motion for reconsideration because it "directly challenged the ALC's test for determining whether [Belfair] had shown that [Coastal's] Amended Project constituted a 'substantial change' under South Carolina law " However, we find Belfair's challenge to the ALC's consideration of the project review criteria is not sufficiently specific to preserve its burden of proof argument for our review See Hill v S C Dep't of Health & Env'tl Control, 389 S C 1, 19, 698 S E 2d 612, 622 (2010) (finding it is incumbent upon appellant to show it had clearly raised the issue to the ALC and asked for a specific ruling in that regard to preserve the issue for appellate review), see also Anonymous v State Bd of Med Exam'rs, 329 S C 371, 375, 496 S E 2d 17, 18-19 (1998) (finding issue of burden of proof must be raised to and ruled upon to be preserved for appellate review)

### **III Substantial Evidence**

Belfair argues the ALC's decision was unsupported by substantial evidence, thereby requiring reversal pursuant to the APA We disagree

Substantial evidence "is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the [administrative] agency reached " Leventis v S C Dep't of Health & Env'tl Control, 340 S C 118, 130, 530 S E 2d 643, 650 (Ct App 2000) The possibility of drawing two inconsistent conclusions from the evidence does not prevent the ALC's finding from being supported by substantial evidence Id at 130-31, 530 S E 2d at 650 Pursuant to the APA, this court may reverse the ALC if the appellant's substantial rights have been prejudiced because the administrative decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record S C Code Ann § 1-23-380(5)(e) (Supp 2010)

Belfair claims it presented overwhelming evidence Coastal's amended project was substantially different in equipment, location, layout, scale, scope, and services from its original project While Belfair introduced evidence and testimony to indicate changes were made to the MRI project, as

the fact finder, the ALC could weigh the evidence and assess each witness's testimony and credibility prior to ruling on whether these changes were substantial enough to constitute a new project under section 605. See Spartanburg Reg'l Med Ctr v Oncology & Hematology Assoc of S C, 387 S C 79, 89, 690 S E 2d 783, 788 (2010) ("The ALC presides over the hearing of a contested case from DHEC's decision on a CON application and serves as the finder of fact ")

Several witnesses, including Dr Borelli, the owner of Belfair, testified the original and implemented MRI units have virtually identical equipment with substantially similar scan times and image quality. Dr Moesch, a radiologist, and Ms Platt, an expert in health care planning and health care finance, both testified the change in location of the MRI project in relation to the hospital (adjacent to instead of inside the hospital) as well as the minor differences in the "Code Blue" system, the MRI lift and lift opening, and the overall layout of the implemented MRI project did not substantially change the project from a clinical, operational, or patient safety perspective. Further, Coastal presented evidence that the scope of the services is the same under both the original and amended project. Although Coastal cannot scan "unstable patients" who are in need of constant monitoring, Belfair highlights only one instance in Coastal's fifty-page application where it references "unstable patients," and as reflected in its initial application, the vast majority of the patients it seeks to serve are "acutely ill patients" who are not on constant monitoring equipment. Last, while Coastal's project costs decreased significantly under the amended MRI project, this modification was permissible. Although utilizing the fixed MRI unit instead of an in-house MRI unit decreased the operating and capital costs estimated in Coastal's CON application, this change was not substantial in terms of the project's compliance with the CON because it did not negatively affect the project's compliance with the cost containment or financial feasibility factors set forth in the project review criteria. Based on the foregoing, we find substantial evidence in the record exists to support the ALC's conclusion.

#### **IV Transfer of Ownership**

Last, Belfair claims Coastal's changes to its MRI project were substantial, thus resulting in a new project. Because the new project was

incomplete on the date of the sale of Coastal to Tenet Health Systems, Belfair avers Coastal's CON was void as a result of the sale. Because we find Coastal's changes to the MRI project were not substantial, we decline to address this argument. See Futch v McAllister Towing of Georgetown, Inc., 335 S C 598, 613, 518 S E 2d 591, 598 (1999) (noting appellate court need not address an issue when disposition of prior issue is dispositive)

### **CONCLUSION**

Based on the foregoing, the ALC's decision is

**AFFIRMED**

**HUFF AND THOMAS, JJ , concur**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**RECEIVED**

SEP 15 2011

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Judge

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**SC Court of Appeals**

Case No 2007-ALJ-07-0389-CC

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MRI at Belfair, LLC,

Appellant,

v

South Carolina Department of Health and  
Environmental Control and Coastal Carolina Medical Center,

Respondents

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PETITION FOR REHEARING

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### INTRODUCTION

Appellant (Belfair) respectfully submits this Petition for Rehearing pursuant to Rule 221, SCACR. Belfair respectfully requests this Court to grant rehearing, withdraw the current opinion, and issue an amended opinion that reverses the appealed decision and remands for further proceedings.

This Petition is based upon the grounds set forth herein, and is further based upon the grounds set forth in the Brief of Appellant, Reply Brief of Appellant, and oral argument submitted to this Court, all of which is incorporated herein. For ease of reference, this Petition refers to Respondents as CCMC.

## GROUNDS FOR REHEARING

### I Introduction

This is an appeal after remand by the Supreme Court. See *MRI at Belfair LLC v South Carolina Dept of Health and Environ Control*, 664 S E 2d 471 (S C 2008) (*Belfair I*). In *Belfair I*, the Supreme Court considered challenges to the Original Certificate of Need (CON) issued in this case. The Court held the purpose of the Project Review Criteria is to limit the issuance of a CON, even if the CON satisfies the requirements of the State Health Plan. 664 S E 2d at 475. Thus, despite the State Health Plan goal of at least one MRI machine in every hospital, CCMC still had to satisfy the Project Review Criteria to obtain a CON for an MRI. The Court remanded for application of the Project Review Criteria, because DHEC and the ALC had improperly found that the State Health Plan goal exempted CCMC's CON application for an MRI from the Project Review Criteria.

In so ruling, the Court also considered whether the Original CON met the availability requirements of the State Health Plan. The Court's analysis focused on CCMC's claim that "because it was a hospital, it needed MRI accessibility *twenty-four hours a day, seven days a week*" and upon the ALC's ruling that CMCC needed "a fixed, in-house MRI unit that would be accessible *twenty-four hours a day seven days a week*" 664 S E 2d at 473 (all emphasis added). In considering this issue, the Supreme Court focused and relied upon the testimony of CCMC's president and CEO that CCMC needed "*around-the-clock MRI availability*" and CCMC's expert testimony that "a MRI facility open *twenty-four hours a day seven days a week*, was in the best interest of CCMC's patients." *Id* at 476 (all emphasis added). Accordingly, the Supreme Court found that "CCMC's needs would require an onsite MRI facility that was accessible *twenty-four hours a day seven days a week*" *Id* (emphasis added). As noted later, the evidence in this case shows that CCMC, in fact, has no such need, and there is no evidence that CCMC's MRI is

open, manned and ready on the 24/7 basis noted by the Supreme Court in *Belfair I* to uphold the issuance of the Original CON<sup>1</sup>

DHEC approved the Original CON on November 22, 2004. Belfair challenged it, and the ALC upheld the Original CON on November 10, 2005. Belfair appealed to this Court in *Belfair I*, and the appeal was later certified to the Supreme Court on March 19, 2007 (R. 1294).

DHEC issued the Original CON on August 3, 2006 and delivered it to CCMC on the same day – the CON was valid for one year and CCMC was required to issue monthly progress reports (R. 1311-1312). On the very next day, August 4, 2006, CCMC requested permission from DHEC to use a temporary, mobile MRI unit while it constructed the in-house unit approved in the Original CON. DHEC approved this request on the same day, August 4, 2006 (R. 982). Belfair learned of this request and approval by happenstance, and it commenced proceedings to challenge the allowance of a temporary, mobile MRI unit.

After receiving DHEC's permission to use the temporary, mobile MRI unit, CCMC sent monthly letters to DHEC advising that CCMC was pursuing the equipment and construction services needed to build the in-house MRI unit approved in the Original CON (See, e.g., R. 984, 1027, 1053 – letters from Sept. thru Nov. 2006). The November 2006 letter advised that CCMC anticipated completion of the approved MRI project in mid 2007 (R. 1053). By March 2007, CCMC still had not begun the construction project and advised that it was still awaiting final costs estimates on the electrical work for the approved MRI project (R. 1301). CCMC sent the identical letter for the next three months on April 3, May 4, and June 7, 2007 (R. 1357-1359). Thus, as of June 7, 2007, only two months before the expiration of the Original CON, CCMC had not begun construction of the approved MRI project.

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<sup>1</sup> The Supreme Court's emphasis on the need for 24/7 MRI service is not surprising – CCMC noted and relied on this need seven (7) times in eleven (11) pages of argument in its brief before the Supreme Court (R. 1068, 1068, 1069, 1070, 1071, 1074, 1074, 1075, 1075, 1076).

June 2007 would prove to be a very busy month for CCMC. Between June 8, 2007, and June 27, 2007, CCMC would announce its intention to abandon the Original MRI Project, seek to amend its original application and build the project at issue here, obtain DHEC's permission to proceed with the amended project, and complete the amended project.

June 12, 2007 Only five (5) days after reporting to DHEC that it continued to pursue construction of the Original MRI Project, CCMC requests a DHEC determination that making the temporary, mobile MRI permanent was not a substantial change to the Original CON – the request includes detailed information on how and when CCMC proposes to complete the amended project (R 1360-1361). CCMC blamed the legal costs involved in the Original CON proceedings, including the appeal to Supreme Court, as the reason for changing the project (R 1360). These are the same legal costs that led to the Supreme Court's opinion that CCMC could not obtain a CON for an MRI without meeting the Project Review Criteria.<sup>2</sup> Notably, this June 12 request was supported with a copy of an April 12, 2007, proposal to CCMC for enclosing (*i.e.*, making permanent) the temporary, mobile MRI unit (R 1367). It is thus clear that, CCMC's monthly progress reports notwithstanding, CCMC had long been considering the contested change in the Original MRI Project.

June 13, 2007 CCMC receives a quote and proposed bill of sale for purchasing the used MRI unit being used at CCMC under DHEC's prior permission for a temporary, mobile MRI (R 1363-1365). This quote mirrored a proposal sent the day before on June 12, 2007 (R 1368).

June 21, 2007 CCMC receives a proposal to construct the concrete pad needed for the amended MRI project (R 1390). DHEC requests additional information on the proposed changes to the MRI project (R 1375-1376). CCMC responds with the requested information on the very same day (R 1377-1379).

June 22, 2007 DHEC Staff approves the amended project as not being a substantial change from the project approved in the Original CON (R 1380). CCMC receives a Zoning Permit from the City of Hardeeville for skirting the mobile MRI unit – a part of the amended MRI project (R 1393). This is the same skirting for which CCMC had requested and received a proposal as early as April 2007, when CCMC was still reporting that it intended to pursue construction of the Original MRI Project (See R 1367, see also R 1357-1359).

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<sup>2</sup> DHEC took the same view of this legal fees issue. Mr. Grice was the supervisor of the DHEC CON program during the approval of the Original MRI Project and the Amended MRI Project. He considered the legal fees incurred in the first appeal in this case to be a driving force in CCMC's need to change the project (R 335). He also considered the appeals process to be abusive and unnecessary – this being the same process that led to the reversal of DHEC's in-house policy that a hospital did not need to meet the Project Review Criteria when seeking a CON for its first MRI (R 328, 335, 336).

June 26, 2007 CCMC buys the used MRI (R 1388) CCMC submits its final completion report for the amended project (R 1381-1382)

June 27, 2007 DHEC requests confirmation that the quote for awning costs included in the final completion report was the actual cost, that the awning has been installed, and that the amended project is 100% complete (R 1423) CCMC confirms the quote was the actual cost and the project is 100% complete (R 1424) DHEC responds that all requirements of the amended project have been fulfilled and the project is now closed (R 1426)

It is unreasonable to believe that all of this was accomplished in just eighteen (18) days, *i e*, that CCMC decided to abandon the Original MRI Project on June 8, 2007 – only one day after telling DHEC that it continued to pursue construction of the Original Project – and then completed the amended project on June 26, 2007. More importantly, during this entire time, the appeal in *Belfair I* was pending before the Supreme Court, and Belfair’s challenge to the temporary, mobile MRI was pending before the ALC. Despite this, CCMC and DHEC never advised the Supreme Court, the ALC, or Belfair that CCMC had abandoned the original project, proposed an amended project, received approval of the amended project, and completed the amended project.

The “June 2007 whirlwind” of activity begs two questions: how and why. The “how” is obvious – CCMC had been considering this project change long before June 2007 despite always telling DHEC that it was pursuing construction of the Original MRI Project. The “why” is equally obvious – the sale of CCMC to Tenet HealthSystem Medical, Inc. was scheduled to close and did close on July 1, 2007, and the MRI project had to be completed before that sale or the CON would be voided upon the sale. (See R. 21)

Belfair learned of the Amended MRI Project on June 28, 2007, and immediately notified the ALC on June 29, 2007 (R. 1434-1436). Also on June 29, Belfair requested the DHEC Board to conduct a final agency review of the Staff decision to allow the Amended MRI Project and requested a contested case hearing in the ALC on the Amended MRI Project (R. 1447-1448,

1449-1450) On July 13, 2007, the ALC dismissed with prejudice Belfair's pending challenge to the allowance of a temporary, mobile MRI unit, because that challenge had become moot with the June 22, 2007 DHEC Staff decision to allow the Amended MRI Project (R 1440-1441) On July 26, 2007, the DHEC Board announced that it would not review the Staff decision on the Amended MRI Project and, therefore, the Staff decision was the final agency decision (R 1459) On July 30, 2007, Belfair requested a contested case hearing in the ALC on this final agency decision, which led to the hearing and decision at issue in this appeal (R 1473-1474)

The contested case over the Amended MRI Project was pending before the ALC when the Supreme Court issued *Belfair I* and remanded for application of the Project Review Criteria to the Original MRI Project (R 27) The ALC consolidated the remanded case with the pending case on the Amended MRI Project (R 27) The approval and completion of the Amended MRI Project mooted the question remanded by the Supreme Court – it was now known that CCMC would not and did not build the Original MRI Project Thus, applying the Project Review Criteria to the Original MRI Project was a useless task Accordingly, Belfair moved to dismiss the remanded case on the Original MRI Project CCMC and DHEC consented to this motion, and the ALC granted the motion (R 27) Thus, the only remaining issue was whether the Amended MRI Project was a substantial change to the Original MRI Project, *i e*, did the changes result in a new project?

## **II The Effect of a “New Project” Determination**

If proposed changes to a project already approved under a CON result in a “new project” determination, then the applicant has two choices It can abandon the proposed changes and implement the project approved under the existing CON, or it can seek a CON for the new

project The request for the new CON essentially voids the existing CON but the “new project” determination does not itself void the existing CON (See R 391-392, 392-393)

If the applicant seeks a CON for the new project, the CON requirements of notice and public hearing are triggered – this notice and hearing trigger was avoided in this case with the erroneous finding that the Amended MRI Project was not a “new project” In addition, the applicant will bear the burden of proving the “new project” meets all CON requirements, including the Project Review Criteria

**III CCMC’s MRI facility is not the “24/7” operation heavily touted to – and heavily relied upon by – the Supreme Court in *Belfair I***

As noted earlier, in *Belfair I*, CCMC repeatedly asserted a need for a 24/7 MRI operation, and the Supreme Court heavily relied on this purported need See n 1 and accompanying text, *supra* The evidence shows quite the contrary

Dr Moesch is the medical director of radiology at CCMC and oversees the MRI operation (R 227) He is the only radiologist at CCMC (Id ) He obviously is not at CCMC “twenty-four hours a day, seven days a week ” He admitted that the MRI operation is basically a 7-to-5, Monday-Friday operation (R 250) He admitted it is rare to do an MRI outside of those hours (R 245-247, 250) Doing so would require calling in an MRI technician for an emergency situation (R 250) There is no evidence on the response time for these emergency call-ins It is clear that CCMC’s MRI facility is not the 24/7 operation touted to the Supreme Court in *Belfair I* <sup>3</sup>

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<sup>3</sup> DHEC admitted at trial that – in reviewing the requested change – DHEC did not consider or request any information on whether there was any change in the need for MRI services or how those services were to be provided from the time of the original CON (R 337)

**IV The Amended MRI Project manifestly was a substantial change to the Original MRI Project and, therefore, was a “new project” that required a new CON application**

The DHEC Staff decision to approve the Amended MRI Project was made by one person, Victoria Tibshirany (R 316) She testified at trial, as did her then supervisor, Joel Grice (R 328) <sup>4</sup> Their testimony revealed that DHEC’s policies and procedures for reviewing MRI change requests generally – and the review undertaken in the present case – are driven by the result-oriented goal that every hospital should have at least one MRI This is the same goal-oriented approach that the Supreme Court rejected in *Belfair I*

**A DHEC’s “substantial change” review process for hospital MRI projects**

Mr Grice was the principal witness on DHEC’s general procedure for reviewing change requests on hospital MRI projects He described the process summarized below

It is DHEC’s policy to not involve any “interested parties,” even if they are known to exist, in the review of requests to change an approved MRI project for which a CON has already been issued (R 333, 334) DHEC does not give notice to “interested parties” that had challenged the original CON for the MRI project (Id ) This approach reflects DHEC’s earlier noted view that the CON appeal process generally, and the appeal in *Belfair I* specifically, is abusive and unnecessary See n 2, *supra*

At the time of the change request here, DHEC’s view of MRI projects remained controlled by DHEC’s position – later rejected by the Supreme Court in *Belfair I* – that every hospital should have at least one MRI and thus need not satisfy the Project Review Criteria (See R 339-341) This view was a deeply rooted institutional bias in favor of approving any application for an MRI from any hospital that did not have an MRI If there were competing CON applications for an MRI from a hospital and non-hospital, the hospital’s application would

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<sup>4</sup> At the time of trial neither of these witnesses worked for DHEC but they were called to testify on the substantial change review process generally and the specific review undertaken in this case

be granted first, even if the non hospital application proposed a state-of-the art facility (R 340-341) If there were competing applications between two non-hospitals, the relative capabilities and sophistication of the proposed MRI's became important (R 341-342)

As a result of its position that every hospital should have an MRI, DHEC took what Mr Grice called a "rather simplistic" and "really very simplistic" approach to requests for changing an already approved hospital MRI project (R 315, 325) If the MRI had the same or a lower magnet strength, and if the project cost did not increase by more than 10%, then there was no substantial change and the amended project was approved as a matter of course (R 315, see also R 313-314, 318-320, 325-326) A reduction in the cost of an MRI project is never considered to be a substantial change (R 320, 322-323) The overriding consideration is a change in magnet strength – the change is substantial only if the magnet strength is increased from that approved in the original CON (R 318-319, 336) This view is so "simplistic" that when an original CON application is accompanied by a detailed list of capabilities and ancillary equipment, a proposed change in equipment did not have to be supported by a corresponding detailed list so long as the magnet strength was the same or lower (R 345-346)

If there was a change in the need for or the use of the MRI, this would never be considered a substantial change, because the "State Health Plan states every hospital should have its own MRI" (R 339) Here again, DHEC's erroneous view of the State Health Plan on MRI's guided its review of the requested change, just as it had guided its erroneous approval of the original CON application Thus, DHEC was unconcerned (but also unaware because CCMC never told DHEC) that CCMC's much-touted need for a 24/7 MRI operation – in the original CON proceedings and in the appeal to the Supreme Court – was not how CCMC in fact used its MRI facility Indeed, the evidence demonstrates that CCMC's current MRI facility cannot

possibly operate on a 24/7 basis as currently staffed, and it also reveals that CCMC has no need for a 24/7 operation

B DHEC's "substantial change" review process in the present case

Ms Tibshrary was the DHEC staff member that approved the project change in the present case. Her testimony, summarized below, reveals that her review was controlled by the general, result-oriented policy that every hospital should have at least one MRI

The review of a requested change was a comparison of the requested change to the application for the existing CON and the scope of the original project as approved, together with any additional information that might be requested from the applicant (R 361). As to requested changes for an MRI project, the principal criteria were magnet strength, cost, and location (R 362-363). DHEC approved CCMC's requested change because (a) the location remained at the hospital, (b) there was no increase in cost, and (c) the MRI had the same magnet strength and nothing in the request indicated there were any significant changes in the equipment (R 366). Ms Tibshrary admitted that she assumed the two machines had the same capability, because CCMC did not disclose any differences in its request for a change in its CON (R 402-403).

The decreased project cost was not viewed as a substantial change, because DHEC did not consider cost reduction to be a substantial change – only cost increases were viewed as potential substantial changes if the increase exceeded 10% (R 377-378).

This was the first project in which Ms Tibshrary reviewed a request to change an MRI project that involved going from an in-house, fixed unit to a mobile unit that was altered to be a "fixed" unit, i.e., a mobile unit with the wheels removed and a skirt placed around the bottom (R 383). Although she would not be surprised if there had been a similar request, she was

unaware of it (R 383) There is no evidence of any similar change request having been considered by DHEC

Ms Tibshrary testified that had the original CON been for a mobile unit at the hospital, but the requested change was for a fixed unit, then that would be considered a substantial change, because DHEC does not consider them to be the same equipment (R 379) For reasons that DHEC did not explain and that would necessarily defy logic, the opposite is not true Thus, when CCMC sought to change from a fixed unit to a mobile unit, albeit a mobile unit with its wheels removed and a skirt placed around it, DHEC saw no substantial change This is completely arbitrary<sup>5</sup>

C DHEC's conclusion that there was no "substantial change" was manifest error

The Original MRI Project had a capital cost of \$3.2 Million, and the Amended MRI Project had a capital cost of \$836,822.00 (R 30) The resulting 75% reduction in capital cost is not only a substantial change – it is a dramatic change It defies all logic and reason to conclude that a project constructed at a 75% capital cost reduction remains substantially similar to the original project and its 400% higher capital cost This cost reduction, standing alone, demonstrates a substantial change The question of whether or not the "25% project" nevertheless qualifies for a CON is irrelevant – that question is to be answered by submitting and reviewing a CON application for the substantially changed project

The Original MRI Project was to be housed in an addition to the hospital building and adjacent to the Emergency Room As implemented under the approved change, the MRI unit

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<sup>5</sup> Ms Tibshrary was confused about the change she approved She thought the MRI unit actually in use at CCMC was a modular unit It was not It was a mobile unit that had been altered (wheels removed and skirting added) to look more like a modular unit, but it was always a mobile unit within a semi truck trailer (See R 383 388) CCMC's responses for more information plainly revealed that the requested change was to use a mobile unit and convert the coach [into] a modular building *i.e.* remove the wheels and add skirting around the bottom (R 1377 1378) CCMC's expert (Ms Platt) also recognized that the changed project used a stationary mobile unit achieved by 'parking a mobile unit permanently on site' (R 259 292)

was located on the opposite side of the hospital (away from the ER) and in a converted mobile trailer outside the hospital (R 395) On its face, this change in location is substantial It moved the MRI from a location that was as close as possible to the ER to a location that was far away as possible and still be “connected” to the hospital This change was particularly substantial given the much touted need for an MRI to treat ER patients needing emergency MRI’s

The equipment change was also substantial The CON application proposed the purchase of a new MRI at a cost of \$1 8 Million – the change proposed the purchase of a used MRI at a cost of \$535,000 00 (R 31) As with the overall project cost, the 70% reduction in equipment cost, combined with the change from a new machine to a used machine, is substantial on its face

DHEC promulgated the substantial change regulation, but it did not become law until approved by the General Assembly The regulation simply states that DHEC will decide if a proposed amendment to a CON project is substantial such that the proposed amendments constitute a new project 24A S C Code Ann Regs 61-15 § 605 (Supp 2008) The regulation does not define “substantial” in any special way, nor does any other regulation or statute Thus, when the General Assembly approved the regulation, it necessarily intended the use and application of the plain and ordinary meaning of “substantial” The undisputed evidence in this case demonstrates that the change in projects here was substantial

As noted in this Court’s opinion, courts generally defer to an administrative agency’s interpretation of its own regulations That deference, however, does not permit the agency to avoid the plain meaning of a statute or regulation, and the courts do not defer to an interpretation that is controlled by an error of law Both defects are present here

As shown above, the project changes in this case are manifestly substantial under the plain meaning of that word Indeed, the changes are more than substantial, they are dramatic

As also shown above, DHEC’s “substantial change” analysis in this case was driven by its legally erroneous view and institutional bias – rejected in *Belfair I* – that every hospital is entitled to at least one MRI. This legal error led to DHEC to apply what it admitted was a “simplistic” review of the proposed changes to the MRI project. Thus, there can be no deference to DHEC in this case.<sup>6</sup>

As noted earlier, the question presented here is not whether a CON would be issued for the changed project. That question was to be answered if, and only if, CCMC decided to abandon the original project and seek a CON for the new project. The only question here is whether CCMC’s changes to the original project were substantial under the plain meaning of that word. Clearly they were and, therefore, the proposed changes were for a new project that required a new CON application.

**V The “Project Review Criteria” are irrelevant to the “substantial change – new project” determination and, in any event, application of the Project Review Criteria does not negate the undisputed evidence showing that CCMC’s amended MRI project is a substantial change from the original project and therefore a new project.**

DHEC, the ALC, and this Court found it appropriate to apply the “Project Review Criteria” to determine whether CCMC’s requested change to its MRI project was substantial and therefore a new project. This was error.

The Project Statute (§ 44-7-230(A)) limits any project to that approved in the CON. Thus, absent a specific statute or regulation on the substantial change question (and there is none), this statute sets forth the parameters for the substantial change analysis. There is no

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<sup>6</sup> At the time of the DHEC’s change decision in this case the Supreme Court had not yet issued its opinion in *Belfair I*. Thus DHEC did not have the benefit of that decision and its rejection of DHEC’s institutional bias in favor of hospital MRI applications. The term “bias” is not used in a pejorative sense. DHEC’s view of hospital MRI applications was based on a good faith – but legally erroneous – reading of the State Health Plan.

statute and no regulation that incorporates the Project Review Criteria into the substantial change analysis

Section 230(A) requires, in relevant part, that, once issued, a CON is “valid only for the project *described* in the application *including* location, beds and services to be offered, physical plant, capital or operating costs, *or other factors as set forth in the application*, except as may be modified in accordance with regulations ” [emphasis added] The italicized wording can only limit the validity of a CON to the project meeting the named descriptive factors, *or* additional descriptive factors set forth in the CON application. It does not justify finding that an amended project that is substantially different from the original project is not a new project simply because it meets some CON Project Review Criteria discussed in the Application.

Although it may seem “logical” that the catch-all phrase in S C Code Ann § 44-7-230(A) includes the Project Review Criteria,<sup>7</sup> this Court misapprehended the Legislative intent of maintaining factors for consideration under S C Code Ann § 44-7-230(A) as separate and apart from the Project Review Criteria. Opinion, Shearhouse Adv Sh No 28 at 162

This Court incorrectly found that “Belfair conceded Coastal’s MRI Project, as set forth in its CON application satisfied the relevant project review criteria ” Prior to hearing, Belfair moved for dismissal of its challenge to DHEC’s decision to issue a CON for the Original Project. CCMC and DHEC consented to Belfair’s motion and the ALC issued an order dismissing Belfair’s challenge. Belfair’s motion contained no concession that the Original Project satisfied relevant project review criteria. Likewise, the ALC’s order granting Belfair’s motion contained no finding on this point. Moreover, it is the law of the case under *Belfair I* that the Project Review Criteria had not been applied to the original CON. Since those criteria were never

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<sup>7</sup> However, if the General Assembly had considered “other factors” to mean Project Review Criteria, it would have said so. *Stardance Casino Inc v Stewart*, 347 S C 377, 390 556 S E 2d 357 364 (2001)

applied to the CON after remand, it was impossible to compare the changed project's compliance to that of the original project were it proper to do so (and it was not)

The CON Act subjects new projects to various due process mechanisms that protect "affected persons,"<sup>8</sup> including notice and possible public hearing requirements. Affected persons are deprived of these protections when an amended CON application that is substantially different, is deemed to satisfy the "substantial change" regulation, 24A S C Code Ann Regs 61-15 § 605, because it otherwise meets the Project Review Criteria

In this case, CCMC never took any steps to implement the Original Project. Just before its CON was set to expire, CCMC switched projects and yet managed to avoid any of the notice procedures and potential public hearings that should have occurred on the Amended project that it actually implemented

The Legislature recognized that the class of parties affected by a project may have a very different composition if the project varies from the CON application, and so it adopted the Project Statute S C Code Ann § 44-7-230. The Project Statute requires final drawings and specifications, limits the duration of a CON to less than two (2) years, requires an implementation timetable to be followed, and denies any transfer of a CON S C Code Ann § 44-7-230(C)-(E). Central to this case, the Legislature states a CON is valid *only* for "the project described in the application including location, beds and services to be offered, physical plant, capital or operating costs, or other factors as set forth in the application, except as may be modified in accordance with regulations "

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<sup>8</sup> "After the department has determined that an application is complete, affected persons *must* be notified in accordance with department regulations. The notification of affected persons begins the review period." S C Code Ann § 44-7-210(A) (emphasis added). "The department may hold a public hearing, if timely requested, to gather information and obtain public comment and opinion about the proposed project." S C Code Ann § 44-7-210(B)

This Court correctly noted the purpose of the CON Act but failed to apprehend how this purpose is frustrated by allowing CON applicants to substantially amend their project as long as the amended project meets the Project Review Criteria. Such action defeats the due process requirements adopted by the Legislature that allow the public to participate in the determination of the “health facilities and services which will best serve public needs.” Opinion, Shearhouse Adv Sh No 28 at 160 (discussing S C Code Ann § 44-7-120)

Specifically, by limiting the validity of an issued CON to “the project described in the application including location, beds and services to be offered, physical plant, capital or operating costs, or other factors as set forth in the application,” the Legislature has ensured that the appropriate class of affected individuals have had an opportunity to be heard by DHEC on the project before the project is implemented. If DHEC and the ALC are permitted to use the Project Review Criteria to deem that no “substantial changes” have occurred because, in any event, the changes would be acceptable if they appeared in a new project application, CON applicants will be permitted to avoid the notice and possible public hearing requirements for new projects.<sup>9</sup>

CCMC has performed that end-run in this case by never breaking ground on the Original Project approved by DHEC but, instead, implementing an entirely different project without providing any notice to any affected or potentially-affected persons. As a result of conflating the Project Review Criteria into S C Code Ann § 44-7-230(A), CCMC has added an MRI facility that differs substantially – and dramatically – from the Original Project. The Legislature intended such a “substantial change” to undergo the process of obtaining a new, valid CON. This Court

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<sup>9</sup> For example, it is undisputed under CCMC’s evidence – the testimony of its Director of Radiological Services – that it does not need and does not have a 24/7 MRI operation as touted in its CON application and its arguments in *Belfair I*. Thus, the Health Plan’s stated requirement that the suitability of shared mobile services be considered in hospital MRI applications would be highly relevant in any CON application for the CCMC’s real MRI project.

mistakenly frustrates this statutory scheme by allowing the Amended Project's supposed satisfaction of the Project Review Criteria to override changes from the Original Project that were manifestly substantial

Allowing this process results in a "secret de facto" CON application whereby an applicant convinces DHEC – without notice to anyone – that its proposed changes satisfy all the requirements for a CON and, therefore, should be allowed under the existing CON. That simply is not the question, nor is it the process mandated by statute and regulation. Rather, the first question is narrow and straightforward: do the proposed changes reflect a substantial change to the existing project under the plain and ordinary meaning of "substantial"? If they do (as they manifestly do here), then there is a new project that requires a new CON application (at which time the Project Review Criteria will be applied). This process also creates potential problems for applicants. For example, if the ALC had found that CCMC's amended project did not meet the Project Review Criteria, then CCMC could not later obtain a new CON for the same amended project. The ALC had already ruled in a proceeding that is binding on CCMC and DHEC that the new project does not meet the Project Review Criteria. Again, this is not the process mandated by statute and regulation.

**VI This Court's "substantial evidence" analysis applied the wrong law by applying the Project Review Criteria, and the controlling facts on the question of "substantial change" are undisputed and come from witnesses for DHEC and CCMC**

The arguments made above on the issue of "substantial change" are based on undisputed facts, including the testimony of witnesses presented by DHEC and CCMC. As shown above, these facts demonstrate that the amended project was a substantial change from the original project and, therefore, the amended project was a new project that could not be pursued unless CCMC obtained a new CON. In addition, as also argued above, the Project Review Criteria are

not applicable to the issue of “substantial change” Thus, this Court erred in its “substantial evidence” analysis, because that analysis hinges on applying the Project Review Criteria For example, this Court relied on the Project Review Criteria of “cost containment” to overcome the manifest “substantial change” in capital costs between CCMC’s original project and amended project, a change that necessarily resulted in a new project under the plain and ordinary meaning of “substantial ”

## **VII Belfair’s “burden of proof” argument was properly before this Court**

This issue involves the effect of a “substantial change” finding and what must be proven to obtain a “substantial change” finding In opening argument, Belfair argued there was substantial change and, therefore, the amended project could not go forward unless CCMC sought and obtained a new CON for the new project (R 151) During trial, Belfair elicited the following testimony from Ms Tibshrary, the DHEC Staff member that conducted the “substantial change” review in this case (1) if the proposed changes are substantial, then the amended project is a new project that requires a new CON, (2) the original CON is not voided by a ‘substantial change’ finding, because the applicant is free to abandon the proposed changes and complete the original project under the CON, (3) but if the applicant wants to pursue the new project, then it must apply for a new CON, and the act of making that application – not the substantial change finding – voids the original CON (See R 391-392, 392-393) In closing arguments, Belfair again argued that a showing of “substantial change” means the applicant must obtain a new CON to pursue the amended project (R 465) At the request of the ALC (R 455), the parties submitted proposed orders Belfair’s proposed order set forth the burden and approach argued on appeal (R 84-101) Thus, the issue was raised to the ALC and ruled upon Therefore, there was no need for a 59(e) motion to preserve the issue for appeal

Moreover, and assuming a 59(e) motion was necessary on this issue, Belfair's proposed order was attached to and incorporated into its 59(e) motion (R 82) The proposed order again set forth the burden and approach argued on appeal (R 84-101) The ALC again ruled on it by refusing to sign the proposed order Thus, the issue was preserved for appeal

**VIII This Court should reach the "transfer of ownership" issue**

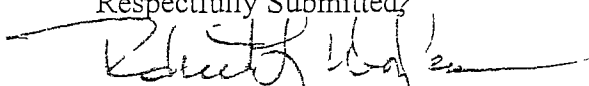
As shown above, this Court should reverse the appealed order and find that CCMC's amended MRI project was a "substantial change" Upon doing so, this Court should reach the "transfer of ownership" issue and rule the only way permissible under the law – the CON for the original project was voided upon the transfer of ownership

**CONCLUSION**

For all of the foregoing reasons, and for the reasons set forth in the briefs and oral argument presented to this Court, which are incorporated herein by reference, the Appellant (Belfair) respectfully requests this Court to grant rehearing, withdraw its opinion, and issue an amended opinion that reverses the ALC and remands for further proceedings

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# The South Carolina Court of Appeals

MRI at Belfair, LLC,

Appellant,

v

South Carolina Department of Health  
and Environmental Control and Coastal  
Carolina Medical Center,

Respondents

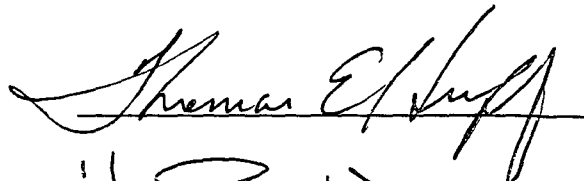
The Honorable Ralph K. Anderson, III  
Richland County  
Trial Court Case No. 2007-AL-07 00389

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## ORDER DENYING PETITION FOR REHEARING

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PER CURIAM After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

  
\_\_\_\_\_  
J Huff

  
\_\_\_\_\_  
J Williams

  
\_\_\_\_\_  
J Thomas

Columbia, South Carolina

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